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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
TEASA K. WEAVER, MASTER-IN-EQUITY

Appellate Case No.: 2021-000816

Vicki Lynn Vergeldt, individually and as
Successor Trustee of the John Vergeldt, Jr.
Revocable living Trust dated September 27, 1978, ...Respondent,

v.

John Edward Vergeldt, ...Appellant.

**RECORD ON APPEAL
VOLUME III OF III**

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Certificate of Counsel

1 that he provided, but there were places **ROA 000939**
2 financial statements that he claimed that work
3 was done, but on visual inspection, that work was
4 not done. The only work that I could definitely
5 agree was done was the locks were changed.

6 MR. PEACE: Okay. No further questions, Your
7 Honor.

8 JOHN EDWARD VERGELDT: I promise you, I'll be
9 brief.

10 - - -

11 RECROSS-EXAMINATION

12 - - -

13 BY JOHN EDWARD VERGELDT:

14 Q. You said that you did not believe that the
15 financial statements were complete, but you can't
16 tell me what's missing; you just think there's --
17 you can't tell me what's missing, can you?

18 A. Is that a question or a statement?

19 Q. Yes. Can you tell me what's missing in
20 the financial statements?

21 A. Yes, I can. Let's look at the
22 March 25th, 2014 first annual financial
23 statement that you wrote.

24 Q. Okay.

25 A. If you turn to page -- it's handwritten **ROA 000939**

1 and it's called page 2, and it says, exp ~~ROA 000940~~
2 for the trust estate, July 1st, 2013 to
3 March 28th, 2014. There is a sum at the bottom
4 of 320,799, from which you intended, I believe,
5 as you'll see on the next page, to pay the
6 residuary beneficiaries their distributions.

7 What's very significant on the balance
8 sheet is that, according to this report, you had
9 \$40,000 in -- and 60 -- no -- beg your pardon --
10 \$59,518 left once those initial distributions to
11 the residuary beneficiaries had been paid,
12 excluding an owed payment to me, not of 15,000,
13 which you stated earlier today. That 15,000 was
14 a number that we disagreed upon because you
15 reduced my proposed distributions based on your,
16 I believe, ire that I had asked questions about
17 it and based on my refusal to sign a release of
18 claim.

19 You reduced my inheritance to 15-whatever.

20 Q. I'm sorry. Are you finished?

21 A. No, I'm not finished. And so then, if you
22 would have paid the \$40,068 that you calculated I
23 was owed, this annual trust report shows a
24 balance in the trust of \$10,322. Okay.

25 Also on the previous page, it sta ~~ROA 000940~~

1 this report covers from July 1st, 2013 t**ROA 000941**
2 March 28th, 2014. There is no place in these
3 pages where you reveal that you made additional
4 identified inheritance distributions to yourself
5 and to our sister Patti, but not to me. And
6 those were made in February of 2014.

7 Now, if you remember, I said that if we
8 had -- had one of two operating balances,
9 depending on whether or not you were counting
10 what you said was 40,068 bucks that was owed to
11 me. If you were counting that, there should have
12 been \$50,390 left in the trust account, according
13 to this report.

14 Then in your following report, which I
15 don't know if I've got up here -- I need to see
16 it, but it's refunded by more than \$100,000 that
17 you did not reflect in this initial annual trust
18 report.

19 I believe that answers your question.

20 Q. Sure. Possible to assume that that extra
21 money came from Henry Ford Village?

22 A. It is impossible to assume that.

23 Q. Okay. Thank you. You say you never saw
24 any work being done at the cottage; is that
25 correct?

ROA 000941

1 A. No. I said -- well, yeah, I never ROA 000942
2 work actually being done.

3 Q. Okay. So the bills that were paid, the
4 copies of the checks and the invoices that were
5 sent to you, were for mythology? I just made
6 them up?

7 A. The bills that you sent to me to approve,
8 I approved. However --

9 Q. This is long before that. This is long --
10 I'm sorry. Go ahead.

11 THE COURT: Well, let's restrict your
12 questioning because that redirect was just about
13 the work on the cottage.

14 JOHN EDWARD VERGELDT: Right.

15 Q. So in the last few years, there were
16 lights put in the parking lot; gutter extensions
17 were made; posts in the rope fence were installed
18 with lighting; the roof was patched; the shed was
19 painted; the barn was painted; and the grass was
20 cut; and the gutters were cleaned, which I'm
21 going to get to with the next witness, because
22 the gutters were cleaned.

23 MR. PEACE: Is there a question in there,
24 Judge?

25 JOHN EDWARD VERGELDT: Yes.

ROA 000942

1 Q. Were those things done? Did you **ROA 000943**
2 those things done?

3 A. I am supposed to tell the truth, the whole
4 truth, and nothing but the truth.

5 Q. Yeah.

6 A. What I saw done occurred in July of 2019,
7 which was completely by accident, and I did not
8 lay eyes on this. Coincidentally, our cousins,
9 who have a cottage 2 miles away, happened to
10 drive by and, because we spent many happy summers
11 there as children, wanted to see the property.
12 They came upon --

13 Q. You're not answering.

14 A. I'm answering your question. You must let
15 me finish, please. I was alarmed to hear that
16 Audry Scheible's father was on a ladder to clean
17 the gutters. This alarmed me because Audry
18 Scheible's father didn't have my permission to be
19 there and suffers from neuropathy in his legs.
20 If the man had fallen off the ladder, it would
21 have been bad news for the tiny bit of money that
22 was left. I didn't have money to pay for anybody
23 getting injured.

24 Also, it was clear to me after that visit
25 that Audry had tried to clean things up, **ROA 000943**

1 furniture over the floor to try to, I believe **ROA 000944**
2 and I think this is what the pictures you brought
3 are going to show -- to try to camouflage the
4 extent of damage at the cottage.

5 Moreover, in my note to Audry, I let her
6 know that nothing superficial like that could
7 even begin to address the structural damage at
8 the cottage and that she or anybody else
9 shouldn't be there, for health reasons, without a
10 face mask.

11 I also said, if anybody needs anything
12 from there, just let me know, and I will make
13 arrangements.

14 Q. Getting back to my question, did you see
15 lights put in the parking lot? Yes or no?

16 A. No. The broken lights are still on the
17 ground.

18 Q. Excuse me. But then you saw lights put in
19 the parking lot?

20 A. I did not, John. I answered your
21 question.

22 Q. You saw them laying on the ground?

23 THE COURT: She's answered.

24 Q. Did you see gutter extensions installed?

25 A. I did not.

ROA 000944

1 Q. All right. Did you see the posts ~~ROA 000945~~
2 rope and the lights on top of them installed?

3 A. The posts -- okay. To answer all of these
4 questions collectively, they are still in a
5 damaged or broken condition.

6 Q. So repairs were being done? Yes or no?

7 A. No.

8 Q. Repairs were being done?

9 A. No, repairs were not being done. They
10 were documented from two years earlier, and they
11 still are not done as I sit here today.

12 Q. So there was no painting done on the barn?

13 A. I believe I did make that exception as a
14 note, that it looked as though the barn had been
15 spray-painted.

16 Q. No. That's the shed. The barn is the big
17 tall one. There was no painting done on the
18 barn -- well, let's -- there was no roof patch
19 put on.

20 THE COURT: Mr. Vergeldt, ask a question
21 instead of statements.

22 Q. There was no roof patch put -- to the best
23 of your knowledge, there was no roof patch put on
24 the roof where the shingles might be worn?

25 A. I saw no evidence of any maintenance ~~ROA 000945~~

1 whatsoever on this property. **ROA 000946**

2 Q. To the best of your knowledge, the barn

3 had not been painted?

4 A. I did not state that.

5 Q. To the best of your knowledge, the shed

6 had not been painted?

7 A. I don't know, John. I wasn't there.

8 Q. You saw Jack Scheible cleaning the

9 gutters?

10 A. No. I heard secondhand that Jack Scheible

11 was on a ladder in July of 2019 and that it was

12 verbally reported to me it was for the purpose of

13 cleaning the gutters.

14 Q. Okay. So the gutters were being cleaned?

15 A. At that point, the damage had already been

16 done from ten years of them not being cleaned. I

17 believe --

18 JOHN EDWARD VERGELDT: Thank you, Your Honor.

19 THE COURT: All right. Ms. Vergeldt, you're

20 excused.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Vergeldt, I think you had a

23 witness that we're going to take out of sequence.

24 JOHN EDWARD VERGELDT: Audry Scheible,

25 please. **ROA 000946**

1 (Audry Scheible was sworn in by the ~~ROA~~ **ROA 000947**
2 THE COURT: You may be seated. Ms. Scheible,
3 can you please state your name and spell your name.
4 AUDRY SCHEIBLE: Audry Scheible. A-U-D-R-Y,
5 last name, S-C-H-E-I-B-L-E.
6 AUDRY SCHEIBLE
7 having been first duly sworn, was examined and
8 testified as follows:
9 - - -
10 DIRECT EXAMINATION
11 - - -
12 BY JOHN EDWARD VERGELDT:
13 Q. So what is your relationship to the
14 petitioner and the defendant, please?
15 A. My aunt and uncle.
16 Q. Are you a bona fide beneficiary of the
17 trust?
18 A. I think so.
19 Q. Were you a healthcare provider to your
20 grandfather while he lived with the petitioner?
21 A. I was a CNA at the time.
22 Q. So you were a healthcare provider?
23 A. Yes.
24 Q. Was there a car left there for your use?
25 A. His Equinox was there. **ROA 000947**

1 Q. Do you know who actually owned the ROA 000948
2 Equinox?

3 A. I believe Grandpa.

4 Q. Would it surprise you to know that I owned
5 it?

6 A. I did not know that.

7 Q. Was the car readily available for your
8 use -- and the other healthcare providers?

9 A. It was available when it wasn't full.

10 Q. Full of?

11 A. Band equipment.

12 Q. Band equipment. In your capacity as the
13 healthcare provider, were you provided with a
14 debit card and/or credit card?

15 A. I was -- he -- Grandpa had one. It was --
16 we used it to purchase stuff for him or that
17 we -- that was -- I was told to go to the store
18 and get.

19 Q. So were you ever told by anyone other than
20 Grandpa to go to the store and buy something and
21 use the credit card?

22 A. Yes.

23 Q. Who told you that?

24 A. Aunt Vicki.

25 Q. Did you use a debit card or credit card? ROA 000948

1 A. Do I myself? ROA 000949

2 Q. No. To buy the stuff from --

3 A. Yes.

4 Q. Both. Was it a debit card or a credit

5 card?

6 A. Just a bank card.

7 Q. A bank card. So you don't know which it

8 was.

9 Did you personally witness illegal drug

10 use in the home?

11 A. Yes.

12 Q. Did you personally witness violence in the

13 home?

14 A. Yes.

15 MR. PEACE: Objection. Where is this going?

16 This is not relevant.

17 JOHN EDWARD VERGELDT: Certainly it is, Your

18 Honor. It's relevant to the point of I am being

19 accused of forcing things to happen up at the

20 cottage when the entire story has to be understood.

21 He brought up the point that when I was the

22 co-trustee, I didn't do anything to the cottage,

23 and yet my father was alive, kicking and well.

24 What am I supposed to do? Say, hey, Dad get up on

25 the roof. If it needed to be done on the ROA 000949

1 got done, whether I did it or somebody else. ROA 000950

2 So he's now splitting hairs, saying, if
3 there's violence going on in the house, why didn't
4 Dad want to live there? Ms. Vergeldt has testified
5 that I kind of, like, took him. She said in her
6 direct testimony that Audry showed up one day and
7 took him like he was kidnapped.

8 THE COURT: Mr. Vergeldt, it's -- we're
9 talking about --

10 JOHN EDWARD VERGELDT: We're talking about
11 the entire fiduciary relationship and how much
12 money was spent.

13 THE COURT: I sustain your objection. Let's
14 move on.

15 BY JOHN EDWARD VERGELDT:

16 Q. Did you attend the family meeting at the
17 cottage in the fall of 2011?

18 A. Yes.

19 Q. Was it your grandfather's decision to move
20 out or was it someone else's decision?

21 A. So I think that that meeting was actually
22 to move into Vicki's house.

23 Q. No. I'm sorry.

24 MR. PEACE: Objection. He can't correct the
25 witness.

ROA 000950

1 THE COURT: You can't correct the witness. ROA 000951
2 you don't like the answer, Mr. Vergeldt. You're --

3 Q. So was there a family meeting to move out
4 of Vicki's house and over to your mother's house?

5 A. I don't know if there was a family
6 meeting. I know we had talked about -- I know
7 that it was talked about between the children.

8 Q. Okay. Do you -- but do you remember the
9 meeting and it was Grandpa's decision or was it
10 sort of like the whole family's decision?

11 A. Grandpa did not want to be in the house
12 with Ben anymore.

13 JOHN EDWARD VERGELDT: Here is a list of
14 expenditures that I've previously submitted. I
15 note, since it's not a total breakdown --

16 Q. But does that look accurate for what you
17 spent in charges?

18 MR. PEACE: Objection, Your Honor. I don't
19 know if she prepared this document; I don't know
20 who prepared the document. All I know is right now
21 and for the entirety of today, he's attempted to
22 get people to say what it is. She doesn't -- other
23 than him telling it her what it is, she doesn't
24 know what it is.

25 ROA 000951

1 BY JOHN EDWARD VERGELDT:

ROA 000952

2 Q. Do you know what it is?

3 A. No.

4 THE COURT REPORTER: I'm sorry. I'll keep
5 the original exhibits over here. Thank you.

6 Q. Did you take pictures of the cottage?

7 A. I did.

8 Q. Did you, in taking pictures of the
9 cottage, attempt to sugarcoat anything?

10 A. No.

11 Q. Attempt to hide anything?

12 A. No.

13 JOHN EDWARD VERGELDT: Let me find the
14 pictures of the cottage. While I'm looking for the
15 pictures of the cottage -- here they are -- I
16 apologize, Your Honor. I will find it.

17 Q. You have heard testimony that says the
18 cottage is unlivable. Do you agree with that
19 assessment?

20 A. It needs to be cleaned. I don't know --
21 I'm not a construction worker. I thought it was
22 livable. That's why I was trying to clean it.

23 Q. Do you believe that work has been done on
24 the house, on the cottage, in the last five to
25 seven years?

ROA 000952

1 A. Yes. ROA 000953

2 Q. Do you know who was doing that work?

3 A. I know I did a lot of it just while I was

4 up there.

5 Q. Okay. Did you --

6 A. And then Jeff, my mom's significant other,

7 had been working on it when he passed very

8 unexpectedly.

9 Q. Were you ever there when some of the

10 restoration work was being done?

11 A. No.

12 Q. But did you see evidence that restoration

13 work was being done?

14 A. I saw the tools and things and new pieces

15 of wood that had been put up.

16 Q. Do you know how many significant water

17 leaks there have been in the cottage?

18 A. From what I've understood, like two or

19 three.

20 Q. So the first water leak was -- the first

21 water leak was in the winter of -- that's -- was

22 in the winter of '17 and '18, correct?

23 A. I believe so.

24 Q. Were you up there at all during that time

25 frame to spend time with Patti, to spend ROA 000953

1 with your dad, and see -- just spend some time at the cottage and do some cleaning and general
2 stuff?
3

4 A. Not during that winter. And my mom was
5 pretty much dying at that point, so I did not
6 make it up there that fall.

7 Q. Did you and your dad routinely do work on
8 the cottage?

9 A. He came to help me because I'm not very --
10 I like -- he's handier than I am. So he would
11 supervise me.

12 Q. Okay. So you would say, though, that work
13 was being done?

14 A. Yes.

15 Q. Did you take Dad to see Mr. Gutman, to
16 prepare the tenth --

17 A. I do not believe so.

18 Q. Do not believe so. Actually, you have no
19 memory of doing it? Is that what you're saying?

20 A. I took him to a lawyer's appointment that
21 the only thing that -- this was back in the day
22 to -- after Dave had passed away for Dave to --
23 from what he had just said in the car, for Bonnie
24 to be removed from the thing.

25 Q. Bonnie was Dave's wife at the time ROA 000954

1 passing? **ROA 000955**

2 A. Yes. But he had asked me to drive him.

3 It wasn't -- I did not have any knowledge of what

4 exactly was going on.

5 Q. Do you believe that you are not only a

6 beneficiary of the trust, but since your mother

7 passed, that you are a principal of the trust?

8 A. I'm not sure. I know I'm a beneficiary

9 of -- I believe of the use of the cottage.

10 Q. Okay. Have you been locked out of the

11 cottage?

12 A. Yes.

13 Q. Have you been threatened with legal action

14 if you enter the cottage?

15 A. I got a Facebook message from Tim telling

16 me it was illegal for me to be on the property.

17 And in an email, it said --

18 Q. Is that it?

19 A. I was told I was not allowed to be on the

20 property, that they were putting up video

21 cameras, and the police were made aware.

22 Q. Okay. And did you leave the property?

23 A. I did.

24 Q. Have you paid your own money to fix the

25 cottage? **ROA 000955**

1 A. I -- throughout the years, if some- **ROOM 00956**
2 needed to be done, such as -- I was the one that
3 painted the barn and the shed. I used my own
4 money, and I was asked to submit receipts, and I
5 just didn't because that's -- because we just
6 take care of the cottage when we were up there.
7 That's --

8 Q. Would you say that the cottage by itself
9 is essentially a family entity?

10 A. I always thought it was.

11 Q. Okay. Were you aware of any conflicts in
12 the amount of stuff that was in the cottage or
13 did everyone -- I'm sorry. Go ahead and answer
14 that.

15 A. Oh. I don't know that there were any
16 conflicts. I just was up there, was up there.
17 If you bought something, you just added it and
18 left it, to my knowledge. At least I did.

19 Q. Did your mother go up there and do work on
20 the cottage?

21 A. Per her -- yes, she said she did. Her and
22 Jeff.

23 Q. Her and Jeff.

24 A. I know they changed the fan in the back
25 room and did some other work, but I don't **ROOM 00956**

1 and the overhang, the wood overhang, they replaced
2 replaced a few pieces that had fallen with holes
3 because that's not something that I had any idea
4 how to do.

5 Q. So part of the soffit was fixed?

6 A. If --

7 Q. That's the overhang where --

8 A. Yes. The front left corner, I know for
9 sure was the piece that was replaced.

10 Q. Okay. Are you aware of a continuous mold
11 problem in the cottage for as long as the family
12 has owned the cottage?

13 A. It's an old cottage, but I didn't really
14 know there was mold.

15 Q. Okay. Have you ever been up in the attic?

16 A. I have not.

17 Q. Okay. Is there any paperwork for me that
18 you have ever asked for that I didn't provide in
19 your documents?

20 A. No.

21 JOHN EDWARD VERGELDT: And I cannot find the
22 pictures. I'm sorry. I don't know if that's
23 something that I can add later, ma'am, but I can't
24 find them.

25 THE COURT: Maybe. It just depends

1 witness is on the stand. ROA 000958

2 JOHN EDWARD VERGELDT: Okay. So let me look.

3 I think that's my last question. So let me

4 continue paging through my pile of stuff.

5 THE COURT: Mr. Peace.

6 MR. PEACE: Judge, I actually have no

7 questions for Ms. Scheible.

8 THE COURT: You're excused.

9 THE WITNESS: Okay. Can I actually go home

10 then?

11 THE COURT: Yes.

12 THE WITNESS: Is that okay?

13 THE COURT: That's unless Mr. Vergeldt --

14 JOHN EDWARD VERGELDT: Unless I can find

15 those pictures in the next 30 seconds. She's got a

16 long drive.

17 THE WITNESS: I'm sorry. I live in Virginia.

18 THE COURT: You're excused unless he wants to

19 re-call you.

20 JOHN EDWARD VERGELDT: No, Your Honor. I

21 don't know where they are, but they're not readily

22 available.

23 THE COURT: Mr. Peace, call your next

24 witness.

25 MR. PEACE: Judge, I see it's ten to ROA 000958

1 We can continue going forward or I've got **ROA 000959**
2 back to Columbia, if possible, or if the Court
3 would allow a recess until tomorrow; or if not,
4 we'll go forward.

5 THE COURT: Yeah. I can allow a recess
6 unless there's a witness availability issue.
7 Mr. Vergeldt, do you know of any witness
8 availability issues?

9 JOHN EDWARD VERGELDT: I do not have any
10 other witnesses, ma'am. What I have tomorrow
11 morning at 8 o'clock is a doctor's appointment that
12 takes about eight to ten weeks to get scheduled for
13 and a possible employment. It depends on my
14 passing this. So if we were going to do a
15 continuance, I would ask it to be sometime after
16 tomorrow, but I understand.

17 THE COURT: What time could you be up here
18 after your appointment?

19 JOHN EDWARD VERGELDT: It's a
20 three-and-a-half-hour drive. So it's 8:45. I
21 should be done by 9:30. A solid three and a half
22 hours after that -- 10:00, 11:00, 12:00 -- 1:00,
23 perhaps.

24 THE COURT: Any objection to starting at
25 1 o'clock?

ROA 000959

1 MR. PEACE: One second, Judge. ROA 000960

2 JOHN EDWARD VERGELDT: I understand that
3 they've got plane tickets as well. I can stay.
4 There's not a problem with me staying tonight.

5 MR. PEACE: Judge, my only other witness has
6 a flight tomorrow at 4:40. I can continue on, but
7 I've got one more witness, and then I'm assuming
8 Mr. Vergeldt will want to testify on his own
9 behalf. I just don't know how long that's going to
10 take.

11 THE COURT: Well, we can --

12 JOHN EDWARD VERGELDT: I would probably take
13 about 20 minutes testifying on my own behalf. I've
14 got a short statement to read and sort of a
15 summary, and that's all.

16 THE COURT: You just have one witness?

17 MR. PEACE: Yes, Your Honor.

18 THE COURT: We can continue with that witness
19 or is that an issue to continue?

20 MR. PEACE: No. Actually, it would be better
21 for him if we continue with him; and then if we
22 need to recess until tomorrow, we can recess until
23 tomorrow.

24 THE COURT: Recess until 1:00 tomorrow for
25 Mr. --

ROA 000960

1 MR. PEACE: Yes, ma'am. ROA 000961

2 THE COURT REPORTER: May we go off the

3 record?

4 THE COURT: Yes.

5 (A recess was taken.)

6 THE COURT: Mr. Peace, you may proceed.

7 MR. PEACE: Thank you, Your Honor. We call

8 Charles Bosler to the stand, please.

9 (Charles Bosler was sworn in by the Court.)

10 THE COURT: You may be seated.

11 CHARLES E. BOSLER

12 having been first duly sworn, was examined and

13 testified as follows:

14 - - -

15 VOIR DIRE DIRECT EXAMINATION

16 - - -

17 BY MR. PEACE:

18 Q. All right. Mr. Bosler, if you could state

19 your name for the record.

20 A. My names is Charles E. Bosler.

21 Q. Can you spell Bosler for me.

22 A. That's B-O-S-L-E-R.

23 Q. And Mr. Bosler, where do you live?

24 A. In Oxford, Michigan. That's about

25 40 miles north of Detroit. ROA 000961

1 Q. Okay. What do you do for a living? BOA 000962

2 A. I am predominantly a CPA and do business

3 valuations and related work, a lot of tax returns

4 and auditing, accounting.

5 Q. How long have you been doing that?

6 A. Over 45 years.

7 Q. During that entire 45 years, were you a

8 certified public accountant?

9 A. Yes, since 1978.

10 Q. What did you do before then?

11 A. I worked in internal accounting --

12 internal auditing at a Fortune 250 company, and

13 one year I worked in the credit business at the

14 lowest level.

15 Q. Where did you go -- where did you go to

16 school?

17 A. Well, of course of any interest, it would

18 be college, Michigan State University. I got an

19 economics degree and then worked a year and then

20 went back and got a master's, MBA, at University

21 of Michigan, predominantly in business with an

22 emphasis in accounting. And thereafter, I took

23 some courses as needed, including more accounting

24 courses.

25 Q. When did you graduate from Michigan? BOA 000962

1 A. 1975. ROA 000963

2 Q. I'm sorry. Let me ask in a different

3 order. When did you graduate from Michigan

4 State?

5 A. 1971.

6 Q. And then Michigan in '75?

7 A. Yes.

8 Q. After you went to school, you started

9 working at the company where you did the internal

10 auditing?

11 A. Yes. Even while I was at school, I took

12 full-time first year as a master's student.

13 Second year, I worked during the day and went to

14 school at night until I started there in '73.

15 Q. Do you -- who all do you do accountings

16 for?

17 A. Well, large -- mostly small to medium

18 businesses, certainly below 100 million in sales;

19 and many startup organizations, 10,000 sales, you

20 know; and most often, 1-million to

21 10-million-dollar sales companies; and a lot of

22 individual clients, too. About 340 individual

23 clients.

24 Q. Do you work for yourself?

25 A. Yes, you might say so. I have a ROA 000963

1 Bosler & Company, but I own it 100 percent. **ROA 000964**

2 Q. How many accountants -- how many certified
3 public accountants are at your firm?

4 A. Well, just myself. But I work with two
5 others every day in my suite, and we talk all the
6 time. But yeah.

7 Q. So it's become busy season for you?

8 A. Yeah. There's been times that I had other
9 CPAs, but not presently.

10 Q. Okay. How long have you known the
11 petitioner?

12 A. I might guess 25 years, not straight
13 through. But on and off, I've helped them
14 prepare their tax return when they felt they
15 couldn't handle it themselves.

16 Q. Okay.

17 A. Yeah.

18 MR. PEACE: Your Honor, I would like to
19 qualify Mr. Bosler as an expert on the basis of his
20 training, knowledge, and experience in accountancy
21 and -- in accountancy and bookkeeping.

22 THE COURT: Any objection?

23 JOHN EDWARD VERGELDT: No objection, Your
24 Honor. But again, with the report --

25 THE COURT: He is so qualified. **ROA 000964**

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MR. PEACE: Thank you.

ROA 000965

- - -

DIRECT EXAMINATION

- - -

BY MR. PEACE:

Q. Had you only done their individual tax returns?

A. Yes, prior to this engagement.

Q. Tell me about this engagement.

A. Well, actually, I really only got to know about it in October of this last year, 2019, and Vicki called me, said that she was -- felt she needed another report to quantify things because she didn't feel like she had a tight grasp on the numbers. And she showed me what she had, including from Kathleen Palinski, who testified earlier. And she put forth some very good information, but it didn't tie out the numbers year to year from where we left off to how we got to end of the year. Beginning of the year, end of the year wasn't tied down like accountants normally do.

And certainly that's what you learn in accounting: to account for everything. So you -- I felt that until somebody does the

ROA 000965

1 going to be very hard to quantify, if the ROA 000966
2 money missing, how much it is, and so forth. And
3 certainly I couldn't agree with anything unless I
4 did such a task.

5 Q. Sure. Sure.

6 A. Yeah.

7 Q. Okay. Did you -- what information did you
8 look at in preparing --

9 A. Okay.

10 Q. -- whatever you did?

11 A. Yes. Well, I felt that in looking at all
12 that was given to me, which was pretty much all
13 that Vicki had, including the trust agreement, I
14 noticed it said in, I think, the eighth amendment
15 that all debts were forgiven up till July 29th
16 of 2009. So I felt that, well, it doesn't do any
17 good to look for any money prior to that, because
18 everything has been forgiven if there was missing
19 money.

20 And so I felt, well, what were the assets
21 at the end of 2008? It's hard to -- going to be
22 hard to tell exactly what they were in July,
23 especially given the records were, at best, at
24 year-end on some statements, like Merrill Lynch
25 and OMP annuity, you only got a year-end ROA 000966

1 statement at best -- or at least that's **ROA 000967**
2 had. So we felt -- or at least I concluded that
3 we should see what the trust had and John, Jr.
4 had at the end of 2008 and then go forward year
5 by year and see if we couldn't put together an
6 accounting.

7 So we -- there was quite a good amount of
8 records available, including that subpoenaed by
9 Kathleen Palinski, and there was enough there to
10 make a good guess of what the trust had at each
11 year end from 2008 thereafter and pretty good
12 records from all the transactions that happened.
13 Not a month-to-month for every account, but
14 enough to make a lot of sense, you know, what
15 happened to each major asset from 2008 to April
16 of 2019.

17 Q. Okay. So we're basically -- you looked at
18 the time period --

19 A. Yeah.

20 Q. -- by the eighth amendment through the
21 date of John Edward Vergeldt's resignation as
22 trustee?

23 A. You might say so, but I did actually look
24 a little prior to that eighth amendment because I
25 went all the way to the beginning of 200**ROA 000967**

1 reason -- just not having enough records. **ROA 000968**
2 a clean starting point of what the assets were at
3 the end of July 29th of 2009.

4 Q. Okay.

5 A. Yeah.

6 Q. Okay. All right. And did you perform
7 that -- did you complete that accounting?

8 A. To the best of our -- my ability, yes.

9 Q. Okay.

10 A. Did it have missing information? Yes.
11 But we tried to address that in our report.

12 Q. Okay. All right. Let me ask you this:
13 Who did you talk to when you prepared your report
14 other than just looking at the records?

15 A. Well, pretty much Vicki and looking at the
16 records. And admittedly, you'll see a lot of
17 information in the report that certainly I only
18 got from Vicki, because a good accounting report
19 explains all the background and -- of the whole
20 trust.

21 Q. Okay.

22 A. And you need to deal with integral member
23 management or a knowledgeable person to get that
24 report.

25 Q. Let's take a look at your report. **ROA 000968**

1 A. Okay. ROA 000969

2 Q. Can you tell me, kind of the proverbial
3 10,000-foot view, what you found.

4 A. Okay. Well, first of all, at the end of
5 '08, which is kind of like the starting point,
6 you -- there is a -- what we call a balance
7 sheet, you might say, and it's on page 2 in the
8 report. And there was, according to this, about
9 594,464 of assets in the trust. Now, some of
10 these might have had different names, but they
11 all ended up being trust -- treated as trust
12 assets along the way, even if they were in an
13 account with John, Jr.'s name. And sometimes
14 they -- later on or even at the outset might have
15 included John E. Vergeldt -- name.

16 Those assets eventually got treated as
17 trust assets later. So I included them in the
18 accounting.

19 Q. Okay.

20 A. And what we start with at the end of
21 '08 -- 594,000. And that -- okay. From --
22 starting from there -- well, let's just look at
23 page 3, the very next page.

24 Q. Okay.

25 A. This is what I saw to be all of the ROA 000969

1 revenues and expenditures, year after year, ROA 000970
2 it explains how we got to the next year, every
3 dollar accounted for. But however, at the bottom
4 quarter of the page, you'll see off to the left,
5 it says insufficient explanation and support,
6 payments to, and it says who those entities are.
7 The rest of the payments, we could see what they
8 were for. Whether they were right or wrong, we
9 could see what they were for.

10 So the bottom quarter, you know, you see
11 year after year some numbers there, and later
12 on -- oh. I should say that some of those
13 payments actually were explained. They were
14 payments to beneficiaries. So --

15 Q. Okay. So for --

16 A. If you look all the way to the right, the
17 whole 11-year period, approximately, that section
18 is 484,000 of so-categorized expenses that
19 weren't clearly earmarked as to what type they
20 were. Now, of those -- no -- 282,000 went to
21 beneficiaries. Whether equitably distributed or
22 not, that was to direct children. And then to
23 the grandchildren, another 48,000. So that is, I
24 think, roughly 330,000 of that 484 what -- was
25 explained. ROA 000970

1 So the difference is really the **ROA 000971**
2 unexplained expenditures from our initial
3 accounting. So --

4 Q. So we're looking at -- what did you say it
5 was? About 300 --

6 A. So 330.

7 Q. Out of 484?

8 A. Yeah, out of 484. So that's 154,000,
9 let's say, initially of unexplained expenditures.
10 Now, that would be, as categorized -- initially,
11 and initially there was payments to CapitalOne
12 credit cards, and it wasn't believed that John,
13 Jr. had any credit cards -- at least not by
14 Vicki.

15 There was -- well, along the way -- I'm
16 going to say unauthorized gifts. Now, maybe it
17 was to pay for plane tickets or whatever, but it
18 was distributions to non-children, you know,
19 and --

20 Okay. There was -- okay -- seemingly a
21 carpet replacement. Admittedly only \$900, but it
22 seemingly took place in South Carolina in a year
23 that John, Jr. didn't live there. What year was
24 that? That was in 2011.

25 Cash transfers out that we just don't have **ROA 000971**

1 know -- sometimes we know that they went ~~ROA 000972~~
2 commingled account described earlier with John E.
3 Vergeldt's -- him and his wife's name. Okay.
4 That's -- but I can't say that all of those cash
5 transfers -- they just listed on the bank
6 statement as cash transfers out.

7 We do know for certain in 2011 or at least
8 fairly certain that when the Fifth Third Bank
9 account described earlier was liquidated --
10 actually, we personally, at our firm, feel all
11 but 17,000 did go back to the trust, but -- in
12 rough numbers, within \$50, 17,000 never
13 surfaced -- resurfaced back in the trust. These
14 are cash transfers out, that line. Those added
15 up to, well, 32,000 over the period.

16 Well, if you go down the list, there's --
17 there was a lot of checks written that we just
18 never got the bank statements for, so we don't
19 know what the checks are for. This was
20 predominantly that Credit Union ONE account, and
21 that was no longer used after a while. It was
22 replaced by other accounts.

23 So we just don't know.

24 Q. Okay.

25 A. Then there was a lot of, as described ~~ROA 000972~~

1 earlier, ATM withdrawals and so forth. **ROA 000973**
2 can see the extent -- now, that's not all --
3 okay. ATM charges and ATM withdrawals -- those
4 were pretty much what they were. And there's a
5 line item for that. That totaled 47- or 48,000
6 over the period.

7 Q. Okay.

8 A. And then there's the inheritance payments,
9 which I did notice. You asked me what I noticed.
10 They weren't equitably amounts -- equitable
11 amounts all the time. For instance, the initial
12 distributions centered right around the
13 60,000-dollar amount right after -- to the three
14 children right after John, Jr. died. But then in
15 February, as Vicki testified, there was an amount
16 paid to a John E. Vergeldt and also to Patti.

17 Strange enough, though, even those amounts
18 were not equal. Like John E., as I -- it's
19 listed here, but I think his amount was -- it's
20 actually -- appears a little later his -- I'm
21 just going to say, his amount, even in February
22 of '14, was 45,836, and he paid his sister Patti
23 35,836 and then Vicki nothing. That was --

24 Q. Let me --

25 A. Yeah.

ROA 000973

1 Q. -- stop you right there. ROA 000974

2 A. Okay.

3 Q. The \$60,000 --

4 A. Yeah.

5 Q. -- payments that you're talking about --

6 A. Yes.

7 Q. -- is that shown on page 3?

8 A. Okay. Let's get to that. Now, page 3.

9 In that -- okay. Now, a year before John, Jr.

10 died, Patti, his daughter, I guess needed a car.

11 Now, I heard it earlier suggested that John, Jr.

12 did not own that Equinox, but for some reason, I

13 notice it was mentioned in correspondence as

14 being owned by him, and it was repaired out of

15 trust money, and Patti got it as part of her

16 inheritance.

17 And so that and another \$1,000 was given

18 to her in 2012 ahead of John's death. So that is

19 part of her 60,000.

20 Q. That's why you're showing the 10 on

21 page 4 --

22 A. Yes.

23 Q. -- where you've got 2012 --

24 A. Yeah.

25 Q. -- beneficiary distribution -- ROA 000974

THE COURT REPORTER: I'm sorry. 2012

On page 5 -- well, 4 and 5 -- the RO's 000975

1 equity distributed by beneficiary, and y **ROA 000976**
2 see on page 5, in 2014, at the very top, if you
3 look over, these are the various beneficiaries.
4 J.E. Vergeldt -- that's his 45,000 that he was
5 paid and 35,836 to Patti. And while the dispute
6 was going on with Vicki, she got nothing.

7 Now, you might ask, what are these other
8 numbers. Well --

9 Q. Yeah.

10 A. Especially on page 4 and 5, each year
11 there's generally an operating cost of keeping
12 the trust open, and generally there's not a
13 profit; it's a loss, because the expenses are
14 more than the revenue, even -- because the
15 investment income wasn't enough to pay for all of
16 John, Jr.'s expenses to live.

17 Until he died, that was his equity; but
18 then as soon as he died in 2013, you'll see an
19 entry here to distribute the trust equity to the
20 various beneficiaries: grandchildren and the
21 three children. And then thereafter, any loss on
22 operations gets charged to the remaining
23 beneficiaries.

24 Q. Okay.

25 A. So -- oh.

ROA 000976

1 Q. I was going to say, you don't show ROA 000977
2 distributions in 2015, except it looks like one
3 distribution to Patti of \$2,660?

4 A. Yes.

5 Q. Nothing in 2016, 2017, 2018, but then
6 there is a distribution of 9,227 to John Edward,
7 \$3,000 to Patti, and then 5,273 to Vicki?

8 A. Yes. Now that 3,000 to Patti, I didn't
9 mention earlier. There was a loan made to her
10 way back early on, and I -- that's been -- was
11 earmarked in the books by Kathleen Palinski as a
12 loan. It was noted.

13 And -- well, that happened in 2010. So
14 she is credited or debit charged with receiving a
15 write-off of that loan, 3,000. Now, by the way,
16 she died prior to that date, but according to the
17 trust, she still inherits her share, because of
18 your -- you are living, but when John, Jr. died,
19 you are entitled to your share. So I charge her
20 estate, because she still owed that 3,000-dollar
21 loan from way back in 2010 as a distribution
22 instead of carrying it as a loan anymore.

23 Now, the other 14,500 was the -- a
24 distribution by John E. Vergeldt right before he
25 terminated his trusteeship. And I'm just ROA 000977

1 to look here at another page to see how **ROA 000978**
2 gave each -- himself and Vicki. He gave himself
3 9,227 and Vicki 5,273. Those must add up to the
4 14 -- the difference, 14,500. Yes, they do. And
5 the total, that's the 17-5.

6 So you see the breakdown who got it on
7 page 5.

8 Q. Okay. Do you know if the \$5,273 was to
9 Vicki individually or was it the remaining funds
10 in trust when she became successor trustee?

11 A. Well, I -- it was -- it was actually at
12 the same time, in my opinion, from what I recall,
13 as John paid himself. So I just figured it was
14 her remaining share of her inheritance, according
15 to John E. Vergeldt.

16 Q. According to --

17 A. Not having anything further, being that he
18 paid himself money at the same time -- and her --
19 I figured it was the last of their inheritance.

20 Q. Okay. Would you have any reason to -- if
21 I were to represent to you that the 5,273 was
22 to -- was the remaining funds in trust and were
23 delivered to Vicki about the same time --

24 A. Okay. Now that money that was delivered
25 to her, she took that 5,000 and put it **ROA 000978**

1 the trust later. This only goes through ROTA 000979
2 She did that later after April.

3 Q. Okay.

4 A. Yeah. And from what I understand, I think
5 John E. might have even returned his money. I
6 might be wrong, but I think I remember Vicki
7 saying that.

8 Q. Okay.

9 A. Or a good part of it.

10 Q. Okay. All right.

11 A. I'll just wait for your next question, but
12 obviously, the report contains more than this.

13 Q. Let's talk about the cottage for a little
14 bit.

15 A. Okay.

16 Q. On page 17, you addressed the cottage?

17 A. Yes.

18 Q. There is -- there was extensive discussion
19 on Ms. Vergeldt's testimony, during her
20 testimony, about the repairs to the cottage.

21 A. Yes.

22 Q. What did you end up finding about the
23 cottage?

24 A. Well, the money I actually saw as
25 earmarked as paying for cottage repairs ROTA 000979

1 4,998. It did seem strange to me that the ROA 000980
2 insurance proceeds to pay for the damage were
3 15,535, you know. And I was just looking for
4 more than 4,000 of actual outlay towards fixing
5 the cottage. That's what I saw from all records,
6 including what Kathleen Palinski was able to
7 determine were for cottage repairs.

8 Q. Okay.

9 A. Let me look and see what year those are
10 spent, because I do have everything on the
11 cottage broken down by type. It was a variety of
12 things. Oh, there was repairs made throughout
13 the period that totaled 10,479, but a lot of that
14 was before the major damage. So -- but in 2018,
15 that's when the 4,998 was spent.

16 Q. So the repairs that you saw that totaled
17 the \$10,000, those occurred prior to the --

18 THE COURT REPORTER: I'm sorry. Prior to?

19 A. Let's just say 5,000 were 2015 and prior,
20 and it's all laid out on page 3. You can see
21 cottage expense, repairs, and maintenance. And I
22 could go over each year, but it wasn't anything
23 out of the ordinary until that 5,000 in 2018. It
24 looked like normal maintenance.

25 Q. So prior to the deposit of the 15,535 ROA 000980

- 1 you reference on page 17 -- **ROA 000981**
- 2 A. Yeah.
- 3 Q. -- there was some amount of repairs to the
- 4 cottage, but the only -- after the deposit of the
- 5 15,535, you could only show approximately 4,998?
- 6 A. Right. Right around that time. The only
- 7 thing close to it was that amount of repairs.
- 8 Q. All right.
- 9 A. Yeah.
- 10 Q. Based on what you did, what were you able
- 11 to determine, if anything, was improperly removed
- 12 from the trust accounts?
- 13 A. Okay. Well, the -- obviously, nobody
- 14 knows for sure what money was exactly spent
- 15 for -- except, perhaps, for John E. But there
- 16 was one -- the Fifth Third account was the most
- 17 obvious transfer of money out that never
- 18 returned, and that -- you might be looking for a
- 19 big number, but that was around 17,000, not
- 20 100,000, but over and above other monies.
- 21 I mean, all a person could do is go on a
- 22 prudent man standard after that point, because
- 23 there's no way to see what money was really spent
- 24 on it from our viewpoint. Yeah.
- 25 Q. Now, on page 18 of your report -- **ROA 000981**

1 A. Yeah. Uh-huh. ROA 000982

2 Q. -- you've got some outstanding litigation

3 as of report issuance date?

4 A. Yes.

5 Q. And you've got some trust advances

6 transferred to JEV --

7 A. Yeah. Uh-huh.

8 Q. -- as to --

9 THE COURT REPORTER: I'm sorry. I'm sorry.

10 I can't hear his question when you say uh-huh or

11 interrupt.

12 THE WITNESS: Okay.

13 THE COURT REPORTER: Thank you.

14 Q. What is that?

15 A. All right. Now, anytime you do a

16 financial report on historical financial

17 statements, a good accountant will put

18 outstanding litigation to let a reader know

19 liabilities that might be imposed on those assets

20 that do remain, and so that ties into a later --

21 part 2 of this report.

22 Q. Okay.

23 A. Even though it's in part 2, we included it

24 in part 1, the financial statements themselves,

25 because -- for that reason I just gave you ROA 000982

you should disclose claims that might be **ROM 000983**

Now, part 2 is the pro formas, financial statements that largely myself -- and I do say I was heavily involved in the preparation in this report. I looked at what was actually spent that we know was for specified items, and then I looked at, to the extent available, the trustee's annual reports and I just used common sense on some expenses, and I came up with what I thought a prudent man would have experienced if they were managing the trust.

Q. Okay.

A. And that's what I put forth in the second section, and the actual statements start on page 23.

Q. Okay.

A. And you were asking about that one note that explains the damages. Well, first of all, let me start off by saying, later on in this report, there's Schedules S-1 through S-11.

That's where I looked at each year individually to see how it went and see -- and presented four columns, one of which was the original report of our accounting that showed what we knew about revenues and expenditures for sure; and **ROM 000983**

1 showed the trustee's annual report, to the ROA 000984
2 available, next to those numbers; then a third
3 column is an adjustment to the fourth column,
4 which is what I felt a prudent man would
5 experience in expenses based on both the
6 trustee's annual report and what they actually
7 spent.

8 And I used that information, and to the
9 extent that missing money was -- seemed to not be
10 accounted for, I added it to an account called
11 loans receivable, JEV, because he was the
12 successor trustee on the trust.

13 Q. What page are you looking at, Mr. Bosler?

14 A. I'm looking at page 23, where it's the
15 overall year-by-year summary.

16 Q. Okay.

17 A. But -- and remember, in 2008, we started
18 at zero. That's where they had 594,000 of
19 assets. Then in 2009, I'm going to go over a
20 couple of examples in a minute of the year by
21 year how we get to these numbers.

22 But we looked at actual revenues and
23 appreciation and investment accounts and so
24 forth, and then we took expenses, and we adjusted
25 them to what a reasonable prudent man would ROA 000984

1 seemingly incurred. And to the extent that **ROA 000985**
2 assets were missing over that amount of revenues
3 less expenses that were deemed reasonable, this
4 account grew. Loan receivable, JEV. This is a
5 pro forma accounting, the best that we can do.

6 And we -- this was -- this approach was
7 arrived after reading both the trust agreement
8 and Michigan and South Carolina law that, lacking
9 an exact accounting, judges sometimes go with
10 what a prudent man might do.

11 JOHN EDWARD VERGELDT: Your Honor, may I --
12 just two minutes, I promise you.

13 THE COURT: Yes.

14 (A recess was taken.)

15 THE WITNESS: Should I continue?

16 THE COURT REPORTER: Yes. Thank you.

17 A. So you were asking me what did I find in
18 the pro forma report, and I basically prepared it
19 to build up basically a shortage of assets
20 compared to what a prudent man would have
21 experienced. So let's look at that first number
22 in 2009. It says the loan receivable JEV in that
23 year is 6,898.

24 Q. Okay.

25 A. Okay. That number can be found on **ROA 000985**

1 Schedule S-1. Okay. Schedule S-1. Okay. **ROA 000986**
2 said earlier, first I put the initial accounting
3 in the far left column. This is what we
4 originally were able to determine.

5 Q. Okay.

6 A. Then we looked at the trustee report, and
7 John E. Vergeldt put forth a report that year
8 showing these numbers, and you know, there's
9 differences. We actually made more money that
10 year than he showed -- when I say we, the trust.
11 Well, we put to the far right -- the third column
12 is just simply an adjustment of column 1 to
13 the -- what we feel a prudent man would have
14 experienced.

15 Well, they certainly would have
16 experienced all of the revenues because we
17 noticed they came in looking at the accounts.

18 The expenses were very close to John's
19 annual report. You know, there's -- it's only a
20 500-dollar difference, so we're not really that
21 far off that year. However, we notice there was
22 an asset shortage at the end of the year of
23 6,898. If that happened, these revenues,
24 expenses wouldn't have accounted for the change
25 in assets. **ROA 000986**

1 Now, where did the money get spent? ROA 000987
2 that's -- the bottom third of this schedule shows
3 numbers, and that's the section, Insufficient
4 expend -- Explanation and Unsupported Payments,
5 Too. Well, we did notice these checks going out
6 and card-member payments, CapitalOne payments.
7 We applied a lot of that to these pro forma
8 adjustments higher up on column 3, but the rest
9 that we felt were over and above what a prudent
10 man would have incurred, we charged John's loan
11 account.

12 And we went year by year doing this.

13 Q. Okay.

14 A. Now, that year, admittedly -- okay -- his
15 account was charged with 6,898. Well, you might
16 say, well, John, Jr. didn't die until July 9th;
17 why did you prorate it? Well, certainly in --
18 you could say, well, the year wasn't over until
19 December, and the money could have been returned
20 by that, you know, whatever. This is -- nobody
21 knows the exact numbers, but this is for the
22 whole year.

23 Q. Okay.

24 A. Now, before I get into 2010 -- or no. I
25 will say that I found it -- one page to ROA 000987

1 error earlier. Oh, that's later on in the ROA 000988
2 report, and it's a very small error, but I
3 brought a substitute page.

4 Q. Okay.

5 A. I'll perhaps get that out of the way.
6 But -- okay. The next year -- let's just look at
7 a couple of them. Again, there was a report, you
8 know, by the trustee, and we recorded our actual
9 known information in column 1 on -- this is page
10 S-2. Okay.

11 And again, this year was a relatively
12 small difference. Even though there was a large
13 difference individually in the numbers, it was
14 only \$1,860 charged to John's loan account that
15 year. The far right is what we felt a prudent
16 man would incur, and by the way, many times we
17 would go higher than John E. Vergeldt's annual
18 report, like auto expense. We know he had to pay
19 insurance, gas, so forth. He only charged --
20 that we could determine from actual checks
21 written -- 980. Well, we felt it must have been
22 more than that.

23 So we came up with 51,000 of expenses that
24 we felt a prudent man would have incurred that
25 year compared to his 32,000. However, the ROA 000988

1 lot shorter than him in his revenue number **ROA 000989**
2 year. You might wonder -- all things told, we
3 charged \$1,860 to his loan account that year.

4 Perhaps I'll go now to a greater number.
5 2011 is that year when that 17,000 went out of
6 Fifth Third, and we never could see it coming
7 back. And by the way, we accounted for every
8 account, and we knew where every deposit came
9 from in each account, pretty much, and we didn't
10 see that 17,000 ever come back. We saw the rest
11 of the 58,000, but not that.

12 Well, that's one reason why his loan
13 account went up so much that year. It went up
14 by 20,000. We -- and by the way, we did not have
15 an annual report from him that year, at least not
16 that I was given.

17 And we came up -- like, look at caretaker.
18 We felt -- we saw checks for a reasonable amount,
19 36,800. So that's what we left it at in the
20 original column. It's the same. In other
21 accounts, we put in -- and by the way, we're also
22 giving him credit for \$1,500 in trustee fees
23 during these years. No -- did he charge checks
24 to that description? No. But we felt, well,
25 he's entitled to that. **ROA 000989**

1 So we tried to be fair all the way **ROA 000990**
2 through, and it was largely our firm's judgment.

3 Q. Okay.

4 A. But that's the one -- okay. One reason
5 '11 was much bigger than the previous two years.

6 Now we're getting into '12. This
7 particular year that John's loan account was hit
8 with a little higher up, 12,608 addition, we -- a
9 lot of the unspecified payments, we did credit
10 expense accounts at -- to levels we thought
11 reasonable, but the rest we just couldn't justify
12 without support.

13 We hit his loan account with -- and that
14 was a heavy year for debit charge, ATM
15 withdrawals. They were 11,000. And I don't
16 know -- by the way, that year, we -- he gave a
17 report that showed his expenses to be 54,975, but
18 we actually gave him a higher amount of 66,000.
19 We felt some expenses were too low that he didn't
20 add in his report, and we knew the money was
21 spent.

22 So he just didn't seem to keep good
23 records. We gave him credit for things that he
24 probably spent money on. Auto expense, for
25 instance, 1,500, we gave him credit, bec **ROA 000990**

1 car was still owned by John, Jr. that year. ROA 000991

2 So this is how we proceeded year by year.

3 And now here's -- some crucial assumptions
4 are coming up. Okay. Well, 2013, you know, it
5 was another big year for loans to John. It was
6 22,508, over and above what we thought was
7 reasonable. Again, remember, this is actual
8 money that's unaccounted for. It's tied to
9 statements. We just couldn't justify in our own
10 minds higher expenses than these.

11 We knew he paid caretakers, for instance,
12 for a half year. If he didn't -- and we think he
13 did; he just didn't put it in his report. Now,
14 his reports did sometimes look like budgets
15 rather than actual accounting. So we knew that
16 John, Jr. was alive half a year. We put in
17 caretaker, 17-5. He only took credit for 17,000.
18 We gave him credit for 40,000 that year, but we
19 still were short by 22,508 actual money gone at
20 the end of the year.

21 Now we're getting into a -- years after
22 John's death. Okay. 2014 is the year that John
23 wasn't here. Now, by the way, in years of
24 excessive activity, we bumped the reasonable
25 trustee fee to a higher amount. We felt ROA 000991

1 was a reasonable amount for '14, given, **ROA 000992**
2 John's died; we've got to start managing and
3 sheeping -- shepherding the assets now, and it
4 warrants more trustee fee.

5 But given that you're also a beneficiary,
6 generally you don't do things at lawyer rates.
7 12,000 is reasonable considering you're doing
8 this for your own parent.

9 This particular year, we -- John did pay
10 himself a higher beneficiary distribution than
11 his sister, Patti, but we lowered his to 35,836
12 that he paid his sister, and we put the rest in
13 his loan receivable. And all told, his loan
14 receivable account went up 8,209 that year.

15 Just explaining --

16 Q. Is that the year that he gave a
17 distribution to himself and Patti --

18 A. Yeah.

19 Q. -- excluding Vicki?

20 A. Yes. 2014.

21 Okay. Now, right about this time, John E.
22 Vergeldt started to, you know, get questioned by
23 Vicki, and he hired his own attorneys. And it
24 seemed like the fees were more to stonewall an
25 accurate accounting than to protect trust **ROA 000992**

1 directives, and it would have been complicated. ROA 000993
2 unnecessary, in our mind, from what explanation
3 we got. So we did not allow legal expenses of
4 J.E., you know, Vergeldt, as a normal prudent man
5 expenditure. Once John dies, a fiduciary's duty,
6 by the way we read it, is to maximize
7 distributions to the beneficiaries -- is one of
8 them -- and be more loyal to them than yourself.
9 So that would have meant, okay, let's corral the
10 assets and start to minimize expenses.

11 And the trust agreement itself as well as
12 the laws of Michigan and South Carolina say you
13 have to provide accurate accounting, and even the
14 trust agreement says you have to provide answers
15 to questions about the accounting and where -- so
16 to stonewall that request seemed to be what was
17 going on, so we didn't allow that as a normal
18 trust expense.

19 And this went on for a period of years.

20 Q. Okay.

21 A. So now John's account -- loan account in
22 2015 went up 33,000 that year. And 25,000, I
23 noticed, was spent on his attorneys -- the trust
24 assets.

25 Q. Okay.

ROA 000993

1 A. But -- and by the way -- here's a **ROA 000994**
2 thing. I should have mentioned, in '14, we felt
3 a prudent man -- what should have been done in
4 2014 -- this could be debated, but a year and a
5 half to distribute assets generally not contested
6 except for not providing an accounting when
7 requested -- a year and a half is generally
8 enough to wrap up an estate.

9 Now, given that the cottage was seemingly
10 not welcome to everybody, it seemed like a
11 reasonable man would have looked for a solution
12 right away instead of drag on expenses and have
13 an asset out there subject to rapid depreciation
14 if not cared for. And I -- a prudent man would
15 have looked for a solution to, hey, why don't one
16 of you take this; I know our father wanted it in
17 the family, but that wasn't reasonable.

18 Yes, he -- his trust document says to put
19 aside 50,000 to care for the cottage, but, look,
20 Patti is living there with her family, won't even
21 let Vicki come with -- this is what -- and feel
22 welcome -- and John lives in South Carolina. The
23 logical thing, let Patti and their family -- they
24 have acquaintances up that way.

25 We took the approach that a really **ROA 000994**

1 man would have distributed this whole thing through ROA 000995
2 wrapped it up and would have been done, and it
3 would have eased everybody's life.

4 So you'll notice that we don't have any
5 more cottage expenses after 2015. We felt that
6 it would have been a wrapped-up deal by the end
7 of '14. That's how we proceeded, anyway, in this
8 report.

9 And you'll notice from thereafter, we did
10 not show any normal operating expenses. A
11 prudent man would have wrapped this thing up by
12 the end of '14, a year and a half after John's
13 death.

14 And then, however, there's still assets
15 in -- oh, by the way, each year, we -- our income
16 at the bottom exactly equals the income that the
17 original accounting -- there still was assets
18 there, and for instance, in the very last year,
19 they went down by 55,000. You'll notice, each
20 year, it's the same number both in our pro forma
21 accounting and in the original accounting.

22 It's because we just show the money --
23 some of it going to John's loan account instead
24 of unknown expenses.

25 I do have a page here. I found the ROA 000995

1 be an error, but I brought a replacement **ROA 000996**
2 you wanted to distribute this to various people,
3 I made a little clerical -- at the bottom of page
4 S-10.

5 Q. Got it.

6 A. But I didn't notice any other errors. And
7 it's a relatively small error, but it's made to
8 also show \$2,738 was added to John's loan account
9 that year. Okay.

10 MR. PEACE: Hold on, Mr. Bosler.

11 Your Honor, move to introduce the corrected
12 sheet S-10 as Plaintiff's 14.

13 THE COURT: Any objection.

14 JOHN EDWARD VERGELDT: Yes, ma'am. I've got
15 to tell you the truth: Not being an accountant and
16 not having this report, I have not been able to
17 have someone who knows accountancy help me out. I
18 have, quite honestly, no idea what he's talking
19 about most of the time.

20 But what I hear a lot of is, we made an
21 assumption; a prudent man would have. Well, I
22 guess I'm not prudent, and obviously, I'm not
23 trained. But he has made so many assumptions that
24 he's plugged into his numbers, I can't agree to it.
25 He's made -- and he has said so. We assume **ROA 000996**

1 we assume that; common sense; a prudent man. **ROA 000997**

2 Well, that may be a term that he uses, but
3 what that means is you guessed -- he guessed.
4 Okay. I should -- but what that means is he
5 guessed. So this entire report is a guess. And he
6 never talked to me.

7 THE COURT: Well, Mr. Vergeldt, I'm going to
8 overrule your objection.

9 JOHN EDWARD VERGELDT: Thank you.

10 THE COURT: Still subject to your objection
11 of not being provided this before trial, I'll allow
12 this to be amended. Plaintiff's 14.

13 MR. PEACE: And Judge, it hit me while
14 Mr. Bosler was testifying, I delivered the Bosler
15 report to Mr. Vergeldt by separate correspondence,
16 which it's not -- I don't have it in my file. So
17 if we do come back tomorrow, I will provide a copy
18 of it or email it both to you and Mr. Vergeldt
19 showing the transmittal.

20 THE COURT: Okay. Thank you.

21 JOHN EDWARD VERGELDT: That's -- ma'am, Your
22 Honor, that still doesn't give me time to have
23 anyone review it.

24 THE COURT: I'll note your objection,
25 Mr. Vergeldt.

ROA 000997

1 JOHN EDWARD VERGELDT: Thank you. **ROA 000998**

2 THE COURT: You may proceed, Mr. Peace.

3 MR. PEACE: Thank you, Your Honor.

4 BY MR. PEACE:

5 Q. So once we go through all of that, all

6 those figures, we come up with what you were

7 showing is an amount on page 18 of a best

8 estimate of appropriate advances of \$127,770?

9 A. Yes.

10 Q. Okay. And is that based on your

11 pro forma?

12 A. Yes, it is based on the pro forma

13 assumptions.

14 Q. Did you do -- did you do an -- did you do

15 an accounting that showed what the best estimate

16 was outside of -- or outside of a pro forma what

17 the actual expenditures were?

18 A. Well, of course we know what the total

19 expenditures were because this is an exact

20 accounting.

21 Q. Okay.

22 A. Both on page 3 and -- I mean, the total

23 expenditures were -- the combination of these two

24 numbers on -- there's operating expenses of

25 287,000 and then undescribed, insufficient **ROA 000998**

1 documented, or beneficiary distributions **ROA 000999**
2 484,000. So those two numbers are the total
3 expenditures. Now, I don't think that's what you
4 really meant to ask.

5 Q. Well, yeah. I meant to ask -- well,
6 you've got inappropriate -- best estimate of
7 inappropriate advances?

8 A. Yeah.

9 Q. And that's based on your pro forma. Did
10 you do a best estimate of your -- the actuals
11 that's not on the pro forma?

12 A. You might say that our first number, I
13 said the beneficiary distributions were 330,000,
14 and the total in that category were 484,000, so
15 that's \$150,000 there. Now, we feel that some of
16 those expenditures in that category were
17 appropriate, but we just didn't -- they weren't
18 marked as such. They were just not accounted
19 for.

20 Q. Okay. So based on your pro forma, your
21 best estimate of the amount unnecessarily spent
22 would be 127,000?

23 A. Yes.

24 Q. Okay.

25 A. After paying John E. Vergeldt his **ROA 000999**

1 equity in the trust. That would be after RCPA 901100
2 him his total equity.

3 Q. Okay.

4 A. He did take distributions. That's not
5 including fair distributions if he was a prudent
6 man.

7 Q. Okay.

8 A. Yes.

9 Q. Now, on page --

10 (Plaintiff's Exhibit 14 was marked for
11 identification.)

12 Q. On page 5, you've got an equity -- or
13 you've got balance -- on the bottom of page 5, a
14 balance January through April 2019. You've got a
15 net equity of \$25,010, a -- basically John Edward
16 being bound \$12,444, Patti needing to be
17 distributed \$118, and Vicki being distributed
18 \$37,336. Is that correct?

19 A. Yes. That is a -- assumes that all of the
20 unexplained expenditures were appropriate trust
21 expenditures. That is -- this is -- there are
22 remaining equity in the trust if every
23 expenditure was appropriate for the trust to
24 make.

25 Q. So if -- so at a minimum, you-all RCPA 901100

1 that -- I'm sorry -- you found that Vick ROA 001001
2 still owed \$37,000 from the trust?

3 A. Yes.

4 Q. Okay. And that would be almost in
5 addition to the \$127,000 -- or that would --
6 depending on what the Court rules, \$127,000
7 should be coming back to the trust?

8 A. Okay.

9 Q. Am I understanding it properly?

10 A. Well, yes. I tried to summarize in
11 note 8 -- in the note on 18 --

12 Q. Okay.

13 A. -- what is being requested, from my
14 understanding. The variance from the prudent
15 man's standard as summarized in -- by the way, in
16 the notes to the pro forma statements -- the
17 127,000 that we felt was over and above a prudent
18 man spending.

19 Then sometimes courts allow interest, so
20 we put that number in just to ballpark that
21 number in case the Court would find it
22 appropriate.

23 THE COURT: Mr. Bosler, what page are you
24 referring to now?

25 THE WITNESS: Okay. Page 18. ROA 001001

1 A. I'm starting to read the total data requested from our viewpoint from the first
2 requested from our viewpoint from the first
3 successor trustee. Now, this number, you can
4 see, by the way, ties into this balance sheet a
5 little later, just so you can see these numbers
6 do tie in and are supported by our estimates.

7 And on page 23, all of these loan advances
8 to John, based on our pro forma year-by-year
9 analysis, add up to the far right. Down towards
10 the bottom, you'll see 127,770. That's on
11 page 23.

12 Q. Yes, sir.

13 A. Year by year, we added on to it -- okay.
14 Spending over what you think would be recorded.
15 So that adds up to 127,000.

16 And then some courts allow interest since
17 that money was overspent.

18 Okay. So then I've heard the plaintiff
19 say that she would like to ask that the first
20 successor trustee not be allowed any distribution
21 because he violated the trust from the get-go.
22 If he was disallowed any, that would be another
23 160,000.

24 Q. Where does that figure come up?

25 A. Okay. Okay. That -- in the pro

1 statements, if a -- this is based on the **ROA001003**
2 man path. Hold on. Okay. Year by year, in the
3 pro forma statements, just like the historical,
4 there is a breakdown of fiduciary equity year by
5 year. Now, initially it all goes to John, Jr.
6 because he's still alive. That's to carry on his
7 life.

8 But then the year he dies, in 2013, it --
9 his equity gets distributed to the beneficiaries.

10 THE COURT: Mr. Bosler, what page are you
11 referring to?

12 THE WITNESS: Okay. I'm looking at page 25
13 now.

14 THE COURT: Page 25?

15 THE WITNESS: Yes.

16 A. On page 25, it shows -- it's a statement
17 of beneficiary equity year by year, and it shows
18 the equity that was in the trust year by year. A
19 crucial event happened in 2013 when John died.
20 His equity now went to the beneficiaries. Now,
21 165,000 initially went to the three children,
22 with 48,000 going to the grandchildren. There's
23 no way to -- that 48,000 is going to change, but
24 the 165,000 will be changed.

25 Now, initially they got 60,000, **ROA001003**

1 know, it also went down by losses in 2014. ~~ROA 001004~~
2 it takes money to operate the trust and to carry
3 the cottage and so forth. And if you look at the
4 schedule that supports 2014, you'll see that the
5 trust lost 15,289 that year. Under a prudent man
6 standard, that's what we feel it would have lost.

7 Well, that gets charged to the three
8 children. That would have left 160,000 --
9 because, to be quite honest, under our
10 assumptions, we assumed that that trust should
11 have been wrapped up at the end of 2014. Because
12 there was no fuzzy feeling between family
13 members, there should have been a discussion to
14 distribute the cottage or do away with it by the
15 end of that year. That's a year and a half.

16 We felt that the prudent man's duty is to
17 safeguard the assets and maximize distributions.
18 That's what it says in the Michigan and South
19 Carolina law.

20 That would have left 160,000 apiece to the
21 three children under the pro forma path. Now, so
22 it's the 165 that they initially accrued in 2013,
23 but less the loss -- by the way, in 2013, we do
24 have a loss also in that year prior -- we have
25 John, Jr. absorbing a loss that year of ~~ROA 001004~~

1 Then for convenience purposes, we showed ROA 001005
2 before the children got their share.

3 So we don't have the loss in '13, even
4 though there was one. We should have it, but
5 it's all charged to John, Jr.

6 Then in '14, though, there's just the
7 three grandchildren. We charge them with a loss
8 of equal amount apiece. That left them with
9 160,000 apiece that a prudent man would have
10 tried to shepherd the assets and distribute that
11 much in a year and a half of quick dealing, and
12 it's done.

13 And so that's where the 160,000 came
14 through. Yeah. So -- yeah.

15 Q. Now, tell me about this -- you've got
16 another -- another accrued interest calculation.
17 Tell me about the assets from Merrill Lynch.

18 A. Okay. Well, there was -- we -- Kathleen
19 Palinski, I think -- or maybe it was Vicki --
20 eventually subpoenaed records from Merrill
21 Lynch -- or no -- or not Merrill Lynch, but that
22 commingled account that had John E. Vergeldt's
23 name on it and his wife. She noticed there was
24 24,000 that came in, and it was -- I think in
25 2011, it says exactly in that note. ROA 001005

1 And she never was able to get def **FOIA 001006**
2 evidence, but she -- but neither was the first
3 successor trustee able to say where that
4 24,000 -- how it got into his account, and being
5 that her dad used to do business at Merrill
6 Lynch, she -- and she did see, along with a
7 special trustee, Kathleen Palinski, 24,000 going
8 into this account. She feels that it's her
9 dad's, or very likely would have been her dad's,
10 money at Merrill Lynch. He did have previous
11 accounts there.

12 And did that money ever -- this 24,000
13 that's not to be confused with the other Merrill
14 Lynch account that was closed in an earlier year
15 that the trust did get credit for, this is a
16 deposit into the -- I'll call it a commingled
17 account of John and his wife. That came in.
18 That was never explained where it came from.

19 So there's three numbers, essentially, and
20 then accrued interest on those three numbers in
21 that first total you see on page 19.

22 Q. Okay. And I've got interest there. So
23 based on the pro forma, you are -- it's -- based
24 on the calculations you've done, that includes
25 the interest. You've got that John Edward **FOIA 001006**

1 the trust approximately \$419,953? **ROA 001007**

2 A. Yes, if the Court would allow all these

3 claims.

4 Q. Okay. And you've got an attorney fee

5 calculation there?

6 A. Yeah, that's --

7 Q. But I understand that that's the entirety

8 of what Vicki has --

9 A. -- vented through our preparation of the

10 report. And that was as of, you know, the turn

11 of 2020. And it's still running -- that tab.

12 That's what she spent out of her own pocket, not

13 trust money.

14 Q. Do you know if that involved the 2014

15 lawsuit as well?

16 A. I would assume so, but I can't say for

17 sure. You know, I don't know.

18 MR. PEACE: Okay.

19 JOHN EDWARD VERGELDT: Your Honor, I'm going

20 to beg your indulgence again. It's been a long

21 day. I promise I'll return quickly.

22 (A recess was taken.)

23 THE COURT: All right. Mr. Peace, you may

24 proceed.

25 MR. PEACE: Thank you, Your Honor. **ROA 001007**

1 BY MR. PEACE: ROA 001008

2 Q. Mr. Bosler, is there anything else --
3 let's say the Court would not be willing to grant
4 the interest that you've included. What would
5 the amount be that John Edward Vergeldt owed to
6 the trust?

7 A. If the -- let's assume that if the Court
8 said that a prudent man receivable was allowed
9 and also agreed that the first successor trustee
10 violated his fiduciary duty, therefore, wasn't
11 allowed any inheritance because of reasons so
12 described in the trust, and because John E.
13 Vergeldt didn't provide details of where that
14 24,000-dollar Merrill Lynch came from --

15 Q. Would that figure be adding the 127 to the
16 160?

17 A. Yeah, and the 24.

18 Q. Okay.

19 A. That would be like \$310,000.

20 Q. Okay.

21 A. Yeah.

22 MR. PEACE: Thank you, Mr. Bosler. Please
23 answer any questions Mr. Vergeldt may have.

24 THE COURT: Mr. Vergeldt.

25 JOHN EDWARD VERGELDT: I just have v ROA 001008

ROA 001009

CROSS-EXAMINATION

BY JOHN EDWARD VERGELDT:

Q. You made the statement early on that an accounting was not provided. Would it surprise you that Judge Carolyn Rogers, Don Harper, John Gettis all approved the accounting that I gave to the members of the trust?

Now, in order to get it through probate, all of these numbers had to go to Carolyn Rogers.

Would it surprise you that a probate judge said, yes, this format is acceptable, and these numbers are acceptable?

A. I would find it a little out of the ordinary.

Q. Would it surprise you that my father actually had a Credit 1 -- I'm sorry -- CapitalOne credit card?

A. Well, of course, nothing surprises me, but I was -- it would be a variance from what I was told.

Q. Okay. Let me ask you then. Did you talk to me?

A. No.

ROA 001009

1 Q. Who did you talk to? ROA 001010

2 A. Vicki.

3 Q. So all of the numbers that you are basing

4 your assumptions on were based on what you were

5 told plus the fact sheets that you got from

6 Ms. Palinski and the other accounting data?

7 A. Yes, and plus your annual reports.

8 Q. So would it surprise you that the car was

9 not actually owned by my father?

10 A. Well, in a way, it would, because I heard

11 that it was -- there was discussion in some of

12 the documents I saw of what it was worth. And

13 why would it be discussed unless it was part of

14 your dad's estate? So it would be at variance

15 from what I observed.

16 Q. So you do understand that this was a

17 family issue, that there perhaps was a reason for

18 the ownership of the car derivating the way it

19 was, and had I been the professional accountant,

20 I would have resolved that; but perhaps there was

21 a reason, which you may have known if you had

22 spoken to me?

23 A. Possibly.

24 Q. Possibly. So I heard you say you figured

25 and you assumed and common sense says that ROA 001010

1 Isn't that kind of euphemistic for you're **ROA 001011**
2 making assumptions?

3 A. Not really, because the Court even
4 describes coming up with a prudent man estimate
5 if lack of good accounting records, so --

6 Q. I understand.

7 A. So I felt -- to be quite honest, 48 years
8 of experience in accounting, you know, I've seen
9 a lot of situations, and I kind of get a feeling
10 of what's reasonable. And I also had the past
11 history both from your reports and also the
12 actual accounting to make estimates from it.

13 And in many cases, I estimated more than
14 your numbers.

15 JOHN EDWARD VERGELDT: I'd like to enter
16 that.

17 Q. Would it surprise you, when you said a
18 prudent man would try to wrap it up, that a
19 prudent man did try to wrap it up?

20 A prudent man made offers to get out of it
21 based on that letter. A prudent man said, I want
22 out. Okay. A prudent man -- would it surprise
23 you a prudent man made the offer --

24 THE COURT: Mr. Vergeldt, why don't you mark
25 what you've shown the witness and ask him **ROA 001011**

1 he's -- ROA 001012

2 JOHN EDWARD VERGELDT: I did. Here it is.

3 Where I said -- right there.

4 THE COURT: It's Defendant's?

5 THE COURT REPORTER: It will be Number 8.

6 THE COURT: Defendant's 8.

7 MR. PEACE: I'm going to object, Your Honor.

8 This appears to be written by Mr. Vergeldt. I'll

9 let Mr. Bosler testify as to whether or not he's

10 seen it, but if he's not seen it before, he has no

11 knowledge of it and can't testify to it.

12 JOHN EDWARD VERGELDT: But he did testify

13 that a prudent man would have tried to wrap it up.

14 MR. PEACE: That's his testimony.

15 JOHN EDWARD VERGELDT: Yes.

16 THE COURT: Right. We're talking about this

17 letter, and you need to ask him first if he's

18 familiar with it, who prepared it.

19 JOHN EDWARD VERGELDT: I'm sorry.

20 THE COURT: Lay the foundation about the item

21 itself.

22 JOHN EDWARD VERGELDT: I'm sure he hasn't,

23 Your Honor, because --

24 BY JOHN EDWARD VERGELDT:

25 Q. Have you seen this letter before? ROA 001012

1 BY JOHN EDWARD VERGELDT:

ROA 001014

2 Q. You made the statement that Patti living
3 at the cottage there [sic] but Vicki wasn't
4 allowed. Is that a correct statement?

5 A. Yes, I said something along those lines.
6 Yes, sir.

7 Q. Do you have any factual knowledge that
8 Vicki wasn't allowed other than what Vicki told
9 you?

10 A. No.

11 Q. A prudent man -- is it possible, in your
12 opinion, that if lawsuits are pending, a prudent
13 man could not close out the accounting because of
14 pending lawsuits?

15 A. If -- I was going on what I understood the
16 lawsuit to be about, and a prudent man wouldn't
17 carry on a lawsuit to stonewall accounting.

18 Q. If the prudent man wasn't the creator of
19 the lawsuit, then your argument or your comment
20 that a prudent man would try to get out isn't
21 germane, because if a prudent man is locked into
22 a lawsuit by somebody else and he can't get out
23 of it, then your assumption is false. Would you
24 agree?

25 A. No, because I think a prudent man

ROA 001014

1 have evaluated his responsibility and see **ROA 001015**
2 you know, that I'm required to report and have
3 all these records, and I'm not doing that, and
4 all my attorneys are doing is stonewalling my
5 responsibility as a fiduciary, so I should drop
6 this lawsuit right away.

7 That's my understanding of what the
8 lawsuit was: stonewalling your responsibility to
9 report.

10 Q. You can't -- is it your understanding that
11 you can drop a lawsuit that you haven't filed?

12 A. No. I believe you can't drop a lawsuit
13 unless you settle and become a reasonable person.

14 Q. So would a prudent man have offered to
15 settle?

16 A. Yes.

17 Q. That's a yes?

18 A. Because you minimize your negativity at
19 that point.

20 Q. Do you have any knowledge that I didn't
21 offer to settle?

22 MR. PEACE: Objection Your, Honor. This
23 concerns offers for settlement. Under Rule 40 -- I
24 want to say 7, but I don't think that's entirely
25 right. **ROA 001015**

1 JOHN EDWARD VERGELDT: He brought it up, ROA 001016
2 Honor. He said that a prudent man would get out of
3 the lawsuit and/or offer to settle. So he's
4 implying that he has knowledge that I didn't offer
5 to settle.

6 MR. PEACE: You know, Judge, I'm going to
7 withdraw my objection. I think the rule -- the
8 evidence rule is concerning the terms of
9 settlement, not whether there was an offer to
10 settle. I'll withdraw my objection.

11 THE COURT: You may proceed, Mr. Vergeldt.

12 BY JOHN EDWARD VERGELDT:

13 Q. I just have one: Would it surprise you
14 that, in fact, there have been more than five
15 offers to settle? I know it's a supposition, but
16 would it surprise you if someone said to you
17 there had been more than five offers to settle
18 and they had all been rejected?

19 A. It wouldn't surprise me because I know
20 Vicki is adamant about wanting to see what her --
21 she was entitled to, and she thought maybe the
22 settlement amount was far less than that. So I
23 know she's a person of her word and wants people
24 around her to be, you know, honorable, that -- to
25 others.

ROA 001016

1 Q. So let me clarify that: You have ~~ROA 1001017~~
2 what the terms of a settlement may have been, so
3 when you said that Vicki may have rejected the
4 terms of the settlement because it may have been
5 too low, you have no factual knowledge?

6 A. I did see one settlement paper that
7 offered her 40,000.

8 MR. PEACE: That, I am going to object to.

9 THE COURT: I'll sustain the objection.

10 JOHN EDWARD VERGELDT: That's all I have,
11 Your Honor.

12 THE COURT: Anything further, Mr. Peace?

13 - - -

14 REDIRECT EXAMINATION

15 - - -

16 BY MR. PEACE:

17 Q. Mr. Bosler, just real quick, how much
18 has -- how much have you charged Ms. Vergeldt
19 for?

20 A. \$5,000.

21 Q. And how much of that has she paid?

22 A. The entire amount.

23 Q. So she's paid you \$5,000 for your work?

24 A. Yes.

25 MR. PEACE: No further questions, Yo~~ROA 1001017~~

1 THE COURT: Any questions regarding ROA 001018
2 questions, Mr. Vergeldt?

3 JOHN EDWARD VERGELDT: No, ma'am. Thank you.
4 Thank you very much for your patience with me
5 throughout the day.

6 THE COURT: You're excused, Mr. Bosler.

7 THE WITNESS: Thank you.

8 THE COURT: Is he excused from trial? No
9 further questioning of Mr. Bosler?

10 MR. PEACE: Yes, ma'am.

11 THE COURT: We'll stop here for the day.
12 Thank you all for having patience in going this
13 late, but I think by tomorrow we'll appreciate not
14 having to go too late on a Friday afternoon,
15 hopefully.

16 JOHN EDWARD VERGELDT: So 1 o'clock tomorrow?

17 THE COURT: 1 o'clock tomorrow.

18 - - -

19 (The hearing is adjourned and will reconvene
20 at 1 p.m. on January 31, 2020.)

21 - - -

22

23

24

25

ROA 001018

CERTIFICATE OF REPORTER

ROA 001019

I, Cherie J. Anderson, Registered Merit Reporter, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript; that the witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the witnesses and all objections made at the time of the examinations were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate, and complete record of the testimony of the witnesses, the statements and arguments of counsel, and of all objections made at the time of the examinations to the best of my ability.

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 on this 27th day of February, 2020, at Charleston, Charleston County, South Carolina.



Cherie J. Anderson, RMR, CRR
My Commission expires
April 30th, 2023

ROA 001019

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

VICKI LYNN VERGELDT,
Plaintiff,

vs.

JOHN EDWARD VERGELDT,
Defendant.

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:
:

Case No.
2016-CP-46-00820

TRIAL BEFORE THE HONORABLE TEASA WEAVER
DAY 2

DATE TAKEN: Friday, January 31, 2020

TIME BEGAN: 1:02 p.m.

TIME ENDED: 2:42 p.m.

LOCATION: York County Historic Courthouse
 2 Congress Street
 York, South Carolina

REPORTED BY: Cherie J. Anderson, RMR, RPR, CRR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

ROA 001020

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APPEARANCES:

ROA 001021

HARRELL MARTIN & PEACE, P.A.
BY: TAYLOR A. PEACE, ESQUIRE
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Representing the Plaintiff

ALSO PRESENT:

John Edward Vergeldt, Pro Se

Vicki Lynn Vergeldt

ROA 001021

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ROA 001023

WITNESS:

CHARLES E. BOSLER

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14	Weaver. Defendant's Exhibit 8 was retained by John		
15	Edward Vergeldt.)		
16			
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25	ROA 001025		

1 THE COURT: Back on the record. Mr. ROA 001026
2 has a motion.

3 JOHN EDWARD VERGELDT: At this point, ma'am,
4 this is the volume of paperwork that was delivered
5 to me yesterday. I have had, by the time I got
6 home last night at 10 o'clock -- that's when it was
7 delivered to me in court. I was up until roughly
8 2 o'clock and was back up again at 5:00 trying to
9 digest this to prepare a defense for it, and I
10 simply do not have enough time to do so.

11 I've consulted with an attorney and a CPA. A
12 good friend of mine is a CPA, a guy who I flew
13 with. And he's given this a quick perusal, and he
14 says, absolutely, he would take the time to prepare
15 a rebuttal to it, but he can't do it between
16 8 o'clock this morning and now.

17 I do not know -- Mr. Peace says he mailed the
18 stuff. I'm not going to question his integrity
19 except I went by the post office again this
20 morning, and they're not there. So I've been
21 literally given no opportunity to review what --
22 especially this is damning material.

23 And the CPA would take -- he can't start on
24 it for at least a week. It's tax season. And he
25 would need at least a week to go through iROA 001026

1 are many numbers in there that, quite honest, ROA 001027
2 incorrect. I don't know where he got the numbers.
3 He never spoke to me.

4 So I've literally had no opportunity to
5 review it to mount a defense for it. I spent
6 another hour and a half on the internet last
7 night -- granted, that's not evidence; that's
8 information -- about mold and mold spores, and
9 there is inaccurate information in the reports from
10 the mold people up in Michigan, and I need the
11 opportunity to prepare a defense for those.

12 So I'm asking you for a continuance of 60
13 days if you can grant that to allow me to properly
14 prepare a defense.

15 THE COURT: Thank you, Mr. Vergeldt.

16 Mr. Peace.

17 MR. PEACE: Your Honor, at this point, we
18 would object to the request for the continuance.
19 We had raised these issues to Mr. Vergeldt in our
20 amended petition for removal and for other related
21 relief back in June and July of this year.

22 We produced -- as Your Honor saw yesterday,
23 we produced the Supplemental Answers to
24 Interrogatories and Requests for Production as soon
25 as we were able. ROA 001027

1 Also, Your Honor, one thing I showed **ROA 001028**
2 Mr. Vergeldt before you came in, I did find the
3 letter dated January 16th, 2020 where I
4 produced -- or I indicated to Mr. Vergeldt that I
5 was producing Mr. Bosler's report to him by letter
6 and just by mail and would be sending Supplemental
7 Interrogatories or Requests for Production shortly.
8 My first set of Supplemental Interrogatories and
9 Requests happened on -- approximately a week later.

10 And he can claim that he never received them.
11 However, that is the address on file with the
12 Court.

13 If there was a continuance request to be
14 made, it would have been prior to today, prior to
15 days when we're with the Court.

16 At this point, it would not be in the
17 interest of judicial economy nor in the interest of
18 my client for the case to be continued. You know,
19 we've been -- the issues surrounding the status of
20 these accounts that are at issue have been
21 outstanding now for almost three years, and it's --
22 actually, just under four. This petition was
23 brought back in January of 2016, January 21st of
24 2016. So yeah, right at four years.

25 Now, while there has been some delay **ROA 001028**

1 Ms. Vergeldt's previous attorney's health ~~REDA 001029~~
2 these issues have still been outstanding
3 nonetheless. There was a -- there was a limited
4 special trustee who put this -- put a report
5 together. Mr. Vergeldt had all the information of
6 what the general allegations were. He had every
7 opportunity during those four years to engage his
8 own counsel to prepare an accounting as a defense
9 to this case.

10 To ask for a continuance now at this late day
11 is just, quite frankly, untimely.

12 THE COURT: And Mr. Peace, was there a
13 general request made as far as expert reports in
14 discovery?

15 MR. PEACE: There was actually not. I looked
16 at it -- well, there was. I mean, they're asking
17 for any and all documents that they may use at
18 trial, lists for an expert -- list the names and
19 address of any and all experts you intend to use at
20 trial.

21 Due to when Ms. Vergeldt engaged Mr. Bosler,
22 as he said yesterday, back in October, a report was
23 produced or finalized here at the first of the
24 year. I received a bound copy of it on, I believe,
25 about January 14th and produced it two, th~~REDA 001029~~

1 days later to Mr. Vergeldt and supplemented **RON 001030**
2 answers to interrogatories and requests for
3 production that identified Mr. Bosler -- and I can
4 hand a copy up to the Court, if you would like to
5 see them, Judge -- on the 23rd.

6 THE COURT: So in other words, you
7 supplemented discovery once you received this
8 report. Within a few days of you receiving this
9 report, you forwarded it to Mr. Vergeldt at the
10 address, and that would be January 16th, 2020?
11 You received it on about January --

12 MR. PEACE: January 14th.

13 THE COURT: 14th?

14 MR. PEACE: Yes, Your Honor.

15 THE COURT: A couple days before.

16 MR. PEACE: And as I mentioned in my letter,
17 I was attempting to get it. I understood what was
18 happening and potentially what would -- potentially
19 the requests that would be coming or, at a minimum,
20 recognizing that it was almost being produced -- or
21 it was being produced at a late date relative to
22 trial. So I indicated in my letter, I'm trying to
23 get this in your hands as soon as possible. I'm
24 not trying to surprise you with anything in terms
25 of what we intend on using, and even indic **RON 001030**

1 would be producing supplemental responses **ROA 001031**
2 as possible, which I was finally able to do about a
3 week later.

4 THE COURT: And how soon was Mr. Vergeldt
5 notified of the existence of this expert,
6 Mr. Bosler?

7 MR. PEACE: On the 20 -- well, in my letter,
8 I identified Mr. Bosler as an accountant, and then
9 I specifically identified him in the Answers to
10 Interrogatories and Requests for Production a week
11 later.

12 THE COURT: And Mr. Vergeldt, did you receive
13 those --

14 JOHN EDWARD VERGELDT: May I see that letter,
15 please?

16 THE COURT: Yes.

17 JOHN EDWARD VERGELDT: I have never seen that
18 letter, ma'am.

19 THE COURT: The letter which is dated
20 January 16th -- and Mr. Peace, correct me if I'm
21 wrong -- this letter accompanied the report that
22 you --

23 JOHN EDWARD VERGELDT: Which if --

24 THE COURT REPORTER: I'm sorry. I'm sorry.
25 Just one person at a time. **ROA 001031**

1 JOHN EDWARD VERGELDT: I interrupted you. ROA 001032
2 I'm sorry.
3 THE COURT: I assume you did not receive this
4 letter dated January 16th because it accompanied
5 the report.
6 JOHN EDWARD VERGELDT: That is correct,
7 ma'am.
8 THE COURT: What I'm trying to get from
9 Mr. Peace is that he also supplemented the
10 interrogatories with Mr. Bosler's information a
11 week later.
12 MR. PEACE: Yes, Your Honor. And I can
13 present those to you if you'd like.
14 THE COURT: If you could show Mr. Vergeldt,
15 too.
16 MR. PEACE: Yes.
17 JOHN EDWARD VERGELDT: Okay. This is what
18 you're saying?
19 MR. PEACE: No, sir. The one that --
20 JOHN EDWARD VERGELDT: Okay.
21 MR. PEACE: And then here is --
22 JOHN EDWARD VERGELDT: Very well. I've never
23 seen that letter.
24 MR. PEACE: Judge, I'll submit to you, here
25 is the cover letter along with the Petition. ROA 001032

1 Supplemental Answers to Interrogatories. **ROM 001033**
2 with the letter of January 23rd, 2020, Mr. Bosler
3 is identified in answer to a supplemental answer to
4 interrogatory number 1, and he is also identified
5 as a potential expert or an expert in response to
6 interrogatory -- I believe it's number 7 or 8.

7 And I have included -- along with the Answers
8 to Interrogatories is a certificate of service
9 signed by my paralegal, Tracy Slice Moore,
10 indicating that she mailed them on the same day.

11 THE COURT: Thank you, Mr. Peace. I'm going
12 to make a copy of these because --

13 MR. PEACE: Certainly.

14 THE COURT: I'm assuming these are your only
15 copy.

16 MR. PEACE: I believe I have them scanned at
17 my office, but --

18 THE COURT: So I can keep these?

19 MR. PEACE: Yes, ma'am, if you'd like.

20 THE COURT: Mr. Vergeldt, would you like a
21 copy?

22 JOHN EDWARD VERGELDT: Since I haven't seen
23 them, yes.

24 THE COURT: I am going to make these Court's
25 exhibits, so I'll identify them as 1 and 2 **ROM 001033**

1 get them back from being copied so that **ROA 001034**
2 Mr. Vergeldt may have a copy.

3 JOHN EDWARD VERGELDT: I would also like to
4 retain legal counsel. After watching yesterday's,
5 I am woefully unprepared for this, which is my
6 responsibility, but again, I have not been given
7 any of this information. Again, I do not doubt
8 that he says he mailed them or had an office staff
9 mail them, but that does not mean that I got them.
10 I haven't received it.

11 THE COURT: Mr. Vergeldt, I'll deny your
12 request to continue any portion of this case to
13 retain counsel. You've had sufficient time to
14 retain counsel since Mr. Blue was relieved in this
15 case, and there was sufficient time for you to
16 obtain other counsel prior to this hearing.

17 However, what I'm going to do, we are going
18 to proceed today, and I'm going to review this
19 matter to see if I can -- I will grant further
20 evidence to be presented by the defense
21 regarding --

22 JOHN EDWARD VERGELDT: There are factual
23 errors in here that I cannot present to you today.

24 THE COURT: Well, I'm going to review it for
25 a continuance to see about whether or not **ROA 001034**

1 be reviewing this for the report of Mr. Boardman. BOA 001035

2 JOHN EDWARD VERGELDT: I also have pictures
3 now of the cottage in its current condition that
4 shows that the statements made by the petitioner
5 are absolutely incorrect, but I can't get the
6 person back here to testify. I could do it by
7 affidavit of when those pictures were taken, but I
8 can't -- they're at work. They couldn't get out of
9 work two days in a row. I just can't do it.

10 THE COURT: I understand that, Mr. Vergeldt,
11 but it was your request to have her -- and I'm
12 assuming you're referring to your niece.

13 JOHN EDWARD VERGELDT: My niece and others.

14 THE COURT: Called out of turn or to have
15 another witness that could have --

16 JOHN EDWARD VERGELDT: I understand that,
17 ma'am.

18 THE COURT: And you did not -- I take it that
19 you had those pictures with you prior to this
20 trial, and for whatever reason, you did not bring
21 those with you for your witness. And I'm not -- I
22 found that that's not a sufficient reason to
23 continue.

24 JOHN EDWARD VERGELDT: Even though I don't
25 have any of this information? I didn't get it. BOA 001035

1 He can say he sent it; he can say he warned me, but I don't
2 even if I had an attorney, there's no guarantee
3 that the attorney would have gotten it. I don't
4 have this information, ma'am.

5 THE COURT: Well, Mr. Vergeldt, then let's
6 go -- what exhibits are you specifically referring?
7 The pictures that Ms. Vergeldt --

8 JOHN EDWARD VERGELDT: Of the pictures that
9 she submitted are factually incorrect.

10 THE COURT: That's not the issue. It's that
11 you never received a copy of the pictures prior
12 to --

13 JOHN EDWARD VERGELDT: No, I never received a
14 copy of those pictures prior to yesterday when he
15 handed them to me. This entire file, ma'am -- all
16 of this, yesterday was the first time I saw any of
17 it.

18 THE COURT: Mr. Peace, a lot of this -- was
19 it enclosed together at the time?

20 MR. PEACE: Yes, Your Honor. Now,
21 admittedly, the pictures of the cottage that
22 Ms. Vergeldt sent me, those I'm not entirely sure
23 that -- entirely sure that those were produced
24 prior to -- prior to yesterday. However, I
25 understand from Ms. Vergeldt that she submitted them to me.

1 those to her previous counsel that were produced. **ROA 001037**
2 What I'm saying is that I didn't produce them, but
3 I believe that they were produced through other
4 counsel.

5 THE COURT: And they might have been made
6 an -- I believe the testimony was maybe made an
7 exhibit in a previous hearing?

8 MR. PEACE: Yes, Judge. I think so.

9 JOHN EDWARD VERGELDT: May I ask what hearing
10 that was, ma'am?

11 THE COURT: I believe there was a motion
12 either for summary judgment or partial summary
13 judgment that was conducted by Judge Kimball maybe
14 back in May of 2018. Maybe he issued a decision in
15 May.

16 JOHN EDWARD VERGELDT: Was that the hearing
17 where Judge Kimball issued the restraint on I
18 couldn't get things fixed without submitting the
19 bills to her?

20 THE COURT: That's right. I think he denied
21 summary judgment.

22 JOHN EDWARD VERGELDT: Yes, ma'am. I do not
23 remember those pictures being submitted. I don't
24 remember any evidence being submitted. It was all
25 argument. **ROA 001037**

1 THE COURT: Mr. Peace. ROA 001038

2 MR. PEACE: I'm sorry, ma'am.

3 THE COURT: That's okay. Was there a

4 discovery request that would have included

5 production of those pictures?

6 MR. PEACE: Yes, Judge, and my client was

7 just reminding me that those pictures were produced

8 as part of an affidavit that she filed in support

9 of her motion for summary judgment back in 2018.

10 And I'm looking for them, Judge, to see if they

11 were filed in the record.

12 I do see that pictures were submitted with a

13 previous affidavit. I don't have the exhibit

14 pictures in front of me, but I know that there were

15 pictures submitted.

16 THE COURT: Mr. Vergeldt, I do see that

17 pictures were made part of the record.

18 JOHN EDWARD VERGELDT: A different set of

19 pictures, ma'am, not these pictures. These were

20 also in color.

21 THE COURT: These are, too.

22 JOHN EDWARD VERGELDT: Ma'am, if I may --

23 THE COURT: Hold on one moment, Mr. Vergeldt.

24 Do you have the picture exhibit?

25 THE COURT REPORTER: Yes, ma'am. It ROA 001038

1 Plaintiff's 8. ROA 001039

2 MR. PEACE: Judge, these -- Plaintiff's 8 is

3 different pictures than was previously submitted.

4 THE COURT: I was going to say, I only see

5 pictures of the exterior of the --

6 MR. PEACE: Right.

7 THE COURT: -- of the home, not the interior.

8 So these pictures would have been provided one day?

9 MR. PEACE: As far as I know. I'm not aware

10 of what was previously produced by other counsel.

11 THE COURT: So as far as you know, one day

12 prior to trial. How long had these pictures been

13 in Plaintiff's -- I mean Petitioner's possession?

14 MR. PEACE: I would assume some previous

15 time.

16 THE COURT: That would be around November 8,

17 2018?

18 MR. PEACE: Yes, Judge, as far as I know.

19 JOHN EDWARD VERGELDT: And ma'am, again, I

20 didn't see them until yesterday, so one day prior

21 to trial is incorrect. I saw them when he handed

22 them to me yesterday. I have been given no

23 warning. Literally -- there's no need for me to

24 stand here and misrepresent myself or lie to you.

25 I'm not lying to you. But I don't have any ROA 001039

1 stuff. ROA 001040

2 THE COURT: Mr. Vergeldt, I'm not assuming

3 either party is lying to me.

4 JOHN EDWARD VERGELDT: Okay. I would just

5 like a fair opportunity.

6 THE COURT: I think it's an entirely possible

7 scenario that discovery is sent and it's not

8 received. I'm just trying to work through each

9 exhibit that --

10 JOHN EDWARD VERGELDT: I understand.

11 THE COURT: Mr. Peace, I'm going to deny

12 Plaintiff's 8 in that it was not --

13 MR. PEACE: Parts of it, Judge. It was

14 produced -- that's a packet.

15 THE COURT: Just as to the pictures --

16 MR. PEACE: Just as to the pictures. That's

17 right.

18 THE COURT: Just as to the pictures --

19 JOHN EDWARD VERGELDT: Will we deny this?

20 Again, this report --

21 THE COURT: Just as to Plaintiff's 8. I

22 think what Mr. Peace is referring to is there's an

23 inventory that I believe had some of your

24 handwriting on it.

25 JOHN EDWARD VERGELDT: I prepared thROA 001040

1 original inventory, yes. That is her change. BOA 001041
2 it. I've never seen that change.

3 MR. PEACE: I believe the -- at a minimum,
4 the last two pages, Ms. Vergeldt's testimony as to
5 the interior items of the cottage, those were
6 produced as part of Plaintiff's Supplemental
7 Answers on January 23rd.

8 JOHN EDWARD VERGELDT: Of this year?

9 MR. PEACE: Yes, sir.

10 JOHN EDWARD VERGELDT: I am sorry. I want to
11 understand. You're saying that I received those in
12 January 23rd?

13 MR. PEACE: Mr. Vergeldt, I don't know if you
14 received them or not. I know that they were part
15 of what was produced as a supplemental response to
16 your interrogatories and requests for production.

17 And Judge, I can provide the Supplemental
18 Answers, Requests for Production. I just didn't
19 want you to give the whole packet without needing
20 it.

21 JOHN EDWARD VERGELDT: Ma'am, this is -- and
22 this -- these are the only things that I received
23 from Mr. Peace in the mail. This is it.

24 THE COURT: Mr. Vergeldt, we're going to go
25 through each and -- so I can make a determination. BOA 001041

1 of what was sent, what was received, and what dates. ROA 001042

2
3 So as far as Plaintiff's 8, it's denied. I'm
4 going to remove from Plaintiff's 8 the pictures.

5 (The removed photographs were subsequently
6 marked as Court's Exhibit 1. There is no Court's
7 Exhibit 2.)

8 Mr. Peace, you said the last two pages --

9 MR. PEACE: Yes, ma'am. And I'm going to
10 hand that up right now. It said the last two
11 pages. They're the last two pages of what
12 Ms. Vergeldt has sent me before.

13 THE COURT: As far as the inventory with
14 Ms. -- I believe these were Ms. Vergeldt's
15 annotations to the inventory?

16 MR. PEACE: They were not produced with this,
17 this production. If I recall correctly, I did
18 produce that in a separate email, but you know, I
19 can't recall exactly.

20 THE COURT: Then Mr. Peace, what I'm going to
21 do is remove from Plaintiff's 8 all but the two --
22 the last two pages that were sent on the 23rd.

23 MR. PEACE: Yes, Your Honor.

24 (Plaintiff's Exhibit 8 was re-marked for
25 identification.)

ROA 001042

1 THE COURT: I'm going to keep a copy **ROM 001043**
2 just for the record as a court exhibit to show
3 exactly what was removed initially from
4 Plaintiff's 8.

5 So then as to the report, Mr. Vergeldt, and
6 your motion as to the report, we're going to
7 continue, and I'm going to defer a ruling on that
8 to review this issue to see if we can allow you to
9 present a witness.

10 JOHN EDWARD VERGELDT: Yes, ma'am.

11 THE COURT: Give them time -- give you time
12 to get your own expert and respond.

13 JOHN EDWARD VERGELDT: Thank you.

14 THE COURT: Any other exhibits? I know you
15 talked about the pictures. Any other exhibits that
16 you --

17 JOHN EDWARD VERGELDT: Yes, ma'am. The mold
18 reports for the same thing. I mean, I have -- the
19 first time I saw the mold reports were yesterday.
20 Now, I can get expert witnesses that will testify
21 to the lifetime of mold, how long mold may have
22 been there, whether or not the mold is actually
23 factually present.

24 The building itself is over 80 years old.
25 There's been at least five floods to it. **ROM 001043**

1 only person in this room that's been down **ROA 001044**
2 crawl space as well as up in the attic, and I can
3 testify -- but I can't testify because there was
4 mold up there. There's been mold up there the
5 entire time we were in the house from the time my
6 parents bought it in approximately 1964.

7 She's claiming, I believe, that the mold is
8 new. Nothing in the report says the mold is new.

9 And I can show pictures of the inside of the
10 house after it's been cleaned that shows virtually
11 no mold. Mold inside of the walls could have been
12 there for 50 years, could have been there for 70
13 years.

14 The house next door to us that they just
15 built, they had to rip out all of the drywall
16 because they did the interior framing with wet
17 lumber, and in less than six months, there's mold
18 coming through the drywall.

19 But I've got to have time to take these
20 reports to someone and pick it apart and say --
21 believe me, Charleston is the mold capital of the
22 United States. And that can be done, but I can't
23 do it today.

24 THE COURT: Well, Mr. Vergeldt, what I'm
25 going to do -- and that's as to the Plaintiff **ROA 001044**

1 the affidavit of Mr. Carson -- **ROA 001045**

2 JOHN EDWARD VERGELDT: I believe there's

3 three of them, ma'am.

4 THE COURT: The mold remediation expert.

5 MR. PEACE: Judge, there's actual mold

6 testing, the affidavit of Tom Hernick; then there's

7 the Brian Carson, which is the remediation

8 estimate.

9 THE COURT: What was the last name?

10 Mr. Hyatt?

11 MR. PEACE: Hernick.

12 THE COURT: I don't remember that one being

13 placed into evidence. I have an affidavit of

14 Mr. Carson and an affidavit of Tony Jordan.

15 MR. PEACE: I believe it would have come

16 before the affidavit of Brian Carson.

17 THE COURT REPORTER: Plaintiff's 10.

18 JOHN EDWARD VERGELDT: Just one more thing,

19 ma'am: On the issue of Mr. Peace sending me

20 things, according to the order that you gave the

21 petitioner, I was to receive notifications of all

22 expenditures for the cottage prior to the checks

23 being written and justification for them. The only

24 thing I received from Mr. Peace on that issue is

25 dated October 18th. **ROA 001045**

1 So I don't know what's happening with ROA 001046
2 mail, but in fairness, ma'am, I can -- I can -- I
3 can gather evidence for this stuff, but I can't
4 gather evidence for something that was handed to me
5 yesterday.

6 THE COURT: Mr. Vergeldt, I'm going to take
7 this issue under advisement as to Plaintiff's 10,
8 11, and the accountant's report, which I believe
9 may be 13.

10 THE COURT REPORTER: Yes, ma'am.

11 THE COURT: We're going to continue forward
12 today.

13 JOHN EDWARD VERGELDT: Thank you, ma'am.

14 THE COURT: Anything further, Mr. Vergeldt?

15 JOHN EDWARD VERGELDT: No, ma'am.

16 THE COURT: Mr. Peace, just so I'm clear, the
17 Plaintiff's 10 and 11 were sent on -- would that be
18 the January 23rd?

19 MR. PEACE: Yes, ma'am, I believe so. Let me
20 double-check that, because I know at least one or
21 two of them -- the Hernick affidavit, Judge, I know
22 I got after the remaining ones. So those were
23 produced on the 28th -- the Hernick report was
24 produced on the 28th, as was the Tony Jordan.

25 THE COURT: Thank you, Mr. Peace. **ROA 001046**

1 And Mr. Peace, any further witnesses **ROA 001047**

2 MR. PEACE: Your Honor, if the Court would
3 allow, I'd like to recall Vicki Vergeldt.

4 THE COURT: Yes.

5 MR. PEACE: Very quickly.

6 THE COURT: Ms. Vergeldt, you don't need to
7 be sworn again, but you're still under oath as of
8 yesterday.

9 VICKI LYNN VERGELDT: Thank you. Okay.
10 Thank you.

11 VICKI LYNN VERGELDT
12 having been first duly sworn, was examined and
13 testified as follows:

14 - - -

15 FURTHER REDIRECT EXAMINATION

16 - - -

17 BY MR. PEACE:

18 Q. All right. Ms. Vergeldt, I'll be very
19 brief. As part of this action, I just want to
20 clarify for the Court what it is you're exactly
21 seeking, what relief you're seeking.

22 A. I'm seeking damages.

23 Q. Okay. What are those damages? Do you
24 know what those damages amount to?

25 A. Yes. They're reflected on the CP **ROA 001047**

1 report. ROA 001048

2 Q. Okay. This is the -- when you're talking
3 about the CPA, you're --

4 A. Charles Bosler's report.

5 Q. Charles Bosler's report. Let me show you
6 what has been previously marked as
7 Plaintiff's 13. If you can, find what --

8 A. Yes.

9 Q. Tell me what you're talking about.

10 A. Sorry. Give me a second. Yes. On
11 pages 18 and 19, he offers some summary figures,
12 and he found in his accounting that John had
13 inappropriately advanced \$127,770 to himself.
14 There were interest calculations that he
15 included, which I would ask the Court to please
16 rule in favor of granting me. There was also my
17 request for the Court to consider the trust
18 provisions pertaining to disinheritance.

19 If those provisions are ruled to be
20 appropriate to uphold, then this report suggests
21 that there should be \$160,275 excluding the
22 interest. The interest calculations are
23 separately calculated on Mr. Bosler's report.

24 And let me see. I'm trying to see. Yes.

25 There was a question concerning monies from ROA 001048

1 Merrill Lynch account for \$24,000 that was not possible to locate which we would like included. BOA 001049

2
3 So beyond that, I was hoping to get the --
4 the cottage trust was a fund that my father had
5 directed be established for \$50,000. John never
6 did establish it for 50,000; he established it
7 for 49. But that fund is completely gone, and
8 the condition of the cottage is such that it's
9 clear that the fund was not used for the purposes
10 intended. Specifically it is clear that much of
11 that money -- and that's reported in Mr. Bosler's
12 report -- was spent on John's legal defense. So
13 I would ask that that \$50,000 -- I hope that the
14 Court will rule that that should be returned.

15 Also, because of the extensive damage, I
16 had asked that the Court would consider
17 consequential damages to both the building -- in
18 terms of the building, I had produced two
19 contractors' estimates, and I averaged them.
20 That's on the list that you are hanging on to
21 that has two pages.

22 And in addition to -- I took the two
23 contractors' estimates, and I averaged them. And
24 in addition, there was very substantial damage to
25 the interior furnishings of the cottage BOA 001049

1 of the mechanicals involved at the cottage. BOA 001050

2 And then finally, I would ask that the
3 Court grant me the legal fees and reasonable
4 expenses that I've sustained in pursuit of
5 obtaining my rightful inheritance.

6 Q. Okay. Let's talk about those attorney's
7 fees real quick and the reasonable expenses.
8 Whose -- who have you engaged to pursue this
9 action for you?

10 A. I beg your pardon? Are you specifically
11 referring to the removal petition?

12 Q. To this case, yes, ma'am.

13 A. Okay. So the removal petition was
14 initiated by Adam Silvernail, I believe, in 2016.

15 Q. Okay.

16 A. Is that correct? Do I have the date
17 correct?

18 Q. Yes, ma'am. You have the year correct.

19 A. Okay.

20 Q. Can you identify this document for me?

21 A. Yes.

22 MR. PEACE: Before you answer that question,
23 Your Honor, I will -- we'll go ahead and let the
24 Court know, I intend on introducing or presenting
25 basically -- almost for her -- for her two BOA 001050

1 attorneys, evidence of fees and costs expended on those
2 those attorneys charged her. Mr. Vergeldt is just
3 seeing these for the first time.

4 THE COURT: Okay.

5 THE WITNESS: Did you want me to comment?

6 Q. Yes, ma'am. If you could identify that
7 document for me.

8 A. Oh, yes. This is legal fees that I paid
9 to the Law Office of Adam Silvernail and my
10 related reasonable expenses.

11 Q. Okay. And how much did you pay
12 Mr. Silvernail in attorney's fees?

13 MR. PEACE: I'm sorry. Before I do that,
14 Your Honor, move to place the packet of information
15 related to Mr. Silvernail's fees as Plaintiff's 15.

16 THE COURT: Any objection, Mr. Vergeldt?

17 JOHN EDWARD VERGELDT: I haven't seen it,
18 ma'am, so I guess not. I don't know.

19 THE COURT: Do you have a copy?

20 (Plaintiff's Exhibit 15 was marked for
21 identification.)

22 JOHN EDWARD VERGELDT: No objection.

23 THE COURT: Plaintiff's 15 entered without
24 objection.

25 Q. How much did you pay Mr. Silvernail?

1 attorney's fees? ROA 001052

2 A. \$1,886.55.

3 Q. All right. What about -- you said other

4 reasonable expenses. Do you have that on that

5 packet of information I gave you?

6 A. Yes. One moment. I'm sorry. It's not

7 totaled. Do you want me to speak to the

8 individuals? I'll see --

9 Q. If you will turn to page number 4 on that

10 packet of information that I gave you.

11 A. Okay. Oh, I beg your pardon. Yes.

12 \$1,013.94.

13 Q. What were those costs related to?

14 A. Airline ticket, hotel, minor expenses for

15 food, transportation.

16 Q. And that's related to this action?

17 A. Absolutely.

18 Q. Okay. Can you tell the Court in what

19 capacity -- or why you made those expenditures?

20 A. To sustain myself while I was out of town.

21 Q. Okay. All right. And Mr. Silvernail --

22 well, let me ask you this: Is that related to

23 the mediation you had in 2016?

24 A. Some, but not all.

25 Q. Mr. Silvernail -- is he the only ROA 001052

ROA 001053

that you hired?

A. No.

Q. Who is the other attorney?

A. Tommy Lydon.

Q. Okay. Well, who is Mr. Lydon with?

A. McAngus -- oh, shoot. MGC. McAngus.

MR. PEACE: Your Honor, I'll represent to the Court, Mr. Lydon is an attorney with McAngus Goudelock & Courie.

A. Thank you. That was always a mouthful.

Q. Can you identify this document for me?

A. Yes.

Q. Can you tell me what it is?

A. This is a covering note from me to you because I forwarded an overall receipt for my expenditures with Tommy Lydon's firm.

MR. PEACE: Your Honor, I move to place the email and cover and what looks to be almost an accounts receivable report from McAngus Goudelock & Courie as Plaintiff's 16.

THE COURT: Plaintiff's 16.

JOHN EDWARD VERGELDT: Agreed.

THE COURT: Entered without objection.
Plaintiff's 16.

(Plaintiff's Exhibit 16 was marked for

ROA 001053

1 identification.)

ROA 001054

2 Q. All right. And according to this
3 document, how much has been -- how much did you
4 incur with McAngus Goudelock & Courie?

5 A. \$15,549.16.

6 Q. Has that money been paid?

7 A. Yes. Yes, sir.

8 Q. You paid Mr. Silvernail the 1800 that we
9 talked about a minute ago?

10 A. Yes, sir.

11 Q. Am I the other attorney that you hired in
12 this matter?

13 A. You are.

14 MR. PEACE: Okay. Your Honor, since I've got
15 an affidavit for myself, I would just move to mark
16 it into evidence as Plaintiff's 17.

17 THE COURT: Any objection, Mr. Vergeldt?

18 JOHN EDWARD VERGELDT: No, ma'am.

19 THE COURT: Plaintiff's 17 entered without
20 objection.

21 MR. PEACE: Thank you.

22 (Plaintiff's Exhibit 17 was marked for
23 identification.)

24 Q. Ms. Vergeldt, how much is -- how much are
25 you seeking -- so just to recap, you're

ROA 001054

1 the amounts that are listed in Mr. Bosler's report as damages, correct? ROA 001055

2
3 A. Correct.

4 Q. You are seeking the amount to repair the
5 cottage?

6 A. Correct. Both the building and the
7 furnishings.

8 Q. Okay. Do you remember how much that would
9 be?

10 A. 123,000, I believe. There's a total on
11 that.

12 Q. For the building and the furnishings?

13 A. Correct.

14 Q. And you are also seeking your attorney's
15 fees and costs?

16 A. Correct.

17 Q. Go ahead.

18 A. Also John's trustee fees, I would like
19 them returned. I don't think he earned them.

20 Q. And then are you seeking that the Court
21 make a declaration as to any matter?

22 A. Yes, concerning his inheritance -- well,
23 actually, I think the Court needs to make a
24 declaration about all of these items because I
25 need the Court to decide whether or not ROA 001055

1 appropriate. The cottage trust, for example, is gone, but the cottage is barely standing. ROA 001056

2
3 Q. Do you believe that Mr. Vergeldt is
4 entitled to any more funds out of the trust in
5 any way?

6 A. Absolutely not.

7 Q. Do you have probable cause to bring this
8 action?

9 A. Absolutely. Without a doubt.

10 Q. Do you believe you had probable cause to
11 bring this action at the time you brought it?

12 A. I absolutely do. I had no choice.

13 MR. PEACE: No further questions, Your Honor.

14 THE COURT: Mr. Vergeldt.

15 JOHN EDWARD VERGELDT: I don't even know
16 where to start.

17 - - -

18 FURTHER RECROSS-EXAMINATION

19 - - -

20 BY JOHN EDWARD VERGELDT:

21 Q. Approximately how much of your inheritance
22 were you paid? Do you remember?

23 A. I was paid \$60,000.

24 Q. Could you tell me -- I don't have it right
25 in front of me, but I believe -- see, I ROA 001056

1 state that. **ROA 001057**

2 You were not paid \$6,000 within two weeks
3 of your father -- 15,000 within two weeks of your
4 father's passing?

5 A. Absolutely not.

6 Q. Okay. I would have to revisit that.

7 If you took the -- if you took the
8 \$60,000, then the only thing that's remaining, in
9 your estimation, would be \$40,000 of your
10 inheritance, correct?

11 A. No, that is incorrect. Based on the
12 findings by Charles Bosler, you paid yourself in
13 excess of --

14 Q. I didn't ask that.

15 THE COURT REPORTER: I'm sorry.

16 Q. What I asked was --

17 A. Okay. The answer is no, you're incorrect.

18 Q. Okay. You did not see the T accounts that
19 were prepared by me that showed how the funds
20 were derivated, they were approved by Judge
21 Rogers, and they were approved by the attorney
22 for the trust? You did not see that document?

23 A. I have no idea what you showed those
24 individuals that they may have approved. I only
25 know that what I have is incorrect. **ROA 001057**

1 Q. I'm asking you again, you did not see any of the 001058
2 A. I answered your question.
3 Q. -- the T accounts that were sent --
4 A. I answered your question. The answer is
5 no.
6 Q. The answer is no. Thank you.
7 A. The answer is no.
8 Q. How did Mr. Bosler then come up with what
9 he feels was your proper inheritance unless you
10 told him?
11 A. Mr. Bosler did a thorough examination of
12 all of the bank records and financial statements,
13 including the extensive report prepared by the
14 limited special trustee, Kathleen Palinski, who
15 testified yesterday.
16 Q. Would you agree that these are pictures of
17 the cottage without respect to time?
18 A. It appears to be the front door of the
19 cottage.
20 Q. The pictures, please. Would you just look
21 at all of them?
22 A. I have never seen these before. I would
23 like to know, were these entered? Am I allowed
24 to talk about this?
25 Q. I'm just asking you right now, do you see any of the 001058

1 appear to be pictures of the cottage with ROA 001059
2 respect to time? I cannot prove who -- when they
3 were taken, but do they appear --

4 A. I don't know what these are.

5 MR. PEACE: Your Honor, I'm going to object.
6 If she's not seen them, know who's taken them, I
7 don't believe that she can testify as to their
8 contents.

9 JOHN EDWARD VERGELDT: All I asked, sir,
10 was --

11 THE COURT: Mr. Vergeldt, one moment. First
12 we need to mark those. Defendant's 8.

13 (Defendant's Exhibit 8 was marked for
14 identification.)

15 THE COURT: Mr. Vergeldt, you need to hand
16 those to Mr. Peace and allow him to review those
17 before you hand them to your witness.

18 MR. PEACE: Judge, my objection is the same:
19 If she's not the one who took -- if the proper
20 foundation is not laid, I don't believe she can
21 testify as to these pictures.

22 THE COURT: And has Petitioner received these
23 pictures before?

24 MR. PEACE: Not that I'm aware of.

25 JOHN EDWARD VERGELDT: No, ma'am. IRDA 001059

1 them last night. So no. I'm sorry. The **ROA 001060**
2 no, she has not -- all I ask- --

3 THE COURT: So you have not provided a copy
4 of those pictures to Petitioner prior to this
5 hearing?

6 JOHN EDWARD VERGELDT: That's correct, ma'am.
7 I just received them midnight last night. Now,
8 again, all I asked her is do these pictures -- I
9 would like to say -- I'm going to try -- with your
10 permission, I will validate the time and date that
11 they were taken later on. All I've asked her is,
12 do these pictures appear to be the pictures of the
13 cottage.

14 THE COURT: Well, Mr. Peace, I'm going to
15 allow him to try to lay a foundation before -- and
16 so you can ask her questions about what they are.

17 BY JOHN EDWARD VERGELDT:

18 Q. Do these pictures appear to be pictures of
19 the cottage, irrespective of time, because you
20 don't know when they were taken?

21 A. Well, some of them are clearly pictures of
22 the cottage.

23 Q. Do any of those pictures show the damage
24 that you've spoken to the Court about?

25 A. Yes. **ROA 001060**

1 Q. Could you please -- which one, please, ROA 001061
2 which ones?

3 THE COURT: Well, Mr. Vergeldt, you need to
4 ask that they be entered into evidence before you
5 ask any questions in particular about the pictures.

6 JOHN EDWARD VERGELDT: I'm sorry. I thought
7 that they were because she marked them. May I have
8 these entered into evidence?

9 MR. PEACE: I'm going to object, Your Honor.
10 The fact that they appear to be pictures of the
11 cottage without -- and even by Mr. Vergeldt's own
12 question, irrespective of time and place, and we
13 don't know who took them, and the fact that
14 Ms. Vergeldt has just now been given to them [sic]
15 when they've not been supplied to her prior to, a
16 foundation has not been properly laid, and
17 therefore, they should be excluded.

18 THE COURT: I'll sustain the objection.

19 BY JOHN EDWARD VERGELDT:

20 Q. So I'm going to ask you again. You stated
21 yesterday that there was significant damage to
22 the inside of the cottage: Yes or no?

23 A. Yes.

24 Q. There was significant damage to the
25 foundation of the cottage: Yes or no? ROA 001061

1 A. I didn't state that yesterday. **ROA 001062**

2 Q. You said the foundation of the structure
3 of the cottage was damaged.

4 A. What I said was that the -- due to the
5 failure to rid the gutters of debris that backup
6 of water had occurred under the eaves on the roof
7 of the cottage and that once those structures
8 became saturated, water then cascaded down onto
9 the foundation; and in at least one significant
10 area, it resulted in rot that went from the
11 exterior to the interior of the cottage.

12 Structurally speaking, a similar situation
13 occurred on the opposite side of the cottage at
14 the top end of the cottage, causing rot from
15 under the gutter all the way through to the
16 interior of the cottage.

17 Q. And it is your statement then that this is
18 recent damage, not old damage?

19 A. I became aware of the extensive damage at
20 the cottage when I obtained keys in November of
21 2018 and was able to go inside the cottage.
22 Prior to that, in August of 2017, I was aware
23 that there was evidence of severe neglect, which
24 I reported in my affidavit, which was submitted
25 at the hearing with Judge Kimball in May **ROA 001062**

1 JOHN EDWARD VERGELDT: I have no more **ROA 001063**
2 questions.

3 THE COURT: Anything further?

4 MR. PEACE: No further questions, Your Honor.

5 THE COURT: You're excused, Ms. Vergeldt.

6 THE WITNESS: Thank you.

7 THE COURT: Any further witnesses, Mr. Peace?

8 MR. PEACE: No further witnesses, Judge.

9 THE COURT: Go ahead.

10 MR. PEACE: I was going to make a motion
11 pursuant to Rule 55 for a directed verdict in this
12 matter as to the plaintiff's claims. As pled in
13 our -- as pled in our amended petition, we are
14 basically seeking damages resulting from a breach
15 of the trust agreement made by Mr. Vergeldt. As
16 was heard yesterday, essentially we've asserted a
17 good number of causes of action, reserved those
18 causes of action, but I believe at the end of the
19 day, our case boils down to a breach of trust
20 action by Mr. Vergeldt while he was serving as
21 successor trustee.

22 As was testified to by Ms. Palinski
23 yesterday, regardless of whether this is a family
24 trust, family matter, et cetera, the trustee --
25 either the co-trustee or successor trustee **ROA 001063**

1 view [sic] of certain fiduciary duties, standards of
2 loyalty, standards of account, standard of
3 impartiality. The Court heard yesterday testimony
4 from Ms. Palinski, who is essentially a
5 professional fiduciary, said that did not happen
6 here, that did not happen in this case.

7 Mr. Vergeldt, while he was serving as the
8 successor trustee, used his father's funds for his
9 own benefit, routinely, while his father was
10 living, transferring funds in and out of the First
11 Citizens 4009 account into his own 9209 account.

12 In fact, obfuscated that fact from
13 Ms. Palinski until she specifically made that
14 request, at the same time, Judge, denied my client
15 information about her father's assets and her
16 father's -- her father's finances as well as the
17 finances of the trust.

18 And then, once it became -- once their father
19 passed away, as Mr. Vergeldt -- Ms. Vergeldt
20 testified to yesterday, and as is clear from
21 Ms. Palinski's report as well as Mr. Bosler's
22 report, basically paid himself and his -- and their
23 other sister Patti a -- more than they paid Vicki,
24 more than paid my client. That is not an impartial
25 action of fiduciary or trustee and, in fact, ROA 001064

1 the remaining trustee -- used the remaining **BOA 001065**
2 distribution as a stick to try and get Ms. Vergeldt
3 to release all claims that she may have against the
4 trust without providing her the information.
5 Basically saying, sign this or you get nothing.

6 Your Honor, that is a -- that is a breach of
7 those fiduciary duties.

8 Also, throughout the time period that she
9 testified to yesterday, Mr. Vergeldt routinely
10 denied her information or access to the trust,
11 simply stating that you have everything that is out
12 there, never mind the fact that he was hiding
13 multiple bank accounts, multiple certificate of
14 deposits account, all basically in the -- in
15 furtherance of a goal of hiding what he was doing.
16 Your Honor, that is a --

17 JOHN EDWARD VERGELDT: That --

18 THE COURT: Mr. Vergeldt, he gets an
19 opportunity to speak, and let him speak, and then
20 I'll let you speak.

21 MR. PEACE: That is a breach of the duty of
22 loyalties to the settler as well as to the
23 remaining beneficiaries that is imposed upon him by
24 not only South Carolina law, but -- Mr. Bosler
25 testified to this yesterday -- is also a breach **BOA 001065**

1 Michigan law, Michigan trust law. **ROA 001066**

2 So we would move for damages or move for a
3 directed verdict on the breach of trust,
4 negligence, conversion action, and unjust
5 enrichment action on those grounds that
6 Mr. Vergeldt -- Mr. Vergeldt basically used the
7 accounts of his father as essentially his own piggy
8 bank; and then when it came time to account to the
9 beneficiaries for his actions as co-trustee and/or
10 settler trustee, here, because it's Super Bowl
11 Sunday, essentially gave my client a stiff arm and
12 tried to keep her from finding out the information
13 that -- finding out information about what he was
14 doing.

15 And once she began to ask those questions and
16 instituted these legal proceedings for the purpose
17 of attempting to get that information, as Your
18 Honor can see from Ms. Palinski's report and
19 Mr. Bosler's report, used my client's inheritance
20 in order to fund the defense of his litigation in
21 which he was named individually. So Your Honor,
22 those are the facts that we heard yesterday.

23 Now, because this is a motion for a directed
24 verdict, the Court has to view the evidence in
25 light most -- the Court has to basically u**ROA 001066**

1 summary judgment motion standard, in view **ROA 001067**
2 light most favorable -- view the evidence presented
3 in a light most favorable to the nonmoving party,
4 which would be Mr. Vergeldt. Based on what was
5 heard yesterday, there was no questions raised.
6 Mr. Vergeldt basically admitted in his -- well, I
7 can't -- I won't say he admitted in his questioning
8 because he's not under oath. However, there's no
9 question about what was presented yesterday that
10 would relieve him or grant a question in the minds
11 of the Court, even viewing in the light most
12 favorable to him, as to what his actions amounted
13 to.

14 The only question that could be -- that we
15 believe could be raised is the condition of this
16 cottage. Well, Judge, Ms. Vergeldt sat up there
17 and testified yesterday that during the entire time
18 period -- the entire relevant time period,
19 Mr. Vergeldt, either with his father or solely, was
20 the person responsible for the care and maintenance
21 of that cottage. It simply just wasn't done.

22 Now that Ms. Vergeldt has become the
23 successor trustee -- second successor trustee, we
24 now know the extent of that damage. I mean, it's
25 basically a teardown. It's a 90,000-dollar **ROA 001067**

1 job.

ROA 001068

2 So that issue was resolved, we believe, by
3 saying that it's, again, another breach of his
4 fiduciary duty for failing to care for the cottage
5 of his father or the cottage that was owned by the
6 trust.

7 Now, what we heard also today was that -- and
8 what we heard yesterday was Ms. Vergeldt had plenty
9 of probable cause to bring this case. There's no
10 question that -- based on Mr. Vergeldt's actions
11 that she had reason to believe that there was
12 something going on. I bring this up, Your Honor,
13 because the trust agreement which is at issue
14 basically says that if somebody brings an action
15 to -- brings an action to contest the actions of
16 the trustee, that no-contest clause provision is
17 invoked unless they have probable cause. Being
18 stonewalled and getting stiff-armed for almost
19 seven years certainly amounts to probable cause.

20 Also, Your Honor, the trust ends up saying
21 that the -- that the trustee's liability is limited
22 unless the trustee acts in bad faith. Judge, I
23 don't know what else amounts to bad faith other
24 than taking the actions that Mr. Vergeldt did
25 during the seven years that he was the trustee.

ROA 001068

1 whether he knew it or not, but taking those **BCA 001069**
2 and then telling my client, no, I'm not giving you
3 anything, or here, you just get this breadcrumb
4 here and you just get this breadcrumb there, in an
5 attempt to push her off the case, amounts to bad
6 faith. Your Honor, there is just no other way to
7 put it.

8 Mr. Vergeldt tried to use his father's funds
9 as his own personal piggy bank to the detriment of
10 my client, and there's been nothing here presented,
11 at least in our case in chief, to change that fact.

12 Thank you, your Honor. That's it.

13 THE COURT: Mr. Vergeldt.

14 JOHN EDWARD VERGELDT: There was a statement
15 just made that I hid assets in CDs. If the trust's
16 attorneys and the probate judge and my personal
17 attorney assured me -- I gave every document that I
18 had. She was given copies of every check; she was
19 given copies of the checkbook registers; she was
20 given copies of every monthly account statement;
21 she was given a listing of what the expenditures
22 added up to, i.e., for the cottage or for insurance
23 or for gas and electric or for water. She was
24 given that every year.

25 She was given the location and the **BCA 001069**

1 numbers of every account that Dad had. EvROA 001070
2 She says she saw a receipt for a CD for \$100,000.
3 No such CD exists.

4 She subpoenaed the IRS for Dad's tax returns,
5 I believe looking for interest paid on the CD.
6 She's subpoenaed the trust account tax returns, I
7 believe looking for interest on the CDs or whether
8 or not the tax returns that I submitted to her were
9 true and accurate as -- like the same ones that I
10 filed. And they, in fact, were every time. At no
11 time did I try to stonewall anything.

12 The trust's attorney, Mr. Don Harper,
13 prepared a codicil for release, and everyone signed
14 it but her. Everyone. She was given a copy of how
15 the trust distributions were derivated. Period.
16 She was given that copy.

17 And she took \$75,000 before she said, no, I'm
18 not -- I'm not going to sign this release. Don
19 Harper then informed me that you can't give her the
20 rest of the money until she signs the release. It
21 was South Carolina law. I'm not an attorney. I
22 don't know. I'm not a trustee -- apparently not a
23 very good one.

24 But I can state for the record, I never took
25 a dime of my father's money. While my fatherROA 001070

1 alive, yes, there was some commingling. **ROA 001071**
2 took a dime of his money. Every dime that I wound
3 up getting inadvertently was given back.

4 I believe -- which is one of the reasons I
5 challenge this. I believe that the \$24,000 that
6 Mr. Bosler mentions was my Merrill Lynch account,
7 which I also terminated when it was decided in the
8 family that we would terminate the Merrill Lynch
9 and go over to Edward Jones. But until I have time
10 to study that, I can't prove that. I believe it,
11 but I can't prove it.

12 I never took any money from my father. Every
13 document that I had -- everything -- was given to
14 her and was never good enough.

15 As I said before, she did everything in her
16 power to mess with my life. She said -- I won't
17 say she said. She or someone in her circle sent
18 letters to the FAA, to my company, in an attempt to
19 have me fired. I've jumped through hoops trying to
20 make her happy, trying to do the right thing for
21 the entire family, and to keep the cottage open and
22 running.

23 When Dad passed away and we did the initial
24 distributions, there was \$49,000 set aside for the
25 cottage because there was about \$1,000 worth **ROA 001071**

1 insurance and taxes and things that were done. ROA 001072
2 Don Harper approved my only putting \$49,000 into
3 the account rather than 50 because I paid \$1,000 up
4 front for the taxes and insurance for that year.

5 When she filed suit, she filed suit against
6 the trust and me as the trustee. Now, I know the
7 trust says that I'm indemnified unless I'm found to
8 have committed errors. Well, I freely admit that
9 there was some commingling of funds, but when Dad
10 died, that stopped.

11 Dad -- I am now told that, oh, as the
12 co-trustee, you have the same responsibility as the
13 trustee. However, your respons- -- your main
14 responsibility was to the trustee, not to the
15 beneficiaries. So if the trustee told me to do
16 something, I did it as his son. I transferred
17 money where he told me to; I paid things against my
18 wishes that he told me to.

19 Many of his expenditures, I was totally
20 against. He bought a truck for my brother Dave. I
21 was totally against that. I believe that's in
22 there, but until I have a chance to spend some -- I
23 can't prove it.

24 I believe that she has materially misled the
25 Court on the condition of the cottage, but ROA 001072

1 prove it because I can't enter the picture **ROA 001073**
2 prove what it looks like today.

3 I have been blindsided, legalistically
4 blindsided, by an attorney dropping a mountain of
5 stuff on me at the last minute and says, oh, well,
6 I mailed it to you, without ever -- there's no
7 proof that I ever got it. There's really no proof
8 that it was mailed. There's an affidavit signed
9 that said we mailed it, but is that proof that it
10 actually went in the mail? I don't know.

11 If the Court accepts that, that's fine, but I
12 know I never got it. I am not being given the
13 opportunity to defend myself against the latest
14 group of charges because I didn't have them.

15 I guarantee I will never be a trustee again
16 ever for the rest of my life. I worked my tail off
17 for my father to keep my father happy and solvent.
18 I did not misrepresent myself as having his
19 healthcare power of attorney when others did. I
20 did not go into hospitals and change his medication
21 when others did. I don't know what else I could
22 have done. Absolutely do not know what else I
23 could have done.

24 When the lawsuits were filed against -- I've
25 got \$28,000 worth of unpaid legal fees myself **ROA 001073**

1 I'm going to have to pay. Her saying the **RCPA 001074**
2 was worth 60 -- call it an even \$60,000 once you
3 take the furniture out. Well, a third of that was
4 mine, so she can't charge me for the whole of it.
5 A third of that was mine.

6 She says there's \$50,000 set aside for the
7 cottage trust. Well, a third of that was mine.
8 49,000. A third of that was mine. A third of that
9 was Patti's. Now a third of that is Audry's.

10 The entire rest of the family want nothing to
11 do with the cottage. Quite honestly, I want
12 nothing to do with her. I don't know what else I
13 could have done. Every document she ever asked for
14 was given.

15 For Mr. Bosler to sit up there and say that
16 my attorney drug his feet and obfuscated, I find
17 just horribly unprofessional. There are numbers in
18 here, if you accept this document, that I can prove
19 are flat wrong. How many times did Mr. Bosler say
20 yesterday, I assumed; so I assumed, so I put the
21 money here; I assumed, so I did this.

22 A proper -- what was the term that he used?
23 A "something" man. A prudent man. Well, a prudent
24 man is totally subjective unless you're talking
25 perhaps about a narrowly defined term that **RCPA 001074**

1 use. ROA 001075

2 The gentleman who looked at this this morning

3 told me, eh, we don't use that in South Carolina

4 because it's too subjective. At no time did I ever

5 feel the necessity to do a spreadsheet for this

6 little itty-bitty account.

7 Monies came in. She knew where they were.

8 She knew where all of the money was all of the

9 time. Until she filed suit against me, we had

10 constant communication back and forth on what the

11 monies were being spent on, how much there was,

12 where the accounts were, what accounts he had,

13 every time he changed an account. She knew about

14 it.

15 I'm at a loss. I'm totally blindsided by --

16 thank you, ma'am. I would ask that you do not do a

17 directed verdict.

18 THE COURT: Thank you, Mr. Vergeldt.

19 Mr. Peace, I think the best course of action

20 right now is for a ruling on your motion for

21 directed verdict subject to me reviewing the

22 exhibits. So I'm not quite sure what my final

23 ruling is going to be about exactly what exhibits

24 are going to be accepted.

25 So based upon his objection that he ROA 001075

1 received them -- so I just want to get further on that
2 that issue, because that could -- although there
3 was testimony about the exhibits, and that's in
4 evidence, it could affect whether or not those -- I
5 believe that was Plaintiff's 10 through 13, whether
6 or not the exhibits themselves will be received.

7 The testimony has been received; it's whether
8 or not the exhibits will be received.

9 MR. PEACE: Thank you, Your Honor. As long
10 as -- I would like an opportunity to at least brief
11 on the obligation and how the law rules on delivery
12 of such documents, when delivery is assumed and
13 presumed.

14 THE COURT: That would be helpful if you
15 provided something of that nature. Anything
16 further, Mr. Peace?

17 MR. PEACE: Not at this time, Your Honor.

18 THE COURT: Anything further, Mr. Vergeldt?

19 JOHN EDWARD VERGELDT: No, ma'am.

20 THE COURT: Mr. Peace, I do have a question,
21 just so I understand. The probable cause standard,
22 which is separate than the standard to be reviewed
23 for the causes of action, I guess I should say --

24 MR. PEACE: Yes, ma'am.

25 THE COURT: -- is that the probable

1 standard applies just as to that no-contest **ROA 001077**
2 provision?

3 MR. PEACE: Yes, ma'am. And actually, there
4 is a case out of Judge Kimball's courtroom that was
5 ruled upon back at -- on December 6th, 2018,
6 filed July 3rd, 2019. The Deborah Dereede Living
7 Trust, dated December 18th, 2013, v. Karp, 427
8 S.C. 336 2019. The Southeastern citation is
9 831 S.E.2d 435.

10 And I will -- I'll just reference the case
11 for two specific things. First is it involves a
12 similar case, actually, in terms of the trustee
13 attempting to act in good faith. However, in that
14 case, the Court of Appeals affirmed Judge Kimball's
15 ruling that whether a trustee is acting in good
16 faith still constitutes a breach of -- if they do
17 something that's violative of a trust, it still
18 breaches the trust.

19 And also the no -- it involves a no-contest
20 provision and sets forth the probable cause
21 standard. Essentially a provisional trust -- or
22 provision of revocable trust purporting to penalize
23 in the interest of person -- I'm sorry. That's the
24 wrong quote.

25 Probable cause exists when at the time **ROA 001077**

1 instituting the proceeding there was evidence. **ROA 001078**
2 related a reasonable person properly informed and
3 advised to include that there was a substantial
4 likelihood that the challenge would be successful.
5 That is from the restatement of third property
6 section -- I'm sorry. That's not right. It's
7 Townes Associates 266 S.C. 86.

8 I mentioned Michigan law, Judge, in my
9 argument because one of the things that I did
10 not -- we did not mention is this trust is actually
11 governed by Michigan law. However, that probable
12 cause standard that's in Townes pretty much runs
13 almost sim- -- not simultaneous -- is almost
14 identical to the provision that's in the tenth
15 amendment to the trust.

16 So the probable cause standard here in
17 South Carolina is almost the same as what's in the
18 trust. So like I said, the case is informative of
19 what the -- what we believe the Court needs to
20 review legally in this case.

21 THE COURT: Okay. And Mr. Peace, just a
22 question I have as far as in reviewing the prior
23 order by Judge Kimball, any difference -- I know he
24 made some findings as the difference in
25 Mr. Vergeldt's duties as a co-trustee versus **ROA 001078**

1 a successor trustee, and I know that many **ROA 001079**
2 figures that are contained in the report or the
3 testimony involved --

4 MR. PEACE: Going prior to Mr. Vergeldt's
5 death.

6 THE COURT: Right, or prior to Mr. Vergeldt
7 being successor trustee, and that was a finding by
8 Judge Kimball in the previous order. And so if you
9 can explain to me why his actions as co-trustee --
10 Mr. Vergeldt, sit down and let Mr. Peace talk --
11 is -- why that should be included or why that is
12 the same.

13 MR. PEACE: Right. We believe or we take the
14 position -- or I take the position that even though
15 Judge Kimball found that there was -- that
16 Mr. Vergeldt became the successor trustee, I
17 believe, May of 2013, that's when those duties
18 arose as to the remaining beneficiaries. So at
19 that point then, Mr. Vergeldt became responsible
20 for providing annual accountings and accounts to
21 Ms. Vergeldt.

22 However, I don't believe there's any ruling
23 in that order that speaks to -- speaks to the
24 ability of a beneficiary to recoup funds relative
25 to a breach of -- I apologize, Judge -- re **ROA 001079**

1 a breach of trust that occurred prior to t **ROA 001080**
2 Mr. -- John Vergeldt, Jr. as the co-trustee
3 becoming incapacitated.

4 And even so -- or even kind of, I guess,
5 further down the road, Ms. Vergeldt is now the
6 successor trustee of the trust, so any cause of
7 action that would have existed at that time, she is
8 now the holder of, or she has the right to bring it
9 to recoup those funds on behalf of the trust.

10 Now, I understand that there could be
11 potentially a statute-of-limitations question on
12 some of those issues. However, at the time,
13 Ms. Vergeldt was not aware of the damage or the
14 extent of the damage that may have been available
15 or that may have been caused by the respondent
16 while he was the co-trustee and the successor
17 trustee. You know, it's one thing to know
18 potentially -- or at the time, she didn't know the
19 extent or that there was a claim out there for
20 damages.

21 So I think on those grounds, as the now
22 second successor trustee, she is able to go back
23 and attempt to seek damages for breach of trust
24 that occurred prior to -- prior to Mr. John
25 Vergeldt, Jr. becoming incapacitated. **ROA 001080**

1 Unfortunately, Mr. Vergeldt, Jr. is not here. ROA 001081
2 state one way or the other what his -- what he
3 instructed his son to do. However, as Ms. Palinski
4 indicated, even if there was a directive from the
5 trustee to use a debit card or do something that
6 didn't amount to a fiduciary standard, that would
7 still be in breach of the fiduciary standard. The
8 co-trustee has the obligation to say to the
9 trustee, I can't do that; we can't do that.

10 So I don't -- I think that as a second
11 successor trustee, she's now able to go back and
12 remedy that breach of trust incurred by the -- or
13 committed by the successor trustee or co-trustee,
14 and Judge Kimball's order does not limit her
15 ability to recoup funds. In fact, I believe it
16 specifically states that no action for damages have
17 been brought. It was wrote for the parties, and I
18 think he said there was no determination of
19 probable cause being made at that time.

20 THE COURT: Okay. Thank you, Mr. Peace.
21 Mr. Vergeldt.

22 JOHN EDWARD VERGELDT: I beg to differ with
23 Counsel. I believe what Judge Kimball said was
24 that I'm totally absolved and non-responsible --
25 not responsible for anything that happened. ROA 001081

1 trust prior to the day that he determined **ROA 001082**
2 was incapacitated, which was May 6th of 2013.

3 My father was cogent. He moved money around.
4 He bought stocks. He bought bonds. He bought a
5 car, sold a car. He took plane trips. This all
6 started -- his mental deterioration really started
7 in February of -- February/March-ish of 2013, which
8 was why we went to court at that time to try to get
9 a conservatorship and guardianship, which the
10 plaintiff vehemently opposed because she wanted
11 guardianship and conservatorship.

12 My understanding, based on what the attorneys
13 told me, was anything prior to May 6th of 2013,
14 responsibility would rest on my father's shoulders.

15 Now, if they make the claim that I did some
16 things that are stupid, I wouldn't say they were
17 stupid. I did things for my father that I advised
18 him against doing. Dad, I wouldn't do that; that's
19 not a good idea. Now I am somehow being held to a
20 standard that if the trustee said to do it, I
21 should have said no.

22 Well, the plaintiff, when she was the trustee
23 for my mother's trust, wrote checks out of my
24 mother's trust account. She wrote -- she never
25 got -- now she's saying that it doesn't apply **ROA 001082**

1 because Dad was the trustee; I was just thROA 001083
2 co-trustee. But somehow, I, as the co-trustee, am
3 being held to a much higher standard than she's
4 holding herself to.

5 I've been advised by counsel to respectfully
6 say I will appeal your decision not to issue or
7 grant the continuance. I still believe I've been
8 blindsided by him. I believe it was intentional.
9 And here I am in court woefully unprepared --
10 prepared to discuss and argue those things that
11 were in the petition, not all of this other
12 mountain of stuff that he just literally dumped on
13 me at the last minute.

14 I believe I could have refuted everything in
15 Mr. Bosler's report. I know I could have refuted
16 everything in the mold reports. I could have
17 refuted the, quote, damage to the cottage, because
18 it just doesn't exist. And the expenses -- I would
19 have gone through those line by line.

20 And he says, well, you know, you had this
21 report. I had it when I got it from him. I never
22 got that report from Ms. Palinski. In fact, I
23 believe there's a letter saying she did continuing
24 work in 2019 that I was totally unaware of, and
25 there was a bill generated by Ms. PalinskiROA 001083

1 presented in 2019 that I was totally unaware of. ROA 001084
2 didn't know she was still working on stuff.

3 If she's still working on stuff, who is she
4 working for? Was she working for the trust? If
5 she was working for the trust, as a beneficiary, I
6 should have been notified, and I wasn't. I haven't
7 been notified except for one set of bills,
8 according to your order, that I'm supposed to get.

9 And it's just symptomatic of -- whether it's
10 the staff at Mr. Peace's office, I'm not getting
11 the information. So I come into court. I look
12 like a buffoon.

13 MR. PEACE: Judge, as to those issues, I
14 have -- and I can provide an affidavit to this
15 effect. I have provided multiple -- multiple
16 documents to Mr. Vergeldt by mail, by email. You
17 know, I -- I can't explain it other than I've done
18 it and will be more than happy to provide the Court
19 with the correspondence attempting to send those to
20 him, which he has responded to.

21 You know, I can't speak to why certain things
22 have not made their way to his P.O. Box by virtue
23 of the mail, but there's a certificate of service
24 attached to the documents that were sent. I've
25 tried to get Mr. Bosler's report to him as ROA 001084

1 possible. He was provided with Ms. Palins **ROA 001085**
2 final bill, which I'll be more than happy to submit
3 to the Court again by affidavit, which shows that
4 it was for work done while Mr. Vergeldt was --
5 while Mr. Vergeldt had counsel engaged and includes
6 his meeting with Ms. Palinski.

7 It just took her that long to issue a bill.
8 I can't speak to that. I can't speak to why she
9 took that long. All I could speak to is what I've
10 presented to Mr. Vergeldt.

11 THE COURT: Mr. Vergeldt, you may be seated.

12 And Mr. Peace, I want to make clear that I
13 don't assume that anything was done inappropriate.
14 I just want to make sure that I've reviewed what is
15 required and make sure that what the civil rules
16 are regarding discovery.

17 MR. PEACE: Certainly.

18 THE COURT: And if he -- if there's some
19 rules regarding -- from my review of it, it just
20 appears that you supplement discovery promptly, and
21 there was no scheduling order that certain exhibits
22 or reports were to be done by a specific time. I
23 just want to make sure that if there's any -- and
24 that's why I would appreciate if there's anything
25 else that you can supply the Court, you know **ROA 001085**

1 there's any case law or anything, as far as ROA 001086
2 defendants are --

3 MR. PEACE: Will have an opportunity to
4 review.

5 THE COURT: Exactly. Enough time to prepare
6 for trial. And is the time that you placed in the
7 mail, which I think is sufficient for service --
8 was that timely enough for them to be able to
9 prepare for trial.

10 MR. PEACE: Yes, Judge. I would like to
11 clear up one matter. The final order in the 2014
12 case by Judge Kimball does -- deals mainly with the
13 accountant. I can pull a copy. I don't have a
14 paper one, but -- actually, we do. It was
15 introduced as an exhibit, I believe. However, what
16 is of public record, it states that no declaration
17 concerning probable cause to challenge the
18 trustee's performance of his duties is at issue and
19 is not presented in the case -- paraphrase that
20 part. Such determination is preserved for such
21 time that Plaintiff challenges the actions of the
22 successor trustee while acting. More importantly,
23 no finding or conclusion of this order shall be
24 deemed to be a determination of
25 compliance/noncompliance with applicable law ROA 001086

1 terms of the trust agreement. **ROA 001087**

2 So any action for damages was not included in

3 that specific action. That mainly dealt with

4 solely -- almost with the duty to account.

5 THE COURT: Thank you.

6 MR. PEACE: Thank you.

7 THE COURT: Okay. So I just want to be

8 clear. I've deferred ruling as far as Plaintiff's

9 8 -- we've got Plaintiff's 8. I would say

10 Plaintiff's 10 through 11, 12, and 13, I'll review

11 in the discovery issue.

12 MR. PEACE: Yes, Your Honor.

13 THE COURT: And then I defer a directed

14 verdict or ultimate verdict on this case while I

15 decide whether or not to allow Mr. Vergeldt a

16 continuance as to the mold issue and the

17 accountant.

18 JOHN EDWARD VERGELDT: All right. Would that

19 include Ms. Palinski's report?

20 THE COURT: No. There was no objection to

21 her report.

22 JOHN EDWARD VERGELDT: All right.

23 THE COURT: Or to her testimony at the time.

24 And you did not bring it up when I asked if there

25 was anything further. **ROA 001087**

1 JOHN EDWARD VERGELDT: Didn't think ~~ROA 001088~~
2 One day I'll be an attorney, maybe.

3 THE COURT: And while we're here, let me
4 address your contempt motion, Mr. Vergeldt.
5 Because this trial and the evidence that was
6 present is separate and distinct from -- since
7 Ms. Vergeldt has become a trustee. Mr. Vergeldt,
8 my understanding of contempt is when you allege
9 contempt for acts that occur outside the presence
10 of the court that it must be done by affidavit or
11 hearing, and neither of which of those are present
12 in this case.

13 Now, I'm not saying that there can't be
14 further motions for contempt regarding when
15 Ms. Vergeldt took over as trustee. I'm referring
16 to your filed motion for contempt.

17 JOHN EDWARD VERGELDT: Yes, ma'am. I don't
18 understand what you said just previous to that.
19 Does there have to be a hearing?

20 THE COURT: Mr. Vergeldt, my review of the
21 case law is that when you are alleging that a
22 person has committed acts that violate a court
23 order -- which is what you've done in this case.

24 JOHN EDWARD VERGELDT: Yes, ma'am.

25 THE COURT: -- that if they do not ~~ROA 001088~~

1 the presence of the Court, which they did **ROA 001089**
2 within my presence, I have no knowledge of what was
3 done. In other words, they did not occur in court,
4 the violations of the order.

5 JOHN EDWARD VERGELDT: So to be clear, their
6 failing to provide me the things that you ordered
7 them to provide me does not generate a contempt?

8 THE COURT: It may. What I'm telling you is
9 that you have failed to prove -- there is proof
10 that you need to offer. And when it does not occur
11 in my presence or the Court's presence --

12 JOHN EDWARD VERGELDT: I understand, ma'am.

13 THE COURT: -- it needs to be done by
14 affidavit, which your motion did not attach an
15 affidavit, or we need to have a hearing, which you
16 did not want to have a hearing.

17 JOHN EDWARD VERGELDT: I understand. I
18 didn't want to waste your time.

19 THE COURT: That does not mean that you
20 can't -- this does not preclude you from filing
21 another motion or having a hearing. What I'm
22 telling you is that what is before the Court
23 currently regarding your motion for contempt is
24 insufficient.

25 JOHN EDWARD VERGELDT: Thank you, ma'am **ROA 001089**

1 THE COURT: Anything about that, Mr. PEACE. **REA 001090**

2 MR. PEACE: Other than we would like it --

3 other than we would like it dismissed.

4 THE COURT: Well, your motion is denied, but

5 again, Mr. Vergeldt, this does not preclude you

6 from bringing another motion and moving forward

7 with the same -- without prejudice, I guess, to

8 say.

9 JOHN EDWARD VERGELDT: I understand. Is it

10 within the Court's discretion to reaffirm your

11 order and ask them to please obey it.

12 THE COURT: I don't need to reaffirm it.

13 It's --

14 JOHN EDWARD VERGELDT: But they're not

15 obeying it. Even as of today, they're not obeying

16 it.

17 THE COURT: File a motion, Mr. Vergeldt.

18 JOHN EDWARD VERGELDT: Thank you, ma'am.

19 Thank you for your indulgence.

20 THE COURT: All right. This hearing is

21 concluded.

22 MR. PEACE: Judge, if Mr. Vergeldt has

23 nothing further, I'd move to dismiss the

24 counterclaims raised in his answer and

25 counterclaim. He raised several causes of **REA 001090**

1 in it basically alleging money due for medical bills, money due for what I'll essentially call
2 bills, money due for what I'll essentially call
3 alienation of affection from his wife as well as
4 [unintelligible] and other damage.

5 There's been no evidence presented at this
6 hearing related to those counterclaims by him or
7 any other witness. Due to the failure to present
8 any evidence, we would move to have those
9 counterclaims dismissed such as they are for
10 essentially lack of prosecution.

11 JOHN EDWARD VERGELDT: If you dismiss them, I
12 ask you to dismiss them without prejudice because
13 they are going to be brought again. So if you
14 dismiss those claims -- I would prefer that they
15 not be dismissed, but if you do, I would ask that
16 you dismiss them without prejudice so that I can
17 bring them back.

18 MR. PEACE: And Judge, there's got to be an
19 end to this litigation. This is -- as you've heard
20 testimony now, this has been seven years ongoing.
21 Continuing to -- continuing to be forced to
22 litigate or the threat of litigation is --

23 THE COURT: I agree, Mr. Peace.

24 MR. PEACE: Thank you, Your Honor.

25 THE COURT: The counterclaims are dismissed.
RCDA 001091

1 with prejudice, Mr. Vergeldt. **ROA 001092**

2 JOHN EDWARD VERGELDT: That is exactly what

3 she's done to me for seven years. Exactly.

4 THE COURT: Mr. Vergeldt, you offered no

5 proof of it.

6 JOHN EDWARD VERGELDT: I understand.

7 MR. PEACE: Judge, was there a time period by

8 which you would like me to brief those evidentiary

9 issues.

10 THE COURT: Mr. Vergeldt.

11 JOHN EDWARD VERGELDT: I'm sorry. I thought

12 you said we were dismissed.

13 THE COURT: You might want to hear. What do

14 you think is a reasonable time, Mr. Peace? I don't

15 know what your schedule is, so if you could let me

16 know.

17 MR. PEACE: I was going to say, if I could

18 have until the end of February, that would be

19 fantastic.

20 THE COURT: That would be great.

21 JOHN EDWARD VERGELDT: And I'm sorry. This

22 is for?

23 THE COURT: I believe this will be briefing

24 of the issues for the discovery, objections that

25 you had. **ROA 001092**

1 JOHN EDWARD VERGELDT: Could we do it by the 1st of March, early in March? **REDA001093**

3 THE COURT: You're under no obligation,
4 Mr. Vergeldt, unless you would like to. We'll do
5 this by the end of February. If you'd like to
6 submit something by the end of February, that
7 would -- you may do so, but you're under no
8 obligation. In other words, it's not going to
9 affect your --

10 JOHN EDWARD VERGELDT: Again, I apologize for
11 my ignorance. There is going to be information
12 sent to the Court regarding what? So you just said
13 I could file something, but I don't know what it
14 is.

15 THE COURT: He will brief the issues, which
16 will -- he'll give the Court his understanding of
17 what the law is regarding discovery --

18 JOHN EDWARD VERGELDT: Will I be --

19 THE COURT: -- and how he complied with that.

20 JOHN EDWARD VERGELDT: Yes, ma'am.

21 THE COURT: If you would like to respond,
22 I'll give you ten days to respond to whatever he
23 submits.

24 JOHN EDWARD VERGELDT: Yes, ma'am. And
25 that -- will I get a copy of that from Mr. **REDA001093**

1 THE COURT: Yes. ROA 001094

2 MR. PEACE: Judge, I'll send it by certified

3 mail as well as by email.

4 JOHN EDWARD VERGELDT: Thank you. I would

5 ask the Judge to consider one thing, and I'll be

6 really brief because it's really easy. Having to

7 respond to Mr. Peace within five business days

8 sometimes is very onerous for me. I don't carry a

9 computer with me. I'm reasonably off and out of

10 the country. If we could make that ten business

11 days, it would be much easier.

12 And I'm not trying to stymie him. I'm not

13 trying to delay the payment of any bills, because

14 the cottage bills have to be paid. I honestly

15 don't care. She gets the bills, but I'm supposed

16 to get a copy of it. And let her pay it. You know

17 what I'm saying? I don't care. This is what I've

18 always done. I don't care. The cottage needs to

19 run.

20 THE COURT: Any objection to that, Mr. Peace?

21 He wants ten -- basically two weeks.

22 MR. PEACE: Oh, that's fine.

23 JOHN EDWARD VERGELDT: I've asked you for

24 that before, sir, and you said no.

25 Thank you very much, ma'am. ROA 001094

1 MR. PEACE: One more clarification t ROA 001095
2 going to bug me if I don't correct it: The rule
3 for a directed verdict is Rule 50, not Rule 54. I
4 just wanted that -- I apologize.

5 THE COURT REPORTER: Your Honor, I believe we
6 agreed that the Judge will retain the exhibits, if
7 that's okay.

8 THE COURT: The Judge will retain exhibits.
9 Any objection from the parties?

10 MR. PEACE: No objection, Your Honor.

11 THE COURT REPORTER: Thank you.

12 JOHN EDWARD VERGELDT: Okay.

13 - - -

14 (The hearing is adjourned at 2:42 p.m.)

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ROA 001095

CERTIFICATE OF REPORTER

ROA 001096

I, Cherie J. Anderson, Registered Merit Reporter, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript; that the witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the witnesses and all objections made at the time of the examinations were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate, and complete record of the testimony of the witnesses, the statements and arguments of counsel, and of all objections made at the time of the examinations to the best of my ability.

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 on this 27th day of February, 2020, at Charleston, Charleston County, South Carolina.



Cherie J. Anderson, RMR, CRR
My Commission expires
April 30th, 2023

ROA 001096



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AUDIO TRANSCRIPTION

June 17, 2020

Vicki Lynn Vergeldt, etc.

VS

John Edward Vergeldt

2016-CP-46-0820

REPORTER: Sheila Smith

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2016-CP-46-0820

In Re:

Vicki Lynn Vergeldt,
Individually and as
Successor Trustee of
the John Vergeldt, Jr.
Revocable Living Trust
dated September 27, 1978,

Petitioner

vs.

John Edward Vergeldt,
Respondent.

TRANSCRIPTION OF HEARING
June 17, 2020

Before: The Honorable Teasa K. Weaver

ROA 001099

ATTENDEES:

Taylor A. Peace, Esquire
Attorney for Petitioner

John Edward Vergeldt
Appearing pro se

* * * * *

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ROA 001099

ROA 001100

P R O C E E D I N G S

JUDGE WEAVER: This is Case Number 2016-CP-46-0820, Vicki Lynn Vergeldt versus John Vergeldt. This is Plaintiff's Motion to Alter or Amend Plaintiff's issued by the Court. And present representing Petitioner is Mr. Taylor Peace. Also present is Mr. John Vergeldt, appearing pro se. And Mr. Peace, whenever you're ready.

MR. PEACE: Thank you, Your Honor. May it please the Court, Taylor Peace for the Petitioner. Some of the stuff that I put in my Motion to Alter or Amend has kind of been rendered moot by Mr. Vergeldt's June 1st, 2020 filing.

I filed this Motion really to get some -- and at the end of the day, get some clarity on what the court was -- what Your Honor was exactly ruling on in the Order on -- I believe it was filed 12/2020, giving Mr. Vergeldt additional time to do some kind of a response. And what I understood that to be a response from the forensic accountant or other accountant that he had retained to reply to the Court by Charles Bosler that was presented at trial, as well as to -- and to get clarity on all these other Motions for Contempt or filings for Contempt and

ROA 001100

ROA 001101

1 Sanctions that have been filed by both me and Mr.
2 Vergeldt.

3 You know, I kind of took Your Honor's Order
4 to say that no other matter would be considered
5 to mean that either all those motions were denied
6 and everybody remained in the same place as they
7 would if they had been denied, but I just wanted
8 some clarity on that, especially kind of in light
9 of what I thought to be the Court's ruling on Mr.
10 Vergeldt's initial Motion for Contempt back in
11 the trial.

12 The other -- like I said, the other matters
13 were basically resolved by Mr. Vergeldt's June 1,
14 2020 filings. You know, I thought that the court
15 was agreeable to allowing -- or to requiring Mr.
16 Vergeldt to identify his accountant within ten
17 days of the report being filed. It doesn't
18 appear now that he has retained an expert or an
19 accountant to provide a response to the Bosler
20 Report, that identification of that witness is
21 kind of rendered moot at this point. And I think
22 that point -- oh, and did want some clarification
23 on what the limitations were as to the evidence
24 that he could submit within those 30 days. And
25 we can deal with that on the -- on his Motion to

ROA 001101

ROA 001102

1 Exclude the Bosler Report and other matters
2 included in his June, 2020 filing when the Court
3 hears him on that, if that's something that's
4 going to be heard today as well.

5 So that's really kind of my -- the gist of
6 my Motion, Judge. I just wanted some clarity so
7 I can know that the door is at least closed on
8 these matters that have been filed. Under Rule
9 59, you know, we were entitled to -- or this is
10 my time to bring up additional items on the Rule
11 59 motion. Rule 59(e) is my opportunity to bring
12 up matters that were discussed or presented at
13 either trial or hearing and not ruled upon by the
14 Trial Court. I'm not saying that Your Honor did
15 not rule on those issues, but was more looking
16 for an amendment of that Order just for clarity
17 purposes and possibly for appeal purposes if
18 those matters actually end up being heard.

19 JUDGE WEAVER: Okay.

20 MR. PEACE: So that's kind of where --

21 JUDGE WEAVER: All right. So first we'll deal with the
22 issues that are moot. And is that in -- I did
23 not see a responding report to the Bosler Report.
24 And, Mr. Vergeldt, is that -- I take it nothing
25 was submitted? Because what I saw in the file, I

ROA 001102

ROA 001103

1 didn't see another Affidavit, a responding
2 Affidavit.

3 MR. VERGELDT: To the Bosler Report?

4 JUDGE WEAVER: Right.

5 MR. VERGELDT: Yes, ma'am, I submitted that. And I got
6 the comeback from the Court saying it had been
7 received.

8 JUDGE WEAVER: Okay. Maybe that's not been
9 (indiscernible).

10 MR. VERGELDT: Assumes that 18 -- it was an 18-page
11 pretty much a (indiscernible) by me. Mr. Peace
12 has it. It was submitted to the Court as well,
13 stating my objections to the things that are in
14 the Bosler Report and asking that the Bosler
15 Report be excluded.

16 JUDGE WEAVER: Okay. Well, that I'm going to deal with
17 first. Mr. Vergeldt, I'm not going to consider
18 any objection to the Bosler Report at this time
19 because you made an objection at trial. The
20 objection was based upon the fact that you had
21 not received the Bosler Report in enough time to
22 prepare for trial.

23 MR. VERGELDT: Yes, ma'am.

24 JUDGE WEAVER: I agreed with you, not that I found a
25 discovery violation, but I did find -- and Mr.

ROA 001103

ROA 001104

1 Peace, I don't know if this will help, that even
2 though you received it, I agreed that you did not
3 receive it within time enough to prepare for
4 trial. Therefore, I was giving you an
5 opportunity to file a responding affidavit. So
6 any further objections I'm not considering
7 because those were not raised at trial. And I
8 think I specifically asked you were there any
9 other objections to the Bosler Report, and no
10 other objections were raised at that time.

11 MR. VERGELDT: Yes, ma'am, but I believe I objected to
12 the Bosler Report because I didn't have time to
13 prepare to a response for it. And you gave me 30
14 days to prepare a response for it, and I did.
15 And I sent that response to you, as well as to
16 Mr. Peace.

17 JUDGE WEAVER: But the response was supposed to be the
18 accountant that you mentioned that you had been
19 -- that you may have been in contact with or were
20 going to contact to file a responding affidavit.
21 In other words, you were going to present an
22 affidavit in response to the Bosler Report, but I
23 don't think that's been done. I think what you
24 did was you just filed a motion to object.

25 MR. VERGELDT: Well, I responded with the response to

ROA 001104

ROA 001105

1 the Bosler Report showing the Court the
2 (indiscernible) and the flat out discrepancies
3 that are in the report. But no, I did not -- I
4 did not pay someone \$5,000 to write a report. I
5 wrote the report myself on --

6 JUDGE WEAVER: Well, Mr. Vergeldt, I'm not going to
7 consider your -- that response. The purpose of
8 it was to allow you time to get a responding
9 affidavit from your own expert, if you so -- you
10 know, if you chose to do so. And so I'm not
11 going to (indiscernible). Any objections you
12 make in this Motion I deny.

13 MR. PEACE: Okay. So you're accepting the Bosler
14 Report as accurate?

15 JUDGE WEAVER: I didn't say I accepted it as accurate,
16 that it is in evidence for me to consider.

17 MR. PEACE: All right, thank you.

18 JUDGE WEAVER: Mr. Peace, what other -- did that
19 clarify that issue for you?

20 MR. PEACE: It did. It did insofar as I guess what I'm
21 hearing Your Honor say is anything -- well,
22 because there are a couple more things in the --
23 in Mr. Vergeldt's Bosler that were sent to me as
24 part of that package that I'm -- that I think we
25 may also need to deal with. But I understand

ROA 001105

ROA 001106

1 that the 18-page -- that the 18-page Motion to
2 Exclude Bosler Report and Bosler direct
3 testimony, along with the affidavits or the
4 attachments to it aren't being considered by the
5 Court?

6 JUDGE WEAVER: If -- unless the -- unless it's an
7 affidavit of an expert, which I -- that's not
8 what I heard. And that was the purpose of me
9 extending the time, was to allow Mr. Vergeldt
10 time to get an expert and to respond, because his
11 objection -- my understand of his objection was
12 that he did not receive this report in enough
13 time to respond to it. And, Mr. Vergeldt, a
14 response would be by witness and you did not
15 testify when you had the opportunity to. And so
16 I gave you time to get an expert or other witness
17 to do a responding affidavit. And I don't see
18 that has been done, so --

19 MR. VERGELDT: You are correct, Your Honor. I did not
20 do that. I did not -- I don't have the money --

21 JUDGE WEAVER: Okay.

22 MR. VERGELDT: -- to be brutally honest with you. I
23 simply don't have the money to pay someone. The
24 person's that I spoke to -- I spoke to three.
25 Two of them are close personal friends. They

ROA 001106

ROA 001107

1 said they could not do it because of our
2 corresponding friendship and relationship. The
3 other person said it would take a minimum of
4 \$5,000. I just don't have it, so I wrote the
5 report myself.

6 JUDGE WEAVER: Well, I'm not -- I deny Mr. Vergeldt's
7 Motion.

8 MR. VERGELDT: Thank you, ma'am.

9 MR. PEACE: Judge, that clears up that part of my
10 Motion to Alter or Amend. The only other thing
11 would be these other outstanding Motions for
12 Contempt or for Sanctions I guess that were filed
13 prior to the May 12th Order. If I could just get
14 some clarity or have that Order altered or
15 amended to specifically state -- you know, either
16 specifically state by each Motion or as a group
17 to say that, you know, Motions filed January 1,
18 January 2nd, so forth and so on, and I'm just
19 using random dates, are denied. That would be
20 the only other thing that was really outstanding
21 in my Motion I think.

22 JUDGE WEAVER: Right. And I think I may have touched
23 on it over the telephone conference that yes, I
24 would say that every other Motion that I'm
25 thinking of, unless one of you remind me, that

ROA 001107

ROA 001108

1 they are denied. I did not find Plaintiff in
2 contempt, based upon Mr. Vergeldt's objections or
3 claims. I think part of -- I know we briefly
4 discussed -- because part of them were based upon
5 the cottage agreement, which I -- which -- it had
6 to be based upon an Order. And I believe that
7 one of the allegations was about not receiving
8 certain bills or items currently from the --
9 since Ms. Vergeldt has taken over the Trust. But
10 I believe that issue was resolved because those
11 were provided to Mr. Vergeldt.

12 MR. VERGELDT: No, ma'am, that is incorrect. I, in
13 fact, do not have any bills. Your Order -- let
14 me get it out for you -- specifically states
15 that prior to the expenditures of trust funds on
16 the cottage, I am to be notified. I have
17 received one and one only notification -- I'm
18 sorry, I'll take that -- two, because the second
19 notification, which only covered a very, very
20 brief period of time, was contained in the
21 financial report, which I told Mr. Peace was
22 incomplete and actually argumentative. But I am
23 not getting the bills prior to her paying them.
24 I am not getting any notifications from Mr. Peace
25 or the Petitioner.

ROA 001108

ROA 001109

1 They're in actually direct violation of your
2 Court Order saying that I shall be notified prior
3 to their paying the bills, and that I have ten
4 days to say yes or no on the bills, and I'm just
5 not getting those. If Mr. Peace feels that I am,
6 I would like him to supply to the Court the
7 paperwork showing that I'm getting them. I'm not
8 getting any e-mails. I'm not getting any papers.
9 I'm not getting anything. She's just paying the
10 bills totally without my knowledge, which is in
11 direct violation of your Order.

12 MR. PEACE: Judge, he said that my client has presented
13 them to me. I forwarded them to Mr. Vergeldt.
14 I'll be more than happy to supply that to the
15 Court, if you would like me to. I've sent it --
16 to the extent that anything's been supplied, I've
17 sent it to Mr. Vergeldt by e-mail and received no
18 response from him as to any kind of objection or
19 question as to the invoices. I will let Mr.
20 Vergeldt know, or at least the Court know that to
21 the extent that the cottage -- that basically
22 right now I don't think anybody's at the cottage.
23 I'll verify with my client whether or not the
24 power's on or whether the water is on. But yeah,
25 to the extent I've gotten anything, it's been

ROA 001109

ROA 001110

1 forwarded to Mr. Vergeldt. I understand he's
2 saying he doesn't claim that he's got -- or he's
3 claiming that he hasn't gotten them. But I can
4 only send you what -- I can only send Mr.
5 Vergeldt what my client has sent me.

6 JUDGE WEAVER: Well --

7 MR. VERGELDT: Your Honor?

8 JUDGE WEAVER: Yes?

9 MR. VERGELDT: Your Honor, the point -- the issue here
10 is not Mr. Peace. I'm not saying, sir, that
11 you're not forwarding me the bills. I'm saying
12 she's not forwarding them to you. You cannot
13 send me what you don't have. However, there is a
14 court Order that applies to her that says -- and
15 I've got it right in front of me. It says prior
16 to her paying the bills, I must be notified. I
17 don't care how it's done. She's just not doing
18 it. She's sent you one -- one statement. And
19 you responded with yeah, it's late, but it was my
20 fault, essentially your fault because you didn't
21 get it in time and you were really busy. And
22 then we got the financial report that was dated
23 April 1st. Those are the only two responses I
24 have.

25 The Court is very, very clear in the Court's

ROA 001110

ROA 001111

1 Order that says prior to paying the bills, I am
2 to be notified. Again, I'm not saying that she's
3 notifying you, sir. I'm not claiming that at
4 all. What I'm saying is, she's not obeying the
5 Court's Order.

6 JUDGE WEAVER: Mr. Vergeldt, how do you know Ms.
7 Vergeldt is not notifying Mr. Peace of all -- of
8 --

9 MR. VERGELDT: I'm assuming that -- right. I am
10 assuming that Mr. Peace is being honest and
11 forthright, and he says he's not getting them
12 from the Petitioner. I'm making that assumption
13 to him as a professional. However --

14 JUDGE WEAVER: Right. That assumption -- how do you
15 know Ms. Vergeldt is not telling you about all
16 the bills she's paying, or expenditures she is
17 making?

18 MR. VERGELDT: How do I know she's not telling me --

19 JUDGE WEAVER: Right.

20 MR. VERGELDT: -- or Mr. Peace?

21 JUDGE WEAVER: Both; either.

22 MR. VERGELDT: I do not know. I know I'm not getting
23 them, so it's either she's either not sending
24 them to Mr. Peace, which is a violation of your
25 Court Order, or Mr. Peace is not forwarding them

ROA 001111

ROA 001112

1 to me.

2 JUDGE WEAVER: But if you don't -- but how do you know
3 you're not receiving them? How do you know that
4 expenditures are being made and you're not
5 receiving notice of them?

6 MR. VERGELDT: Because the water is still on, the
7 electricity is still on. So the bills are being
8 paid; otherwise, they would have been shut off.
9 Further, I have friends -- we all have friends
10 that are up there. It's a small community. They
11 drive by the place and workmen are working there,
12 so the electricity is still turned on. If the
13 electricity hadn't been turned --

14 MR. PEACE: (Indiscernible).

15 MR. VERGELDT: Let me finish, sir. If the electricity
16 hadn't been turned on throughout --

17 MR. PEACE: Judge, I'm going to object.

18 MR. VERGELDT: -- the winter months, the place would
19 have froze again.

20 MR. PEACE: And to the extent Mr. Vergeldt is
21 testifying about what other individuals have told
22 him, that's all hearsay and should be excluded.

23 JUDGE WEAVER: Right. Mr. Peace, I know you mentioned
24 earlier that you would check with Ms. Vergeldt
25 about the cottage, that as far as you were aware,

ROA 001112

ROA 001113

1 there was no power or water being paid currently
2 or that it was --

3 MR. PEACE: Yes, ma'am.

4 JUDGE WEAVER: Okay. If you could just confirm that
5 and confirm that with her, and if there have been
6 expenditures made, just --

7 MR. PEACE: We'll get them forwarded.

8 JUDGE WEAVER: -- find out what you can and forward it
9 to Mr. Vergeldt.

10 MR. PEACE: Yes, ma'am.

11 JUDGE WEAVER: And we'll go from there.

12 MR. VERGELDT: The spring taxes have been paid, ma'am,
13 and the insurance has been paid. These bills are
14 being paid.

15 JUDGE WEAVER: Well, let me ask you this, Mr. Vergeldt.
16 Do you object to the taxes being paid?

17 MR. VERGELDT: No, but I am objecting to her flaunting
18 your Court Order. I am trying to be open and
19 honest --

20 JUDGE WEAVER: Right.

21 MR. VERGELDT: -- and do everything the Court asks me
22 to do. In the meantime, the Petitioner is doing
23 whatever she wants to do, which is exclude me.
24 You ordered her to provide copies of the bills,
25 which I don't -- ma'am, I am not going to say

ROA 001113

ROA 001114

1 don't pay the electric bill. That would be
2 stupid. I'm not going to say don't pay the water
3 bill. I'm not saying don't pay the insurance
4 bill, nor the taxes. But you have an existing
5 Order that orders her to notify me prior to the
6 expenditures, and that is, Mr. Peace, that I have
7 ten days to object. Sir, I have objected to
8 anything as far as paying bills on the cottage?
9 No. They have to be paid. But there's an
10 existing Court Order that says I am to be
11 notified.

12 JUDGE WEAVER: Okay. All right, Mr. Vergeldt. Mr.
13 Peace, I think get an accounting to him of what
14 expenditures have (indiscernible) in the trust
15 account.

16 MR. PEACE: Yes, ma'am.

17 JUDGE WEAVER: And that way he can review them. And
18 what I'll do is I'll -- Mr. Vergeldt, I'll allow
19 you once Mr. Peace gets an accounting of what
20 expenses have been paid from the account, I'll
21 give you an opportunity to object of too many of
22 those expenditures.

23 MR. VERGELDT: Your Honor, please hear me. I'm not
24 saying -- and I -- please don't even hear me say
25 that you think -- or he thinks I'm going to

ROA 001114

ROA 001115

1 object. What I want her to do is obey your
2 Order.

3 JUDGE WEAVER: Correct. And I --

4 MR. VERGELDT: So either Mr. Peace is not forwarding
5 the bills to me or she's not forwarding to him.

6 JUDGE WEAVER: Correct.

7 MR. VERGELDT: He has previously said that to the best
8 of his knowledge, which I'll give him, that he
9 has forwarded everything to me that she has given
10 to him. I'll give him that as a professional.
11 But she's flaunting your Court Order, and the
12 only way it's going to stop, ma'am, is if you, I
13 don't know, order her or start charging her
14 money. Then maybe she'll obey it.

15 JUDGE WEAVER: Thank you, Mr. Vergeldt. Mr. Peace, how
16 long do you think you need to get a full
17 accounting to them of -- since she's taken over
18 the trust, what expenditures have been made?

19 MR. PEACE: The expenditures that have been made that I
20 know of -- the expenditures that I know of are
21 what have been submitted to Mr. Vergeldt. As far
22 as an accounting, Judge, I think the question of
23 what constitutes an accounting has been part of
24 this case and the case that Judge Kimball heard.
25 So to be quite honest, I don't think if my client

ROA 001115

ROA 001116

1 presented an accounting -- even an accounting
2 that was done by a CPA, I don't think these two
3 individuals would agree on what's an appropriate
4 accounting or not. I can certainly have her
5 provide copies of the invoices and copies of the
6 bank statements and canceled checks, to the
7 extent they exist.

8 JUDGE WEAVER: That would be sufficient. It's not like
9 an accounting in a case, it's just to account to
10 Mr. Vergeldt, since she's taken over as trustee,
11 what expenditures have been made, and so I think
12 the bank account information, just so he can
13 review it and see if there's any expenditures
14 that he would object to.

15 MR. PEACE: Yes, ma'am.

16 MR. VERGELDT: Yes, Your Honor. And I seriously doubt
17 I'm going to object to any of them. I just want
18 her to obey the same rules that I'm trying to
19 obey.

20 JUDGE WEAVER: And I agree.

21 MR. VERGELDT: And without having Mr. Peace caught in
22 the middle.

23 JUDGE WEAVER: Correct. And so, Mr. Vergeldt, if you
24 say you can -- if there's expenditures on there
25 that she made that you are made aware of,

ROA 001116

ROA 001117

1 according to my Court Order, then you can do a
2 Motion for Contempt.

3 MR. VERGELDT: And I'll be happy to do another one
4 today, ma'am. She is not providing -- I don't
5 have one for January --

6 JUDGE WEAVER: Mr. Vergeldt.

7 MR. VERGELDT: -- February, March. Yes?

8 JUDGE WEAVER: You don't -- you need to review the
9 information before you file anything else.

10 MR. VERGELDT: I'll be happy to do that, Your Honor.

11 JUDGE WEAVER: Mr. Peace, anything I'm missing?

12 MR. PEACE: Nothing on my Motion to Alter or Amend,
13 Judge, other than -- like I said, there's some --
14 there were some exhibits that were attached to --
15 in -- I guess in reply to my Motion to Alter or
16 Amend. Mr. Vergeldt filed an Affidavit. If I
17 misunderstood what he -- what he intended to do
18 with regard to additional evidence -- you know, I
19 understood that he wasn't going to be providing
20 any more Affidavits on the condition of the
21 cottage. I would ask, Your Honor, though, that
22 the Affidavit of Audry Scheible that was attached
23 to that Affidavit or that's been submitted that
24 includes basically a screenshot of a phone dated
25 July 8th, 2019, that says that she went to the

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1 cottage and took photographs that were attached
2 as Exhibits 1 through 25. There's no 1 through
3 25 attached to the Affidavit, first of all. And
4 I believe, Your Honor, that these were the same
5 pictures that Mr. Vergeldt attempted to present
6 at trial on the second day, but Ms. Scheible was
7 not there and he could not lay the foundation as
8 to those pictures and the Court excluded them.
9 Submitting this Affidavit is almost a second bite
10 at the apple that I don't believe Mr. Vergeldt is
11 entitled to.

12 JUDGE WEAVER: I agree. I agree they're excluded.

13 MR. PEACE: And so they should be excluded. And I
14 believe if the remainder of the motions are
15 dismissed, then that's it on my Motion to Alter
16 or Amend.

17 JUDGE WEAVER: Okay. Mr. Vergeldt?

18 MR. VERGELDT: Yes, Your Honor?

19 JUDGE WEAVER: Anything that we've left open?

20 MR. VERGELDT: When Ms. Scheible submitted the
21 Affidavit three days after court containing the
22 pictures, that's not acceptable to the Court?
23 She submitted a sworn Affidavit --

24 JUDGE WEAVER: Mr. Vergeldt.

25 MR. VERGELDT: -- that said that she took those

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1 pictures.

2 JUDGE WEAVER: Mr. Vergeldt, the day that you tried to
3 get the pictures in and Ms. Scheible was not
4 present, I explained to you that they would be
5 excluded. I think I -- you could have taken the
6 stand and attempted to place those into evidence,
7 but that's -- they're excluded. You had an
8 opportunity to do so at trial and you did not.
9 In fact, Ms. Scheible took the stand and you
10 could have -- and you could have provided those
11 when she was on the stand and you did not.

12 MR. VERGELDT: I understand, Your Honor. So --

13 JUDGE WEAVER: Anything further from you, Mr. Vergeldt?

14 MR. VERGELDT: No, ma'am.

15 JUDGE WEAVER: Okay. Mr. Peace, if you could draft an
16 Order for me.

17 MR. PEACE: Yes, Your Honor.

18 JUDGE WEAVER: Just make sure that it covers what we've
19 discussed today and any -- you know, if there's
20 any matter that you -- in your review that I've
21 missed, let me know and we'll --

22 MR. PEACE: And to just clarify, this is an Order just
23 concerning today's hearing, not a final Order?

24 JUDGE WEAVER: Right. Right. And I'm glad you brought
25 that up. If -- also, Mr. Peace and Mr. Vergeldt,

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1 you may, too, provide me with a proposed Order
2 because I believe I have all the evidence now.
3 There's nothing further to provide, Mr. Vergeldt.

4 MR. VERGELDT: I agree, ma'am.

5 JUDGE WEAVER: So if you'll provide me with a proposed
6 Order.

7 MR. PEACE: And Judge, just -- unless you have an
8 objection, I'll include in my Order that as of
9 today's date, the evidence is closed?

10 JUDGE WEAVER: Yes.

11 MR. PEACE: Just so we're all on the -- all operating
12 from the same playbook.

13 JUDGE WEAVER: Correct. And, Mr. Peace and Mr.
14 Vergeldt, my understanding is the only additional
15 piece of evidence outside of trial was the
16 Affidavit of -- I might have his name wrong. I
17 believe it was an affidavit Mr. Vergeldt provided
18 earlier, by the time that we had our
19 teleconference.

20 MR. PEACE: Did the Court -- do you consider that,
21 Judge? I mean, the only -- oh, the Nirenberg
22 Affidavits?

23 JUDGE WEAVER: Right. Right.

24 MR. PEACE: Yes, ma'am. Yes, ma'am.

25 JUDGE WEAVER: Right. So that would be the -- that's

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1 the only -- that is the only evidence outside of
2 the trial.

3 MR. PEACE: Okay.

4 MR. VERGELDT: Okay. So a question, ma'am. Has Mr.
5 Nirenberg's Affidavits been accepted as evidence?

6 JUDGE WEAVER: Yes.

7 MR. VERGELDT: They were presented at trial.

8 JUDGE WEAVER: Yes. It has been received into
9 evidence. I make no other findings at this time
10 about any other -- it's received into evidence.

11 MR. VERGELDT: All right. Thank you.

12 JUDGE WEAVER: Okay.

13 MR. PEACE: Thank you, Judge.

14 JUDGE WEAVER: Thank you. Oh, Mr. Peace, how long do
15 you think about the proposed Order do you need?

16 MR. PEACE: I will -- I have a motion in an appeal
17 that's due Friday and I'm scheduled to take
18 Friday off. So it'll -- that'll take up most of
19 my day tomorrow.

20 MR. PEACE: Yeah, you can take time. I'm not rushing
21 you. I'm just --

22 MR. PEACE: Can we call it a week, Judge?

23 JUDGE WEAVER: Oh, you can -- you could have more time
24 than that if you need it. So that's -- it -- I
25 would say within 30 days, if --

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1 MR. PEACE: Oh, yes, ma'am. Yes, ma'am, definitely
2 within 30 days. And I'll also -- at the same
3 time I -- would you like me to send it to you and
4 Mr. Vergeldt in Word form to provide comment and
5 then upload it? How do you (indiscernible)
6 upload it.

7 JUDGE WEAVER: If you e-mail it, that'll be sufficient
8 for me.

9 MR. PEACE: Okay.

10 JUDGE WEAVER: So if you want to e-mail it and cc Mr.
11 Vergeldt, that'll be sufficient. And so -- or
12 Robin --

13 MR. VERGELDT: Your Honor, if I may?

14 JUDGE WEAVER: -- if you want it to e-mail it to Robin,
15 we can get -- we can handle the e-filing of the
16 thing after that. But yeah, you can e-mail it.
17 And Mr. Vergeldt, if you would like to e-mail an
18 Order, you may -- you can do so as well. You can
19 e-mail Robin is the best way to do it.

20 MR. VERGELDT: All right. Thank you very much. And
21 given that I have never, ever, ever in my entire
22 life written one, if Mr. Peace would cc me so
23 that I don't insult with you with my inexperience
24 with the format, that would be great.

25 JUDGE WEAVER: Okay.

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ROA 001123

1 MR. PEACE: What I'll do, Judge, is we'll get it done
2 and cc it and send it to Court. And if it's fine
3 with you, allow Mr. Vergeldt a ten-day reply or
4 time to provide comments to the extent that I --
5 that he's got anything he disagrees with and then
6 we'll also -- kind of once we get this Order
7 entered, go ahead and do the proposed Final
8 Order, if that's fine with you.

9 JUDGE WEAVER: That's fine with me.

10 MR. PEACE: Okay.

11 JUDGE WEAVER: That sounds good.

12 MR. PEACE: All right. Thank you, Judge.

13 JUDGE WEAVER: Thank you.

14 MR. VERGELDT: Thank you.

15 JUDGE WEAVER: Thank you.

16 MR. VERGELDT: Hey, have a great Friday.

17 JUDGE WEAVER: You, too, Mr. Vergeldt.

18 MR. PEACE: Thank you, you, too.

19 MR. VERGELDT: And you can have a great month. I can't
20 give the attorney, you know, my opponent more
21 than one day, but you can have a great month.

22 JUDGE WEAVER: I'll try. Thank you both.

23 MR. PEACE: Have a good one.

24 MR. VERGELDT: Trying to lighten things up here. We're
25 not all enemies.

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1 JUDGE WEAVER: That's right.

2 MR. PEACE: That's right.

3 JUDGE WEAVER: Thank you.

4 MR. PEACE: Thank you.

5 (END OF AUDIO)

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ROA 001124

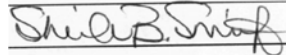
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C E R T I F I C A T E

I, the undersigned, Sheila B. Smith, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing transcript was prepared by me at my hand;

That I was not present at said proceeding;
That the within statements are an accurate transcription of the audio file transcribed, to the best of my ability;

In witness whereof, I have hereunto set my hand and seal this 4th day of September, 2021.



Sheila B. Smith, CVR-CM
Notary Public for South Carolina
My Commission Expires: 2/25/2024

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HEARING PROCEEDINGS

March 17, 2021

Vicky Lynn Vergeldt. etc.

VS

John Edward Vergeldt

2016-CP-46-00820

REPORTER: Laura DeCillis

Vicky Lynn Vergeldt, Individually,)
and as Successor Trustee of the)
John Vergeldt, Jr. Revocable Living)
Trust Dated September 27, 1978,)
Petitioner,)
vs.)
John Edward Vergeldt,)
Respondent.)

Zoom Video Hearing before the Honorable Teasa Weaver, reported by Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina; said hearing was taken on Wednesday, the 16th day of March 2021, scheduled for 2:30 p.m. and commencing at the hour of 2:40 p.m.

ROA 001134

APPEARANCES:

Representing the Petitioner:

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(Attending via Zoom Video Conference)

Representing the Respondent:

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Also present:

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(Attending via Zoom Video Conference)

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EXHIBITS

(None were proffered)

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THE COURT: Okay. This is case number 2016-CP-46-0820, Vicky Vergeldt versus John Vergeldt. Present on behalf of petitioner is Mr. Taylor Peace. Present on behalf of respondent is Ms. Desa Ballard?

MS. BALLARD: That's correct, your Honor.

THE COURT: This is respondent's motion to reconsider a judgment order that I filed on February 2nd of 2021. And, Ms. Ballard, whenever you're ready.

MS. BALLARD: Thank you very much. Your Honor, I can tell that this has been a long and arduous case and I think Mr. Peace and I are the recent additions to it, relatively recent, me more so than him. So, please, as I said in my Motion for Reconsideration, my hands are a bit tied by not having been counsel of record all the way through the proceedings, but Mr. Peace gave me the transcript which helped tremendously so I was able to amend my Motion for Reconsideration.

In the memo I kind of grouped my issues into topics as opposed to the specific numbers in the Amended Motion for Reconsideration. Is it all right with you if I just address them in the order that I did in the memo?

THE COURT: That's fine.

MS. BALLARD: Okay. The first issue that we briefed is the error that we believe occurred when the

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1 Court allowed Mr. Peace's client to amend to add a legal
2 cause of action. If you will recall, there was a consent
3 order sending the case to the Master in Equity a year or
4 so before this amendment was sought. So when this
5 amendment occurred and a legal claim for damages was
6 sought for the first time, my client was in a difficult
7 position in that he couldn't demand a jury trial in the
8 equity court because he'd already consented to being in
9 the equity court and the counsel that was representing
10 him at the time either didn't raise it or didn't discuss
11 it with Mr. Peace. I'm not sure and it's not clear from
12 the record, I don't have the whole file. But our
13 position is, once the amendment was made, the doctrine of
14 res judicata kicked in and it would have been error at
15 that point to allow a claim that could have been
16 litigated in the first case, the 2014 case, to be added
17 to this case.

18 Judge Kimball was very clear in his order that
19 nobody was asking him to award damages and he was not
20 awarding damages and he wasn't making any rulings about
21 liability. Our position is that the doctrine of res
22 judicata required any claim for damages to be brought
23 during that action and not in this action. And when the
24 second action was brought, when this action was brought,
25 it initially sought only equitable relief, so there

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1 wasn't a res judicata issue to it because it focused on
2 acts that occurred after the first action.

3 Mr. Vergeldt was still the trustee so the Court
4 still had the ability to monitor the trust and issue such
5 orders as might be appropriate for the internal
6 operations of the trust. But when the amendment was
7 allowed to assert a damages cause of action, I think
8 that's when the res judicata doctrine kicked in and
9 should have prevented the Order to Amend from being
10 granted.

11 So our first issue on reconsideration is that
12 the Order Amending should have been denied, because any
13 claim for damages should have been brought during the
14 original 2014 action and not in this action. And I
15 included in my memorandum a number of citations.

16 I hope you can't hear that phone. I'm so
17 sorry. There's a phone ringing in my office.

18 I've cited a bunch of cases. I'm not going to
19 read them to you. Everybody knows what res judicata is.
20 I would, with reference to Mr. Peace's response, he cited
21 some case law, which I totally agree with, that when
22 there is an equitable counterclaim and a legal primary
23 claim or an equitable claim and a legal counterclaim, and
24 I agree that that is the law, but this wasn't a
25 counterclaim so that law doesn't apply here.

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1 We had ourselves in equity court and in order
2 to request a jury trial we would have had to either
3 somehow go back to Circuit Court and request a jury
4 trial, and then I'm not sure what would have happened at
5 that point. But by amending and allowing the character
6 and nature of the case to change from strictly equitable
7 to a legal claim, adding a claim for damages, we think
8 that was error and our motion for reconsideration asks
9 the Court to vacate the order allowing the amendment of
10 the complaint under the doctrine of res judicata.
11 Because I think the claim for damages relates primarily
12 to issues that occurred prior to the bringing of this
13 claim. They relate primarily to issues that talk about
14 Mr. Vergeldt's service as trustee and by the time, of
15 course, the case was tried in January of last year, he
16 was no longer the trustee because he had resigned by that
17 time. But what got Ms. Vergeldt in court the second time
18 was the continued equitable jurisdiction of the Court
19 pursuant to statute.

20 The first action was the only action in our
21 mind that should have allowed a claim for damages.
22 Mr. Peace says in his memorandum in response to my
23 memorandum that he didn't know the extent, or his client
24 didn't know the extent of the damages during the first
25 case. But that's not the test. The test is, you knew

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1 you had a claim, not the extent of the claim but you knew
2 you had a claim. It's the same type of analysis that's
3 supplied on a discovery rule for a statute of limitations
4 issue. You don't have to know the extent of your
5 damages, you just have to know that you've been damaged.
6 And you can tell from the pleadings in the original 2014
7 action that she believed she had been damaged. And she
8 says in her complaint in this action she didn't
9 understand the extent of her damages until the first
10 action was finished.

11 But my point is, she had one shot to seek
12 damages and her shot to seek damages was in the 2014
13 lawsuit. So it was error for the Court to allow an
14 amendment to add a whole new cause of action that should
15 have been brought during the original 2014 action. Did
16 you want to have Mr. Peace respond issue by issue?

17 THE COURT: Well, that might be easier, in my
18 opinion. But, Mr. Peace, if you'd rather wait to respond
19 until the very end, it's up to you.

20 MR. PEACE: No, Judge, that's fine. I can
21 respond to that, the res judicata argument.

22 Your Honor, I think Ms. Ballard is 100 percent
23 correct. This is a long -- with one respect, this is a
24 long tortuous journey between two siblings who either at
25 one point did like each other and now clearly don't or

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1 never did. I think it's based on who you ask.

2 But on this 2014 action, Judge, and I think
3 that this directly relates to the res judicata issue, I
4 think Judge Kimball's order is telling. But Judge
5 Kimball did say that he wasn't being asked for damages
6 and nothing had been planned at that point. But I also
7 think that if you'll look at the order carefully, what he
8 ends up saying is that that first action only answers the
9 narrow question of what Mr. Vergeldt's obligations were
10 as trustee to the beneficiaries to provide records.
11 Because as your Honor heard at the trial and as Judge
12 Kimball's order indicates, Mr. Vergeldt had basically
13 told his sister that she wasn't entitled to anything, she
14 was entitled to the trust, she was entitled to the
15 records that he produced in the manner that he produced
16 them and nothing else.

17 Judge Kimball's order seeks that issue and
18 says, no, no, no, you're entitled to records of the trust
19 regardless as to time and scope. And, most importantly,
20 Judge -- and if you've got it in front of you it can
21 actually be found on -- one second. It can be found in
22 the Order of the Court section in findings 5 -- or orders
23 5 and 6.

24 It says specifically that no declaration
25 concerning probable cause to challenge the successor

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1 trustee's performance of his duties as made as such is
2 not presented in this case. Thus, determination is
3 preserved for such time as plaintiff challenges the
4 actions of John while acting as successor trustee. Order
5 bullet point number 6 says: No finding or conclusion in
6 this order shall be deemed to be a determination to
7 compliance or non-compliance with applicable law or the
8 terms of the trust agreement. Further, no finding or
9 conclusion of this order shall be deemed to establish the
10 amount of any entitlement of any beneficiary in terms of
11 the trust agreement.

12 By carving this, by answering that narrow
13 question of record and what had to be produced -- and by
14 those two parts of the order, your Honor, which was on
15 appeal by Mr. Vergeldt's previous counsel, it's our
16 position that regardless of the elements of res judicata,
17 Judge Kimball specifically carved out a case such as the
18 one that your Honor heard in January of 2020 for this
19 very reason.

20 The respondent says that, well, she knew that
21 she had a claim or knew that she had, or believed she had
22 a claim back when this was filed. Well, actually, Judge,
23 that case was merely related to the production of
24 documents, and this 2016 case only got brought because
25 Mr. Vergeldt, in contradiction and in defiance of what

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1 the 2014 order said, refused to provide the document that
2 Judge Kimball said that my client was entitled to, which
3 then led to, as your Honor knows, the hiring of Kathleen
4 Polenski to be the limited special trustee to put
5 together an accounting, because Mr. Vergeldt's
6 record-keeping was so poor, and it took her two years to
7 put that together because he was so obstinate in getting
8 the records together, despite what he will swear up and
9 down until the cows come home on. It was only once
10 Ms. Polenski finished the report was my client able to --
11 able to understand and know that she had a claim beyond
12 the reactions of her brother of refusing to give
13 documents.

14 So on that res judicata issue, and specifically
15 as to Judge Kimball's order, that claim was not ripe.
16 Or, at least, my client would not qualify under the
17 discovery rules for having knowledge or knowing that she
18 had a claim or even really believing that she had a
19 claim, other than she knew that her brother had denied
20 her records and so she needed to file this action to
21 demand them. And unless the and in light of this Court's
22 position or the law of this state that the discovery rule
23 allows for an unsubstantiated inkling of a claim, I don't
24 think res judicata on the 2014 case applies. But even if
25 it does, Judge Kimball's order explicitly carved out this

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1 sort of action and claim for that very purpose. Because,
2 at least, as far as he was concerned I think the
3 assumption could be made based on the language that he
4 didn't think that my client had enough information to
5 bring it back. And, again, that order was unappealed for
6 whatever reason.

7 On the jury trial issue, I noticed that, or I
8 had a couple of thoughts about that -- well, let me
9 finish kind of the res judicata part.

10 Ms. Ballard, in her -- let me see if I can find
11 it. Yeah. In the brief cites, or cites to the three
12 elements for res judicata, identity of the parties. In
13 the 2014 case you had my client as petitioner, as the
14 beneficiary, suing both her brother and her deceased
15 sister, but with her brother being the first successor
16 trustee for the demand of record and her other sister as
17 a beneficiary. So on the face of it we have identities
18 of party.

19 The second case initially had the same
20 alignment, but when Mr. Vergeldt resigned as the first
21 successor trustee, I'm not sure that we have identify of
22 party. Because while they maybe have the same names and
23 may involve the same people, they switched positions once
24 Ms. Vergeldt -- or Mr. Vergeldt resigned and Mr. Vergeldt
25 became the -- or Ms. Vergeldt became the successor

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1 trustee.

2 She basically took over that fiduciary position
3 and her status changed, so to speak. So not only was she
4 suing Mr. Vergeldt as a former trustee to collect damages
5 or to seek liability based on the actions she'd taken as
6 first successor trustee, but also as beneficiary in
7 seeking the Court's declaration that either he had gotten
8 everything he was entitled to or he had acted in
9 contradiction of the trust which would have triggered the
10 forfeiture provision or the no contest provision that
11 seems to be at issue.

12 We also don't have identity of the subject
13 matter. Even though we have the identity of the parties,
14 we still have the identify of, or we still have people's
15 rights under the trust at issue. The initial bringing of
16 this petition, Ms. Ballard, I think would agree that we
17 don't have identity of the subject matter or, at least,
18 it is still subject to the Court's jurisdiction, not
19 barred by res judicata. But it seems to be the issues
20 is, is the amendment to allow the damages.

21 Well, in the 2014 case, as previously argued,
22 nobody was seeking damages at that time because my client
23 couldn't bring the claim for damages because she had
24 nothing to tell her that she had damages. The only thing
25 she had at the time was the fact that her brother was

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1 refusing to provide records and saying, here, here's
2 your life-long bit of inheritance, please sign this
3 release, thank you very much.

4 It was only after the 2016 case and the work of
5 the Court and Kathleen Polenski were we able to know that
6 we had, or discover that we had a claim for damages.
7 And, also, your Honor, we don't have it here, the third
8 element, the adjudication of the issue in the former
9 suit. The only thing that was adjudicated in the 2014
10 claim was that very narrow question of what records
11 Mr. Vergeldt was, or my client was required to be given
12 by Mr. Vergeldt, which again he refused to give which
13 brought about this action.

14 So we don't have res judicata, I don't think,
15 under the current law, even if -- even if it may have
16 been a claim that's floating out there. My client at the
17 end of the day didn't have enough or was not given enough
18 by her brother to actually qualify under the discovery
19 rule to bring that action.

20 On the jury trial issue, as the Court knows,
21 under Rule 38 you're allowed to demand a jury trial on
22 actions that you're entitled to, a legal claim. If it's
23 an action in equity, you don't have a claim for a jury
24 trial but you may have a claim for a jury trial if it's a
25 compulsory counterclaim.

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1 Now, in the initial reply that was filed by
2 Mr. Ballou before this case was actually referred to
3 Judge Kimball, Mr. Ballou filed counterclaims for abuse
4 of process, malicious prosecution and frivolous civil
5 proceedings. I don't know whether those are -- I have to
6 be honest. I couldn't find any research showing that
7 those are legal counterclaims for which, and compulsory
8 for which Mr. Vergeldt would be entitled to a jury trial.
9 But I think at the end of the day, those claims were
10 waived when he didn't reassert them after we filed ours
11 are insufficient. But what is noticeable, or what is
12 important to note, your Honor, is he would have a jury
13 trial -- a claim for a jury trial, excuse me, on our
14 claims in the amended petition and he didn't assert it.

15 Now, understand that there was a consent order
16 that vested the equity court with jurisdiction. But
17 that's vesting and that consent order was entered at the
18 time, I'm assuming, when everybody thought this case was
19 just equitable in nature.

20 I don't believe that there's any prohibition,
21 or I'm not aware of one that would have prohibited
22 Mr. Vergeldt from filing for a jury trial or demanding a
23 jury trial when we introduced legal counterclaim. So we
24 believe that he could have demanded it under Rule 38(b)
25 at that time, he just didn't do so. And he also had ten

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1 days after the last pleading pointed to that issue, which
2 I believe would have been our reply to actually his
3 counterclaim back in August, I would say August of 2019.
4 He just didn't do it.

5 Now, I don't know. Rule 38 doesn't say, if you
6 consented to the jurisdiction of the equity court based
7 on equitable counterclaims if something is reasserted to
8 bring a legal counterclaim they're barred from doing it.
9 So we believe that at that time he could have made a
10 demand for a jury trial and simply didn't do so. So I'm
11 not sure. Again, we would say that it's not a grounds
12 for reconsideration or a striking of the amendment.

13 Also, your Honor, based on the failure of the
14 discovery rule and even kind of aside that, under Rule 15
15 a party can amend their pleading once as a matter of
16 course before or within 30 days after a responsive
17 pleading is heard. Then after that, a pleading can be
18 amended only by the consent of the other party or with
19 leave granted by the Court which shall be freely given as
20 long as there's no prejudice to the opposing party.

21 As your Honor knows, when this case was
22 originally filed, Mr. Silvernail, my client's first
23 attorney in this matter in the 2016 case, basically
24 alleged that Ms. Vergeldt, upon information and belief,
25 had -- or that Mr. Vergeldt had threatened her with

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1 disinheritance and unequal distributions in direct
2 contravention of the trust. And at the hearing we had
3 before your Honor in, say, May or June of 2019,
4 Mr. Ballou, Mr. Vergeldt's previous counsel, argued that
5 they would have handled the case differently and we knew
6 about this all along and it's a year-and-a-half into
7 litigation. And I at least argued to the Court then and
8 will argue to the Court now that based on Mr. Vergeldt's
9 refusal and threats, quite frankly, that he had made
10 against his sister, that once the work of the special
11 trustee or limited special trustee was completed, then
12 the allegations were made except for other than damages.
13 So it should have come as no surprise at least in the
14 2016 case that this was coming. And so the only
15 prejudice there, if any -- or it wouldn't be prejudice to
16 Mr. Vergeldt merely because he would have to defend a
17 claim in a litigation that had been going on for three
18 years.

19 So we don't believe that it was error for the
20 Court to allow the amendment based on res judicata. We
21 don't believe that Mr. Vergeldt has been prejudiced by
22 the failure to demand a jury trial, which he could have
23 done when we introduced legal counterclaims, and we don't
24 believe it was error or that there was prejudice there to
25 Mr. Vergeldt when we amended to assert this legal

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1 counterclaim. And, as the Court knows, parties can even
2 be allowed to amend their pleadings up until the day of
3 trial as long as there's, you know -- as long as there's
4 consent. And even then, as the Court knows, the
5 amendment was made and then we had about another half a
6 year before we actually had a final hearing.

7 So Mr. Vergeldt had plenty of time to -- so
8 there's no surprise. Mr. Vergeldt had plenty of time to
9 prepare himself to where there would be no prejudice, if
10 any.

11 MS. BALLARD: May I reply briefly?

12 THE COURT: You may.

13 MR. PEACE: That's all I've got on those
14 issues, Judge.

15 MS. BALLARD: Very briefly, your Honor. First
16 of all, I don't think Judge Kimball could carve out an
17 exception to allow the petitioner to bring an action for
18 damages in a separate case. I think that's part of the
19 reason he went out of the way to say nobody's asked this
20 question.

21 Particularly, I think it was beyond the scope
22 of his authority to reserve some right to the petitioner
23 when no request to do so had been made. So, of course,
24 the issue was not appealed at that point because, as is
25 clear, a second action could have been and was brought

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1 seeking additional equitable relief. And I think it's
2 inescapable if you'll look at the original action, the
3 2014 action, these parties, as Mr. Peace said, didn't
4 like each other and I think there was a significant
5 amount of distrust between the parties as to whether my
6 client was doing an adequate job and whether Ms. Vergeldt
7 had been damaged at all by inequitable distributions from
8 the trust.

9 So while the issue for damages was not
10 litigated in the first action, it could have been. And
11 the doctrine of res judicata specifically says, any issue
12 that could have been litigated in the first action is
13 barred by subsequent litigation. And those are the cases
14 that talk about nobody gets a second bite of the apple.
15 And res judicata was not raised when the second action
16 was brought because it was continuing issues internal to
17 the trust which the Court does have continuing
18 jurisdiction over.

19 The Court's order granting the amendment finds
20 that there would be no prejudice to Mr. Vergeldt and we
21 strenuously disagree with that. There was huge prejudice
22 to Mr. Vergeldt because all that had been before the
23 Court prior to that time was equitable release about who
24 does what in the trust. The amendment specifically
25 included an action for damages against him which hadn't

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1 been raised before, so clearly that was prejudicial to
2 him. It was prejudicial to him because he was already in
3 a court where he couldn't request a jury trial. And I
4 will agree with Mr. Peace. I've researched the issue of
5 whether you can request a jury trial after a case has
6 been referred to the Master in Equity and I can't find
7 that, either. So I think that this is a novel issue.

8 But in terms of, I don't think we have to get
9 to that novel issue because damages could have been
10 brought in the first action. And if you look very
11 carefully at the complaint in the second action, it says,
12 Ms. Vergeldt's petitions says she didn't know the extent
13 of her damages which is an admission that she knew she
14 had damages before she brought the second action.

15 So three years in, allowing an amendment three
16 years in to this litigation to seek damages seriously
17 prejudiced Mr. Vergeldt and deprived him of an
18 opportunity to request his jury trial. I hope that was
19 sufficiently brief in reply.

20 THE COURT: Yes. And, Ms. Ballard, I do have a
21 question for you.

22 MS. BALLARD: Yes.

23 THE COURT: Judge Kimball in his previous order
24 made clear that this was a declaratory action in which he
25 was only reviewing the terms of the trust to determine

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1 what the duties were as to Mr. Vergeldt as successor
2 trustee, and being a declaratory action with your
3 argument about res judicata does not apply in declaratory
4 actions where they're just determining what right an
5 individual or other has and that they're still able to
6 proceed. I may need to do a little bit of research.
7 Even if you're aware of actions or potential actions or
8 claims or damages that you may have, is it still res
9 judicata just to have your rights declared prior to
10 bringing the action when there's no, I guess, judgment on
11 those issues in that declaratory action.

12 MS. BALLARD: I think the answer to that is,
13 under our liberal joinder rules, Joinder of Claims
14 rules -- and, again, with reference to Rule 15 -- had a
15 motion been made during the pendency of the first action
16 to add a claim for damages, I don't think my client could
17 have said a word about it. I think it would have clearly
18 been permitted. And the case law says, any issue that
19 was litigated or could have been litigated -- and we know
20 it could have been litigated because Rule 15, as
21 Mr. Peace says, favors an amendment even up to and
22 including trial.

23 So even though the first action, the 2014
24 action, was brought as just a declaratory judgment
25 action, the claim for damages could have been brought in

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1 that action by an amendment, but they could have been
2 brought by that action. And if, in fact, Mr. Vergeldt
3 was not providing the documents, even in that first
4 action there are motions to compel discovery. There are
5 all sorts of relief that was available in the first
6 action that nobody ever asked for. It was just, let's
7 see what this trust says and we'll worry about the rest
8 of it later.

9 Well, my point is, res judicata says we can't
10 worry about it later. Under the joinder rules of the
11 parties and of the causes of action, it could have been
12 and should have been. It was in existence at the time of
13 the first time. The late Mr. Vergeldt died in 2013, so
14 activities by my client post-death of the settlor was
15 squarely before the Court. The first action was brought
16 a year after the decedent died so the Court could have
17 adjudicated at that time, not only how do we interpret
18 the trust, but as actions of one person or another caused
19 damages to one or more of the other beneficiaries. I
20 realize there were additional beneficiaries during the
21 2014 case.

22 But my point is, the case law says any issue
23 which was litigated or which could have been litigated,
24 and under Rule 15 a claim for damages certainly could
25 have been litigated. It was ripe, the decedent had been

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1 passed for a year. While Ms. Vergeldt didn't know the
2 extent of her damages, she certainly knew that she had
3 some damages that she had sustained because the proposed
4 distributions to her appeared to be unequal or
5 inequitable. So she didn't know whether they had been
6 made but her discovery could have proved whether they had
7 been made, whether inequitable distributions had been
8 made. All of that should have been done in the first
9 action. And so my point is that the amendment should not
10 have been granted. The amendment should have been
11 denied. The Court should have continued to adjudicate
12 the equitable issues that were before the Court, which
13 continued once my client resigned and Ms. Vergeldt took
14 over as the trustee, there still had to be some
15 supervision by the Court of equitable issues.

16 But the second action was not the place to
17 adjudicate the damages. That should have been brought in
18 the first case. I hope that answers your question.

19 THE COURT: It did, yes.

20 MS. BALLARD: Okay.

21 THE COURT: Again, Mr. Peace, anything you
22 would like to respond? You don't have to, I'm just
23 making sure. Everybody gets a chance.

24 MR. PEACE: In short, Judge. I understand
25 Ms. Ballard's point about discovery and post-trial

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1 motions and motions to compel. The problem is that at
2 the time that the first action was brought, I think one
3 of the ways to consider the first action is a motion to
4 compel. But prior to, Judge, prior to the agreement of
5 the first action, Mr. Vergeldt had insinuated or
6 represented to his sister that she wasn't entitled to
7 anything.

8 So I think that the Court can view that
9 particular case as a motion to compel, or at least an
10 action to compel to tell Mr. Vergeldt, these are the
11 things that you have to do, these are the documents your
12 sister is entitled to and these are the documents you
13 have to produce if requested, you know.

14 The extent -- and I want to make sure we're
15 clear here -- my client could not have known that she had
16 damages when the first action was brought, at least my
17 understanding of the facts of that case, because her
18 brother refused to provide her information and she
19 suspected or based on his actions didn't know but had a
20 small inkling that she may have had a claim. But
21 suspicion, I don't believe, is a grounds to bring a case
22 in good faith.

23 I think what our amended pleading said was,
24 once he brought -- once he's continued to refuse to bring
25 her documents, refuse to produce the documents or produce

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1 them in a false and misleading manner, then and through
2 the actions of Kathleen Polenski, then was my client able
3 to know into what extent she had damages. I don't think
4 that this first action, and I think Judge Kimball, I
5 mean, I think his order is pretty clear that the action
6 for probable cause to challenge a successor trustee's
7 performance of his duties is made was preserved until the
8 plaintiff, being my client, challenges the actions of her
9 brother.

10 In dealing with the entitlement or compliance
11 or non-compliance with the trust explicitly states, or
12 expressly states that such action for damages is still
13 preserved. I don't think res judicata bars an action
14 based on somebody's suspicion, especially when they have
15 no evidence of it because a person holding the evidence,
16 it's the fox watching the henhouse, won't let anybody
17 look at what is being done and then continues to fail to
18 do so, continues to stonewall and be obstinate.

19 I think that if the Court were to look at this
20 in kind of the discovery terms, yeah, this is an
21 action -- or the first action was a Motion to Compel.
22 It's only after the second action was brought and after
23 Mr. Vergeldt refused to comply with an order to compel or
24 an order declaring, that we began, or that my client
25 began to know or have more than a whiff of a claim for

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1 damages. We just don't think that applies here based on
2 the facts of the case.

3 THE COURT: Thank you. Ms. Ballard --

4 MS. BALLARD: Thank you.

5 THE COURT: -- do you want to continue with
6 your next point?

7 MS. BALLARD: The next point, your Honor, has
8 to do with the sua sponte relief, and I'll just mention
9 this briefly. There were two orders that we think were
10 issued by the Court without a request for that relief
11 having been granted.

12 One was an order restraining the operation of
13 the trust while my client was still the trustee. It
14 required him to get permission of the other beneficiaries
15 before expenditures were made and there was no relief
16 before the Court at the time, or there was no motion
17 before the Court for that relief to be granted at the
18 time that order was granted. The motion that was before
19 the Court at that time was, I believe, to remove
20 Mr. Vergeldt, in a temporary capacity to remove him from
21 acting as trustee. And the Court's order says, well, I'm
22 not going to remove him, but this is what I'm going to
23 do. So it kind of said, no, you haven't asked me for
24 this but I'll do this instead.

25 Our position is, that relief wasn't requested

ROA 001158

ROA 001159

1 and that relief, which became a serious point of
2 contention as the litigation went on, it prevented
3 Mr. Vergeldt from making any expenditures on the trust to
4 repair the cabin or the cottage or whatever it is they
5 called it because Ms. Vergeldt would not consent to it.
6 And from the docket, there's at least one filing by
7 Mr. Vergeldt -- and it may have been pro se, I don't
8 recall -- where he asked the Court to allow him to make
9 expenditures because the petitioner would not consent to
10 expenditures that had to be made.

11 So when you ended up trying the case in
12 January, the extent of the damages that may have been
13 presented at that time were exacerbated by Mr. Vergeldt's
14 inability to make trust expenditures to maintain the
15 trust assets, and we take the position that that was
16 relief that was not requested and should have been
17 vacated.

18 The other relief that we think was not
19 requested that was granted was in the Court's final order
20 barring Mr. Vergeldt's interest in the trust going
21 forward. That issue was not litigated before the Court.
22 It was certainly tempting, but I don't think it was
23 properly requested in the pleadings. And so I think
24 those two issues should be addressed on reconsideration.
25 And I'm the last person who wants to suggest we want to

ROA 001159

ROA 001160

1 jump back into the litigation of this, but I think if we
2 reconsider where we are and we vacate the order amending,
3 then you put us in a position where, now that we have
4 good counsel on both sides we may be able to resolve this
5 matter without having to burden the Court much further.

6 I just wanted to mention that. I realize the
7 case law is varying on whether relief requested in the
8 pleadings can or cannot be granted. There are cases
9 that say it both ways. I'm arguing that it can't be
10 granted because it's not requested in the pleading, but I
11 understand if the Court disagrees with me.

12 Can I move on to the burden of proof issue?
13 Mr. Peace, you're welcome to respond, but I realize
14 that's my weakest issue.

15 THE COURT: She just wants to proceed with, I
16 guess, another point on --

17 MS. BALLARD: Yes.

18 THE COURT: -- what she's already talked about,
19 or would you like to go ahead and respond, Mr. Peace?

20 MR. PEACE: If the Court is fine, I'll just
21 respond very, very briefly.

22 The issue of the cottage, I realize that -- I
23 don't believe there is anything of record on this. My
24 understanding, and I will go back and double check. I
25 wasn't the attorney of record at the time. I'll go back

ROA 001160

ROA 001161

1 and check with Mr. Silvernail to see if he has any
2 recollection of this.

3 My understanding is that after this hearing
4 where Judge -- that resulted in this order by Judge
5 Kimball, Judge Kimball eventually actually called the
6 parties into chambers and had a discussion about what was
7 left in the trust, whether it was liquid, you know, kind
8 taking stock of the assets. And, apparently, he had a
9 concern that nothing would be left and so issued --
10 instead of removing the trustee on summary judgment,
11 issued as part of the order on the expenditures. Right
12 about this time, Mr. Silvernail, as I think I told the
13 Court and I think as Ms. Ballard knows, was suffering
14 some pretty severe health issues that ended up having him
15 being relieved as counsel, and the application for
16 payment that was filed of record, I've not seen any kind
17 of resolution on that.

18 MS. BALLARD: I haven't either.

19 MR. PEACE: That's on the docket. It's just
20 sitting out there. And from what I understand from my
21 client -- and I'll go back through the correspondence
22 I've got to see if I can find it. She at least tells me
23 that her second lawyer, Tommy Lydon, had communications
24 with Mr. Ballou to approve those expenditures prior to
25 there needing to be any action by the Court.

ROA 001161

ROA 001162

1 I'm just representing that to the Court based
2 on what I know. But I've got really no evidence to
3 support that other to say there's an application on the
4 docket and nothing came after it.

5 MS. BALLARD: That's true. I checked that.
6 There's no order following that motion.

7 MR. PEACE: Yeah. And I will say, you know,
8 Ms. Ballard did raise, at least in her memo, the issue of
9 the indemnification or the one time that my client really
10 wouldn't provide any kind of consent, and that was after
11 Mr. Vergeldt went ahead and paid or tried to pay
12 Mr. Ballou out of the trust fund without seeking Court
13 approval first. Or I think it may have been all kind of
14 contemporaneous.

15 We filed an objection saying that Mr. Ballou
16 argued that the trust allowed Mr. Vergeldt to be
17 reimbursed and indemnified by the trust, and we took the
18 position at the time in the court order that that issue
19 had not been -- because his actions as trustee were a
20 part of the litigation, that it was not proper for him to
21 pay his attorney's fees out of the trust, especially when
22 the Court may have ultimately found, and I guess did,
23 that his actions were being taken in bad faith which
24 would have triggered a whole host of other issues.

25 But on the sua sponte, on the remainder of the

ROA 001162

ROA 001163

1 relief, I think a Court sitting in equity has the option
2 to fashion a remedy that it sees fitting. In our
3 complaint, we did allege and made a petition that we did
4 allege that we're entitled to such other and further
5 relief as the Court deems just and proper. I think in
6 this case that's not necessarily just stock language in a
7 petition.

8 We also requested that the Court order that
9 Mr. Vergeldt has received all things that he is entitled
10 to under the trust, which I think it's pleading in the
11 alternative but it may end up being the same thing, just
12 meaning that there's -- other than kind of having --
13 other than the portions of the trust saying that
14 Mr. Vergeldt pre-deceased his father due to the no
15 contest provision, I think effectively that just means
16 for going forward, for trust assets that Mr. Vergeldt
17 does not already have advantage of to which he's not
18 entitled to, that any more distributions don't go to him.

19 So that's maybe longer than I wanted it to be,
20 but I think that the Court does have the opportunity to
21 fashion some remedies such as these, even though it may
22 not be as express -- even if it may not be the flashing
23 yellow light in the pleading.

24 MS. BALLARD: I don't have any reply on that
25 now. Thank you.

ROA 001163

ROA 001164

1 THE COURT: Ms. Ballard, I do have two
2 questions for you.

3 MS. BALLARD: Yes?

4 THE COURT: The significance of -- there was no
5 objection, the order is filed, there was no objection by
6 respondent or anything by his counsel regarding the sua
7 sponte provision that Judge Kimball added. And number
8 two -- let me see. I had a number two. What was it?
9 See? This is why I need to write things down.

10 Well, we'll just start with the first and I'll
11 see if I can remember my second point.

12 MS. BALLARD: Thank you, your Honor. I
13 recognize that issue and with reference to that issue, I
14 would only ask that in the Court's Order on
15 Reconsideration that mention of that be made, that prior
16 counsel did not raise an objection to that. Because I
17 don't want Mr. Vergeldt in a position where -- I want him
18 to be able to seek relief if he needs to.

19 I think there were several things that should
20 have been raised during the litigation that may not have
21 been raised and I would ask that whatever order your
22 Honor issues on reconsideration, point out that whichever
23 issues you find were not preserved, the reason you were
24 not addressing them is because they were not preserved.

25 THE COURT: And now I remember point two.

ROA 001164

ROA 001165

1 Point two is that, although it may have been additional
2 hoops to jump through, it wasn't -- the way Judge Kimball
3 structured how payments would be made from the trust
4 there didn't impede the process, it just may have made it
5 just more hoops to jump through. And just your response
6 to that. I know you're saying that it impeded the
7 respondent's ability to be able to make payments on the
8 cottage, but it didn't necessary impede, it just might
9 have made it a little bit --

10 MS. BALLARD: It made it in terms of getting
11 relief from the Court or seeking relief from the Court
12 when they couldn't do it by agreement. And maybe Judge
13 Kimball should have foreseen the inability of these
14 people to agree on anything, I don't know. But I think
15 it certainly made it more difficult and made the final
16 analysis of what damages were due at the end of the day
17 much more difficult because my client -- there's letters,
18 some of them are filed of record. And that's what I'm
19 limited to, is what I found of record, where he's asking
20 for permission either from the opposing side, I don't
21 remember if it was Mr. Peace at the time, where he's
22 asking for permission to make these expenditures and he's
23 not getting consent, so he filed for relief with the
24 Court.

25 I don't know how I can quantify that other than

ROA 001165

ROA 001166

1 to say, he wasn't able to make expenditures after that
2 order was issued. Maybe we'd be speculating to say that
3 his damages were greater as a result of his ability to
4 do -- or his inability to do that. But my point was, it
5 was relief that was not requested and whether it
6 proximately resulted in dollars that were not spent from
7 the trust that could have been perhaps spent to maintain
8 the cottage or prevent the cottage from falling into
9 further disrepair, we don't know on this record. We just
10 don't know. The case has been tried on both sides and
11 that's not an issue that was gone into so we don't know.

12 THE COURT: You may proceed to your next point.

13 MS. BALLARD: Thank you, your Honor. This one
14 I call the standard of proof or the burden of proof and I
15 reference the tenth amendment to the trust agreement
16 which was introduced into the record at trial. And it
17 looks like it may have introduced earlier because I found
18 a copy of it stamped on an earlier filing.

19 The tenth amendment to the trust -- I've never
20 seen a trust with ten amendments -- but the tenth
21 amendment may have been a result of the settlor realizing
22 that his children did not get along very well together,
23 and so he specifically established a very, very high
24 burden of proof for liability by a successor trustee.
25 And the tenth amendment says an individual successor's

ROA 001166

ROA 001167

1 liability is limited to an act or omission committed in
2 bad faith or with reckless indifference to the purpose of
3 the trust or the interest of the beneficiaries.

4 This Court's order did not find that, did not
5 mention the burden of proof that was set forth in the
6 tenth amendment to the trust. I think it necessarily
7 follows that the Court apply a common law standard of
8 proof, which was preponderance of the evidence which is a
9 much lower burden of proof. And I think Mr. Vergeldt,
10 the deceased Mr. Vergeldt intended to set a very high bar
11 before either of his children sue the other for damages
12 and that may be the purpose for the tenth trust.

13 But my point is that the proper burden of
14 proof, the proper element of degree of proof that
15 Mr. Vergeldt required before damages were sought between
16 these parties was not met. If it was a preponderance of
17 the evidence, that's a preponderance of the evidence, but
18 the order doesn't say so I can only assume that it was
19 preponderance of the evidence, and that's a lower burden
20 of proof than the one he set forth in the tenth
21 amendment.

22 So our position is, the burden of proof was not
23 sustained by the burden of proof set forth in the tenth
24 amendment which required bad faith or reckless
25 indifference to the purpose of the trust or the interest

ROA 001167

ROA 001168

1 of the beneficiaries, plural. And that may be something
2 that can be fixed on reconsideration, I don't know. But
3 it was not addressed in the final order so I felt
4 obligated to raise that issue.

5 THE COURT: Mr. Peace?

6 MR. PEACE: Judge, on this, I'm not sure I have
7 a whole lot of disagreement here with Ms. Ballard. I
8 think that the tenth amendment to the trust says what it
9 says in terms of the bad faith and reckless indifference.
10 I think probably our agreement though ends when it comes
11 down to the actions of Mr. Vergeldt whether they were
12 made in bad faith and reckless indifference. And, you
13 know, I'm not even sure that -- I'm not even entirely
14 sure that the burden of finding something in bad faith
15 or reckless indifference constitutes a higher burden of
16 proof, or at least raises to the clear and convincing
17 evidence standard. I've just not seen anything to say
18 that and maybe it's just something I missed in
19 Ms. Ballard's brief that, you know, it seems to talk
20 about a lot of the two different standards, but whether
21 an action taken in bad faith or whether the action taken
22 with reckless indifference for the purposes of the trust
23 rises to a clear and convincing evidence standard.

24 But those issues notwithstanding, we would at
25 last argue that as a result of seven years of litigation

ROA 001168

ROA 001169

1 that the Court can only come to the conclusion that
2 Mr. Vergeldt acted in bad faith and reckless indifference
3 to the purposes of the trust through spending assets that
4 he was not entitled to, by refusing to provide documents
5 to the Court or to his sister in violation of the trust
6 and a Court order and then threatening to disinherit his
7 sister for, or terminating her interest in the trust if
8 you questioned what she did.

9 So we would actually have no -- I don't think
10 we would have any issue with the Court finding that
11 Mr. Vergeldt acted in bad faith with reckless
12 indifference. But I will amend my previous statement and
13 say, I'm not sure that the finding of bad faith or
14 reckless indifference necessarily leads -- there's a
15 direct line between a higher standard of proof in bad
16 faith or reckless indifference. And, like I said, I may
17 have just missed it if Ms. Ballard cited to a case that
18 says it. I'm just not -- I'm not convinced that that's
19 where, if you've got bad faith that immediately means
20 clear and convincing evidence.

21 I think you probably have bad faith be proved
22 by the preponderance of evidence. And even if she can in
23 this case, I think we've got enough evidence even on
24 reconsideration on the Court's order, or on the Court's
25 findings of fact and conclusions at this point that if

ROA 001169

ROA 001170

1 the Court wants to insert language in there that says
2 that Mr. Vergeldt acted in bad faith we'd be find with
3 it. But I'm sure Ms. Ballard would not be fine with
4 that.

5 MS. BALLARD: A brief reply?

6 THE COURT: A brief reply.

7 MS. BALLARD: Thank you, your Honor. As with
8 any contract, a trust is a contract and the settlor of
9 the trust can establish whatever terms he wants to. And
10 our courts have said -- the Supreme Court, I know, has
11 said that parties are free to contract intelligently or
12 unintelligently. And if he decided to establish a burden
13 of proof that was higher than the common law burden of
14 proof, he had a right to do that. And Mr. Peace is
15 right. I could not find any cases that equated the bad
16 faith finding to the common law burdens of proof. The
17 common law burdens of proof are preponderance of the
18 evidence and clear and convincing. I think this is a
19 higher burden but we don't know. But it was spelled out
20 in the trust.

21 Our position is, it wasn't argued, it wasn't
22 raised, Ms. Vergeldt didn't argue that she was proving
23 anything was a violation of bad faith or with reckless
24 indifference, and the Court didn't find that anything was
25 in bad faith or with reckless indifference; and,

ROA 001170

ROA 001171

1 therefore, the burden of proof was not satisfied, the
2 burden of proof set forth in the trust was not satisfied,
3 and we think the findings of fact as a result should be
4 vacated.

5 THE COURT: Okay. The next point?

6 MS. BALLARD: Thank you, your Honor. The last
7 issue that I briefed -- and I reserve all of the other
8 issues as well -- but the last issue that I briefed was
9 the absence of expert testimony. And my point here is,
10 Ms. Polenski obviously is uber qualified as a trustee,
11 but she testified as to the standard of trust as to what
12 an expert trustee would do. The only thing she actually
13 said that she would have recommended that Mr. Vergeldt do
14 was to hire a bookkeeper. That's the only thing she said
15 that she thought he should have done differently.

16 She didn't address proximate cause, she didn't
17 address whether his failure to get a bookkeeper caused
18 any damages to anybody. There was no testimony as to a
19 deviation of a standard of care of a lay trustee. There
20 was clearly testimony as to a deviation of a standard of
21 care if Mr. Vergeldt had been a professional trustee, but
22 he's not. So the standard of proof that was established
23 by Ms. Polenski's testimony clearly is not the right
24 standard of proof for determining whether Mr. Vergeldt
25 violated his duties as a lay fiduciary.

ROA 001171

ROA 001172

1 And with reference to the testimony of Mr. --
2 is it Bosler, I believe? Mr. Bosler is very
3 knowledgeable, I make no issue with that. But he was
4 helpful in that he told us what the law was in several
5 different states as to what a trustee's obligations were,
6 but at the end of the day all he really did was go
7 through the documents and piece together what he said is
8 what a prudent man should have done. And he even
9 testified that a prudent man shouldn't have even tried to
10 maintain that cottage. A prudent man should have gotten
11 the agreement of the other side to sell the cottage.
12 Well, we all know how that would have gone.

13 My position here is that Mr. Bosler's numbers
14 are based on a whole lot of assumptions. And he admits
15 he didn't have all the documents that he needed, he only
16 had the only ones that were provided to him by
17 Ms. Polenski and that he made a lot of assumptions. His
18 numbers were not to a reasonable degree of certainty, his
19 numbers were really based on guesses.

20 So the numbers that amounted to the damages
21 that were awarded were not established, I believe by the
22 record, were not established by the required expert
23 testimony. We had no expert testimony as to what is
24 expected of a lay trustee. We had an expert trustee and
25 I'll disagree with her testimony as to an expert trustee.

ROA 001172

ROA 001173

1 Mr. Bosler, while he was an expert, the only
2 thing he testified is about, I assumed these certain
3 numbers because this is what Vicky told me. There were a
4 couple of times where he said, this is what Vicky told
5 me, and I noticed in the transcript where Mr. Vergeldt
6 said, well, you never talked to me. So he did have a
7 one-sided view of things and it's clear from his
8 testimony that he had to assume a lot. So our position
9 is that the numbers that are represented by Mr. Bosler's
10 report are not established to a sufficient degree of
11 certainty to support an award of damages.

12 He also did not testify to proximate cause.
13 Neither Ms. Polenski nor Mr. Bosler testified to
14 proximate cause. They both said Mr. Vergeldt did things
15 he shouldn't have done, but neither one of them said that
16 the trust or Ms. Vergeldt were proximately harmed by that
17 in any way. So I think that obviates in favor of a
18 finding that the plaintiff, or the petitioner did not
19 sustain her burden of proof and, therefore, the order
20 should be vacated.

21 THE COURT: Mr. Peace?

22 MR. PEACE: Thank you, Judge. Well, on the
23 proximate cause issue, I think that Mr. Bosler and
24 Ms. Polenski's testimony somewhat speaks to themselves.
25 And as the Doreety case from a couple of years ago points

ROA 001173

ROA 001174

1 out, that a breach of trust is a breach of trust is a
2 breach of trust, or failures as the duties of a trustee
3 be, if you breach them, that they're harmful and damages
4 are the result. And I'm not sure that Ms. Polenski or
5 Mr. Bosler were there to testify necessarily as to
6 proximate cause. I think that's something that the Court
7 actually -- that the Court may have to find, especially
8 sitting without a jury.

9 So I think both of the people that testified,
10 all testified that Mr. Vergeldt did not act properly, did
11 not act appropriately. And as to the proximate cause, I
12 think that Mr. Bosler's report, as well as Ms. Polenski's
13 report, all point to a breach of trust which show unequal
14 distributions and damages to my client such that they may
15 not have testified to it, but the documentary evidence
16 that they produced certainly did. And with Mr. Bosler,
17 it gets a little funny because, like I said or like we've
18 noted before, Mr. Vergeldt, when he resigned as trustee,
19 relinquished the, or basally relinquished that authority
20 over to Ms. Vergeldt. And so some of those damages, I
21 think, your Honor, are the result of Ms. Vergeldt seeking
22 damages on behalf of the trust. I think there is a --
23 there is proximate cause and I think the evidence shows
24 proximate cause between the unequal distributions which
25 would have been damning with Ms. Polenski and Mr. Bosler

ROA 001174

ROA 001175

1 both testifying that Mr. Vergeldt acted in a manner that
2 was inappropriate for his position as the fiduciary.

3 On the licensed fiduciary versus a lay
4 fiduciary, I'm not aware of any difference between -- at
5 least in our trust code and I know this is governed by
6 Michigan law and Ms. Ballard kind of does this a little
7 bit more than I do -- I'm not aware of any difference in
8 our trust code between a licensed fiduciary having a
9 higher degree of, or super fiduciary duties whereas a lay
10 fiduciary may just have fiduciary duties. And so I think
11 if -- and Ms. Polenski, I think, testified to this, if
12 you're a fiduciary, you're a fiduciary, you're a
13 fiduciary. And so as she kept saying in her testimony,
14 it's not your money, it's not your money. That extra
15 training may give her a leg up, but I don't think that
16 imposes any higher standard on her that she can testify
17 as any different to the standard that would be on
18 Mr. Vergeldt as a lay fiduciary.

19 On Mr. Bosler, part of the reason -- and I
20 think Ms. Polenski testified to this, too -- part of the
21 reason that there were so many assumptions comes back to
22 why these two cases were brought to begin with. Because
23 Mr. Vergeldt didn't keep good records, didn't keep
24 complete records and refused to give them, Ms. Polenski
25 had to issue numerous subpoenas over two years to be able

ROA 001175

ROA 001176

1 to provide the documents or to be able to put together
2 her report, which I think even she testified was still
3 not complete at the time.

4 So part of those assumptions were based on
5 incomplete records. And as effectively our expert, as
6 the petitioner's expert, I'm not so sure that he would
7 have spoken to Mr. Vergeldt or that he would have
8 gotten, you know -- with all due respect to Mr. Vergeldt,
9 I'm not sure he would have gotten a straight answer. So
10 I think that those assumptions are not necessarily
11 harmless error, but within the scope of what he would be
12 able to do as a CPA.

13 Now, this reasonable man, prudent man standard,
14 I'm not an expert in accounting by any means, but I do
15 think that he can testify and do a hypothetical on what
16 would happen based on what accountancy standards would
17 tell him. I don't necessary disagree that on some level
18 that he probably did step into our world, but I think
19 that was part of what he is -- part of maybe some leeway
20 he could have been given on what he could testify to and
21 what he couldn't. And even then, those weren't -- and I
22 know Ms. Ballard is preserving these for the record, but
23 at the same time, there was no objection as to what
24 his -- as to what he was qualified to do or qualified to
25 say.

ROA 001176

ROA 001177

1 The only thing that, the only objection that
2 was made was Mr. Vergeldt had never seen this, seen the
3 report before, and I'm sure we'll get into that a little
4 bit with Ms. Ballard's evidentiary objections. So that's
5 all I have on those right now.

6 MS. BALLARD: And just briefly in reply, your
7 Honor. I think the Court has to determine whether this
8 was a cause of action that required the assistance of
9 expert testimony in order for the Court to make an
10 adjudication of the issues. If it is something that
11 falls within the common knowledge exception, and I don't
12 think it is, but if it is something that falls within the
13 common knowledge exception, then we didn't need any
14 expert testimony and the omissions and the failure of the
15 experts to speak to proximate cause or to speak to the
16 actual losses didn't hurt anything because the Court
17 didn't need expert testimony to start with.

18 But I think the law is pretty clear that a
19 breach of fiduciary duty is something that requires
20 expert testimony. And my point is, if you look at
21 Ms. Polenski's testimony very carefully, her only
22 criticism was that Mr. Vergeldt should have hired a
23 bookkeeper. He kept terrible records. I think those
24 were her words, he kept terrible records.

25 That, of course, was reinforced by Mr. Bosler

ROA 001177

ROA 001178

1 who, in calculating the numbers, had to guess at a lot of
2 his numbers. And Mr. Vergeldt, while he was pro se at
3 that last hearing, he did object to Mr. Bosler's report
4 on the grounds that it was based primarily on guesses and
5 speculation so that issue is preserved. Mr. Vergeldt
6 raised that himself. And that's why I set forth in my
7 memorandum all of the different qualifications that I
8 found Mr. Bosler making during his testimony, you know,
9 well, I didn't know this and I didn't know that so I
10 speculated this.

11 The last point I would make, your Honor, on
12 this is with reference to the Doreety case, it
13 unfortunately doesn't give us a lot of comfort because
14 the trustee in that case was a licensed lawyer and so,
15 therefore, fell into the scope of an expert. And the
16 testimony, the expert testimony that was provided in that
17 case came from Allen Midland and Cathy Kennedy. So we
18 had experts all across the board.

19 This is very, very different. This is a
20 layperson who is a pilot, probably doesn't balance his
21 own checkbook. So I think there would have had to have
22 been some testimony as to what was expected of a lay
23 guardian and the only testimony you had was from
24 Ms. Polenski who said that he should have hired a
25 bookkeeper. And I don't think any of us disagree with

ROA 001178

ROA 001179

1 that, he should have hired a bookkeeper. But she did not
2 say that his failure to hire a bookkeeper proximately
3 resulted in any damages to the trust or to the
4 petitioner. And that's an issue I didn't raise because I
5 don't think these pleadings embrace the issue of whether
6 the damages were due to the trust or the damages were due
7 to the petitioner. It doesn't look to me like that issue
8 was ever spelled out or explored in the litigation so I'm
9 not raising that issue. And I think since Ms. Vergeldt
10 and Mr. Vergeldt are the only surviving beneficiaries,
11 it's probably a moot point.

12 But my point is, if it doesn't fall within the
13 common knowledge exception, and I don't think it does,
14 then the expert testimony that you had wasn't sufficient
15 to adjudicate a lay guardian's obligations and certainly
16 neither of them testified as to proximate cause.

17 THE COURT: Any additional, or anything to add,
18 Mr. Peace, before we proceed?

19 MR. PEACE: Well, I was a little bit concerned
20 when I mentioned Doreety, because I knew Ms. Ballard was
21 on that and I was a little bit concerned she was going to
22 tell me something I didn't know or that I had completely
23 wrong.

24 The only thing, Judge, again, I'm not aware of
25 any different standard between a lay fiduciary and a

ROA 001179

ROA 001180

1 licensed fiduciary insofar as this trust is concerned. I
2 certainly agree that there is different -- that different
3 experiences lend themselves to different -- I don't want
4 to say qualifications, but maybe that's the best way to
5 say it, you know. Somebody that's been a fiduciary and
6 has been a lawyer and licensed as a CPA like Ms. Polenski
7 is going to have a higher degree or a higher knowledge of
8 what her standards are, her duty of loyalty and duties of
9 care are.

10 With that being said, I would liken it to a
11 pro se defendant or a pro se party versus as dealing with
12 a lawyer. The rules, you know, we as lawyers and as the
13 Court know the Rules of Civil Procedure and we're
14 presumed to know what the law is and to be competent in
15 it. The same can be said for a pro se defendant or a pro
16 se party. A pro se party can't get out of -- under the
17 rules still has to answer the complaint just like a
18 lawyer does, has to follow the same rules. And I think
19 the law is pretty clear that there's nothing that
20 differentiates the two on the standards of care.

21 So we think that the distinction between a
22 licensed fiduciary and a lay fiduciary is one that may
23 not make a difference here regardless of who testified,
24 because I think even if he had somebody that was, I
25 guess, qualified as an expert as a "lay fiduciary" would

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1 still say, you still have the same duties of care, you
2 still have the same duties of loyalty. And in this case,
3 I think the evidence bore out that Mr. Vergeldt violated
4 both of those duties as it relates to my client. And
5 just, again, the documentary evidence shows that he
6 breached those duties that proximately caused it, that he
7 treated both himself and his sister, Patty -- and their
8 sister, Patty -- in a differing manner and tried to hold
9 the disinheritance of my client over her head to get what
10 he wanted. So that would be my response or my reply on
11 that.

12 THE COURT: Okay. Ms. Ballard, now you can
13 proceed to the next point.

14 MS. BALLARD: Your Honor, I wasn't planning on
15 offering any oral argument on the evidentiary issues,
16 knowing that the standard for that is the discretion of
17 the Court. I just wanted to preserve those issues in the
18 event this matter goes up on appeal. And it is my
19 sincere hope that some of these issues that I have raised
20 will result in an order that doesn't require us to get to
21 those evidentiary issues so they will become moot.

22 And, Mr. Peace, please don't hold the Doreety
23 case against me. I fought that one pretty hard and I
24 didn't like the way it turned out, but it was a
25 fascinating case, I will give you that.

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1 MR. PEACE: Okay. Now, let me be clear. It's
2 just, I knew that case had kind of come down and you were
3 involved and I always get worried telling somebody else
4 about their case because, you know, I would be anxious to
5 jump out of my seat and say, well, that's not how it went
6 at all.

7 MS. BALLARD: We don't have to be on the record
8 for this, Madam Court Reporter.

9 (Discussion off the record)

10 MS. BALLARD: Your Honor, thank you so much for
11 allowing me to be heard on all of these issues. Do you
12 have any guidance as to whether you want proposed orders
13 from us, or how do you want to address this?

14 THE COURT: I was just about to say, because of
15 the number of issues and I'm sure that getting a proposed
16 order from both of you would help at least me
17 tremendously, I would appreciate it. So I don't know how
18 much time that you would need to do that but that would
19 be appreciated --

20 MS. BALLARD: Could I --

21 THE COURT: -- by me.

22 MS. BALLARD: Could I have 30 days?

23 THE COURT: Yes.

24 MS. BALLARD: Thank you. That will be very
25 helpful.

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1 THE COURT: If you need an extension just let
2 me know. That's not a set deadline where I'm going to
3 deny receiving your proposed order at that point.

4 MS. BALLARD: Thank you, your Honor. And this
5 is my first time appearing in front of you and I want to
6 tell you that it's nice to meet you and I appreciate
7 having you on the bench.

8 THE COURT: Well, thank you. Thank you. It
9 was very nice to meet you, too.

10 MR. PEACE: Judge, I know your office knows
11 this and Ms. Ballard knows this. My wife is expecting
12 our second daughter on April 4th so I may be out for a
13 couple of weeks. Would it be okay if we go ahead and
14 vault that 30-day deadline out to 60 days?

15 THE COURT: Any objection, Ms. Ballard?

16 MS. BALLARD: Not at all.

17 THE COURT: Okay. 60 days is fine. And,
18 congratulations. Well, thank you all. This concludes
19 the hearing.

20 (The taking of the hearing adjourned at
21 3:55 p.m.)
22
23
24
25

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CERTIFICATE OF REPORTER

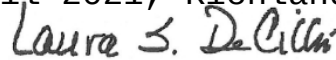
I, Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina at large, do hereby certify:

That the foregoing Videotaped Zoom Video Hearing was taken before me on the date and time stated on page 1 of this transcript; that said proceedings was recorded stenographically by me and was thereafter transcribed; that the foregoing hearing as typed is a true, accurate and complete record to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

I further certify that the original of said transcript shall be hereafter sealed and delivered to DESA BALLARD, ESQUIRE, Ballard & Watson, 226 State Street, West Columbia, South Carolina, 29169.

Witness my hand, I hereunto affixed my official seal this 27th day of April 2021, Richland County, South Carolina.



Laura S. DeCillis, CCR, CVR, CCRI
State of South Carolina at Large
My Commission expires
August 4, 2026

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EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

between

JOHN VERGELDT, JR.

Settlor

and

JOHN VERGELDT, JR.

Trustee

Bodman LLP
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777

Detroit_936183_1



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TO TRUST AGREEMENT
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EIGHTH AMENDMENT AND COMPLETE RESTATEMENT
TO TRUST AGREEMENT

THIS EIGHTH AMENDMENT AND COMPLETE RESTATEMENT TO TRUST AGREEMENT dated September 27, 1978 is made this 29th day of July, A.D., 2009, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor"; and John Vergeldt, Jr., hereinafter called the "Trustee". This trust may sometimes be referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978".

WITNESSETH:

WHEREAS, the Settlor desires to completely amend and restate the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, as amended by Second Amendment and Complete Restatement on June 27, 1990, Third Amendment dated December 23, 1998, Fourth Amendment dated February 22, 2001, Fifth Amendment dated December 10, 2003, Sixth Amendment dated April 26, 2006 and Seventh Amendment dated June 7, 2006, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions hereinafter set forth; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that all of the provisions of the Trust Agreement dated September 27, 1978 and the Amendments thereto shall be deleted and the provisions set forth herein shall be substituted therefor:

FIRST

FUNDING

A. The Settlor has heretofore assigned, transferred, conveyed and delivered to the Trustee various property.

B. Other property which is acceptable to the Trustee may be transferred to the Trustee by Settlor or by others. Such transfers may be accomplished at any time by any instrument, including a Will.

END

SECOND
DEFINITIONS

A. The term "child", "grandchild", "issue", "heir", "descendant", "beneficiary" or other equivalent term shall be construed to include any adopted person and his or her descendants, whether natural or adopted. Provided, however, and notwithstanding anything contained in this Agreement to the contrary, David Leigh Vergeldt shall be treated as a child of Settlor and the biological children of David Leigh Vergeldt shall be treated as grandchildren of Settlor. Provided, further, and notwithstanding anything contained in this Agreement to the contrary, Devin T. Hodgman, stepson of John Edward Vergeldt, shall be treated as a grandchild of Settlor and a child of John Edward Vergeldt for all provisions of this Agreement.

B. Any reference to a "corporate" Successor Trustee shall mean a corporate banking institution, including a national banking association, or trust company engaged in trust administration.

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee is referred to in the neuter gender. The Successor Trustee shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to the Settlor acting as Trustee.

D. Wherever reference is made to the Internal Revenue Code or any section thereof, such reference shall be construed to mean the Internal Revenue Code

of 1986, as amended, or such section thereof, as the case may be, as heretofore or hereafter amended or supplemented, or as superseded by laws of similar effect.

E. The term "person" shall mean and include any individual, corporation and/or other legal or business entity.

F. The term "education" shall include all forms of education, including, but not limited to, public or private schools, primary or secondary, college, advanced college or post-college, commercial, technical, business or art education, or otherwise.

G. "EPIC" means the Estates and Protected Individuals Code of the State of Michigan.

H. Whenever this Trust Agreement provides a specific bequest or a devise to an individual, if the individual does not survive the Settlor's death, the bequest or devise shall lapse unless the bequest or devise specifically directs the bequest or devise to pass to the individual's descendants or an alternate taker.

I. If this Trust Agreement refers to "by representation" or "by right of representation", the descendants or issue of a deceased devisee shall receive their share "per stirpes".

J. In the event that any state is determined to be Settlor's heir any distribution that would have been made to the state, but for this provision, shall be added to and distributed as part of the shares being distributed to living individuals.

K. The terms "issue" and "descendants" of a person mean all the lineal descendants of that person of all generations.

L. Use of any gender in this Agreement includes the masculine, feminine, and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

M. Use of the verb "shall" in this Agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

N. Captions, headings, and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

O In the event that any property or interest in property passing under this Agreement (other than as part of the residue) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations, such encumbrance shall not be charged to the residue, but that the devisee or legatee or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of Settlor's death.

P. Any generation-skipping tax resulting from a transfer occurring under this Trust Agreement shall be charged to the property constituting the transfer in the manner provided by applicable law.

END

THIRD

SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE

A. Settlor reserves the right to use or to direct the payment of any part of or all of the net income and the principal of the trust for Settlor's own benefit during Settlor's entire lifetime. If the Successor Trustee succeeds Settlor as Trustee during Settlor's lifetime by reason of Settlor's mental or physical incapacity, the Successor Trustee shall have the power to apply so much of the net income and the principal of the trust as it shall determine to be necessary for Settlor's health, maintenance and support and the health, maintenance and support of those persons dependent upon Settlor.

B While Settlor is Trustee, Settlor shall have all of the powers set forth in Paragraph EIGHTH A of this Agreement which Settlor may exercise completely for Settlor's own benefit, in any manner Settlor wishes, and without regard to any restrictions of law or "prudent man" rule which may pertain to investments or other actions of a fiduciary.

C. The Settlor, while acting as Trustee, shall have the exclusive power and authority: (i) to establish and maintain one or more accounts, which may be margin accounts, for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, or turning to account of, or realizing upon, and generally dealing in and with (a) any and all forms of securities, including but not by way of limitation, shares, stocks, bonds debentures, notes, scrip, participation certificates, rights to subscribe,

options, puts, calls, warrants, certificates of deposit, mortgages, choses in action, evidences of indebtedness, commercial paper, certificates of indebtedness and certificates of interest of any kind and nature whatsoever, secured or unsecured, whether represented by trust, participating and/or other certificates or otherwise; and (b) any and all commodities and/or contracts for the future delivery thereof, whether represented by trust, participating and/or other certificates or otherwise; (ii) to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased with such brokers as security for loans and advances made to the Trustee; (iii) to pledge or mortgage trust property as collateral for any personal or business loans of Settlor, or for the benefit of any other person or entity designated by Settlor and to guarantee the repayment of such loans; (iv) to employ investment counselors and investment advisors and to grant them complete discretion to invest for and on behalf of the trust without any restrictions; (v) to delegate to any agent of Settlor's choice by power of attorney or otherwise, the conducting of banking activities for Trustee, or the hiring, cancellation or use of entry of safe deposit box or other storage facilities in the name of Trustee; and (vi) to appoint (and remove or change) during Settlor's lifetime a Co-Trustee to serve during Settlor's lifetime with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the trust as if made by Settlor as Trustee. Said power and authority shall be peculiar to Settlor while acting as Trustee

and shall not pass to Settlor's successors in trust, except to the extent such power and authority is set forth in other provisions of this Trust Agreement.

D. The Settlor reserves unto Settlor the right to revoke or amend this Agreement in whole or in part, at any time, upon written notification to that effect, duly executed by the Settlor and delivered to the Trustee; provided, that the duties, responsibilities, and liability of the Trustee hereunder shall not be increased without the Trustee's written consent. The right of revocation or amendment shall be personal to Settlor and may not be exercised by any other person acting for Settlor. This Trust Agreement shall become irrevocable upon Settlor's death.

E. The Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent that Settlor is unable to act in Settlor's own behalf. The Successor Trustee may at any time and for any reason determine that Settlor is no longer incapacitated and, upon such determination or upon the restoration of Settlor to full capacity by court order, Settlor shall again act as Trustee and shall have all of the powers Settlor possessed prior to the appointment of a guardian for Settlor or the determination of Settlor's incapacity, as the case may be.

F. Any Successor Trustee to Settlor shall not be liable or responsible in any way for its determinations as to Settlor's capacity or incapacity so long as it acts

in good faith. The Successor Trustee shall always give first consideration to the needs of the Settlor.

END

FOURTH

ADMINISTRATION OF SETTLOR'S ESTATE

A. Upon the death of Settlor, the Successor Trustee, if not then in possession of the trust estate, shall succeed to such property and take possession thereof and shall hold, administer and dispose of the trust estate (together with any undistributed income and any accrued income not received at Settlor's death), as hereinafter set forth.

B. The Successor Trustee shall have the power to purchase any securities or other property belonging to the estate of the Settlor at the then fair market value, and to loan the personal representative of the Settlor's estate, in such amount as the Successor Trustee may deem necessary or advisable to protect and conserve the assets of the Settlor's estate, out of the principal of the trust, other than from: any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. Such loans may be secured or unsecured. The Successor Trustee shall not be liable for any losses suffered by the trust estate as a result of its exercise of the powers created in this Subparagraph.

C. To the extent that United States Treasury Bonds held in the trust are redeemable at par in payment of federal estate tax payable by reason of Settlor's death, the Successor Trustee shall apply the redemption proceeds of such bonds in payment of the federal estate tax, anything contained in this Agreement or Settlor's Will to the contrary notwithstanding. To the extent that other property from sources other than the trust is not available to provide the necessary funds, the Successor Trustee

may, in its discretion, pay Settlor's funeral and burial expenses, any allowances by court order for those dependent upon Settlor, administration expenses of Settlor's estate, legally enforceable claims against Settlor or Settlor's estate, federal estate tax remaining after redemption proceeds of United States Treasury Bonds are applied and all inheritance, succession and estate taxes payable by reason of Settlor's death (except generation-skipping taxes and those other taxes which Settlor's personal representative is precluded from paying by reason of Settlor's Will), together with any interest thereon or other additions thereto; provided, however, no such payments shall be made from any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. No reimbursement shall be secured from any person for any payments so made. The Successor Trustee may make these payments directly or to Settlor's personal representative. The Successor Trustee may rely upon written statements of Settlor's personal representative as to all facts relating to these payments.

D. Upon Settlor's death, the Successor Trustee shall distribute Settlor's tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by Settlor) located in Settlor's residence at Henry Ford Village, as follows:

1. Each of Settlor's children shall be given the opportunity to choose items that they would like to receive.

2 After Settlor's children have each taken the items they desire if there are any remaining items, each of Settlor's grandchildren shall be given an opportunity to choose items they would like to receive.

3. If there are any items remaining, the Successor Trustee shall dispose of such items as the Successor Trustee deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, Settlor desires that all disputes be settled by the flip of a coin.

END

FIFTH

FORGIVENESS OF LOANS AND/OR ADVANCES AND
ESTABLISHMENT OF RESIDUARY TRUST

A. Settlor hereby forgives any loans and/or advances (which have not been repaid) which Settlor has made prior to the date of this Eighth Amendment and Complete Restatement to any of Settlor's children and Settlor directs that the amount of such loans and/or advances (which have not been repaid) shall not reduce any devise or bequests that such child of Settlor is entitled to receive pursuant to this Trust Agreement or any amendments to this Trust Agreement. Provided, however, to the extent that any child of Settlor shall receive from Settlor on or after the date of his Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement; provided further, the reduction shall only be to the extent there has not been a full reduction under Settlor's Will.

B. After the Settlor's death and subject to the foregoing, all of the rest, residue and remainder of the trust estate, including any lapsed or disclaimed legacies or

devises, shall be held, administered and distributed from the Residuary Trust in accordance with the provisions of Paragraph SIXTH.

END

SIXTH

ADMINISTRATION OF RESIDUARY TRUST

AND TRUSTS RESULTING FROM THE RESIDUARY TRUST

A. After the death of Settlor, and if this trust at said time owns (or will own pursuant to Settlor's Will) real property described as Lots 3, 4, 5, 6, 7 and 8 of Block 5 of Wallace and Orr Park Subdivision, Town 19 North, Range 7 East, Sims Township, Arenac County, Michigan (hereinafter called the "Cottage") and any tangible personal property located in or about the Cottage, then:

1. The Successor Trustee shall allocate from the Residuary Trust to a separate trust, to be known as the "Cottage Trust", the Cottage together with the tangible personal property located in or about the Cottage at the date of Settlor's death and the sum of fifty thousand and 00/100 (\$50,000.00) dollars less any amount set aside with John Edward Vergeldt for the purpose of maintaining the Cottage. The income and principal of the Cottage Trust shall be used to pay all expenses that accrue in connection with the Cottage, including real estate taxes, fire and extended coverage and liability insurance, repairs, utilities and any other expenses related to the ownership and maintenance of the Cottage. The Cottage Trust shall continue until the death of the last surviving child of Settlor or until the Cottage is disposed of in accordance with the provisions of this Paragraph SIXTH A.

2. The Cottage shall be sold upon the occurrence of either of the two (2) following events:

(a) There are no assets in this Trust to pay for the expenses described in 1 above and the individuals who are using the Cottage do not agree to pay said expenses; or

(b) Ten years after the creation of the Cottage Trust and a majority of Settlor's then living children elect to have the Cottage sold or if there is a deadlock between Settlor's children as to whether the Cottage should be sold. In all events John Edward Vergeldt shall have two (2) votes and the other children shall each have one (1) vote.

(c) In the event the decision is made to sell the Cottage, Settlor's children and grandchildren shall have the first option to purchase the Cottage. If none of Settlor's children or grandchildren desires to purchase the Cottage, then Linda Anne Zummer shall be given the option to purchase the Cottage. If Linda Anne Zummer does not wish to purchase the Cottage, then it shall be sold to any willing purchaser. In all events the Cottage is to be sold for fair market value.

3. The use of the Cottage shall be controlled by the Cottage Use Agreement dated August 13, 2008, as it may be amended from time to time. During Settlor's lifetime, Settlor shall have exclusive authority over all matters related to the Cottage. After Settlor's death, the Successor Trustee shall have exclusive authority to settle any disputes that may arise with respect to the Cottage, the maintenance of the Cottage and the use of the Cottage.

Upon the sale of the Cottage, the Cottage Trust shall terminate and the assets of the Cottage Trust shall be added to the Residuary Trust and held, administered and disposed of in accordance with Paragraph SIXTH B below but shall be divided in accordance with Paragraph SIXTH B as if the date of the sale was substituted for Settlor's death.

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Settlor's daughter, Patricia A. Vergeldt Downey), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Settlor's daughter, Patricia A. Vergeldt Downey, shall not survive Settlor, then her share shall be distributed, as follows. The Successor Trustee shall distribute from the share of Settlor's daughter, Patricia A. Vergeldt Downey, the sum of ten thousand (\$10,000.00) dollars to Settlor's daughter's spouse, James Downey, if then living, if he was married to Settlor's daughter at the date of her death, there was no divorce proceeding pending at the date of her death and the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars and

the balance shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

C. If at the time herein provided for the distribution of the principal of any trust created by or administered under this Paragraph SIXTH there shall be no beneficiary herein designated then living, the trust shall immediately terminate and the remaining trust estate shall be divided equally between Settlor's then living grandchildren and, subject to Paragraph SIXTH D, be distributed to them outright.

D. Unless the Successor Trustee elects the Uniform Transfers to Minors Act to age twenty-one (21), in the event the descendants of any of Settlor's children shall not have attained the age of thirty (30) years at the time he or she is entitled to participate in Settlor's estate, the Successor Trustee shall hold and administer the share of such person (other than the specific bequest of six thousand (\$6,000.00) dollars which shall be distributed outright to each of Settlor's grandchildren) until he or she shall have attained such age and during such period shall pay to or for

the benefit of such person so much of the income and principal of his or her share, as it, in its sole and uncontrolled discretion, shall determine in order to provide for his or her health, support, maintenance and education. Any unexpended portion of the annual net income of such share shall be retained as principal. When such person attains the age of thirty (30) years or upon his or her death, whichever first occurs, the entire share of such person and any accumulations of income shall be transferred and delivered over to him or her or to his or her estate without reservations of any kind.

E. After the death of Settlor, the Successor Trustee may assign, transfer, convey and pay over to the then income beneficiaries, in equal shares if there is more than one income beneficiary, the entire body or corpus of his or her trust estate free and discharged from the trust hereof, in which event any remaindermen shall not be considered as having a vested interest in the trust estate so conveyed to such income beneficiaries, thereby terminating the trust, when in the uncontrolled discretion of the Successor Trustee it might become expedient or advisable to do so for the following reasons or any other reason whatsoever which the Successor Trustee may deem sufficient: (1) changes in the political, economic, or social order in the United States, (2) legislation, regulation or court decisions detrimental to any trust or trusts hereunder, or any beneficiary thereof, (3) lack of availability of suitable trust investments for an extended period, (4) insufficient principal to justify the expense of continuing the trust's existence, or (5) other events which do or may tend to greatly impair the intent and purpose of this instrument.

END

SEVENTH

SUCCESSOR TRUSTEES

If John Edward Vergeldt shall die or resign or be unwilling or unable to act as a Successor Trustee, then the following persons shall be substituted in his place and stead in the following order: (1) Settlor's daughter, Vicki Lynn Vergeldt; and (2) Settlor's daughter, Patricia A. Vergeldt Downey.

END

EIGHTH

TRUSTEE'S POWERS

A. The Trustee shall have the following general powers and is authorized to:

(1) Enter upon and take possession of the trust estate, to collect the income and profits therefrom, and to invest and reinvest the estate in real, personal or mixed assets in accordance with its judgment, including interests in any amounts in common trust funds maintained by the Trustee, without being limited by any present or future investment law;

(2) Vote in person or by proxy with respect to any and all securities, and carry in its name or in the name of its nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting registration;

(3) Retain all property in the form in which the same shall be received or acquired by it without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(4) Allocate between income and principal all receipts and disbursements in accordance with sound trust accounting principles;

(5) Sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and option, convey, exchange, lease and release for any length of time, mortgage, pledge, partition,

plat, sub-divide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of the trust estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of the Trustee may seem expedient and proper;

(6) Borrow money on the general credit of any trust or trusts, or by pledge or mortgage of any of the trust property as security for the repayment thereof, and to renew from time to time any such indebtedness;

(7) Prosecute and defend and, in the exercise of its sole discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims by or against the trust and the trust estate;

(8) Make, execute and deliver any and all such instruments in writing as shall be necessary and proper to carry out any disposition whatever of any trust property;

(9) Make any distributions of income or principal, whether before or after the beneficiary attains age eighteen (18), in the Trustee's discretion, (i) directly to the beneficiary, (ii) if the beneficiary is under a legal disability or if the Trustee determines that the beneficiary is unable to properly manage his or her affairs, to a person furnishing support, maintenance or education for the beneficiary or with whom the beneficiary is residing or to any person having legal or actual custody of the beneficiary, or to the guardian or conservator of the beneficiary, or to any trustee appointed by a court for the benefit of a beneficiary, or to any institution attended by the beneficiary, for expenditure on the

beneficiary's behalf, or (iii) if the beneficiary is a minor, to a custodian for the beneficiary as selected by the Trustee (who may be the Trustee) for the beneficiary under a Uniform Transfers (Gifts) to Minors Act until age twenty-one (21) or similar applicable law, or (iv) in any manner whereby it may reasonably be expected that the funds will be expended for the benefit of and on behalf of the beneficiary, and the Trustee shall be under no duty to audit the use of such funds.

(10) Allocate different kinds or disproportionate shares of property or undivided interests in property among the trusts herein or the beneficiaries thereof;

(11) Enter into any transaction with the personal representative of Settlor's estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee has any interest, even though the Trustee also is the other trustee or personal representative;

(12) Continue any business (other than a profession) of Settlor so long as it shall deem it to be in the best interests of the beneficiaries and exercise all powers with respect to such business which Settlor could exercise if living;

(13) Disclaim, in whole or in part, any disclaimable interest as defined in the applicable law; and

(14) Exercise all of the powers and authority provided by applicable law.

B. Certain elections afforded by the Internal Revenue Code may be exercised only by the person who is the "executor" within the meaning of the Internal Revenue Code. The Successor Trustee shall exercise those powers enumerated below, which under the applicable provisions of the Internal Revenue Code may be exercised only by the executor, only if the Successor Trustee is also the "executor" within the meaning of the Internal Revenue Code. Subject to the limitation expressed in the preceding sentences, the Successor Trustee shall have the power to: (1) elect to claim expenses or losses as either income or estate tax deductions; (2) elect, to the extent permitted by the Internal Revenue Code, to defer the payment of all or part of the Settlor's estate taxes; (3) exclude from or include in the Settlor's gross estate, any asset, in the first instance, for federal estate tax purposes; (4) value all assets, in the first instance, for federal estate tax purposes, using date of death or alternate values as the Successor Trustee shall elect; (5) elect to value qualified real property at its value for the use under which it qualifies and enter into any agreements required by such election; (6) elect to have gain or loss recognized on distribution of property in kind under Internal Revenue Code Section 643(e)(3); (7) elect to make, continue or revoke any election to be taxed under Subchapter S of the Internal Revenue Code with respect to any securities eligible for such an election; (8) elect to allocate the Settlor's unused generation-skipping tax exemption; and (9) elect to exercise or not to exercise any other option or election afforded by the Internal Revenue Code unless Settlor has specifically given directions with respect to such matter.

C. Notwithstanding any provision herein to the contrary, with respect to any trust administered under this Trust Agreement no Trustee or Successor Trustee (hereafter called the "Trustee") shall have the power to use or apply trust property (i) for the support and maintenance of anyone the Trustee is obligated to support and maintain, or (ii) for the purpose of directly or indirectly discharging the personal legal obligations of that Trustee or of any beneficiary with respect to any other person, nor shall any Trustee who is also a beneficiary of any trust administered under this Trust Agreement have the power, as Trustee, to make discretionary distributions to him or herself except (if expressly permitted by this instrument) to the extent necessary for such Trustee's health, education, support and maintenance as described under Internal Revenue Code Sections 2041 and 2514 (concerning powers of appointment and ascertainable standards), and such beneficiary-Trustee shall exercise its Trustee powers solely in a fiduciary capacity and shall possess no powers that would otherwise permit that beneficiary-Trustee to enlarge or shift any of the beneficial interests (except as an incidental consequence of the discharge of such fiduciary duties); and to the extent a beneficiary-Trustee has the authority to make discretionary distributions of income and/or principal to another beneficiary from a trust administered under this Trust Agreement that the beneficiary-Trustee is also a beneficiary thereof, such distributions shall be limited by an ascertainable standard related to the distributee beneficiary's health, education, support and maintenance. No beneficiary-Trustee shall possess any power or discretion that is "conclusive," "sole," "absolute" or "uncontrolled" with respect to the exercise or non-exercise of such power or discretion; and such beneficiary-

Trustee's power or discretion in that regard shall at all times be exercised or not exercised in a reasonable manner, be limited by a reasonably definite standard, and shall be subject to review and judicial scrutiny. Notwithstanding the foregoing, this provision shall not apply to Settlor while Settlor is serving as Trustee.

D. Notwithstanding any other provision of this Trust Agreement to the contrary, the following provisions under this Paragraph EIGHTH D shall apply upon the death of the Settlor:

1. If a trust held under this instrument would otherwise be partially exempt from generation-skipping tax ("GST") due to the intended allocation of a GST exemption to it (as used in this instrument, the "GST exemption" means the exemption from generation-skipping tax allowed under Section 2631 of the Internal Revenue Code), then, before such allocation and as of the relevant valuation date under Section 2642 of the Internal Revenue Code with respect to such allocation, the Successor Trustee may (but need not) divide that trust (the "original trust") into two separate trusts of equal or unequal value which shall be identical in all other respects to the original trust, so that the allocation of GST exemption can be made to one trust which will be entirely exempt from generation-skipping tax. The two trusts created under this Paragraph EIGHTH D 1 shall have the same name as the original trust except that the trust to which the GST exemption is allocated shall have the phrase "GST Election" added to its name.

2. If property which is held in, or is to be added or allocated to, a trust pursuant to this instrument is subject to different treatment for any reason for purposes of the generation-skipping tax under Chapter 13 of the Internal Revenue Code than other property being added or allocated to, or also held in, that trust, then the Successor Trustee may (but need not) hold such property instead as a separate trust that is appropriately designated to distinguish it from the trust to which the property otherwise would have been allocated, but that is identical in all other respects to that trust.

3. It is the Settlor's intent that the Successor Trustee shall not be required to administer a trust hereunder that is only partially exempt from generation-skipping taxes, or to commingle property subject to different treatment for generation-skipping tax purposes whether because the transferors with respect to the property are assigned to different generations or otherwise. The provisions of this Paragraph EIGHTH D are intended to enable the Successor Trustee to avoid such situations by empowering the Successor Trustee to segregate trust property (a) that is entirely exempt from generation-skipping tax from trust property that is not exempt, or (b) that is otherwise treated differently from other trust property for purposes of the generation-skipping tax, and the provisions of this Paragraph EIGHTH D shall be applied in a manner consistent with this intention.

4. To the extent it is consistent with the Successor Trustee's fiduciary obligations, the Successor Trustee, in making discretionary distributions of net

income and principal from the trusts referred to in this Paragraph EIGHTH D., shall take advantage of the opportunities provided by the creation of such trusts to avoid or delay generation-skipping tax when making discretionary distributions, and to maximize the amount of trust property that eventually may be distributed to the Settlor's grandchildren or more remote descendants without transfer tax of any kind at the termination of all trusts created under this Agreement.

5 For purposes of dividing trusts under this Paragraph EIGHTH D., the Successor Trustee shall select property in a manner that the assets of each trust will have an aggregate fair market value fairly representative of each trust's proportionate share of the appreciation or depreciation in the value (from the values as finally established for federal estate tax purposes) to the dates of allocation of all property then available for allocation.

6. Any person may add property to any trust hereunder, with the consent of the Successor Trustee, and such property shall thereafter be held by the Successor Trustee as a part thereof. However, no property shall be added to a trust if such addition would cause the inclusion ratio of such trust to become other than zero (0), and such property shall be held as a separate trust with terms identical to those of the trust to which the property would have been added.

7. For purposes of this Paragraph EIGHTH D., a separate share shall be treated as a separate trust.

E. Notwithstanding anything contained in this Trust Agreement to the contrary, upon Settlor's death, the Successor Trustee may appoint (and remove and substitute) Independent Investment Advisor(s) (herein collectively referred to as the "Advisor") under this Trust Agreement and if so appointed the Successor Trustee shall exercise investment powers only on the written direction of the Advisor to the trust. Provided, however, if at any time during the continuance of any such trust there shall be no Advisor of such trust, or if the Advisor of such trust shall fail to communicate in writing to the Successor Trustee the Advisor's direction as to the exercise of any of the aforesaid powers for which exercise the direction of such Advisor shall be necessary, within twenty (20) days after the Successor Trustee shall have sent to such Advisor, by certified mail, at the Advisor's last known address(es), a written request for such direction (notwithstanding that the Successor Trustee shall be under no obligation to request any such direction), then the Successor Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust, and shall be relieved of any and all liability for losses incurred thereby. The Advisor shall be reimbursed for out-of-pocket expenses and reasonable investment counsel fees. The Successor Trustee is relieved of any and all liability for losses incurred as a result of obeying the Advisor's investment directions.

F. The Trustee may register this trust in accordance with Section 700.7101 of EPIC.

G. The Successor Trustee is authorized (but not required) to make distributions from the trust estate to the Guardian(s) of any trust beneficiary, or to the person(s) acting in such capacity to any trust beneficiary (all such being collectively referred to as the "Custodian"), for the following purposes, taking into account the funds available in the trust estate:

1. Reimbursement of the Custodian for traveling to and from the place of the beneficiary's last residence and to the Custodian's place of residence for the purpose of making arrangements for and the actual transportation of the beneficiary to the Custodian's place of residence.

2. Allowance to the Custodian in such amount as the Successor Trustee deems advisable after consultation with the Custodian for the added expenses occasioned by the beneficiary's residence with the Custodian.

3. If the Custodian's residence is inadequate to handle the addition of the beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian upon such terms of repayment as the Successor Trustee deems appropriate, money to assist the Custodian in remodeling or expanding the Custodian's then present residence or to purchase a more suitable residence.

4. If the Custodian's family car/van is not adequate in size to accommodate the addition of any beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian money to assist the Custodian in purchasing a new and larger car/van.

5. The Successor Trustee may advance to the Custodian the cost of any educational expense committed to on behalf of any beneficiary hereunder. These expenses shall include tuition, room and board, books, related expenses, extracurricular seminars and other expenditures which in the opinion of the Successor Trustee would further and broaden the educational opportunities available to the trust beneficiary.

H. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, there is only one current income beneficiary and the current income beneficiary indicates his or her willingness in writing to consent to such election, the Successor Trustee shall allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and the current income beneficiary indicates his or her willingness in writing to consent to such an election, shall either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Qualified Subchapter S Trust FBO" said beneficiary.

The following terms and conditions of such trust shall supplement or override, if to the contrary, any other terms and conditions contained elsewhere in this Trust Agreement to the trust for the benefit of the then current income beneficiary.

1. All income, within the meaning of Section 643(b) of the Internal Revenue Code, of the trust shall be distributed to the current income beneficiary while the small business corporation is an "S corporation";

2. During the lifetime of the current income beneficiary, the income and principal of the trust may be distributed only to the current income beneficiary or, while the current income beneficiary is under any legal disability, may be paid by the Successor Trustee to any court appointed guardian or similar appointee with respect to such legally disabled current income beneficiary;

3. The income interest of the current income beneficiary shall terminate on the earlier of the beneficiary's death or the termination of the trust;

4. Upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary; and

5. The trust's terms and conditions, not to the contrary that would otherwise apply if this trust was not created, shall control the administration and disposition of any trust created hereunder.

I. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal

of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, and there are two or more current income beneficiaries or the sole current income beneficiary indicates his or her unwillingness to consent to such election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, the Successor Trustee may allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and there are two or more current income beneficiaries or the current income beneficiary indicates his or her unwillingness to consent to such an election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, may either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Electing Small Business Trust FBO" said beneficiary(ies). At any time while there shall be in place a valid election to administer the trust as an Electing Small Business Trust ("ESBT"), the Successor Trustee shall not be permitted to take any action, other than an express revocation of the trust's ESBT election, which would result in the trust failing to qualify as an ESBT pursuant to Section 1361(e) of the Internal Revenue Code and the Regulations promulgated thereunder, and in furtherance thereof the following shall be observed:

1. The trust shall not have as a current beneficiary any person other than an individual, an estate, or an organization described in paragraphs (2), (3), (4) or (5) of Section 170(c) of the Internal Revenue Code.

2. No interest in the trust shall be acquired by purchase.

3. An election under Section 1361(e)(3) of the Internal Revenue Code shall be made by the Successor Trustee and shall be in effect for the trust.

4. The trust shall not have a number of "potential current beneficiaries", as defined in Section 1361(e)(2) of the Internal Revenue Code, which would cause the corporation(s) whose stock is owned by the trust, to exceed the numerical shareholder limitation imposed upon such corporation(s) at any time by Section 1361(b) of the Internal Revenue Code.

J. Notwithstanding any provisions to the contrary contained in this Trust Agreement, the Successor Trustee shall be subject to the following restrictions, duties and obligations for any beneficiary of any trust receiving or entitled to receive government assistance or aid:

1 The Successor Trustee shall, in its sole and absolute discretion, expend principal or income for the needs of the beneficiary not otherwise provided for by government financial assistance and benefits or by the providers of the services. Such needs include, by way of description and not by way of limitation, additional food, clothing, health services not provided, radios, record players, television sets, camping, vacations, athletic contests, movies or trips; provided, however, that the Successor Trustee is under no obligation to expend

principal or income for such needs, but if the Successor Trustee does, in its sole discretion, decide to do so, in no case shall the Successor Trustee pay or reimburse any amounts to the federal or state governments, or any subdivision thereof.

2. Any income which is not distributed shall be retained in the trust and added to the principal thereof.

3. In making the distributions provided for in Subparagraph EIGHTH J 1, the Successor Trustee shall take into consideration the amounts which the beneficiary shall be entitled to receive from any government agency, including, but not limited to, the Social Security Administration benefits, Supplemental Security Income, or Medicaid. The Successor Trustee is directed to assist the beneficiary in obtaining the full benefit of these programs. The Successor Trustee is further directed to collect, expend and account for separately all such governmental assistance benefits, but not commingle them with the trust funds.

END

NINTH
ALIENATION

The principal of the trusts administered hereunder and the income resulting therefrom while in the hands of the Successor Trustee shall not be subject to any conveyance, transfer or assignment, or be pledged as security for any debt of any beneficiary thereof and shall not be subject to any claim of any creditor of any such beneficiary, through legal process or otherwise. Any attempted sale, anticipation, assignment or pledge of any of the principal or income held in any such trust by such beneficiaries or any of them shall be null and void, and shall not be recognized by the Successor Trustee. It is the Settlor's intention to place the absolute title to the property held in trust and the income therefrom in the Successor Trustee from the time the Successor Trustee succeeds Settlor as Trustee with the power and authority to pay out the same only as authorized herein. Nothing in this Paragraph shall prohibit the release of a power of appointment or withdrawal granted hereunder, or an exercise in accordance with the terms of the power.

END

TENTHRULE AGAINST PERPETUITIES

If the provisions of any trust herein for any beneficiary shall be violative of the rule against perpetuities, then such trust for such beneficiary shall be based upon the lives of all beneficiaries of all other trusts hereunder whose lives shall be competent under said rule, and such trust for such beneficiary shall continue with all of its other provisions until the expiration of the maximum period permitted by the Uniform Statutory Rule Against Perpetuities unless the provisions of any such trust as continued by this Paragraph shall direct the conveyance of any part or all of the principal of the trust to the beneficiary thereof to take place at a time before the termination of the trust as continued under this Paragraph, in which case such conveyance shall be made in accordance with such direction.

END

ELEVENTH

ALLOCATION OF ASSETS

The Successor Trustee may make any division or allocation in cash or in kind, and as to any property incapable of exact division, it shall not be necessary for the Successor Trustee to divide the same physically into parts to which each trust shall be entitled, but individual parts thereof may, by appropriate book entries, be allocated among the trusts. In any case where exact division of property or allocation of undivided interests therein between or among the other trusts hereunder is not practical or expedient, the Successor Trustee may select assets to be appropriated in whole or in part to any of said trusts.

END

TWELFTHRESIGNATION OF SUCCESSOR TRUSTEE

A. The Successor Trustee of a trust may resign by written notice setting forth the effective date thereof delivered personally or sent by registered mail, at least thirty (30) days prior to said effective date, to each of the ascertained and then living beneficiaries of the trust to or for whom income may currently be paid or used, or their guardians, addressed to the last known address of such person as disclosed by the resigning Successor Trustee's records.

B Except as otherwise provided in Paragraph SEVENTH, within twenty (20) days after the delivery or mailing of such notice of resignation, a majority of such adult beneficiaries, or a majority of the guardians of minor beneficiaries, if there are no adult beneficiaries, shall select a corporate successor to the resigning Successor Trustee and shall in writing, signed by a majority of the beneficiaries or their guardians, whichever is applicable, inform the resigning Successor Trustee of the identity of the selected corporate successor to the resigning Successor Trustee. If the beneficiaries shall fail to select a corporate successor to the resigning Successor Trustee within the twenty (20) day period or if there are no adult beneficiaries and a majority of the minor beneficiaries do not have guardians, then the resigning Successor Trustee shall select a corporate successor.

C. The resigning Successor Trustee, upon the effective date of its resignation, shall deliver to its successor and to each such beneficiary of the trust a statement of all receipts and disbursements of the trust together with an inventory of the

assets belonging to the trust. When the successor shall deliver its receipt for the assets of each of the trusts to the Successor Trustee so resigning, the latter shall stand and be discharged of all of its duties and obligations hereunder.

D. Each and every successor to the original Successor Trustee shall have the identical powers, rights, duties and obligations of the original Successor Trustee named in this Agreement unless otherwise provided herein.

END

THIRTEENTHLIFE INSURANCE PROVISIONS

A The Settlor shall pay all premiums or assessments on any life insurance policies on Settlor's life made payable to this trust. The Trustee shall be under no obligation to see that said premiums or assessments are paid or to pay the same, and shall be under no obligation in respect to the policies deposited hereunder other than for their safekeeping, except to the extent expressly provided herein. Nothing herein contained shall be deemed to impose any obligation on the Settlor to maintain any or all of said policies in force. If, at any time, and so long as, the only assets held by the Trustee are insurance contracts or beneficiary designations under employee benefit plans and cash of nominal amount, the Trustee shall be under no duty or obligation to invest and/or keep invested such cash of nominal amount.

B. The Settlor reserves unto Settlor during Settlor's lifetime, all incidents of ownership, payments, dividends, surrender values and benefits of any kind which may accrue on account of any of the policies of life insurance on Settlor's life made payable to this trust, under this Agreement, and the right at any time to assign, pledge or use said policies or any of them or to change the beneficiary thereof, and to borrow money thereon; and the Settlor shall have the right and power at any time to withdraw from the possession of the Trustee any and all policies of life insurance deposited with the Trustee hereunder, upon the execution and delivery to said Trustee of a proper receipt therefor.

C. No insurance company who shall make payment of insurance proceeds to this trust shall be required to inquire into or take notice of any of the provisions of this Agreement or to see to the application or disposition of the proceeds of said policies, and the receipt of the Successor Trustee to any such insurance company shall be effectual to release and discharge them for any payment so made and shall be binding upon every beneficiary of the trusts hereby created.

D. The Successor Trustee shall use its best efforts to collect the proceeds of any life insurance policies that are payable to this trust, or may, at its option, exercise any of the options of settlement that may at that time be available to the Successor Trustee under the terms of any of said policies. The Successor Trustee may institute any proceedings at law or in equity in order to enforce the payment thereof, it being distinctly understood, however, that the Successor Trustee shall not, except at its option, enter into or maintain any litigation to enforce the payment of said policies until it has been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part. The Successor Trustee is authorized to compromise and adjust claims arising out of the insurance policies or any of them, upon such terms and conditions as it may deem just, and the decision of the Successor Trustee shall be binding and conclusive upon all persons and corporations interested therein. The Successor Trustee shall be responsible for the proceeds of the insurance only when, as and if collected or paid to it, and the Successor Trustee shall not be liable to anyone if for any reason the policies shall lapse or be otherwise uncollectible in whole or in part.

E. An instrument in writing completely terminating the trust shall, without more, upon delivery to the Trustee, completely terminate all of this trust's right, title and interest to insurance proceeds otherwise payable to it. The Settlor assumes full responsibility for changing the insurance beneficiary designations to reflect Settlor's intent with respect to such policies.

F. Anything contained in this Trust Agreement to the contrary notwithstanding, the Trustees (and Successor Trustees) of each trust hereunder, other than any individual Trustee or individual Successor Trustee (except Settlor) whose life may be insured under the life insurance policy in question, shall have and, in their sole discretion, may exercise all of the incidents of ownership in each and every policy of life insurance which may at any time be owned or purchased by such trust. The term "incidents of ownership" with respect to a policy shall include, by way of illustration and not limitation, the right to collect, receive, and retain all payments, dividends, surrender values, sickness, accident, disability, retirement, or other benefits, including all death benefits, maturing on such policy during the insured's lifetime and thereafter, as well as the right to at any time transfer, assign, sell, pledge, hypothecate, borrow on, surrender, prepay, convert, divide, change the beneficiary of, and/or exercise or select any options, elections, and waivers with respect to such policy. All other provisions of this Trust Agreement to the contrary notwithstanding, any individual Trustee or individual Successor Trustee (except Settlor) whose life is insured under a trust owned policy shall under no circumstances be entitled to partake in any way in decisions relating to such policy or in the exercise of any of the foregoing powers or discretions with respect to

such policy (and in the absence of another then acting Trustee or Successor Trustee no incidents of ownership as to such policy shall be exercised).

1. The payment of premiums on each policy owned by any trust hereunder shall be charged against the principal of that trust unless the Trustees or Successor Trustees of such trust (other than any (except Settlor) who might be financially affected thereby), in the exercise of reasonable discretion, shall determine to charge such premiums against the income of such trust on the basis of that being in the best interests of the present and future beneficiaries of such trust.

2 Furthermore and also notwithstanding all other provisions of this Trust Agreement, if any insurance on the life of a beneficiary of a trust hereunder is an asset of such trust, such insurance and all proceeds thereof, unless held by the original trust hereunder, shall be excluded from the assets which might otherwise be subject to any use, enjoyment, withdrawal, or appointment by that beneficiary (and on such beneficiary's death such proceeds shall be disposed of as though any power of appointment held by such beneficiary had not been exercised).

END

FOURTEENTH

GENERAL PROVISIONS

A. The Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

B. The Successor Trustee shall furnish at least annually, to the beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended, a complete inventory of the assets held in the trust for such beneficiary and shall furnish at least annually, or at such other periodic intervals as may be agreed upon between the Successor Trustee and such beneficiary, or beneficiaries, a statement of all receipts and disbursements.

C. The Successor Trustee shall pay all necessary and proper disbursements, expenses and liabilities in the administration of the trusts hereunder, including reasonable compensation of the Successor Trustee or its successor.

D. In cases where the Internal Revenue Code affords the Successor Trustee any election or option, the Successor Trustee shall exercise such election or option for what it believes to be the best interest of the trust and the beneficiaries thereof. The Successor Trustee shall not make any adjustment between income and principal because of a benefit conferred or a detriment imposed upon any trust or any of

the beneficiaries thereof by reason of the applicable provisions of the Internal Revenue Code, including elections or options.

E. The trusts herein provided shall be administered and this Agreement shall be construed in accordance with the laws of the State of Michigan.

F. In any proceeding involving the construction, operation or modification of this Agreement, the then living beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding not only upon such known persons but also upon all unknown and undetermined beneficiaries.

G. The Successor Trustee shall have the power to maintain the situs of the property of any trust created under this Agreement in any jurisdiction, in the Successor Trustee's absolute discretion, and thereafter transfer the situs at any time or times to any jurisdiction selected by the Successor Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Successor Trustee, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. If the Successor Trustee of any trust created hereunder elects to change the situs of any such trust, the Successor Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

END

FIFTEENTH

DISCLAIMER

The acceptance to serve as Successor Trustee shall be construed as no more than acceptance of the terms of this Agreement as they apply to the rights, powers, duties and obligations of the Successor Trustee during its tenure as trustee and shall in no way be construed to mean acceptance, ratification or approval of any of the acts, omissions, or defaults of the individual Trustee nor any undertaking by the Successor Trustee to audit or verify the records of the individual Trustee. The Successor Trustee shall be entitled to rely upon any statements and records (which may come into the Successor Trustee's possession after a reasonable search) of the individual Trustee as to the assets of this trust and shall have no responsibility or liability hereunder to any person for the assets of this trust until reduced to the possession of the Successor Trustee.

END

SIXTEENTHCONSOLIDATION OF TRUSTS

After the death of Settlor, if the provisions under the trust or trusts created herein shall become substantially the same as the provisions under any trust or trusts established by the Settlor or by any other person for the irrevocable benefit of the same beneficiary or beneficiaries, the Successor Trustee may, in its complete discretion, terminate such trust or trusts created hereunder and distribute all of the assets thereof to the trustee of said similar trust or trusts, or may accept from the trustee of said similar trust or trusts, all of the assets thereof, and the assets so distributed or received shall be treated as an addition to said similar trust or trusts or to this trust or trusts, as the case may be, and shall be held, treated and disposed of as a part thereof or hereof, and if distributed to a similar trust or trusts, the trust or trusts created hereunder shall thereupon terminate. The purpose of this Paragraph is to eliminate the necessity of maintaining two or more separate trusts with similar provisions for the same beneficiary. However, the Successor Trustee shall not combine any trust having an inclusion ratio, as defined in Section 2642 of the Code, of other than zero (0) with a trust having an inclusion ratio of zero (0).

END

SEVENTEENTH
ENVIRONMENTAL MATTERS

A. For purposes of this Paragraph, the following terms have the meanings set forth below:

1. "Assets held in the trust estate" include interests in sole proprietorships, partnerships, corporations, limited liability companies and other business entities and the assets owned by such business entities.

2. "Environmental law" means any federal, state, or local statute, rule, regulation or ordinance relating to protection of the environment or human health.

3. "Hazardous substance" means any substance defined as hazardous or toxic in or otherwise regulated by any environmental law.

4. "Environmental concerns" means, as determined by the Successor Trustee in its sole discretion, (a) any condition of, or activity conducted on or with, any property or assets held in the trust estate that violates, or may cause violation of any environmental law; (b) the presence of or any actual or threatened release of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate; and (c) any actual or threatened spill, leak, discharge, disposal, emission, dispersal, leaching, or migrating of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate.

5. "Governmental body" means any unit of federal, state, or local government, and any agency, department, board, commission, or subdivision thereof, and any quasi-governmental agency thereof and any court or quasi-judicial entity.

B The Successor Trustee shall have the powers, in addition to those powers provided by applicable law:

1. To inspect, assess, and evaluate any property or assets held in the trust estate or proposed to be donated or transferred to the trust estate, and any records related thereto, for the purpose of determining if any environmental concerns exist with respect to such property or assets.

2. To respond to any actual or suspected environmental concerns relating to property or assets held by the Successor Trustee in the trust estate.

3. To take, on behalf of the trust estate, any action necessary to prevent, abate, or otherwise remedy any environmental concerns relating to property or assets held by the Successor Trustee in the trust estate, either before or after the initiation of an enforcement action by any governmental body.

4. To refuse to accept property or assets in trust if the Successor Trustee determines or suspects that environmental concerns are present at, affect or relate to any property or assets to be donated or transferred to the trust which the Successor Trustee believes could result

in liability to the trust or the Successor Trustee, or otherwise impair the value of the property or assets held therein.

5. To settle or compromise at any time any and all claims or lawsuits against the trust estate or against the Successor Trustee which may be asserted by any governmental body or private party involving any alleged environmental concern relating to property or assets held in the trust estate.

6. To disclaim any power granted by any document, statute or rule of law which, in the sole discretion of the Successor Trustee, may cause the Successor Trustee to incur personal liability under any environmental law or under the common law.

7. To decline to serve as Successor Trustee if the Successor Trustee reasonably believes that there is or may be a conflict of interest between the Successor Trustee in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust estate because of any environmental concerns that relate to property or assets held in the trust estate.

8. To disclaim, in whole or in part, any interests in property or assets for any reason including, but not limited to, a concern that holding such property or assets in the trust estate could result in liability to the trust or the Successor Trustee as a result of any environmental concerns.

9. To use and expend the trust income and principal to: (i) conduct environmental assessments, audits, and site monitoring to determine if any environmental concerns are present at or affect any property or assets held in the trust estate; (ii) take all appropriate remedial action to contain, remedy, cleanup, or respond to environmental concerns that relate to property or assets held in the trust estate, either on its own accord or in response to an actual or threatened claim by any governmental body or private party; (iii) institute legal proceedings concerning any environmental concerns that relate to property or assets held in the trust estate or contest or settle legal proceedings brought by any governmental body or by any private person or entity regarding environmental concerns that relate to any property or assets held in the trust estate; (iv) comply with any order of any governmental body directing an assessment, investigation, remedial action, response action, abatement or cleanup of any environmental concerns relating to property or assets held in the trust estate; (v) to take any action or do anything permitted in the above paragraph, or as otherwise permitted by law; and (vi) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Successor Trustee under this paragraph may be charged against income or principal as the Successor Trustee shall determine.

C. The Successor Trustee shall not be personally liable to any beneficiary or other person or entity for any decrease in value of property or assets held in the trust estate by reason of the Successor Trustee's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the Successor Trustee of property nor a failure by the Successor Trustee to inspect property or assets shall be deemed to create any inference as to whether there is or may be any liability under any environmental law with respect to such property or assets.

D. No Successor Trustee shall be liable for any loss or depreciation in value sustained by the trust as a result of the Successor Trustee retaining any property or assets upon which there is later discovered to be environmental concerns requiring remedial action pursuant to any environmental law, unless the Successor Trustee contributed to the loss or depreciation in value through willful default, willful misconduct, or gross negligence.

E. Settlor's estate shall indemnify, defend, protect, and hold harmless the Successor Trustee, and each of the Successor Trustee's successors, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including without limitation, diminution in the value of the trust property or assets, damages for the loss of or restriction on the use of rentable or usable space or of any amenity of the trust property), costs, or expenses (including attorneys' fees, consultants' fees, and experts' fees) arising from or caused in whole or in part, directly or indirectly, by any environmental concerns relating to property or assets held in the trust estate,

regardless of the cause of such environmental concerns. Settlor's obligations under this indemnification shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation or testing of site conditions, and any and all costs of any required or necessary repair, remedial action, response action, cleanup, detoxification, or decontamination of the trust property (including, without limitation, the soil and ground water on, under or about the trust property), and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Settlor's obligation under this indemnification shall survive the expiration or earlier termination of the Successor Trustee's term as fiduciary under the Trust Agreement. For purposes of the release and indemnity provisions, hereof, any acts or omissions of Settlor, or by employees, agents, assignees, contractors, or subcontractors of Settlor, or by others acting for or on behalf of Settlor (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Settlor.

END

EIGHTEENTHFORFEITURE

The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Therefore, if any beneficiary shall assert any claim, statutory election or other right or interest against or in the Settlor's estate, either pursuant to Settlor's Last Will and Testament, this Trust Agreement (as it may be amended) or otherwise, or directly or indirectly contest the Settlor's Last Will and Testament or this Trust Agreement (as it may be amended), or attack or seek to impair or invalidate any of the provisions thereof, or conspire with or voluntarily assist anyone attempting to do any of those things, then (a) all beneficial interest, powers and rights of every kind and nature which such beneficiary might otherwise have had under this Trust Agreement shall be forfeited and such forfeited interest shall augment proportionately the shares of the beneficiaries designated in Paragraph SIXTH B who shall not have participated in such acts or proceedings, (b) all of the provisions of this Trust Agreement, to the extent that they confer any benefits, powers or rights whatsoever upon such beneficiary, shall thereupon become absolutely void and revoked, and (c) such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The foregoing shall not be construed, however, to limit the

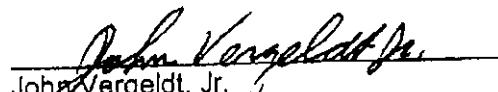
appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

END

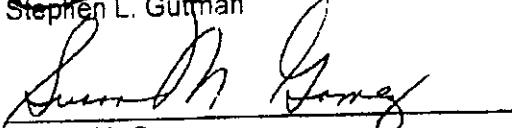
IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment and Complete Restatement as of the day and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

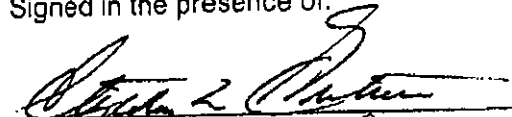

Stephen L. Gutman

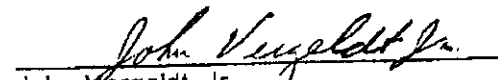

John Vergeldt, Jr.

"Settlor"

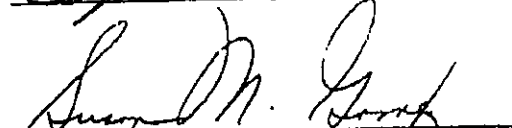

Susan M. Gomez

Signed in the presence of:


Stephen L. Gutman


John Vergeldt, Jr.

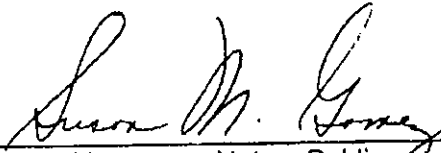
"Trustee"


Susan M. Gomez

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 29th day of July, 2009, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the

foregoing instrument and acknowledged that he executed the same as his free act and deed.



Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My Commission expires: 11/11/2012

NINTH AMENDMENT TO TRUST AGREEMENT

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JUDGE OF PROBATE
WAYNE COUNTY, MI

THIS NINTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978,

is made this 5th day of February, A.D., 2010, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

WITNESSETH

WHEREAS, on July 29, 2009 the Settlor completed amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement shall be amended as follows:

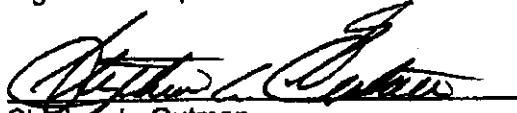
Paragraph SIXTH B of the Eighth Amendment and Complete Restatement

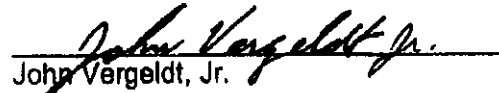
shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

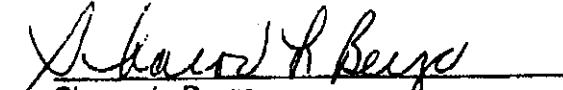
B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The Successor Trustee shall distribute from the share of David Leigh Vergeldt the sum of twenty thousand (\$20,000.00) dollars to his surviving spouse, Bonnie Graham Vergeldt, if and only if she survives Settlor and if the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars, and the balance (or all if these conditions are not satisfied) shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C. If the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

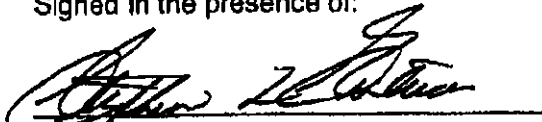
Signed in the presence of:

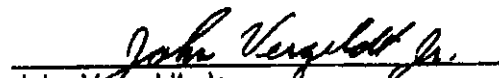

Stephen L. Gutman


John Vergeldt, Jr.
"Settlor"


Sharon L. Bergo

Signed in the presence of:


Stephen L. Gutman

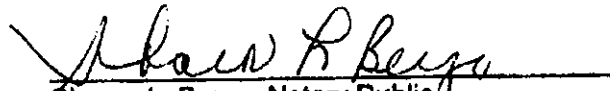

John Vergeldt, Jr.


Sharon L. Bergo

"Trustee"

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 5th day of February, 2010, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.


Sharon L. Bergo, Notary Public
Oakland County, Michigan acting in
Wayne County, Michigan
My Commission expires: 09/14/2012

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TENTH AMENDMENT TO TRUST AGREEMENT OF PROBATE
YORK COUNTY, SC

THIS TENTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 7th day of March, A.D., 2011, between John Vergeldt, Jr., of the City of Birmingham, County of Oakland, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

W I T N E S S E T H

WHEREAS, on July 29, 2009 the Settlor completely amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, on February 5, 2010 the Settlor amended the Eighth Amendment and Complete Restatement by the Ninth Amendment;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement and Ninth Amendment; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement and Ninth Amendment shall be amended as follows:

1. Paragraph SECOND C as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND C substituted therefor:

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee and each Trustee is referred to in the neuter gender. The Successor Trustee and each Trustee of each trust created pursuant to this Trust Agreement shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to either the Settlor acting as Trustee or to the Successor Trustee. The Successor Trustee's duties relate to the trust while Settlor is alive, the trust after Settlor's death and during the post-death administration period and before its division for the beneficiaries' shares and each and every trust created pursuant to this Trust Agreement after Settlor's death unless this Agreement specifies a different Trustee for one or more of such trusts.

2. Paragraph SECOND D as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND D substituted therefor:

D. All tax-related terms, provisions and sections mean the same in this Agreement as they mean in the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, and any successor provisions of either. Notwithstanding, if at any time a federal tax including, but not limited to, estate, gift or generation-skipping transfer tax, is not applicable and there is no term, provision or section of the federal tax law that corresponds to any term, provision or section contained in this Agreement, then such term, provision or section contained in this Agreement shall nevertheless be interpreted with reference to the term, provision or section that was in effect at the time of the execution of this Agreement or the term, provision or section that was in effect immediately before such tax law became inapplicable, as the case may be.

3. The following Paragraphs SECOND Q and SECOND R shall be added to the end of Paragraph SECOND:

Q. The term "mental incapacity" shall mean the court appointment of a guardian or conservator for a person or if that person's primary care physician renders such an opinion.

R. The term "current trust beneficiary" means each beneficiary who currently either has a right to receive all or a portion of the income of a trust or is eligible to receive a mandatory or discretionary distribution of income or principal of a trust.

4. Paragraph SIXTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The share of David Leigh Vergeldt shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

5. The following paragraph shall be added to the end of Paragraph SEVENTH:

An individual Successor Trustee's liability is limited to an act or omission committed in bad faith or with reckless indifference to the purposes of the trust or

the interests of the trust beneficiaries. The individual Successor Trustee shall be indemnified from the applicable trust estate for reasonable legal expenses in defending any claim or action filed by a trust beneficiary, except for a claim or action based upon an act or omission by the Successor Trustee to have been committed in bad faith or with reckless indifference to the purposes of the trust but only if the beneficiary prevails in such litigation.

6. Paragraph FOURTEENTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph FOURTEENTH B shall be substituted therefor:

B The Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. The Successor Trustee need not render account statements so long as Settlor is a Trustee. If Settlor is living but is not a Trustee, the Successor Trustee shall account only to Settlor or, if Settlor is deemed mentally incapacitated, to Settlor's spouse, and to each current trust beneficiary, but shall not provide any account statements or information about the trust to any other beneficiary. If a current trust beneficiary is another trust, accounts statements shall be delivered to the trustee of the other trust. Except as provided above, if any current trust beneficiary is a minor or otherwise disabled, delivery shall be made to his or her designated agent, to the conservator of his or her estate, or, if none, then to his or her parent, nearest of kin, or an adult with whom he or she is living.

8. Paragraph EIGHTEENTH as set forth in said Trust Agreement shall be deleted and the following Paragraph EIGHTEENTH substituted therefor:

EIGHTEENTH

CONTEST

A. The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts,

which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Except as provided in subsection (D) below, every share, interest, or power conferred by this trust is made on the condition precedent that the recipient acquiesce in all aspects of Settlor's estate planning and not engage in any activity described in clauses (i) through (x) set forth below. If any beneficiary of this trust, singly or in conjunction with any other person or persons, directly or indirectly, (i) contests in any court the validity of this trust or, in any manner, attacks or seeks to impair or invalidate any of its provisions; (ii) contests in any court the validity of the Settlor's Last Will in any manner, or attacks or seeks to impair or invalidate any of its provisions; (iii) seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that Settlor's Will or any of its provisions is void; (iv) claims entitlement by way of any written or oral contract to any portion of the Settlor's estate, whether in probate or under this instrument; (v) unsuccessfully challenges the appointment of any person named as Successor Trustee of this trust, or as personal representative or successor personal representative of the Settlor's Will; (vi) objects in any manner to any action taken or proposed to be taken in good faith by the Successor Trustee or the personal representative of the Settlor's Will, or other agent, whether said personal representative is acting under court order, advice of legal counsel, or otherwise; (vii) objects to any construction or interpretation of this Trust, or any provision of it, that is adopted or is proposed in good faith by the acting Successor Trustee; (viii) unsuccessfully seeks the removal of any person acting as Successor Trustee of any Trust created under this instrument, or of the personal representative of the Settlor's Will; (ix) files any creditor's claim in Settlor's estate (without regard to its validity), whether the claim arose before or after the date of this instrument, except for claims for cash advanced or paid for expenses of last illness or funeral by said claimant; or (x) contests or seeks to invalidate any of the following: any trust which Settlor has created or may create during Settlor's lifetime, or any provision thereof, any gift which Settlor has made or will make during Settlor's lifetime, whether before or after the date of this instrument, any exercise of a power of appointment possessed by the Settlor, or any other transaction by which Settlor sold any assets (whether to a relative of Settlor's or otherwise), then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement. Further, such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The provisions of this paragraph shall not apply to any disclaimer by any person of any benefit under this trust or under any Will. The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

B. The Successor Trustee is authorized to enforce this provision and to defend, at the expense of the trust, any contest or other attack of any nature on the trust or any of its provisions.

C. In the event that any provision of this paragraph is held to be invalid, void or legal, the same shall be deemed severable from the remainder of the provisions in this paragraph, and shall, in no way, affect, impair or invalidate any other provision in this paragraph.

D. Both Settlor and the law recognize that facts or circumstances could give rise to probable cause to challenge this Agreement or some of its provisions. Therefore, the precondition of subparagraph (A) above shall not apply to a challenge or contest if there is probable cause for asserting the challenge or contest. As used in this subparagraph, probable cause shall exist if at the time of instituting the proceeding, there was evidence that would lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful.

IN WITNESS WHEREOF, the parties hereto have executed this Tenth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

* John Vergeldt, Jr.
John Vergeldt, Jr.

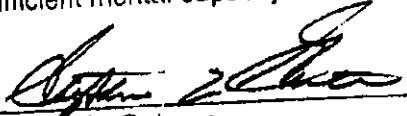
"Settlor"

* John Vergeldt, Jr.
John Vergeldt, Jr.

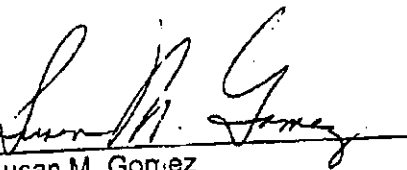
"Trustee"

We sign below as witnesses. This Amendment was signed in our presence by the Settlor and the current Trustee. To the best of our knowledge, John Vergeldt, Jr. signed this Amendment willingly; signed it as his voluntary act for the purposes set forth in this Amendment; and at the time of execution of this Amendment

was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this Amendment.


Stephen L. Gutman

of 6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226


Susan M. Gomez

of 30496 Minton Street
Livonia, Michigan 48150

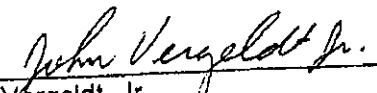
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JUDGE OF THE COURT
NEW YORK APPOINTMENT

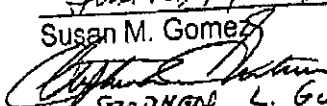
Pursuant to Paragraph THIRD C of a Trust Agreement dated September 27, 1978, as amended, between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the undersigned, as Settlor, hereby appoints John Edward Vergeldt to serve as Co-Trustee of the Trust created by the Trust Agreement during the undersigned's lifetime. According to Paragraph THIRD C, John Edward Vergeldt, as Co-Trustee, is vested with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the Trust as if made by Settlor as Trustee. The undersigned reserves the right to revoke this appointment.

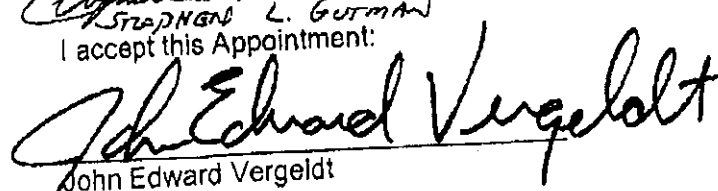
Dated: July 29, 2009

WITNESS:


Susan M. Gomez


John Vergeldt, Jr.


STEPHEN L. GORMAN
I accept this Appointment:


John Edward Vergeldt

ROA 001272

ROA 001272

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Mar 03 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
TEASA K. WEAVER, MASTER-IN-EQUITY

Appellate Case No.: 2021-000816

Vicki Lynn Vergeldt, individually and as
Successor Trustee of the John Vergeldt, Jr.
Revocable living Trust dated September 27, 1978, ...Respondent,

v.

John Edward Vergeldt, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies 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/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

BALLARD & WATSON

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

desab@desaballard.com

harvey@desaballard.com

February 11, 2022