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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

James Marshall Shoemaker, III.....Appellant,
v.

Lesley R. Moore, Esq. as Personal Representative and Trustee, and Edward Sloan Shoemaker
and Jonathan Evans Shoemaker.....Respondents.

SECOND SUPPLEMENTAL RECORD ON APPEAL

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EXHIBITS:

None Introduced

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 We're here today in the matter of James Marshall
3 Shoemaker, Jr. This is case number 2018ES2301729. And
4 just by way of background I do have a Death Certificate
5 for Mr. Shoemaker, Jr. indicating the date of death was
6 July the 14th, 2018. I have a Will that was filed on
7 July the 18th, 2018. He was testate. I have a
8 application for Informal Probate of a Will and
9 appointment of a Personal Representative that was filed
10 July the 18th, 2018. I have the inventory and
11 appraisement. And also Affidavit of Publication
12 indicating the Creditor's Notice was published on July
13 the 27th, August the 3rd, and August the 10th, 2018.
14 And the inventory and appraisement indicates a gross
15 value of probate Estate in the amount of \$46,540. I
16 have a waiver of statutory requirements and receipt and
17 release signed by Edward Sloan Shoemaker. I have one
18 and the same document signed by Mary S. Shoemaker as
19 co-trustee. And I have the same document signed by
20 Lesley Moore as co-trustee. And I have the same
21 document signed by Mary S. Shoemaker, individually.
22 And I have a waiver of statutory filing requirements
23 signed by Ms. Moore and dated the 25th of April 2019
24 and filed the same date with The Court. I understand
25 that a Petition for Formal Hearing in the Estate of

1 James Shoemaker, Jr. was filed on June the 27th, 2019.
2 And in response we have Debora Wine's Motion to Dismiss
3 pursuant to 12(b)(6) and due to a lack of proper
4 service. The Petitioner has filed a response to this
5 on August 12th, 2019. And the Respondents Mary Hunter
6 Sloan-Shoemaker, Edward Sloan Shoemaker, Jonathan Evans
7 Shoemaker, and Lesley Moore have also filed a Notice to
8 Dismiss Or In The Alternative Motion For A More
9 Definite Statement. Those are in pursuant to rules
10 10(b), 12(b)(1), 12(b)(6), 12(b), and 12(f). And we
11 are here to deal with those today. I believe this
12 matter was scheduled earlier this year and the
13 Petitioner requested a continuance, and it was granted.
14 All right. So let me see who we have here today. So
15 our Petitioner is James Marshall Shoemaker, III; is
16 that correct?

17 MR. SHOEMAKER:

18 Correct.

19 THE COURT:

20 You're here today then, sir?

21 MR. SHOEMAKER:

22 Yes.

23 THE COURT:

24 Are you representing yourself?

25 MR. SHOEMAKER:

1 I am.

2 THE COURT:

3 All right. Have you had the opportunity to consult
4 with an attorney?

5 MR. SHOEMAKER:

6 About a hundred of them looking for them to take the
7 case on contingency, 'cause I can't afford to hire one.

8 THE COURT:

9 All right. And so you're representing yourself today?
10 MR. SHOEMAKER:

11 Correct.

12 THE COURT:

13 And do you understand that an attorney has graduated
14 from law school, taken the Bar, passed the Bar, likely
15 understands things about the rules of evidence, the
16 rules of court, and is familiar with probate law and
17 can probably assist you with this matter?

18 MR. SHOEMAKER:

19 Yes, ma'am.

20 THE COURT:

21 Okay.

22 MR. SHOEMAKER:

23 I -- I know I would be advantaged by having an
24 attorney. I'm hoping to get some traction on my own
25 there if somebody will take it on a contingency basis.

1 THE COURT:

2 All right. Do you understand that if you represent
3 yourself today you'll be expected to follow the rules
4 of court, present your case as an attorney would,
5 question witnesses and cross-examine witnesses as an
6 attorney would? Do you understand all of that?

7 MR. SHOEMAKER:

8 I -- I understand what you're saying. I don't know
9 what that means practically speaking.

10 THE COURT:

11 Well, there's a certain way that you have to present
12 your case and make arguments, things like that. We
13 likely won't have witnesses today, so that won't be an
14 issue. But if there are any objections, if you want to
15 make any objections, all of those things would have to
16 be done in accordance with the rules of evidence and
17 the rules of court. And I can't help you with those
18 things, and the other attorneys can't help you either.
19 Do you understand that?

20 MR. SHOEMAKER:

21 Yes, ma'am.

22 THE COURT:

23 Okay. And knowing all of those things and knowing that
24 you're going forward without the assistance of counsel
25 do you still want to go forward today representing

1 yourself?

2 MR. SHOEMAKER:

3 Absolutely.

4 THE COURT:

5 All right. And we also have Ms. Wine who is
6 represented by Ms. Culbreath; is that correct?

7 MS. CULBREATH:

8 Yes, Your Honor.

9 THE COURT:

10 All right. And is she present today?

11 MS. CULBREATH:

12 She is not, Your Honor.

13 THE COURT:

14 All right. And the remainder of the Respondents are
15 represented by Mr. Haynsworth; is that correct?

16 MR. HAYNSWORTH:

17 Yes, Your Honor --

18 THE COURT:

19 All right.

20 MR. HAYNSWORTH:

21 -- except for the John and Jane Doe Respondents.

22 THE COURT:

23 All right. Okay. So everybody except John and Jane
24 Doe. All right. Well, I see that Ms. Wine filed her
25 Motion first. We can start with her. It really is up

1 to you-all who we start with.

2 MS. CULBREATH:

3 That's fine, Your Honor, I'm happy to go. Again, Anne
4 Culbreath here for Ms. Wine. Your Honor, we also filed
5 a rule 12(b)(6) Motion in our Motion with our
6 discussion of --

7 THE COURT:

8 Yes, ma'am.

9 MS. CULBREATH:

10 -- service of process. And today the real crux of it
11 is that 12(b)(6) Motion, Your Honor.

12 THE COURT:

13 All right.

14 MS. CULBREATH:

15 Because when looking at the Complaint -- or Petition
16 filed by Mr. Shoemaker there is zero valid claim for
17 relief against Ms. Wine. Ms. Wine is the housekeeper.
18 She is the maid for Mr. and Mrs. Shoemaker. And in
19 reading the Complaint it appears that the Complaint
20 attempts to set forth two Causes of Action so to speak.
21 One asserting an issue for testamentary capacity of Mr.
22 Shoemaker where Mr. Shoemaker attempts to request The
23 Court to set aside Will and Trust that had written him
24 out of taking under the Estate. And it looks like a
25 second Cause of Action which does not comply with 62-5-

1 303 request that The Court appoint a Guardian ad Litem.
2 And then further ask that The Court charge that
3 Guardian ad Litem to take over the Healthcare Power of
4 Attorney from his two brothers and assign it to someone
5 else. To hire a team to treat his momma's alleged
6 Valium dependency. To replace the housekeeper and then
7 to hire a Trust. Your Honor, those assertions in the
8 Complaint Mr. Shoemaker has failed to state any type of
9 factual assertion or claim against Ms. Wine. There's
10 zero assertion in the Complaint that Ms. Wine has an
11 interest in the Estate or that she is some sort of
12 beneficiary of the Estate. It seems that the
13 Petitioner simply doesn't want her to be her (sic)
14 momma's maid. And there is no assertion under the
15 Statute that she is a proper party under 62-5-101 with
16 regard to assigning and providing for a Guardian ad
17 Litem. If you look at that definition there are six
18 different people that could serve as a party or that
19 constitute a party, and Ms. Wine does not count as any
20 of them. She's not a Protected Person. She's not a
21 Petitioner, a Guardian, Conservator, or ward, and she's
22 not a proper party to this. Your Honor, and we would
23 ask that she be dismissed with prejudice.

24 THE COURT:

25 All right. Thank you, ma'am. Yes, sir, would you like

1 -- let me ask you this: do you want to respond
2 individually or do you want to hear from both attorneys
3 and then respond --

4 MR. SHOEMAKER:

5 I'm --

6 THE COURT:

7 -- to everything?

8 MR. SHOEMAKER:

9 -- taking that on right now.

10 THE COURT:

11 All right. Yes, sir. I'll hear from you.

12 MR. SHOEMAKER:

13 Okay. So I -- I wrote it down, you know, in the
14 interest of being clear. So there -- there are two
15 facts which are important to consider regarding the
16 inclusion of Ms. Wine in this case. On December 7th,
17 2017 my partner, Julie Callaghan who's sitting next to
18 me, and I drove to Greenville from Atlanta where I live
19 to take my parents out to lunch as previously arranged,
20 with my father. When we pulled up to the curb we were
21 confronted in the front yard by Ms. Wine who bluntly
22 and aggressively stated that the lunch was cancelled
23 because my father had had a fall that morning. She
24 then positioned herself between Julie and I and the
25 front door and acted as if she was going to prohibit us

1 from going inside of the house. I said to her "I'm
2 going to see my parents." I walked around her, we went
3 into the house. So for the next hour Julie and I sat
4 and talked with my parents, and about my father's fall,
5 and about the fact they couldn't go out to lunch, and
6 why we were in town that weekend for the Christ Church
7 football event. So as we were talking during this last
8 conversation I had with my father face-to-face -- this
9 is in December of '17. He passed away in July of 2018.
10 Debora Wine was constantly going in and out of the room
11 making a lot of noise trying to demand me to come into
12 my father's bedroom to help her put some sort of bumper
13 under the bed, and generally interrupting my
14 interactions with my parents. And finally I had to say
15 to her "I'm not here to work with you on my father's
16 bed, I'm here to visit with my parents." The second
17 incident that concerns me was an undis -- an
18 undetermined date a couple -- it happened a couple of
19 years before I was aware of it. But Debora Wine and my
20 parents spent an evening driving around Atlanta (sic)
21 removing money from ATM machines because my mother had
22 gotten a phone call from somebody who purported to be
23 in the Dominican Republic and that my son, Peter, who's
24 never been in the Dominican Republic before, since, or
25 afterwards, had been locked up and this guy was going

1 to help them get him out of jail. So my mother bought
2 it. For some reason my father bought it. And Ms. Wine
3 did not have the presence of mind to pick up the phone
4 and call me or my son's mother. I'm told that my
5 mother -- I -- I -- I am guessing that my mother put
6 \$15,000 in an envelope and FedEx'd it to someone in New
7 York where Debora Wine is from. I do not know if Ms.
8 Wine participated in this as a co-conspirator, but I
9 know that she completely failed as a rational
10 caretaker. Now, my father on the day we visited before
11 his death in that December which I previously
12 mentioned, he referred to Ms. Wine like a daughter.
13 You'll also hear somebody in this room talk about being
14 -- feeling very close to my parents. It had this --
15 there was this -- well, I'm not going to go into that.
16 I'm going to try to stick with the facts. Okay. So
17 because of this behavior I reported this incident to
18 the Greenville Police Department probably four weeks
19 before my father died. I sent them a detailed Email
20 about the incident. About my concerns that my parents
21 were incapacitated due to alcoholism and drug
22 addiction. And I asked the policeman who I had spoken
23 with on the phone -- on the phone before sending the
24 Email would he look into it. Three weeks later my
25 father died and I was -- I forgot about this. It

1 became irrelevant somewhat. Since then, and since the
2 funeral, and all the activity around the funeral, and
3 since this January when I read the Will and I found
4 that I had been excluded fully and my children excluded
5 in part compared to the traditional way in which they
6 were going to participate, I just thought "Okay. She's
7 involved in this." She's part of this family unit if
8 you want to call it that, and she's part of the problem
9 of my parents not being able to take care of
10 themselves, and here's somebody who's intimately
11 involved in her life. And that's why I named her. She
12 is -- contrary to what you just hear she is included in
13 the Estate in one or more of the documents. She is to
14 inherit \$50,000 based on some contingency on -- I don't
15 recall. It has to do whether or not she's still in my
16 mother's services upon death. So she is not a maid and
17 she is not a housekeeper, she's more than that. And I
18 believe -- excuse me. I believe that she is
19 potentially -- a potential co-conspirator with my
20 brothers to isolate my parents from me. The result
21 being with what we're talking about today. And that's
22 it about her that I have. Oh, excuse me. One more
23 thing. I have a green card in my case where Debora
24 Wine signed receipt of my original Pleading, 'cause I
25 sent it to my -- my -- my parents' address 'cause I

1 didn't have her address. So, you know, she got the
2 paperwork. It wasn't a failure to serve her. I
3 followed the rules of The Court was you can mail it to
4 them. You can use U.S. Post Office. If they sign the
5 green card they've accepted service.

6 THE COURT:

7 All right. Ms. Culbreath, any response?

8 MS. CULBREATH:

9 Very briefly, Your Honor. If you are reading the four
10 corners of the Complaint there is zero reference at all
11 to Ms. Wine who is the housekeeper who has served in
12 that capacity for many years is anything more than just
13 a housekeeper or maid. This idea that she is some sort
14 of a "co-conspirator" is not in the Complaint. And if
15 it is in the Complaint and it becomes part of the
16 Complaint that will certainly give rise to perhaps a
17 Counterclaim. Your Honor, this is a case where they're
18 asserting that testamentary capacity was unclear on a
19 particular day. It has nothing to do with Ms. Wine.
20 Ms. Wine is not a family member, and she more
21 importantly is not a party under the rules with regard
22 to Guardian ad Litem. There is no reason for her to be
23 in this lawsuit other than apparently spite and
24 harassment, and we would ask that she be dismissed.

25 THE COURT:

1 All right. Okay. All right. Then, Mr. Haynsworth,
2 you're next unless you have anything you would like to
3 add.

4 MR. HAYNSWORTH:

5 I would like to weigh in just as a factual matter, Your
6 Honor.

7 THE COURT:

8 That's fine.

9 MR. HAYNSWORTH:

10 Ms. Moore who is with me has more intimate knowledge of
11 this than I did, but for what it's worth Ms. Wine has
12 now resigned as Polly Shoemaker's housekeeper. She's
13 not in the mix with his mother any longer.

14 THE COURT:

15 All right. Thank you for that.

16 MR. HAYNSWORTH:

17 Well, I'll --

18 THE COURT:

19 Just out of an abundance of caution do you have
20 anything else you would like to add to -- regarding Ms.
21 Culbreath's argument or anything that Mr. Haynsworth
22 has added?

23 MR. SHOEMAKER:

24 I'm trying to focus on the facts and -- and the term
25 "spite," and I don't remember the second phrase --

1 THE COURT:

2 If you're going to address The Court you do need to
3 stand. That's one of those rules you have to know.

4 MR. SHOEMAKER:

5 I -- I respect that. I apologize.

6 THE COURT:

7 Thank you. That's all right.

8 MR. SHOEMAKER:

9 I -- I am focused on talking about the facts and
10 whether or not I have a right to move forward with this
11 litigation. So terms such as "spite" and I don't know
12 what -- harassment, I don't think they belong in this
13 interaction. Thank you.

14 THE COURT:

15 All right. Thank you.

16 MR. SHOEMAKER:

17 That's all I've got.

18 THE COURT:

19 Thank you, sir, for that. All right. Mr. Haynsworth,
20 we'll move on to your -- unless you have anything else
21 you would like to add, or we can --

22 MR. HAYNSWORTH:

23 No. No, ma'am.

24 THE COURT:

25 -- move on to you. Yes, sir?

1 MR. HAYNSWORTH:

2 Your Honor, may it please The Court.

3 THE COURT:

4 Yes, sir.

5 MR. HAYNSWORTH:

6 Your Honor, as Ms. Culbreath related to, Mr. Shoemaker
7 has challenged his father's Will and Trust and he
8 believes that his father was under some type of undue
9 influence at the time that he executed the testamentary
10 documents. He's even put that in his response to my
11 Motion. I don't dispute at all that's what we're here
12 about. That's the problem. He has put in his Petition
13 challenging his father's Will and Trust a whole bunch
14 of other stuff that doesn't belong in a Will Contest
15 challenge. His mother is still alive. If he thinks
16 that she is not competent he is certainly able at any
17 point in time -- unlike this Will Contest where the
18 Statute is fast approaching. If he believes his mother
19 is incompetent and he wants to continue to push that
20 issue, he can do it. But he needs to file the proper
21 Petition to deal with her competency and her care and
22 not lump it in the challenge to his father's Will and
23 Trust. And the rest of my argument about the kicking
24 out his two brothers as Healthcare Power of Attorney
25 and Financial Power of Attorney, and kicking Lesley

1 Moore out as PR and co-trustee of the various Trusts,
2 you know, all of that is fine. If he wants to fight
3 that fight, okay, just do it the proper way. Chapter
4 three of the Probate Code deals with the administration
5 of Wills. That's what he's fighting about. If he
6 wants to go through chapter five and try to get a
7 Conservator appointed for his mother, again, there's a
8 mechanism to do that. So the Motion to Dismiss is not
9 let's dismiss the whole thing and throw him out of
10 court without getting into the merits. Obviously I
11 think it would be stupid to take that position. What I
12 want dismissed is the stuff that's not properly in this
13 proceeding. I don't think he's pled it properly under
14 the Statute, and so that's what we wanted to get
15 dismissed. On the part of my Respondents' Motion for a
16 -- to Dismiss Or In The Alternative To Strike, or for a
17 Motion for A More Definite and Certain Pleading, he is
18 endeavored to clean up his Pleadings in his response to
19 my Motion. I understand that Marshall is Pro Se. I
20 understand that he would not plead it as a lawyer
21 would. And frankly, Your Honor, with his
22 clarifications there's probably enough to respond with
23 a Petition. But my overall request is to clean it up
24 where we're dealing with "My dad cut me out because my
25 mom and my brothers convinced him to. He was under

1 undue influence." Fine. We want to have that fight,
2 let's have that fight. That's why we're here. The
3 rest of the stuff, if he wants to push it, it's
4 certainly within his right, but he needs to file the
5 proper Pleadings to make those fights. So that's why I
6 ask that those things be dismissed.

7 THE COURT:

8 All right. Thank you, sir. Yes, sir, your response?
9 Or before I go there, Ms. Culbreath, did you have
10 anything you wanted to add to that before I --

11 MS. CULBREATH:

12 No, ma'am.

13 THE COURT:

14 All right. Yes, sir, if you would like to respond.

15 MR. SHOEMAKER:

16 Okay. So the -- the -- the way I understood this is
17 there's sort of three components; Debora Wine,
18 Guardianship, and Estate. I -- I'm going to -- I'm
19 prepared for all three, but I -- I would like to --
20 okay. Just a second. Okay. I'll talk about the
21 Guardianship. I -- I've -- I've proposed to change the
22 financial and medical Guardianship of my mother and
23 that the issue be considered with the Will Contest.
24 The facts are, that my mother number one is incapable of
25 managing her own affairs. Number two, she's vulnerable

1 to manipulation by my brothers. And I will talk about
2 that more. And number three, I believe she's ill-
3 served by her current professional advisors. The facts
4 of my -- my mother being vulnerable and not managing
5 her own affairs, my father died -- I was notified about
6 my father's death by my daughter who was in Vietnam who
7 received a call from her mother, who received a call
8 from my brother. The lines of communication were
9 terrible. And obviously my brother didn't -- didn't
10 care enough to call me up directly and tell me about my
11 father. I started to communicate with my mother a few
12 days before my father's funeral and everything was
13 going good and she was looking forward to seeing me,
14 and my kids, and my ex-wife, and her husband, and Julie
15 to come up to the funeral. A few days before the
16 funeral my mother called up and said "Your brother has
17 shown me an Email and you are not welcome to come to
18 the funeral." So a single Email, which has not been
19 produced by the Respondents' counsel, which is
20 purported to have been -- which was provocative and
21 emotional led my mother to make this decision. I did
22 go to the funeral but the entire family with -- with
23 the -- with the exception of Uncle Ed and John, who are
24 in the courtroom, basically shunned me because of this
25 reaction to this Email supposedly. Which will be

1 argued by the Respondents' counsel is what led my
2 father to three weeks before his death -- I'll stick
3 with the script. Okay. I'm sorry. Let's see, the
4 facts of my mother's incapacitance which I believe is
5 due to a long-term Valium addiction is related to my
6 father's long-term alcohol addiction, and the
7 personalities involved. And I think the facts of that
8 are so intricately intertwined with the circumstances
9 of the death -- of the death-bed Will changes that they
10 should be heard together by the same court, the same
11 Judge, and maybe the same jury. The Probate of
12 Greenville, South Carolina according to the website
13 here is the appropriate venue to hear matters related
14 to protection of the mentally ill or chemically
15 dependent. It's also the place for the appointment of
16 a Guardianship. I've also been explained to me by a
17 friend who's a retired lawyer that there's -- there's a
18 concept of judicial economy and that when one lawyer
19 can hear multiple cases that are all interrelated and
20 save time, and effort, and billable hours then it makes
21 sense to do so. And I just don't see any point in
22 going through this whole process twice. That's the
23 bottom-line on that.

24 THE COURT:

25 Yes, sir, your response?

1 MR. HAYNSWORTH:

2 Your Honor, to state the obvious if Mr. Shoemaker wants
3 to bring a proper Action to allege these other things
4 and then move to consolidate it, I suppose he could do
5 that. That's not my issue. My issue is he didn't
6 plead it properly and he didn't proceed under the
7 correct Statute. And if he wants to have that fight --
8 you know if the issue is my mom is not being taken care
9 of, there are certain things he needs to allege in his
10 Petition, and certain things The Court then has to do
11 in response to that. And I get what he's saying "Let's
12 just hear the whole grip I've got all at once." But
13 you've got to properly get to that point where it can
14 all be heard at once, and we're not there. The non-
15 Will Contest, Trust challenge needs to go away. And if
16 it comes back again we have no Statute of Limitations
17 problem. But it's not proper to just lump it in his
18 Petition in his Will causes.

19 THE COURT:

20 All right. Mr. Shoemaker, let me ask you a couple of
21 questions. Help me understand how your mother's
22 capacity -- and I don't know anything about your
23 mother. I don't know how she's doing, or whether she
24 needs a Guardian, or a Conservator, or whether she --
25 she might come in here and make perfect sense and bring

1 me all of her financial documents and be just fine. I
2 don't know. But tell me how that's related to this
3 issue to your father's Estate. How are the two
4 intertwined so that it really would be in the interest
5 of judicial economy to hear everything at the same
6 time? I'm having a hard time with that.

7 MR. SHOEMAKER:

8 Well, I give you an example. Shortly after I filed my
9 Petition I received from Respondents' attorneys this
10 Motion to Dismiss. And I believe that the -- the
11 chronology was such that I then received
12 Interrogatories and a Request for Production that were
13 very aggressive and broad. I took those
14 Interrogatories from Mr. Haynsworth, switched the names
15 around and sent them back to him for my mother, and two
16 brothers, and Ms. Moore to answer. I responded to the
17 Interrogatories and Request for Production within the
18 30 day limitation. I just now received information
19 about the financial -- the size of my father's Estate
20 in the last few weeks -- weeks. There was a long delay
21 in getting the -- Mr. -- the Respondents' attorneys
22 response to my Request for Interrogatories and
23 Production. My claim about my father is based on his
24 medical condition. In the response to the
25 Interrogatories and Production I was not given any

1 records from hospice care. I was given some very --
2 some older records, six months old, for his primary
3 physician. My understanding about hospice care is that
4 once a person is taken out of their primary physician's
5 care the hospice nurse and the hospice caregiver make
6 the decisions. They log the medications. They log the
7 activity. I have no information of that. That
8 information would -- would -- would reflect on what
9 were the interactions between my father and mother.
10 There is an interaction between the incapacity and this
11 notion of a conspiracy which I -- I admit is a
12 grandiose term. But when Julie and I went to visit my
13 father three weeks before his death, we were -- we were
14 shuttled out of his bedroom by my mother. And then
15 when I pleaded with my mother to please let me say
16 goodbye to my father, she refused to let me back in his
17 bedroom. I don't know what conversation she had with
18 him. So everybody in this mess is -- it's just a huge
19 mess and it's taken a while to unravel it. And I just
20 can't see how it would be fair to make me execute two
21 separate lawsuits here of -- of stuff that is so
22 overlapped like it is. That's all I've got to say.
23 Oh, I mean sorry. You asked me a question.

24 THE COURT:

25 Well, I'm still wondering how the two are related. I

1 don't --

2 MR. SHOEMAKER:

3 How the two are related?

4 THE COURT:

5 You've included a lot --

6 MR. SHOEMAKER:

7 Because I -- I'm sorry.

8 THE COURT:

9 -- in your Petition about your mother's capacity, and
10 it's a bit confusing, you had indicated you wanted a
11 Guardian ad Litem appointed. And you wanted the
12 Guardian ad Litem to take over your brothers' -- over
13 the Healthcare Powers of Attorney. Or you wanted the
14 Guardian ad Litem to become the agent pursuant to the
15 Healthcare Power of Attorney and I think a Durable
16 Power of Attorney, and treat your mother's Valium
17 dependency from a Guardian ad Litem. So that's
18 confusing just in and of itself. It may just be that
19 you're not quite using the right term, which is that's
20 what I suspect is going on. But tell me how that's
21 related to your father's Estate and the allegations of
22 your father's testamentary incapacity. How are those
23 two related such that it would be in everybody's best
24 interest just to come on in for I don't know a couple
25 of days and just put up your witnesses, and everybody

1 have their say on everything. Not just your dad's
2 testamentary incapacity, but your mom's capacity as
3 well.

4 MR. SHOEMAKER:

5 Well, there --

6 THE COURT:

7 How are those two related? I'm not seeing it.

8 MR. SHOEMAKER:

9 Well, the -- the -- the primary relationship other than
10 my brothers is the attorney who is the Personal
11 Representative of the Estate and who now is at least
12 according to the communications I had before I
13 initiated the lawsuit with her very intimately involved
14 with running my mother's life. I -- that's Ms. Moore.
15 I -- I asked of her "Well, who are the Medical Powers
16 of Attorney? Who are the Financial Powers of
17 Attorney?" She communicated that to my mother and then
18 communicated back to me. And if you'll let me go over
19 the history of the Estate -- the 20 year history prior
20 to this change three weeks prior to my father's death,
21 I can show you how the personalities are related. How
22 the sequence of events is related.

23 THE COURT:

24 So you're saying you think your mom's capacity came
25 into question three weeks prior to your father's death?

1 MR. SHOEMAKER:

2 I think my brothers' ability to have to -- to convince
3 my mother to exclude her oldest son from my father's
4 funeral, yes, is definitely related to her capacity.
5 And I think the bigger picture of untreated alcohol --
6 untreated alcoholism and drug addition is all over this
7 experience. And if I -- do you mind if I give you sort
8 of my -- the -- the facts as I see them on the Estate
9 issue and how it might be related to this?

10 THE COURT:

11 Well, let's kind of -- let's stick with what we have in
12 front of us.

13 MR. SHOEMAKER:

14 Okay.

15 THE COURT:

16 How long was hospice interacting with your father --

17 MR. SHOEMAKER:

18 I'm -- I'm interested in that --

19 THE COURT:

20 -- to your knowledge?

21 MR. SHOEMAKER:

22 Oh. I -- I think three months. I've gotten no
23 response to the Respondents' counsel on Discovery in
24 that area.

25 THE COURT:

1 And you think those records are going to include
2 interactions between your parents?

3 MR. SHOEMAKER:

4 Oh, they're definitely going to include the fact that
5 people were talking about giving my father injections,
6 which I assume are pain killers, 'cause he was
7 suffocating to death from his disease.

8 THE COURT:

9 Uh-huh.

10 MR. SHOEMAKER:

11 And when -- when I saw him briefly when I visited that
12 final time shortly before his death he seemed un --
13 sort of "whacked out" basically to use a casual term.

14 THE COURT:

15 All right. And to Ms. Wine -- as to Ms. Wine, you
16 indicated she would -- is she a beneficiary under the
17 Trust --

18 MR. SHOEMAKER:

19 In one of these documents --

20 THE COURT:

21 -- is that what you're saying?

22 MR. SHOEMAKER:

23 -- and I'm sure these lawyers know better. But in one
24 of the documents it says she's going to get \$50,000
25 based on certain contingencies.

1 THE COURT:

2 And wasn't one of the contingencies that she continued
3 to work for your mother?

4 MR. SHOEMAKER:

5 I'm not positive about that.

6 THE COURT:

7 Okay.

8 MR. SHOEMAKER:

9 Oh, okay. It's been suggested to me that was only if
10 my father survived my mother and she continued in his
11 care that she would get the \$50,000.

12 THE COURT:

13 All right. I have not read them all. I've looked at
14 some of them, but she may not even be a player in all
15 of this then. Is that --

16 MR. SHOEMAKER:

17 A play -- well --

18 THE COURT:

19 She may not be a party to any of this. If she doesn't
20 receive anything, she's not a beneficiary. If she's
21 not a devisee what's your --

22 MR. SHOEMAKER:

23 Well --

24 THE COURT:

25 What do you have to say about that?

1 MR. SHOEMAKER:

2 -- my take on Ms. Wine is the same as my take on Ms.
3 Moore and indirectly Cary Hall who I copied the Email
4 about Ms. Wine and the police in the elder fraud
5 incident, and there was no response from him, and I
6 copied my brothers, is they are all sort of bit players
7 in this dysfunctional family environment. And the
8 reason I was written out of the Will is because I was
9 confronting the truth, which I've been -- for 33 years
10 I've been trying to get my parents to get -- to -- to
11 get treatment to no avail. And it only alienated me
12 from them. But it's in the interest of some of these
13 professional caregivers who are -- who are on my
14 father's payroll and are now on the Estate's payroll to
15 maintain control over first my father and my mother and
16 make -- and -- and be in the good graces of my two
17 brothers which have now -- now instead inheriting 3.3
18 million dollars they're both going to inherit 5 million
19 dollars. And my daughter -- and my daughter and son
20 who have spent more time with my parents since they
21 were alive than either of my brothers or any of their
22 children, instead of inheriting 1.6 million dollars
23 they're going to inherit -- they inherited \$500,000.
24 And I could go into more evidence about how I think the
25 Will -- the changes to the Will were hasty and

1 unprofessional. There was no videotape taken. There
2 was no medical person involved. I'm not even clear on
3 whether the witnesses were in the room with them. Plus
4 one of the witnesses, Amos Workman, he notarized his
5 own signature on the document. And that final document
6 does not have my father's signature on all four of --
7 on all the pages like the four previous versions of his
8 Estate. So basically there's a 20 year history of four
9 different documents and one Revocable Will that treat
10 his three sons in an equal manner and their children.
11 And three weeks before when I believe he was heavily
12 medicated, which I can't find out unless I get
13 cooperation from opposing counsel, he changes his Will
14 and froze me out.

15 THE COURT:

16 Okay. And tell me how Ms. Wine is related to any of
17 that in your father's testamentary capacity. Tell me
18 --

19 MR. SHOEMAKER:

20 My -- my father looked -- he -- he -- he referred on
21 more than one occasion as Ms. Wine was like a daughter.
22 So perhaps it's been suggested that maybe she ought to
23 be a witness that I depose and subpoena information
24 from. I didn't really understand that distinction when
25 I wrote this Pleading.

1 THE COURT:

2 Other than her being just like a daughter to your
3 parents, tell me is there anything else regarding Ms.
4 Wine.

5 MR. SHOEMAKER:

6 Well, she was probably there the last -- on a daily
7 basis involved with his healthcare for the last three
8 months. And as I indicated earlier in my story she was
9 posing as somewhat of a barrier to me interacting
10 directly with my parents. And she never called me up
11 when this elder fraud happened. Success elder fraud
12 and said "Marshall, your parents are thinking about
13 sending money to the Dominican Republic. Is your son
14 in the Dominican Republic?" I mean potentially there
15 could be a claim there for, I don't know, a lack of
16 care as a housekeeper. I don't know what they -- I
17 haven't decided to pursue that really.

18 THE COURT:

19 Well, that's not before us today.

20 MR. SHOEMAKER:

21 Okay.

22 THE COURT:

23 All right. Anything else you would like to say?

24 MR. SHOEMAKER:

25 Me?

1 THE COURT:

2 Yes.

3 MR. SHOEMAKER:

4 Oh, thank you. No, thank you.

5 THE COURT:

6 I'll give you-all -- anything else you-all need to
7 say?

8 MS. CULBREATH:

9 Very briefly, Your Honor. If you look at the Will that
10 is attached to the Petitioner's Complaint dated June
11 24, 2018 on page seven you will see the provision that
12 discusses Ms. Wine, and it is a situation where if
13 Polly survives Marshall the bequest lapses.

14 THE COURT:

15 Okay.

16 MS. CULBREATH:

17 She is not a taker under this Will, Your Honor. She
18 has zero to do with any of this.

19 THE COURT:

20 Okay. Mr. Haynsworth, anything further?

21 MR. HAYNSWORTH:

22 Briefly, Your Honor.

23 THE COURT:

24 Yes, sir.

25 MR. HAYNSWORTH:

1 Just a response to something Mr. Shoemaker said, Judge.
2 And we're getting into a lot more --

3 THE COURT:

4 I know.

5 MR. HAYNSWORTH:

6 -- behind the scene's history, but --

7 THE COURT:

8 I understand.

9 MR. HAYNSWORTH:

10 -- he felt compelled to clarify a statement, and so let
11 me clarify as well. It should become apparent to The
12 Court already that there is family dysfunction.

13 THE COURT:

14 Uh-huh.

15 MR. HAYNSWORTH:

16 Marshall's been estranged from his mom and dad, and his
17 brother, Sloan, and younger brother, Jonathan, for
18 years. This Email to which he refers was an Email he
19 sent saying he was going to kill his brother. That was
20 the proverbial straw that broke the camel's back as far
21 as dad is concerned. And when we get into the merits
22 you'll see that Marshall was in and out of his father's
23 Estate Plan numerous times over the decades. He has
24 talked to a hundred lawyers by his own admission about
25 taking this case.

1 THE COURT:

2 Uh-huh.

3 MR. HAYNSWORTH:

4 If he wants to take a shot at everyone in the family
5 over everything, that is certainly his right. And
6 quite frankly, Your Honor, to drag his mother through
7 the claims he's making in his dad's Will Contest is
8 going to create a whole other can of worms in the
9 family. And if he wants to have that fight, I think
10 it's important that he fight it correctly. That he
11 file the proper Petition. If he wants to try and force
12 his mom to come in here and force The Court to appoint
13 doctors to examine her and create the additional
14 problems in the family that existed before, that is his
15 right, but he's got to do it correctly. So I would
16 simply request that the part of his case that isn't
17 properly pled be kicked. Bring it back if he wants.
18 But let's just narrow down our fight to daddy's Will
19 and his Trust.

20 THE COURT:

21 Okay. All right, then. Yes, sir?

22 MR. SHOEMAKER:

23 Thank you. So this notion of me being, I don't know,
24 bad son and estranged is completely blown out of
25 context. The first I learned of my father's Estate

1 Plan was he sent me a letter on August 2nd, 2010. This
2 is what he said. "I put your children's one-sixth
3 interest and your one-sixth interest in Trust to
4 protect," and this is a quote, "and in your case
5 because that was a period of uncertainty in your life
6 and marriage." This was -- and he's referring to this
7 non-revocable insurance Trust in 1988. Ten years
8 previous. Or twelve years previous. Second thing that
9 he said in this letter. "If I were doing it today I
10 would have the entire one-third distributed to you
11 outright." The rest of the -- the note is very loving.
12 So that was -- that was 12 years after he wrote his
13 first formal Estate Plan which is worth 4.9 million
14 dollars, and which -- which isn't -- which isn't in
15 play according to legal terminology in this Action
16 here. For the next -- excuse me. For the next ten
17 years he -- he created a Revocable Will and Trust that
18 had three different versions and restatements. The
19 last of which was in February of 2018. Just over five
20 months when he died when he reaffirmed the notion of
21 equity; the sons would be treated in an equal manner.
22 And I guess we can get into the Email and all of that
23 stuff too, but the man over 20 years reaffirmed over
24 and over again I'm going to treat my three sons
25 equally. So this notion that there was some long-term

1 permanent animus is not true and it's false.

2 THE COURT:

3 Okay. All right. Anything else that I --

4 MS. CULBREATH:

5 (Shakes head.)

6 THE COURT:

7 Okay. I just want to make sure I've looked at
8 everything I need to look at. I'm going to take this
9 under advisement. I'm going to have my ruling out to
10 you-all by the end of the week. And, Mr. Shoemaker,
11 does Ms. Campos-Ivey have your contact information? I
12 will likely Email my ruling to the attorneys --

13 MR. SHOEMAKER:

14 Yes, ma'am.

15 THE COURT:

16 -- and I will include you in that, because I don't want
17 to talk to them without you.

18 MR. SHOEMAKER:

19 Thank you.

20 THE COURT:

21 All right. She has your contact information?

22 MR. SHOEMAKER:

23 Yes, we're in Email contact. All of this.

24 THE COURT:

25 Okay.

1 MR. SHOEMAKER:

2 Yes.

3 THE COURT:

4 All right, then. Okay. And that's what I'm going to
5 do. I just want to make sure I've looked at the Will
6 and everything I need to look at. And I will have my
7 ruling out to you by the end of the week. Thank you-
8 all. We'll be adjourned.

9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
10 3:07 P.M.)

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CERTIFICATE OF REPORTER

I, TREASA HIX, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 39 pages represents a true and accurate transcript of the hearing in the Matter of James Marshall Shoemaker, Jr., which was taken by me on the 21st day of October, 2019.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Treasa Hix, Reporter

Notary Public for South Carolina

Commission Expires: 06/13/29

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EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 We are here today in the matter of James Marshall
3 Shoemaker, III. The Petitioner is James Marshall
4 Shoemaker -- I'm sorry. We're here today in the matter
5 of James Marshall Shoemaker, Jr.; correct?

6 MR. BLINCOW:

7 That's correct.

8 THE COURT:

9 The Petitioner is James Marshall Shoemaker, III. The
10 Respondents are Mary Hunter Sloan Shoemaker, Edward
11 Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley
12 Moore, and John and Jane -- or Jan Doe. And we are
13 here on a Motion for Summary Judgment filed by the
14 Respondents. The Respondents are represented by Mr.
15 Knox Haynsworth, III. And the Petitioner is
16 represented by Mr. John Blincow (pronounces Blen co).
17 Am I pronouncing your last name correctly?

18 MR. BLINCOW:

19 That's it. Yes, sir. That's correct.

20 THE COURT:

21 Very well. Respondents provided notice of today's
22 hearing and Mr. Haynsworth, I'll let you proceed.

23 MR. HAYNSWORTH:

24 Your Honor, as a housekeeping matter, and I can address
25 it on the back end or the front end. I received an

1 Affidavit and a Memo opposing my Motion, I guess,
2 yesterday. I wasn't sure whether The Court had that or
3 not. I have some thoughts as to whether that Affidavit
4 is proper and can be considered.

5 THE COURT:

6 I received it today, and I did notice that the
7 Affidavit did not have any signature or execution by a
8 notary public, if you're referring to that issue?

9 MR. HAYNSWORTH:

10 That is, Your Honor. And we're sort of -- on that
11 there are a couple of issues if -- why we're talking
12 about it. And I've got cases I'll hand up and a copy
13 for Mr. Blincow that address these issues. It's got to
14 be notarized. Under rule 5 it is crystal clear an
15 opposing Affidavit has got to be filed two days before
16 the hearing. This was not. This Petition was brought
17 June of '19. Mr. Blincow appeared May of 2020. I've
18 never ever, ever received any Interrogatory Answer
19 update listing any expert witness. Now, obviously had
20 I known about this guy I would have gone and deposed
21 him and would have been able to address it. But for
22 the reason that he's never been identified in Discovery
23 given the length of time, and rule 5, and the fact it
24 is not notarized, I don't think it can be considered
25 for purposes of our hearing today. That's my two cents

1 worth on that issue, obviously. But the important
2 opinion is yours, but I wanted to get that out to the
3 extent the Affidavit is -- has been filed or --

4 THE COURT:

5 All right. I'll let Mr. Blincow respond to that after
6 you have already proceeded with your arguments.

7 MR. HAYNSWORTH:

8 Okay.

9 THE COURT:

10 You may proceed.

11 MR. HAYNSWORTH:

12 Okay. All right, Judge. Would it be possible --

13 THE COURT:

14 It's okay with me if everyone else is okay with removal
15 of Mr. Haynsworth's mask.

16 MR. BLINCOW:

17 It's okay with me.

18 MR. HAYNSWORTH:

19 I figure you're the one in the line of fire and you've
20 got the plexiglass --

21 THE COURT:

22 And I've had --

23 MR. HAYNSWORTH:

24 -- and the distance.

25 THE COURT:

1 -- one shot, and I've got a plexiglass shield. And so
2 I'm about 12 feet from you, so I'm protected.

3 MR. HAYNSWORTH:

4 I'll try not to project any further than --

5 THE COURT:

6 All right.

7 MR. HAYNSWORTH:

8 -- six feet. Your Honor, I don't know if you've had a
9 chance to read our Memo or the Affidavits filed with
10 the Motion, but essentially Marshall Shoemaker, one of
11 three children, has challenged his father's Estate and
12 Trust and brought a lawsuit contending that the Will
13 and Trust should not be considered proper because
14 they're the product of undue influence and lack of
15 testamentary capacity. I have submitted, Your Honor,
16 you know, ten give or take Affidavits, including from
17 Mr. Shoemaker's physician, Danny Grover out at IMA, who
18 saw Mr. Shoemaker I believe eight days before the
19 testamentary documents that bring us here today. And
20 to a man and a woman, as the case may be, all of the
21 Affidavits I submitted specifically address
22 testamentary capacity, and specifically address those
23 people's firsthand knowledge of Jim Shoemaker's
24 competency. And, Judge, probably the most significant
25 fact for you to consider in this overall case is the

1 claim initially that Mr. Shoemaker brought contending
2 that he and his brothers have always been treated
3 equally by their father. That the only possible
4 explanation for Marshall being cut out of his father's
5 Estate plan is undue influence brought to bear by his
6 two younger brothers, Sloan and Jonathan, and by his
7 mother, Polly, and that his dad was out of his mind.
8 And that's the only possible reason that he could have
9 cut Marshall out. Well, Judge, through Discovery, and
10 it's there before you, that's just a misrepresentation
11 to The Court. Marshall Shoemaker was not cut out for
12 the very first time in June of '18. A decade earlier
13 Marshall Shoemaker was completely cut out by both his
14 mother and father. He has been -- at times been
15 treated equally with his brothers, but at other times
16 been treated completely different. The deposition
17 testimony of Marshall Shoemaker and the emails that he
18 sent -- to sort of give you, I guess, the penultimate
19 reason of what happened, in our submissions, Judge,
20 there's an email that Marshall sent his younger brother
21 Sloan essentially threatening to kill Sloan if Sloan
22 came to Marshall's son Peter's graduation. Sloan shows
23 up at his mom and dad's house instead of at graduation
24 having flown to Atlanta. "What are you doing here?"
25 "Oh, I got this email from Marshall." That email

1 tipped off the parents. And it was what I phrase "the
2 straw that broke the camel's back this latest time."
3 There had been a series of episodes of dissension
4 between Marshall and his family. It began in high
5 school and continued off and on until the present day.
6 Lesley Moore has been sued. I'm not exactly sure what
7 the claims are against Ms. Moore. But just like his
8 brothers it has forced Ms. Moore to put her malpractice
9 carrier on notice. It's forced the family to spend
10 tens of thousands of dollars to basically chase down
11 rabbit holes. For the very first time yesterday we see
12 the first bit of potential evidence speaking to these
13 issues. Up until yesterday there was nothing Mr.
14 Shoemaker had submitted at all over the entire course
15 of this lawsuit that took issue with or presented any
16 evidence, scintilla or otherwise, to refute the
17 evidence we've submitted to The Court, which is that on
18 the day he executed the documents Jim Shoemaker had
19 testamentary capacity to do that. As Your Honor is
20 aware it takes less capacity to draft a Will than to
21 draft a contract saying "Give me a hundred dollars and
22 I'll build you a wall." It doesn't require very much
23 at all. And importantly what it requires is knowledge
24 of the condition on the day the documents were
25 executed. There is case law, Your Honor, and I forget

1 the name of the case, but it's a guy who lives in a
2 hollow tree log out in the woods. It's a very, very
3 old case. But the gist of it was you can be crazy as a
4 bed bug, but on the day that you did your documents as
5 long as you knew the objects of your bounty -- and I
6 won't properly articulate the other two criteria. But,
7 again, the point is if you have enough capacity the day
8 you do the documents, that's it. That's what you look
9 to. And there is zero evidence. Zero evidence in this
10 record from the Petition speaking to anything the day
11 the documents were done. On the other hand, Judge, Ms.
12 Moore, who's seated right here, gave a lengthy
13 Affidavit with exhibits attached to it explaining
14 firsthand from her sitting there talking to him and
15 witnessing it the competency of both Mr. And Mrs.
16 Shoemaker. Their long-time -- the Shoemaker's long-
17 time accountant, Martha Louise Ramage Lewis, gave an
18 Affidavit. It was discussed with her over the years
19 the estrangement that existed between Marshall and his
20 family. This was no great surprise that Marshall was
21 cut out. And, Judge I guess, you know, in point of
22 fact there's just no evidence to support their claims
23 period. And there is an enormous amount of evidence to
24 support our position that not only was the documents
25 not the subject of undue influence and that Mr.

1 Shoemaker had capacity. But frankly, Judge, that this
2 lawsuit was not brought for the legitimate purpose of
3 challenging those documents, but was instead brought as
4 a continuation of the family strife that's existed
5 between Marshall and his two brothers, and his mom, and
6 dad. As you may recall, Judge, twice before in this
7 one case The Court has had to sanction Mr. Shoemaker
8 for his conduct. And in my humble opinion this whole
9 lawsuit is just a bigger version of that. It's a jab
10 to stick his family. And it has no basis in fact and
11 it has no basis in law. And final point I would like
12 to make before I side down and shut up: to the extent,
13 Your Honor, that the Affidavit that's been submitted
14 untimely and unnotarized is considered, it doesn't
15 address the standard of care that they need to meet.
16 It's not a scintilla of evidence in a proceeding
17 attacking a Will for undue influence or lack of
18 capacity. And I don't want to misquote, so let me --
19 bear with me, Your Honor. I don't want to --

20 THE COURT:

21 Take your time.

22 MR. HAYNSWORTH:

23 -- spout off a quote that's inaccurate. And, Your
24 Honor, I'm quoting from Russell versus Wachovia Bank
25 353S.C.208, 578S.E.2d329. It's a Supreme -- South

1 Carolina Supreme Court Opinion from 2003. It says "The
2 standard of proof in an undue influence case is
3 unmistakable and convincing evidence. There must be
4 more than a scintilla of evidence in order to defeat a
5 Motion for Summary Judgment. A heightened standard for
6 Summary Judgment is required." So even if the
7 Affidavit submitted in opposition is considered
8 notwithstanding the defects in it, it still doesn't
9 address the legal standard, nor if you read it does it
10 say Mr. Shoemaker lacked testamentary capacity.

11 Whereas all my Affidavits, including from his
12 physician, say he had testamentary capacity. So for
13 those reasons, Your Honor, we believe that the
14 Respondents are entitled to judgment as a matter of
15 law. And unless you have any questions for me right
16 now I'll sit down.

17 THE COURT:

18 Not yet.

19 MR. HAYNSWORTH:

20 Okay.

21 THE COURT:

22 Mr. Blincow.

23 MR. BLINCOW:

24 May it please The Court. Good afternoon, Judge. My
25 name is John Blincow and I do represent the Petitioner,

1 Marshall Shoemaker, III. If I could start and address
2 a couple of things that have been mentioned, and then
3 I'll get to the merits of my argument. First of all
4 there is this contention that the Affidavit should not
5 be considered because it's not notarized. I witnessed
6 Dr. Hughes sign the Affidavit. I'm an officer of this
7 court. I know who he is, and I watched him sign it. I
8 think when it comes down to standing on some sort of
9 procedural rule or letting the case turn on their
10 merits, I think we need let the case turn on its merits
11 rather than kicking the party out of court because an
12 Affidavit has not been notarized by a notary, and
13 instead has been witnessed by a lawyer. And I'm
14 telling you I watched him sign that Affidavit. There's
15 just no question about that. And the law is clear that
16 these cases need to turn on their merits and not some
17 technicality. And we've avoided getting into --
18 whatever the history has been with regard to Marshall
19 and his family really is not relevant. If there was a
20 period of time when Marshall was out of the Will, so to
21 speak, that was followed by long stretches of time
22 where there's letters from Mr. Shoemaker, the dad, to a
23 son ending with "love, dad." There's no question that
24 he was to share equally with his two brothers until
25 June the 24th before he died in July. There's no

1 question about that. So here we are at Summary
2 Judgment. We've got to get over this hump, and to do
3 that we cite to the Affidavit of Dr. Thomas Hughes. He
4 is a board certified neurologist. He has reviewed the
5 medical records. The way this went, Your Honor, is Mr.
6 Shoemaker had this terrible idiopathic pulmonary
7 fibrosis and had it for years and years. And in May
8 he, in consultation with his family and his doctors,
9 decided to become a hospice patient. And he was at
10 home but his disease was such that he had skilled
11 nurses who were doing assessments, so we have a number
12 of records. In June -- in July, excuse me, signed a
13 new Will on June 21st. On July 5th has a real episode
14 and ends up through the emergency room and in the Saint
15 Francis Hospital for five days. So we've got a good
16 stack of records from that admission. And then back
17 home and in the care of another hospice, and so we have
18 the assessments from all of those nurses. And Dr.
19 Hughes has looked at those records and can opine that
20 Mr. Shoemaker had cognitive impairment. Seventy
21 percent of the folks that have idiopathic pulmonary
22 fibrosis have cognitive impairment in some form or
23 fashion. And if you think about it being a spectrum on
24 one hand you could -- if you forget where you put your
25 car keys on one end, and full blown dementia and you're

1 not sure what world you're in on the other hand, the
2 line for testamentary capacity is somewhere between
3 those two extremes. And he can say he clearly had
4 cognitive impairment. This is a progressive disease.
5 It's a situation where you get a little worse each day.
6 He had it for years. And so this doctor can go as far
7 as saying he had substantial cognitive impairment. And
8 there are a number of examples of that in these medical
9 records. For example, we know that when he signed this
10 new Will at the end of June he was on supplemental
11 oxygen all the time, six liters a minute. We know he
12 went and got -- went to the emergency room on July 5th
13 and came home on 15 liters of oxygen a minute. Clearly
14 a fact finder could infer that if he needed 15 liters
15 of oxygen on -- in early July, six liters at the end of
16 June would not have been nearly enough in order for the
17 brain to function. And we acknowledge it's a high bar.
18 We can read the cases. There's no question
19 testamentary capacity is a high bar. But there are
20 examples where the disease was getting the better of
21 Mr. Shoemaker. If he spilled his medicine and became
22 so angry and irate that the nurses and the pharmacist
23 made a note of it, that it wasn't just anger, it was
24 sort of irrational, that is the disease talking. If he
25 was so agitated that the nurse had to give several

1 units of Morphine just to get him to a baseline, that
2 is evidence of significant impairment. And so at the
3 end of the day, yes, there may be ten Affidavits from
4 Mr. Shoemaker's primarily law partners that witnessed
5 him signing the new Will, but there's also evidence
6 going the other way. And The Court is going to have to
7 weigh that evidence. And in order to grant the Motion
8 The Court will just have to reject the other evidence.
9 There's evidence going both ways in this case. You
10 know we could argue that it better falls to a medical
11 expert than a law partner. And Mr. Shoemaker had been
12 retired for years and years. And naturally you sort of
13 lose touch with your friends and so forth. The folks
14 that witnessed the Will being signed in June had seen
15 him less and less and less over the years, and had a
16 smaller sample size to pick from. Never mind the fact
17 that the easiest thing to do would have been to say
18 "Hey, before we make a big decision like this let's get
19 a doctor to look at him and check neurological status."
20 That could have been done and wasn't. So I think at
21 the end of the day the question -- the evidence stacks
22 up on one side, but there's evidence that stacks on the
23 other side. And in order for a fact finder to decide
24 whether he had testamentary capacity in June when he
25 made this new Will, you're going to have to weigh all

1 of the evidence. And that is something that should be
2 done at a full trial on the merits and not at Summary
3 Judgment.

4 THE COURT:

5 Let me ask you: what evidence do you have of undue
6 influence? I mean all you've cited so far is this
7 purported Affidavit of an expert which really relates
8 to mental capacity. And in addition that Affidavit
9 only opines that there was quote "some level of
10 cognitive impairment."

11 MR. BLINCOW:

12 I think -- I don't have it right --

13 THE COURT:

14 So let me go back to my question. What evidence do you
15 have of any undue influence?

16 MR. BLINCOW:

17 I'm not going to answer the question. I meant to
18 mention earlier that that heightened burden of proof
19 applies to an undue influence claim, and not to a
20 testamentary capacity claim.

21 THE COURT:

22 All right.

23 MR. BLINCOW:

24 But there is evidence that Mr. Shoemaker had a meeting
25 with the other two sons and the stockbroker, and there

1 was discussion of "This is my plan." And I think both
2 of the brothers said that was the first time they
3 really understood what sort of Estate was -- had been
4 built up over the years. This son was excluded from
5 that meeting. There are --

6 THE COURT:

7 What does that have to do with undue influence?

8 MR. BLINCOW:

9 Well --

10 THE COURT:

11 Or specifically bearing upon the testator's
12 testamentary act of signing a Will or an Estate for --
13 I mean a Trust Agreement for Estate planning purposes?

14 MR. BLINCOW:

15 Yeah, I get your question, and it doesn't. You're
16 correct. And I've told my client that maybe from a
17 lawyer's perspective anytime you've got that clear and
18 convincing standard, that's a tough road. And we
19 understand that that claim is not as good for us as the
20 testamentary capacity claim. I would also acknowledge
21 that what we've put forth in our response to the Motion
22 and in the Affidavit all deals with testamentary
23 capacity and not undue influence.

24 THE COURT:

25 Do you wish to dismiss the claim for undue influence or

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MR. BLINCOW:

I would rather not dismiss it --

THE COURT:

Okay.

MR. BLINCOW:

-- but I acknowledge that the response is what it is,
and the burden of proof is what it is.

THE COURT:

Okay. Can you tell me why attorney Moore is still a
defendant in this Action?

MR. BLINCOW:

Well, only that she is the Trustee of the Estate.

THE COURT:

Well, I don't think she's named as a Trustee. She's
named individually.

MR. BLINCOW:

I don't have it in front of me. I think that when I
entered an appearance -- if I -- I've tried to make it
clear that I was appearing for the Petitioner. There's
no question no one has any claim against Ms. Moore. I
don't think we've ever said that. She's a Trustee of
the Estate is at issue.

THE COURT:

Okay. So for clarity are you informing The Court that

1 there's no claim against attorney Moore for
2 professional liability or malpractice?

3 MR. BLINCOW:

4 Never has been, and never have we alleged that.

5 THE COURT:

6 Okay. So her involvement in the case according to the
7 Petitioner relates solely to her role or capacity as a
8 Trustee of the Trust or Personal Representative of the
9 Estate?

10 MR. BLINCOW:

11 Correct.

12 THE COURT:

13 Okay. Tell me what evidence you have related to the
14 lack of mental capacity of Mr. Shoemaker, the decedent.
15 Is it all --

16 MR. BLINCOW:

17 It's --

18 THE COURT:

19 -- found in the Affidavit of your expert?

20 MR. BLINCOW:

21 Well, I think the Affidavit of the expert points to the
22 evidence which exists. You know as a practical matter
23 Ms. Shoemaker lives in Atlanta and the two brothers
24 lived in New York and Colorado, and nobody was really
25 involved day-to-day with either parent. So what we are

1 pointing to is the good bit of records -- as I
2 mentioned there's I want to say daily assessment by a
3 nurse beginning in May until he passes away in July.
4 And in there is evidence of the disease talking.
5 Idiopathic pulmonary fibrosis is this terrible,
6 aggressive lung disease, and it -- there's no
7 treatment. And it was a -- the day he had it I think
8 it was -- you know his prognosis was he was going to
9 die from this disease. But what the doctor can talk
10 about and what the nurses could talk about is evidence
11 in those records that supports here is a guy -- well, I
12 should have said this earlier. You know you've got to
13 have oxygen to the brain for it to function normally.
14 And, you know, if you get blue in the lips and short of
15 breath, taking off your pajamas in the morning, that is
16 evidence that you've got impaired oxygen to the brain
17 --

18 THE COURT:

19 Is that a symptom of hypoxemia?

20 MR. BLINCOW:

21 Yes.

22 THE COURT:

23 And what's the difference between that and anoxia, or a
24 lack of oxygen?

25 MR. BLINCOW:

1 I don't -- I would rather -- I don't know.

2 THE COURT:

3 Okay.

4 MR. BLINCOW:

5 But the point is there's no question he had this
6 disease. There's no question it was progressive.
7 There's no question he was getting worse. And towards
8 the end when he decides "I'm going to become a hospice
9 patient, sign a Do Not Resuscitate Order, and live out
10 these days at home," there's assessments which support
11 that his impairment was as the doctor said substantial.
12 Now, the doctor can't -- I don't know that -- only the
13 ultimate fact finder can say is -- was his impairment
14 on June the 24th, was it on this side or that side of
15 the line for testamentary capacity. Knox is right.
16 Dr. Hughes can't say that. He never saw the patient.
17 Never evaluated him. But he can point to plenty of
18 places where the disease is talking. And the disease
19 is saying "He's not of his right mind before he passed
20 away."

21 THE COURT:

22 Is the standard for execution of a Trust the same as
23 for execution of a Will? Or is the Trust Agreement
24 contractual in nature and requiring a higher level of
25 mental capacity?

1 MR. BLINCOW:

2 I don't know the answer to that question. I would like
3 to research it. I've always taken the Will and the
4 Trust together. Meaning they were signed on the same
5 day, I've sort of lumped them and considered that both
6 were the issue is did he have testamentary capacity on
7 June the 24th to sign both. Does that answer the -- in
8 other words I've never --

9 THE COURT:

10 I understand what you're saying. My final question to
11 you is: in the purported Affidavit of Mr. Thomas
12 Hughes, or Dr. Thomas Hughes, M.D., the only conclusion
13 I see is a conclusion of Dr. Hughes that Mr. Shoemaker
14 quote "had some level of cognitive impairment." Does
15 that clear the hurdle for the standard of Summary
16 Judgment if a doctor and your expert cannot opine that
17 the testator, or settlor of a Trust lacked capacity to
18 understand the objects of his affection, or what assets
19 he had, or anything like that, then how could the jury
20 reach that conclusion?

21 MR. BLINCOW:

22 I totally get what you're -- I think the answer is
23 this. There exists evidence that a fact finder would
24 have to weigh and consider to find testamentary
25 capacity. There's ten Affidavits on one side of the

1 scale, and on the other there is evidence of impaired
2 cognition of diminished brain power. And that is going
3 to have to be weighed, and that's not proper at Summary
4 Judgment.

5 THE COURT:

6 And --

7 MR. BLINCOW:

8 I don't know that an expert -- I think you could object
9 if an expert said he did or didn't have testamentary
10 capacity because ultimately the fact finder is going to
11 have to weigh all of that out. In other words I -- for
12 better or worse Dr. Hughes can only go so far. I
13 believe he says in the Affidavit "substantial cognitive
14 impairment." Clearly had it. And because it's
15 progressive and because he was at end stage of his
16 disease, it was substantial. I don't know that anybody
17 -- a doctor can say substantial cognitive impairment is
18 on one side of the line or the other. But the point is
19 there's evidence to weigh and consider to decide that.

20 THE COURT:

21 And what about Mr. Haynsworth's argument that the
22 Affidavit of Dr. Hughes should not be considered
23 because it was not filed 48 hours prior to this
24 hearing?

25 MR. BLINCOW:

1 I would admit the rule says what it says. We go back
2 to I think that these cases need to turn on their
3 merits as opposed to a technicality. We would be happy
4 to hold everything in abeyance. Let Mr. Haynsworth
5 take the deposition, or wait two days and then -- or
6 submit reargument, or whatever. I ended up after work
7 yesterday going to his house and he signed it. Then I
8 raced back to the office and faxed or emailed it, so
9 there's no question about that. But that's an awfully
10 severe remedy under the circumstances.

11 THE COURT:

12 Okay. All right. Mr. Haynsworth.

13 MR. HAYNSWORTH:

14 May it please The Court. Judge, let me work backwards.
15 Rule 5's there for a reason. You know if we're just
16 going to say "Well, technicality, let's don't worry
17 about that because the system's geared to resolved it
18 on the merits," then why have any rules? I mean it
19 couldn't be clearer. And it's not like this is I filed
20 an Affidavit and you had a hearing a week later. My
21 Motion's been pending since November, Judge, of last
22 year. I mean anybody can figure out if one side's got
23 ten Affidavits, including from the guy's doctor, you're
24 going to need something to refute that other than the
25 Petitioner's self-serving testimony. So I cannot

1 opinion on the circumstances surrounding the execution
2 of the Will. In this case, Judge, just like in the
3 Russell case, even if you overlook the other problems
4 with the Affidavit, that doctor never laid eyes on Jim
5 Shoemaker. Jim Shoemaker's doctor, who gave you an
6 Affidavit that he had capacity, is his long-term family
7 doctor. No one knows Jim Shoemaker better than Jim
8 Shoemaker's long time family doctor. This guy was
9 hired to create an Affidavit to try and gum up this
10 Summary Judgment Motion. His Affidavit, even if you
11 consider it, is not a weight of an evidence issue. It
12 is no evidence, and it's certainly not sufficient
13 evidence given the plaintiff's heightened burden to
14 overcome the evidence before The Court entitling us to
15 Summary Judgment.

16 THE COURT:

17 And let me ask you what I asked Mr. Blincow, and that
18 is: do you know what the mental capacity -- what mental
19 capacity is required for execution of a Trust Agreement
20 versus a Last Will and Testament? Is there a
21 difference because the Trust is contractual in nature,
22 or is it the same?

23 MR. HAYNSWORTH:

24 Your Honor, I will parrot Mr. Blincow's --

25 MR. BLINCOW:

1 (Talking over each other.)

2 MR. HAYNSWORTH:

3 Yeah, you got us both there.

4 THE COURT:

5 You might want to ask the person beside you.

6 MR. HAYNSWORTH:

7 (Confers with Lesley Moore.)

8 THE COURT:

9 And I should know the answer to that but I don't know

10 --

11 MR. HAYNSWORTH:

12 We believe after consultation, Your Honor, it is the
13 same standard.

14 THE COURT:

15 All right.

16 MR. BLINCOW:

17 Well, then I was right and didn't even know it.

18 MR. HAYNSWORTH:

19 So -- yeah. So the two blind hogs have now confirmed
20 that we have --

21 THE COURT:

22 Okay.

23 MR. HAYNSWORTH:

24 -- had the right the law.

25 THE COURT:

1 Okay. Well, Mr. Blincow, any response?

2 MR. BLINCOW:

3 Yeah. Please. My memory wasn't good but it is what I
4 recall. After I appeared -- and if you look at the
5 caption that I used when we filed this filing
6 yesterday, Lesley R. Moore, Esquire, the defendant, is
7 sued as Personal Representative as -- and Trustee. So
8 --

9 THE COURT:

10 Well, this is a Brief filed. I mean it doesn't --

11 MR. BLINCOW:

12 I'm just --

13 THE COURT:

14 Changing that in the caption doesn't really change the
15 substance of the original Petition --

16 MR. BLINCOW:

17 Fair --

18 THE COURT:

19 -- or Complaint.

20 MR. BLINCOW:

21 Fair enough. But when I stepped in there was never any
22 question that this -- she was a party by virtue of the
23 fact she was the Trustee.

24 THE COURT:

25 Okay. Was your client alleging any wrong doing as

1 Trustee or Personal Representative?

2 MR. BLINCOW:

3 No.

4 THE COURT:

5 All right. All right.

6 MR. BLINCOW:

7 Well, he was, but -- he was. Whatever, his Petition
8 says what it says, but I'm saying that now our position
9 is that she's a party simply by virtue of the fact
10 she's the Trustee.

11 THE COURT:

12 All right. And is there any evidence of any wrong
13 doing by Ms. Moore as Personal Representative or
14 Trustee?

15 MR. BLINCOW:

16 No, sir.

17 THE COURT:

18 All right.

19 MR. BLINCOW:

20 And I --

21 THE COURT:

22 I just wanted to clarify.

23 MR. BLINCOW:

24 Yeah, I do. I really do think this Russell case is an
25 undue influence case. And so to the extent they

1 concluded that a doctor's testimony didn't change the
2 result, that was not a testamentary capacity situation.
3 I think the law is clear on that.

4 THE COURT:

5 All right.

6 MR. BLINCOW:

7 You know it says, I believe in the line, the
8 highlighted parts -- I've read this case, but I don't
9 have it in front of me. But there's a heightened
10 standard for undue influence, but that is not the case
11 for testamentary capacity. So we take the position
12 that the doctor's Affidavit doesn't count because a
13 different level of proof is -- would not be accurate.
14 You know it would be just -- we could argue that an
15 Affidavit from a lay person is not as important as
16 someone who knows what they're talking about when they
17 talk about chronic idiopathic pulmonary fibrosis with
18 hypoxic respiratory failure. There is evidence that
19 the deceased lacked testamentary capacity, and that
20 needs to be weighed and considered.

21 THE COURT:

22 All right. Well, this is an interesting case and set
23 of facts, and I'm going to have to give it careful
24 deliberation and consideration. And I can tell you at
25 first glance it doesn't appear to be evidence

1 sufficient to withstand Summary Judgment on a cause of
2 action for undue influence. But I'm going to have to
3 do my homework and give everything proper consideration
4 before reaching any decision on this matter. I
5 appreciate both sides informing The Court of all of the
6 relevant facts, and circumstances, and supplementing
7 the Motion with appropriate Affidavits. And so you've
8 both done an excellent job, and I appreciate that. And
9 I'm going to weigh through these materials and have a
10 decision hopefully within the next week or so.

11 MR. HAYNSWORTH:

12 Thank you. I appreciate it.

13 MR. BLINCOW:

14 Thank you.

15 THE COURT:

16 Thank you very much. We're adjourned.

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
18 2:55 P.M.)
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CERTIFICATE OF REPORTER

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3 I, Treasa Hix, a Notary Public in and for the State of
4 South Carolina, do hereby certify that the foregoing hearing
5 was taken before me on the date and at the time and location
6 stated on page 1 of this transcript.

7 That the deponent was duly sworn to testify to the
8 truth, the whole truth, and nothing but the truth.

9 That I am not related to nor the employee of any of the
10 parties hereto, nor related to or employed by any attorney
11 or counsel employed by the parties hereto, nor interested in
12 the outcome of this action.
13
14

15 _____
16 Treasa Hix, Reporter

17 Notary Public for S.C.

18 Commission Expires: 6/13/29
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1 believe that the need for an opposing Affidavit wasn't
2 something that the Petitioner figured out well before
3 now. Again, the whole purpose of Discovery -- and I
4 waited a long time, Judge, after I filed my Motion
5 before I requested a hearing because I knew Mr. Blincow
6 once he got in the case he needed an opportunity to do
7 Discovery. If he wanted to depose any of my affiants,
8 he needed to have time to do that. No sense in trying
9 to get a hearing before he had been able to do his
10 Discovery. You know Interrogatories are there for a
11 reason. If you're going to list an expert, list it so
12 Knox can go depose him so we don't get in the situation
13 we're in now where on the day that we should be able to
14 resolve this case we're throwing in problems that are
15 not excusing or neglect kind of problems. They're
16 problems that everyone involved knew or needed, and
17 everyone involved knew what the rules were, yet a day
18 before this hearing that's been set for quite a while
19 we get this Affidavit from a doctor who's never laid
20 eyes on Mr. Shoemaker, and an argument with you that
21 that's enough. That what we need to do, Judge, is
22 weigh -- it's weighing the evidence. "My Affidavit
23 versus the ten that Knox submitted." Well, Judge,
24 again, you didn't list the guy as a witness. You
25 didn't file the Affidavit on time, it ain't notarized.

1 All three are very problematic. If you consider it, it
2 still doesn't speak to two very important things;
3 testamentary capacity and what Mr. Shoemaker's
4 condition was the day he executed the documents. The
5 only evidence in this case of Mr. Shoemaker's condition
6 that day is Ms. Moore's Affidavit who was sitting right
7 there with him and had been working on the latest
8 Estate planning documents, and Martha Louise Ramage
9 Lewis, and then the two witness. All of those people
10 have firsthand personal knowledge of his condition the
11 day the documents were executed. And to a man and a
12 woman all of them explained that they're aware of
13 what's required for testamentary capacity. That he had
14 it that day. Ms. Moore's Affidavit goes into great
15 lengths to explore her interaction with Mr. and Mrs.
16 Shoemaker to make sure that these were their wishes.
17 They were -- articulated them correctly. They were
18 competent to make those requests. Let me jump for a
19 second too. It is wrong to claim that any of these
20 Pleadings were changed as to Ms. Moore. She was sued
21 as a defendant personally. And the allegation is, I'm
22 reading from page seven of Mr. Shoemaker's Petition
23 filed June 27 of '19 in this court, "The attorney is
24 presently tasked with and compensated for administering
25 the Will and managing my father's Revocable Trust.

1 Lesley Moore knew or should have known my father's lack
2 of capacity and the undue influence of my mother and
3 brothers, and yet did nothing and allowed her personal
4 prejudice and her self-interest in earning fees for
5 services as Personal Representative, Trustee, and/or
6 counsel to the same to cloud her judgment. As such she
7 is unable to fulfil her fiduciary duties of loyalty to
8 all beneficiaries, including me and my children. The
9 Court remove Lesley Moore from serving as Personal
10 Representative of my father's Estate and Trustee of any
11 Trust," et cetera, et cetera. Lesley has been accused
12 of wrong doing in this lawsuit. John represented some
13 facts to this court, and let me represent some facts.
14 I know for a fact she had to put her malpractice
15 carrier on notice 'cause she got sued by Marshall in
16 this lawsuit. And two years later all of a sudden "Ah,
17 we don't have any evidence against Ms. Moore. That was
18 just a typo." Huh-uh, Judge. That is not how the
19 legal system works. And there are responsibilities
20 attached for making allegations against people, and
21 dragging them into court, and forcing them to pay to
22 the defend themselves when they did nothing wrong. On
23 this Affidavit issue, again, I -- there is zero excuse
24 for not listing that man before now. Zero excuse.
25 We've done a bunch of depositions since John Blincow

1 was retained as counsel, and I ain't heard mention one
2 of any expert until out of the blue this guy's
3 Affidavit comes in. And finally, Judge, if I could
4 turn your attention back to the Russell v. Wachovia
5 case that I referenced earlier -- in fact if you'll let
6 me approach enough to hand it to you --

7 THE COURT:

8 Sure thing.

9 MR. HAYNSWORTH:

10 -- I can give you a copy. I have highlighted
11 identically on your copy, Mr. Blincow's copy, and my
12 copy what I thought was important, Judge. For purposes
13 of my argument right now if you'll flip over to page
14 five of eight, and I've highlighted a provision that
15 says "Appellants argue that two expert witnesses, both
16 medical doctors, testified the testator was subject to
17 undue influence, and that this testimony is enough to
18 withstand Summary Judgment." We disagree. Neither of
19 the experts examined the Testator. Both experts
20 testified the Testator was competent to execute a Will.
21 Absent examination of the Testator by the expert on
22 opinion that the Testator was mentally incompetent, and
23 therefore more susceptible to undue influence, we fail
24 to see how expert medical testimony can be provided as
25 to undue influence. Further neither expert based his

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EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 All right. Good afternoon. We are here in the matter
3 of James Marshall Shoemaker, Jr, case number
4 2018ES2301729. And we are here today on Petitioner's
5 Motion and Motion to Recuse and Vacate seeking the
6 recusal of yours truly and seeking an order vacating
7 the prior order of the The Court granting Summary
8 Judgment to the Respondents. It appears that the
9 interested parties are present. Mr. John Blincow
10 represents the Petitioner, and he is present. And Mr.
11 Knox Haynsworth, III is present on behalf of the
12 Respondents. So, Mr. Blincow, I'll let you tell me
13 about your Motion.

14 MR. BLINCOW:

15 Yes, sir. May it please The Court and good afternoon.
16 My name is John Blincow and I represent the Petitioner
17 Marshall Shoemaker, III. As you know we have filed a
18 Motion in this court asking you to recuse yourself from
19 hearing this case and in a related case involving the
20 same parties and the Estate of Mrs. Polly Shoemaker.
21 The basis of our Motion is as you set out to us in an
22 email in September where you described being in a co-
23 counsel relationship with a lawyer name Stanley McLeod.
24 Mr. McLeod and Mr. Haynsworth are law partners. And on
25 that basis we filed our Motion and implicated Canon 2

1 of the Code of Profession -- of the model rules which
2 is codified and made part of our South Carolina
3 Appellate Court rules. And Canon 2 is the rule that
4 says, Judge, that a Judge shall act at all times in a
5 manner that promotes public confidence and the
6 integrity and impartiality of the judiciary. This
7 requires a Judge to avoid impropriety and the
8 appearance of impropriety. So that is the basis of our
9 Motion. The test for appearance of impropriety is --
10 the test for appearance of impropriety is whether the
11 conduct would create in reasonable minds a perception
12 that the Judge violated this code or engaged in other
13 conduct that reflects adversely on the Judge's honesty,
14 impartiality, temperament, or fitness to serve as a
15 Judge. So that's the test. And, you know, the facts
16 are can a Judge hear a case involving a law firm while
17 simultaneously working with that law firm on other
18 cases in a different court? That's the crux of it.
19 The first thing that occurred to me, and I guess it was
20 because I was in law school with -- it was a Family
21 Court Judge named Judge Segars-Andrews and she had a
22 husband who was a lawyer in Mount Pleasant and she
23 heard a Family Court case -- a divorce case, and it
24 turns out that her husband had been co-counsel with the
25 lawyer for the wife in that Family Court case. And it

1 went round and round but it ended up in the -- at the
2 Judicial Merit Selection Committed -- Committee. And
3 they decided that she needed -- she should have recused
4 herself based on the relationship her husband had with
5 lawyers for one of the parties. And the failure to do
6 that ended up -- and the committee voted unanimously
7 that her conduct not recusing herself created an
8 imperpearance -- an appearance of impropriety. And
9 then voted seven to three finding that she lacked the
10 required ethical fitness to continue on the Bench. And
11 so they didn't clear her and she was not reappointed by
12 the General Assembly and isn't a Judge today. She
13 appealed that finding by the Judicial Merit Selection
14 Committee to the Supreme Court, and they denied her
15 request and didn't give her any relief. Judge, this
16 case is even stronger in terms of the relationship
17 between The Court and lawyers for one party in that in
18 Judge Segars' case it was an indirect relationship.
19 She benefitted because her husband got legal fees for
20 working on a case with lawyers for one party, as
21 opposed to in this case you benefitting directly from
22 working on a case with Mr. Haynsworth's law partner.
23 And the other thing is that this case, ours, there's an
24 ongoing relationship. In other words Judge Segars-
25 Andrews testified that she didn't even remember that

1 her husband had worked with lawyers for the wife in a
2 case before her, and in our case it's an ongoing
3 situation. After I filed my Motion I did a little
4 further digging and found a couple of authorities I
5 would like to hand up (counsel hands up documents).
6 You know our -- the guidepost of these model rules of
7 judicial conduct are model rules. The first thing I
8 handed up the Ohio Supreme Court interpreting the same
9 rules that we have found that a part-time referee
10 should disqualify himself in a proceeding in which a
11 party is represented by an attorney with whom the part-
12 time referee co-counsels on related -- on unrelated
13 cases in private practice when a co-counsel case is
14 ongoing or when a co-counsel case has been completed
15 and the fees have not been fully earned -- have been
16 fully earned but not received. The corollary rule is a
17 part-time referee should disqualify him or herself in a
18 proceeding in which a party is represented by a law
19 partner when a co-counsel case is ongoing or when a co-
20 counsel case has been completed and the fees earned but
21 not received. So I think that is on all fours with the
22 situation that we have here. And if you look at the
23 last page of what I handed up the basis, they're
24 construing the same rules. And this Supreme Court of
25 Ohio says "Potential conflicts abound because of the

1 personal, professional, and financial aspects of the
2 relationship." In other words it's not just a
3 financial relationship. You could have a personal
4 relationship with Mr. McLeod. You could think he's a
5 good lawyer. You could appreciate working with him,
6 and that gives an appearance of an impropriety or the
7 perception that you might be partial to one side or the
8 other. So again it's not just the fact that there's a
9 financial relationship. There's that and potential
10 conflicts abound because there's a personal and
11 professional relationship.

12 THE COURT:

13 And tell me again where is that? You mentioned on the
14 last page you pointed out?

15 MR. BLINCOW:

16 Yeah, the last page, the second paragraph and page --

17 THE COURT:

18 And there were multiple items you handed up. The first
19 one --

20 MR. BLINCOW:

21 Yeah, yeah. Okay. So the first --

22 THE COURT:

23 -- is the Supreme Court of Ohio.

24 MR. BLINCOW:

25 Right. If you go to page three --

1 THE COURT:

2 Page three.

3 MR. BLINCOW:

4 -- of that --

5 THE COURT:

6 So the second to last page?

7 MR. BLINCOW:

8 Second to last page. Excuse me. The second paragraph,
9 six -- five -- five lines down is where it says
10 "Potential conflact -- conflicts abound because of the
11 personal, professional, and financial aspects of the
12 relationship." That is a co-counsel relation -- a
13 part-time Judge being in a co-counsel relationship with
14 a lawyer while also hearing a case when that lawyer's
15 firm represents one side or the other.

16 THE COURT:

17 And in this case it was a case where --

18 MR. BLINCOW:

19 It doesn't say.

20 THE COURT:

21 well, it says "when attorneys co-counsel on cases and
22 divide fees even though they are not partners or
23 associates in a firm there's a professional
24 relationship which could give an appearance of
25 impartiality."

1 MR. BLINCOW:

2 That's right.

3 THE COURT:

4 okay.

5 MR. BLINCOW:

6 And the corollary applies here, which is recusal is
7 proper if Mr. McLeod was representing the Respondents,
8 and recusal is proper for the same reasons if one of
9 Mr. McLeod's partners or associates is representing a
10 party in a case before you.

11 THE COURT:

12 okay.

13 MR. BLINCOW:

14 And they do go on if you look at page three, question
15 two, they make a distinction if Mr. McLeod and Mr.
16 Haynsworth were partners in the sense that they shared
17 office space that would not be a relationship that
18 would be improper. But because they are not just
19 sharing office space and they are a true partnership
20 the same reasons that would apply would make recusal
21 appropriate -- if Mr. McLeod were representing
22 Respondents would make it appropriate because his law
23 partner is representing the Respondents here.

24 THE COURT:

25 okay.

1 MR. BLINCOW:

2 All right. And the last thing if you'll look at the
3 next thing I handed up. It's a one-page document and
4 it's our Opinion 12-2013. In Ohio the Supreme Court
5 rides herd over advisory opinions for the judiciary.
6 And in there I guess there's a committee -- an advisory
7 committee on standards for judicial conduct. And they
8 issued an Opinion 12-2013. And this is the closest
9 thing I could find in South Carolina. You know if you
10 think about it most Judges aren't part-time. This was
11 a case where there was a Judge who was becoming a Judge
12 and the issue was could he receive fees for work with
13 another lawyer? And The Court said "Yes, you could do
14 that." But if you look at the last paragraph "Until
15 all the fees are paid the Judge should not preside in
16 cases in which the attorney with whom the Judge is
17 sharing fees appears as counsel."

18 THE COURT:

19 okay.

20 MR. BLINCOW:

21 So I think, you know, it's -- our position is pretty
22 straight forward. Under the rules of Canon 2 and an
23 appearance of impropriety should a court recuse itself
24 when a law firm -- when The Court is working with a law
25 firm as co-counsel while at the same time hearing a

1 case where one side is represented by that same firm.
2 We think the result that is compelled is that The Court
3 should step aside. And beyond that, I mean all of
4 these cases talk about The Court has the discretion to
5 -- I'm -- this is Blincow paraphrasing but if it's a
6 close call perhaps the best thing and the most
7 judicious thing and the proper thing is to exercise
8 discretion and step aside. So I think here we've got
9 both. I think if you look at this it's a situation
10 where The Court really -- the law compels The Court to
11 step aside. But even if The Court doesn't agree with
12 that, the proper thing to do and exercise of its
13 discretion is to step aside and let someone else hear
14 the case.

15 THE COURT:

16 All right. Thank you. Mr. Haynsworth?

17 MR. HAYNSWORTH:

18 Thank you, Judge Jennings. Judge, I think the law
19 compels you to continue to hear the case that you are
20 in the middle of hearing. Let me work a little
21 backwards on some of what Mr. Blincow handed up. These
22 cases out of Ohio, I didn't have a chance to read them
23 but very quickly but it appears to me that that case,
24 beyond being an Ohio case, is dealing with a situation
25 where the Judge and in our example, me, are splitting

1 fees with one another. That was obviously not the
2 situation. You and I have no cases in which we are
3 representing co-counsel. As I understand it from Mr.
4 McLeod it was not a situation, also one of the cases
5 Mr. Blincow referenced, where he was involved and
6 you're being hired. You-all both got hired
7 independently by the client. And that's the extent of
8 you-all's connection. Nothing I have seen Mr. Blincow
9 hand up or talk about speaks to that situation. They
10 speak to much more obvious conflicts or the appearances
11 of conflicts. One comment, Judge, and it's an
12 objection I've got to the Motion that was filed. Yet
13 again it's been represented in the document filed with
14 this court Marshall Shoemaker was treated equally by
15 his family except for the Last Will. That's just
16 factually inaccurate. And that inaccuracy is part of
17 the Motions that we brought before you. Beyond my
18 editorial comment on that, Judge, let me speak to a
19 couple of the cases that Mr. Blincow cited in his
20 Motion. One of the cases that he quoted from is the
21 A.T. Massey U.S. Supreme Court case. And he attempted
22 to analogize that case as somehow involving money that
23 if a Judge is being paid money by a litigate before it
24 somehow creates this impropriety. You know, read the
25 case, Judge. The head of Massey Coal gave three

1 million dollars to the Judge's election campaign to get
2 a particular Judge elected who ruled in his favor when
3 the Appeals Court heard an adverse decision against
4 Massey Coal. And this opinion from the U.S. Supreme
5 Court goes on to talk about what an extraordinary case
6 it was, and that due process clause incorporated in the
7 common law rule that a Judge must recuse himself when
8 he has a direct personal substantial pecuniary interest
9 in the case. It's apples and oranges, Judge. It's not
10 South Carolina law. It's not a South Carolina Judge,
11 and to the extent it stands for anything. It has
12 nothing to do with the situation before you. The Judge
13 Segars-Andrews case, Judge, let me make a couple of
14 comments on that. I pulled and read the complete
15 report of Canon's qualifications that Mr. Blincow cited
16 from. A couple of things I think it's important to
17 consider. When she denied the Motion to recuse
18 herself, that was appealed. South Carolina Court of
19 Appeals concluded that Judge Segars-Andrews was correct
20 in her interpretation of the law concerning the merits
21 of the case and her recusal. So I don't want this
22 court to think that Judge Andrews did anything wrong
23 and a higher court said she should have recused
24 herself. That's not at all what happened, and that
25 wasn't The Court's opinion. She got mired in the

1 politics of how Judges get dealt with down in Columbia,
2 and the fact that her husband got a huge fee. And I
3 think this is correct. I think the difference there,
4 Judge, is her husband -- excuse me. She had ruled on
5 an issue that was adverse to the very litigate or his
6 relative. I may have that wrong. Maybe his son. In
7 this situation there is nothing. There is no other
8 case that Stanley McLeod, or you, or I have involving
9 Marshall Shoemaker. There is no extra judicial
10 dealings that you are having that have any bearing on
11 this. And so other than to try and leverage the fact
12 that you are a practicing attorney as well as a Judge,
13 and you obviously are in practice with other attorneys,
14 there is not an issue here involving recusal. You have
15 dealt impartially with the parties. Your obligation
16 obviously is to continue to do that. And I think you
17 do both sides a disservice if you were to exercise your
18 discretion and recuse yourself, because both of us now
19 have to start over again on a lot of what we've been
20 through. And that's not fair to the litigants. It's
21 not efficient for the judicial system, and there's no
22 reason to go there. So for those reasons, Your Honor,
23 I would respectfully request you deny Mr. Blincow's
24 Motion.

25 THE COURT:

1 All right. Thank you. And let me ask some questions
2 first of Mr. Blincow.

3 MR. BLINCOW:

4 All right.

5 THE COURT:

6 Case law in South Carolina says that "The party seeking
7 disqualification must do more than merely allege bias
8 on the Judge's behalf. The party must present some
9 evidence of judicial prejudice or bias."

10 MR. BLINCOW:

11 Yeah.

12 THE COURT:

13 "When an appellant offers no evidence to support his
14 claim of partiality the trial Judge is correct to deny
15 a Motion for recusal." Where is the evidence? You
16 haven't alleged any evidence of judicial prejudice or
17 bias, so I'm going to give you the opportunity now to
18 --

19 MR. BLINCOW:

20 Yeah.

21 THE COURT:

22 -- demonstrate it.

23 MR. BLINCOW:

24 Here's the difference. The case that you're quoting
25 from was an Ex Parte communication case. It was a

1 Canon 3, not a Canon 2 appearance of impropriety case,
2 and here's the difference. If I called you this
3 afternoon and said "Judge, I've got a flat tire on the
4 interstate I'm going to be 30 minutes late" --

5 THE COURT:

6 Well, this is Segars-Andrews' case I just quoted. This
7 is Simpson v. Simpson 377S.C.519 Court of Appeals South
8 Carolina --

9 MR. BLINCOW:

10 Right.

11 THE COURT:

12 -- 2008.

13 MR. BLINCOW:

14 So then my answer would be after The Court of Appeals
15 came the Judicial Merit Selection Committee that found
16 unanimously that she should have recused herself based
17 on the relationship her husband had with lawyers for
18 the wife. And after that she appealed to the Supreme
19 Court -- let me get this right. And the Supreme Court
20 denied her request and did not give her any relief.
21 I've got it right here.

22 THE COURT:

23 But, again, I'll ask what is the evidence of judicial
24 prejudice or bias in this case?

25 MR. BLINCOW:

1 well, when you're relying on an appearance of
2 impropriety you don't have to show actual impropriety,
3 it's just the perception. What we're relying on is
4 exactly what you relayed to the parties which is "I'm
5 in a co-counsel relationship with a lawyer in a firm
6 while at the same time hearing a case with that firm
7 where one of the parties is represented by that firm."
8 The rule on appearance of impropriety is intentionally
9 vague 'cause you're never going to be able to come up
10 with all the scenarios where that could happen. The
11 test is clear in our state of what the analysis should
12 be on appearance of impropriety. It doesn't have
13 anything to do with showing actual bias or anything
14 actually improper. Going back again -- and I don't
15 think there's any question about that. The test is
16 whether the conduct would create in reasonable minds a
17 perception that the Judge may have a reason to be
18 impartial -- or partial.

19 THE COURT:

20 Okay.

21 MR. BLINCOW:

22 Does that answer the question?

23 THE COURT:

24 Well, I'm not sure that --

25 MR. BLINCOW:

1 Let me --

2 THE COURT:

3 Hold on. Let me finish. I'm not sure what you're
4 saying about if there's a mere appearance of
5 impropriety that that stands alone and disqualifies the
6 Judge. And it appears to me in the case law I have
7 reviewed that you must show more than that. That under
8 judicial Canon rule 3E(1) our Supreme Court has stated
9 that "The movement or Petitioner must show some
10 evidence of the bias or prejudice of the Judge." And
11 I'm citing that case of Simpson v. Simpson which was
12 citing and quoting Lyvers, L-y-v-e-r-s, v. Lyvers. And
13 again in 1998 in the case of Roche v. Young Brothers,
14 Inc. our Supreme Court has said in a dispute involving
15 judicial Canon rule 3E(1)(a) if there is no evidence of
16 judicial prejudice a Judge's failure to disqualify
17 himself will not be reversed on appeal. A Judge's
18 impartially might reasonably be questioned when his
19 factual findings are not supported by the record. So,
20 I mean, I can research that issue more, but you're
21 telling me that no evidence of prejudice or bias is
22 necessary if there's a mere appearance of impropriety?

23 MR. BLINCOW:

24 Under the appearance of impropriety test it was well-
25 established and understood that proof of actual

1 misconduct is not required.

2 THE COURT:

3 Okay. What are you citing?

4 MR. BLINCOW:

5 That is this John Freeman Law Review article that cites
6 to -- I'll find it for us. Something at page 1918.

7 I'll have to -- well, it's footnoted at footnote 24.

8 See id. at 1918. So I've just got to figure out what
9 the --

10 THE COURT:

11 Well, I'll let you --

12 MR. BLINCOW:

13 I can --

14 THE COURT:

15 -- submit that to The Court following the hearing, if
16 you would?

17 MR. BLINCOW:

18 Sure.

19 THE COURT:

20 Now, and tell me this: our Court of Appeals and/or
21 Supreme Court may find conduct of a Judge to be --
22 well, let me state it a different way. The committee
23 on, what, Judicial --

24 MR. BLINCOW:

25 Fitness, maybe.

1 THE COURT:

2 -- Fitness can find in one case that conduct may
3 disqualify a Judge, and our Court of Appeals may find
4 that the same conduct does not disqualify a Judge.
5 Whose opinion controls here?

6 MR. BLINCOW:

7 Well, the fact that our Supreme Court let stand the
8 Judicial Fitness Committee's decision would mean that
9 the decision that recusal was proper, they -- the
10 Supreme Court let that stand.

11 THE COURT:

12 Well, refused to hear the case; right?

13 MR. BLINCOW:

14 Correct.

15 THE COURT:

16 So the Supreme Court issued no finding, no decision, no
17 opinion on the matter?

18 MR. BLINCOW:

19 The Supreme Court was given the opportunity to say is
20 The Court of Appeals right or is the Judicial Merit
21 Selection Committee, which came later, are they right;
22 and they left it alone. And she was not reelected or
23 what didn't get out of the committee so that she could
24 be reelected by the General Assembly.

25 THE COURT:

1 All right. You allege in your Motion that it is "clear
2 that there is some sort of financial relationship and
3 Judge Jennings is being paid for his work." Why is
4 that clear?

5 MR. BLINCOW:

6 Well, again, in your email you say you're in a co-
7 counsel relationship. I think we heard today that you
8 were hired by Mr. Gafaary, and I assume you're getting
9 paid for your work so you've got two cases pending.
10 You mention in there there may be a chance for a third
11 co-counsel relationship. I am assuming that you're
12 getting paid for your work. I'm not suggesting that
13 that's improper but that creates a relationship -- a
14 co-counsel relationship with Mr. McLeod and his firm.

15 THE COURT:

16 And what if a Judge is not being paid, has not billed
17 any time for something, and has not appeared in court
18 or done any work on a file?

19 MR. BLINCOW:

20 Well, I can see it both ways. You --

21 THE COURT:

22 Well, I'm telling you I --

23 MR. BLINCOW:

24 If you were working pro bono --

25 THE COURT:

1 Let me just disclose this to you right now. I have
2 filed a Notice of Appearance in the cases I have
3 referred you to. I have not billed an hour, or a point
4 one of an hour on either of the files. Have not been
5 paid a dime. Have not recorded any time in either
6 case. Does that change your perspective or your
7 conclusion?

8 MR. BLINCOW:

9 It doesn't. There's still a co-counsel relationship.
10 And, you know, if you're sitting over here you're
11 thinking this court is working with Mr. McLeod in some
12 fashion while at the same time hearing a case where the
13 respondents are represented by Mr. McLeod's law
14 partner. And that dredges up all sorts of risks of --
15 it creates an appearance of an impropriety and dredges
16 up risks of conflicts abound where there could be the
17 perception that you might be partial one way and not
18 another.

19 THE COURT:

20 All right. Now, as I recall we had a hearing on a
21 Motion for Summary Judgment in the matter of James
22 Marshall Shoemaker, Jr., and at that hearing I allowed
23 you to submit your only Affidavit you submitted
24 approximately an hour before the hearing in violation
25 of rule 6 of the rules of Civil Procedure. Allowed you

1 to submit an Affidavit that was unnotarized. In your
2 opinion would that show bias or prejudice to you or
3 your client, or would that appear to bias or prejudice
4 Mr. Haynsworth and his clients?

5 MR. BLINCOW:

6 It was the decision to consider the Affidavit was
7 favorable to us. But the last thing you do when you're
8 trying to get at whether recusal is proper is to add up
9 the number of times you've ruled for one side or
10 against one side. That's not the analysis. The
11 analysis is can it be -- would a reasonable person say
12 this is -- this creates an appearance of a relationship
13 and we would be better off because we got -- at the end
14 of the day the last thing The Court wants to do is to
15 appear to be unfair. And so that's -- that -- yeah.
16 But, again, you don't want to add up when you've ruled
17 against us three times so that must mean you're
18 impartial. It's not that. It's the relationship that
19 you disclosed that we're hanging our hat on.

20 THE COURT:

21 All right.

22 MR. BLINCOW:

23 Does answer the -- I feel like I'm rambling.

24 THE COURT:

25 I believe so. Now, again, and applying Canon 3E(1)

1 South Carolina Supreme Court has stated that "The
2 movement or Petitioner must show some evidence of the
3 bias or prejudice of a Judge." And I'm quoting the
4 Lyvers v. Lyvers case. And immediately --

5 MR. BLINCOW:

6 I've got --

7 THE COURT:

8 -- prior to that The Court said that the party seeking
9 disqualification must do more than merely allege bias
10 on a Judge's behalf. The party must present some
11 evidence of judicial prejudice or bias.

12 MR. BLINCOW:

13 Okay. And you mentioned that way back in an email
14 where we were trying to decide if a hearing was
15 "necessary." I can find it. There is a distinction
16 between the general where there is some -- we're
17 relying on the general rule and the model rules and not
18 one of the specific rules for which we may have to show
19 actual bias. Does that make any sense at all? I --

20 THE COURT:

21 which rule are you relying on?

22 MR. BLINCOW:

23 The general -- let me see if I can --

24 THE COURT:

25 Canon 2?

1 MR. BLINCOW:

2 Canon 2, but it goes further. I just need to find --
3 excuse me. I'm sorry. Yeah. We are relying on the
4 general standard of disqualification in Canon 3C(1)
5 that a Judge or referee should disqualify himself in
6 which his or her impartiality might reasonably be
7 questioned. Four specific instances in which a Judge
8 or referee's impartiality might be questioned are 3C(1)
9 A through D. I think that the A through D requires
10 proof of specific bias as you were asking, and the
11 general one does not.

12 THE COURT:

13 All right. And Simpson v. Simpson I'm quoting the
14 opinion I cited earlier. It says that "Husband argues
15 Judge Segars-Andrews' own statements about the need to
16 disclose a previous working relationship between her
17 husband's law partner and wife's counsel might
18 reasonably question her impartiality. Husband fails
19 however to provide any evidence of how the former
20 relationship actually resulted in some prejudice or
21 bias in Judge Segars-Andrews' ruling. Thus Judge
22 Segars-Andrews is correct to deny husband's request for
23 recusal." Isn't that a holding which reflects that you
24 have to not only -- if you're arguing the appearance of
25 impartiality that you also have to show evidence of how

1 the improper relationship or the relationship of
2 counsel resulted in some prejudice or bias?

3 MR. BLINCOW:

4 well, we know how Judge Segars-Andrews' case came out.

5 THE COURT:

6 I have the case. We --

7 MR. BLINCOW:

8 Right.

9 THE COURT:

10 -- know what the committee said.

11 MR. BLINCOW:

12 Right.

13 THE COURT:

14 But what matters more again, the committee or our
15 Appellant Courts?

16 MR. BLINCOW:

17 well, Judge Andrews --

18 THE COURT:

19 What controls?

20 MR. BLINCOW:

21 The latter or the more -- the Judicial Merit Committee
22 that decided that she clearly should have recused
23 herself, and the failure to do so meant that she was
24 ethically unfit trumps over the Court of Appeals.
25 Especially when you consider that Judge Segars-Andrews

1 said "Gosh, that's a terrible ruling. We need to take
2 it to the Supreme Court." And the Supreme Court let it
3 stand.

4 THE COURT:

5 well, they didn't even consider it. They just refused
6 to hear the case; isn't that right?

7 MR. BLINCOW:

8 She asked them to hear it. And they read her papers
9 and said for one reason or another we will let the
10 decision stand and she's no longer a Judge.

11 THE COURT:

12 All right. Mr. Haynsworth, I'm going to let you
13 follow-up with -- you've heard these questions, and any
14 comments or arguments you would like to make I would
15 like to hear.

16 MR. HAYNSWORTH:

17 Briefly, Your Honor, I just would like to make it
18 clear, Judge, the failure to reelect Judge Segars-
19 Andrews if you read through this is a lot more than
20 just what we're talking about. But specifically what
21 we're talking about she said on the record. Judge
22 Segars-Andrews vehemently insisted that she could not
23 sit the situation right for Mr. Simpson, and that her
24 only alternative was to let him have a new trial. When
25 she failed to provide him that with that alternative

1 and gave only a perfunctory explanation that she was
2 relying on opposing counsel's submission she created an
3 atmosphere of distrust. So what happened is, is she
4 decides "Oh, gosh, I've got a conflict 'cause of a
5 situation of my husband's. I hate to do this to ya'll,
6 'cause it's really going to mess you both up, but I'm
7 going to have to. There's no way I can fix this."
8 okay? And then she did a one-eighty. The opposing
9 side submitted an Affidavit with Nathan Crystal that
10 said "well, I'm an expert in all of this and you don't
11 have to recuse yourself," and she changed her mind.
12 That was the problem with her. Not that there's this
13 conflict she had and it rose to the level of you don't
14 get to be a Judge anymore because of it. She went out
15 of her way to point out "I can't be fair. I can't undo
16 what's happened." And then after basically on her own
17 Motion saying she was going to recuse herself she
18 changed her mind based on an Affidavit from the other
19 side. It's just a completely different situation than
20 what we have here. On the issue of what trumps what,
21 Mr. Blincow's just wrong. The Appellant Court decision
22 as to whether she should recuse herself is the highest
23 court decision on that issue. Her appealing whether
24 she got gigged to be a Judge again is not the issue
25 that was going up on appeal. What went up on appeal

1 was the recusal, and that's been decided as Your Honor
2 has already addressed with us. And finally, Your
3 Honor, just to swing it back to South Carolina law
4 Zurich tried to get justice told and it disqualified
5 herself in asbestos -- a bunch of asbestos cases down
6 in Richland County. And I happened to stumble across
7 her order denying their Motion and just wanted to cite
8 a couple of the relevant provisions from our law. Oh,
9 Lord, bear with me, Your Honor. Just a couple of
10 relevant citations from that case, Your Honor. And I'm
11 quoting "It is not enough for a party seeking
12 disqualification to simply allege" -- this is exactly
13 what you said. "To simply allege bias. The party must
14 show some evidence of that bias or prejudice." And the
15 site of that is Roache v. Young Brothers
16 322S.C.75504S.E.2nd311. It's a 1998 Supreme Court
17 opinion. Another relevant provision from a case,
18 Judge, I think is this: and that is "The standard for
19 establishing prejudice is high." That's a citation
20 from Graham v. State. All I have is the Westlaw site
21 for it, which is 9844641. It's a Court of Appeals 2008
22 case.

23 THE COURT:

24 Mr. Blincow's saying if there's an appearance of
25 impropriety that the rule is that there's no need to

1 show actual prejudice or bias.

2 MR. HAYNSWORTH:

3 I don't think that's the rule. But if it were it has
4 to be a reasonable objective appearance of impropriety.
5 If you want to just say "Hey, the rule is Judge if it
6 looks like you might be impartial you must recuse,"
7 then the extent to which that appearance goes would
8 never end. Give you an example. Say our children were
9 in fifth grade together, or whatever grade together.
10 You know, we may see each other at -- you could
11 arguably come in here and say that Judge and Knox's
12 children are in the same class and they're together at
13 events for the kids, and that's the appearance of
14 impropriety. So any Judge who has children with any of
15 the litigants that appear before that Judge must recuse
16 themselves because that would create an appearance of
17 impropriety. You could extend that, you know, to the
18 nth degree and someone could take the position "Well,
19 no, no, that looks like it might be improper." And so
20 then you're going to have no one's going to be able to
21 hear anything because someone's going to think it looks
22 like maybe there's the appearance of impropriety 'cause
23 there's some connection between either the lawyer and
24 the Judge, the litigant, or Mr. Blincow's point, other
25 people that the lawyer works for. But when you get

1 down to final analysis I think you've got to, as Your
2 Honor asked, give The Court some evidence or what you
3 contend is evidence of some impropriety. You can't
4 just say "You've got a conflict and when in doubt
5 recuse." That's not the standard. It's not fair to us
6 if -- to go that route. So, you know, I just wanted to
7 reference those couple of South Carolina cases, Your
8 Honor, and I'll be happy to answer any questions The
9 Court may have for me.

10 THE COURT:

11 And, Mr. Blincow, you're aware that when
12 disqualification is not required the South Carolina
13 Code of Judicial Conduct holds that "A Judge shall hear
14 and decide matters assigned to the Judge." And that is
15 quoting the Canon 3D(1).

16 MR. BLINCOW:

17 Yeah, that's right if there's no issue that creates an
18 appearance of impropriety then yes.

19 THE COURT:

20 All right. Well, are you aware of any cases where a
21 Judge issues a decision but should be -- should have
22 the prior order vacated because the Judge was involved
23 in a case as co-counsel but received no compensation
24 directly or indirectly from his or her involvement in a
25 case as co-counsel with a firm whose other attorney is

1 involved in the case in which the Judge rendered an
2 opinion?

3 MR. BLINCOW:

4 Let's see if this answer the question. I think that if
5 recusal is appropriate based on the relationship that
6 we've been talking about, then it would be appropriate
7 for that recusal to relate back to when you -- when the
8 co-counsel relationship was created which as you
9 mentioned in your email was in April, which was before
10 The Court heard and ruled on Summary Judgment.

11 THE COURT:

12 It was not before The Court heard the Motion. The
13 Court ruled on the Motion two months later.

14 MR. BLINCOW:

15 okay.

16 THE COURT:

17 And you're arguing your Motion to Recuse and Vacate
18 that money is the root of all evil, and there's no
19 money involved in this case. If I do have to appear in
20 court at some future date and bill my client for time
21 spent on the matter, then money could become an issue.
22 And you are alleging in your Motion that there is some
23 sort of financial relationship and that I'm being paid
24 for my work in these other matters, and that's not
25 true. Or at least I haven't done anything and haven't

1 been paid or billed anything. All right.

2 MR. BLINCOW:

3 Yes.

4 THE COURT:

5 Is it possible that -- I don't know. Can you provide
6 to The Court, Mr. Blincow, case law or other
7 controlling Canons, or regulations, or anything of the
8 sort that would demonstrate to The Court that a co-
9 counsel relationship creates the appearance of
10 impropriety even if there's no payment being made or no
11 financial advantage or gain for the Judge? And that
12 not only is that in and of itself creating the
13 appearance of propriety, but that you do not -- based
14 on the mere appearance of impropriety there needs to be
15 no actual demonstration of prejudice or bias by that
16 Judge?

17 MR. BLINCOW:

18 I've done a poor job of -- there is a distinction
19 between the showing of actual prejudice --

20 THE COURT:

21 How long would you need to be able to submit case law
22 on that --

23 MR. BLINCOW:

24 Sometime next week --

25 THE COURT:

1 -- issue?

2 MR. BLINCOW:

3 Yeah, either next week sometime.

4 THE COURT:

5 Why not this week?

6 MR. BLINCOW:

7 Tomorrow's Thursday.

8 THE COURT:

9 Okay. You've already done the research; right?

10 MR. BLINCOW:

11 I have.

12 THE COURT:

13 So is there any reason you couldn't submit that later
14 this week?

15 MR. BLINCOW:

16 No.

17 THE COURT:

18 Okay. And Mr. Haynsworth I give you the opportunity to
19 research the same, and I hate to drag this out but I'm
20 going to need to take this matter under advisement. I
21 want to make sure that I do the right thing. I don't
22 think on the one hand that I need to participate in
23 this case if there is an actual appearance of
24 impropriety, and that I must recuse myself even if
25 there's no actual allegation or demonstration of actual

1 prejudice or bias. And, of course, I don't want to
2 proceed in that matter. At the same time when we
3 consider the amount of time and effort spent by the
4 parties in this Action and everything that went into
5 the Motion for Summary Judgment and these other
6 Motions, which have not yet been ruled upon as Mr.
7 Haynsworth pointed out, my recusal could also have a
8 very harmful effect on the litigants in this matter.
9 So it's a difficult issue. And so if you can clarify
10 it for me with some -- what I've just requested --

11 MR. BLINCOW:

12 Yes, sir.

13 THE COURT:

14 -- I would be most appreciative. Anything else? Mr.
15 Haynsworth wants to speak.

16 MR. HAYNSWORTH:

17 Well, I just want to make sure I understand, Your
18 Honor, you're -- so as I understand it you're expecting
19 from Mr. Blincow, if it's out there and he can find it,
20 case law that it's just the appearance, not the --

21 THE COURT:

22 That the --

23 MR. HAYNSWORTH:

24 -- evidence of --

25 THE COURT:

1 That if there's an appearance of propriety the
2 Petitioner seeking recusal does not then have to show
3 as these other cases have required that there is actual
4 -- there has been actual prejudice or bias by the
5 Judge.

6 MR. HAYNSWORTH:

7 All you've got to do is suggest it in there for what it
8 is versus we've got to have --

9 THE COURT:

10 well, I guess, he's -- if I understand it right he's
11 saying that serving as co-counsel with another member
12 of an attorney's firm is maybe prima facie or per say
13 demonstration of the appearance of impropriety.

14 MR. HAYNSWORTH:

15 But to fit your facts which is no -- we've got what
16 he's already relied on about money. That's factually
17 different. So what we're looking for is --

18 THE COURT:

19 I guess even if the Judge has not been compensated.

20 MR. HAYNSWORTH:

21 Yes, sir.

22 THE COURT:

23 But even if he wants to -- or if any of you can show a
24 case where there has been compensation but -- whether
25 there's been compensation or not, I would love to see

1 the case.

2 MR. BLINCOW:

3 All right. And that clearly would be right on point,
4 but and I'm -- and I know we're done, but you wouldn't
5 want it to turn on the fact that I haven't been
6 compensated and then next month you send out a bill,
7 and then next month you hear --

8 THE COURT:

9 But that could affect --

10 MR. BLINCOW:

11 -- a Motion.

12 THE COURT:

13 -- your Motion to Vacate the prior Order.

14 MR. BLINCOW:

15 Yep.

16 THE COURT:

17 So it could be that maybe you're arguing I shouldn't --
18 maybe there's some basis and I'm just -- this is for
19 the sake of argument --

20 MR. BLINCOW:

21 Yeah. Right.

22 THE COURT:

23 -- that there's some basis for me to recuse myself for
24 any further proceedings in any of these cases. But
25 since I haven't been paid a dime, or billed any time,

1 or appeared in court, or done anything in the two cases
2 I referenced as having a co-counsel relationship with
3 Mr. Haynsworth's firm on, that maybe the prior order
4 which you're challenging should remain in full force
5 and effect and not be vacated.

6 MR. BLINCOW:

7 Yeah.

8 THE COURT:

9 So, you know, that issue may be relevant. The issue of
10 compensation may be relevant to your Motion to vacate.

11 MR. HAYNSWORTH:

12 Do you want, Your Honor, mine by Friday and his by
13 Friday? Is that where we're at?

14 THE COURT:

15 Well, let's do it this. How about by next Tuesday?

16 MR. HAYNSWORTH:

17 Okay.

18 THE COURT:

19 If you could submit it to Ms. Campos-Ivey. And I
20 believe you've got my direct email here at The Court
21 you can submit it. It doesn't have to be a formal
22 Brief, but any use --

23 MR. BLINCOW:

24 Some authority if we can find it?

25 THE COURT:

1 Yes. If you can find it that would be very helpful.
2 okay?

3 MR. BLINCOW:

4 Yes, sir.

5 THE COURT:

6 All right. Thank you, gentlemen.

7 MR. HAYNSWORTH:

8 Thank you, Your Honor.

9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
10 3:05 P.M.)
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CERTIFICATE OF REPORTER

I, Treasa Hix, a Notary Public in and for the State of South Carolina, 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 I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Treasa Hix, Reporter

Notary Public for S.C.

Commission Expires: 6/13/29

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EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 We are here today in the matter of James Marshall
3 Shoemaker, III. The Petitioner is James Marshall
4 Shoemaker -- I'm sorry. We're here today in the matter
5 of James Marshall Shoemaker, Jr.; correct?

6 MR. BLINCOW:

7 That's correct.

8 THE COURT:

9 The Petitioner is James Marshall Shoemaker, III. The
10 Respondents are Mary Hunter Sloan Shoemaker, Edward
11 Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley
12 Moore, and John and Jane -- or Jan Doe. And we are
13 here on a Motion for Summary Judgment filed by the
14 Respondents. The Respondents are represented by Mr.
15 Knox Haynsworth, III. And the Petitioner is
16 represented by Mr. John Blincow (pronounces Blen co).
17 Am I pronouncing your last name correctly?

18 MR. BLINCOW:

19 That's it. Yes, sir. That's correct.

20 THE COURT:

21 Very well. Respondents provided notice of today's
22 hearing and Mr. Haynsworth, I'll let you proceed.

23 MR. HAYNSWORTH:

24 Your Honor, as a housekeeping matter, and I can address
25 it on the back end or the front end. I received an

1 Affidavit and a Memo opposing my Motion, I guess,
2 yesterday. I wasn't sure whether The Court had that or
3 not. I have some thoughts as to whether that Affidavit
4 is proper and can be considered.

5 THE COURT:

6 I received it today, and I did notice that the
7 Affidavit did not have any signature or execution by a
8 notary public, if you're referring to that issue?

9 MR. HAYNSWORTH:

10 That is, Your Honor. And we're sort of -- on that
11 there are a couple of issues if -- why we're talking
12 about it. And I've got cases I'll hand up and a copy
13 for Mr. Blincow that address these issues. It's got to
14 be notarized. Under rule 5 it is crystal clear an
15 opposing Affidavit has got to be filed two days before
16 the hearing. This was not. This Petition was brought
17 June of '19. Mr. Blincow appeared May of 2020. I've
18 never ever, ever received any Interrogatory Answer
19 update listing any expert witness. Now, obviously had
20 I known about this guy I would have gone and deposed
21 him and would have been able to address it. But for
22 the reason that he's never been identified in Discovery
23 given the length of time, and rule 5, and the fact it
24 is not notarized, I don't think it can be considered
25 for purposes of our hearing today. That's my two cents

1 worth on that issue, obviously. But the important
2 opinion is yours, but I wanted to get that out to the
3 extent the Affidavit is -- has been filed or --

4 THE COURT:

5 All right. I'll let Mr. Blincow respond to that after
6 you have already proceeded with your arguments.

7 MR. HAYNSWORTH:

8 Okay.

9 THE COURT:

10 You may proceed.

11 MR. HAYNSWORTH:

12 Okay. All right, Judge. Would it be possible --

13 THE COURT:

14 It's okay with me if everyone else is okay with removal
15 of Mr. Haynsworth's mask.

16 MR. BLINCOW:

17 It's okay with me.

18 MR. HAYNSWORTH:

19 I figure you're the one in the line of fire and you've
20 got the plexiglass --

21 THE COURT:

22 And I've had --

23 MR. HAYNSWORTH:

24 -- and the distance.

25 THE COURT:

1 -- one shot,, and I've got a plexiglass shield. And so
2 I'm about 12 feet from you, so I'm protected.

3 MR. HAYNSWORTH:

4 I'll try not' to project any further than --

5 THE COURT:

6 All right.

7 MR. HAYNSWORTH:

8 -- six feet. Your Honor, I don't know if you've had a
9 chance to read our Memo or the Affidavits filed with
10 the Motion, but essentially Marshall Shoemaker, one of
11 three children, has challenged his father's Estate and
12 Trust and brought a lawsuit contending that the Will
13 and Trust should not be considered proper because
14 they're the product of undue influence and lack of
15 testamentary capacity. I have submitted, Your Honor,
16 you know, ten give or take Affidavits, including from
17 Mr. Shoemaker's physician, Danny Grover out at IMA, who
18 saw Mr. Shoemaker I believe eight days before the
19 testamentary documents that bring us here today. And
20 to a man and a woman, as the case may be, all of the
21 Affidavits I submitted specifically address
22 testamentary capacity, and specifically address those
23 people's firsthand knowledge of Jim Shoemaker's
24 competency. And, Judge, probably the most significant
25 fact for you to consider in this overall case is the

1 claim initially that Mr. Shoemaker brought contending
2 that he and his brothers have always been treated
3 equally by their father. That the only possible
4 explanation for Marshall being cut out of his father's
5 Estate plan is undue influence brought to bear by his
6 two younger brothers, Sloan and Jonathan, and by his
7 mother, Polly, and that his dad was out of his mind.
8 And that's the only possible reason that he could have
9 cut Marshall out. Well, Judge, through Discovery, and
10 it's there before you, that's just a misrepresentation
11 to The Court. Marshall Shoemaker was not cut out for
12 the very first time in June of '18. A decade earlier
13 Marshall Shoemaker was completely cut out by both his
14 mother and father. He has been -- at times been
15 treated equally with his brothers, but at other times
16 been treated completely different. The deposition
17 testimony of Marshall Shoemaker and the emails that he
18 sent -- to sort of give you, I guess, the penultimate
19 reason of what happened, in our submissions, Judge,
20 there's an email that Marshall sent his younger brother
21 Sloan essentially threatening to kill Sloan if Sloan
22 came to Marshall's son Peter's graduation. Sloan shows
23 up at his mom and dad's house instead of at graduation
24 having flown to Atlanta. "What are you doing here?"
25 "Oh, I got this email from Marshall." That email

1 tipped off the parents. And it was what I phrase "the
2 straw that broke the camel's back this latest time."
3 There had been a series of episodes of dissension
4 between Marshall and his family. It began in high
5 school and continued off and on until the present day.
6 Lesley Moore has been sued. I'm not exactly sure what
7 the claims are against Ms. Moore. But just like his
8 brothers it has forced Ms. Moore to put her malpractice
9 carrier on notice. It's forced the family to spend
10 tens of thousands of dollars to basically chase down
11 rabbit holes. For the very first time yesterday we see
12 the first bit of potential evidence speaking to these
13 issues. Up until yesterday there was nothing Mr.
14 Shoemaker had submitted at all over the entire course
15 of this lawsuit that took issue with or presented any
16 evidence, scintilla or otherwise, to refute the
17 evidence we've submitted to The Court, which is that on
18 the day he executed the documents Jim Shoemaker had
19 testamentary capacity to do that. As Your Honor is
20 aware it takes less capacity to draft a Will than to
21 draft a contract saying "Give me a hundred dollars and
22 I'll build you a wall." It doesn't require very much
23 at all. And importantly what it requires is knowledge
24 of the condition on the day the documents were
25 executed. There is case law, Your Honor, and I forget

1 the name of the case, but it's a guy who lives in a
2 hollow tree log out in the woods. It's a very, very
3 old case. But the gist of it was you can be crazy as a
4 bed bug, but on the day that you did your documents as
5 long as you knew the objects of your bounty -- and I
6 won't properly articulate the other two criteria. But,
7 again, the point is if you have enough capacity the day
8 you do the documents, that's it. That's what you look
9 to. And there is zero evidence. Zero evidence in this
10 record from the Petition speaking to anything the day
11 the documents were done. On the other hand, Judge, Ms.
12 Moore, who's seated right here, gave a lengthy
13 Affidavit with exhibits attached to it explaining
14 firsthand from her sitting there talking to him and
15 witnessing it the competency of both Mr. And Mrs.
16 Shoemaker. Their long-time -- the Shoemaker's long-
17 time accountant, Martha Louise Ramage Lewis, gave an
18 Affidavit. It was discussed with her over the years
19 the estrangement that existed between Marshall and his
20 family. This was no great surprise that Marshall was
21 cut out. And, Judge I guess, you know, in point of
22 fact there's just no evidence to support their claims
23 period. And there is an enormous amount of evidence to
24 support our position that not only was the documents
25 not the subject of undue influence and that Mr.

1 Shoemaker had capacity. But frankly, Judge, that this
2 lawsuit was not brought for the legitimate purpose of
3 challenging those documents, but was instead brought as
4 a continuation of the family strife that's existed
5 between Marshall and his two brothers, and his mom, and
6 dad. As you may recall, Judge, twice before in this
7 one case The Court has had to sanction Mr. Shoemaker
8 for his conduct. And in my humble opinion this whole
9 lawsuit is just a bigger version of that. It's a jab
10 to stick his family. And it has no basis in fact and
11 it has no basis in law. And final point I would like
12 to make before I side down and shut up: to the extent,
13 Your Honor, that the Affidavit that's been submitted
14 untimely and unnotarized is considered, it doesn't
15 address the standard of care that they need to meet.
16 It's not a scintilla of evidence in a proceeding
17 attacking a Will for undue influence or lack of
18 capacity. And I don't want to misquote, so let me --
19 bear with me, Your Honor. I don't want to --

20 THE COURT:

21 Take your time.

22 MR. HAYNSWORTH:

23 -- spout off a quote that's inaccurate. And, Your
24 Honor, I'm quoting from Russell versus Wachovia Bank
25 353S.C.208, 578S.E.2d329. It's a Supreme -- South

1 Carolina Supreme Court Opinion from 2003. It says "The
2 standard of proof in an undue influence case is
3 unmistakable and convincing evidence. There must be
4 more than a scintilla of evidence in order to defeat a
5 Motion for Summary Judgment. A heightened standard for
6 Summary Judgment is required." So even if the
7 Affidavit submitted in opposition is considered
8 notwithstanding the defects in it, it still doesn't
9 address the legal standard, nor if you read it does it
10 say Mr. Shoemaker lacked testamentary capacity.
11 Whereas all my Affidavits, including from his
12 physician, say he had testamentary capacity. So for
13 those reasons, Your Honor, we believe that the
14 Respondents are entitled to judgment as a matter of
15 law. And unless you have any questions for me right
16 now I'll sit down.

17 THE COURT:

18 Not yet.

19 MR. HAYNSWORTH:

20 Okay.

21 THE COURT:

22 Mr. Blincow.

23 MR. BLINCOW:

24 May it please The Court. Good afternoon, Judge. My
25 name is John Blincow and I do represent the Petitioner,

1 Marshall Shoemaker, III. If I could start and address
2 a couple of things that have been mentioned, and then
3 I'll get to the merits of my argument. First of all
4 there is this contention that the Affidavit should not
5 be considered because it's not notarized. I witnessed
6 Dr. Hughes sign the Affidavit. I'm an officer of this
7 court. I know who he is, and I watched him sign it. I
8 think when it comes down to standing on some sort of
9 procedural rule or letting the case turn on their
10 merits, I think we need let the case turn on its merits
11 rather than kicking the party out of court because an
12 Affidavit has not been notarized by a notary, and
13 instead has been witnessed by a lawyer. And I'm
14 telling you I watched him sign that Affidavit. There's
15 just no question about that. And the law is clear that
16 these cases need to turn on their merits and not some
17 technicality. And we've avoided getting into --
18 whatever the history has been with regard to Marshall
19 and his family really is not relevant. If there was a
20 period of time when Marshall was out of the Will, so to
21 speak, that was followed by long stretches of time
22 where there's letters from Mr. Shoemaker, the dad, to a
23 son ending with "love, dad." There's no question that
24 he was to share equally with his two brothers until
25 June the 24th before he died in July. There's no

1 question about that. So here we are at Summary
2 Judgment. We've got to get over this hump, and to do
3 that we cite to the Affidavit of Dr. Thomas Hughes. He
4 is a board certified neurologist. He has reviewed the
5 medical records. The way this went, Your Honor, is Mr.
6 Shoemaker had this terrible idiopathic pulmonary
7 fibrosis and had it for years and years. And in May
8 he, in consultation with his family and his doctors,
9 decided to become a hospice patient. And he was at
10 home but his disease was such that he had skilled
11 nurses who were doing assessments, so we have a number
12 of records. In June -- in July, excuse me, signed a
13 new Will on June 21st. On July 5th has a real episode
14 and ends up through the emergency room and in the Saint
15 Francis Hospital for five days. So we've got a good
16 stack of records from that admission. And then back
17 home and in the care of another hospice, and so we have
18 the assessments from all of those nurses. And Dr.
19 Hughes has looked at those records and can opine that
20 Mr. Shoemaker had cognitive impairment. Seventy
21 percent of the folks that have idiopathic pulmonary
22 fibrosis have cognitive impairment in some form or
23 fashion. And if you think about it being a spectrum on
24 one hand you could -- if you forget where you put your
25 car keys on one end, and full blown dementia and you're

1 not sure what world you're in on the other hand, the
2 line for testamentary capacity is somewhere between
3 those two extremes. And he can say he clearly had
4 cognitive impairment. This is a progressive disease.
5 It's a situation where you get a little worse each day.
6 He had it for years. And so this doctor can go as far
7 as saying he had substantial cognitive impairment. And
8 there are a number of examples of that in these medical
9 records. For example, we know that when he signed this
10 new Will at the end of June he was on supplemental
11 oxygen all the time, six liters a minute. We know he
12 went and got -- went to the emergency room on July 5th
13 and came home on 15 liters of oxygen a minute. Clearly
14 a fact finder could infer that if he needed 15 liters
15 of oxygen on -- in early July, six liters at the end of
16 June would not have been nearly enough in order for the
17 brain to function. And we acknowledge it's a high bar.
18 We can read the cases. There's no question
19 testamentary capacity is a high bar. But there are
20 examples where the disease was getting the better of
21 Mr. Shoemaker. If he spilled his medicine and became
22 so angry and irate that the nurses and the pharmacist
23 made a note of it, that it wasn't just anger, it was
24 sort of irrational, that is the disease talking. If he
25 was so agitated that the nurse had to give several

1 units of Morphine just to get him to a baseline, that
2 is evidence of significant impairment. And so at the
3 end of the day, yes, there may be ten Affidavits from
4 Mr. Shoemaker's primarily law partners that witnessed
5 him signing the new Will, but there's also evidence
6 going the other way. And The Court is going to have to
7 weigh that evidence. And in order to grant the Motion
8 The Court will just have to reject the other evidence.
9 There's evidence going both ways in this case. You
10 know we could argue that it better falls to a medical
11 expert than a law partner. And Mr. Shoemaker had been
12 retired for years and years. And naturally you sort of
13 lose touch with your friends and so forth. The folks
14 that witnessed the Will being signed in June had seen
15 him less and less and less over the years, and had a
16 smaller sample size to pick from. Never mind the fact
17 that the easiest thing to do would have been to say
18 "Hey, before we make a big decision like this let's get
19 a doctor to look at him and check neurological status."
20 That could have been done and wasn't. So I think at
21 the end of the day the question -- the evidence stacks
22 up on one side, but there's evidence that stacks on the
23 other side. And in order for a fact finder to decide
24 whether he had testamentary capacity in June when he
25 made this new Will, you're going to have to weigh all

1 of the evidence. And that is something that should be
2 done at a full trial on the merits and not at Summary
3 Judgment.

4 THE COURT:

5 Let me ask you: what evidence do you have of undue
6 influence? I mean all you've cited so far is this
7 purported Affidavit of an expert which really relates
8 to mental capacity. And in addition that Affidavit
9 only opines that there was quote "some level of
10 cognitive impairment."

11 MR. BLINCOW:

12 I think -- I don't have it right --

13 THE COURT:

14 So let me go back to my question. What evidence do you
15 have of any undue influence?

16 MR. BLINCOW:

17 I'm not going to answer the question. I meant to
18 mention earlier that that heightened burden of proof
19 applies to an undue influence claim, and not to a
20 testamentary capacity claim.

21 THE COURT:

22 All right.

23 MR. BLINCOW:

24 But there is evidence that Mr. Shoemaker had a meeting
25 with the other two sons and the stockbroker, and there

1 was discussion of "This is my plan." And I think both
2 of the brothers said that was the first time they
3 really understood what sort of Estate was -- had been
4 built up over the years. This son was excluded from
5 that meeting. There are --

6 THE COURT:

7 What does that have to do with undue influence?

8 MR. BLINCOW:

9 Well --

10 THE COURT:

11 Or specifically bearing upon the testator's
12 testamentary act of signing a Will or an Estate for --
13 I mean a Trust Agreement for Estate planning purposes?

14 MR. BLINCOW:

15 Yeah, I get your question, and it doesn't. You're
16 correct. And I've told my client that maybe from a
17 lawyer's perspective anytime you've got that clear and
18 convincing standard, that's a tough road. And we
19 understand that that claim is not as good for us as the
20 testamentary capacity claim. I would also acknowledge
21 that what we've put forth in our response to the Motion
22 and in the Affidavit all deals with testamentary
23 capacity and not undue influence.

24 THE COURT:

25 Do you wish to dismiss the claim for undue influence or

1 --

2 MR. BLINCOW:

3 I would rather not dismiss it --

4 THE COURT:

5 Okay.

6 MR. BLINCOW:

7 -- but I acknowledge that the response is what it is,
8 and the burden of proof is what it is.

9 THE COURT:

10 Okay. Can you tell me why attorney Moore is still a
11 defendant in this Action?

12 MR. BLINCOW:

13 Well, only that she is the Trustee of the Estate.

14 THE COURT:

15 Well, I don't think she's named as a Trustee. She's
16 named individually.

17 MR. BLINCOW:

18 I don't have it in front of me. I think that when I
19 entered an appearance -- if I -- I've tried to make it
20 clear that I was appearing for the Petitioner. There's
21 no question no one has any claim against Ms. Moore. I
22 don't think we've ever said that. She's a Trustee of
23 the Estate is at issue.

24 THE COURT:

25 Okay. So for clarity are you informing The Court that

1 there's no claim against attorney Moore for
2 professional liability or malpractice?

3 MR. BLINCOW:

4 Never has been, and never have we alleged that.
5 THE COURT:

6 Okay. So her involvement in the case according to the
7 Petitioner relates solely to her role or capacity as a
8 Trustee of the Trust or Personal Representative of the
9 Estate?

10 MR. BLINCOW:

11 Correct.

12 THE COURT:

13 Okay. Tell me what evidence you have related to the
14 lack of mental capacity of Mr. Shoemaker, the decedent.
15 Is it all --

16 MR. BLINCOW:

17 It's --

18 THE COURT:

19 -- found in the Affidavit of your expert?

20 MR. BLINCOW:

21 Well, I think the Affidavit of the expert points to the
22 evidence which exists. You know as a practical matter
23 Ms. Shoemaker lives in Atlanta and the two brothers
24 lived in New York and Colorado, and nobody was really
25 involved day-to-day with either parent. So what we are

1 pointing to is the good bit of records -- as I
2 mentioned there's I want to say daily assessment by a
3 nurse beginning in May until he passes away in July.
4 And in there is evidence of the disease talking.
5 Idiopathic pulmonary fibrosis is this terrible,
6 aggressive lung disease, and it -- there's no
7 treatment. And it was a -- the day he had it I think
8 it was -- you know his prognosis was he was going to
9 die from this disease. But what the doctor can talk
10 about and what the nurses could talk about is evidence
11 in those records that supports here is a guy -- well, I
12 should have said this earlier. You know you've got to
13 have oxygen to the brain for it to function normally.
14 And, you know, if you get blue in the lips and short of
15 breath, taking off your pajamas in the morning, that is
16 evidence that you've got impaired oxygen to the brain
17 --

18 THE COURT:

19 Is that a symptom of hypoxemia?

20 MR. BLINCOW:

21 Yes.

22 THE COURT:

23 And what's the difference between that and anoxia, or a
24 lack of oxygen?

25 MR. BLINCOW:

1 I don't -- I would rather -- I don't know.

2 THE COURT:

3 Okay.

4 MR. BLINCOW:

5 But the point is there's no question he had this
6 disease. There's no question it was progressive.
7 There's no question he was getting worse. And towards
8 the end when he decides "I'm going to become a hospice
9 patient, sign a Do Not Resuscitate Order, and live out
10 these days at home," there's assessments which support
11 that his impairment was as the doctor said substantial.
12 Now, the doctor can't -- I don't know that -- only the
13 ultimate fact finder can say is -- was his impairment
14 on June the 24th, was it on this side or that side of
15 the line for testamentary capacity. Knox is right.
16 Dr. Hughes can't say that. He never saw the patient.
17 Never evaluated him. But he can point to plenty of
18 places where the disease is talking. And the disease
19 is saying "He's not of his right mind before he passed
20 away."

21 THE COURT:

22 Is the standard for execution of a Trust the same as
23 for execution of a Will? Or is the Trust Agreement
24 contractual in nature and requiring a higher level of
25 mental capacity?

1 MR. BLINCOW:

2 I don't know the answer to that question. I would like
3 to research it. I've always taken the Will and the
4 Trust together. Meaning they were signed on the same
5 day, I've sort of lumped them and considered that both
6 were the issue is did he have testamentary capacity on
7 June the 24th to sign both. Does that answer the -- in
8 other words I've never --

9 THE COURT:

10 I understand what you're saying. My final question to
11 you is: in the purported Affidavit of Mr. Thomas
12 Hughes, or Dr. Thomas Hughes, M.D., the only conclusion
13 I see is a conclusion of Dr. Hughes that Mr. Shoemaker
14 quote "had some level of cognitive impairment." Does
15 that clear the hurdle for the standard of Summary
16 Judgment if a doctor and your expert cannot opine that
17 the testator or settlor of a Trust lacked capacity to
18 understand the objects of his affection, or what assets
19 he had, or anything like that, then how could the jury
20 reach that conclusion?

21 MR. BLINCOW:

22 I totally get what you're -- I think the answer is
23 this. There exists evidence that a fact finder would
24 have to weigh and consider to find testamentary
25 capacity. There's ten Affidavits on one side of the

1 scale, and on the other there is evidence of impaired
2 cognition of diminished brain power. And that is going
3 to have to be weighed, and that's not proper at Summary
4 Judgment.

5 THE COURT:

6 And ---

7 MR. BLINCOW:

8 I don't know that an expert -- I think you could object
9 if an expert said he did or didn't have testamentary
10 capacity because ultimately the fact finder is going to
11 have to weigh all of that out. In other words I -- for
12 better or worse Dr. Hughes can only go so far. I
13 believe he says in the Affidavit "substantial cognitive
14 impairment." Clearly had it. And because it's
15 progressive and because he was at end stage of his
16 disease, it was substantial. I don't know that anybody
17 -- a doctor can say substantial cognitive impairment is
18 on one side of the line or the other. But the point is
19 there's evidence to weigh and consider to decide that.

20 THE COURT:

21 And what about Mr. Haynsworth's argument that the
22 Affidavit of Dr. Hughes should not be considered
23 because it was not filed 48 hours prior to this
24 hearing?

25 MR. BLINCOW:

1 I would admit the rule says what it says. We go back
2 to I think that these cases need to turn on their
3 merits as opposed to a technicality. We would be happy
4 to hold everything in abeyance. Let Mr. Haynsworth
5 take the deposition, or wait two days and then -- or
6 submit reargument, or whatever. I ended up after work
7 yesterday going to his house and he signed it. Then I
8 raced back to the office and faxed or emailed it, so
9 there's no question about that. But that's an awfully
10 severe remedy under the circumstances.

11 THE COURT:

12 Okay. All right. Mr. Haynsworth.

13 MR. HAYNSWORTH:

14 May it please The Court. Judge, let me work backwards.
15 Rule 5's there for a reason. You know if we're just
16 going to say "Well, technicality, let's don't worry
17 about that because the system's geared to resolved it
18 on the merits," then why have any rules? I mean it
19 couldn't be clearer. And it's not like this is I filed
20 an Affidavit and you had a hearing a week later. My
21 Motion's been pending since November, Judge, of last
22 year. I mean anybody can figure out if one side's got
23 ten Affidavits, including from the guy's doctor, you're
24 going to need something to refute that other than the
25 Petitioner's self-serving testimony. So I cannot

1 opinion on the circumstances surrounding the execution
2 of the Will. In this case, Judge, just like in the
3 Russell case, even if you overlook the other problems
4 with the Affidavit, that doctor never laid eyes on Jim
5 Shoemaker. Jim Shoemaker's doctor, who gave you an
6 Affidavit that he had capacity, is his long-term family
7 doctor. No one knows Jim Shoemaker better than Jim
8 Shoemaker's long time family doctor. This guy was
9 hired to create an Affidavit to try and gum up this
10 Summary Judgment Motion. His Affidavit, even if you
11 consider it, is not a weight of an evidence issue. It
12 is no evidence, and it's certainly not sufficient
13 evidence given the plaintiff's heightened burden to
14 overcome the evidence before The Court entitling us to
15 Summary Judgment.

16 THE COURT:

17 And let me ask you what I asked Mr. Blincow, and that
18 is: do you know what the mental capacity -- what mental
19 capacity is required for execution of a Trust Agreement
20 versus a Last Will and Testament? Is there a
21 difference because the Trust is contractual in nature,
22 or is it the same?

23 MR. HAYNSWORTH:

24 Your Honor, I will parrot Mr. Blincow's --

25 MR. BLINCOW:

1 (Talking over each other.)

2 MR. HAYNSWORTH:

3 Yeah, you got us both there.

4 THE COURT:

5 You might want to ask the person beside you.

6 MR. HAYNSWORTH:

7 (Confers with Lesley Moore.)

8 THE COURT:

9 And I should know the answer to that but I don't know

10 --

11 MR. HAYNSWORTH:

12 We believe after consultation, Your Honor, it is the
13 same standard.

14 THE COURT:

15 All right.

16 MR. BLINCOW:

17 Well, then I was right and didn't even know it.

18 MR. HAYNSWORTH:

19 So -- yeah. So the two blind hogs have now confirmed
20 that we have --

21 THE COURT:

22 Okay.

23 MR. HAYNSWORTH:

24 -- had the right the law.

25 THE COURT:

1 Okay. Well, Mr. Blincow, any response?
2 MR. BLINCOW:

3 Yeah. Please. My memory wasn't good but it is what I
4 recall. After I appeared -- and if you look at the
5 caption that I used when we filed this filing
6 yesterday, Lesley R. Moore, Esquire, the defendant, is
7 sued as Personal Representative as -- and Trustee. So
8 --

9 THE COURT:

10 Well, this is a Brief filed. I mean it doesn't --
11 MR. BLINCOW:

12 I'm just --

13 THE COURT:

14 Changing that in the caption doesn't really change the
15 substance of the original Petition --

16 MR. BLINCOW:

17 Fair --

18 THE COURT:

19 -- or Complaint.

20 MR. BLINCOW:

21 Fair enough. But when I stepped in there was never any
22 question that this -- she was a party by virtue of the
23 fact she was the Trustee.

24 THE COURT:

25 Okay. Was your client alleging any wrong doing as

1 Trustee or Personal Representative?

2 MR. BLINCOW:

3 No.

4 THE COURT:

5 All right. All right.

6 MR. BLINCOW:

7 Well, he was, but -- he was. Whatever, his Petition
8 says what it says, but I'm saying that now our position
9 is that she's a party simply by virtue of the fact
10 she's the Trustee.

11 THE COURT:

12 All right. And is there any evidence of any wrong
13 doing by Ms. Moore as Personal Representative or
14 Trustee?

15 MR. BLINCOW:

16 No, sir.

17 THE COURT:

18 All right.

19 MR. BLINCOW:

20 And I --

21 THE COURT:

22 I just wanted to clarify.

23 MR. BLINCOW:

24 Yeah, I do. I really do think this Russell case is an
25 undue influence case. And so to the extent they

1 concluded that a doctor's testimony didn't change the
2 result, that was not a testamentary capacity situation.
3 I think the law is clear on that.

4 THE COURT:

5 All right.

6 MR. BLINCOW:

7 You know it says, I believe in the line, the
8 highlighted parts -- I've read this case, but I don't
9 have it in front of me. But there's a heightened
10 standard for undue influence, but that is not the case
11 for testamentary capacity. So we take the position
12 that the doctor's Affidavit doesn't count because a
13 different level of proof is -- would not be accurate.
14 You know it would be just -- we could argue that an
15 Affidavit from a lay person is not as important as
16 someone who knows what they're talking about when they
17 talk about chronic idiopathic pulmonary fibrosis with
18 hypoxic respiratory failure. There is evidence that
19 the deceased lacked testamentary capacity, and that
20 needs to be weighed and considered.

21 THE COURT:

22 All right. Well, this is an interesting case and set
23 of facts, and I'm going to have to give it careful
24 deliberation and consideration. And I can tell you at
25 first glance it doesn't appear to be evidence

1 sufficient to withstand Summary Judgment on a cause of
2 action for undue influence. But I'm going to have to
3 do my homework and give everything proper consideration
4 before reaching any decision on this matter. I
5 appreciate both sides informing The Court of all of the
6 relevant facts, and circumstances, and supplementing
7 the Motion with appropriate Affidavits. And so you've
8 both done an excellent job, and I appreciate that. And
9 I'm going to weigh through these materials and have a
10 decision hopefully within the next week or so.

11 MR. HAYNSWORTH:

12 Thank you. I appreciate it.

13 MR. BLINCOW:

14 Thank you.

15 THE COURT:

16 Thank you very much. We're adjourned.

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
18 2:55 P.M.)
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

1
2
3 I, Treasa Hix, a Notary Public in and for the State of
4 South Carolina, do hereby certify that the foregoing hearing
5 was taken before me on the date and at the time and location
6 stated on page 1 of this transcript.

7 That the deponent was duly sworn to testify to the
8 truth, the whole truth, and nothing but the truth.

9 That I am not related to nor the employee of any of the
10 parties hereto, nor related to or employed by any attorney
11 or counsel employed by the parties hereto, nor interested in
12 the outcome of this action.

13
14
15 _____
16 Treasa Hix, Reporter

17 Notary Public for S.C.

18 Commission Expires: 6/13/29
19
20
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22
23
24
25

STATE OF SOUTH CAROLINA)
: IN THE PROBATE COURT
COUNTY OF GREENVILLE)

James Marshall Shoemaker, III,)
:)
Petitioner,)
:)
-vs-) Case No: 2018-ES-23-01729
:)
Mary Hunter Sloan Shoemaker,)
Edward Sloan Shoemaker,)
Jonathan Evans Shoemaker,)
Debora Wine, Lesley Moore, and)
John and Jane Doe,)
:)
Respondents.)

DEPOSITION OF JAMES MARSHALL SHOEMAKER, III

PURSUANT to Notice and/or agreement between the parties,
the deposition of James Marshall Shoemaker, III, called by the
Respondents, was taken commencing at the hour of 10:10 a.m. on
Friday, July 24, 2020, in the offices of Brown, Massey, Evans,
McLeod & Haynsworth, LLC, Attorneys at Law, 106 Williams Street,
Greenville, South Carolina.

IRVETA J. SHOUSE, Reporter

SHOEMAKER v. SHOEMAKER, et al

APPEARANCES:

BLINCOW GRIFFIN LAW
126 Meeting Street
Charleston, SC 29401
BY John K. Blincow, Jr., Esquire

.....On behalf of the Petitioner

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC
106 Williams Street
Post Office Box 2464
Greenville, SC 29602
BY Knox L. Haynsworth, III, Esquire

.....On behalf of the Respondents

Also Present:

Leslie R. Moore
Edward Sloan Shoemaker (By telephone)
Jonathan Evans Shoemaker (By telephone)

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

See Index, Page 3.

INDEX OF EXHIBITS

Respondents'
No.

Description

Entered
at Page

1	Petition for Formal Hearing filed by the Petitioner, with exhibits	
2	Amended Petition	
3	Petitioner's Answers to Respondents' First Set of Interrogatories	
3a	Petitioner's Production of Documents	
4	E-mail from Marshall to Sloan May 7, 2018	
5	E-mails between Marshall and Sloan dated April 26, 2018, Re: Do Not Come	
6	E-mail from Jim Shoemaker to Marshall Shoemaker dated July 03, 2018, "In light of our years of discord..."	
7	Will of Mary Hunter Sloan Shoemaker dated June 24, 2018	
8	Memorandum Regarding Personal Property signed by Marh S. Shoemaker, July 8, 2018	
9	First Codicil to the Last Will and Testament of James M. Shoemaker, Jr. dated July 20, 1994	
10	First Codicil to the Last Will and Testament of Mary S. Shoemaker dated May 10, 1996	
11	Transcript of Probate Hearing held October 21, 2019	
12	Affidavit of Martha Louise Ramage Lewis	141
13	E-mail from James M. Shoemaker, Jr. to Marshall Shoemaker dated June 17, 2014	156

EXHIBITS 1-11 MARKED PRIOR TO THE BEGINNING OF DEPOSITION

1 JAMES MARSHALL SHOEMAKER, III, having first been
2 duly sworn to tell the truth, testified on his oath as follows:

3 EXAMINATION

4 By Mr. Haynsworth:

5 Q. Marshall, have you ever had your deposition taken
6 before?

7 A. No.

8 Q. All right. Well, let me give you some legal ground
9 rules and some practical ground rules. Our Rules of Civil
10 Procedure in South Carolina provide that, if you have any
11 questions about my questions, if you don't understand my
12 question, you don't get to ask your lawyer, you've got to ask
13 me. And I want you to understand my question so your answer
14 will be responsive. So if I ask a goofy question ---and I may
15 well--- or if you don't understand it or it seems confusing at
16 all, please stop me, tell me you don't understand my question,
17 and I'll try to ask you a better question.

18 Irveta Shouse, the lady seated to your right, is our
19 court reporter. She is preparing a transcript of everything we
20 say in here today that's on the record. It's very difficult
21 for her to pick up uh-huhs and huh-uhs and head nods.

22 Q. She's doing a written transcript?

23 Q. She knows how to take shorthand.

24 A. Okay.

25 Q. So all those little chicken-scratch lines, believe

1 it or not, she can read into real words. A lost art these
2 days. But, yes, she will prepare a transcript, just like the
3 transcript we had of the hearing we had in Probate Court, where
4 it has everything that's been said. That's what will result
5 from this deposition today, is a typed transcript of your
6 testimony, our questions, our objections, and any of the
7 exhibits to your deposition.

8 A. Is this being recorded? ,

9 Q. Yes.

10 A. How is it being recorded?

11 REPORTER: (Indicating tape recorder)

12 Digitally. That's for my transcription purposes.

13 THE WITNESS: Okay.

14 Q. So, to the extent you can, try to give a verbal
15 response. If I say something like, "Was that a yes?" "Was
16 that a no?", I'm not trying to be rude, it's just that I didn't
17 understand what your verbal response was.

18 Like we said before we got started, if you need to
19 take a break, you know, if I'm rambling on, and I go more than
20 an hour and you need to go to the bathroom, tell me to stop,
21 you need a break, and I'll stop. I will tell you, during
22 breaks you are still under oath. You and your lawyer can
23 certainly talk about sport, the weather, anything you wanna
24 talk about other than your testimony here today. And if you do
25 talk about that, I have the right to ask you about your

1 , conversations with your lawyer, which typically someone cannot
2 do. So it's an easy rule to follow, just don't talk with John,
3 during a break, about the case and what we've been talking
4 about in here.

5 With me so far?

6 A. Correct. Yes.

7 Q. Okay. Let me get --- I obviously know where you
8 went to high school and I know you went to Princeton, but I
9 don't know exactly your educational background. So you
10 graduate CCES in what year?

11 A. '78. .

12 Q. All right.

13 THE WITNESS: (To Mr. Blincow) So what about
14 the objection about the discovery process?

15 MR. BLINCOW: Marshall just wanted me to put
16 on the record that he's sitting for his deposition but
17 prior to seeing all the medical records which may
18 exist.

19 MR. HAYNSWORTH: Okay.

20 MR. BLINCOW: And pharmacy records and so
21 forth.

22 A. And e-mails from my brother and my father and
23 between each other.

24 Q. Okay. Well, as you know, Marshall, since you've
25 been representing yourself for most of the lawsuit, there's a

1 mechanism. If you think you've not been given relevant
2 information or documents, you can file a motion with the court
3 to compel the documents you feel like you're entitled to that I
4 haven't given you. Now that you have John involved, obviously
5 he is very familiar with that process. So I understand you
6 feel like you've not gotten some stuff you want. Your lawyer
7 and I, and/or the court, will work through all that.

8 Oh, let me ask you. As you sit here today, are you
9 under the influence of any medications that would affect your
10 ability to answer my questions?

11 A. No.

12 Q. Okay. So you graduate in '78. Start college the
13 next year?

14 A. '79.

15 Q. All right. Princeton?

16 A. Princeton.

17 Q. When did you graduate Princeton?

18 A. Oh, I finished my coursework in '83; I finished my
19 thesis in '85, so that's when I graduated.

20 Q. Were there any breaks during your time at Princeton
21 or were you ---

22 A. I took a year off to study in Detroit --- I mean,
23 excuse me, to be a community organizer in Detroit.

24 Q. All right. So graduate Princeton, ultimately, with
25 a degree in what?

1 A. History. Latin American Studies.

2 Q. Any postgraduate work?

3 A. Yes.

4 Q. What was that?

5 A. I spent a year at the Pacific School of Religion
6 studying theology. That got me a Certificate of Theological
7 Studies. I spent two years at University of California-Davis,
8 in which I earned an MBA. I also spent a year at Georgia Tech
9 in quantitative finance, a year out of the two-year-degree
10 program.

11 Q. All right. What did you do after you finished your
12 one year of the two-year degree?

13 A. What, at Georgia Tech?

14 Q. Yeah. What was that ---

15 A. Well, that was about eight years ago. So I've had a
16 career in high tech since college.

17 Q. Okay. Okay. So the Georgia Tech was after you had
18 finished your education for a period of time and gotten out in
19 the working world.

20 A. Correct.

21 Q. And your current business is Flocking Behaviors? Is
22 that correct?

23 A. That's a Georgia LLC that I sometimes use for
24 billing clients for my software development project management
25 business. I'm current employed by a staffing firm and I'm

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1 working for Norfolk Southern

2 Q. And when you say you're employed by a staffing firm,
3 you mean a staffing firm is using you as a consultant to do
4 something for that staffing firm?

5 A. No.

6 Q. Okay, when you say you're employed by a staffing
7 firm, what do you mean?

8 A. The majority of people who work in large
9 corporations in IT departments work through staffing firms.
10 And because they're on contract, they're not employees of the
11 enterprise. I work for Norfolk Southern; however, I'm paid on
12 a W-2 through the staffing firm who takes a margin on the
13 hourly rate that Norfolk Southern pays the staffing firm.

14 Q. Gotcha. All right. And how long have you had the
15 Norfolk Southern assignment?

16 A. November of last year.

17 Q. All right. And I apologize, but when I was going
18 through my preliminary spiel about making sure you understood
19 my questions and that sort of thing, I forgot to give you some
20 of the practical stuff. And this is a flaw of Knox, all right?
21 I'm a touch ADD. So I tend to bounce around, topically and
22 chronologically. It's not a lawyer trick, just a confused
23 brain. And because I do that, often times it confuses people.
24 So, again, if I lose you and I'm talking about some document
25 and you don't understand, please stop me. Because I can

1 assure you, I will ask confusing questions. And I also wanna
2 apologize ahead of time...I try to take notes as to what your
3 answers are and I try to remember it. But at times I might ask
4 you a question that I've already asked you earlier, I simply
5 forgot that I asked. I'll try not to replot old ground, that's
6 waste of everyone's time and money. But that may happen, so
7 I'm gonna apologize to you ahead of time.

8 Let me get you to take a look, in the first
9 instance, at Exhibit 3. I'll represent to you I believe that
10 to be the interrogatory answers you served on me. But you look
11 at them and satisfy yourself that that's what they are.

12 A. (Reviewing Exhibit 3) These were my answers to your
13 questions; correct?

14 Q. Yes. That is what I believe them to be. I wanted
15 to make sure from you that that's what they were.

16 A. This looks to be what I produced.

17 Q. Okay. Let me go through some of them with you.
18 Take a look on Page 2 at Interrogatory No. 4, which asks for
19 you to list the name and address of any expert witness who you
20 propose to use as a witness in this case. And as of the time
21 you served me with these interrogatory answers on September 5th
22 of 2019, your answer was, "No expert witnesses have been
23 determined as of today." Is that still the answer to that
24 interrogatory today, July 24th of 2020?

25 A. Yes.

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1 Q. Okay. Have you talked to any --- other than your
2 lawyer, have you talked to anybody about any of the medical
3 records that you have been provided with in this lawsuit?

4 A. No. Well, I've talked to many lawyers, friends and
5 potential counsels, but I have not --- yes, that's the answer.

6 Q. So no physician has looked at those records and
7 given you any opinions one way or another about them or about
8 whether they support or don't support your claims in this
9 lawsuit.

10 A. Not me, no.

11 Q. Not you, no. Okay. Have they talked to somebody
12 else?

13 A. I don't know why you're asking me that question.

14 Q. Well, one of the great advantages now, Marshall,
15 that you have a lawyer is, John can explain to you the rules
16 that we're playing by here today. And those rules are
17 essentially that, any question I ask you that is relevant to
18 your claims, or might lead to the discovery of relevant
19 evidence about your claims, is fair game for me to ask. We
20 have gone to court twice now over what I perceive to be your
21 flaunting of the Rules of Civil Procedure.

22 A. You know what?

23 MR. BLINCOW: Stop. Everyone take ---

24 A. Is that a question?

25 Q. It's an explanation as to what's gonna happen if you

1 don't answer my question.

2 A. No, it's a hostile accusation.

3 Q. Marshall.

4 A. Knox.

5 Q. You're gonna answer my questions today. I'm not
6 trying to be hostile. I'm trying to explain to you the rules
7 that ---

8 A. No, you were disrespectful and unprofessional in
9 what you said about flaunting. And I know in depositions
10 there's rules against harassment and obstruction. And, if
11 necessary, we can get a Special Master to make this thing more
12 amenable.

13 Q. No, I'm not ---

14 MR. BLINCOW: We're not gonna need to do that.
15 Just listen --- if you know the answer, you answer it.
16 That's all.

17 Q. So, as I was saying, Marshall, the last two times
18 we've had to have court hearings, the court has...what is the
19 phrase?...appeared to me to be frustrated with your
20 participation in accordance with the Rules of Civil Procedure.
21 And so the reason I bring that up is, if you don't answer my
22 questions ---now, if John tells you not to answer, that's fine,
23 John and I and the court will work that out---- but if you're
24 gonna independently decide not to answer my questions, I just
25 want to let you know that I'm going to adjourn our deposition

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Page 13

1 and I'm gonna file a motion with the court and try and get you
2 sanctioned. We can get through it, you can answer my
3 questions, or we can get in arguments over whether the
4 questions are hostile or answers are hostile. I think the
5 former is a much smoother way to go through it. You know, I've
6 got nowhere to go today. I've got all day, into the night, and
7 I'm being paid to sit here. So it doesn't matter if it takes a
8 long time to me.

9 A. My understanding is the format here is you ask me a
10 question and I answer. What you have been doing is
11 pontificating and misrepresenting reality. But if you have a
12 question for me, I'm glad to answer. So why don't you ask me a
13 question and I'll answer it.

14 Q. Okay, Marshall. I think the question on the table
15 was: Who has talked to a doctor about the medical records ---

16 A. I believe that my lawyer has talked to doctors.

17 Q. Okay. You've talked to none.

18 A. Correct.

19 Q. Have you talked to anybody else other than your
20 lawyer about the medical records? Your girlfriend? Your Uncle
21 Ned? Neighbors? Anybody?

22 A. I have talked to friends who are doctors and lawyers
23 about the circumstances of this case in great detail.

24 Q. Okay. What friends who are doctors have you talked
25 to about this case? What are their names?

1 A. I don't even know their names. They're people I
2 know in a social context.

3 Q. How did you communicate with them?

4 A. Verbally.

5 Q. Okay. What is the social context in which you were
6 communicating with them verbally?

7 A. Gatherings in which we both participate.

8 Q. Gatherings where?

9 A. In Atlanta.

10 Q. When?

11 A. On a regular basis. I get together with men and
12 talk about all sorts of things. Social gatherings.

13 Q. Don't need to know anything you talked about other
14 than the doctor friends who you've talked to about this case.

15 A. I do not have their names for you.

16 Q. Okay. Do you know when you talked to them at these
17 social gatherings?

18 A. I've been talking to them since six months before my
19 father died. So starting at the beginning of 2018.

20 Q. Well, let's start there. The beginning of 2018,
21 before your father died, what prompted you to talk to doctor
22 friends at these social settings in Atlanta about your father's
23 medical condition?

24 A. I did not understand the disease of pulmonary
25 fibrosis. I did not understand why he didn't pursue a lung

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1 transplant. I did not understand the severity of its impact on
2 his life. I did not understand the prognosis for his life. I
3 was asking questions about that.

4 Q. Did you ever call your dad and ask him those
5 questions?

6 A. I did.

7 Q. And did he tell you?

8 A. He did.

9 Q. Okay. When did you call your dad and ask him about
10 his condition?

11 A. Over the last five years of his life we had many
12 interactions about that.

13 Q. My question's much more limited. When was the last
14 time you called your dad on the telephone and talked to ---

15 A. I visited him about a week before he died.

16 REPORTER: Excuse me just a second, Marshall.
17 I'm sorry. If you'll let him finish the question. Because
18 I can't write with both of you talking at the same
19 time.

20 THE WITNESS: Oh, I'm sorry. Okay.

21 Q. When's the last time you talked to your father?

22 A. I don't have the date in front of me. I think it
23 was two weeks before he died. My girlfriend and I visited him.

24 Q. Okay, yeah. And you went into great detail, and
25 we'll cover that.

1 All right. Walk me back to the prior time that you
2 talked to your dad. Before you and Julie went and your mom
3 shushed you out and wouldn't let you go in and see him. Before
4 that, when's the last time you talked to him?

5 A. We exchanged --- I spoke to him sometime in the
6 spring. Probably in March. I wrote him letters, and he wrote
7 me a letter in the spring.

8 Q. When's the last time you would have talked to your
9 father on the telephone?

10 A. As I just said, in March before he died.

11 Q. I'm sorry, I thought y'all were exchanging letters
12 during that time.

13 A. Also exchanging letters.

14 Q. Okay. So you had phone conversations with your dad
15 in March of '18.

16 A. Yes, I believe that's true.

17 Q. And amongst those conversations, one of the topics
18 was you asking him about his condition, and about lung
19 transplant as an option, and the sort of things that you asked
20 your doctor friends?

21 A. No. I did not ask about the lung transplants. I
22 asked about how he was doing, and he got very upset and talked
23 about it being a fatal disease. And we had a conversation
24 about his looking at his death.

25 Q. Okay. When you had that conversation with him in

1 March of 2018, did he seem of sound mind, to the extent you
2 could tell?

3 A. He was distraught. And I'm not sure what sound mind
4 means.

5 Q. Do you feel that the time that you talked to him he
6 was under any undue influence from your mother or your
7 brothers? In March of '18 when you were talking to him.

8 A. He was difficult to reach on the phone. Phone calls
9 would not get returned that I left on the message machine at
10 the house.

11 Q. Do you know why --- and these are phone calls to
12 your dad?

13 A. Yes. And to my mother.

14 Q. And you would leave these messages for both your
15 mother and father ---

16 A. Yes.

17 Q. --- and they would not return your calls?

18 A. Yes.

19 Q. Do you know why that might be?

20 A. My mother was not technical. She never worked a
21 computer in her life. I don't know whether she had problems
22 picking them up. I think the help, Debbie Wine, probably
23 picked up messages. I'm not sure if they got the messages.
24 That's why I wrote letters more than I called. Because then I
25 could be sure they got the communication. The last time I

1 wrote my father, 'I sent a separate letter to my mother and my
2 father. Because the communication channels between my parents
3 and myself and my brothers were very poor in general.

4 Q. Why was that?

5 A. My mother was not of sound mind the last five years
6 of her life. She had dementia. She could not be relied on to
7 be rational of thought or able to recall facts, or even make
8 commitments about whether a fact is true or false.

9 My father went through a lot of mood swings over the
10 years. And sometimes he would get mad about something and
11 react, or he would not communicate, or withdraw. And there
12 tended to be a cycle of positive communication and somebody's
13 upset about something.

14 My brothers over the years kept me out of the loop
15 of family events. Like my mother going to the hospital, my
16 father going into the hospital. I had to communicate with my
17 Uncle Ned in order to find out about a lot of these events.

18 Q. During this period of time you've just relayed to
19 me, did you consider yourself estranged from your parents and
20 your brothers?

21 A. No. I talked to them. I visited them. I saw my
22 parents in December of 2017 when I came up for the Christ
23 Church football reunion. We were all gonna go out to lunch.
24 However, my father fell and crushed a table and didn't feel
25 like he could get up and go to the event. And then my mother

1 was upset because she had been sent to get a new table. And so
2 we had a visit at the house.

3 I always --- I --- I --- my children --- well, never
4 mind. I'm volunteering information.

5 Q. Well, the drawback to starting to volunteer is that
6 I would have asked what you were gonna volunteer. So you
7 started to say something about your children. What were you
8 gonna say?

9 A. Unlike my brothers, I moved back to South Carolina
10 in 2000 and I frequently took my children to visit my parents.
11 And they visited us in Atlanta. So my children had a much
12 closer relationship with my parents than either of my brothers'
13 children did, and I encouraged and supported that.

14 Q. So you moved back to South Carolina in the year
15 2000, you said?

16 A. Correct.

17 Q. Was that in connection with a job change? Or what
18 brought you back to Greenville?

19 A. The number one motivation is I wanted to be closer
20 to my parents, specifically my father. And someone had
21 suggested to me that what worked for them was to go out to
22 lunch on a weekly basis. So my ex-wife and I decided to move
23 back to the East Coast where her parents lived, up in New York
24 and Middlebury, Vermont. And we thought about moving to
25 Greenville, but it just felt like it was too much of a

1 pressure-cooker, so we moved to Charleston.

2 Q. And you said that someone had suggested that if you
3 could go out to lunch on a routine basis with your father...?

4 A. It would help us to become closer.

5 Q. Were y'all not close prior to the year 2000?

6 A. It's kind of a black and white question, and I don't
7 know how to answer it.

8 Q. Okay. Well, give me some shades of gray if you need
9 to. Were you and your father close? You've told me you moved
10 back to Greenville and wanted to go have --- or, excuse me, you
11 moved back to South Carolina and wanted to have lunch with your
12 dad, because someone told you that would be a good thing to
13 help bring y'all closer. Is that generally what you're telling
14 me you ---

15 A. I lived in California for sixteen years. I went to
16 California after college. There's a three-thousand-mile
17 distance. It's very expensive to fly a family back to the East
18 Coast on a regular basis. Living on the East Coast would have
19 put me physically closer, and opportunities for more
20 interaction. The same way it put my wife ---ex-wife---
21 physically closer and more opportunities for interaction with
22 her parents, actually, who were in Vermont.

23 Living in California is three hours away in time
24 zone and you're basically like living in a different country.
25 And the three hours makes a huge impact on personal

1 relationships.

2 Q. Okay. So you moved back to Charleston, you and
3 Amelie. Am I pronouncing ---

4 A. Correct.

5 Q. --- it correctly? Did you have some lunches with
6 your dad, once you ---

7 A. Yes.

8 Q. --- came up in 2000?

9 A. We frequently went up to Greenville. We went up to
10 Lake Toxaway. For a while, we were having family vacations
11 including Sloan and Jonathan at Litchfield Beach. There were
12 many more opportunities to get together by living on the East
13 Coast.

14 Q. Okay.

15 A. They came to Charleston.

16 Q. All right. Let me get you to look at Interrogatory
17 No. 13, if you would.

18 A. Yeah.

19 Q. In your Petition you listed a John and Jane Doe, and
20 I asked you, essentially, who that was. And you said, "(They)
21 are as yet unidentified family friends, medical hospice
22 providers..."

23 I don't quite understand what it is you're saying,
24 so I'll just try to ask you to explain it. Who are the
25 unidentified family friends that are John and Jane Doe in the

1 case caption?

2 A. I'm not a lawyer. I tried to get information from
3 other documents that I found --- legal documents. And it
4 seemed to me to put John and Jane Doe in there kept open the
5 possibility for new information coming to light of individuals
6 to be identified. That's why I stuck it in there.

7 Q. Okay. So you were not intending to assert a legal
8 cause of action against John and Jane Doe, or the people who
9 were gonna represent the anonymous. Typically, the respondents
10 are people you've made a claim against, not witnesses who know
11 information. And you had listed them in the caption as
12 respondents. So that's why I was trying to figure out, who are
13 John and Jane Doe that you might have a claim against? And it
14 sounds like that wasn't your intention. John and Jane Doe are
15 just some witnesses you might want to add later on. Is that
16 correct?

17 A. Correct.

18 Q. Okay. Okay. And when you say "unidentified family
19 friends," you're not telling me you don't want to identify
20 them, you just don't know who the family friends are. Was that
21 your intention by saying "unidentified"?

22 A. I'm finding somebody's phone to be very distracting.
23 Is it possible for everybody to turn off their phones?

24 Q. Well, I cannot turn off my phone because I've gotta
25 communicate with your brothers, who are listening in to the

1 deposition. But to my knowledge, my phone ---if not, I will
2 make sure--- is on silent.

3 A. So you're texting with my brothers during the
4 deposition.

5 Q. I may well be, yes. And during breaks, I'll be
6 talking to them about your testimony. Because they are
7 listening in on the telephone to us here today.

8 So, Interrogatory No. 13 ---

9 A. Well, I have another question. So the lady here is
10 taking down everything that's said here while ---

11 Q. Hey, Marshall?

12 A. --- we're on the record?

13 Q. Marshall?

14 A. What?

15 Q. If you need to question me because you don't
16 understand one of my questions, I'm happy to try and explain my
17 question. I'm not gonna explain the logistics of the rules
18 here today. Your brothers are parties. They have a right to
19 be sitting in here. Just like Leslie Moore is sitting in here
20 live. Because you've sued all these people.

21 A. It's my understanding that no one has the right to
22 talk in here except for you and me. That's a form of
23 communication that's going on as if Leslie were talking to you
24 right now.

25 Q. So ---

1 A. And I don't appreciate your tone, and you better get
2 more respectful. You're get more cooperation that way.

3 Q. Marshall, I am sure ---

4 A. And my question was, if the lady here was writing
5 down everything that's said right now.

6 Q. I'm not answering your question, Marshall.

7 A. Huh! (Laughing)

8 MR. BLINCOW: Let's get back on track.

9 A. You're being ridiculous.

10 MR. BLINCOW: Let's get back on track.

11 Q. So, where were we, Marshall? We were talking about
12 Interrogatory No. 13 and these unidentified family friends and
13 medical and hospice providers. You don't know the identify of
14 any of those people. That was just your way to give yourself
15 the opportunity to tell me there may be family friends of
16 medical or hospice providers; is that correct?

17 A. Yes.

18 Q. Okay. I had asked you in the next interrogatories
19 to give me the name, address and phone number of your
20 girlfriend. You objected. I would like to know, as we sit
21 here today, the name, address and phone of your girlfriend.

22 A. (Laughing) Well, you just met her outside. Her
23 name is Julie Callahan and her address is the same as mine.

24 Q. And phone same as yours?

25 A. No, her phone number is different. I can get you

1 that.

2 Q. Okay.

3 A. (Looking at phone) (404) 953-8311.

4 Q. Interrogatory No. 15, you go into some elaboration
5 on something we touched on a while ago. Which was when you and
6 Julie came up to see your dad on June 25th of 2018.

7 Take a second. Read your answer to Interrogatory
8 No. 15. And let me know if anything is different since you
9 originally did it back in September.

10 A. (Reviewing document) It's exactly the way I recall
11 it.

12 Q. Okay. When your mother came and told you that your
13 dad did not want to see you, did you believe your mother?

14 A. I did not know whether to believe her or not.

15 Q. Did you think your mother would lie to you ---

16 A. Yes.

17 Q. --- about your father's wishes in seeing you?

18 A. My mother --- yes.

19 Q. Okay. Do you know why she would lie to you about
20 whether ---

21 A. Yes.

22 Q. --- or not your dad wanted to see you? Why is that?

23 A. My mother was a very passive and dependent person
24 and avoided confrontation at all cost. Therefore, if a topic
25 was unpleasant or confrontational, she would say or do anything

1 to avoid dealing with it.

2 Q. Okay. And then this sarcastic comment, "Boy that
3 must really have hurt." Do you know why she would throw that
4 out? That seems kinda confrontational.

5 A. No, it was a passive/aggressive cruel remark and it
6 was within character.

7 Q. Okay. The next interrogatories references Page 6 of
8 your Petition. And it references the portion of your Petition
9 that says your dad was incapacitated at the time of the alleged
10 revisions to his Will.

11 Were you with your father on the day that he
12 executed the most current testamentary documents?

13 A. No.

14 Q. Do you know who was with him when he executed those
15 documents?

16 A. The documents imply that there were two lawyers from
17 my father's law firm, as I recall. I do not have them in front
18 of me.

19 Q. Okay. And you've not had occasion to talk to either
20 of the two lawyers you show up on the documents, to ask them
21 about your dad's condition or capacity ---

22 A. No.

23 Q. --- on the date that he executed the documents?

24 A. No.

25 Q. Okay. In the Interrogatory Answer...the question

1 was when his incapacity began. Or part of the question was.

2 And in your answer, it doesn't appear to me that you've
3 answered when the incapacity began.

4 A. Let me re-read this, please.

5 Q. Okay. Yeah.

6 MR. BLINCOW: I'm sorry, what...?

7 MR. HAYNSWORTH: 16.

8 MR. BLINCOW: Thank you.

9 A. (Reading Interrogatory 16) Okay, could you please
10 repeat your question?

11 Q. Yeah. When did your dad's incapacity begin?

12 A. I believe that my father was a practicing alcoholic.
13 I believe that my mother was a practicing drug addict. They
14 were doing that up until the end of their lives. As alcoholics
15 age, their mental capacities diminish over time. I witnessed
16 that in my father. If you're talking about his incapacity
17 under his disease, I understand he was in hospice for the last
18 three months of his life where he was basically suffocating to
19 death and was on a lot of tranquilizing drugs to deal with his
20 panic attacks, one of which ended the hospice and got him back
21 into the hospital. And I also believe that he was under the
22 influence of a great deal of anger because my brother showed
23 private communication to him. So I'd say all those led to his
24 incapacity.

25 Q. Okay. And ---

1 A. And he was on oxygen constantly.

2 Q. Okay. Bad question on my part.

3 His incapacity --- you have alleged that he didn't
4 have the mental capacity to properly execute his Will and
5 Trust.

6 A. Correct.

7 Q. When did that incapacity begin? When did he become
8 so incapacitated of his mind and his free will that he was no
9 longer able to execute testamentary documents based on what he
10 wanted?

11 A. Once again, I'll repeat: I believe towards the end
12 of his life ---and there are many events I can point to--- he
13 was losing the ability to think rationally about emotionally-
14 charged topics. In a more compressed time framework, he was
15 suffocating to death and was on medication to avoid the
16 anxiety. I don't think a person who's suffocating to death and
17 on tranquilizers has the capacity to make decisions in his best
18 interest. Given the twenty-year history of him treating his
19 sons equally and the three weeks before his death making this
20 drastic change, I'd say the facts speak for themselves.

21 Q. You reference that your dad might've been angry,
22 that that might've been some of the motivation for what he did
23 in his last executed testamentary documents. Something about
24 your brothers had shown private communications to your dad and
25 it made him mad. Tell me about that.

1 A. It's been revealed by e-mails that you've copied me
2 on, and you have his secretary's statement. I think it's
3 common knowledge that my brother showing some e-mail
4 communications to him really pissed him off and he took this
5 action.

6 Q. He got mad as hell at you for threatening to kill
7 Sloan, and then he wrote you an e-mail that he didn't wanna
8 communicate with you anymore and he cut you out of the Will.

9 A. Is that a question?

10 Q. Do you agree that that's a fair representation of
11 factually what happened?

12 A. No, it's not.

13 Q. Okay. How do you know your father was angry when he
14 was shown the e-mails which you and Sloan exchanged?

15 A. Well, when I visited him, I was not aware of him
16 being shown the e-mails. I was also not aware that he had
17 written me out of his Will. I didn't find that out until six
18 months after his death when I started to seek the information
19 from Attorney Moore. It's only in hindsight that I found out
20 about this.

21 Q. So you didn't know he was angry with you in close
22 proximity to when Sloan sent the e-mail. You only found out
23 your dad was mad because, looking back in time, he cut you out
24 of the Will, and then you found out he was shown the e-mail.
25 And now, in hindsight, you're telling me you figured he was

1 mad. Is that correct? Or did you know he was mad at you about
2 the e-mails?

3 A. I didn't know about the e-mails being shown to my
4 parents until my brothers pulled the same trick after my
5 father's death and got my mother and poisoned my relationship
6 with my mother, at which time she said, "Don't come to the
7 funeral." That's when I knew the e-mails were being used as a
8 weapon against me.

9 Q. Okay. All right. Well, before you dad was shown
10 the e-mail, you and your dad were on good terms?

11 A. Yes.

12 Q. Okay. And looking in hindsight after he was shown
13 the e-mail, you perceived he got angry with you.

14 A. Well, he wrote me a very cold e-mail, saying "Don't
15 contact me" after I visited him.

16 Q. And do you believe that that hostile e-mail he sent
17 you after you visited him was prompted by him seeing the
18 e-mail? Or if not that e-mail, do you know why your dad sent
19 you that hostile e-mail?

20 A. You know, he did not tell me personally, face to
21 face, "Do not talk to me." I was shooed out of the room by my
22 mother. I do not know what his wishes were at the end. His
23 e-mail account was accessible by his secretary, obviously.
24 And, apparently, Sloan and Jonathan had a lot of access to it,
25 too. Although, you have not produced communications between

1 that e-mail account and my brothers. I only know secondhand
2 what his feelings were through these e-mails that supposedly he
3 wrote. I tried to contact him regularly after I visited and
4 was told my by mother he wouldn't see me. I hoped to see him
5 to say goodbye before he died, and I was prevented from doing
6 so. I don't know if those were his wishes or not. He never
7 said anything directly to me.

8 Q. When your father sent you e-mails, do you have any
9 doubt that it was him sending the e-mail?

10 A. (No response)

11 Q. It sounded like you might be suspicious that an
12 e-mail from his account might not be an e-mail from Jim
13 Shoemaker.

14 A. My father had a computer in his home where he
15 accessed the Wyche e-mail server.

16 Q. Okay.

17 A. He used that prolifically up until this conflict
18 started up, and then he started asking his secretary to print
19 off e-mails in his office. If she could print them off, she
20 could access them. So I do not know who wrote the e-mail. Yet
21 he copied my brother Jonathan on that e-mail where he says,
22 "Don't contact me." I don't know if Jonathan was visiting my
23 father and wrote the e-mail, or if Sloan was visiting my father
24 and wrote the e-mail.

25 Q. As we sit here today, though, you have some question

1 in your mind as to whether or not the e-mail you got,
2 reportedly from your father, about, "In light of our years of
3 discord," ---I'm paraphrasing--- "I no longer wish to contact
4 you in writing..." You know. I'm paraphrasing. You believe
5 that that e-mail might not have been actually prepared by your
6 father, that those were not his words.

7 A. Correct.

8 Q. Okay.

9 A. My brothers have both benefitted to the point of 1.7
10 million dollars each by me being written out of the Will. You
11 and Attorney Moore are making money off of this conflict.
12 Everybody's making money off of it except for me. That e-mail
13 was part of this whole constellation of absurdity. And it went
14 in the face of twenty years prior, factual experience,
15 including letters I have where my father expresses his
16 affection for me that is contrary to his last actions,
17 supposed.

18 Q. Take a look at Interrogatory 20. And I should say
19 your Answer to Interrogatory 20.

20 A. (Witness complies) I stand by everything in that
21 answer.

22 Q. Including that your brothers killed a pedestrian at
23 Litchfield Beach?

24 A. Yes. As reported to me by Sloan.

25 Q. Okay. The first part of your answer you make

1 reference to your mother's Sundowner's syndrome, and that's
2 based on conversations with your uncle. That would be Uncle
3 Ned Sloan?

4 A. Correct.

5 Q. What did you and Ned talk about, vis-a-vis your
6 mom's Sundowner's syndrome?

7 A. Over the years, when my mother and father would go
8 into the hospital ---usually from some accident, like my mother
9 would trip, or my father would fall--- I would get the best
10 source of information from my uncle, who cared a lot about his
11 sister. And he also cares about me. So he would be open with
12 the communication flow. Something that was not true among
13 other family members. He explained that, in the afternoon, she
14 would tend to lose reality and behave like someone who was
15 either in Alzheimer's or dementia.

16 Q. And when are you and Ned having these conversations
17 where he is relaying the information that you just imparted to
18 me?

19 A. I don't know. The last three or four years of their
20 life, my parents' lives. Over the telephone.

21 Q. And were your parents not keeping you appraised
22 directly of their condition during the last four or five years
23 of their lives? It sounds like you were having to get
24 information from Uncle Ned because no one in your immediate
25 family, your brothers or your parents, was keeping you up to

1 date and what was going on with them.

2 A. My father was not free with information. One time
3 my mother fell on her face and in the hospital. He wrote an
4 e-mail to everybody: "Mother's in the hospital. Do not
5 contact me by phone, I've got too much to do." Well, I
6 respected his wishes. A week later I called to find out about
7 my mother's condition. Had to call my uncle to find out and he
8 said my two brothers were visiting. So either I was too
9 passive about respecting my father's wishes about staying away,
10 or...I don't know. But I wasn't getting the information.

11 Q. Okay. Last paragraph, last full paragraph of your
12 Answer to Interrogatory No. 20 that begins, "I grew up in a
13 family dominated by affluence..."?

14 A. Yeah.

15 Q. It goes on to say, "...by affluence, alcoholism and
16 drug addiction. This fact explains not only father's lack of
17 capacity at the end of his life..." That's what I wanna focus
18 on. So is it your contention that at the end of your dad's
19 life, due to alcoholism and drug addiction, he lacked
20 testamentary capacity?

21 A. I don't really know what testamentary capacity
22 means.

23 Q. Okay. Glad you told me. And I'll define it for
24 you. So then we'll be on the same page, as it were.

25 Testamentary capacity is the legal capacity by which

1 a person has to do a Will. Leave their possessions to who they
2 want to leave them to. The legal capacity to be able to do a
3 valid Will that would be upheld in a court of law is
4 testamentary capacity. Got enough mental acuity and not under
5 the influence, undue influence, of someone else. I got enough
6 going on to validly leave a Will. When I say testamentary
7 capacity, that's what I'm talking about.

8 So is it your contention that alcoholism and drug
9 addiction caused your father to not have testamentary capacity?

10 A. The drug addiction refers to my mother, not my
11 father.

12 Q. Okay. Strike drug addiction from my question.

13 A. Yes. His actions three weeks before his death are
14 so contrary to his actions twenty years previous. And, since
15 he was a lawyer, he was fully aware of the kind of damage for
16 multiple generations this action would take on me and my
17 children and my side of the family and the relationship with
18 the other side of the family. And since he acted in a loving
19 way many years previously towards me and my children, and
20 seemed very aware of family dynamics, and in general acted
21 towards keeping a unified family, it was totally against his
22 character. And that is explained to me by being on narcotics,
23 suffocating to death, the long-term effects of alcoholism.

24 Q. Do you remember approximately the first time you
25 voiced to either of your parents your opinion that they were

1 alcoholics and/or drug addicts?

2 A. I think the same weekend in which Sloan and Jonathan
3 ran down the pedestrian, I had said something that my mother
4 and my father overheard, that I thought Dad was an alcoholic.
5 So that was probably...oh, god, I guess I was in my thirties or
6 something. So that was twenty-five years ago.

7 Q. Okay.

8 A. I had told my mother that I thought she was a drug
9 addict probably ten years ago.

10 Q. Well, the twenty-five years ago, was that Dad's an
11 alcoholic and Mom's a drug addict was only ten years ago? I
12 mean, two different dates?

13 A. Yeah. I wasn't sure about my mother until I did
14 research and I recorded some of her conversations and played
15 them to professionals and they said that she's under
16 benzodiazepine intoxication.

17 Q. All right. Well, let me ask you about that. So you
18 recorded some phone conversations with your mom?

19 A. Yeah. I was getting a lot of crazy phone calls.

20 Q. How did you record these calls with your mom?

21 A. I guess I used my telephone. I'm not exactly sure
22 how I --- and they might've been messages on a message machine.
23 They were probably messages on my voicemail.

24 Q. Okay. And you shared those messages, did you say,
25 with some doctors?

1 A. With a therapist.

2 Q. With a therapist. Okay. And how did you...how did
3 the therapist listen to the recording? Was it voicemail on a
4 cell phone?

5 A. I played it on my phone, yeah.

6 Q. And what was this therapist's name that you played
7 the recordings of your mom for?

8 A. I don't know. I can get it for you. I don't
9 remember her name.

10 Q. When did you record your mom's calls?

11 A. Probably ten years ago.

12 Q. So that would be 2010?

13 A. Probably, yeah.

14 Q. Okay.

15 A. You know, I'm just pulling this out of my memory.

16 Q. All right. Well, do you still have the recordings?

17 A. No, I do not.

18 Q. What happened to them?

19 A. I erased them. I don't keep voice messages.

20 Q. So did you give a copy to the therapist? Or you
21 just let the therapist ---

22 A. No, she just listened to it.

23 Q. Okay.

24 A. It was distressing me. My --- I frequently had
25 conversations with my mother that distressed me because they

1 were so nuts. I didn't know how to deal with it.

2 Q. And you say you'll provide the name of the therapist
3 later?

4 A. I guess I can track it down. I don't know how I ---
5 yes, I think I can track it down.

6 Q. Okay. And what did the therapist say to you when
7 you played these recordings from your mom?

8 A. She said, "That's not the way a drunk person talks,
9 but it is the way a person talks who's on too many Valiums."
10 And Valium is often referred to as alcohol in pill form. And
11 it's highly addictive. And she frequently just sort of
12 departed from reality and talked...sort of like a drunk person
13 but not slurring words.

14 Q. All right. I'm reading further in that same
15 paragraph we were on in your Answer to Interrogatory No. 20.

16 "This fact explains not only father's lack of
17 capacity at the end of his life, but the ongoing pain and
18 perversity in the relationships between my brothers and mother,
19 and myself." What do you mean by the perversity in the
20 relationship between your brothers, your mother and yourself?

21 A. Children and spouses who are raised in an alcoholic
22 home pretty much go crazy as a result of being around an
23 alcoholic. The domination, the inconsiderateness, the self-
24 centeredness, the rules about not telling the neighbors, the
25 lack of affirmation, the tendency towards control as opposed to

1 love. That's what I'm talking about.

2 Q. And when you say tendency towards control and not
3 love, are you talking about your dad and your relationship,
4 that he tended to be controlling over you and not express love
5 to you?

6 A. He expressed both at different times on multiple
7 occasions.

8 Q. Is it a fair characterization to say that over the
9 years at various times you and your dad were estranged?

10 A. No. Estranged has a long-term permanent
11 characteristic. That's not accurate. We had conflicts.

12 Q. Okay.

13 A. But all family members have conflicts.

14 Q. Did you have more conflicts, in your opinion, with
15 your dad than your brothers did?

16 A. Depends on what time period you're talking about.

17 Q. Well, let's talk about from year 2000 to year 2010.

18 A. Well, it depends on if you wanna go on opinion or
19 fact. The fact is, in 2010 my dad wrote me a very loving
20 letter explaining why he set up an irrevocable trust and why he
21 divided the money between me and my children according to my --
22 - because I'd gone through a divorce --- I was in a divorce at
23 the time. It was a very loving letter. In 2017 he wrote
24 another letter that was very loving and interested in me and my
25 children, and talking about his positive regard for my brothers

1 and their children.

2 Q. Okay.

3 A. Six months before he died, he reaffirmed a Will that
4 treated all three children and grandchildren equally. So those
5 are the facts. There are other times, though, such as when my
6 daughter graduated from Georgia Tech and I asked my parents, in
7 the presence of my brother and my girlfriend, to please drop
8 divorce from family conversations. Again, my mother liked to
9 bring up things like this. And I said, "Please stop that."
10 And he and my mother left the table and he then, three days
11 later, asked me to return a hundred thousand dollars he'd given
12 to each of his three sons, because he so pissed off that I
13 would ask him not to talk about divorce at the family events on
14 a regular basis. I sent him back the hundred grand. so there
15 were times when there was love being exchanged and there was
16 time when there was conflict.

17 As to your original question: I'm the oldest son.
18 I also don't back down. And so, in general, I would tend to
19 set boundaries with my father that my two brothers did not do.
20 If you wanna look back to our childhoods, my brother Sloan and
21 I got the same physical treatment that my brother Jonathan
22 escaped. So I'm not sure how to parse the difficulty in the
23 relationship.

24 Q. Okay. Interrogatory No. 21. I had again referenced
25 part of your Petition, and there was a reference in the

1 Petition about a distant family friend reaching out to you. My
2 interrogatory was: "Who was the friend? How did they reach
3 out to you?" and "Identify any documents..." And you chose to
4 not identify that person. So now that we're sitting here
5 together, I would like you to tell me who the distant family
6 friend was that you reference in your Petition.

7 A. Dottie Schipper.

8 Q. All right. Walk me through that. Dottie call you?
9 You call her? Tell me about it.

10 A. So, Knox, you have asked me about this before and
11 you --- the term you used with me before about Dottie was, "I
12 put her into play." I have nothing but affection and respect
13 for Dottie and a deep sense of gratitude. Because she gave me
14 the opportunity to visit my father before he died, whereas, my
15 brothers and mother were not gonna give me that opportunity.
16 So I would appreciate you not embroiling her in something when
17 she did a very simple thing: she tracked me down on Facebook
18 and said, "Marshall, I really need to talk to you, could you
19 please give me a call?" I gave her a call. And she said,
20 "Marshall, people are saying goodbye to your father." I said,
21 "Dottie, thank you very much, I didn't know that." A few days
22 later, I got in the car and went to visit my father.

23 Q. And when you thanked her, "I didn't know that," was
24 that via Facebook? Did you respond ---

25 A. No, I called her up on the phone.

1 Q. Okay. So first contact was, she found you on
2 Facebook and reached out on Facebook?

3 A. And said, "Would you please call me?"

4 Q. And said "Please call me."

5 A. Yes.

6 Q. You called her, she told you, "Hey, people are ---
7 your dad's close, people are going and paying their last
8 wishes."

9 A. Yes.

10 Q. You thanked her for advising you, and that was the
11 extent of your conversation with Dottie Schipper about your
12 dad?

13 A. Yes.

14 Q. Okay. I'm not on Facebook, so I may say an improper
15 term of art. When she reached out to you on Facebook, is your
16 Facebook page open so anyone who goes on Facebook can contact
17 you? Or was she a friend, if I'm using the right term of art?

18 A. I don't use Facebook. I have a Facebook page so
19 that occasionally my children can share photos with me. I have
20 removed all my friends on Facebook. I don't like the medium or
21 the platform. I don't really wanna have anything to do with
22 it. I do have a page, though, so somebody who wants to track
23 me down can track me down.

24 Q. Okay. And is that how Dottie tracked you down,
25 is ---

1 A. Yeah.

2 Q. --- posted something on your page?

3 A. No, no. She sent me a note or something.

4 Q. Okay. The next interrogatory again references part
5 of your Petition. It's the portion where you contend your
6 brothers have been edging you out of the family for years in a
7 cold and calculated manner. And in your answer, you tell me,
8 "During the last five years of my father's life, my brothers
9 hid from me..."

10 During the last five years of your dad's life ---

11 A. Can you let me read this again?

12 Q. Yeah. I'm sorry. Sure, go ahead.

13 (Witness Reviewing Answer to Interrogatory No. 22)

14 A. Okay, I've read it.

15 Q. Okay. Second sentence: "Over the last 10 years of
16 our parents' lives - during which both our parents suffered
17 multiple accidents, illnesses and hospitalizations - I was
18 directly, on multiple occasions, excluded from notice of the
19 event until days and weeks afterwards, thus prevented from any
20 opportunity to be of assistance or support to either James M.
21 Shoemaker, Jr. or Mary Hunter Sloan Shoemaker."

22 Were you not in routine contact with your mom and
23 dad over the last ten years of their lives so you would know
24 directly from them that they had suffered multiple accidents or
25 illnesses or hospitalizations?

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1 A. I was in regular contact with them.

2 Q. Okay. Well, ---

3 A. Visits. Telephone calls. However, the dynamic
4 about accidents, illnesses: my mother face-planted on several
5 occasions, and I think it had to do with this Valium
6 intoxication. My father fell over quite frequently. I think
7 it had to do with him being impaired, too. So, obviously, if
8 there's one member of the family who doesn't drink, and who
9 thinks not drinking is very important and that drinking is very
10 deleterious to the health of family members, and that drug-
11 taking is very deleterious, if they go into a medical situation
12 they don't want me there saying, "Well, I think Dad should stop
13 drinking and Mom should stop taking drugs."

14 Q. So do you believe your parents --- because of your
15 thoughts on what you perceived to be their addictions, do you
16 believe your parents were intentionally not communicating with
17 you and injuries and accidents they were having?

18 A. Correct. I do.

19 Q. And do you believe that was well thought out on
20 their part? That they intentionally didn't communicate with
21 you because they didn't want you to know, for fear you may
22 offer your opinions as to why they were falling out?

23 A. Yes. Well, I'm not --- I'm sorry. Do I think it's
24 well thought out? I don't know if it's well thought out. I
25 think it's instinctual. A lot of this behavior is described in

1 the literature about alcoholism, and family systems theory, and
2 scapegoating. And heros. And isolating and blaming. It's ---
3 I mean, it's...

4 Q. Okay. Over on the next page there's a paragraph
5 that begins, "My brothers refused to cooperate with planning
6 family vacations, so we stopped having family vacations over
7 the last 5 years of my father's life."

8 Did your mom and dad go on any family vacations with
9 their other two sons during the last five years of their life?

10 A. I'm not aware of any vacations where the brothers
11 and their kids were invited and I was not. They did visit, in
12 Colorado and New York, my other brothers.

13 Q. So do you know whether or not there was a family
14 vacation during the last five years of your dad's life, where
15 Jonathan and Sloan and/or their kids did a vacation with your
16 mom and dad where you were excluded?

17 A. No, I'm not aware of it. No, but I do know that
18 this annual trip to the beach got sabotaged because Sloan and
19 Jonathan refused to cooperate on the planning. So, basically,
20 I put together a conference call with my two brothers and my
21 parents, and I said, "Hey, the important thing is, let's get
22 together. You wanna go to Litchfield? You wanna go to Lake
23 Toxaway? Where do you wanna go?" Sloan says, "Oh, let's go to
24 the Catskills." And Jonathan says, "Oh, that doesn't fit with
25 my work schedule." So they both made it impossible for us to

1 get together as a group.

2 Q. A group, including you and your family.

3 A. Yeah. I mean, you sound like you're aware of
4 vacations to which I wasn't invited. If that's important, why
5 don't you tell me about it.

6 Q. Well, again, as we said earlier, Marshall, the way
7 this works is that I get to ask you the questions and not vice
8 versa.

9 A. (Laughing) Okay.

10 Q. The e-mails that you have referenced about being for
11 their eyes only...? I think one was the e-mail that Sloan sent
12 to your dad about you when you and Sloan got in a dust-up over
13 him wanting to come to Peter's graduation. That was an e-mail
14 that was sent to your dad that you felt like shouldn't have
15 been shared; right?

16 A. Correct.

17 Q. And then there was the e-mail that you sent to
18 Detective Drew Palmer that you copied Cary Hall and others on,
19 about Debbie Wine driving them around to withdraw \$15,000 to
20 send to New York because they were scammed on the Dominican
21 Republic thing. That was the e-mail --- when you talk about
22 showing to your mom and causing great distress for her, is that
23 the e-mail that you believe, or that you contend, that they
24 showed to your mom? The e-mail about being duped? That Peter
25 was in the Dominican Republic and needed money and Debbie wine

1 drove 'em around. You remember, you e-mailed Drew Palmer, the
2 detective?

3 A. Correct. I remember.

4 Q. And that e-mail to Drew Palmer, which we'll get to,
5 went into a lot of stuff about this event where your parents
6 were duped into sending money.

7 A. Correct. Right.

8 Q. Is that the e-mail that you believe Sloan or
9 Jonathan showed to your mom after your dad had died that upset
10 your mom?

11 A. At the time my mother called me, just before the
12 funeral, I thought he'd shown the e-mail where I had talked
13 about their alcoholism and saying, "Sloan, we've gotta do
14 something about it." I did not consider that it would've been
15 the e-mail about the cops.

16 Q. And I'm not suggesting it was. I'm just trying to
17 figure out from you, and, you know, you've got "Their sharing
18 with my father communication from me (for their eyes only) was
19 in part the stimulant to my father's last irrational act of
20 rejection." So that's an e-mail that they showed your dad.

21 What e-mail are you talking about in the sentence
22 "Their sharing with my father communication from me (for their
23 eyes only) was in part the stimulant to my father's last
24 irrational act of rejection." What e-mail are you talking
25 about?

1 A. The e-mail exchange with Sloan around his behavior
2 around my invitation to stay in my house and my making it clear
3 to him that I thought that he was playing a nasty game in my
4 parents' life.

5 Q. All right. And then the next sentence: "After my
6 father died, they leaned very heavily on my mother and
7 convinced a grief stricken old lady to exclude her oldest son
8 from his own father's funeral, pleading their 'fear that I
9 would harm them'..." Tell me about that. The pleading their
10 fear that you would harm them. Did your mother share with you
11 that there'd been some conversation with Sloan or Jonathan that
12 they were afraid if you came to the funeral you would harm
13 them?

14 A. Uh...a few days before the funeral, my mom and I
15 were talking about me and my kids coming up. And we had a very
16 good --- there was a very positive and loving tone to the
17 conversation. The next day, maybe three days before the
18 funeral, she called up and said, "Well, I see, if you feel so
19 negatively about our family, you should not come to the funeral
20 and you're not welcome," and hung --- "Sloan is showing me this
21 e-mail," and hung up the phone.

22 When I communicated with my mother for the year and
23 a half after my father died, at some point I said, "Mother, how
24 could you try and exclude me from my own father's funeral?"
25 And she said something to the effect, "Oh, your brothers were

1 afraid of you." That's where I got that conclusion.

2 Q. Okay. Okay. So after your dad has been buried, you
3 have a subsequent conversation about, "Mom, why would you
4 exclude me from the funeral?" And that's when she told you
5 that your brothers expressed they were fearful of you if you
6 had come.

7 A. Right. And I interpret that to be a socially
8 acceptable presentation for the real underlying thing, that she
9 was horrified that I would openly talk about alcoholism and
10 drug addiction in the family. And that she was grief-stricken
11 and my brothers found a way for her to vent her spleen on me.
12 Which had been part of a pattern. And which I understand from
13 other lawyers I've talked to in Georgia, that when parents are
14 aging, siblings tend to become very entitled about assets of
15 their parents and behave in ways in order to gather more of
16 those assets. And that's what I see in my brothers' behavior.

17 Q. Okay. Still reading in the same paragraph after the
18 quote "fear that I will harm them," and you've got, in
19 parenthetical, "a totally fabricated idea cooked up in their
20 obviously guilty consciences."

21 What would Sloan and Jonathan have --- are you
22 talking about they would have guilty consciences?

23 A. Yeah.

24 Q. About what?

25 A. Sloan's passing on e-mail, which would obviously

1 , distress my parents, to my parents, which were not addressed to
2 my parents, directly resulted in my father writing me out of
3 his Will. And I would think --- in my mind, I've never thought
4 to try and exclude my brothers out of my parents' estate. I've
5 never tried to exclude them from the family, really. I didn't
6 want Sloan coming to the graduation because he was so
7 disrespectful. But I would think, on some level, my brothers
8 would think, "You know, this situation sucks, we had a part in
9 it, and I don't feel good about my part in it."

10 Q. Okay. Did your mother ever share with you that
11 either of your brothers had talked to her or your dad about
12 trying to get him to exclude you?

13 A. Could you repeat that?

14 Q. Yeah. You told me you talked to some lawyers in
15 Georgia and they explained to you that siblings, at times, when
16 parents get older, become very entitled to the assets of those
17 parents.

18 A. Correct.

19 Q. And if I'm understanding you correctly, Sloan and
20 Jonathan should feel guilty, or you think should feel guilty,
21 because they were part of the mechanism that caused your dad to
22 cut you out.

23 A. Correct.

24 Q. Okay. And I didn't tell you this when we started.
25 Sometimes ---it's not ADD, it's stupidity--- sometimes my mouth

1 , overruns my brain, and I've just forgot the point that I was
2 trying to make, or the question that I really want to ask. So
3 I will move on to a different question, rather than waste our
4 time trying to remember where I was.

5 Let's see. Next sentence: "You will see in an e-
6 mail exchange from Jonathan and my father that he knew in the
7 final weeks of my father's life that I had been excluded from
8 the estate." And we'll get to that e-mail in a little while,
9 but it's the one where your dad, or on your dad's e-mail
10 account, an e-mail was sent, "Marshall, I no longer wish to
11 have any contact with you." And then Jonathan e-mailed your
12 dad something along the lines of ---and, again, I'm
13 paraphrasing--- "You know, Dad, I know that was hard. I've got
14 kids of my own, but I support your decision."

15 A. And he copied me on the e-mail.

16 Q. Right. And ---

17 A. Which was an extremely hostile --- never mind.

18 Q. And when you got that e-mail, you've now seen that
19 your dad has sent you what looks like a hostile e-mail, and
20 Jonathan is obviously aware of it because he's been copied.
21 Did you call Jonathan and go, "What the hell's going on?
22 What's this e-mail about?"

23 A. I'm sorry. Are you asking me why I didn't call him?

24 Q. I'm asking if you called him. You get an e-mail
25 from your dad, a kiss-off e-mail ---my words--- and Jonathan

1 has been copied on it. Right?

2 A. And he copies me on his response saying, "Good job,
3 Dad."

4 Q. Right. "Dad, I support your decision."

5 A. Yeah, yeah. "Screw him." "Screw my brother."

6 Q. All right. And after you got that e-mail from
7 Jonathan, did you pick up the phone and call Jonathan?

8 A. Jonathan would not return my calls. You have
9 letters where I tried to reach out to them before initiating
10 this lawsuit to amend the relationship. They didn't respond to
11 letters, they don't respond to phone calls. They don't
12 communicate with me. Jonathan wrote me out of his life many
13 years ago.

14 Q. So you did try calling, you just couldn't get
15 through.

16 A. Jonathan? No, I did not try to call.

17 Q. Oh. Okay. All right. So you didn't try to call
18 him. Did you call your dad? "Dad, did you send this e-mail?"

19 A. No, I think I was so stunned and hurt that I really
20 didn't know what to do.

21 Q. But you felt like the motivation of what happened
22 was sharing that e-mail. That's what pissed Jim off enough to
23 make that decision, was when he saw the e-mail where you
24 threatened to kill Sloan.

25 A. Well, no, I would say that was solely the reason.

1 My father was an authoritarian man and he responded to
2 challenge with great aggression throughout his entire life. He
3 smoothed it off in the professional world, but at home he did
4 not hold back, in any manner whatsoever. There were repeated
5 instances that, when challenged, he responds with incredible
6 aggression. This was about as aggressive as he could be, other
7 than getting in the car and punching me out. This was about as
8 much damage as a man can inflict on a child without putting a
9 bullet in their head. And it was so over-the-top. I think it
10 was motivated by the e-mail; but the other contributing
11 factors, which I've repeated probably way too often by now,
12 impacted his ability to think clearly in this situation.

13 Q. Let me get you to switch over, Marshall, to you ---

14 THE WITNESS: I'd like to take a break.

15 MR. HAYNSWORTH: Good idea. Excellent point.

16 Break time.

17 (BREAK)

18 Mr. Haynsworth Resuming:

19 Q. Okay, we're gonna switch over the Exhibit 3a, which,
20 if you could take a look, I'll present to you that I believe 3a
21 is a copy of your responses to the Request for Documents, along
22 with a copy of the documents that you produced. I will
23 forewarn you that the second letter in the pile from Uncle Ned
24 is almost illegible. It just copied very badly. And then
25 there's another bad copy in it. I don't think that's gonna be

1 a particular impediment, I just wanna make sure you're
2 comfortable that what I've told you 3a is, is in fact your
3 responses to the document request for the documents that you
4 have provided.

5 A. Okay.

6 Q. Oh, I'm sorry. Go ahead, finish making sure that
7 it's what I said it was, and then we're gonna skip back to the
8 prior exhibit for a second.

9 A. This is illegible, too. (Indicating document) But
10 do you know the date on this last page?

11 Q. That's the letter from Wyche?

12 A. Yeah. Personal letter from my father.

13 Q. Wait a minute. The last page, the personal
14 letter --- yeah, I can tell you that date, too. The personal
15 handwritten letter, "Dear Marshall," is 8/12/10. And then the
16 letter that your dad referenced that you'd be getting from Cary
17 Hall and Leslie Moore is dated August 11th, 2010. And I've got
18 that Wyche letterhead August 11, 2010 letter as the final
19 document in the stack.

20 A. All right.

21 Q. Does that generally look like the document ---

22 A. Well, I have a letter of 1917 (sic) that I referred
23 to earlier about a very positive regard for everybody, and
24 "Love, Dad" and all that. I don't see it in there. Maybe I
25 didn't have it at the time.

1 REPORTER: Could you give me that date again.

2 I heard 1917.

3 THE WITNESS: April 9, 1917 (sic)

4 MR. BLINCOW: 2017.

5 THE WITNESS: 2017.

6 REPORTER: I thought.

7 Q. And, again, I apologize, I got ahead of myself.
8 We'll get to 3a in a minute. Let's go back to 3, which are the
9 interrogatory answers we were talking about, and I skipped over
10 one. Interrogatory No. 18.

11 A. Okay.

12 Q. And Interrogatory No. 18 asks: "Have you ever been
13 treated for emotional or psychological issues by any physician,
14 therapist or other provider? If so, please identify the
15 condition for which you were treated, who treated you for the
16 condition, and identify any documents related to the treatment
17 or condition."

18 So, as we're sitting here today, same question: You
19 ever been treated for emotional or psychological issues by any
20 physician, therapist or other provider?

21 A. 1986. I got sober and I was in a halfway house.

22 Q. The halfway house, was that part of a program, like
23 AA? Was the halfway house in connection with any sort of
24 criminal issue? When you say halfway house, I'm thinking a
25 transitional place ---

1 A. I went through a treatment program for alcoholism in
2 a hospital in San Francisco. They suggested a halfway house.
3 I went there for six months.

4 Q. And was that in 1986? Six months during ---

5 A. Correct.

6 Q. --- the year '86?

7 A. Yes.

8 Q. What was the name of the treatment facility?

9 A. Henry Ohlhoff House.

10 Q. Henry Olaf?

11 A. O-h-l-h-o-f-f House.

12 Q. Did you make the decison to check yourself in to
13 Henry Ohlhoff House on your own?

14 A. Yes.

15 Q. And you were --- were you there for six months and
16 then in a halfway house for a period of time later? Tell me
17 how long ---

18 A. I was there for six months. I lived there for six
19 months. And I worked, and went to meetings. It was a place to
20 live in early recovery.

21 Q. And the treatment facility is Henry Ohlhoff House.

22 A. Correct.

23 Q. Is the halfway house, is that ---

24 A. Yes.

25 Q. Same place we're talking about.

1 A. Oh, no. The hospital was called Marshall Hale
2 Hospital. It no longer exists.

3 Q. Okay.

4 A. It was a 28-day program.

5 Q. Okay. So let me make sure I understand. You were
6 in a 28-day program in a hospital called Marshall Hale that no
7 longer exists. And that would have been in the year '86?

8 A. Yes.

9 Q. Okay. And then following your 28-day stay in the
10 hospital, then you went to Henry Ohlhoff House ---

11 A. Correct.

12 Q. --- for some period of time. Okay. Other than that
13 treatment for alcoholism, any other emotional, psychological
14 issues that you have seen a therapist or a physician or other
15 provider about?

16 A. I take an antidepressant.

17 Q. Have you seen a doctor about ---

18 A. Yes.

19 Q. --- depression?

20 A. Years ago, I saw a psychiatrist. Now my internist
21 resubscribes --- re-prescribes the antidepressant.

22 Q. And you said now your regular physician prescribes
23 the antidepressants?

24 A. Yes.

25 Q. Who was it that first got you on them? Did you

1 --- who did you first see for depression? I'm sorry, I missed
2 that part.

3 A. Dr. Gordon, in Smyrna.

4 Q. Do you know Dr. Gordon's first name, or what
5 hospital ---

6 A. Michael.

7 Q. And is Dr. Michael Gordon in Smyrna, Georgia a ---

8 A. Psychiatrist.

9 Q. --- psychiatrist?

10 A. Yes.

11 Q. Do you know if Dr. Gordon practices with a
12 particular group?

13 A. No. I don't know if he's still in practice or not.

14 Q. All right. And how long --- and I'm sorry if you
15 told me, I didn't jot it down. When did you see Dr. Gordon in
16 Smyrna, Georgia ---

17 A. Maybe ten years ago.

18 Q. --- about depression? So approximately ---

19 A. 2010.

20 Q. 2010. Okay. And how long were you treated by Dr.
21 Gordon for depression?

22 A. Oh, you know, a few weeks. Got the antidepressant.
23 Used it. It worked. That's it.

24 Q. And who is the doctor who presently prescribes the
25 antidepressant to you?

1 A. Tejura. T-e-j-u-r-a. In Smyrna.

2 Q. And Dr. Tejura is what type of doctor?

3 A. Internist.

4 Q. Is Dr. Tejura with a practice?

5 A. WellStar.

6 Q. And what is the antidepressant that you take at
7 present?

8 A. TRINTELLIX.

9 Q. How often do you take it?

10 A. Once a day. In the morning.

11 Q. Other than the 1986 stay in the hospital and then
12 the halfway house, and the 2010 seeing of Dr. Gordon for
13 depression, any other physicians, therapists or other providers
14 ever treated you for any psychological or emotional issues?

15 A. I've seen therapists over the years, but it was a
16 long time, I don't remember who they are. Julie and I see a
17 couple's counselor.

18 Q. What is the couple's counselor's name?

19 A. (Referring to phone) C.C. Balboni.

20 Q. B-a-l ---

21 A. --- b-o-n-i. In Atlanta.

22 Q. And you said you forgot their name but you saw a
23 therapist years ago?

24 A. In Berkley.

25 Q. Can you give me roughly the year?

1 A. '90s. In the '90s.

2 Q. And what were you seeing the therapist in Berkley,
3 California in the '90s about?

4 A. Just, mainly, recovery.

5 Q. Okay. Helping you deal with licking the alcoholism.

6 A. No, not licking the alcoholism, just day-to-day
7 challenges in personal and professional relationships. Just
8 therapy. Everybody in Berkley's in therapy.

9 Q. All right. Thank you, sir. Let's kick back over to
10 Exhibit 3a, the responses to document requests.

11 The first request was very generic: Any and all
12 documents, hard copy or otherwise, that are related to the
13 claims in your Petition. And you have objected that the
14 request was overly broad and duly burdensome, and indicated
15 that information sought would best be discovered through
16 deposition. So who should I depose to discover what documents
17 are in your possession that relate to the claims in the
18 Petition, other than you, of course?

19 A. I don't really --- I mean, this is boilerplate
20 language that I got from somebody. I might even have gotten it
21 from you. So... (Reviewing Exhibit 3a) I'm not aware of any
22 documents that I have that I haven't produced. I've been very
23 thorough in my document production and communications. Kinda
24 stands out, actually, in this experience.

25 Q. So when you've got this phrase "best discovered

1 through deposition," you think that's just some boilerplate
2 language you got from somewhere? You weren't really meaning
3 that there were specific people to depose to find out the
4 information sought by that request?

5 A. That was the language that some buddy of mine said,
6 "That's what you need to answer that for. Give 'em what you
7 got, but cover your bases with that boilerplate language." So
8 I threw it in there.

9 Q. Okay. So any documents that you have that are
10 related at all to the claims you made in the Petition, you've
11 already provided to me.

12 A. Correct.

13 Q. Okay. There's a second line in your answer. It
14 says, "Personal communication produced prior to, or outside the
15 scope of, litigation will be shared." I was a little unclear
16 on what you were talking about there.

17 A. I don't really know what I meant there. That looks
18 to me like a typo. I don't know what that refers to. Maybe it
19 meant to say "will not be shared." Maybe that's what I meant
20 to say.

21 Q. Well, it begs the question. Do you have
22 communications, personal communications, prior to the
23 litigation that relate at all to the claims you've made in the
24 litigation?

25 A. Yes. I've produced them. Communication with my

1 father, and mother, and brothers.

2 Q. So you haven't held anything back just because the
3 communication was prior to the lawsuit?

4 A. No. No.

5 Q. Okay. All right. Next question, same issue.
6 You've given me anything you've got that was sent to or
7 received from Uncle Ned regarding your mom, your dad, or Sloan
8 or Jonathan.

9 A. Yes. What question is that?

10 Q. That would be Request No. 2.

11 A. Oh, I see. Okay. Thank you. Yes.

12 Q. Request 5. Again, I just wanna understand your
13 objection. I've asked for sketches, plats, photographs, any
14 other tangible evidence relating to the subject matter of your
15 lawsuit. And you have objected the request as overly broad and
16 duly burdensome, telling me it'd be best discovered through a
17 deposition, and then indicated that, "...much of the
18 information requested is material produced in preparation for
19 litigation in a suit in which I am representing myself,
20 therefore protected against discovery."

21 What --- it sounds to me like you've got material
22 that's covered by the request, you just object to producing it
23 to me. Is that what you're saying?

24 A. I had communications with lawyers in pursuit of
25 building relationships with them, which I understand is

1 privileged. I guess that's what I'm referring. I also
2 believed that there was a great inequity in our relationship
3 and that I was producing information starting in 1998 and you
4 were restricting your production of information starting to
5 three months before my father's death. Because you repeated
6 said medical information was irrelevant --- his earlier
7 history.

8 Q. Okay. So you haven't held --- let me back up. You
9 might have had some correspondence with some lawyers that you
10 withheld because your understanding was, you weren't supposed
11 to produce communications with lawyers. But short of that, any
12 documents, sketches, plats, photographs, or other tangible
13 evidence that relate to your lawsuit, you've already given to
14 me.

15 A. Yes, sir. That's correct.

16 Q. Okay. And Request No. 7 may be the same issue,
17 Marshall. It's any and all correspondence that relate to any
18 of your claims, and you've given me essentially the same answer
19 as you gave to the one we were discussing previously.

20 Same question of my part: Other than communications
21 you had with potential lawyers to represent you, you've
22 produced everything ---correspondence, memos, documents,
23 e-mails, etcetera, that relate ---

24 A. Yeah.

25 Q. --- to the lawsuit.

1 A. Yes. I have.

2 Q. Okay. Number 8 we have covered. You have not
3 retained any expert witness at this time?

4 A. No.

5 Q. Number 9. Again, I was just a bit unclear in your
6 answer. I asked for any statements, whether recorded or
7 transcribed, with any party or witness. And your answer was,
8 "The above statements will be produced through deposition."
9 What are you trying to tell me there?

10 A. I didn't go out and get affidavits from people. So
11 I don't have any of those to produce.

12 Q. Okay. Speaking of, have you seen the affidavits
13 from the various people at Wyche, and Harrison McLeod, the
14 Rector at Christ, and ---

15 A. Yes. You've given me copies of those.

16 Q. Okay. Have you talked to anyone about giving you a
17 statement or an affidavit that relates to the claims you've
18 made ---

19 A. No.

20 Q. --- in this lawsuit? Okay. Do you intend to depose
21 any of the witnesses I have listed in the lawsuit and/or the
22 affiants, the people who have given the affidavits that I have
23 produced to you?

24 A. I don't know my lawyer's strategy about that.

25 Q. Well, before you had a lawyer, you had the

1 information about the witnesses and you had their affidavits.
2 Were you intending at that point, when you still represented
3 yourself, to take those people's depositions?

4 A. I was intending on deposing my brothers and Mrs.
5 Moore. And I did not find those affidavits to be of any
6 weight, and, therefore, I wasn't gonna spend time and money
7 talking to those people.

8 Q. Okay. So we should expect that you'll want to
9 depose your brothers and Mrs. Moore?

10 A. I'm no longer running this show here.

11 Q. Fair enough.

12 A. So it's up to my lawyer.

13 Q. Fair enough.

14 Number 10 is probably the same thing we've been
15 talking about, Marshall. You've given me all the documents,
16 and "best discovered through deposition" --- same sort of drill
17 we've gone through in the last few, you've really given me
18 everything except some communications with some lawyers?

19 A. Correct.

20 Q. All right. Let's roll over --- the first document I
21 have in the stack that you have produced is a letter to you
22 from Edward D. Sloan, Junior, dated March 17, '19. And it
23 references a letter that you wrote on March 5th, which is right
24 behind it. Begins "Dear Uncle Ned."

25 A. Yeah.

1 Q. Let me ask you first about your letter to Uncle Ned
2 dated March 5th. You indicate that you continue to seek your
3 mom's commitment to meeting with you and your Uncle Ned.

4 A. Correct.

5 Q. What was the purpose with you wanting to meet with
6 your mother and your uncle?

7 A. I was not aware at this point that my mother had
8 participated in writing me out of my father's will and that
9 she'd written me out of her will, also. And I thought that,
10 with Uncle Ned's help, I could persuade her that the actions
11 taken three weeks before my father's death were extremely
12 damaging, and that perhaps she would help seek a correction to
13 this situation. Basically, throw out the last will.

14 Q. How was your mom going to help you resolve the
15 situation?

16 A. Well, she was there, and influential over my father,
17 and interacting with my brothers. So I was seeking to talk to
18 her about it, to try and understand what had happened, and if
19 there was some way to correct it...this injustice.

20 Q. Did you ever have occasion to talk to your mom about
21 what had happened? "Why did Dad do what he did, Mom?" Did you
22 ever have that conversation with her?

23 A. I had a conversation in which I asked her why she
24 participated in it. She goes, "Well, I stand by my husband."
25 And it was sort of one of her strange, histrionic kinda

1 statements. And, in hindsight, she was hiding the fact that
2 she'd written me out of her Will, too, and she didn't wanna
3 talk about it, because it would've been confrontational to her.
4 And I was trying at this time, which you've got copies of
5 letters to my brothers, to reach out to my brothers. And my
6 uncle had expressed the opinion that he thought it was a
7 terrible thing that my father did, that he would never do it,
8 and that he was willing to talk to my mother about rectifying
9 it. But he was only willing to do it if my mother was willing
10 to have the conversation. And my mother kept postponing the
11 conversation. And I kept saying, "Mom, I'm gonna have to file
12 a lawsuit by the end of June. If we don't have this
13 conversation and try and resolve this, I'm gonna end up in a
14 lawsuit. We're gonna end up in a lawsuit." And she just kept
15 postponing it. So she basically refused to have the
16 conversation.

17 Q. You mentioned the letters to your brother, and
18 they're further down in the stack. If you'll just keep turning
19 in the documents we've been looking at. And I'm gonna kick
20 back over to Uncle Ned's first letter, but let's go ahead and
21 turn to the letters you wrote Jonathan and Sloan. The letter
22 to your mom, and then Jonathan, and then Sloan should start
23 right behind Ned's letter dated March 2.

24 A. Yes.

25 Q. Okay. So you wrote your mom March 2nd and you

1 explained about reading her Will, and seeing the words, and how
2 that shocked you. And this is basically what you've just told
3 me about reaching out to mom to see if there's some way to have
4 a meeting with Uncle Ned and figure this out. Seek some sort
5 of resolution. And then the next page is a letter you wrote to
6 Jonathan, February 25th.

7 A. Yeah.

8 Q. "I wish to make amends to you for my mistakes in our
9 relationship over the years." And then a similar letter to
10 Sloan a little earlier, February 7th, 2019. "...make amends to
11 you for my mistakes and failures in our relationship over the
12 years." Right?

13 A. Yeah.

14 Q. You wrote these letters after you knew your dad had
15 cut you out and Sloan and Jonathan were gonna inherit
16 significant additional amounts of money; correct?

17 A. That's the cynical interpretation.

18 Q. Really, just as a factual matter, Marshall, these
19 letters were written after you had found out that your father
20 had cut you out of his Will and, as a result, Sloan and
21 Jonathan are getting a lot more money.

22 A. You're suggesting a causation. I do not agree with
23 it.

24 Q. I'm suggesting a date range. Factually. February
25 25th, 2019.

1 A. Correct. You're right on the dates.

2 Q. Okay. Thank you. At this time, February of '19,
3 were you of the opinion that your father lacked the sufficient
4 capacity to make the changes to his Will that he had made?

5 A. Yes.

6 Q. Well, I see your reference in the letter to Sloan to
7 what you perceive to be your father's alcoholism but no
8 reference to any cognitive deficits. Any reason you didn't
9 mention that in these letters, whereas you did mention
10 alcoholism?

11 A. I wrote these letters in working the steps in AA,
12 trying to clean up what's called the wreckage of that past.
13 And as I reflected on my relationships, there was still
14 wreckage for which I was interested in taking responsibility.
15 I tried to call both of these men, but neither one of them
16 would talk to me on the phone. So I decided to take the risk
17 of putting in print my feelings just to make the amends. I
18 sent them these letters via UPS so I was assured that they got
19 them. So I had, in effect, made my best attempt to reach out
20 to my brothers before initiating a lawsuit, and cleared up my
21 side of the street.

22 I was not aware of all the medical and all that
23 complexity at this point. I didn't get a lot of the medical
24 records from you until...I don't know, two or three months ago.

25 Q. Okay. Flip over to --- this is actually an e-mail

1 that we alluded to earlier. Flip over to the document after
2 your letter to Sloan of February 7th. It is the e-mail from
3 Jonathan back to your dad addressing your dad's e-mail to you
4 that he sent on July 3rd, 2018. Does this --- do you believe
5 this to be the one we were talking about earlier?

6 A. You're talking about the one at the top of the page
7 from Jonathan, where he copies me?

8 Q. Yeah.

9 A. Yeah, I have that in front of me.

10 Q. From Jonathan, date Tuesday, July 3rd, 2018? Starts
11 off, "Hi Dad. I'm very sorry you had to write this."?

12 A. Yeah.

13 Q. And the e-mail below it to which Jonathan refers is
14 the one that your dad sent to you on July 3rd, 2018; right?

15 A. It came from my father's e-mail account.

16 Q. Well, when you saw Marshall e-mailing your dad back
17 to his e-mail account ---

18 A. Jonathan, you mean?

19 Q. Jonathan ---I'm sorry--- were you still suspicious
20 that this was not really your dad generating this e-mail? When
21 you saw Jonathan e-mail back to your dad about it? Were you
22 still questioning whether that really was your dad ---

23 A. Correct.

24 Q. --- typing that?

25 A. My father was incapacitated, struggling to breathe,

1 going in and out of the hospital, in bed all the time, busting
2 up furniture. I didn't know what his capabilities were. His
3 e-mail is very cold, and very blunt, and makes no attempt to
4 engage about what's motivating him. So, basically, it's the
5 kind of blunt thing that somebody would send somebody who
6 didn't give a shit about them whatsoever, and I didn't feel
7 that to be true in my dad's case. So it was out of character.
8 And Jonathan's e-mail was offensive, obnoxious, petty,
9 destructing and arrogant, to bring my children into this
10 situation.

11 Q. Ever make any efforts to determine whether or not
12 your father actually sent you that e-mail? Or had it sent to
13 you?

14 A. As I mentioned before, I was in shock at this point
15 at what was going. And, no, I did not pursue --- I did make
16 more phone calls to the house. I did not pursue conversation
17 with Jonathan.

18 Q. And when you say phone calls to the house, you mean
19 your mom and dad's house?

20 A. Yes.

21 Q. And that's where you'd leave messages on the
22 answering machine?

23 A. Correct.

24 Q. Did you ever write your mom either a letter or an
25 e-mail --- when you got this e-mail that appeared to be from

1 your father but you weren't sure, and it was so terse, and no
2 elaboration, did you contact your mom in any fashion? Send her
3 an e-mail and say, "Did Dad send this? This can't be him?"
4 anything of that nature?

5 A. I've done that in the past. I brought up the fact
6 that he demanded I return the hundred thousand dollars, and she
7 said she didn't know anything about that. So my mother did not
8 deal openly and honestly about things that disturbed her. And
9 there was no point in engaging her, really, about this, as long
10 as my father was alive. So, no, I didn't do that.

11 Q. Okay. Turn over a couple more pages. It's another
12 e-mail that we spoke generally about earlier.

13 A. The one to the cop?

14 Q. Yes. You send this correspondence to Detective
15 Palmer and you copied a number of people: Sloan and Jonathan
16 and Cary Hall at the Wyche Firm. Why did you copy Mr. Hall?

17 A. Mr. Hall is the co-trustee of my father's
18 irrevocable Will, and maybe even the Revokable Will, too, with
19 Ms. Moore. And in the past my father's had me consult with Mr.
20 Hall. And he was introduced to me as the trustee in 2010. So,
21 obviously, he trusted Cary Hall. And I always had positive
22 regard for Mr. Hall. And so I thought that my parents were
23 incapable of taking care of themselves and it had reached the
24 point of putting \$15,000 in an envelope and mailing it off for
25 some fraud that they were being taken advantage of. And I was

1 hoping that somebody ---I knew my brothers wouldn't do it, but
2 I attempted--- would take responsibility for the fact that my
3 parents could no longer manager their affairs and elder fraud
4 was being committed against them. I never got a response from
5 anybody about this letter.

6 Q. On the second page of the letter ---

7 A. And somebody did it a second time.

8 Q. Did what?

9 A. Attempted to get money from them. But this time
10 they picked up the phone and called my ex-wife before the
11 money. I think they were very embarrassed by what happened the
12 first time. But they took themselves into, at the help of this
13 housekeeper, without ever calling me, my son, my daughter, or
14 my ex-wife. So they learned a lesson on the second time.

15 Q. Okay. On that second page, at the top it says, "I
16 have two concerns which I would appreciate your addressing with
17 my parents," and then there's paragraph 1) and 2) below that
18 and you've got some bullet points. And one starts, "My parents
19 refuse to speak with me." So at this point, in June of '18, I
20 presume, as your words indicate to Detective Palmer, that
21 neither of your parents are talking to you at that point. Is
22 that right?

23 A. Yes. They were not returning my phone calls, I
24 believe.

25 Q. The next bullet point to Detective Palmer: "My

1 father drinks and my mother takes drugs."

2 Third bullet point: "I'm a recovering alcoholic and
3 have on multiple occasions confronted them about their
4 dependencies." And this is going back decades, right, that you
5 had confronted them at various times about alcohol and drugs?

6 A. I don't know about decades, but it is true it had
7 happened in the past.

8 Q. And I apologize if I'm reploting old ground. The
9 first time you raised issues about your dad being an alcoholic,
10 I thought, was something like twenty-five years ago.

11 A. Correct.

12 Q. Okay. Go on to say that, "They find the situation
13 intolerable, so have written me out of their lives." What
14 situation are you talking about that was intolerable that
15 caused your parents to write you out of their lives?

16 A. Alcoholics' and drug addicts' primary relationship
17 is with the substance. And when people threaten their use of
18 that substance, it's intolerable to them.

19 Q. Okay. And then the next line down, after you say,
20 "They find the situation intolerable, so they've written me out
21 of their lives," then you say, "And probably their wills!" ---
22 exclamation mark.

23 A. This letter was written in anger and in hast, and
24 upset. So, you know, there's a bit of hyperbole in it.

25 Q. Okay. Well, did you know, did you have an inkling

1 from any source, that as of June 12, 2018 you were written out
2 of their Wills?

3 A. I had an intuition that, based on the fact that my
4 brothers were edging me out of the relationship, not telling me
5 about traumatic events in their healthcare, and that the
6 communication was spotty, that there was a movement afoot. And
7 for the last few years, there was, in the back of my mind, "You
8 know, these don't really treat me like a brother, and it's
9 really gonna pay off big for 'em if there's a pile of money."
10 Now, I didn't know how much money was there. I didn't know
11 that until I got into this legal situation. But I assumed
12 there was gonna be a lot of money. And I also assumed that my
13 brothers were in a campaign of edging me out.

14 Q. Okay.

15 A. So that was a guess. That was a wild shot.

16 Q. Okay. Reading a little further, the next paragraph
17 begins, "You are free to communicate..." The end of that
18 paragraph starts, "As persona non grata in the Shoemaker
19 family, I am obviously not going to get selected for this
20 responsibility." I gather, as the words you've used indicate,
21 that you felt like you were persona non grata in the Shoemaker
22 family as of June 12th of '18?

23 A. That's a fair assessment, yes. Of the way I felt,
24 yes.

25 Q. All right. Let's keep thumbing through. If you'll

1 turn the next couple of pages. This was a text you extracted
2 for me from an e-mail that you sent to Sloan on April 26th of
3 2018. Would that be correct?

4 A. Yeah. I think you have a copy of the original
5 e-mail.

6 Q. I do.

7 A. Yes.

8 Q. I want to ask you about the second paragraph. It
9 begins, "I would prefer that you not show up for Peter's
10 graduation. I know that my wishes have in the past meant
11 nothing to you or hematology oncology or my father or
12 mother..." What are you talking about there, that your wishes
13 in the past have meant nothing to your brothers or your
14 parents?

15 A. I'll take them one at a time. Jonathan did not
16 invite me to his wedding, never showed up to any of my
17 children's important events, never sent Christmas presents.
18 When he'd show up at family events, he was surly and demeaning
19 and disrespectful. So, you know, that was pretty obvious.

20 My relationship with Sloan over the years was
21 sometimes very positive, sometimes not. But it was obvious in
22 the e-mail exchange, if you go to ---that e-mail was on 4/26---
23 if you go to earlier in the e-mail exchange, on...let's see. I
24 sent him in invitation on 4/17, and he was flippant and
25 disrespectful in his response. I responded to that on 4/18 and

1 said, "I withdraw the invitation." He writes back another
2 flippant and disrespectful e-mail: "I'm coming anyway. I'll
3 stay in a hotel. That's when I wrote him and said, "No, I
4 don't want you to come. Let me be clear why I don't want you
5 to come." That's what the genesis of that letter is.

6 Q. Okay. The page we're looking at, the one at the top
7 says, "Text extracted from e-mail to Sloan 042618."

8 A. Yeah, I'm looking at your production of the original
9 e-mail.

10 Q. I'm asking you about an exhibit to the deposition,
11 Marshall. So if you would reference --- we've both got the
12 e-mail, I'm not gonna argue with you about that, it's obvious
13 we do. But I'm asking you about your document you produced.

14 A. All right.

15 Q. So if you look at the third paragraph: "I wanna
16 focus on my son's considerable achievement..." That paragraph?

17 A. Yeah.

18 Q. You go down to the last line, beginning, "I have
19 also, and more blatantly..." See where I'm reading?

20 A. Third paragraph...

21 Q. Third paragraph down. The paragraph starts, "I want
22 to focus on my son's considerable achievement..."

23 A. Yes. I see it.

24 Q. That paragraph, the last line in the paragraph
25 begins, "I have also, and more blatantly, failed to build a

1 bridge with Jonathan, and now with my mother and father, with
2 whom visits and phone calls have become openly hostile on their
3 part..."

4 Now, I was under the impression that they weren't
5 returning your calls around this period of time. And maybe
6 I've got my timeline off. Were you having openly hostile phone
7 calls with your mother and father in or around April of '18?

8 A. No. My father wrote me some hostile e-mails, to
9 which I've previously referred. This letter was sent in upset
10 and some of these statements are overly broad.

11 Q. Okay. So is it incorrect that visits and phone
12 calls have become openly hostile on your parents' part as of
13 when this e-mail was sent to Sloan?

14 A. The last visit to my parents before my father died
15 in November of 2017 was civilized --- civil. Yes. So it was
16 not openly hostile.

17 Q. Well, I just wanna make sure I understand, Marshall.
18 So if you had this to do over again, would you delete that
19 phrase, "with whom visits and phone calls have become openly
20 hostile on their part"? Is that no longer an accurate
21 statement?

22 A. No, it's not accurate. My father would go off the
23 deep end and write me hostile notes sometimes, but the visits
24 weren't openly hostile, no.

25 Q. All right. Go look at the next paragraph, that

1 starts, "I believe my father will go to his grave a miserable
2 practicing alcoholic..." and take a look at the...I believe
3 it's the second to last sentence in that paragraph. It begins,
4 "They will go to their graves knowing..." See where I'm
5 reading?

6 A. Yeah.

7 Q. "They will go to their graves knowing damn little
8 real experience of felt love, and much more experience of
9 constant intoxication, and it is unnecessary. Your stance
10 towards Jonathan's treatment of me ---hostile, political,
11 without any love whatsoever--- also feeds into the Shoemaker
12 family mythology that 'Marshall is the only one with problems,
13 the rest of us are fine.'"

14 Tell me about this Shoemaker family mythology that's
15 represented by what you've got in quotes there in your e-mail.

16 A. It's alcohol systems theory. The children get
17 labeled. One's a hero, one's a scapegoat, one's a clown. I
18 became the scapegoat.

19 Q. And scapegoat to me implies blaming someone for
20 things that weren't their responsibility.

21 A. Correct.

22 Q. Okay. What were you blamed for in the Shoemaker
23 family mythology that wasn't your responsibility?

24 A. I wanted my mother and father's mental health to be
25 addressed and that was more important to me than sucking up to

1 inherit money. That distinguished me from my brothers. I also
2 did not allow my father to physically intimidate me or demean
3 me in others' presence, which is how we were raised. Sloan
4 received the same treatment. My mother did, too. Not
5 physically, but in her personal demeaning. Jonathan escaped
6 that.

7 So when I got sober, people, instead of saying,
8 "That's wonderful. What a wonderful thing for somebody to get
9 a spiritual program like AA that creates such great results,"
10 it was, like, "Marshall's not an alcoholic, we're not
11 alcoholics, it's embarrassing, don't talk to the neighbors, why
12 do you bring that up?" That's their reaction.

13 Q. Reaction to you. Why do you bring this up?

14 A. "Why do you bring this up?"

15 Q. Okay.

16 A. And, like a lot of Southerners, who are full of
17 ignorant religious views, they looked at alcoholism as a sin as
18 opposed to a disease. And, therefore, they were very
19 judgmental about me deciding to stop drinking and advocating
20 that others do the same in the family.

21 Q. Anything else you were a scapegoat about in the
22 Shoemaker family mythology?

23 A. Yeah. When my father would start berating people at
24 the dining room table, or bullying people, I would stand up to
25 him. And people can interpret that in two ways: Marshall's

1 causing problems, or Jim Shoemaker's being a bully. They
2 didn't wanna take my dad on. He was a big, aggressive,
3 dominant person. It was much easier to blame me for the
4 conflict.

5 Q. So, in your opinion, you were being wrongfully
6 blamed for conflict, when you were really just trying to get
7 them to address their problems and ---

8 A. Or start treating me in a decent manner. Like the
9 conversation around divorce.

10 Q. And I haven't seen that referenced in the documents.
11 This conversation around divorce, you were upset that your
12 family was bringing up your and Amelie's divorce? I'm just
13 lost on ---

14 A. Yes. Yes. And other people's divorce.

15 Q. All right. They liked to bring it up in
16 conversation and ---

17 A. My mother liked to bring it up, yes.

18 Q. And was this after y'all are divorced she would
19 wanna bring it up?

20 A. Yeah. Well, no, when I was going through problems
21 with Amelie, she inserted herself. She was a very negative
22 influence on my relationship with my ex-wife.

23 Q. You might be trying to work it out and your mom was
24 advocating divorce? Is that ---

25 A. Yeah. And she's inserting herself and expressing

1 opinions to my ex-wife which she's not communicating to me.
2 She's just playing a very negative role. A manipulative role.
3 Manipulative and controlling.

4 Q. When did y'all get divorced, by the way?

5 A. 2005. My parents were of the generation that
6 divorce was some sort of moral failing, and was a shameful
7 thing for everybody in the family, and that I had brought shame
8 on the family by getting a divorce.

9 Q. So you were ---my words--- you were criticized, not
10 praised, for going through AA and getting a handle on the
11 alcoholism and advocating for others to do the same, and you
12 were also criticized, not praised, for realizing that if two
13 people can't get along to a certain level, divorce is what
14 you ---

15 A. Correct. Exactly.

16 Q. And then on your document you produced you reference
17 Sloan's reaction. We've actually got his e-mail in another
18 exhibit. Let me go back, Marshall, if you would, to the very
19 first document, the letter from Uncle Ned, on March 7, 2019.

20 A. I don't really --- I have to get my own copies,
21 because I can't read the copies in this packet.

22 Q. Well, I had attempted to replace Ned's March 7, 2019
23 letter in your stack and John's stack with a better copy.

24 A. I don't have that. I have my own copy.

25 Q. Well, that's fine. That's fine.

1 MR. HAYNSWORTH: And, Irveta, when you hit on
2 some of these, if you can't --- if it's too blacked
3 out to read, let me know. My copy and Marshall's copy
4 are more legible. When I went to make a better copy,
5 it just didn't work out too well.

6 Q. So, yeah, Marshall, grab ---

7 A. I have it. March 7th, 2009.

8 Q. 2019.

9 A. Yeah.

10 Q. Ned acknowledges your March 5th letter and
11 indicates, "Last night" ---I guess March 6th--- "your mom and
12 Sloan and a stranger were here for dinner." Do you know who
13 the stranger was?

14 A. No.

15 Q. "Your and my correspondence was not mentioned." Had
16 you asked Uncle Ned to keep in confidence that you were
17 communicating with him around this time?

18 A. No, but it was in the nature of the communication
19 that we were talking about the behavior of other family members
20 and didn't want that information to be misused.

21 Q. Got you. Okay. I guess the third full paragraph
22 down, begins, "I think you genuinely feel strongly..."?

23 A. Yes.

24 Q. "...that your late father unwisely, perhaps
25 unlawfully, disinherited you in his Will. Be that true or not,

1 I think you'll be wise to accept as a fact that for several
2 years he thought that you did things that so offended him he
3 thought it wise for him to disinherit you."

4 Now, can you tell me what your uncle's talking about
5 that for several years ---

6 A. No, I don't know what he's talking about there.

7 Q. Did you ever ask him, after you got this letter,
8 "Ned, what do you mean for several years Dad" ---

9 A. No, I didn't ask him.

10 Q. Can you think of what he could possibly be talking
11 about ---

12 A. No.

13 Q. --- that for several years your dad --- okay. Do
14 you know if your dad ever discussed with Ned his intentions as
15 to you and your inheritance?

16 A. No, I do not know.

17 Q. Okay. Next paragraph: "I sense that you're
18 planning to contest the Will. Even if there was undue
19 influence affecting revisions of the Will, I think you'll be
20 unable to get the judiciary to rule in your favor."

21 Did you ask Uncle Ned what he meant by that
22 statement?

23 A. No, I did not.

24 Q. Uncle Ned attended the hearing that you have
25 attended in Probate Court since this lawsuit was brought.

1 A. Yes.

2 Q. Did you and Uncle Ned not discuss, either before he
3 came to court with you or after, some of the things in this
4 letter that he alluded to?

5 A. We talked on the phone quite a bit over this time
6 period. But I didn't know he was gonna show up in court that
7 day.

8 Q. But when y'all talked over the phone a good bit, it
9 never came up in conversation what he meant by your dad had
10 thought for several years that you'd done things to so offend
11 him he thought it wise to ---

12 A. No. Apparently, my father complained to several
13 people.

14 Q. About you?

15 A. Yes. About our relationship.

16 Q. "If your contest fails, your expense of the
17 litigation will be significant. More importantly, failure will
18 have a negative impact on the status of your long-troubling
19 mental health. I urge you in your best interest to abandon any
20 plans you might have to contest his Will."

21 Well, we wouldn't be sitting here today if you had
22 taken Uncle Ned's advice and not contested your dad's Will.
23 But what I'd like to ask you about is his reference here that,
24 if you did, and you lost, "failure would have a negative impact
25 on your long-troubling mental health." Do you know what Ned is

1 alluding to by that phrase?

2 A. I don't really know, no.

3 Q. Okay.

4 A. I mean, I've been open about being in recovery.

5 And, again, in the Shoemaker and Sloan world view, alcoholism
6 is not talked about, it's not seen as a disease, and people who
7 have drinking problems are not encouraged to get sober. As a
8 matter of fact, you have a document in which my father sent me
9 a disparaging article about AA. Uncle Ned lost a child to
10 alcoholism. But he didn't --- the family doesn't talk about
11 Courtney dying from alcoholism. They said, oh, he got
12 infection because his leg was amputated. It's typical Southern
13 denial about alcoholism.

14 Q. Did you share with your Uncle Ned --- well, let me
15 back up. So I assume by your answer that you believe his
16 phrase "troubling mental health" related to your alcoholism and
17 efforts to get straight.

18 A. Correct.

19 Q. I assume you did not share with Uncle Ned anything
20 about depression, or being treated for it, or things of that
21 nature.

22 A. No.

23 Q. When you and Ned have been talking about this
24 situation, initially trying to have a meeting with your mom and
25 figure out some solution ---you obviously talked to him after

1 you found out what happened--- I presume y'all have still been
2 talking. You said you didn't know he was gonna come to the
3 hearing. Were y'all still communicating around the time the
4 hearing was held?

5 A. Yeah, but not frequently.

6 Q. Did he just show up? Or ---

7 A. Correct.

8 Q. You didn't know he was coming?

9 A. Correct.

10 Q. Do you know how he knew what time the hearing was?

11 A. He was following the postings on the court website.

12 Q. Fair enough. Did you ever talk to Ned about whether
13 he had any information, medical information, related to your
14 dad's condition at or about the time he executed his Last Will
15 and Trust?

16 A. No.

17 Q. Did your Uncle Ned ever express to you --- well, let
18 me back up. Did you express to Ned your opinions that your
19 father lacked the capacity to do his final Will and Trust?

20 A. Did I express that?

21 Q. Yeah.

22 A. I think so, yes. I mean... Yes.

23 Q. Do you have any knowledge as to whether your Uncle
24 Ned has seen a copy of the Petition that you filed in the
25 Probate Court?

1 A. I think so. He got it --- well, I think he got it
2 from the court, but he also got it from me. As soon as the
3 lawsuit happened, because he knew I was getting ready to file
4 it, he asked me for copies and I provided him copies. I sent
5 him an entire document of the pleading and exhibits.

6 Q. All right. And did you and he have conversations
7 about the stack of pleadings you sent after he'd seen them?

8 A. No, not in de --- no, not that I remember.

9 Q. Did you ever ask Uncle Ned if he knew of anyone who
10 could help you establish the allegations you had put in ---

11 A. No.

12 Q. --- your Petition?

13 A. No.

14 Q. Okay.

15 A. I looked to him for emotional support, which he has
16 offered. I did not try to embroil him in the lawsuit.

17 Q. Let me switch gears for a second. And you may have
18 to fill in the blanks because I'm not super-familiar with it.
19 But Ned and your mom are brother and sister.

20 A. Correct.

21 Q. And their dad, your granddad, left you and Jonathan
22 and Sloan some money.

23 A. Correct.

24 Q. And you used some of that money, I think, to attend
25 Princeton and do some other things in college, I seem to

1 recall. Maybe that's wrong. It's not important. But your
2 grandparents left you some money and your two brothers some
3 money.

4 A. Yes.

5 Q. How much were you left?

6 A. There was an educational trust fund that I think
7 paid for Christ Church and college. And I think my dad gave me
8 a hundred grand when I was twenty-two and living on the West
9 Coast. I inherited three batches of money: 200 at 25, 300 at
10 30, and 400 at 35.

11 Q. Okay.

12 A. My father and David Freeman managed the Trust.

13 Q. Did you ever get crossways with your father or Mr.
14 Freeman over their management of your trust?

15 A. Well, that is an interpretation that I think my
16 father took. However, that's not the interpretation I would
17 have.

18 Q. Okay. Well, without anyone interpreting it, tell me
19 about the events that you interpreted one way and your father
20 interpreted another way relative to your dad's involvement in
21 the management of the Trust.

22 A. Let's see. In the spring of '94, I graduated from
23 business school. Shortly thereafter, I wrote my dad a letter
24 saying, "Okay, I know I'm getting the last distribution of
25 Grandfather's Trust on my birthday in December of '94. You've

1 sent me some documents about property that I own with my
2 brothers in the Trust. I would like to divest myself of that
3 property. Please tell me some more details about it." I think
4 it was a gas station or something.

5 In the next letter --- he didn't acknowledge my
6 letter. The next letter I got was, "Oh, okay, we signed a
7 long-term lease with So-and-So." So I wrote him a letter and
8 said, "Dad, you just signed a long-term lease and I'm trying to
9 get out of that property. Why did you do that without
10 communicating with me?" And I think he wrote --- I don't know
11 if he wrote back or not.

12 So I went to a buddy of mine, a lawyer in Oakland,
13 and said, "How do I get out of this?" Most of the money was
14 gonna be in financial assets, so easily transferred. I didn't
15 wanna be a property owner with my brothers and be under my
16 father's thumb, so to speak. Because I felt sort of like I was
17 on an allowance until age 35. And so I asked the lawyer, "What
18 can I do to get out of this?" And he said, "Well, contact a
19 realtor in South Carolina." Which I did, I contacted Howard...
20 I forgot his last name, he worked for Brad Halter at Caine.

21 Q. Hill?

22 A. Huh?

23 Q. Hill?

24 A. Yeah, yeah. "And can you please give me an
25 assessment of the value of that asset?" And he said, "I don't

1 know, it's worth 150." So I wrote a letter to my brothers and
2 said, "You know, how about you buy me out for 40 grand or
3 something? Make an attractive offer to be bought out." Well,
4 when --- but my father --- the lawyer also wrote my father a
5 letter and said, "Marshall has a desire to be free and clear of
6 any financial entanglement with his brothers when the estate is
7 distributed. Could you please give us information?" Dad,
8 which he tended to do, if challenged, he went ballistic. He
9 produced boxes of documents of his management of the Trust over
10 the years, his and David Freeman's, as if we were suing him in
11 court. All my lawyer did was write a letter, because my father
12 wasn't communicating with me at the time. And then we started
13 to --- then, as it became close to my birthday --- I was kinda
14 shocked, because my father --- actually, I called him in the
15 fall of '94, and he said, "I can't talk to you." I said, "Why
16 can't you talk to me?" And he said, "You sued me." I said, "I
17 didn't sue you, I asked you for information about the Trust."
18 "Well, your lawyer contacted me." So he went over the deep
19 end.

20 As a matter of fact, my son was born in August of
21 '94. My father didn't come to the West Coast, like my mother
22 did, to visit my son when he was born. He was doing one of his
23 sort of petulant, you know, "Fuck you, Marshall" --- excuse my
24 language.

25 Can she not put that in the thing?

1 Q. Well, she's supposed to put down everything
2 everybody says in the record. But don't worry, Marshall, you
3 will not be the first person to cuss on the record. And I have
4 actually used the F word on the record, so no big deal.

5 A. Okay.

6 Q. No one's gonna think ill of you.

7 A. Thank you.

8 Okay. So basically he's ramping up. He's offended.
9 And I don't know what to do. And then suddenly I get a letter
10 where he's gone in front of the Probate Court, Diane Smock ---
11 Brad Wyche's wife--- and asked her to say the money was
12 appropriately managed, there's no problems here, everything's
13 fine. And I was just shocked. I was just shocked he went in
14 front of a judge. I was shocked that he went in front of a law
15 partner's wife. I mean, I was just shocked.

16 Well, six months later, you know, I'd calmed down.
17 I realized, okay, maybe I shouldn't've --- maybe I should've
18 tried to handle that directly and not get a lawyer. Maybe I
19 should've foreseen that he was gonna feel threatened or
20 something. So I went --- on one of my flights back to South
21 Carolina, I went to him and said, "Dad, I'm sorry about our
22 conflict over the last distribution of the estate. How much
23 did it cost you? I wanna make amends." He said fifteen
24 hundred bucks. I wrote him a check for fifteen hundred bucks.

25 Q. I wanna make sure I wrote down what I think you said

1 correctly. Did you say, when you were talking about your
2 lawyer buddy writing your dad a letter --- did you say your
3 father was not communicating with you at this time?

4 A. When he received the letter from a lawyer, he
5 stopped communicating with me. And I called him up and said,
6 "Dad. What's going on? How ya doin'?" "I can't talk to you."
7 He said that. I said, "Why can't you talk to me?" He said,
8 "We're in a lawsuit." I said, "A lawsuit? Rich just wrote you
9 a letter. He's a friend of Amelie's and mine, he just wrote
10 you a letter to try to negotiate out of this thing. But he
11 went nuclear.

12 Q. Didn't communicate with you further about the issue.

13 A. Not for six months or longer, until I reached out
14 again after it was resolved.

15 (Off-record discussion regarding
16 lunch recess),

17 (LUNCH RECESS - 11:45 A.M. TO 12:18 P.M.)

18 Mr. Haynsworth Resuming:

19 Q. Marshall, the next document I was going to ask you
20 about is in that same batch of Exhibit 3a, the documents you
21 produced. It's kind of towards the end. It's the e-mail from
22 Dad --- you've captioned it "email from dad re polly's injury."
23 It's about when she fell and he said, "I got my hands full,
24 y'all, don't call..." If you're just thumbing through the
25 documents, there's an April letter from you to Uncle Ned:

1 "Thanks so much for sending along so quickly..." The next
2 document is from Sloan to you: "Hi Marshall. Yes, it does
3 sound like a fun weekend." The next one is April 8th, 2018, to
4 James Shoemaker, Mary Shoemaker: "Dear Dad and Mom..." I
5 think maybe another copy of that same letter, and then behind
6 that is "email from dad re polly's injury." It's the page
7 before the handwritten ---yours will be illegible because of
8 the copy--- the handwritten letter on Wyche letterhead.

9 A. "Polly had a terrible fall..."

10 Q. Yep. That's it. And at the very top, "email from
11 dad re polly's injury." Yeah, that's the next one in our
12 sequence that we'll be starting on.

13 A. Okay.

14 Q. Marshall, we've talked a couple of times about this
15 situation and this e-mail and this event with your mom injuring
16 her eye very badly. And I think that you were telling me about
17 this situation from the standpoint that you didn't really know
18 it was going on, and when you finally found out, you discovered
19 that your brothers had already gone to Greenville. I think
20 that's the context ---

21 A. Correct.

22 Q. --- in which we were discussing this e-mail.

23 I wanted to ask you a question about some of the
24 people copied on this. The person that your dad sends it to,
25 and then everyone else is a CC, was to Ben Clauss. Do you know

1 who that is?

2 A. He's the money manager at Merrill Lynch who took
3 over for Niles Ray, I believe, in managing my father's money.

4 Q. Have you ever talked to Ben?

5 A. I met him at my father's funeral.

6 Q. Okay. Short of that, have you ever ---

7 A. No.

8 Q. --- talked to him?

9 A. No.

10 Q. Do you know what knowledge he has, if any, about
11 your dad's wishes as far as his estate was concerned?

12 A. No.

13 Q. Do you know whether Mr. Clauss has been provided
14 with any documents from your father that express his wishes as
15 far as where his assets went upon his death?

16 A. I think I saw an IRA document somewhere, a document
17 you produced, that's about it.

18 Q. James Warren is the first CC. Do you know who Mr.
19 Warren is?

20 A. No, I don't.

21 Q. Appears to be somebody at Wyche. Leslie Moore, who
22 was at Wyche and at this point in time was with her and David
23 Freeman's firm, Freeman & Moore, she is also copied. Do you
24 know why your dad copied Leslie?

25 A. No.

1 Q. Do you know about any conversations, if there were
2 any, between Leslie and your dad about your mom's injury?

3 A. No, not specifically.

4 Q. Okay. How about Niles Ray, do you know who that is?

5 A. Yep. Money manager at Merrill Lynch.

6 Q. And then it appears to have you at gmail, and
7 Jonathan and Sloan, and Katy Spicuzza is your dad's sister,
8 right?

9 A. Correct.

10 Q. And then Amelie would be your ---

11 A. Ex-wife.

12 Q. --- ex-wife. And you told me, y'all got divorced
13 in...when? '10?

14 A. 2005.

15 Q. 2005. I'm sorry. Did Amelie remain close with your
16 parents even after y'all were divorced?

17 A. She remained in communication with them, yes.

18 Q. All right. Can you think if --- well, let me back
19 up. Do you think that --- she remained in communication with
20 them, was she close to them? Did she talk to them often? Or
21 do you know?

22 A. I don't think often, but regularly.

23 Q. Do you know why your dad chose to have her as one of
24 the people he included to notify her and these others,
25 including you, about Polly's fall?

1 A. She is the mother of his grandchildren. So she's in
2 the loop.

3 Q. Okay. And I don't know how legible your copy is,
4 but the next document over is the handwritten letter your dad
5 sent you 8/12/10?

6 A. Yeah.

7 Q. I think you talked about this letter with me earlier
8 and you referenced it, I think, in your Petition. And I don't
9 wanna put words in your mouth, which is why I'm going to ask
10 you: What is the significance of this letter? I think in the
11 Petition you said this was an example of the love and affection
12 and equity that your dad had previously expressed. But I don't
13 wanna misstate it. What am I to conclude from this letter as
14 far as you and your dad's relationship was concerned?

15 A. That he was trying to protect my children's
16 financial interest by not having them claimed by a potential
17 partner of mine, since I was going through a divorce; and, in
18 hindsight, he would have just given a third to me outright. So
19 maybe he would've --- he's saying, "Well, I'm sure you would've
20 taken care of them and I wouldn't've needed to protect them
21 like that, from your potential divorced spouse." Because my
22 ex-wife took half of my inheritance from my grandfather.
23 Because I put it --- I mistakenly put it in joint custody in
24 California.

25 Q. Even that final 400 or whatever that you were gonna

1 get from ---

2 A. Yeah. I loved the woman. I trusted her. And I put
3 it all in joint custody and she took half of it. She got 800
4 grand when she left me.

5 Q. Okay.

6 A. So he was aware of my lack of caution in sharing
7 money with spouses who then might leave and take a chunk of
8 money. So it was smart, in a way. Let's see. (Reviewing
9 letter) Explains the tax impact. Shows some respect for my
10 relationship with my kids, giving me the right to break the
11 information to them, "if you want. Love Dad." I thought it was
12 a very decent letter.

13 Q. All right. As of the date you got this letter, what
14 was your understanding as to what Sloan and Jonathan were gonna
15 get out of your dad's Irrevocable Trust?

16 A. I had no understanding. Because we never openly
17 talked about my father's assets or his estate plans. This was
18 the first I'd ever heard of his estate plans.

19 Q. And when you got this letter and saw that your dad
20 said he'd put a sixth interest of what he was leaving --- that
21 your kids were gonna get a sixth and you were gonna get a
22 sixth, and that if he had it to do all over again, he'd give
23 you the whole third, did you have any conversations with him
24 after you got this letter? "Well, hey, Dad. I got your
25 letter." You know.

1 A. I talked to him. I think I wrote him. I got a
2 letter right after from Cary Hall and Leslie Moore explaining
3 the mechanism of the Trust.

4 Q. And at what point in time, if any, did you become
5 aware of what Sloan and Jonathan were getting out of this
6 Trust?

7 A. In December of 2018, when I started to communicate
8 with Ms. Moore about my father's estate information, I started
9 to get some kind of inclination about what was going on.

10 Q. Oh. And I won't go pull it unless we have to. But
11 in your Petition, towards the end of it, one of the things you
12 requested was replacing Leslie as PR of your dad's estate. And
13 I believe that one of the things that was concerning for you
14 was Leslie communicating...how close she was with your folks on
15 a personal basis.

16 A. Yes.

17 Q. How was that problematic, if the person that your
18 mom and dad had named as the Trustee of the Trust, or the
19 Executor of their estate --- how is it that that person so
20 named being good friends with them is problematic?

21 A. Because I think it was in the same communication
22 that she expressed a certain amount of animus towards me; and,
23 therefore, I saw her as choosing not to be a detached
24 professional about a financial relationship and basically
25 presenting herself to have a personal relationship and

1 therefore not acting in the best interest of everybody, which
2 was my father's children and his grandchildren.

3 Q. So you believe that the Trustee of his Trust or the
4 Executor of his estate had some legal obligation to look out
5 for the best intèrest of the children and grandchildren?

6 A. Correct. And I also believe that, to be blunt, she
7 failed in her role as a professional in advising my father when
8 she allowed him at the last minute to take this action, because
9 of the very negative effect it would have on his family. And
10 what do we have now? We have a lawsuit. We have a lot of
11 money being spent. We have a lot of acrimony. There's
12 financial divisions, emotional divisions, relationship
13 divisions. And all of this could've been avoided. And if the
14 goal was to treat his three...I don't know, the legal term is
15 stirpes or something...to treat them equally, then many people
16 have commented to me, "Well, I don't know he didn't just leave
17 it all to your children, then. If he wanted to ex you out of
18 it, why not leave it all to your children instead of dumping it
19 over to the other sons and their children and their children's
20 children?" And then other people told me that typically in
21 situations like that, they set up --- they throw a bone. They
22 say, "Okay, give Marshall 500 grand if he doesn't contest the
23 Will and not if he does contest it." And they film the
24 execution of the Will. So, to me, the whole situation showed a
25 lack of ethics on her part.

1 Q. As we sit here today, you have absolutely no idea
2 what conversations Leslie Moore and your father had about the
3 execution of his most recent testamentary documents, do you?

4 A. No, I do not. I draw my conclusion on her allowing
5 herself to become involved emotionally sometimes in the ups and
6 downs between my father and then taking the liberty of
7 communicating it to me. So I draw my conclusions that she did
8 not act in the best interest of either my father or his heirs.

9 Q. Well, if your father had expressly told her to
10 prepare a document cutting you out, and she followed his
11 express wishes, then, as to your father, she would have done
12 exactly what he asked of her; right?

13 A. Well, it's my contention that he was not in his
14 right mind. I think any rational person who looks at the
15 history of all this and what happened, and if we ever get the
16 pharmaceutical records we'll show that he was strung out on
17 painkillers and that's why he broke his hospice and went back
18 to a hospital and fired his hospice caregivers. He was out of
19 his mind. He was in agony. And for Leslie to allow that to
20 happen was unethical. He didn't even initialize every page on
21 his Last Will and Testament, as he did on all the other
22 documents. So her behavior --- and there is one redeeming
23 person here. Carl Muller, in his affidavit, said --- at the
24 end of his affidavit, he said, "I will do whatever I can to
25 reunify this family from this terrible situation of this

1 conflict. So one person out of the so-called ethical
2 professionals alluded to the bigger picture here, as opposed to
3 "Screw Marshall, write him out of the Will."

4 Q. Well, Marshall, what is it you would have wanted all
5 these professionals to do? To talk your dad out of cutting you
6 out so as not to create dissention amongst the family?

7 A. To talk him out of taking an irrational action on
8 his death bed that went against his long-term will, which was,
9 he loved me and I loved him, and I was his son and it was not
10 based on one tiff e-mail exchange between two of his sons. It
11 was not a rational response to cut them out of the Will.

12 Q. Well, Marshall, you would agree with me that you are
13 now aware that 2018 is not the first time your father or your
14 mother had treated you differently than your brothers as far as
15 their estate plan was concerned.

16 A. No, I'm not aware of that.

17 Q. Well, let's use this 8/12/10 letter. Do you now
18 know --- or do you? Do you know what Sloan and Jonathan get
19 out of the Irrevocable Trust? How their interests ---

20 A. I think Jonathan gets a third distributed outright
21 and Sloan gets a third managed or something.

22 Q. Okay. Used to be. Sloan gets his outright, too.
23 So both your brothers get one third. Back in 2010, you were
24 not getting an equal share with your brothers, were you?

25 A. I don't understand your point. It's obvious here

1 that me and my children are getting a third share, together.

2 Q. But Marshall is not. Marshall is not being treated
3 the same as his two brothers, Sloan and Jonathan.

4 A. Yes ---

5 Q. --- Marshall's getting a sixth.

6 A. And it's explained, because I was going through a
7 divorce, and then it's later explained that he would do it
8 differently otherwise. What is your point?

9 Q. Well, my point is, Marshall, you keep alleging to
10 the court that for the last twenty years your father has
11 treated you and your brothers exactly fairly. Everyone is
12 gonna get the same thing. "We're three children, our father
13 loved us all equally, he wanted us to split everything
14 equally." So my point is, this very letter you got in 2010
15 says you don't get it split equally; you get a sixth, not a
16 third.

17 A. I think you're --- well, do you have a question?

18 Q. Yeah. Are you aware that your father did not treat
19 you equally with your two brothers as far back as 2010?

20 A. No. Because six months before he died he reaffirmed
21 Wills that treated me equally.

22 Q. This Trust still treated you differently...one sixth
23 instead of a third; correct?

24 A. And the letter said he would have done differently
25 if it weren't irrevocable.

1 Q. Okay. Are you aware as to whether your father had
2 cut you out of his estate plans any earlier than 2010?

3 A. No, I'm not.

4 Q. You believe the reason your father cut you out of
5 his estate plans is he was infirm mind and not able to make his
6 own well-reasoned decisions; that, due to pressure from your
7 mother and your brothers, and due to his condition and
8 medication, he was so weak of will that he was not able to
9 execute the documents expressing his wishes. Is that correct?

10 A. Correct.

11 Q. That weakness of will that made him so susceptible
12 that he's not really wanting to execute, he's executing into
13 what he's been pressured into executing...when did that level
14 of weakness start for your dad?

15 A. I don't agree with your statement there.

16 Q. Okay. Well, tell me why your dad's will is no good.

17 A. I keep going over this over and over again. So at
18 some point you're just gonna have to accept my answer. He was
19 dying. Suffocating. He was going in and out of hospice. He
20 was on painkillers. He was at the end stages of alcoholism.
21 My two brothers provoked him. My mother was verifiably nuts at
22 this point. The people around him were not acting in his best
23 interest.

24 Q. If he had cut you out of his estate twenty years
25 earlier than 2018, what could the possible explanation for that

1 be?

2 A. I have none. It's a hypothetical that doesn't
3 exist.

4 Q. It's actually not a hypothetical. If you'll review
5 the documents that I produced to you in discovery, you will see
6 in fact, Marshall ---

7 A. What documents?

8 Q. All the IRA documents, Marshall. There are hundreds
9 of them. From Ben Clauss. I can go up and look at the e-mails
10 and mail transmitting them to you. So you're sitting here
11 today saying you do not know, as a factual matter, that your
12 dad cut you out of some of his estate plans decades ago?

13 A. I don't think that's a factual matter. Because I've
14 seen the iterations of his wills and his trusts and they all
15 affirm it up to three weeks before, and that's what I'm going
16 on.

17 Q. Have you ever seen his IRA designations? Where you
18 indicate who you want to inherit your individual retirement
19 account upon your death?

20 A. I've seen some of them.

21 Q. The ones you've seen, does it show you getting ---

22 A. I don't remember.

23 Q. --- the same share ---

24 A. I don't remember.

25 Q. --- as everybody else?

1 A. I don't remember.

2 Q. Well, assume for purposes of my question ---

3 A. I'm not assuming anything.

4 Q. Marshall.

5 A. You're just trying to box me in.

6 Q. Marshall. If you wanna get in an argument again
7 about how this process works, we certainly ---

8 A. What's your question, Knox?

9 Q. My question is: Assume for purposes of my question
10 that the documentation regarding your father's wishes showed
11 that twenty years ago, give or take, he treated you less
12 favorably than your brothers. Would you agree with me that, if
13 that is true, if my hypothetical is true, the reason your
14 father did that could not possibly be that he was of weak mind,
15 on his death bed, heavily influenced by medication?

16 A. I do not assume that and I do not accept the
17 hypothetical. That's my answer.

18 Q. Okay. Hypothetically, if he did it, what would be
19 the reason? Can you think of any?

20 MR. BLINCOW: Object to ---

21 A. I don't engage in hypotheticals.

22 Q. Marshall. The rules allow me to ask you a question
23 and have you assume ---

24 A. The answer is no.

25 Q. --- for purposes of ---

1 A. The answer is no.

2 Q. I haven't finished my question, sir.

3 A. (Laughing)

4 Q. And the rules allow me to ask you to assume for
5 purposes of my question certain facts. I'm not asking you to
6 agree with those facts, I'm asking you to make the assumption
7 for purposes of my question that those facts exist.

8 A. Really?

9 Q. Yeah, Marshall, really.

10 So, if your dad cut you out twenty years ago, would
11 you have any explanation for why?

12 A. I have no proof he cut me out. I'm not gonna assume
13 a hypothetical that doesn't exist. That's your answer.

14 Q. Did you and your dad get along well twenty years
15 ago?

16 A. What date are you referring to?

17 Q. Generically, twenty years ago. Twenty-five years
18 ago. Over the course of your adult life, have you and your dad
19 gotten along well the majority of the time?

20 A. Yes.

21 Q. Okay. Did you threaten to beat up your father when
22 they lived on Pine Forest Drive, back in the garden your mom
23 and dad used to have in the back yard?

24 A. I told my father to get his finger out of my face or
25 I was gonna break it off.

1 Q. Okay. And tell us about how that little discussion
2 came up between you and your ---

3 A. I don't appreciate your sarcasm and belittling word
4 choice there.

5 Q. Marshall. I'll be brutally honest. I really don't
6 care what you think, I'd just like you to answer my question.

7 A. I don't care what you think, either. You're being a
8 hostile, offensive, harassing attorney right now. And there
9 are rules against that in depositions. I read about it.

10 Q. Well, why don't you tell me, then, what the rules
11 allow at this point.

12 MR. BLINCOW: Ask him a question and let's
13 get back on track, please.

14 Q. What led up to your telling your father you were
15 gonna break his finger off when he stuck it in your face in the
16 garden of your parents' house on ---

17 A. I was visiting my parents with my children and we
18 were in the back yard. And he made some comment about
19 Jonathan, and I made some comment about Jonathan. And he
20 stepped towards me, physically got into my space, and waved his
21 finger at me. And I said to him, like I'd say to any man in
22 any situation who steps into my space, "Get out of my face or
23 you're gonna get a negative reaction."

24 Q. Okay. And approximately when was this?

25 A. I don't know.

1 Q. Do you know the year?

2 A. No, don't know.

3 Q. Do you know the decade?

4 A. I don't know. My mother and I and the kids went out
5 to the Poinsett Club for lunch afterwards. I don't know.

6 Q. Okay. Dad didn't attend the lunch, I assume.

7 A. No.

8 Q. Were Jonathan and Sloan visiting as well?

9 A. No.

10 Q. So it was you, your ---

11 A. Children, and my mother.

12 Q. --- children and your parents.

13 A. Yeah.

14 Q. And did you and your dad speak any further after you
15 left and went to lunch at the Poinsett Club with your mom and
16 your kids?

17 A. Yes, we did. I don't know when, but we did.

18 Q. I mean that same visit, did y'all speak?

19 A. I don't remember.

20 Q. Take a look, if you would, at Exhibit 4.

21 A. I don't know if I have an Exhibit 4. Oh, there it
22 is, under 5.

23 Q. Take a second to read over it, let me know if you
24 recognize that e-mail.

25 A. (Reviewing Exhibit 4) Correct. I recognize it.

1 Q. About halfway down this e-mail it looks like the
2 font changes, I don't know. Anyway, about halfway down: "The
3 sad part is that the Shoemaker assholes that I grew up with..."
4 You see where I'm reading?

5 A. Uh-huh.

6 Q. "...have an incredible methodology of holding out
7 the promise of love, and more importantly money, and never
8 delivering."

9 What are you talking about there?

10 A. I'm talking about a dysfunctional family where
11 people don't consistently treat each other on a loving basis
12 and exchange a lot of hostile behavior on a regular basis.

13 Q. Well, what is this "...holding out the promise of
14 love, and more importantly money, and never delivering." ?
15 What specific holding out of money were you referring to?

16 A. Well, that's an angry way of referring to my dad
17 demanding back the hundred grand. And the cycle of
18 communication where my parents would profess their love and
19 then go off the deep end if they didn't like something I was
20 doing. Which is all about control.

21 Q. Next sentence: "The only thing you assholes
22 deliver is withholding and judgement (sic) and delusion
23 scapegoating."

24 You assholes, plural, are you talking about Sloan
25 and Jonathan? Or Sloan and Jonathan and your mom and dad? Who

1 are the assholes to which you refer?

2 A. Well, I'm not entirely sure, but probably my
3 brothers.

4 Q. Okay. And the delusional scapegoating, is that
5 going back to what we talked about earlier, that you felt like
6 you were the family scapegoat?

7 A. Correct.

8 Q. Okay. Next sentence: "So my children naturally
9 seek out the love of a Shoemaker..." Which Shoemaker are you
10 referring to in that sentence?

11 A. An extended family. My children have a desire to
12 have a loving, extended family: grandparents, uncles, cousins.

13 Q. Reading on: "...love of a Shoemaker 'extended
14 family' which never had any love to give, only devious family
15 politics and ongoing wounding (to them) by rejecting their
16 father."

17 Can I assume there is, is that by your family ---
18 your mom and your dad and your brother--- rejecting you, that
19 has wounded your children?

20 A. Of course it has.

21 Q. Did you ever talk with your children about why ---

22 A. Yes.

23 Q. --- your family ---

24 A. Yes.

25 Q. Okay. What did you tell your children the reason

1 for your ---

2 A. They're very familiar with my feelings about
3 untreated alcoholism, violence, bullying, family politics, the
4 impact of money. I'm very open with them about that.

5 Q. Okay.

6 A. And I've been open with them where I've made
7 mistakes, too.

8 Q. Okay.

9 A. Which also puts me in a bit of a different category
10 from the other people in my family who never admitted to any
11 mistakes in their relationships.

12 Q. I presume your kids are aware that you brought a
13 lawsuit against your ---

14 A. Absolutely. Fully aware.

15 Q. They have an opinion whether that was a good idea or
16 a bad idea?

17 A. Probably.

18 Q. Your children got a disposition from your dad of
19 some money upon his death; right?

20 A. Correct.

21 Q. Two fifty?

22 A. I believe.

23 Q. Each?

24 A. Yeah.

25 Q. That 250 that your dad gave your two kids directly,

1 that provision isn't in his prior Will, is it?

2 A. I don't believe so.

3 Q. Your position is, when your dad executed his Will
4 leaving your two children \$250,000 each, he wasn't in his right
5 mind. He was under undue influence, and that document is no
6 good, and should be thrown out, because your father was not
7 competent to execute the document that left your two children
8 \$250,000 each.

9 A. Yes.

10 Q. And are they aware, your children, that you believe
11 your father's gift to them is invalid because he wasn't in his
12 right mind when he executed the document leaving them that
13 money?

14 A. They're aware that I have sought to set aside the
15 Last Will and Testament, revert to the one six months
16 beforehand that would leave 3.3 million dollars to their
17 father, of which they would be beneficiaries of the vast amount
18 because it would be put aside to generate income for everyone's
19 benefit. Yes, that's what they're aware of.

20 Q. Are they gonna give back the \$250,000 each that the
21 last Will left them if you are successful in having that Will
22 determined to be invalid?

23 A. I don't know what the legal ramifications are of
24 that.

25 Q. Well, I mean, wouldn't that be fair? If they got

1 money based on a Will that your dad was too mentally addled to
2 know what he was doing?

3 A. No, what would be fair is that I sue Leslie Moore
4 for her participation in this and have her insurance pay for
5 this mess. That's what would be fair.

6 Q. Well, that's not where we are, I guess.

7 A. Not yet.

8 Q. Oh. Speaking of suing and such things... Recently
9 you have ---or your lawyer has--- filed paperwork challenging
10 your mother's estate. Correct?

11 A. Correct. That's my understanding.

12 Q. And you believe your mother was not in her right
13 mind to have cut you out of her Will?

14 A. Absolutely certain of it.

15 Q. And she was not in her right mind --- we've covered
16 why you think you dad wasn't in his right mind: because he was
17 in the end stages of dying of pulmonary fibrosis, and under
18 medication, and those sort of things. Why are your mom's
19 wishes invalid? Why was she not competent to do what she did
20 with her estate?

21 A. She had a diagnose of Sundowner's syndrome. I think
22 when we get her prescription records we'll see that she was on
23 benzodiazepines for a very extended period of time. Anyone who
24 knows my mother knows that she basically did not...she did not
25 have the ability for rational thinking, except that glimpses of

1 it would appear every now and then. And she basically had a
2 child-like dependence on my father.

3 Q. Oh. And I apologize, Marshall, I'm doing the
4 jumping around that I warned I might do. We were talking about
5 the holding out the promise of love and money, in Exhibit 4.
6 And I think you said that was your way of addressing your dad
7 pulling back the hundred grand that he gave you?

8 A. Yeah.

9 Q. Why did your dad ask for you to give back that
10 hundred thousand?

11 A. That was the weekend my daughter graduated from
12 Georgia Tech. And he got offended that I made clear at a meal
13 that I didn't wanna have the topic of divorce, my divorce or
14 other relatives' divorces, such as my ex-wife's sister's
15 divorce which was getting brought up --- I didn't want that to
16 be brought up in a family context and have people filleted at
17 the dinner table because of their judgmental, nasty attitudes
18 toward people who've had divorces. And instead of just
19 conceding to, okay, let's not talk about divorce for the good
20 of the harmony of our family gathering, my father really pushed
21 the point. Five days later he writes me a note saying, "You do
22 not honor your father or mother and if you had any honor you'd
23 send me the hundred grand back." After some reflection and
24 consultation with my friends, I said, screw it, cowering to
25 that man is not worth a hundred grand, so I wired him the money

1 back.

2 Q. And when, roughly, did your daughter graduate from
3 college?

4 A. I think it was about five years ago. So 2015.

5 Q. Okay. When your dad invaded your space on the
6 terrace in the back yard and wagged his finger at you and you
7 told him to not invade your space, was calling the police
8 mentioned in that conversation between you and your dad?

9 A. No. That never came up.

10 Q. So your dad did not threaten to call the police
11 when ---

12 A. No, he came in and said to my mother, "He threatened
13 me." And my mother says, "You guys need to put away your
14 swords." So at that particular time, she took it in context:
15 two guys butting heads.

16 Q. Back on Exhibit 4. Continuing where I was reading.
17 "Just fucking shut down narcissistic 'grandparents' and mean
18 asshole 'uncles' who have poisoned any hope of a loving
19 relationship between my children's father, me, and his family."

20 The narcissistic grandparents you're referring to
21 are your mom and dad, I presume? Is that correct?

22 A. No. I was pissed. I shot off my mouth. We can
23 dissect it if you want. It's a bit ridiculous. Yes.

24 Q. And how is it that the narcissistic grandparents
25 have poisoned any hope for a loving relationship between

1 you ---

2 A. No, my brothers are the ones that poisoned the
3 relationship.

4 Q. Okay. I'm sorry.

5 A. It's very obvious in this sequence of events.

6 Q. Okay. Next line: "You" ---meaning Sloan--- "and
7 Jonathan and Mom and Dad are a tribe of mean drunks."

8 You have talked a lot about your views that your dad
9 was an alcoholic and your mom was a drug addict. I have not
10 heard much about you thinking that your two brothers were
11 alcoholics. And maybe a tribe of mean drunks doesn't mean the
12 same thing as alcoholics. Are these alcoholic issues that you
13 were suggesting your dad needed to get a handle on and get some
14 treatment for, did you have the same thoughts about Sloan and
15 Jonathan? Do they have alcohol issues, in your opinion?

16 A. I did drugs with Sloan in college and in high school
17 --- well, mainly in college. I don't know what his consumption
18 is now. I think his behavior's a little off, but I don't know
19 what the cause of that is. I don't see Jonathan --- I've seen
20 Jonathan drink, I've never seen him drunk. So that was
21 basically talking about the concept of mean drunks. And what I
22 refer to there is a family that is quite vicious with one
23 another, and critical, and judgmental, and has been influenced
24 by multiple generations of alcoholism.

25 Q. Okay. Next line: "I highly recommend you stay the

1 fuck away." I don't need you to explain what you meant there.
2 "I am contemplating, strike that, I am going to rip your
3 fucking heart out if you show up. Nobody here needs your
4 'support'; you have none to give."

5 Rolling over to the next page: "I'm going to
6 fucking kill you if you show up. Stay in Colorado, running
7 away from life, waiting for the Patriarch to die and refund
8 your insanely dependent life style."

9 I presume the "waiting for the Patriarch to die"
10 means waiting on the death of your dad so Sloan could inherit
11 money to refund his insanely dependent life style?

12 A. Correct.

13 Q. Sloan never came to the graduation, I presume.

14 A. Correct.

15 Q. Were you in regular communication --- when you sent
16 Sloan this e-mail in May of 2018, were you in regular
17 communication with your mom and dad at that point?

18 A. Yeah. You've got letters in your exhibit where I
19 talk about going to Ireland to visit my cousin ---I mean my
20 girlfriend's family--- and keeping them up to date on visiting
21 old relatives. And I was talking to my dad on the phone. So
22 the answer's yes.

23 Q. So, in your opinion, your family's a tribe of mean
24 drunks and the other things you allude to in this letter, but
25 you're still --- are you on good terms with your folks at this

1 point, in your opinion?

2 A. I'm on the best terms I could be, given the context,
3 yes.

4 Q. The context, meaning...?

5 A. Of their emotional states.

6 Q. Did their emotional states cause your relationship
7 with them to degrade over time?

8 A. I think over the last few years of my mother's life
9 it became impossible to have a rational conversation with her.
10 I mean, you could have a conversation about the weather, or
11 what are we gonna eat, but that's about as far as it would go.

12 For my father, he would still talk about politics,
13 or my contemporaries' athletic abilities. But we didn't have
14 deeply meaningful conversations with an exchange of love and
15 support and affirmation, no.

16 Q. All right, Marshall, take a look at Exhibit 1.
17 Exhibit 1, I will represent to you, should be the Petition you
18 filed in Probate Court here in Greenville County, with all the
19 exhibits to that Petition.

20 A. Yeah.

21 Q. But I don't want you to believe it just because I
22 say it. I'm happy for you to review it and satisfy yourself
23 that that is in fact the Petition that you filed with the
24 exhibits.

25 A. Yes, it looks to me like it's complete. I haven't

1 checked every page but...

2 Q. Okay. And we have covered some of this because the
3 interrogatories track some of the allegations of the Petition.
4 But let me get you to take a look, if you would...this would be
5 --- you've got the first two pages and then you've got the page
6 that says "Petition for Formal Hearing." It'd be Page 2. The
7 numbers at the bottom out from Shoemaker, Jr.-1, this would be
8 dash 2.

9 A. Yeah.

10 Q. And at line 7, the first full sentence that begins,
11 "He was also heavily influenced by my mother, Mary Hunter Sloan
12 Shoemaker, and my two brothers..." See where I'm reading?

13 A. Yeah.

14 Q. Tell me what you're talking about, your dad being
15 influenced by your mother. In what way?

16 A. My mother was in a dependent relationship with,
17 basically, a guy who could be a bit abusive. And the way she
18 got power in the family was that she played the men off against
19 each other. My parents were pretty good at having their sons
20 compete, as opposed to having them, you know, be in affirmative
21 relationships with one another. And my mother used to complain
22 to me about certain behaviors of my father, which I found very
23 disturbing that she was complaining to me. So she got power in
24 the family by being at the center of the information flow and
25 by, as much as possible, brokering the relationships between my

1 father and myself and my brothers.

2 Q. So you ---

3 A. And she had a tremendous amount of power over my
4 father. My father was the dominant, you know, alpha male
5 corporate attorney out in the world. But at home, my mother
6 basically ruled the emotional environment.

7 Q. And my mistake for assuming. So this sentence on
8 line 7 of Page 2 of your Petition, "He was also heavily
9 influenced by my mother, Mary Hunter Sloan Shoemaker, and my
10 two brothers, Edward Sloan Shoemaker and Jonathan Evans
11 Shoemaker." The influence to which you refer there about your
12 mother was not influencing your dad to change his estate plan,
13 you're just talking about influence generally? Or are you
14 alleging that your mother influenced, provided undue influence
15 on your dad to cause him to change the disposition ---

16 A. Yes.

17 Q. --- of his estate?

18 A. Yes.

19 Q. Okay. So your mom was one of the people who was
20 utilizing your dad's weakened mind to convince him to change
21 his estate plans as far as you were concerned.

22 A. Yes. As attested to by her reaction to try and
23 exclude me from the funeral when Sloan put these e-mails in
24 front of her. She took great offence and went nuclear.

25 Q. Well, two different time frames. What you just told

1 me about's after your dad's death.

2 A. Correct.

3 Q. I'm talking about when your dad was still alive. Is
4 it your contention that your mother, along with Jonathan and
5 Sloan, were unduly influencing your father, because of some
6 weakened state, for him to do his Will and Trust, not based on
7 his wishes, but based on their undue influence? Was your
8 mother involved in convincing your dad to change his estate
9 plan?

10 A. Yes. On the long-term basis, she abetted his
11 alcoholism. We had a rule at my house: Do not talk to your
12 father about a difficult topic before he's on his second
13 Scotch. His son's made his Scotches for him. So one of the
14 way she got power was to take a guy who basically was very high
15 strung and who was mellow once he was on his second Scotch. So
16 she abetted him drinking because it mellowed him out and made
17 him more pleasant to be around.

18 She also abetted this sort of competitive
19 relationship between the brothers. And she did not stand up
20 for, really, me, when my brother Sloan put these e-mails in
21 front of my father.

22 Q. Well, in the e-mail we're talking about, this is one
23 where you threatened to kill Sloan; right?

24 A. Right. Like two guys in a bar who are pissed,
25 screaming, "I'm gonna kill you!" Right. I didn't --- well,

1 anyway, never mind. Go ahead.

2 Q. So when your father sees an e-mail that's been put
3 in front of him that you've threatened to kill your younger
4 brother, and your mom is made aware of that, what is it that
5 you felt like your mom was supposed to do?

6 A. Well, what she did with my father is, she said, "Put
7 away your swords." That's what I would do with my children and
8 others. I would say, "Put away your swords. What's going on
9 here? Why are you guys so upset?" That's the rational
10 approach when people you care about are in conflict.

11 Q. And the irrational approach would be to exclude you
12 from the funeral.

13 A. Yes. As a father myself, there's no reason I would
14 ever write off one of my children. Certainly not for some
15 stupid e-mail.

16 Q. All right. And, again, I want to draw a distinction
17 between the e-mails after your dad has passed versus how he had
18 been influenced before. Do you know of any specific instances
19 where either of your brothers or your mother talked to your
20 father about him changing his Will or Trust?

21 A. No.

22 Q. You believe they were involved in convincing him to
23 do that, you just don't know any of the specifics.

24 A. The chain of causality's obvious, yes.

25 Q. Well, it's not as obvious to me, that's why I have

1 to get you to explain some of it.

2 This is along the same vein. Look at the line sort
3 of in between line 17 and 18: "...collusion of my mother and
4 brothers to vilify me..." This is on Page 2 of the Petition,
5 line 18, I guess it is.

6 A. Yeah. Well, let me re-read it just a second.

7 Q. Sure. Go ahead.

8 A. (Reading document) Yeah. Go ahead.

9 Q. "As a result of his weakened, disturbed and
10 distorted state of mind during his final months, and the
11 collusion of my mother and brothers to vilify me to, and
12 separate me from, my father, he was persuaded to sign revisions
13 of his will and trusts..."

14 Now, a couple of questions about those lines. At
15 this point in time did your mom not like you? Why would she
16 collude with your brothers to have your dad cut you out of his
17 Will?

18 A. Because my brother Sloan shoved the e-mails in their
19 face. And they were not of sound mind, in general, but they
20 went off --- those e-mails disturbed them. And instead of
21 picking up the phone to talk to me about it, they just took
22 this sort of nuclear reaction.

23 Q. "I no longer wish to communicate with you," the
24 e-mail you got. The nuclear reaction "Dad doesn't wanna have
25 any contact" ---

1 A. No, the nuclear reaction is changing your estate
2 when he's going in and out of the hospital, and then not seeing
3 your son on your death bed. Can you imagine that as a father,
4 doing that? I don't think so.

5 Q. I guess it would depend on my relationship with my
6 son when I'm on my death bed.

7 A. Yes. And you would judge him and condemn him and
8 tell him to go to hell, I'm sure.

9 Q. I guess it depends on how he'd been in his grown-up
10 years. But, hopefully, we won't be there for a while.

11 A. Yeah, but the facts of the matter are, that for
12 twenty years, the legal documents that I have show him treating
13 him in equity. So you can do whatever, you want to to slander
14 me, and collunify (phonetic) me, and besmirch me, and make me
15 out to look like a monster, but those are not the facts.

16 Q. I'm sorry, I don't know what collunify means.

17 A. Well, maybe I'm not saying the word right.

18 Q. All right. Same sentence we were reading: "...to
19 vilify me to, and separate me from, my father, he was persuaded
20 to sign revisions of his will and trusts..." By whom was he
21 persuaded, exactly?

22 A. My brothers, my mother, his Personal Representative.
23 Obviously these other people. Maybe Carl Muller might've ---
24 Carl Muller, based on his affidavit, might've tried to counsel
25 otherwise. But all these people who you see as the good

1 citizens of Greenville who were testifying to the righteousness
2 of his activity.

3 Q. Let me make sure I understand what you're
4 contending, now. So in addition to your brothers and your mom,
5 you're now telling me that Leslie Moore and others persuaded
6 your dad to revise his Will?

7 A. No, I'm not saying that.

8 Q. Okay. Well, I'm just focusing on who persuaded him.
9 You've alleged that he was persuaded to sign revisions. I'm
10 just trying to get the limited universe of people that you
11 contend persuaded him to change his Will.

12 A. Right. My brothers and my mother.

13 Q. And the day that he revised his Will and Trust, when
14 he sat down and signed them, you hadn't talked to him that day,
15 had you?

16 A. No.

17 Q. Hadn't seen him that day, had you?

18 A. No, I don't believe so.

19 Q. He didn't talk to you ahead of time about what he
20 was planning on doing.

21 A. No.

22 Q. Didn't call you up right after the fact and tell you
23 what he'd done.

24 A. No.

25 Q. And you don't have any information one way or

1 another from any of the people who might have been with him,
2 either when he prepared the documents he signed, or he signed
3 the documents. You've not talked to any of them and don't know
4 what they know about the discussions with your dad or the
5 actual execution of the documents.

6 A. I don't know, that's kind of a big question. So I'm
7 not sure how to answer that.

8 Q. Okay. Let me try to break it into smaller chunks.

9 The day that your dad actually executed the
10 revisions to his Will and Trust, the ones that you have
11 challenged, that day, you didn't talk to your father; correct?

12 A. No.

13 Q. You had not seen him that day.

14 A. No.

15 Q. Or a week before, as an example?

16 A. No.

17 Q. The people that were involved with your dad, such as
18 Ms. Moore, in preparing the revisions to the Will and Trust
19 that he ultimately signed, you weren't with your father and Ms.
20 Moore and the others to know what the discussion was about what
21 was to be changed and not.

22 A. No.

23 Q. Okay. You're not aware of what discussions, if any,
24 were had during the actual execution of the document. When he
25 was sitting there signing it and his signature was being

1 , witnessed.

2 A. No.

3 Q. You don't know what was talked about in the room or
4 what went on.

5 A. Well, no, and I don't know where the room was and
6 --- no, I don't know that.

7 Q. I'm over on the next page now, Page 3. Look up
8 at...I guess it's line 4 or 5. "...my girlfriend, of my mother
9 to allow me to have access to my father's bedroom." And then
10 the sentence that begins, "My mother's influence over my
11 relationship..." You see that one?

12 A. Yeah.

13 Q. "My mother's influence over my relationship with my
14 father was undue and hostile, in large part I believe because
15 of her own untreated emotional problems, and anger at me for
16 suggesting that both she and my father required treatment for
17 chemical dependency."

18 Well, you told me that your mom was upset because of
19 the e-mails, should have been "Put up your swords," and,
20 instead, her reaction was to get very upset at you over the
21 e-mail that you and Sloan had exchanged. If I understood you
22 earlier, that was one of the reasons she was miffed at you in
23 this period of time. Did I ---

24 A. I don't know for sure when Sloan was showing her
25 e-mails. I know that she stated in a phone call to me two days

1 before the funeral that, "I'm sitting" --- she stated,
2 verbally, quote/unquote, "I'm sitting here reading e-mails that
3 Sloan showed me," or "that you wrote." And then she was
4 torqued out. I'm assuming that when she was asked to change
5 the Will and the estate in such a significant way some
6 explanation was given to her.

7 Q. You say when she was asked to.

8 A. She signed the document.

9 Q. Yeah, but ---

10 A. Her signature's on the document.

11 Q. But who asked her to change it?

12 A. Well, I...I would imagine my father asked her to
13 change it. Because when I asked her about it after my father's
14 death, she said, "Well, I'm sticking by my husband."

15 Q. But you don't know --- just like with your father,
16 you don't know anything about any conversations your mom had
17 with anybody about the changes she made to her estate plan.

18 A. Well, I don't know, but when you refer to her estate
19 plan, I don't know what you're talking about, other than the
20 documents I have for their joint estate plan. I have no
21 knowledge about it.

22 Q. Well, what I mean is, Marshall, you now have brought
23 --- or John has filed a separate lawsuit challenging the Will
24 of your mom. Okay?

25 A. Correct.

1 Q. Different. The fight we're in today is the Will and
2 Trust of your dad.

3 A. Okay.

4 Q. You know. Your dad could cut you out but your mom
5 could leave you in, if she were so inclined. So it's two
6 different estate plans. What your mom's gonna do with what she
7 has when dies, what your dad's gonna do with his when he dies.

8 A. I have not seen my mother's estate plan. I do not
9 know anything about it.

10 Q. Have you seen your mother's Will?

11 A. No. I've only seen the document that was executed
12 three weeks before my father died. I don't know of another
13 document.

14 Q. Are you aware that you have challenged your mother's
15 Will, in court?

16 A. Yes.

17 Q. But you've not seen your mother's Will that you are
18 challenging?

19 A. I thought my mother's Will was part of my father's
20 Will and they were a joint estate plan. And the challenge is
21 about her component in dealing with this. Which is what this
22 document says. But the judge said, when we had that hearing,
23 we have to separate it out. So now we're gonna do it with my
24 mother. She's now passed away, so we're gonna deal with it
25 with my mother.

1 Q. And my apologies for getting a little off track.

2 But what I was trying to explore is, is I thought your mom was
3 mad at you about e-mails, and maybe I'm wrong on that. What we
4 were reading is this contention in your Petition that your
5 mother was angry at you for suggesting that she and your dad
6 required treatment for chemical dependency.

7 A. Correct.

8 Q. And not to beat a dead horse, but the sentence says,
9 "My mother's influence over my relationship with my father was
10 undue and hostile, in large part I believe because of her own
11 untreated emotional problems, and anger at me for suggesting
12 that both she and my father required treatment for chemical
13 dependency."

14 Is that why you believe that your mother was trying
15 to influence your father, along with the help of your two
16 brothers, to have you cut out? Because she was PO'd at you for
17 suggesting she and your dad required treatment for chemical
18 dependency?

19 A. Correct. And when she came out and announced that
20 my father for a second time refused to see me on his death bed
21 ---which I do not know if that's what his view was, but that's
22 what she communicated--- she expressed joy and glee in the pain
23 she was witnessing on my face when she communicated the news.
24 It showed malice towards me when she delivered that news. And
25 her sarcastic remark, "Boy, I'll bet that must've hurt," and

1 smiled. That's how I come to these conclusions.

2 Q. Let me get you to look at line 26 on Page 3. This
3 line that beings, "Vulnerable and unstable in the best of
4 times..."? See where I'm reading?

5 A. Just a second please. (Reviewing document) Yes,
6 okay, I got it..

7 Q. Okay. And when you say "Vulnerable and unstable in
8 the best of times," you're referring to your mom; right?

9 A. Yes.'

10 Q. When you say unstable ---

11 A. Do you mind muting the phone so I don't have to
12 listen to the coughs on the other end?

13 Q. I'm sorry, it'd be like if I coughed in here.

14 A. It's distracting, and I think it's intentional.

15 Q. Well, Marshall, I guess we're just gonna have to
16 endure the occasional cough, because, otherwise, they're not
17 gonna be able to ---

18 A. They could mute their line.

19 MR. HAYNSWORTH: Guys, if y'all are intention-
20 ally coughing loudly, could you please cough quietly?

21 Q. "...unstable in the best of times." Are you talking
22 about mental instability, with your mom?

23 A. Yes. Vulnerable and unstable.

24 Q. Mentally unstable.

25 A. Yes.

1 Q. When did her mental instability begin?

2 A. She didn't work until having a job out of college.
3 She was fully dependent on my father. He bullied her quite a
4 bit. Although, he was also loving to her and cared about her.
5 And I think that, like the rest of us, we all tended to walk on
6 eggshells on a regular basis around him. Because his anger was
7 something you did not want to provoke. That created
8 instability in her. Vulnerable because she was so dependent.

9 Q. Let me get you to go over to Page 5 of your
10 Petition.

11 A. Okay.

12 Q. And we won't beat the dead horse. You're
13 referencing an August 12th letter that your dad hand wrote you
14 and he said in that letter that you'd be getting something from
15 Cary Hall and Leslie Moore. And they, in fact, as you've put
16 here, "...followed one day later with confirmation from his two
17 then law partners, Cary Hall and Leslie Moore."

18 A. Yeah.

19 Q. So they basically wrote you to confirm the gist of
20 what the handwritten letter from your dad said.

21 A. They talked about the insurance trust and the
22 mechanism of it.

23 Q. Okay. When you got the letter from Cary Hall and
24 Leslie Moore, did you believe what they said in the letter?

25 A. Yeah.

1 Q. Have any reason to disbelieve it?

2 A. No.

3 Q. As we sit here today, do you have any reason that
4 you can think of to disbelieve what Cary Hall may say about any
5 of this?

6 A. I don't really know how to answer that.

7 Q. Do you have any reason to think that Mr. Hall would
8 lie about his knowledge of your dad's wishes, the execution of
9 documents that your dad signed, anything of that nature? Any
10 reason you can think of that Cary Hall would lie about any of
11 this?

12 A. I'm not in the business of declaring whether or not
13 he's an honest man. I have no opinion on that.

14 Q. But that wasn't my question. My question was: Do
15 you have any reason to believe the man would lie?

16 A. No.

17 Q. Same question for Ms. Moore.

18 A. Yes.

19 Q. And what is that reason that you believe Leslie
20 Moore would lie?

21 A. I think she was emotionally involved with my parents
22 and lost professional detachment. I think that she's built a
23 business on sort of getting into and involved with wealthy
24 people in Greenville. I think that this case is an
25 embarrassment. I think that the outcome of this case is gonna

1 have a very negative effect on her practice. And so I think
2 she'd like it to go away.

3 Q. I was a little ---

4 A. And, also, I would like to further add, that when I
5 inquired of her in December of 2018, like, "Can you please send
6 me the Will?" it took about three months before I got all
7 copies of the Will. And the only way I got the final copies
8 that indicated when it was changed was from David Massey when
9 he took over the case. So her interactions with me was, she
10 dribbled out information and she withheld as much as possible
11 until I pressed.

12 Q. And I think this all started with the question that
13 you said you believed she would lie.

14 A. No, I have not made the statement I believe she
15 would lie.

16 Q. Okay.

17 A. You're asking me to make a judgment about how much I
18 trust her. Maybe you can rephrase the statement.

19 Q. Yeah. And I think I was just following along with
20 the same questions about Cary Hall, which was: Do you have any
21 reason to believe that Cary Hall would lie about your dad's
22 wishes ---

23 A. No, I do not.

24 Q. --- and conversations with your dad? And I think
25 then I said, Well, same question with Leslie Moore: Do you

1 have any reason to believe Leslie Moore would lie about her
2 interaction with your father, and these documents, and his
3 expression of his wishes as reflected in the documents.

4 A. And I told you what my belief is.

5 Q. You believe she would lie.

6 A. No. I believe that her self-interest and her
7 behavior that I've observed would --- that she would have a
8 motivation to at least withhold information and perhaps not
9 divulge everything.

10 Q. Okay. Same question for Mr. Kehl, who you happened
11 to speak to at the funeral, because we were walking in
12 together. Bill Kehl. Long-time partner of your dad's at the
13 Wyche Firm. You spoke to him at the visitation after your
14 dad's funeral. Do you know the man I'm talking about, Mr.
15 Kehl?

16 A. Yeah.

17 Q. Do you have any reason to believe that Mr. Kehl
18 would lie about his knowledge of your father's wishes, his
19 knowledge of any of the execution of Will and Trust documents
20 that we're here about? You got any ---

21 A. No.

22 Q. --- reason to think that man would lie?

23 A. No.

24 Q. Do you know who Amos Workman is?

25 A. I'm aware that he is in the Wyche Firm. I've never

1 met him, I know nothing about him.

2 Q. Would you have any reason to believe, or to think,
3 or to suspect that Amos Workman would lie about his knowledge
4 of your dad's wishes with regard to his estate plan or the
5 execution of any of the documents?

6 A. I would not use the word lie, no.

7 Q. What word would you use?

8 A. I find it very strange that men, that I never saw as
9 guests in my father's home, and other people you got affidavits
10 from who I never saw as guests in his home, who basically had a
11 financial relationship, are the ones who are giving these
12 affidavits as opposed to Jack Sterling, Bob Hassold, is
13 companions from the University of Virginia --- maybe I
14 shouldn't even be giving you these names.

15 Q. No, it sounds like these people may have some
16 knowledge of what we're here about. So, in that sense, you're
17 actually required to give me their names.

18 A. No, I'm --- you've gotten a bunch of people on his
19 payroll. Everybody involved in here is on the payroll.

20 Q. And Bob Hassold's dead, so we can't talk to him.
21 But Jack Sterling's still alive. So if I went and talked to
22 Mr. Sterling, what would he tell me about your dad's execution
23 of these documents that you've challenged?

24 A. He probably wouldn't know anything about it. He
25 wasn't there.

1 Q. Then what is he gonna know that has any bearing on
2 what we're here today about?

3 A. Because you're trying to get me to characterize
4 people as liars, and it's ridiculous. And I wish you'd move
5 on.

6 Q. Well, Marshall, I'm sure that to the extent there's
7 some rationale for me doing what I'm doing, John can explain
8 that to you when we're finished.

9 So you believe that all the affidavits you have seen
10 were given because of some monetary connection to your dad?

11 A. Oh, I know it's true.

12 Q. All right. Have you seen the one from Harrison
13 McLeod, the rector at Christ Church?

14 A. Yes, there was a monetary connection.

15 Q. Because your dad gave money to the church?

16 A. Correct. He set up a foundation so that people
17 could funnel money into the church and the National Episcopal
18 Church would not have influence over it, because those people
19 didn't like homosexuals being in the church. And at my
20 mother's funeral, Harrison McLeod got up and the only thing he
21 said about my mother was that he went to visit her and got a
22 check to move a transformer because it obstructed the view of
23 the church. And that offended me and it offended my uncle. He
24 spoke up in church and mentioned it. So, yes, Harrison McLeod
25 was on the payroll.

1 Q. Do you believe that the representations in Harrison
2 McLeod's affidavit are untrue?

3 A. I don't have an opinion about the representations.

4 Q. True as far as you know?

5 A. I'm not gonna say that, I don't have an opinion.

6 Q. Okay. Well, Marshall, you've given me an opinion
7 that you think Harrison McLeod's motivation is suspect because
8 he's on the payroll.

9 A. Correct.

10 Q. So you believe his motivation is questionable.

11 A. Correct.

12 Q. Okay. Do you believe the factual representations in
13 his affidavit are questionable?

14 A. I believe that the people who wrote affidavits about
15 my father were not in an intimate relationship with him. They
16 dealt with him as a professional, which is different from a man
17 inside of his own family and his relationship with his wife and
18 children. So I believe they're basically irrelevant. And they
19 weren't at the execution of the Will, anyway.

20 Q. Well, who was?

21 A. I don't know who was there. I suppose, since their
22 signature's on it, Workman, and my mother and Carl Muller.

23 Q. The people who gave the affidavits.

24 A. The what?

25 Q. The people who gave the affidavits.

1 A. Well, Workman and Muller, yes. Not my mother.

2 Q. You weren't there to see Workman and Muller talk to
3 your dad or witness what your dad signed. So you don't have a
4 clue what went on, other than what they've said went on in
5 their affidavits.

6 A. Correct. We've talked about this a couple of times
7 today. Yes.

8 Q. Dr. Grover, your dad's physician, he gave an
9 affidavit too. Is he one of the ones whose affidavit you're
10 suspicious of, motivation-wise, because he's on the payroll?

11 A. Correct.

12 Q. And he's on the payroll because he's your dad's
13 doctor and your doctor pays his bills after he has medical
14 visits?

15 A. It's a financial relationship. It's not a personal
16 relationship.

17 Q. Do you have any evidence that the representations
18 made in your dad's doctor's affidavit are anything other than
19 true?

20 A. No.

21 Q. Martha Louise Ramage Lewis. Do you know who that
22 is?

23 A. Yes.

24 Q. Have you ever talked to Martha Louise?

25 A. Maybe at a party. But it's been a very long time.

1 Q. Do you know what her relationship was, if any, with
2 your mom and dad?

3 A. I think she kept their books or something. Or their
4 taxes. I'm not sure.

5 Q. Do you know if she had any knowledge of your mom and
6 dad's wishes as far as what would happen to their estate upon
7 their death?

8 A. I don't know much about that.

9 Q. Have you reviewed the affidavit that I obtained from
10 Martha Louise?

11 A. Yes, I read it.

12 Q. Was anything in her affidavit incorrect as a factual
13 matter?

14 MR. HAYNSWORTH: I'm gonna make that 12.

15 (RESPONDENTS' DEPOSITION EXHIBIT NO. 12 MARKED AND ENTERED)

16 A. (Reviewing document) I don't see anything to call
17 into question.

18 Q. Because she was in a financial relationship, she
19 would fall in the category, though, of people that there may be
20 suspect motives, in your opinion?

21 A. Yes.

22 Q. Do you know what your mom and dad's opinion of
23 Martha Louise was?

24 A. No.

25 Q. Do you have a Will?

1 A. Do I have a Will?

2 Q. Yeah.

3 A. Yes, I have a Will.

4 Q. Have you nominated someone in your will to be your
5 Personal Representative or your Executor of your estate ---

6 A. Yes.

7 Q. --- when you die? And is that a person that you
8 trust?

9 A. Well, it's a very old Will. It needs to be updated.
10 He was a good friend of mine, yes.

11 Q. At the time you did it, the person you put in that
12 position is someone you trusted a lot.

13 A. Yes.

14 Q. And the reason, I presume, you put a trusted person
15 in there is, you wanted them to execute your wishes once you
16 were gone.

17 A. Yes, that's part of it. Doing the right thing is
18 also part of it. My understanding is, the personal
19 representative has a certain amount of judgment about how they
20 handle matters. I would want somebody with good judgment.

21 Q. Fair enough. Rita Christopher. Do you know who
22 that is?

23 A. Yes. I met her at my father's funeral.

24 Q. Had you ever met Rita before then?

25 A. I might've talked to her on the phone, but I don't

1 remember meeting her face to face.

2 Q. And I'm asking because I don't know. As I
3 understand, Rita was your dad's secretary for a good while. Do
4 you ---

5 A. I read somewhere that she was with him for twenty
6 years. But I'm not sure.

7 Q. Back when you and your dad might've talked twenty
8 years ago, did you ever call the office and talk to Rita to get
9 to your dad?

10 A. Usually I called directly to his extension and went
11 to voicemail. I had more interactions with Sarah Barfield, his
12 previous legal assistant.

13 Q. Okay. Other than Rita says in her affidavit that
14 she was aware of the strained relationship between your dad and
15 you, do you have any knowledge of discussions that your dad had
16 with her about you?

17 A. No.

18 THE WITNESS: I'm gonna get some water, I'll
19 be right back, okay?

20 MR. HAYNSWORTH: Sure. Absolutely.

21 (BREAK)

22 Mr. Haynsworth Resuming:

23 Q. Marshall, in July of '18, did your dad know who he
24 was?

25 A. July? I saw him very briefly in...well, actually,

1 I'm not sure what date I saw him.

2 Q. Or June of '18. Well, I'll put it this way: The
3 day that he changed his Will and his Trust to exclude you
4 ---that day, when he signed those papers that had the effect of
5 doing that--- did he know who he was?

6 A. I did not see him or talk to him on that day. The
7 bigger picture leads me to believe he was not in control of
8 himself, or he would not have taken this action and caused so
9 much damage.

10 Q. Do you know if on that day, when he was signing the
11 documents, if he knew where he was?

12 A. I don't know.

13 Q. Do you know if your dad knew who his attorney was on
14 that day?

15 A. I don't know. I wasn't there.

16 Q. Do you know whether or not he was talking with his
17 attorney on that day?

18 A. I don't know.

19 Q. Do you know if your dad knew on that day, generally,
20 what was in his estate? What he had to leave to ---

21 A. I do not know.

22 Q. Do you know whether or not your dad knew generally
23 who he wanted to benefit in his Will?

24 A. No, I don't know anything about what he was thinking
25 that day.

1 Q. Do you know if your dad knew he was signing a Will
2 when he signed it?

3 A. I do not.

4 Q. Has anyone told you that they know that he didn't
5 know who he was that day, didn't know where he was, didn't know
6 what he was signing, didn't know what he had to leave, anything
7 of that nature?

8 A. Not specifically.

9 Q. How about generally?

10 A. Well, I understand there's medical research about
11 people dying from pulmonary fibrosis that says it impairs their
12 cognitive abilities. I haven't followed up on the research
13 yet.

14 Q. Okay. So you have been told about or read some
15 research out in the world that suggests pulmonary fibrosis may
16 affect cognitive function.

17 A. Correct.

18 Q. But no human being has said, "Marshall, I know about
19 your dad the day he signed that, and let me tell you what I
20 know."

21 A. No. It would help to get the prescription records.

22 Q. And just to be clear ---and John and I'll go through
23 it--- so you want to know the prescriptions that your dad was
24 on during what period of time? Because, to my knowledge
25 ---and I'm not affirmatively saying, well, you've got it--- to

1 my knowledge, I gave you the hospice records from both hospice
2 agencies. I gave you the records from his family physician for
3 the last year of his life --- Dr. Grover. As far as I know,
4 any prescriptions that I was aware of, I provided to you. But
5 it sounds like you are of the opinion there's a hunk of
6 prescriptions out in the world that, if you could just get
7 them, it's gonna show your dad didn't know what he was doing.

8 A. Correct. When I was visiting my mother the weekend
9 before she died, I went with my brother Jonathan to a pharmacy
10 to get morphine. Some very strong drugs.

11 Q. Okay.

12 A. I would imagine that if we had the prescription
13 records, we would see exactly the doses, and the quantity and
14 the types of drugs that were to be given my father while he was
15 on hospice. I imagine, since he was having panic attacks and
16 going back and in and out of hospice and going to the hospital,
17 and, I'm told, suffocating to death, that he was on some very
18 strong drugs. But I have not been provided his financial
19 records or the transactions related to his prescriptions.
20 Therefore, I have not got that data yet.

21 Q. Well, good. I just wanted to make sure I understand
22 what you want.

23 So you went with Sloan to get a morphine ---

24 A. Jonathan.

25 Q. Excuse me. Jonathan. --- to get a morphine

1 , prescription for your mother.

2 A. Correct.

3 Q. This is after your dad is dead.

4 A. Correct.

5 Q. And while at that pharmacy, it occurred to you, or
6 at some later point, there've gotta be records for dad at a
7 pharmacy somewhere ---

8 A. Correct.

9 Q. --- for the meds he was on.

10 A. Correct.

11 Q. Okay. And you believe that those prescription
12 records are going to establish that your father did not have
13 the capacity to do what he did.

14 A. Correct.

15 Q. Okay. And the reason you believe those pharmacy
16 records are gonna show you that is because you feel like he
17 must've been on some strong painkillers and perhaps morphine,
18 or what have you, and those medications may influence him
19 cognitively.

20 A. Correct. Because I observed my mother over the
21 course of several days when she was basically suffocating to
22 death, too, because her systems were shutting down. And the
23 hospital kept loading her up with painkillers. And that was
24 their treatment, was to load her up with painkillers. And she
25 was out of it. Because people who are suffocating to death are

1 in great emotional and mental agony, and they load 'em up with
2 painkillers.

3 Q. And in order to analyze these prescription records
4 which you wanna look at, are you wanting them for the day he
5 did what he did, what he was taking that day or that month, or
6 are you wanting them for a year before? I mean, when do his
7 prescription meds become an issue in your mind as far as his
8 competency?

9 A. Well, initially, I would think during the time he
10 was under hospice. However, since he was under treatment for
11 pulmonary fibrosis for years, perhaps it'd be good to look at
12 that, too.

13 Q. Well, are you contending that your dad did not have
14 testamentary capacity? The capacity to know what he had, who
15 he was leaving it to, to be able to do ---

16 A. Yes.

17 Q. --- a Will and ---

18 A. Yes.

19 Q. Let me finish. You talk about he was treated for
20 pulmonary fibrosis for years. Are you contending that, years
21 before, he was under such medication he was not competent? Or
22 is that just during the period of time when he changed the Will
23 and Trust to cut you out?

24 A. I'm not sure. The last time I saw him face to face
25 was seven, eight months before he died. So I don't really

1 don't know what was going on during that time period.

2 Q. And as far as you know, seven or eight months before
3 his death he had not done his new Will or changed his Trust.

4 A. Well, the documents that your law firm provided said
5 he hadn't. As a matter of fact, he confirmed his old
6 arrangement in February before he died.

7 Q. And I noticed that in your Petition lots of places
8 you kept using the phrase "for the last twenty years he has
9 shown, by words and deeds, that he's gonna treat his three
10 children equally." You remember using that phrase a couple of
11 time?

12 A. Yes.

13 Q. That for the last twenty years he ---

14 A. Yeah.

15 Q. What about for the last thirty years, or forty
16 years? What do you know, if anything? You've told me for the
17 last twenty he treated you and your brothers equally. What
18 about before then? How did he treat y'all?

19 A. He never talked about money, and I never saw --- I
20 have not seen any documents. He did, when he gave the hundred
21 grand, he gave each son a hundred grand, equal amount of money.

22 Q. Okay.

23 A. I think that was a value to him: treating his sons
24 equally.

25 Q. Other than the documents you have challenged in your

1 Petition, where you're treated differently than your brothers
2 as far as your dad's estate is concerned, are you aware of any
3 other documents relative to your mom or dad's estate or their
4 assets where you are treated differently than your two
5 brothers?

6 A. Not really. Not other than you said something about
7 an IRA, and maybe he switched an IRA or something. But I'm not
8 aware of other documents.

9 Q. Would your dad have had any reason, other than
10 because he was under the influence of drugs and medication and
11 your brothers and your mother were pressuring him, would he
12 have ever had any reason that you can think of in the past to
13 have provided less for you than Sloan and Jonathan?

14 A. No, not that I'm aware of.

15 Q. Y'all relationship was never so bad in the past that
16 you feel like he would have favored your two brothers over you
17 in what he left.

18 A. Well, the fact is he didn't.

19 Q. That he didn't...?

20 A. He treated us three --- in the formal estate
21 planning documents that I have in my possession, three or four
22 versions, he treated us equally until three weeks before he
23 died.

24 Q. You had conversations with Uncle Ned kind of in
25 connection with all of this. And I don't remember if I asked

1 you: Did you and John, Ned's son, talk about any of the issues
2 involved here?

3 A. John Sloan?

4 Q. Yeah.

5 A. No. He was cordial a couple of times I saw Uncle
6 Ned, both at the courthouse and visits to Ned's house. I
7 understand my brother has given him my mother's car. I found
8 that out recently. But I never had any conversations with John
9 about this, no.

10 Q. Other family that you've talked to about this? For
11 instance, your dad's sister?

12 A. Katya?

13 Q. Yeah.

14 A. At my mother's funeral she said that my dad was
15 hurt. That's what I --- somehow the topic of the Will came up.
16 And I didn't really press it, but she said, "Your dad was
17 hurt," or something like that.

18 Q. Did you know what she was talking about?

19 A. I assume because of what Sloan did, putting the
20 e-mails in front of his face.

21 Q. But other than your dad was hurt, she didn't
22 elaborate and you didn't press as to what she was talking
23 about.

24 A. No.

25 Q. And the reason I'm asking, Marshall, is just trying

1 to figure out who might have some knowledge about this
2 situation and your contentions. So I've asked about your
3 conversations with Ned, and that's why I asked about whether
4 you had conversations with your dad's sister. Any other
5 family, cousins or anything, that you have talked to about
6 this, inquired if they knew anything about mom and dad's
7 wishes, or why your mom and dad might've changed things to
8 exclude you?

9 A. Cousins?

10 Q. just other people.

11 A. I talked to Caroline Sloan at some point. Yeah.
12 But it was a brief conversation, not of any significance.

13 Q. And Caroline Sloan didn't know anything one way or
14 another about the situation, why it was, what it was?

15 A. No.

16 MR. HAYNSWORTH: All right. Tell you what
17 let's do. Why don't we take a ten-minute break.

18 MR. BLINCOW: Gonna reshuffle the deck and ---

19 MR. HAYNSWORTH: Gonna reshuffle the deck.
20 Leslie and I are gonna converse and try and find some
21 light at the end of the tunnel.

22 MR. BLINCOW: Yeah, this is good. And
23 we'll be glad to give you ten minutes.

24 MR. HAYNSWORTH: Yeah, let's take ten and
25 let us chat a little and I'll come get you and

1 we'll, hopefully, be heading towards the finish
2 line. But I don't run very fast, so it may take
3 a bit.

4 MR. BLINCOW: Sounds good.

5 (BREAK)

6 Mr. Haynsworth Resuming:

7 Q. Marshall, I think you told me, if I've got the dates
8 correct, that you and Julie came up...was it...you reference
9 this when you said, "Hi," kind of a surprised look. Was that
10 June of '18?

11 A. It was a week after he changed the Will.

12 Q. Okay.

13 A. Yeah.

14 MR. BLINCOW: Or maybe early July.

15 Q. So late June of early July of '18 would be the time
16 frame that you and Julie came up. And you wanted to see your
17 dad and ---

18 A. June 25.

19 Q. Okay, June 25. And did you and Julie drive up from
20 Atlanta?

21 A. Correct.

22 Q. Did you tell your parents you were coming?

23 A. No.

24 Q. So it was a surprise when you and Julie showed up.
25 They didn't know y'all were coming ahead of time.

1 A. Correct.

2 Q. And, again, I'm trying to remember this correctly.

3 You had found --- the reason you drove up is you found out from
4 Dottie Schipper that your dad was in bad shape.

5 A. Yes.

6 Q. Is that what prompted you and Julie to drive up?

7 A. Well, she said, "Folks are saying their goodbyes."
8 So she made it clear that she thought he was passing away soon.

9 Q. And that was the motivation for you and Julie to hop
10 in the car and come see him.

11 A. Yes.

12 Q. All right. We covered in great detail what you went
13 through as far as the hospitalization and the halfway house for
14 alcohol issues. We talked about therapists you have seen, or
15 treatment you've received, for depression. You ever been
16 treated for bipolar disorder?

17 A. No.

18 Q. Manic depression?

19 A. No.

20 Q. Ever had a diagnosis, or suggested diagnosis, of
21 manic depression or being bipolar?

22 A. No.

23 Q. And, again, short of Irveta looking at her chicken
24 scratch and saying whether you said this, I'm not positive, but
25 I think ---and I don't remember the context, Marshall, that we

1 were talking about it--- but I think you said that your dad
2 from time to time would send you hostile --- I have the phrase
3 "hostile notes" written down. Do you recall saying your dad
4 sent you, ---

5 A. Yes.

6 Q. --- on occasion, hostile notes?

7 A. Yes.

8 Q. I wanna explore that a little more with you. When
9 you say notes, would it be handwritten notes, or e-mails, or
10 both?

11 A. Let's see. The one about the hundred grand was
12 handwritten. He sent an e-mail, which you have a copy of,
13 about --- he got mad about something and threatened to not
14 talk to me.

15 Q. That was the one that, "Given our years of discord,
16 I no longer wish to" ---

17 A. No, it was a different one.

18 Q. Okay.

19 A. It was five years previous. Something like, "I
20 wanna see your children but I'm not gonna talk to you anymore."

21 Q. Any other hostile notes that you recall receiving
22 from your dad?

23 A. No.

24 Q. Do you still have the --- and I've got the e-mail,
25 of course, because it's one of the exhibits, that was sent

1 there towards the end. But do you still have copies of these
2 hostile notes that your dad sent?

3 A. No. I threw away the card about the hundred grand.

4 Q. One was about the hundred grand, and you've alluded
5 to one about five years earlier than the e-mail that was sent,
6 saying, "Due to our years of discord..." The one about five
7 years earlier, where your dad sent some other note ---you
8 might've said about the hundred grand, I don't remember--- that
9 is also one you wouldn't still have?

10 A. I'm trying to find the e-mail. It's in this pile
11 that I think John gave me, that you gave him, or something.
12 June 17th, 2014. "I have the impression that you'd like to
13 completely disassociate yourself from your mother and me."

14 Q. Well, if John gave that to you based on stuff that I
15 gave to John, then that would suggest that I already have it.
16 But could I borrow your copy and make a copy? Because I don't
17 know if I could find mine.

18 (Off record to copy document)

19 (RESPONDENTS' DEPOSITION EXHIBIT NO. 13 MARKED AND ENTERED)

20 Mr. Haynsworth Resuming:

21 Q. The letter that we marked as Exhibit 13 is the
22 e-mail you were kind enough to provide me a minute ago from Jim
23 Shoemaker to you dated June 17, 2014. "I have the impression
24 that you would like to completely disassociate yourself from
25 your mother and me --- to which we are agreeable. The

1 relationship since you left for Princeton has always been sour
2 most of the time. Is that what you would like to do? We will,
3 of course, stay in touch with your adult children as much as
4 possible. Dad."

5 Do you know what, around June of '14, led your dad
6 to be under the impression that you wanted to completely
7 disassociate yourself from him and your mother?

8 A. Well, I don't remember. But Princeton was always a
9 burr in his saddle. Because I got into Princeton, Yale and the
10 University of Virginia, where he went. And he said, "You can't
11 go to Yale," and I didn't wanna go to UVA, so I went to
12 Princeton. So he always resented that. So he identified
13 Princeton as the cause of me...I don't know, being an
14 autonomous individual or something.

15 Q. All right. Well, was there anything --- I mean, is
16 this e-mail he sent you in June of '14 where he thinks you want
17 to disassociate yourself from him and your mom, is that just
18 the culmination that he's pissed about you going to Princeton?
19 Or did something happen closer in time?

20 A. No, it was his practice that if I disagreed with him
21 about something ---such as the divorce, or whatever--- he'd go
22 off the handle and try and power-drive me to conform to
23 whatever his wishes were. And I don't remember what this
24 argument was about.

25 Q. Do you recall if you responded to this e-mail?

1 A. Like all of his notes, they hurt my feelings and, in
2 general, I didn't respond to them. There was one that you've
3 got copies of where I did respond where my mother and --- well,
4 they withdrew an invitation to go to Lake Toxaway.

5 Q. I do have that one. I recall that.

6 A. So just sort of part of the process.

7 Q. So no particular event triggered this June '14 ---

8 A. Not that I'm aware of. I don't know. I don't
9 remember.

10 Q. Okay. Marshall ---and part of this is housekeeping--
11 -- I'm gonna ask you about a couple more exhibits. But we've
12 marked a number of exhibits that we have not specifically
13 talked about. Because we've generally talked about them in the
14 context of the importance of some of the
15 e-mail. They're part of the document production you gave me,
16 so we talked about them there. I've got some of the same ones
17 separately marked as exhibits. But what I'd like to do is just
18 run through some of the other exhibits and confirm that they
19 are what I think they are. Because I don't wanna attach an
20 exhibit that you don't have any clue what it is or the position
21 that...that it shouldn't be an exhibit.

22 So we've looked at and gone over Exhibit 1, your
23 Petition. We're square on that. I think we've covered that.
24 Take a look in your stack at Exhibit 2, which should be a copy
25 of your Amended Petition. And if you'll just confirm for us

1 that Exhibit 2 is a copy of the Amended Petition you filed in
2 Probate Court.

3 A. Yes, that appears to be correct.

4 Q. Okay. And we've talked about 3 and 3a already.
5 Those are the Interrogatories and Document Requests. So we've
6 talked about those.

7 Take a look at Exhibit 5. That appears to be the
8 e-mail, or one of the e-mails, between you and Sloan that we
9 went over in the context of talking about the e-mails earlier.

10 Exhibit 6 is also --- it is the same e-mail that was
11 included in your document production responses but I've also
12 separately marked as Exhibit 6. That's the e-mail that you got
13 from your dad's e-mail address, that, "In light of our years of
14 discord, I do not wish to speak to you..."

15 Exhibit 7 is your mom's Will. Or ---let me back up-
16 -- I represent to you that Exhibit 7 is your mom's Will. I
17 think you told me maybe that you haven't seen it.

18 A. I have seen it. I forgot I've seen it. This was
19 signed the same day as the other documents in my father's
20 estate.

21 Q. Correct. This is the Will that, as I understand it,
22 you are now challenging, through Mr. Blincow, relative to your
23 mom's estate.

24 A. Okay.

25 Q. Well, ---

1 MR. BLINCOW: That's correct.

2 Q. Will and Testament, I think.

3 A. (Reviewing Exhibit 7)

4 Q. You now recall you've actually seen that before;
5 right?

6 A. Correct.

7 Q. Now, you talked earlier, with regard to your dad, it
8 seemed to be a big deal to you that the pages were not
9 initialed. I noticed that the pages on your mother's Will are
10 initialed. Does that signify anything in particular to you
11 about your mom's Will versus your dad's will, other than there
12 are initials on hers and not on his?

13 A. It seemed like he initialed all the previous
14 versions, so I thought it was curious that he didn't.

15 Q. Well, your mom initialed this version as well. Does
16 that, in your mind, make it more legitimate, or more valid,
17 than had she not initialed every page?

18 A. Well, speaking in general terms, yes. But in terms
19 of my mother, I don't think she had any --- she was just doing
20 whatever my father told her to do.

21 Q. Okay. So you believe that your father exerted undue
22 influence on your mother to get her to do this Will that we've
23 marked as Exhibit 7?

24 A. Yes.

25 Q. And was that undue influence put upon her when she

1 did this document? She was under that influence when she
2 signed this document?

3 A. Yes.

4 Q. Okay. It appears that --- well, on the back, on
5 Page 13, there's a provision in the middle that says, "I, Mary
6 Shoemaker," etcetera, and it's dated. It says, "I signed it
7 willingly...that I execute it as my free and voluntary act for
8 the purposes therein expressed, and that I am eighteen years of
9 age or older, of sound mind, and under no constraint or undue
10 influence."

11 You believe when your mother signed below that, that
12 that information above is incorrect; she was not exercising
13 this as her free and voluntary act, and she was not of sound
14 mind, and was under undue influence.

15 A. No. Family members used the term "crazy" when they
16 described my mother. I would not use that term, because I
17 think it's very derogatory. But other family members have.

18 Q. Well, you disagree, I assume, with her
19 representation on Page 13 that she of sound mind and this was
20 her voluntary act.

21 A. Correct.

22 Q. And similar to what I asked you about your dad and
23 the witnesses to his execution: You've not talked to Carl
24 Muller or Amos Workman, who indicate that they witnessed your
25 mother sign this document and that, to the best of their

1 knowledge, your mom was of sound mind and under no undue
2 influence. You have not talked to either one of them.

3 A. No.

4 Q. Can you think of any reason that Carl Muller and Mr.
5 Workman would sign this document and lie? That they would
6 represent that, to the best of their knowledge, your mom was
7 not under any undue influence, if they knew that she was?

8 A. First of all, I'm not --- I'm not --- I don't know
9 that they're qualified to determine whether somebody's of sound
10 mind. My mother had a diagnosed case of Sundowner's syndrome,
11 which, when we get her medical records, it will be obvious.

12 Q. Okay.

13 A. Many people in the family are aware of her infirmity
14 of mind.

15 Q. And when did her infirmity of mind first begin?

16 A. I don't know. I think five years before she died.
17 But the Sundowner's syndrome I probably heard of for three
18 years before she died. But I'm not real clear on it.

19 Q. And you think that her infirm mind began five years
20 before she died, based on her ---

21 A. My observation of her behavior.

22 Q. All right. Let me get you to take a look at Exhibit
23 8, Marshall. It is a Memorandum Regarding Personal Property
24 from your mother. Appears to have been executed, actually,
25 before, earlier ---or, excuse me, I'm sorry--- after. July

1 2nd, 2018. The Will was June 24th, 2018.

2 Had you seen this memo regarding personal property
3 before this lawsuit?

4 A. No. There's a lot of documents I haven't seen here.
5 Which kinda surprises me. I thought that you were under
6 obligation to produce these?

7 Q. Well, as you and I have talked about before, you
8 asked for documents, I asserted objections to some of the
9 documents. And the way around that, absence an agreement, is
10 to file a Motion to Compel and convince the court that I am
11 wrong and you are right and you're entitled to documents. So I
12 have given you the documents that I intended to give you. And
13 I'm sure if John thinks there are some more that you're
14 entitled to, he and I will talk about that and probably get it
15 worked out. And, if we don't, that's why they have the people
16 in the black robes, to be the tie-breakers for us.

17 Take a look, if you would, at Exhibits 9 and 10.

18 MR. BLINCOW: I do not think he's seen these.

19 A. Nope, I have not.

20 Q. Well, I'll tell you what the rules provide. If
21 you've not seen them before now, it is not fair for me to start
22 asking you questions after I stick 'em in front of you. And
23 you can actually go over them with your lawyer and talk about
24 them and I'm not gonna ask about y'all's conversation. So if
25 you and John wanna take a minute and go look at 9 and 10 and

1 talk about them, that's fine with me. If y'all don't need or
2 want to do that, then that's fine, too.

3 A. What is this 11?

4 Q. Eleven (Exhibit 11) is the transcript of the
5 hearing, where you came to court, and Uncle Ned was there with
6 Cousin John.

7 THE WITNESS: How about we go talk about these
8 two?

9 MR. BLINCOW: Just one second.

10 MR. HAYNSWORTH: Sure. Absolutely.

11 (Mr. Blincow and the Witness out briefly to confer)

12 Mr. Haynsworth Resuming:

13 Q. Before we go to that, Marshall, our court reporter
14 pointed out, I left one out when we were kinda going through
15 the laundry list. Exhibit 4. That is also one of the e-mails
16 that we have already talked about, because it's in the batch of
17 e-mails that you collectively produced to me. I just want to
18 make sure you and I ---

19 A. Yeah, I agree.

20 Q. Okay. Because I forgot to ask about it, and now
21 I've covered that. All right. So we'll go back to the ones
22 that you and John just went out and had a chance to talk about.

23 Exhibit 9 appears to be a First Codicil to the Last
24 Will and Testament of your dad. And the Codicil, or the
25 document, appears to have been executed on July 20th of 1994.

1 As I understand it, you had not seen these documents before
2 this lawsuit and, in fact, had not seen them until perhaps
3 today.

4 You've told me a couple of times you really weren't
5 aware of your dad's estate plans until he passed and you
6 started asking for documents.

7 A. Well, that's not exactly correct. In 2010, he sent
8 me a letter and I became aware of the Irrevocable Trust.

9 Q. Okay.

10 A. I was not aware of his Revocable Will until after he
11 died.

12 Q. All right. We talked about, a lot, the fact that in
13 your Petition a number of places you represented that for the
14 last twenty years your father had clearly shown that his
15 intention was to treat all three of his sons equally. And you
16 believe the only reason you were cut out was because your dad's
17 mind was so weakened and so influenced that he cut you out and
18 he didn't really mean it.

19 A. And he was provoked.

20 Q. And he was provoked.

21 A. And engineered.

22 Q. Okay. These Codicils to your dad's Will, Exhibit 9,
23 and to your mom's Will, Exhibit 10, were both done back in July
24 of 1994. More than twenty years ago. And if you look at
25 either document, in Item One of Codicil: "I hereby amend My

1 Will by deleting paragraph (5) of Item XVII of My Will in its
2 entirety and by substituting in lieu thereof the following new
3 paragraph (5)...

4 "For all purposes of this Will, all references
5 herein to 'my child(ren)', 'child(ren) of mine,' 'my issue,'
6 'issue of mine,' 'my descendants', 'descendants of mine' and
7 similar terms shall not include my son, JAMES MARSHALL
8 SHOEMAKER, III, and his issue, descendants and heirs. It is my
9 intention not to make any provision in this Will for JAMES
10 MARSHALL SHOEMAKER, III and his issue, descendants and heirs,
11 and this Will shall be construed accordingly."

12 Do you read that as I do, to cut you and your kids
13 out of his Will as it existed back in 1994?

14 A. I don't know where you're getting '94. I read April
15 23rd, 1991.

16 Q. Well, the document was executed in 1994. The
17 amendment to his Will of April of '91 is amended when your mom
18 and he signed this Codicil to it in July of '94.

19 A. Uh, in July of 94...

20 Q. Yeah. Why'd your parents cut you out of the Will?

21 A. Well, I'm trying to get the dates straight here. So
22 my daughter was born in April of '92 and my son was born in
23 August of '94. That is the time period in which I said, "Dad,
24 I wanna negotiate my way out of that real estate property," and
25 he flipped out.

1 Q. So your mother and father cutting you out of their
2 Wills in July of 1994, you believe, was in response to your dad
3 getting mad at you because you wanted to extricate your
4 interest in the property that you and Sloan and Jonathan
5 shared, the gas station.

6 A. Correct. And then I had a friend of mine who was a
7 lawyer write him a letter and state that that's what we wanted.
8 I don't remember exactly when my friend wrote that letter, but
9 my father responded as if I sued him. So, apparently --- he
10 attended my graduation from business school in, I believe, June
11 of '94, and that's when we started talking about the...you
12 know, the last distribution, which was coming up in December of
13 '94.

14 Q. All right. Well, when your mom and dad, back in
15 1994 cut you and your kids out, thereby, as of 1994, treating
16 you much differently than Sloan and Jonathan, was it because
17 neither of your parents were of sound mind to have been able to
18 validly execute these documents?

19 A. It was because my father did not tolerate dissent
20 and he went nuclear, like he's done many times in our
21 relationship.

22 Q. All right.

23 A. And he had so much rage that, when my son was born
24 in August of '94, he didn't even acknowledge him, his own
25 grandson.

1 Q. So much rage ---

2 A. Yes.

3 Q. --- that he didn't acknowledge ---

4 A. Yes.

5 Q. --- your son?

6 A. Yes. This insane rage of his. Which, when we were
7 children, was very physical. And when I was too big and Sloan
8 was too big to take it, for him to dish that out anymore, it
9 just became emotional terrorism and manipulation. I don't know
10 why he changed his mind two years later. Maybe he came to his
11 senses.

12 Q. Do you have any evidence to believe that back when
13 he executed Exhibit 9 and your mom executed Exhibit 10, in July
14 of '94, that either one of them were not of sound mind or under
15 any sort of undue influence?

16 A. Well, I don't know if you consider rage sound mind
17 or not.

18 Q. Other than they were mad ---a rage--- do ---

19 A. Well, this pattern is part of the alcoholic family
20 where everyone's trying to control each other all the time. So
21 I don't know whether you call that sound mind or not. I
22 wouldn't call it sound mind.

23 Q. Well, now that you've seen these documents --- I was
24 talking to you and trying to give a hypothetical earlier, and
25 you said, "Well, I'm not gonna respond to hypotheticals."

1 You've now seen the document in front of you, signed by your
2 mother and father, cutting you out of their Wills, as long ago
3 as 1994. Did their unsoundness of mind begin decades ago?
4 Have they been unable to validly express their wishes as to
5 what they wanted done with their estate from that far back?
6 I'm trying to get a handle on why they would do this twenty,
7 thirty-odd years ago.

8 A. I just explained it to you.

9 Q. It's the alcoholic rage and he was mad.

10 A. No, that's part of it. The other part was, is I
11 questioned how he was handling my grandfather's estate.

12 A. And this is his response to being challenged.

13 Q. "You challenge me, buddy, I'll cut you out."

14 A. Yeah. He used to verbally talk about that. We'd
15 get into a discussion and he goes, "Well, do you wanna be in my
16 Will?" I mean, he was constantly dangling that carrot.

17 Q. So the documents that bring us here today in the
18 lawsuit, and these back in 1994 that we're talking about, those
19 weren't the only two times, at least, he discussed cutting you
20 out of his Will.

21 A. No, he never discussed cutting me out of his Will.

22 Q. Okay. He would threaten, "Do you want" --- he would
23 ask it ---

24 A. He would indirectly threaten it.

25 Q. "Do you wanna be in my Will?"

1 A. Correct.

2 Q. And those would come up in the context of you were
3 bucking up to him and he was going to show you who was going to
4 win the argument.

5 A. Exactly. Yeah, it's quite painful and astonishing
6 to see these documents. Ha! I had two small children and
7 it's, "Fuck you and your father."

8 Q. I don't really have any questions about the
9 transcript, (Exhibit 11) other than you do recall going to
10 court and us talking to the judge about the Petition, and...
11 You have no reason to think this is not the conversations we
12 were all having in court.

13 A. Makes sense to me.

14 Q. Back in July of '94 ---these Codicils where you were
15 cut out that we're talking about--- to your knowledge, were
16 your mother and father under the influence of any type of drugs
17 during this period of time?

18 A.- Sure.

19 Q. What drugs were they under the influence of?

20 A. My father drank like a fish from the day he went to
21 college, I imagine, and my mother has always been in an altered
22 state. But I don't know that for sure, because I didn't
23 have...you know, I'm just guessing. People don't overnight
24 start abusing alcohol and drugs.

25 Q. Are you keeping your Uncle Ned appraised of the

1 goings on? I think we covered that he knew the hearing was
2 coming up when it came up because he just went on the court's
3 website and somehow found out about it. Are you still
4 communicating with him about what all's going on?

5 A. No. We have an ongoing relationship but I do not
6 keep him appraised in detail about what's going on.

7 Q. Y'all still talk, just not about this.

8 A. Yes, we talk.

9 MR. HAYNSWORTH: I'll tell you what, Marshall,
10 let's take another five-minute break. I might be
11 finished. If I'm not, I won't have much --- hopefully,
12 I will be. But let us talk one more time, talk to
13 the other defendants.

14 (BREAK)

15 Mr. Haynsworth Resuming:

16 Q. Marshall, have you ever had occasion to discuss with
17 Sloan or Jonathan ---this is obviously before you dad had
18 passed, or your mom--- did you ever have occasion to discuss
19 with them, trying to make any plans, where you kids maybe need
20 to get organized and figure out...Mom and Dad are gettin' kinda
21 older, we need to get organized about who's gonna take care of
22 them? Do you recall any discussions like that with either of
23 your brothers?

24 A. Yeah. I recall writing them letters, or e-mails,
25 years before all of this recent stuff, suggesting that it would

1 be good to have a conversation with them about their estate
2 plans. I think it was before I got that letter in 2010. It
3 might've been in the late '90s or something. And I was
4 rebuffed.

5 Q. Did you ---and I'm not gonna try and quote you,
6 because I can't--- but did you say words to the effect ---and
7 this is specifically with reference to talking to Jonathan---
8 that you guys needed to get organized as to your parents'
9 estate because it was y'all's money?

10 A. No.

11 Q. Or words to that effect?

12 A. That's a lie.

13 Q. That's a lie?

14 A. And he's a coward for not putting that in print.

15 MR. BLINCOW: Don't --- no. Stop.

16 Q. Well, as you ---

17 A. There. You just had a good example of what my
18 brothers do to undermine me right there.

19 Q. They tell lies?

20 A. Correct.

21 Q. Did you attend ---and I can't put an exact time
22 reference on it, but I can tell you it would have been within
23 the last year of your dad's life--- did you ever attend any
24 meetings with your dad and Leslie Moore, or Ben Clauss, or any
25 of the people who had knowledge of your dad's estate, to go

1 over his estate with them?

2 A. No.

3 Q. Do you know if either of your brothers had a meeting
4 with your dad and Leslie, or Ben Clauss, or any other people
5 who had knowledge of your dad's estate?

6 A. No. I don't know anything about it.

7 Q. Okay. If there was a meeting involving your dad and
8 your brothers and you weren't there, can you think of any
9 reason why your dad would have excluded you from such a
10 meeting?

11 A. In my mind it didn't happen and I don't have an
12 opinion about it.

13 Q. Okay. And if it did happen, we'd just have to see
14 what your opinion was at that time.

15 A. I don't know that it happened. Do you have
16 documents to say it happened?

17 Q. No, I don't have any documents that say that.

18 A. Man. You guys play a nasty game.

19 Q. What's that?

20 MR. BLINCOW: No, let's just finish up.

21 A. You lawyers.

22 Q. What do you perceive has been nasty?

23 A. Just your behavior. Not producing documents.
24 Producing them later. Threatening me constantly. Maneuvering.
25 This whole gamesmanship of civil procedure, it's just a nasty

1 game.

2 Q. Well, the Rules of Civil Procedure existed before I
3 came into the profession. I can't speak to why they're there
4 or whether they're a good idea or bad idea. They're just the
5 rules.

6 A. I don't even think you're following the rules,
7 though. Because it seems to me ---

8 MR. BLINCOW: Well, we're not gonna ---

9 A. --- that the ethics of discovery is, you produce.
10 You don't withhold and force somebody to take you in front of a
11 judge to produce. That's just gamesmanship.

12 Q. Well, again, Marshall, I won't get into why the
13 rules are the way they are and mechanisms to address
14 disagreements as to discovery. But, you know, the good news is
15 that you've now retained a lawyer. So you won't have to worry
16 about the rules and your perception of how they apply and
17 whether I'm dealing fairly under those rules. Because Mr.
18 Blincow is here with the training to address those issues for
19 us.

20 MR. HAYNSWORTH: I think, Marshall, unless Mr.
21 Blincow ask you any questions that prompt me to ask
22 you any more, that I am finished.

23 MR. BLINCOW: I don't have any questions.

24 He is gonna read and sign.

25 (Deposition concluded at 3:24 p.m.)

STATE OF SOUTH CAROLINA) '
: C E R T I F I C A T E
COUNTY OF GREENVILLE)

Be it known that I took the deposition of JAMES
MARSHALL SHOEMAKER, III;

That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to
administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the truth
concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 4 through 174
is a true and correct transcript of the testimony given in this
matter;

That I am not related to nor an employee of any of
the parties hereto, nor a relative or employee of any attorney
or counsel employed by the parties hereto, nor interested in
the outcome of this action.

WITNESS MY HAND AND SEAL this 29th day of July,
2020.

Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

APPEARANCES:

BLINCOW GRIFFIN LAW
126 Meeting Street
Charleston, SC 29401
BY John K. Blincow, Jr., Esquire

.....On behalf of the Petitioner

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC
106 Williams Street
Post Office Box 2464
Greenville, SC 29602
BY Knox L. Haynsworth, III, Esquire

.....On behalf of the Respondents

Also Present (By Zoom Teleconference)

Marshall Shoemaker
Edward Sloan Shoemaker
Jonathan Evans Shoemaker

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

Copy of handwritten letter from James M. Shoemaker, Jr. to Marshall Shoemaker dated 8/12/2010, marked for identification as Petitioner's Exhibit No. 1, is attached hereto as part of this record.

1 LESLEY MOORE, having first been duly sworn to tell
2 the truth, testified on her oath as follows:

3 EXAMINATION

4 By Mr. Blincow:

5 Q. Good morning.

6 A. Good morning.

7 Q. Would you give us your name for this record, please.

8 A. Lesley, L-e-s-l-e-y, Moore, M-o-o-r-e.

9 Q. Ms. Moore, my name is John Blincow, we've met a time
10 or two before. I represent Marshall Shoemaker in this case in
11 Probate Court in Greenville County. And obviously you're a
12 party and so I'm here to take your deposition. Thank you for
13 coming so close to Thanksgiving. You understand that you're
14 under oath this morning?

15 A. Yes, sir.

16 Q. And we need to be careful to get as good a record as
17 we can get. So if I ask a question that you don't understand,
18 will you please stop me and I'll be happy to start over again.

19 A. Yes, sir.

20 Q. Also, would you please answer the questions as
21 completely as you can. If you have some information that fits
22 with what I'm asking, go ahead and give me that information.
23 All right?

24 A. Yes, sir.

25 Q. Also, you understand that, once we start, if you

1 have a question you need to direct that to me as opposed to Mr.
2 Haynsworth.

3 All right. We spoke a moment ago, but can you tell
4 me where you are employed?

5 A. I'm employed at Freeman & Moore, which is my law
6 firm.

7 Q. And as we talked about a moment ago, Mr. Freeman
8 passed away five or six years ago?

9 A. 2014, yes.

10 Q. All right. And so are you in practice by yourself
11 at this point?

12 A. Yes, I am.

13 Q. And prior to Freeman & Moore, you were an attorney
14 at the Wyche Firm.

15 A. Yes.

16 Q. For how long were you there?

17 A. 1988 to 2011. The very end of 2010.

18 Q. And I take it that your practice is...what?

19 A. Estate planning, probate and trust.

20 Q. What functions do you have with regard to Mr.
21 Shoemaker's estate plan?

22 A. I drafted his estate plan, and supervised the
23 execution of it.

24 Q. And so you serve as the Trustee of ---

25 A. Yes, that's correct. I was the Personal --- named

1 the Personal Representative with Mrs. Shoemaker, and the
2 Trustee of his Irrevocable Trust with Mrs. Shoemaker.

3 Q. All right. Let me just dive in here.

4 A. Sure.

5 Q. In October we got some Supplement Discovery
6 Responses, and I don't know if you've seen them but I wanna
7 tick through and make sure I understand what's in the Trust and
8 what didn't pass into the Trust, okay?

9 A. Sure.

10 Q. First of all, there was an Irrevocable Trust that
11 was set up; is that correct?

12 A. Correct.

13 Q. Tell me about that, please.

14 A. That was what we typically call a life insurance
15 trust that he created, gosh, I think in the early '90s. It
16 owned a second-to-die policy, and I believe it was 4.9 million
17 second-to-die policy. And I created that for him and he funded
18 it. He and Mrs. Shoemaker funded it over the years.

19 Q. And is the single asset that was in the Irrevocable
20 Trust the life insurance policy?

21 A. Yes, that was it.

22 Q. And I apologize, but tell me what is meant by a
23 second-to-die policy.

24 A. It's a life insurance policy that insures two lives,
25 and it pays off at the second death. So it paid off at Mrs.

1 Shoemaker's death.

2 Q. And is that trust closed now at this point?

3 A. No, it's not. Cary Hall, who is a lawyer at the
4 Wyche Firm, and I are the co-trustees of that trust. And at
5 the death of Mrs. Shoemaker, the funds were collected and then
6 they were separated and sent to separate trusts that are
7 described and required to be funded in the actual trust
8 document.

9 Q. Got it.

10 A. With the exception of the share for Jonathan. He
11 received his outright, per the trust document. Sloan's share
12 is in a trust for him. And then a sixth was put in a trust for
13 Marshall's children, and then a sixth in a trust for Marshall.

14 Q. Help me understand why Jonathan received his share
15 of the trust, the trust benefits, and the other two sons did
16 not.

17 A. That's what the trust instrument provides.

18 Q. Well, do you know why Mr. Shoemaker set it up that
19 way?

20 A. Set it up that way? Well, '92 is stretching my
21 memory a little bit. But I think he felt that Jonathan was
22 very responsible with his money, and very stable. And I think
23 he felt very comfortable that he could manage things well.

24 Q. Okay.

25 A. And then for Sloan, I think he felt like it would be

1 helpful for him to have some assistance with money management
2 and investment assistance and that kinda thing.

3 Q. Got it. And so the 4.9 million, a third of it
4 would've been disbursed to Jonathan.

5 A. Correct.

6 Q. A third of it went into a Sloan trust.

7 A. Uh-huh.

8 Q. Which is being managed by Merrill Lynch?

9 A. It is. It is.

10 Q. And a sixth went to Marshall and a sixth went to his
11 two children.

12 A. In trust.

13 Q. In trust.

14 A. Uh-huh.

15 Q. And those are also being managed by ---

16 A. Merrill Lynch.

17 Q. --- Merrill Lynch.

18 A. Yes.

19 Q. And are regular disbursements being made from that
20 life insurance trust?

21 A. For whom?

22 Q. Either of those --- either Jonathan --- either
23 Marshall or Sloan.

24 A. Sloan has requested some distributions. And Mr.
25 Hall and I have made some disbursements to him. We've not

1 received any requests for disbursements from Marshall's trust
2 and have not made any. And we've not received any requests for
3 disbursements for Mary or Peter.

4 Q. The two children.

5 A. Right. .

6 Q. All right. And I believe I know the answer to this:
7 But why did Mr. Shoemaker set it up one-sixth/one-sixth for
8 Marshall and his two children?

9 A. Well, as I recall, around that time, Marshall may
10 have been either experiencing some marital problems, or
11 starting the divorce, or whatever. So I think that Shoe ---
12 and I'm always gonna call him Shoe, I'm sorry, instead of Mr.
13 Shoemaker.

14 Q. I never called him Shoe.

15 A. I'm gonna call him Shoe. And he wanted to also make
16 sure that his grandchildren were protected and provided for.
17 Because they were young at the time, and he wanted to be sure
18 that they were taken care of.

19 Q. And was that, was the life insurance trust, changed
20 to reflect that one-sixth/one-sixth? I mean, when it was
21 originally set up, was it ---

22 A. It was originally set up that way.

23 Q. Oh, it was?

24 A. Yes.

25 Q. I see.

1 A. It couldn't be changed.

2 Q. Once it ---

3 A. It couldn't be changed. The only change that
4 happened over the years was the trustee changed. But it was
5 irrevocable.

6 Q. Did you ever see correspondence from Shoe to
7 Marshall explaining why it was different in his case? Meaning
8 one sixth for him and one sixth for the children?

9 A. I do recall, I think, a letter he wrote to Marshall,
10 and I think Sloan, too. And I think I have a --- I think I was
11 given a copy of it, yes.

12 Q. When would the work of the trustee with regard to
13 the life insurance trust end? In other words, there's a fair
14 bit of money that's being managed by Merrill Lynch. Is there
15 some provision in the trust where the trust will be distributed
16 and end?

17 A. Well, for Sloan and Marshall, those trusts could
18 conceivably last for their lifetimes, and will terminate at
19 their respective deaths. For the grandchildren, I can't
20 remember. I think it's held as one fund until one of them,
21 maybe Peter, is a certain age and then maybe it divides. I
22 can't remember. But that trust will terminate at some age for
23 them, I think.

24 Q. I see. That, I guess was what I was asking.

25 A. Uh-huh.

1 Q. And the way it would work now is: Sloan or Marshall
2 would have to ask the trustees for a disbursement.

3 A. Yes. And it might be good to understand, too, that
4 the provisions for distributions for Sloan are different than
5 the provisions for the distributions for Marshall. They're
6 separate trusts and there are different provisions.

7 Q. Tell me about that, please.

8 A. Well, ---and I may not recall perfectly--- but as I
9 recall, the trustees have more discretion to distribute income
10 and principal to Sloan for, I would describe it as a broader
11 standard. For Marshall, the provisions are discretionary for
12 income only to him, for, I believe, health maintenance and
13 support. But I don't believe that the trustees have any
14 discretion over principal for him. So there are different
15 standards that were put into the original trust.

16 Q. Uh-huh. And how about for Marshall's children, how
17 was that handled?

18 A. As I recall ---and if you want me to look at it, I
19 can tell you--- but I believe it stays as a pot for them until
20 Peter reaches a certain age. I believe that during that time,
21 distributions can be made to them for health, or support, or
22 education. As I recall. But they have not asked for anything,
23 so I haven't really consulted it.

24 Q. Sure. And it would be spelled out in the trust
25 documents.

1 A. It is. It is, yes.

2 Q. And to be fair to you, we took Jonathan's deposition
3 yesterday and one thing that came up, maybe in the exhibit that
4 was marked, there was an e-mail from the guys at Merrill Lynch
5 to Jonathan about, "Hey, we're funding a 529 account for your
6 children."

7 A. Uh-huh.

8 Q. My question is: Did Mr. Shoemaker make provision
9 for education of Marshall's two children?

10 A. Well, I don't know that I know that answer. He did
11 not set up 529s for them. Of course, they're a good bit older.
12 I believe that he provided some educational assistance along
13 the way for them, but I don't think he ever set up 529s. I
14 could be wrong.

15 Q. Okay.

16 A. I remember that he was --- he bragged about Peter
17 getting a great scholarship to Georgia Tech. So I'm not sure
18 that he did a lot of college assistance, but I think they did
19 some ---

20 Q. Private.

21 A. --- private school. But he did not do 529s.

22 Q. And did Mr. Shoemaker ---Shoe--- set up 529 accounts
23 for Sloan's children?

24 A. I believe he did. I believe he did. They were
25 younger, and I think --- yes.

1 Q. To the extent you know, is that a function of those
2 children's ages? In other words, by the --- Marshall's two
3 children were older and perhaps out of school when he set up
4 529s for his other grandchildren?

5 A. I believe, yes. Yes.

6 Q. All right. Again, another thing that came up:
7 Later, in the last four or five years of Shoe's life, I believe
8 I understand from Jonathan's testimony that his day-to-day
9 finances, or month-to-month finances, were really a Merrill
10 Lynch account that had a checking component and maybe a credit
11 card.

12 A. Yes.

13 Q. Is that how he managed... I don't know if he had a
14 mortgage payment, but whatever the monthly payments and
15 expenses would be, how did he manage that?

16 A. I believe so. I wasn't involved in the day-to-day.
17 But I know that he made a concerted effort in the last few
18 years to sort of consolidate things and have things sort of
19 under one roof. And he had a lot of confidence in Merrill
20 Lynch, so I think he used them primarily. He and Polly had a
21 joint bank account at a local bank, but I don't think that they
22 used that much. I think Merrill Lynch was their major account.

23 Q. Right. This discovery response ---and I apologize,
24 I don't have a copy--- but it says at the time of Shoe's death
25 there was a United Community Bank ---

1 A. Uh-huh.

2 Q. --- account with a balance of thirty-four thousand
3 bucks.

4 A. Uh-huh.

5 Q. But this would be consistent with Jonathan's
6 testimony, which is, if he went to lunch, he would use a
7 Merrill Lynch credit card that was attached to a Merrill
8 Lynch ---

9 A. That's right.

10 Q. All right. And whatever bills, you know,
11 drycleaners, or pharmacy, or grocery store, all that, you
12 believe, was handled from that ---

13 A. I believe so. Yes, I do.

14 Q. How was that checking account funded?

15 A. Which checking account?

16 Q. The Merrill Lynch account. I'm sorry.

17 A. Well, I think the --- well, let me go back. They
18 both had ---or he had--- a CMA account at Merrill Lynch that
19 probably threw off dividends and interest. So that could've
20 been a source for funding. But he also, of course, had to take
21 an RMD from his IRA every year. And my guess is ---I'm not for
22 sure--- that that would have been the major resource that would
23 have flowed in to provide cash for their ---

24 Q. Day to day.

25 A. Is that what you're asking?

1 Q. It is.

2 A. Yeah.

3 Q. Would he take the RMD annually, or monthly, or
4 quarterly? How did that go?

5 A. I don't know. Martha Louise could tell you that. I
6 don't know.

7 Q. All right. And let me make sure I'm understanding.
8 You mentioned he had a CMA account.

9 A. Uh-huh.

10 Q. And is that first part of your last answer, whatever
11 interest it generated would be available for ---

12 A. Would've been available if he needed it, right.
13 Dividends. Uh-huh.

14 Q. But, far and away, your best understanding would be
15 the RMDs from his IRA account...

16 A. ...funded their lifestyle. Yes, that's right.

17 Q. Okay. Now, did Shoe handle all of that, or did he
18 have someone that would...a bookkeeper? Or do you know?

19 A. I don't think he had a bookkeeper. And he very much
20 liked to read about investments, study investments. He was
21 very astute.

22 Q. Read The Wall Street Journal daily?

23 A. Yes. Yes. And so I think he kept very much
24 involved in that. He relied on Martha Louise Lewis a great
25 deal for his tax work and some of the tax planning. The RMDs,

1 for example. But I don't think that they ever did the book-
2 keeping for him. And he relied a lot on Merrill Lynch and
3 their support staff to help him if he needed transfers and
4 things like that.

5 Q. To move money.

6 A. Right. But I think he did it.

7 Q. Okay. And ---

8 A. Oh. Can I interrupt you?

9 Q. Absolutely.

10 A. And I will say this: When you live at the Cascades,
11 you just pay one huge bill every month.

12 Q. Right.

13 A. And then there are not a lot of bills that come in.

14 Q. I get it. Sure. But he might occasionally, you
15 could tell from the e-mails with his sons and what not, that
16 they would plan a lunch when ---

17 A. Oh, surely.

18 Q. And Jonathan mentioned that his mom would often take
19 her meals there. Maybe even have them delivered. Would that
20 be included or would that be a separate dinner on Tuesday
21 night, thirty bucks, or whatever it was?

22 A. Well, I think that the Cascades would charge a
23 delivery fee, but I think if you pay, you get a certain number
24 of meals. And so if she chose to have --- they frequently did
25 have their meals at their home. I think you had to pay a

1 delivery fee.

2 Q. Got it.

3 A. But I don't think it was an extra meal, so to speak.

4 Q. Now, that, I'm gonna call it checking account, was a
5 Merrill Lynch account. Would...I call her Martha Louise
6 Ramage.

7 A. Uh-huh.

8 Q. ...Mrs. Lewis?

9 A. Uh-huh.

10 Q. Would she --- where would those records be? Would
11 they be at Merrill Lynch or with Mrs. Lewis, or both? The
12 statements and what, not.

13 A. The statements. I don't know if Martha Louise would
14 have those. Perhaps he gave them as part of the tax stuff
15 every year. I don't know.

16 Q. All right. Now, did that picture change when Mr.
17 Shoemaker died in July of '18? Meaning, how did Mrs. Shoemaker
18 manage day to day and month to month? If you know.

19 A. Well, I think I know some. The people who had
20 always helped them continued on. In other words, Martha Louise
21 was involved, Ben Clauss at Merrill Lynch, and Amanda, who was
22 his administrative assistant. They were all still involved.
23 But at that point, Martha Louise's office starting taking over
24 the bill-pay. And someone in her office started handling that
25 for her.

1 Q. And Jonathan testified that as far as he knew no one
2 had check-signing authority and, instead, they would maybe
3 monthly get the bills, write the checks, and take 'em back and
4 Mrs. Shoemaker would sign the checks and out they went. Do you
5 know about any of that?

6 A. I don't know for sure. I think some of that
7 happened, but I think some of the bills were automatically
8 paid.

9 Q. Drafted.

10 A. Right. So I'm sure she signed some checkd, but I
11 think some were automatically drafted.

12 Q. And would the same situation ---and I'm gonna ask
13 you about this in a minute--- but it just carried on with the
14 same setup after Shoe died, which would be: regular
15 distributions from his IRA into an account that was available
16 to Mrs. Shoemaker until her death.

17 A. Yes. I think that's correct.

18 Q. And I really don't know the answer. So at his
19 death, he had a \$700,000 interest at the Cascades. And I guess
20 it was an undivided --- tell ---

21 A. Yes.

22 Q. What happened to that money on his death?

23 A. Well, it's a promissory note. You don't buy the
24 cottage but they give you a note.

25 Q. Uh-huh.

1 A. And so at his death he --- the note went to Polly,
2 because she was still living in the house. And then at her
3 death the property was vacated. And then when the new resident
4 moved in, then the note was paid off, to her estate. Does that
5 make sense.

6 Q. That's right. So it didn't --- I got confused when
7 it said guaranteed minimum...they had a joint one-half
8 interest.

9 A. Right. Right.

10 Q. And I don't remember from law school days what that
11 means. But in practical terms, it went, on his death, to Mrs.
12 Shoemaker.

13 A. That's right. They were on the note together. I
14 guess you would describe it as joint with right of
15 survivorship. So it went from him to her. Because she
16 continued to live there.

17 Q. And lived there until her death.

18 A. That's correct.

19 Q. All right. And then on her death, it went into her
20 estate. The seven hundred thousand.

21 A. That's correct.

22 Q. All right. And he had a car that I believe he left
23 to Sloan.

24 A. Uh-huh.

25 Q. Do you know that?

1 A. Yes. A Bronco, maybe, if I'm remembering?

2 Q. A Yukon?

3 A. Yukon. That's it.

4 Q. All right. So that gets us, then, to he had a
5 brokerage account.

6 A. Yes.

7 Q. And when these were given in October of '19, the
8 value was two-point-eight million dollars. What happened to
9 that account on his death?

10 A. So that account was transferred --- well, that
11 account was in his...I'm trying to remember...that account was
12 in his Revocable Trust before he died, to minimize probate.
13 That was a CMA account, an investment account. It wasn't
14 actually in his name, it was in the name of his Revocable
15 Trust.

16 Q. I see. So it was already in his Trust.

17 A. His Revocable Trust.

18 Q. Right.

19 A. And pursuant to the terms of the Revocable Trust,
20 that account, or those assets, were to be put into what we
21 called the Exemption Trust, for Polly. And I believe that a
22 significant part of that account was actually dropped down, so
23 to speak, to the Exemption Trust. But not all of it, because
24 we were waiting for paying final bills and expenses, and then
25 the litigation came so we kind of stopped. So that account is

1 sort of broken up between Shoe's Revocable Trust, still, and
2 then there's an Exemption Trust. Does that make sense?

3 Q. Well, ---

4 A. Sort of?

5 Q. Let me ask this and then maybe it'll make sense.
6 But is the Exemption Trust sort of for Mrs. Shoemaker's...to
7 take care of her until her death?

8 A. Yes. Yes. And it was also to use a portion of his
9 federal estate tax exemption, is why we call it an exemption
10 trust. But it was a trust for her, for her lifetime.

11 Q. To keep her in the style to which she was
12 accustomed.

13 A. That's right. That's right.

14 Q. So probably the bulk of that is in his Revocable
15 Trust.

16 A. The bulk of the account?

17 Q. The bulk of the account.

18 A. Well, it's either in the Revocable Trust or the
19 Exemption Trust. Now, remember, too, that there were some
20 specific bequests in Shoe's plan that had to be funded.

21 Q. The church, UVA ---

22 A. Well, that came ---

23 Q. Is that not what you're talking about?

24 A. Those might've come from his IRA, I can't remember.
25 He had bequests to Peter and Mary, of two-fifty each. And then

1 he had bequests to his brother and his sister. So that
2 was...seven hundred thousand, maybe? Something like that. But
3 those bequests were taken care of and satisfied.

4 Q. All right. So the two hundred and fifty to his
5 grandchildren Peter and Mary has been satisfied?

6 A. Yes. That was done pretty early on, yes. And his
7 brother and sister.

8 Q. And, you're right, then his pledge to Christ Church,
9 and I believe UVA, was in his Revocable Trust --- to be
10 satisfied out of the trust.

11 A. I think it maybe came from his IRA, but I could be
12 wrong. We'd have to look at the beneficiary designations. It
13 may be in the Revocable Trust, I don't know.

14 Q. Well, that's where I'm headed.

15 A. Okay. It's a lot to remember.

16 Q. He had an IRA account with a value of seven-point-
17 three million.

18 A. Uh-huh.

19 Q. And as I read these documents, he --- and I do wanna
20 ask you --- but, anyway, it was left to Mrs. Shoemaker; and in
21 the alternative that Mrs. Shoemaker were to die first, then to
22 Sloan and Jonathan. Or they were secondary ---

23 A. Yes.

24 Q. My question is: Because Shoe died first, the seven-
25 point-three went to Mrs. Shoemaker ---

1 A. Yes.

2 Q. --- and is now in her trust?

3 A. It is in --- well, it was transferred. And the only
4 thing I'm not sure of is whether there were some small pieces
5 from the IRA that went to UVA and the church. But the bulk of
6 it went to Polly.

7 Q. Because she was always the ---

8 A. Primary beneficiary.

9 Q. --- primary --- thank you.

10 A. Right. Primary beneficiary. And so after his
11 death, that IRA was rolled over to an IRA at Merrill Lynch for
12 Polly. So that she would then continue to take her required
13 minimum distributions.

14 Q. Uh-huh.

15 A. Right.

16 Q. Well, just to be... I don't think... She couldn't
17 spend --- probably Mr. and Mrs. Shoemaker couldn't spend their
18 required minimum distribution. What happens if they got six
19 hundred thousand annually and spent half of it. What would
20 happen to the other half? I'm showing my ignorance by asking
21 that question.

22 A. No. I mean, I don't know what they did with all of
23 their money, obviously. I mean, they did some gifting,
24 obviously. They probably did some charitable --- I don't know
25 what their cash flow and their expenses were. That wasn't

1 something that I kept up with.

2 Q. I understand.

3 A. But if there was extra, I assume it would have gone
4 into their CMA account at Merrill Lynch. Because they kept
5 everything under that umbrella. So I would think that any
6 extra that they didn't need or choose to do something with
7 would have just stayed in there. Does that answer your
8 question?

9 Q. It does. And I guess what I need to make sure I'm
10 clear on is: That is still being managed now --- it's still
11 being managed by Merrill Lynch, what was Shoe's IRA account.

12 A. No. So Shoe's IRA moved to Polly after his death.

13 Q. Yeah.

14 A. And she had an IRA. She designated beneficiaries
15 for her IRA. And those beneficiaries were Jonathan and Sloan.
16 I don't think any charities. I can't remember right now. And
17 so, after her death, the IRA was disbursed pursuant to her
18 beneficiary designations.

19 Q. When did she change --- was it set up that way ---
20 when was it set up so that those were her two beneficiaries?

21 A. All of that was set up in June of '18 when they did
22 their overall estate plan.

23 Q. Before Mr. Shoemaker died ---

24 A. Yes.

25 Q. --- in July.

1 A. Yes.

2 Q. Got it. But the point is, the seven-point-whatever
3 went into Mrs. Shoemaker's...trust?

4 A. No. It just went on her side --- to her balance
5 sheet.

6 Q. So then it would be ---and I just don't have those
7 documents yet--- she set up an IRA --- she designated her
8 beneficiaries of her IRA account on these Merrill Lynch
9 forms ---

10 A. Yes.

11 Q. --- that have been produced in Shoe's case.

12 A. Yes.

13 Q. Again, all of that was done in June of '18.

14 A. Yes.

15 Q. Okay. I got it. Did she have an IRA account prior
16 to Shoe's death?

17 A. I don't believe so. I don't believe so.

18 Q. I believe the discovery responses are due maybe the
19 end of this month. But what assets did she have, other than
20 Mr. Shoemaker's IRA?

21 A. She had her own CMA account at Merrill Lynch, with
22 her own investments and... I'm struggling to try to remember
23 amounts. It was roughly the same as Shoe's CMA account in
24 size.

25 Q. Okay.

1 A. So she had between two and three million dollars in
2 a CMA account at Merrill Lynch in her ---

3 Q. Name.

4 A. --- her name, or her trust. Her Revocable Trust
5 name. She had some interest in a couple of partnerships that
6 had some value but not significant. And then she had this
7 joint account with him at the Community Bank. I think that's
8 the bulk of it.

9 Q. Two questions: Did ever any of Mrs. Shoemaker's
10 money find its way into Shoe's IRA account?

11 A. I'm not sure what you're asking.

12 Q. Yeah. Just, it's striking that Shoe's IRA has a
13 value of seven million dollars. Even assuming he was a very,
14 very successful lawyer. At least to me.

15 A. You mean it was big, or not big?

16 Q. Big.

17 A. Oh.

18 MR. HAYNSWORTH: Maybe we need to have the
19 Turner Padget/Wyche lawyer comparison.

20 MR. BLINCOW: Well, maybe so.

21 Q. So I was just... And I get that this was over a
22 long career, and I get it was a very successful career. And I
23 guess I just wanna make sure ---and I guess it really doesn't
24 matter--- but was any of Mrs. Shoemaker's money used as seed
25 money for that?

1 A. No. No.

2 Q. Okay.

3 A. We had a very generous profit-sharing plan at the
4 Wyche Firm that started probably in the '70s. And we also had
5 an investment advisor that did extraordinarily well. And so
6 Shoe actually, when he decided to move his profit-sharing from
7 there, from the firm, to an IRA, he actually moved to a more
8 conservative mix at that time. And, you know, had he not done
9 that, it might've been even more. But it was remarkable. It
10 was a remarkable thing for some of those older lawyers who
11 worked there and enjoyed the really incredible decades.

12 Q. See, Knox and I --- we can go off the record for a
13 second.

14 (Off Record Discussion)

15 Mr. Blincow Resuming:

16 Q. In round terms, Mrs. Shoemaker had a CMA account.

17 A. Uh-huh.

18 Q. And it would be worth approximately --- if Mr.
19 Shoemaker's brokerage account was two-point-something, do you
20 think that Mrs. Shoemaker's was in that ---

21 A. Comparable. Uh-huh. Very much.

22 Q. Now, as I understand it, Mr. Ned Sloan just passed
23 away.

24 A. Uh-huh.

25 Q. Were there any assets that belonged to Mrs.

1 Shoemaker that were at his house that needed to be done
2 something with?

3 A. Yes. Yes.

4 Q. Tell me about that, please.

5 A. That's the secretary. I think it's called an Elf,
6 or an Elfe, E-l-f-e. Well, I know a lot of the history of it.
7 But it's a family --- it was a family piece. It was a large
8 secretary that was built by a famous Charlestonian furniture-
9 maker. And Polly's mother acquired it at some point and it was
10 in Polly and Shoe's house. And they had all the history of it,
11 and spoke about it. It was a beautiful piece of furniture.
12 When we were closing up their home at the Cascades after Mrs.
13 Shoemaker died ---

14 Q. Oh, it was at the Cascades?

15 A. It was at the Cascades. Absolutely. It was there
16 in the living room. It was beautiful. And after she died and
17 we had to move out of the Cascades ---and there was some
18 pressure to move out as quickly as we could--- we were ready to
19 put it in storage. And Ned approached...I think he actually
20 approached Sloan, maybe, and mentioned that that piece of
21 furniture had great sentimental attachment to him, he cared
22 about it, and it would please him very much if he could keep it
23 at his home. And so we all talked ---Jonathan, Sloan and I,
24 and also Ned's son John, who's a lovely fella--- and we decided
25 that it would be a nice thing to loan it to Ned. And we did a

1 loan agreement, and it was transported to Ned's house, and he
2 took great care of it and was very proud of it and enjoyed it.
3 And then after his recent death we did collect it and it is in
4 storage.

5 Q. Got it.

6 A. Does that help?

7 Q. Yeah. 'Cause something had to happen to it here
8 recently.

9 A. Yes. And I think that was done last Friday, if I'm
10 remembering correct.

11 Q. So on Shoe's death, the seven-point-three went to
12 Mrs. Shoemaker and into her Revocable Trust.

13 MR. HAYNSWORTH: The seven-point-three ---

14 Q. No, no, no, no. Excuse me. Let me start --- I
15 apologize.

16 Upon Shoe's death, the seven-point-three IRA account
17 went to Mrs. Shoemaker.

18 A. Correct.

19 Q. And on her death it went into her Revocable Trust.

20 A. No. Her beneficiary designation for her IRA was
21 Jonathan and Sloan.

22 Q. And do I understand your testimony that she did not
23 have an IRA designation before the June '18 designations?

24 A. She would not have, because she didn't have an IRA.
25 The IRA was Shoe's, so he had beneficiary designations for his

1 IRA.

2 Q. Right.

3 A. But she didn't have an IRA until he died and it
4 rolled over to her, and then she put a beneficiary designation
5 on it.

6 Q. And that was done --- coincided with the new Will
7 and Trust in June of '18.

8 A. Yes. I believe it was the week after they executed
9 theirs Wills and Trusts with me. The Merrill Lynch ---I'm
10 gonna say Merrill Lynch folks; I don't know if it was Ben
11 Clauss or Amanda--- they went out to the Cascades and that's
12 when the beneficiary designations were completed. So it wasn't
13 done on the day they signed, but it was within a week, I think.

14 Q. If that beneficiary designations of her IRA account
15 had not occurred, what would happen to the seven-point-three
16 that became hers on Shoe's death?

17 A. You mean if she had not filled out any beneficiary
18 designation?

19 Q. In late or mid June of '18.

20 A. I think that by the IRA contract itself, in the
21 absence of any beneficiary designation, it goes into that
22 person's estate. So through their Will. That's typically what
23 happens, and I think that's what would have happened in her
24 case.

25 Q. Would have passed into --- would have gone into the

1 estate.

2 A. Into her estate, that's right.

3 Q. Okay. Did she have ---and we're gonna tick through
4 it in just a minute--- did she have a Will and Trust prior to
5 June of '18?

6 A. Uh-huh.

7 Q. Okay.

8 A. Sure.

9 Q. All right. I think I understand.

10 A. It's a lot of... Well, I have to...in my mind, I
11 see buckets. And if you think about when someone dies there
12 are buckets of assets: there's IRA, there's a joint account,
13 there's a revocable --- you know. And I have to actually
14 visualize the buckets to keep it straight.

15 Q. Uh-huh. And as we've discussed, the Irrevocable
16 Trust was funded by a life insurance policy.

17 A. Uh-huh.

18 Q. The bulk of Mr. Shoemaker's that went into his
19 Revocable Trust would be his brokerage account.

20 A. That's right. That's right.

21 Q. And the IRA passed pursuant to the designations that
22 he gave ---

23 A. Exactly.

24 Q. --- prior to his death.

25 A. Exactly.

1 Q. Okay.

2 MR. BLINCOW: All right, we're gonna take a
3 little break. We're gonna take five minutes.

4 (BREAK)

5 Mr. Blincow Resuming:

6 Q. We're back on the record, Ms. Moore.

7 And I've gotten an earlier ---actually before I was
8 involved in the case--- some discovery responses. Information
9 that Marshall had been provided. And it says, "Copy of
10 policy," and then it has a policy number. That would be the
11 life insurance policy ---

12 A. Yes.

13 Q. --- four-point-nine million?

14 A. Yes. John Hancock, I believe.

15 Q. And then there is a June 2015 Will and Trust;
16 correct? And I can show you...

17 A. Yes.

18 Q. That --- well, we can start there. In Mr.
19 Shoemaker's Will of that date, June 2015, how was his estate
20 set up?

21 A. Well, his Will left household goods to Polly but his
22 probate assets he left to his Revocable Trust.

23 Q. Okay. So beyond household furniture, and silver,
24 and what not, the bulk of his assets went into his Revocable
25 Trust.

1 A. Yes.

2 Q. Dated also June of 2015.

3 A. That's correct.

4 Q. And how was that set up?

5 A. How as that set up? Again, household ---I'm just
6 running through it quickly--- household goods obviously to
7 Polly. Any vacation residence, and then any interest at the
8 Cascades, to Polly. And then the specific bequests to his
9 brother and sister. And then the balance of his estate went
10 in, potentially, two pots: one pot was the Exemption Trust,
11 which would have been funded with his estate tax exemption
12 amount; and then any excess ---and there wouldn't have been, I
13 don't think--- would have gone into the Marital Trust. And
14 it's a formula to use estate tax exemption but then defer any
15 estate tax on the excess. But given what was flowing at the
16 time and what he had, the Marital Trust would not have been
17 created. So he would fund the Exemption Trust for Polly. It
18 was for her during her lifetime and then, at her death, or if
19 he predeceased her, it was going a third, a third, a third.
20 Which is, I think, what you're asking.

21 Q. It is, yeah. And, again, the Exemption Trust
22 business is just to minimize tax liability.

23 A. Estate tax. Yes.

24 Q. Okay. So as of June of 2015, the estate plan, his
25 Will essentially, provided that everything went into his, as

1 you explained, two trusts.

2 A. Right.

3 Q. And the trusts were set up for the benefit of Mrs.
4 Shoemaker for her life, and then to his three sons in equal
5 shares.

6 A. That's correct.

7 Q. Then ---and I'm just gonna stick with the way this
8 is organized--- then there's a First Amendment in February of
9 '18 to the Revocable Trust. And what changes were made by
10 virtue of the First Amendment to the Trust?

11 A. I would describe this as short of a technical tax
12 provision that amended the Exemption Trust. The reason we
13 amended the Exemption Trust was so that we could decide, at
14 Shoe's death, if we wanted it to use his estate tax exemption
15 or if we wanted it, instead, to qualify for a marital
16 deduction. The language in the 2015 trust did not let us go
17 either way. The amendment would have allowed us to go either
18 way. And the reason we wanted to be able to go either way was
19 that by 2018 the exemption, federal estate tax exemption
20 levels, had gotten so large and so high that a lot of planners
21 were really not interested so much in using the exemption; they
22 were really more interested in getting the marital deduction so
23 we could get a step up in basis in the assets when the
24 surviving spouse died. So this was a technical provision to
25 sort of adjust the Exemption Trust so that we could go either

1 way at Shoe's death.

2 Q. And maximize --- or minimize his tax liability.

3 A. Either minimize estate tax liability or preserve a
4 step up in basis at Polly's death.

5 Q. That First Amendment made no change to the ultimate
6 beneficiaries.

7 A. That's correct, it did not.

8 Q. Which were the three sons.

9 A. That's correct.

10 Q. Okay. Then we have a December 16 Restatement. Tell
11 me, please --- and you may need a minute to...

12 A. (Reviewing document) I'm confused. Oh, okay. So I
13 think that the --- I think that the Restatement is actually in
14 between these two.

15 Q. Well, you just tell me ---

16 A. What it means?

17 Q. Yeah. And I would prefer to go in chronological
18 order. You just tell me the significance.

19 A. Well, we've got the '15 Trust.

20 Q. Right.

21 A. Then we've got the Restatement of the '16 Trust.
22 The amendment was done in 2018 and it references the 2016. So
23 I think that the --- does that make sense?

24 Q. No.

25 A. See?

(Ms. Moore and Mr. Blincow reviewing documents)

Q. Amendment.

A. That references the 2016 trust.

Q. Okay. Well, you're right. And, again, the 2018 was a technical ---

A. Technical. Right. That's right.

Q. All right.

A. Now, what you're gonna ask me is, what are the differences between the '15 and '16?

Q. Yes, ma'am.

A. Let me look, if you don't mind. (Reviewing document) So, by that time, they had sold Lake Toxaway. So there's no reference to Polly getting a vacation home.

Q. And just while you mention that, because I saw it in some of the tax records.

A. Uh-huh.

Q. They had a condominium at Lake Toxaway?

A. They did.

Q. And that was sold approximately when? Before 2018.

A. Uh-huh. Probably sometime between '15 and '16 would be my guess. Because it's not referenced in the ---

Q. And so the proceeds from the sale of that property went where?

A. I don't know.

Q. Okay. I gather it was --- was it a substantial...

1 A. Well, I don't remember. I don't recall it being ---
2 it was a --- I don't recall it being a significant sale. And I
3 do remember that he tried for quite a while to sell it.

4 Q. I see.

5 A. It was a little slow to move. And he wanted to ---
6 they wanted to --- they weren't gonna go there anymore. So it
7 wasn't a huge...

8 Q. ...impact one way or the other.

9 A. I don't think so. I mean, huge is relative, but
10 yes.

11 Q. And if this was between '15 and '18, what was
12 driving that decision was, they weren't using it any longer, or
13 were getting...

14 A. I went there one time. I think it was even three
15 storeys. It was a lot of stairs, and it was not something that
16 they were comfortable doing.

17 Q. All right. So the provision with regard to the Lake
18 Toxaway property ---

19 A. Is gone.

20 Q. ---- is not in the restated ---

21 A. That's right. The same bequest to his brother and
22 sister. Then it looks like there was an addition of a bequest,
23 if Polly predeceased, to Deborah Wine, who was their long-time
24 employee. And then it looks like we still had the Marital
25 Trust in the Exemption Trust. And I assume you don't want me

1 to read this word-for-word ---

2 A. No.

3 Q. --- but just give you the gist of it?

4 A. Correct.

5 Q. We still had the Exemption Trust and the Marital
6 Trust. We still had a third, a third, a third in that one,
7 which is, I think, what you're asking about for the most part.
8 And that may be where we had...let me look. Yes, that's where
9 we had some change in the fiduciaries.

10 Q. All right, tell me about that.

11 A. Okay. So in 2015 ---this is Page 30 of 2015--- and
12 then the next one is --- Item 15 of both documents.

13 Q. Okay.

14 A. So in the prior one he named Polly and me to manage
15 his trusts during his lifetime. So, in other words, if he had
16 become incapacitated, Polly and I were to manage his trusts.
17 Then upon his death, he appointed Polly and Merrill Lynch as
18 trustees.

19 Q. What was driving that decision?

20 A. Well, he had --- all through the years, he had a lot
21 of confidence in Merrill Lynch. So he had them named as
22 trustee, to help Polly after he was gone. That's 2015.

23 Q. Yeah. But if I'm understanding you, Mrs. Shoemaker
24 was removed as a trustee.

25 A. No, she was a co- with Merrill Lynch. I was out of

1 the equation. And then she and Merrill Lynch would have
2 managed those trusts together.

3 Q. Right.

4 A. And then in 2016, that's when he named Polly and me
5 to be co-trustees and Merrill Lynch was removed.

6 Q. Sorry. In '15 the co-trustees were Merrill Lynch
7 and Mrs. Shoemaker.

8 A. Yes.

9 Q. And the revised trust was you ---

10 A. Polly and me. Uh-huh. He took Merrill Lynch out.
11 That's right.

12 Q. And do you know why that change was made?

13 A. Well, I think that he...I think he really liked Ben
14 Clauss and the investment folks at Merrill Lynch. But I think
15 he came to the realization that they wouldn't actually be the
16 people who would be administering the trust. It would be an
17 arm of Merrill Lynch that Polly would be dealing with.

18 Q. Yeah.

19 A. And I think he decided that he felt like Polly would
20 be more comfortable working with me and using Merrill Lynch for
21 investments.

22 Q. Sure. So likely, maybe, not even anybody from
23 Greenville would be managing that.

24 A. That's right. That's right. And then the amendment
25 was to the 2016.

1 Q. And that was, as you described it, a technical
2 amendment.

3 A. Yes.

4 Q. All right. Those were the Will and Trust documents
5 that were produced to Marshall early on. What happened after
6 '18...yeah, February...

7 A. Wait a minute. (Reviewing documents)

8 Q. There it is.

9 A. February.

10 Q. Yeah. What happened after --- so in February '18
11 there were three ultimate --- three beneficiaries: the three
12 sons.

13 A. That's correct.

14 Q. When is the next change of any sort to his estate
15 documents?

16 A. That would have been June, when he signed the
17 Restatement of his Trust.

18 Q. And as I understand it, you would have drafted those
19 documents. The June '18 documents.

20 A. That's correct.

21 Q. But you were not involved in witnessing the
22 signatures and so forth of Mr. and Mrs. Shoemaker. Is that
23 right?

24 A. To their documents?

25 Q. Yes, ma'am.

1 A. Yes, I was.

2 Q. You went to --- that was at their house?

3 A. Yes.

4 Q. Do you remember what --- tell me about that. What
5 do you recall?

6 A. The actual execution?

7 Q. Yeah.

8 MR. HAYNSWORTH: Of the changes in June of
9 '18.

10 MR. BLINCOW: That's right.

11 MR. HAYNSWORTH: Just making sure I'm
12 chronologically with y'all.

13 A. So it was --- I believe it was a Sunday afternoon.
14 I had arranged it with Shoe and Polly in advance. We'd had
15 some conversations about it. I asked Amos Workman and Carl
16 Muller to be witnesses. And so we all met at the Cascades. As
17 I remember, it was the 24th, and I think it was a Sunday
18 afternoon.

19 Q. Okay. And it was in the afternoon?

20 A. I think it was late afternoon, yes. Sort of a
21 Sunday afternoon, it was a good time for everybody to sort of
22 get there.

23 Q. How was it decided to ask Mr. Workman and Mr. Muller
24 to be witnesses? Did they live nearby? Or what was the...

25 A. So in the week or so before, I had a meeting with

1 Shoe and Polly at the Cascades and we talked about the draft
2 documents that I had prepared. And we talked about the
3 execution of it and how we would do that. And I suggested that
4 since I was named in the Will as a fiduciary, while that's not
5 disqualifying, I thought it would be better if we had two other
6 independent people. And we didn't really want to ask --- well,
7 at that time they didn't have a regular caregiver. But we
8 didn't wanna ask somebody --- he was under hospice, of course,
9 but we didn't wanna ask a caregiver or anything. So I
10 suggested, or Shoe suggested --- I don't remember who
11 suggested --- that we ask Amos and Carl. He knew them well;
12 they were at the Wyche Firm. And I knew that Carl was very
13 fond of Shoe and Polly, so I just thought that would be good
14 and I lined them up. He thought that was great, and I lined
15 them up.

16 Q. No aspect of that witnessing those signatures was
17 videotaped; is that right?

18 A. No.

19 Q. Or recorded in any sort of way?

20 A. No.

21 Q. And you recall it being in the afternoon.

22 A. Uh-huh.

23 Q. And was Mr. Shoemaker up and dressed, or was he in
24 bed?

25 A. No, he was up and dressed. We sat at the dining

1 room table. He sat at the head. I think I sat to his right
2 and Polly sat next to me. And then Amos and Carl were across.

3 Q. Okay.

4 A. We sat at the dining room table. He was dressed.
5 He had his oxygen, but he was dressed.

6 Q. All right. Let me back up. You mentioned that
7 there was a meeting a week or so before. Or maybe it was ---
8 was it a meeting or phone call, where you talked about "We've
9 gotta get these" --- you had drafted the documents and they
10 needed to be signed?

11 A. There were a couple of phone calls and a meeting.
12 Do you want me to ---

13 Q. Yeah, what I --- right.

14 A. --- start at my first ---

15 Q. That's right.

16 A. --- interaction?

17 Q. And what prompted that call.

18 A. Okay. So about a week before the 24th, give or
19 take, I had a phone call with Shoe. He called me. I was at
20 the office. And he said that he wanted to make some changes to
21 his estate plan. And he said that he was --- he wanted to
22 remove Marshall from his estate plan.

23 Q. Prior to that call, when's the last time you would
24 have seen Mr. Shoemaker?

25 A. Oh, probably...I probably would have seen him within

1 --- I would have talked to him or seen him within the prior
2 month, probably. Just to casually have a phone call with him.

3 Q. Like a social call?

4 A. Uh-huh. Yeah. Just checking in. He had stopped
5 going out to lunch, so I didn't meet him for lunch anymore at
6 Pete's. But we would have a phone call, you know, every six
7 weeks or so. So I had probably talked to him.

8 Q. So he called you.

9 A. He called me. And he said that he wanted to change
10 his estate plan. And he said that he had...and I think these
11 were his exact words...he'd had it with Marshall. He described
12 to me the upset over Peter's graduation, and Sloan being dis-
13 invited to Peter's graduation. And he talked about how that
14 had upset him very much, it had upset Polly, and he was kinda
15 done. So we talked a while. And, you know, I asked him some
16 questions, just for clarification. I asked him about Peter and
17 Mary. And I asked him about the other specific bequests. So
18 he told me he wanted to do something, both of them would wanna
19 do something for Peter and Mary, they loved Peter and Mary very
20 much, but that he wanted to take Marshall out. And he said to
21 me that Polly was in total agreement. That's what he said to
22 me.

23 So I started the drafting. And I will say this: He
24 was very calm. He was decisive and he was calm about it. He
25 wasn't...I mean, he was upset and sad, but he wasn't emotional.

1 So I started working on some drafts. And the next day I talked
2 with him again. And I think I called him. And he, you know,
3 reiterated what he wanted to do. And I told him that I would
4 have some drafts ready pretty soon.

5 Q. So you called him probably a day or so later.

6 A. I think it was the next day. And we talked again,
7 and he was still very clear on what he wanted to do. And I
8 told him I had some drafts that were underway. And so then I
9 told him that I wanted to come out and bring the drafts to
10 them. So I went out maybe two days later, three days later,
11 and I took them both drafts of the new documents. And we sat
12 in the den. Polly was there. And I went through those
13 documents with both of them. And we talked about it and they
14 were clear that that's what they wanted to do. And I felt good
15 that they had expressed their wishes to me. So at that
16 meeting, that's when we talked about how we would execute it,
17 and when we would execute it, and what we would do. So it was
18 sort of two phone calls that I remember and a meeting before we
19 actually met on the 24th.

20 Q. Got it. And you mentioned that they loved their
21 grandchildren, Peter and Mary. So is that why the provision
22 for the two hundred and fifty thousand ---

23 A. Yes.

24 Q. --- for each grandchild?

25 A. Yes.

1 Q. Were you ever aware of any other reason, other than
2 the upset with regard to Peter's graduation and the e-mails
3 which we have, was there ever --- did Mr. Shoemaker ever say
4 anything other than that, that was driving this change?

5 A. Well, I think that the episode with Sloan and
6 Peter's graduation was more like the straw that broke the
7 camel's back. I think there were a number of incidents, or
8 upsets, in the family for years that had sort of led up to
9 that.

10 He was unhappy and upset when the police detective
11 got involved. And I can't remember if that was earlier in the
12 year or not. But he talked to me about that when that
13 happened. Because I got --- Cary Hall, at the office, I think
14 got that e-mail. Cary reached out to me. I called Shoe. I
15 wrote the detective. So he was upset about that. That was
16 very embarrassing to him. So that was a situation. You know.
17 I was aware of the management of Marshall's trust back in the
18 '90s, and he felt like Marshall had sued him, or threatened to
19 sue him. You know. He remembered all those things. And he
20 told me about those things over the years.

21 Q. But there was also no question that up until a week
22 or so before the documents were executed, Marshall was a
23 beneficiary.

24 A. That's correct.

25 Q. And with respect to any reason that he gave when he

1 called you in June, the only thing he ever mentioned was this
2 upset regarding the graduation.

3 A. That was the final, precipitating thing.

4 Q. Okay.

5 A. As I say, I think he said, "I've had it."

6 Q. One thing that came up --- I'm gonna switch gears on
7 you or I'll forget it.

8 A. Sure.

9 Q. What came up yesterday was a meeting ---and Jonathan
10 seemed to recall it being maybe a couple of years earlier---
11 where Mr. Shoemaker --- Jonathan testified that you were there
12 and there was a discussion of his estate plan.

13 A. Yes.

14 Q. Do you recall that?

15 A. Uh-huh.

16 Q. All right. Tell me what you can remember about
17 that, please.

18 A. Well, I think it was a couple of years. And it was
19 a meeting at my office. And I think Shoe wanted Sloan and
20 Jonathan to have a better sense of his plans and also the
21 people involved who were gonna be there to help Polly. By then
22 he'd had his diagnosis and I think he was thinking ahead to
23 making sure that they understood the plans he had made to
24 provide for Polly.

25 Q. Right.

1 A. So we had a meeting at my office when they were in
2 town.

3 Q. Both boys.

4 A. Both boys. And he did not want Marshall present.
5 Polly didn't, either. They didn't want Marshall to participate
6 in that meeting. But in that meeting, we talked about the
7 estate plan, we talked about Merrill Lynch.

8 Q. And the estate plan at that point was: everything
9 to Polly for her life and then to the three boys.

10 A. That's correct.

11 Q. And there was, I believe, a discussion of the value
12 of the estate.

13 A. I think so, yes. There was some. Generally,
14 anyway, yes.

15 Q. Okay. Did you see Mr. Shoemaker following that
16 Sunday afternoon meeting? Did you have an occasion to visit
17 him?

18 A. I did. I did. When we were working through the
19 documents on the 24th, and going through things, and getting
20 everything executed. I had prepared a memo for personal
21 property. And Polly was reading that and wanted to make a
22 change to it. And I can't remember what the change was, but it
23 was something about the household goods or the jewelry or
24 something. And she was reading it as we were going through
25 these documents. And she asked me to make a change to it. She

1 wanted to make a change to that memo. And I said,
2 "Absolutely." So I don't think we signed that memo that day.
3 I brought it back to the office and corrected it, made it the
4 way she wanted, and then I went back out to their house...a
5 week later, maybe?...and they signed that memo. And I don't
6 know, there may be a date on that memo. But that's the last
7 time that I remember seeing him.

8 Q. Now, when you say a memo, it would be like an
9 exhibit to the Will?

10 MR. HAYNSWORTH: It's a one-pager ---

11 A. It's called "Memo for Personal Property."

12 MR. HAYNSWORTH: I think it's one of the
13 exhibits from Marshall's deposition.

14 A. It may be. And it talks about how she wanted Sloan
15 and Jonathan to sort of take picks on the art, and that kinda
16 thing. But she was reading that as we were going through the
17 documents and said, "I wanna change that." So then I went back
18 and visited with them. In the meantime, I think Shoe had
19 changed his beneficiary designation for his IRA during that
20 interim. And at that visit with them, when I went out there,
21 Marshall, in the interim, had come up to visit. Because they
22 told me about that.

23 Q. And what did they tell you about that?

24 A. They said that --- well, Shoe said that Marshall
25 made an unexpected visit, and that he didn't want to see

1 Marshall. And so he said he went back to the bedroom. And
2 Polly, I think, visited briefly with Marshall. And she said
3 that she went back to Shoe's room to make sure that he didn't
4 wanna see Marshall. And he didn't. So she came out and she
5 said that she told Marshall that Shoe didn't wanna see him.
6 And she commented that that was an uncomfortable conversation,
7 but that's what Shoe wanted.

8 Q. And at that point, Marshall left.

9 A. Yes, I think that's correct. But that happened in
10 between when they had signed their documents and I went back.

11 Q. Would --- and you weren't there for any of that
12 visit. You weren't there, they told you about it.

13 A. That's right. They relayed that to me.

14 Q. Would the change in the IRA designation have been
15 done by mail?

16 A. I don't believe so. I believe that Ben Clauss, or
17 Amanda Wood, or someone from Merrill Lynch, physically took it
18 out there. I believe. But I can't say that with a hundred
19 percent certainty.

20 Q. Do those designations have to be re-upped annually?
21 In other words, it looks like in the documents that have been
22 produced there are a number of times where he's affirming his
23 IRA --- his beneficiaries to his IRA. Do you know if that has
24 to be done annually?

25 A. I don't think it does.

1 Q. Do you know why there would be four or five or six
2 of 'em?

3 A. I would assume that if they're being done, there are
4 some slight changes. But I don't know. I'd have to look at
5 them to compare. But I don't think you have to re-up them.

6 Q. There's no question that it was the week after the
7 new Will and Trust were signed that the first IRA designation
8 was signed in which Marshall was not a beneficiary.

9 MR. HAYNSWORTH: Object to form.

10 Q. You can go --- does that ---

11 A. No, just say that again. Sorry. I got distracted.

12 Q. IRA designations, all the way up until June of '18,
13 listed Marshall as a beneficiary?

14 A. I don't think that's correct. I think that going
15 back in history there were times when it wasn't a third, a
16 third, a third. But in '15 or '16, it was a third.

17 Q. Okay.

18 A. But it wasn't always a third.

19 Q. All right. Do you know --- and I can just show you.
20 There was a Codicil to Mr. Shoemaker's Will in 1994. And I can
21 hand you that. (Providing document to the witness) Does
22 that... What can you recall about that period of time? If
23 anything.

24 A. Well, that was a time when they were not on good
25 terms at all. So Shoe wanted to take him out of the estate

1 plan.

2 Q. In 1994.

3 A. In 1994, yes.

4 Q. Back into the estate plan in 1996. And that
5 destroyed the Codicil?

6 A. Yeah, that looks like that's right. That's correct.

7 Q. And do you know what was driving the decision in
8 1994? Or would that be something you don't know?

9 A. I believe that this is around the time of the
10 controversy and conflict over the trust that Polly's father had
11 created. I think that's sort of around that time.

12 Q. And it was a leased property, maybe a gas station or
13 something?

14 A. Yes.

15 Q. And that was between '94 and '96. Are you aware of
16 any other times that Marshall was not a one-third beneficiary
17 in his dad's estate?

18 A. I do. There was a period where the estate plan
19 tracked the insurance trust. In other words, it was a sixth to
20 a trust for Peter and Mary, and a sixth to a trust for Marshall
21 that was more restrictive.

22 Q. And I asked you earlier if you ever saw a letter
23 that Mr. Shoemaker had written explaining why he had set it up
24 that way. Do you recall that?

25 A. I do remember getting that letter.

1 Q. And the point of that letter was that, because
2 Marshall was having some difficulty in his marriage, it was set
3 up one sixth/one sixth, and in later years, if he could have
4 set it up differently, he would have done so.

5 A. Yes. I mean, I remember that letter.

6 Q. Well, how would you have, if you wrote it --- and
7 it's a handwritten letter on Wyche letterhead. Did he give you
8 a copy of it?

9 A. I think he did. I think he did. He was good about
10 keeping up with paperwork. And he would send me a financial
11 statement every year. Not in the '90s, but in the 2000s. And,
12 certainly, when I was over at my own firm, he would send me a
13 financial every year, he'd send me information if he had an
14 appraisal done. So he sort of kept me in the loop on those
15 things.

16 Q. Approximately when would he have gone from a Wyche-
17 managed retirement account to a Merrill Lynch?

18 A. I don't...

19 Q. Years and years and years ago.

20 A. No. No, not years. Well, I would say probably ten
21 to fifteen years ago. He moved from the profit-sharing at the
22 Wyche Firm to an IRA that was invested. I'd say ten to fifteen
23 years.

24 Q. So the sum of your testimony would be, from...let me
25 make sure...from '96 to 2018, Marshall was a one-third

1 beneficiary of his dad's estate. So we have this upset over
2 some aspect of Marshall's grandfather's estate, from '94 to
3 '96.

4 A. Right.

5 Q. And then you told me about there were some periods
6 of time where Mr. Shoemaker's estate plan tracked along with
7 the Irrevocable Trust.

8 A. Uh-huh. Yeah. I just don't know what years that
9 was. I don't know if that was subsequent to this or prior. I
10 just don't remember.

11 Q. Okay.

12 A. That's why I was looking at you funny.

13 Q. I'm gonna hand you the first... Well, no, that's
14 the same thing. Let me show you this, that I don't think was
15 produced initially, and tell me what that is and what you know
16 about it.

17 A. This is the Insurance Trust.

18 Q. I see.

19 A. This is the Insurance Trust.

20 Q. Okay.

21 A. So, '98.

22 Q. Well, so you're right.

23 A. Yeah.

24 Q. The '94 to '96 would be the first time that Marshall
25 was treated differently.

1 MR. HAYNSWORTH: Object to form.

2 Q. In 1994, Marshall was treated differently.

3 A. Yes.

4 Q. And that ended in 1996.

5 MR. HAYNSWORTH: Object to form.

6 A. I believe so, yes, that's correct.

7 Q. And we think we know what prompted Marshall to be
8 taken out in '94. What prompted him to be put back in in 1996?
9 Do you know?

10 A. I don't know anything specific. My experience with
11 being around Shoe and Polly ---particular with Shoe--- was that
12 their relationship with Marshall ebbed and flowed. There were
13 good times, and times when they got along okay, and then there
14 would be upsets. They could be as simple as a phone call that
15 wasn't pleasant. So I don't know. To me, this says that this
16 was a time when things were going a little better and they were
17 making an effort at trying to get along. But it changed. And
18 those conflicts and those problems persisted, even though the
19 Wills weren't changed.

20 Q. I understand that.

21 A. Right.

22 Q. But if we look at from the start to the finish,
23 there were two times when Marshall wasn't --- well, let's say
24 there were three times when Marshall was not treated similarly
25 to his two brothers,

1 MR. HAYNSWORTH: Object to form.

2 Q. The first in 1994, which ended in 1996. Correct?

3 A. Yes, I think so, but I can't remember earlier than
4 '94. You know. And there was a time when I wasn't involved.

5 Q. You're not aware of any time from his first Will, or
6 Trust... Well, the only times that you're aware would be from
7 '94 to '96, and then I believe you just mentioned in 1998 was
8 when the trust was changed to track along with the Irrevocable
9 Trust.

10 A. That's my recollection, yes.

11 Q. And you've seen the letter where Mr. Shoemaker
12 explains that "the only reason I'm doing this is because..."
13 or, "if I had to do it again, I would just do one third, one
14 third, one third," in his letter.

15 A. I've seen that, yes.

16 Q. How was the trust changed...I guess, would it be the
17 2018 document that'd be the change from the one third to one
18 sixth/one sixth. Is that right? Does that make any sense at
19 all? In other words, after 1996 he's a one-third beneficiary.

20 A. Yes.

21 Q. And then you've told me that there was a period of
22 time where the Revocable Trust was patterned after the
23 Irrevocable Trust.

24 A. Uh-huh.

25 Q. Did that ever change until the 2018 documents that

1 we've discussed?

2 A. Probably. Probably. But I don't remember
3 specifics.

4 Q. And you wouldn't be able to remember when or what
5 drove that decision.

6 A. No.

7 Q. Just that it was made.

8 A. Uh-huh. I think there were changes made
9 periodically over the years.

10 Q. All right. What did you know of Mr. Shoemaker's
11 medical condition?

12 A. I knew that he had a very serious pulmonary disease.
13 He described it as terminal. He was very open and frank about
14 it when he was diagnosed.

15 Q. And was he ever a cigarette smoker?

16 A. He was, I believe, in the '80s or so. When I met
17 him in 1988 he had given up smoking. I think he quit cold-
18 turkey. But he had smoked.

19 Q. And, approximately, when was he first diagnosed?
20 I'm just trying to get a sense of your understanding.

21 A. Yeah. I'm not good at that. I'm gonna say about
22 five years prior to this death, something like that. And he
23 was very open about it. And at peace about it, really.

24 Q. He would've been retired by the time he was
25 diagnosed?

1 A. Well, Wyche lawyers kind of never fully retire.

2 Q. We established that yesterday.

3 A. He was semi-retired. He would still go in. He
4 still had an office. He still had access to a secretary. He
5 did personal work. But I would have described it as semi-
6 retired.

7 Q. Okay.

8 A. But not, probably, fully retired. He was still
9 going into the office.

10 Q. Other than the letter that we've talked about where
11 Mr. Shoemaker explained to Marshall why it was set up one-
12 sixth/one sixth, are you aware of any other correspondence
13 between Mr. Shoemaker and Marshall?

14 A. I don't know. I don't think so.

15 Q. Have you told me about the specifics of --- and I
16 get that your testimony would be that there were years of ebb
17 and flow.

18 A. Yes.

19 Q. And you've identified something to do with
20 Marshall's grandfather's estate that was upsetting to his dad.

21 A. Uh-huh.

22 Q. And then the business with Peter's graduation.

23 A. Uh-huh.

24 Q. And about they were victims of a fraud.

25 A. Uh-huh. Calling the detective.

1 Q. Other than those things, are you aware of any
2 specifics that were between the two?

3 A. Well, I guess this isn't specifics, but I remember a
4 couple of times him describing that they would have a phone
5 conversation with Marshall and Marshall would lose his temper
6 with them, raise his voice to Polly, and that that was
7 upsetting to them and it really hurt him and upset him that
8 Polly would bear some of the brunt of that. So it wasn't
9 anything specific, but I do remember a couple of times when he
10 would say that they had had very unpleasant phone
11 conversations.

12 Q. Was this back when y'all were practicing together,
13 or ---

14 A. Uh-huh.

15 Q. --- later?

16 A. Probably, yes. Probably when we were practicing,
17 yes.

18 Q. And you told me earlier you left Wyche in...?

19 A. The end of 2010.

20 MR. BLINCOW: Let me take a five- or ten-minute
21 break and make sure I've got everything and I will
22 be right back.

23 THE WITNESS: Okay.

24 (BREAK)

25 Mr. Blincow Resuming:

1 Q. We've marked as Exhibit 1 to your deposition a
2 letter that Mr. Shoemaker wrote to Marshall in August of 2010.
3 And we've referred to it several times. Is this the letter
4 that you were mentioning that you had seen?

5 A. Yes.

6 Q. And as I understand it, he is writing Marshall and
7 explaining why he has set up his life insurance trust the way
8 he had.

9 A. Uh-huh.

10 Q. And you testified that there were times, years ago,
11 when his Revocable Trust had the same provisions.

12 A. Yes. Actually, it could've been his Will at that
13 point.

14 Q. Will.

15 A. We didn't do a Revocable Trust until kind of later.

16 Q. And, again --- well, two things: What he's saying
17 is, "I've done it this way to protect you, Marshall, and your
18 children," with respect to Marshall's marriage. He doesn't say
19 that, but isn't it true that the reason he did what he did was
20 because of difficulties in Marshall's marriage?

21 A. I think that was part of it. I also think that when
22 he did the life insurance trust he also wanted to be sure that
23 Peter and Mary were taken care of and provided for. So I think
24 it was sort of two-fold.

25 Q. Okay. And you would consider this a loving letter

1 from Mr. Shoemaker at the time.

2 A. Yes.

3 Q. Now, you mentioned that it wouldn't be terribly
4 unusual that you would have --- after you started your firm,
5 and after Mr. Shoemaker became at least semi-retired, that you
6 would have lunch, maybe, at Pete's.

7 A. Uh-huh.

8 Q. How often would you say that you had those get-
9 togethers?

10 A. Every couple of months we'd have lunch at Pete's, or
11 once in a while go to the Poinsett Club. But usually it was
12 Pete's. He liked that.

13 Q. And was it purely social, or was there a work
14 component? Tell me how you would describe those lunches.

15 A. I think it was social. But we obviously had enough
16 history that he would, you know, talk about the firm sometimes.
17 Or talk about clients we had had in common, or things like
18 that. But it wasn't work-related, it was social.

19 Q. Were others involved or just you two?

20 A. Usually just the two of us. I sort of have a
21 recollection that Carl Muller joined us one time for lunch.
22 Possibly my daughter joined us one time. You know, for lunch
23 or something, if she was home from school. She was very fond
24 of him.

25 Q. Have you told us the extent of your testimony with

1 regard to Shoe's relationship with Marshall? In other words,
2 have I covered it all, do you think? Are there any surprises
3 that you haven't told me about?

4 A. I think so. I think we've covered everything. I
5 would say that he would frequently say, when we were doing
6 estate planning, that Marshall would probably raise problems,
7 have problems --- be a problem. He would say that to me
8 periodically as we would change things. I think that was one
9 of the reasons he didn't want him participating in that family
10 meeting. But nothing specific.

11 Q. And, again, it was always the case that, while there
12 may have been problems, other than the two times that you've
13 explained, Marshall was a regular one-third beneficiary like
14 his two brothers.

15 MR. HAYNSWORTH: Object to form.

16 A. I think we said three times. But, yes, that's ---

17 Q. And we've talked about those.

18 A. Yes, that's my recollection.

19 MR. BLINCOW: All right. I think those are
20 all my questions. Thank you very much.

21 MR. HAYNSWORTH: I have no questions.

22
23 (Deposition concluded at 12:30 p.m.)
24
25

Lesley R. Moore
November 24, 2020

62

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) C E R T I F I C A T E

Be it known that I took the deposition of LESLEY R.
MOORE;

That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;

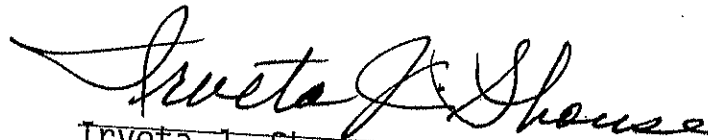
That by virtue thereof, I was duly authorized to
administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the truth
concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 3 through 61
is a true and correct transcript of the testimony given in this
matter;

That I am not related to nor an employee of any of
the parties hereto, nor a relative or employee of any attorney
or counsel employed by the parties hereto, nor interested in
the outcome of this action.

WITNESS MY HAND AND SEAL this 10th day of December,
2020.



Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

IRVETA J. SHOUSE/IJS
119 JONES AVENUE
GREENVILLE, SOUTH CAROLINA 29601

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.....On behalf of the Respondents

Also Present (via Zoom teleconferencing)

James Marshall Shoemaker, III
Jonathan Evans Shoemaker
Lesley R. Moore, Esq.

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

See Index, Page 3.

INDEX OF EXHIBITS

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1 EDWARD SLOAN SHOEMAKER, having first been duly sworn
2 to tell the truth, testified on his oath as follows:

3 EXAMINATION

4 By Mr. Blincow:

5 Q. Good morning. How are you?

6 A. Good, John. Thank you. How are you?

7 Q. I'm fine. Been a long time. But I am here this
8 morning to take your deposition. Have you ever given a
9 deposition before?

10 A. Yes.

11 Q. Tell me about that. What were the circumstances of
12 that?

13 A. Well, it had to do with my work. Suing the federal
14 government over fucking up the land...sorry. So we took 'em to
15 court. Won.

16 Q. Got it. You were not a party. It was your
17 employer, or your company?

18 A. Yeah, I was the plaintiff, if you like.

19 Q. Any other depositions besides that one?

20 A. Written depositions, as a party, but no ---

21 Q. Same sort of thing, with regard to your work?

22 A. Yes.

23 Q. There are a few things I need to tell you that our
24 rules require. But you understand you're under oath, you're
25 bound by the answers you give this morning?

1 A. Yes.

2 Q. Also, you may not be able to answer a question that
3 you don't understand. So if I ask something that you don't
4 understand, stop me and I'll start over again, all right?

5 A. Okay.

6 Q. Also, you understand that once we start your
7 testimony, you're not allowed to discuss it with Knox.

8 A. Yes.

9 Q. And so if you have any questions, you need to direct
10 those to me, all right?

11 A. Okay.

12 Q. And because our rules allow only one deposition in
13 your dad's case, will you agree to answer my questions as
14 completely as you can?

15 A. Sure.

16 Q. Okay.

17 MR. BLINCOW: And, Knox, no one's objecting
18 to the court reporter being in Greenville and
19 the witness being in Colorado; is that right?

20 MR. HAYNSWORTH: That is correct. We are
21 all staying safe and isolated.

22 MR. BLINCOW: There you go.

23 Q. And, Sloan, if you need to take a break, just let me
24 know and we will be glad to do that. Fair enough?

25 A. Thanks.

1 Q. All right. Can you tell me where you live, please
2 sir?

3 A. You want my address?

4 Q. Yes. Please.

5 A. 1071 County Road 111, Carbondale, Colorado.

6 Q. And I think I know the answer to this, but where is
7 Carbondale, say, in relation to Denver?

8 A. It's three hours west. A landmark people are more
9 familiar with is Aspen, and we're thirty minutes down the
10 valley from Aspen.

11 Q. West. All right. And how long have you been out in
12 Colorado?

13 A. Since the fall of 1984.

14 Q. When did you finish school?

15 A. Spring of 1984.

16 Q. Where did you go to --- all right, so you would have
17 finished Christ Church school.

18 A. '79.

19 Q. Got it. Do you still stay in touch with any of your
20 high school buddies?

21 A. Some. Yeah. Not many, frankly, but some, yeah.

22 Q. What would be some of the names of the guys or girls
23 that you would be closest to?

24 A. Well, Al Hipp was my long-time best friend growing
25 up. Appy Apperson, who has done a similar journey with taking

1 care of elder parents at Cascades. Bill Beattie some; see him
2 when I go home. When I went home before, I haven't been there
3 in a while.

4 Q. Yep.

5 A. Those are the top three that come to mind.

6 Q. Got it. Thank you. So if you finished high school
7 in 1979, where'd you go to college?

8 A. Washington & Lee University. Can't remember the
9 dates.

10 Q. So finished in '84 and moved out to Colorado.

11 A. Yes.

12 Q. And you're married; is that right?

13 A. Yes.

14 Q. First marriage?

15 A. Yes.

16 Q. Children?

17 A. Yes.

18 Q. How old are they?

19 A. Two girls, fourteen and seventeen.

20 Q. Looking at colleges for the older one?

21 A. Started the process. I think there's a desire to do
22 some visitation this year, but, you know...weird time.

23 Q. And tell me about you --- what do you out there? I
24 really don't understand, so I need you to explain it, please.

25 A. Well, my current job title is trophy husband.

1 That's tongue-in-cheek.

2 Q. Not bad, work if you can get it.

3 A. Yeah, right. I retired from --- I was executive
4 director of a non-profit conservation organization, working in
5 this area for twenty-plus years. And I stepped away at the end
6 of...I guess it was fall of 2017. I can't remember exactly.
7 Stepped away because it was time to move on, I was gonna burn
8 out, and I was ready to hand it off to the next generation who
9 had more energy and more at stake, frankly. And also,
10 concurrently, there was the growing need for someone to be
11 available on a short-term basis to respond to my parents' care
12 needs. And so my retirement addressed multiple needs.

13 Q. All right. And do you have a plan to get back into
14 the workforce, or is that it?

15 A. Well, I don't have any concrete plans. I've been
16 doing some writing. I was publishing a piece in the local
17 paper for a while. Little bit of consulting here and there.
18 Nothing too substantial. Really, right now, my wife is the
19 working member of the family and I'm the household caretaker.

20 Q. Got it. Does your wife work outside the home?

21 A. Yeah. She has a personal coaching business.

22 Q. In what regard?

23 A. She is a life-long educator. And when we got
24 married and started having family, she stepped away from
25 education, and wanted to get back into that world but not in

1 the classroom. And so she works with --- you know, she's been
2 working with a lot of different people: moms like herself who
3 have been trying to get back into the workforce, coaching them
4 on how to do that, working with teenage kids, working with
5 parents and kids. And she's currently developing some
6 curriculum for gap-year programs for kids. That kinda thing.
7 It's more extensive than that, but that gives you the picture.

8 Q. I've just seen an e-mail, sopris --- s-o-p-r-i-s.
9 Was that the name of the non-profit?

10 A. No, that's the name of a prominent geographic
11 feature, Mount Sopris, that looms over Carbondale, and they
12 named the internet provider after it. The Wilderness Workshop
13 was the non-profit that I was the director of.

14 Q. Okay. And did that have a single issue or multiple
15 issues that were the focus of Wilderness Workshop?

16 A. We focused entire on federal public lands. That
17 means national forests or Bureau of Land Management lands. And
18 our mission was basically to protect their ecological integrity
19 and wild character, so that we would leave something behind,
20 for next generations, like we found it. And so the issues we
21 addressed were anything that was detrimental to that mission.
22 So it was oil and gas development, we took on the oil and gas
23 industry, logging, mining, recreational development, ski
24 industry. And, you know, then worked with a lot of forestry
25 colleges to address the effects of climate change on our

1 national forests, be they insect infestations, or wildfire, or
2 whatever.

3 Q. Got it. All right. Thank you.

4 Since your mom passed away, have you been back to
5 Greenville?

6 A. There was an initial flurry of activity after she
7 passed away, in organizing and coordinating the management of
8 the estate. The physical elements of the estate. And once we
9 contracted with a person who does that professionally, I
10 stopped going back and I haven't been back since.

11 Q. Okay. Now, you lost me there a little bit. Who did
12 you contract with? I mean, what was the nature of the work
13 that needed to be done with regard to your mom's estate?

14 A. Well, it's all the physical items: the house,
15 the ---

16 Q. Furniture.

17 A. --- belongings. Yes. Furniture, clothing, you
18 know, kitchenware, silver, jewelry. All of that stuff needed
19 to be dealt with in an organized and fastidious manner. So it
20 was an overwhelming task for us who don't live there, and so we
21 contracted with a person who does it professionally. I can't
22 think of her name. Oh, wait. Nell O'Keefe is her name. And
23 she took care of it all, and obviously it had to go into
24 storage, pending the outcome of this process.

25 Q. Right. And I believe ---well, I don't believe--- we

1 took Lesley Moore's deposition a couple weeks ago and there was
2 some antique furniture that ended up at your uncle's house. Is
3 that part of the process?

4 A. Yeah.

5 Q. Got it. Did you have a chance to see the Notice
6 that I had sent to Knox about doing this? Well, it wasn't many
7 days ago, but did you see the Notice that I prepared? (EX-1)

8 MR. HAYNSWORTH: I don't think I sent it to him,
9 John.

10 Q. I can get at it this way: Have you made an effort
11 to try to capture and produce all e-mails and correspondence
12 that might relate to this case?

13 A. Yes. And you should be in possession of those.

14 Q. And you're satisfied you've looked where those kinda
15 things might be?

16 A. Yes.

17 Q. All right. I know that in Marshall's case, his dad
18 wrote him a couple of letters, handwritten letters. Did your
19 dad ever write you similarly?

20 A. I received very few handwritten letters from my dad,
21 and they usually weren't very rich with content.

22 Q. And let me see if I can close this door. Your mom
23 was not an e-mailer; is that fair to say?

24 A. That's correct.

25 Q. So in terms of e-mails to and from your dad, or to

1 and from Jonathan, those have been produced to Knox?
2 A. Yes.

3 Q. All right. Can you tell me, have you done anything
4 to prepare for this deposition today?

5 A. Other than observing Jonathan's deposition and
6 reading the documents that were in the packet, no.

7 Q. Have you had a chance to read Jonathan's deposition?
8 I think we got it one day earlier this week.

9 A. I have not read it, no.

10 Q. And when you mention a package, is that something
11 that Knox would have sent you yesterday?

12 A. It was the twelve exhibits that you provided in
13 advance of Jonathan's deposition.

14 Q. All right.

15 A. And an additional one that showed up this morning.

16 Q. That's right. Okay. If your dad passed away in
17 July of '18 ---and you mentioned that it sort of fell to you to
18 manage things, I guess--- when was the last time you visited
19 Greenville prior to your dad passing away?

20 A. Prior to my dad passing away?

21 Q. Correct.

22 A. Well, I was there the day before he passed away. So
23 I can go into details about that visit. Would you like to hear
24 that?

25 Q. Let me make sure I understand and then I'll ask you.

1 But did you happen to leave before he passed away, or were you
2 there the whole time?

3 A. I left the day before he passed. So he passed on
4 Saturday, I left on Friday. And I had been there for two weeks
5 prior, because he had been hospitalized and I showed up to be
6 with him, help him, as ever I could, with him and mom. With
7 the goal being to get him stabilized in the hospital so he
8 could get home, frankly, to return to hospice and live out his
9 remaining days. At the time, we thought it was weeks, if not
10 more. Didn't know that it was days. And so I left. I think
11 we got him home on a Monday or Tuesday of that week, and
12 settled in, got a routine going, got the hospice all dialed in.
13 And it seemed like everything was stable, and settled, and I
14 told him, "I gotta go home and see my family and I'll be back
15 and I'll see you again in a few days." And his last... Well,
16 anyway... I left, and he said goodbye. And we didn't realize
17 it was goodbye-goodbye.

18 Q. And that visit was for several days, you mentioned?

19 A. Two weeks.

20 Q. I'm sorry?

21 A. Two weeks.

22 Q. And that coincided with a hospital admission; is
23 that right?

24 A. Right.

25 Q. Got it.

1 A. Can you hear me okay? Do I need to speak up.

2 Q. No, no, I'm good. Can you hear me?

3 A. Yeah, fine.

4 Q. I have records of an ER admission in May. were you
5 involved in that at all?

6 A. For Dad?

7 Q. Yes.

8 A. I don't recall that one. Do you have any more
9 details on that?

10 Q. Yeah. Look, please, at what we have marked as
11 Exhibit 2. And I believe...well, this is from Jonathan. I
12 believe in order to become a hospice patient you have to have
13 this DNR status. Is that your understanding? Do Not
14 Resuscitate?

15 A. You know, I don't know if it was a necessity. But
16 it was certainly something that the doctor was a strong
17 proponent of, for the reasons outlined in an e-mail that you
18 have in one of the exhibits.

19 Q. Sloan, if you look at the third page, Marshall (sic)
20 asks how your trip to Greenville was.

21 MR. HAYNSWORTH: Are you on Exhibit 2, John?

22 MR. BLINCOW: I'm on Exhibit 2.

23 (Off-record discussion regarding marking of exhibits)

24 (PETITIONER'S EXHIBIT NO. 2 MARKED AND ENTERED)

25 Q. And Jonathan asks how your trip was, and you said,

1 "(Mom and Dad) are pretty good. Dad gets tired but he's in
2 good spirits. Mom is nuts but cheerful." And that would have
3 been at the end of May. Do you see that? Does that ---

4 A. Yeah.

5 Q. Was your dad --- here's my confusion. I thought
6 that he had had this trip to the ER and had been discharged and
7 was home for on the order of weeks before he passed away. And
8 then when you mentioned that you got your dad home and
9 situated, and then he passed away shortly after, that's my
10 confusion.

11 A. Yeah, I understand the confusion. There's a lot of
12 back-and-forth. But all I can tell you is that in early July
13 he was hospitalized with an acute respiratory distress critical
14 event. And I think he was --- he was on hospice, and then he
15 had this respiratory arrest event that they ended up calling
16 9-1-1 for, and he was scooped up and taken to the hospital, and
17 then I showed up the next day. So I sat with him a week and
18 then got him home, and sat with him rest of that week, and
19 that's when I left on Friday and he died on Saturday.

20 Q. And you're only aware of the one --- say, from May
21 until your dad passed away, you're only aware of the one
22 admission.

23 A. That's right. That's what I can recall. I'm sorry.
24 I mean, there were so many with Mom in and out, and Dad's
25 comings and goings with nurses and medical providers, and falls

1 and stuff, that I might've overlooked one. But I don't recall
2 one in May.

3 Q. Okay. And you don't recall --- do you recall
4 leading the charge in order to get this DNR order in place? Or
5 not so much?

6 A. No, I do. I recall that. I was there, went to a
7 doctor's appointment with dad. And this is something that we
8 had been talking about for a while. Because we knew they had a
9 Living Will, which, you know, basically said no extraordinary
10 efforts to prolong life, and the details of that were --- the
11 only thing that was spelled out was, you know, no feeding
12 tubes, or... I think that was the extent of it. And there's a
13 whole lot of space between feeding tubes and nothing. And I
14 wanted them to get really clear on that so they had an
15 understanding of what the possibilities were. And so I went to
16 Dad's respiratory/pulmonary doctor's appointment with him and
17 raised the question, and I asked him for advice. And that's
18 when he described that, you know, "You guys need to have these
19 conversations in advance while everyone's conscious, so that
20 you're not wrestling with these awful decision in a critical
21 moment. And talked Dad into it, he agreed, and we got the DNRs
22 and got them posted around the house.

23 Q. And do you recall that about this time period, Early
24 May, is when he first started hospice at home?

25 A. Yeah.

1 Q. And then, you're right, there was an emergency
2 situation which led to an admission, and got discharged and
3 came home a second time. Correct?

4 A. I don't know about second, but, yes, he came home.

5 Q. All right. Do you recall a switch in the hospice
6 providers?

7 A. Yes.

8 Q. What was driving that decision?

9 A. Well, I know of one for sure. When you call EMS and
10 you engage in the medical system outside of hospice, that
11 cancels hospice. Because the whole point, obviously, is to not
12 do that, and just be comfortable at home, and slip away
13 gracefully. And so when he had that respiratory distress and
14 they called EMS, that, you know, by definition, canceled that
15 hospice and we got a new one arranged while he was back in the
16 hospital so they'd be available when he got home.

17 Q. All right.

18 A. There may have been a previous one. I think there
19 might've been three hospices and the first one we didn't like,
20 because they were inattentive, or didn't like the attitude.
21 That was the one he was with when he dialed 9-1-1, and then
22 third one is the one that was with him in the end.

23 Q. What was driving the decision to go to a third one,
24 or a different one, when he came back from the hospital?

25 A. The previous one wouldn't take him back on.

1 Q. I see.

2 A. Because he violated it. Basically, dialing 9-1-1
3 violates the terms of that contract, I guess. So they
4 terminated it.

5 Q. But you weren't dissatisfied with the first one, it
6 was just that they didn't want, perhaps your dad as a patient.

7 A. We were dissatisfied with the first one, happy with
8 the second one. But when he went to the hospital, that
9 canceled and we had to find a new one.

10 Q. Okay. So you're there in late May, and you say,
11 "Dad gets tired but he's in good spirits." Tell me, what do
12 you mean by that?

13 A. Well, his lungs were slowly losing effectiveness.
14 And so his resting oxygen, blood oxygen saturation, was good
15 when he was sitting still and on the oxygen. But any exertion
16 at all caused his blood oxygen levels to plummet and he would
17 get really tired really easily.

18 Q. Like, say, getting dressed in the morning? That
19 kind of thing would be a stress?

20 A. Yeah. Getting dressed. Walking across the house.
21 You know, having to deal... Anything other than sitting still
22 was a stressor on his respiratory system.

23 Q. And would it exhibit itself in being short of
24 breath? Or what was the... How would you know he was being
25 stressed?

1 A. Yeah, he would pant a little bit, and move really
2 slowly. I don't think he used a walker. But, you know, he
3 would steady himself on the furniture as he moved around the
4 house, that kinda thing. And he would verbally express how
5 challenging it was and how tired he was.

6 Q. Right. If you look, please, at the fourth page as
7 what we've marked as No. 2, there is an e-mail from your aunt.
8 And I guess you got copied on it. I think she may have sent it
9 to Jonathan but you were copied on it.

10 A. You know, I'm going off of the documents and the
11 numbering for Jonathan's deposition for No. 2 doesn't
12 correspond with that. So give me a second to find it.

13 Q. The first page of 2 is the DNR order.

14 A. Oh yeah? And there's an e-mail from Katya there?
15 Hang on a second.

16 Q. And end-of-April e-mail from her.

17 A. (Reviewing documents on computer) Oh, there.
18 Sorry. It was just a short one. I scrolled right by it.

19 Q. That's her observation, but did you notice your dad
20 confused in this spring of '18 --- 2018?

21 A. No, I didn't. I didn't notice him confused. He
22 might've been confused about my visit. Because it was pretty
23 fluid, when I was gonna arrive, based on flight availabilities,
24 and demands at home, and it kinda happened all of a sudden.
25 And, you know, I don't think I was updating --- I don't know

1 what happened. I don't think I was updating him in real time,
2 waiting for it to get clear on my end. So I'm as much
3 responsible for that as he is --- his receipt of it.

4 Q. Did you ever talk to your aunt about what she meant
5 by that?

6 A. No.

7 Q. All right.

8 A. Oh. And that particular visit, that might've been
9 the one that was connected to the aborted visit for Peter's
10 graduation. And so what I had planned to do was spend the
11 weekend in Atlanta, for the graduation, and then drive up to
12 Greenville and be with them for a couple of days. And I think
13 I was kinda figuring those details out on the fly, and then,
14 obviously, that kerfluffle happened with the graduation, which
15 threw that schedule into turmoil. So, yeah, there are a lot of
16 extenuating factors in that one.

17 Q. Well, I'm gonna ask you about that in just a minute.
18 But you did not go to the graduation in Atlanta; is that right?

19 A. That's correct. Under threat of death.

20 Q. Did not go. Did you go to Greenville instead?

21 A. Yeah. So I had a ticket, plane ticket, and I
22 thought, well, I might as well just use the ticket and go see
23 Mom and Dad. So I flew to Atlanta and rented a car and spent
24 the weekend with Mom and Dad.

25 Q. All right.

1 A. Weekend plus two days: Monday and Tuesday.

2 Q. But there was clearly a visit after that visit where
3 you were there for more like two weeks.

4 A. Well, there are multiple more visits after that
5 visit. I think I --- I mean, you have the schedule. I don't
6 have it in front of me, but I think I went in early June, just
7 by myself. And then in mid-June, maybe, went when my kids were
8 out of school. We went as a family, really with the
9 understanding that it was a last visit for my wife and my
10 daughters to essentially say goodbye. So we spent three or
11 four days there and then went down to Charleston to go to the
12 beach.

13 Q. You were by yourself for this last visit where you
14 happened to leave the day before your dad passed away. you
15 were by yourself.

16 A. Yes.

17 Q. Did you notice, say, from May to July, did he get
18 worse? Or was it status quo?

19 A. "It" being what?

20 Q. Yeah, sorry. His physical and mental condition.

21 A. His physical condition was on a precipitous decline.
22 His mental condition was stable.

23 Q. You never saw him confused or anything like that?

24 A. Not really, no. No. In fact, I thought --- I think
25 somewhere in the e-mails that are part of this exhibit I

1 remarked in January that he seemed bitter and agitated and was
2 prone to fits of anger. But by June, he had this...I don't
3 know, it's more of a serenity that set in. And he seemed much
4 more at ease, and resolved to his fate, recognizing that he was
5 spending his last days. And, so, you know, there was this
6 equanimity that I was really kinda taken aback by, that I
7 observed in him in June and early July. In fact, he was
8 cracking jokes.

9 Q. And I just wanna --- this is my characterization of
10 what you just said. But in a period of --- in the months prior
11 to, say, May, June, July, he obviously had this pulmonary
12 condition, and he might get angry, or have a temper, in the
13 months prior to all this?

14 A. I can only speak to what I saw when I was there in
15 January. There's a written record in the e-mail that, you
16 know, he was irritable. And he and Mom were kinda sniping each
17 other. And anyone that's been married recognizes that.

18 Q. Right. All right. Were you --- did you --- what
19 was the normal plan, how often would you get Greenville to
20 visit your parents? Or did they ever come out to visit you, or
21 did y'all go to the beach for a week in the summertime, or
22 vacation together? What was the typical deal with that?

23 A. How far back do you wanna go?

24 Q. Just the last couple of years.

25 A. No, they didn't --- I'm up at six thousand feet.

1 There's not as much oxygen here. When Dad was diagnosed with
2 his condition, they gave him three to five years to live, and
3 they advised that he minimize his exposure to other people by
4 not flying. And it was painfully clear that putting himself in
5 a challenging respiratory environment like 6,000-foot elevation
6 was not a good thing to do. So he said, you know, that the
7 visits were over. And I think the two of them came when the
8 girls were littler. I don't know, maybe 2012, 2011, 2010,
9 something like that.

10 There was a period, there were two successive years,
11 that we gathered at Litchfield, Inlet Point, where we had a
12 condo, for a little family reunion/beach stays. I think we
13 went two years in a row.

14 Q. In the summertime?

15 A. Pardon me?

16 Q. In the summer?

17 A. Yeah, yeah. It was like early June or something
18 like that.

19 Q. Okay.

20 A. And then we talked about continuing on that
21 condition. I forget why Inlet Point was...why we didn't stick
22 with that. I think Mom was uncomfortable on the beach. She
23 has allergy to sun, and she's not very mobile, can't get around
24 very well, and walking on the beach was hard for her. So we
25 tried to find alternative gathering places and nothing ever

1 really panned out. So that only happened twice.

2 And then in terms of my visit, you know, for the
3 last five, six, eight years, I forget, you know --- well, more
4 than that, really. I mean, since they moved into Cascades. I
5 would frequently --- well, we tried to go every Thanksgiving,
6 my whole family. We couldn't go for Christmas because my
7 mother-in-law's birthday's on Christmas, and so we stayed here
8 for that. But, also, Mom was in and out of the hospital for
9 various things, falls and stuff. And I know that that was
10 overwhelming for Dad. And so I would drop everything and go
11 visit with them. Take care of Dad and be Mom's advocate in the
12 hospital so that she got the best care possible. And I think
13 that was all very stressful for them. They just needed someone
14 to hold their hand a little bit while she was hospitalized.

15 Q. So the way it shook out is: Really, right after
16 your dad was diagnosed, if you wanted to visit, that would
17 require you and your family coming east for a visit.

18 A. Yeah. No, they didn't come west. Right.

19 Q. During that last visit with your dad, was there any
20 discussion about Marshall?

21 A. The last visit? You know, I don't think that ---
22 that was the last thing on our minds, really. I don't believe
23 we talked about him at all.

24 Q. During that last visit, was there any discussion
25 about your dad's estate plan?

1 A. No. That was all settled at that point. I mean,
2 those conversations occurred...let's see...I came home, I
3 visited them in the time period around Peter's graduation, the
4 aborted visit of mine. And, you know, obviously, when the plan
5 had been for me to go to the graduation and then come to
6 Greenville afterwards, and then I show up on Friday instead,
7 they were curious as to why. And I explained why. And that's
8 the point at which Dad said, "Well, may I see that e-mail that
9 Marshall sent?" And I shared it with them. And that's the ---
10 I think that's the first time in these series of events that I
11 heard Dad...where it seemed that a switch flipped where he
12 said, "That's kinda the last straw." But he didn't talk much
13 more about it at that point. And then when we came again, as a
14 family, with my girls and my wife, in June, in early June, I
15 think at that point he told me that he had decided he was gonna
16 change his plan and what that meant.

17 Q. I'm basing these next couple of questions on what I
18 believe Jonathan told me. But was there ever a
19 time...(frozen)...estate plan?

20 REPORTER: I'm sorry, excuse me. Was there ever
21 a time...

22 Q. Let me start over again. Thank you, Irveta.
23 Sloan, when did you first find out about your dad's
24 estate plan?

25 A. Dad convened a meeting at Lesley's office...right?

1 Yeah, Lesley's office, in I think the fall of '17. We could
2 find that date. It was Mom and Dad and Lesley, and Ben Clauss
3 from Merrill Lynch, and Jonathan and I. I can't remember if my
4 wife was there or not. And that's when we had a thorough, kind
5 of going over of the plans. Because dad was...he'd been given
6 a three- to five-year life expectancy. He was in year three,
7 maybe? Four? And at that point he wanted to convey all the
8 planning he'd done in preparation for his death.

9 Q. At that point --- well, first, Marshall was not at
10 that meeting; right?

11 A. Correct.

12 Q. But Marshall was a beneficiary, along with you and
13 Jonathan; correct?

14 A. Yes.

15 Q. And that would have been the first time ---I'm
16 again, basing it on what I believe Jonathan told us a week or
17 so ago--- that would have been the first time that you were
18 aware of the value of your dad's estate.

19 A. Yeah. Absolutely. I was blown away. Had no idea.
20 I mean, I knew he did well for himself, but I had no idea that
21 it was that size.

22 Q. If I'm understanding you, the plan didn't change
23 until I guess three weeks before your dad passed away.

24 A. I think it was more than three weeks. He passed
25 away in mid-July and this was... I mean, I'm sure Lesley

1 could ---

2 Q. Well, you're right. The end of May.

3 A. I think it was early June when he came to that
4 conclusion and made that decision.

5 Q. All right. To your knowledge, was there anything
6 other than this dispute, or blowup, about the graduation that
7 drove the decision to change the plan?

8 A. Well, as I said, Dad conveyed, like, "This is the
9 last straw, I've had enough." And so that speaks to a series
10 and a pattern of discord, as he remarked in that e-mail where
11 he told Marshall he didn't wanna talk to him anymore, or
12 whatever. So there's been a long history of it and I think Dad
13 had been back and forth on this issue over the decades, where
14 he'd written Marshall out once before and then, you know, had a
15 charitable moment where he wrote him back in. And then things
16 proceeded.

17 Q. When did you find out about taking Marshall out of
18 the plan and putting him back in? When did you find out about
19 that?

20 A. I think that was when I visited with my girls in
21 early June.

22 Q. Okay. I understand that you're saying there had
23 been years of discord and that your dad remarked, "That's the
24 final straw," or words to that effect. But it wasn't until you
25 showed your dad these e-mails that he changed his mind; is that

1 fair?

2 A. Yeah, I think that was the catalyst for it, sure.

3 Q. If you'd known then that he would have taken the
4 action he did, do you think you would have shown your dad those
5 e-mails? Or talked about it?

6 A. That would have been irrelevant in my decision-
7 making. He asked to see them and I showed 'em to him.

8 Q. And what you're telling me is that you recall,
9 because you had planned to go, you went to Greenville instead
10 of Atlanta.

11 A. Yes.

12 Q. This is getting in the weeds a little bit, but did
13 your dad keep his own checkbook, Sloan?

14 A. Yeah. Yeah. Well, I don't frankly know for a fact
15 that he did. I know there were checks written in the
16 household. Was it his or not? I don't know. I think he did
17 everything by credit card and cash.

18 Q. But whatever those month-to-month bills were, your
19 dad managed that as opposed to having a bookkeeper or something
20 like that?

21 A. I don't know how he managed his month-to-month
22 financial affairs.

23 Q. Would he have handled all of that? Was your mom ---
24 did she have a checkbook or a credit card? If she went to
25 lunch with her friends, how would that work, do you know?

1 A. Yeah, she --- I mean, she had her own accounts, as
2 you know from the estate. And she had a credit card and she
3 had a checkbook. And I know that she wrote checks to Debbie,
4 Debbie Wine, the caretaker, on a regular basis. Yeah, that's
5 how they worked, they split the task.

6 Q. And I get that things changed and they moved into
7 this retirement area and so forth. But who would have been
8 ---and these are two separate questions--- who would have been
9 your parents' friends, and then did your dad have buddies
10 separate from that? Does that make any sense?

11 A. Are you asking me who their friends were at
12 Cascades?

13 Q. Well, I'll start with that, that'd be great. Yes.

14 A. Well, the Aikens. The Aikens --- Bud Aiken and Mom
15 grew up together. They may have even dated in high school, I
16 don't remember. But they were nextdoor neighbors on Pine
17 Forest Drive forever. And they both moved out to Cascades
18 pretty soon after it opened. I think Dad made a few new
19 friends at Cascades. But I wasn't there enough, and when I was
20 there we weren't socializing, so I don't know who they were.
21 There were a lot of women, widows, who went to Cascades. Like
22 Franny Apperson and Evelyn Runge. And those are part of the
23 social circle. His closest friendships were associated with
24 the law firm. And, from what I'm aware, no one else from the
25 law firm was out at Cascades. Dad maintained a habit of going

1 --- he kept his office at the law firm, right up until, you
2 know, six months before he died, I believe. Don't hold me to
3 that. And he would regularly go on. And I remember visiting
4 and seeing him trundle out of the house with his oxygen bottle
5 on a little wheeler, shove it in the car and go to the office.
6 And, you know, he didn't really have work to do, as far as I
7 know, other than taking care of his personal business. And my
8 conclusion was that that was largely a social outlet for him.

9 Q. I believe Lesley Moore testified that they would
10 have lunch at Pete's every so often. So maybe he'd get dressed
11 to go to the office so he could go out to lunch, maybe.

12 A. Yeah, that's true. And, in fact, Appy Apperson and
13 he became pals primarily through a Pete's lunch connection. He
14 was probably closer to some of my friends than I was at the
15 end.

16 Q. All right. Your Uncle Ned recently passed away.
17 Were you back in Greenville for that funeral?

18 A. No.

19 Q. Did you have any conversations with your Uncle Ned
20 about your dad's estate plan and Marshall?

21 A. No. The only time --- I didn't talk to Uncle Ned
22 much at all throughout my life until --- and the e-mail
23 reflects this, that you have in one of the exhibits. We went
24 out to dinner, Mom and I, and Ned and his son, John, my cousin.
25 Went out to dinner and then afterwards Ned asked if I would

1 come over the next morning and meet with him.

2 Q. All right. I have seen that. But zero me in on
3 when in the process that would've been.

4 A. To be definitive, it would be helpful to look at
5 that e-mail because I wrote about ---

6 Q. I don't wanna stop you, but just ---

7 A. But I think that that was --- I was there by myself.
8 It was either that aborted graduation weekend in May, or maybe
9 early June. I was there by myself. I can't remember. In that
10 time period, anyway.

11 Q. I'm with ya.

12 A. And Dad wasn't up for going out to dinner, so the
13 four of us went out. And then the next morning, Ned, you know,
14 asked me to meet with him. And he had some concerns.
15 Primarily about Mom. And what he conveyed, which I didn't
16 fully appreciate leading up to then, was how little
17 communication occurred between him and my mom and dad. And I
18 think there's a number of reasons for that. But he was
19 conveying his concerns and didn't feel like he had a clear
20 avenue of communication to Mom and Dad in order to express
21 those concerns and so he did it through me.

22 Q. Right.

23 A. But the topic of Marshall and the estate did not
24 come up at all in that conversation.

25 Q. He just at that time felt like it had been a while

1 since he'd had a good conversation with your mom and was
2 concerned that he wasn't able to easily get in touch with them.
3 Fair?

4 A. Yeah. I mean, there's two sides to that story. The
5 complaint my parents had is that he never expressed any concern
6 about Mom, in her repeated hospitalizations. Never stopped by.
7 Never called to say "How are you?" You know. Never said, "I'm
8 sorry," etcetera. You know, it's the chicken or egg thing: if
9 he didn't feel like he was welcome and able, or what, what was
10 the cause. But that's the status of it. He didn't call
11 because he didn't think he was welcome to --- and he was
12 concerned. You know. He would talk to Mom occasionally. I
13 don't think he talked to Dad at all. And he was concerned
14 about the way she was talking, which I detailed in an e-mail
15 that's one of the exhibits. And ---

16 Q. The point there was that your mom might be --- was
17 confused?

18 A. The point there was that, yeah, he was concerned
19 about her condition. I guess both mental and physical. Sure.

20 Q. Okay. You mentioned just a minute ago, Sloan, that
21 you were there in late May/early June and your dad said, "Hey,
22 let me see these e-mails." Help me square that with what I
23 thought I understood, which was that you dad's secretary Rita
24 was involved in that.

25 A. I don't know how Rita got involved in that. Because

1 I had my laptop with me and I showed him on my screen. And I
2 don't really --- I have zero recollection of Rita's involvement
3 in that. It may be that Jonathan sent those e-mails to her.
4 Or maybe, I think the printer at home didn't work and Dad
5 wanted 'em printed out, and maybe Rita printed them out or
6 something. I don't really know why she was involved. But I
7 showed them to him directly, on my screen. I can't remember if
8 I e-mailed them, too. I think I would have, but I don't
9 remember, frankly.

10 Q. E-mailed them to your dad?

11 A. Yeah. But directly to him, not to Rita. But, of
12 course, Rita had access to all his e-mails. So maybe that's
13 how she got involved.

14 Q. Do you recall a conversation with Jonathan to the
15 effect of, "Should I share this with Dad or not?"

16 A. That was a different thing. That was the
17 communication with the detective and Greenville police, not
18 this one. There was no conversation with Jonathan about
19 whether or not to share those nastigrams from Marshall.

20 Q. Did you get ---

21 MR. BLINCOW: And, Irveta, let's mark the one I sent
22 earlier this morning as the next exhibit.

23 (PETITIONER'S EXHIBIT NO. 3 MARKED AND ENTERED)

24 Q. Sloan, did you get a typed letter from Marshall,
25 that we've now marked as an exhibit?

1 A. Yes.

2 Q. Did you respond to it?

3 A. No.

4 Q. When's the last time you've spoken to Marshall?

5 A. You mean to this day?

6 Q. Yes.

7 A. Briefly at the funeral. I guess Mom's funeral.

8 Q. And same with your dad's, too, I guess? Do you
9 remember?

10 A. Maybe. I'm not sure I did then.

11 Q. What did you take away from this letter that
12 Marshall wrote you in February of 2019?

13 A. You know, I saw it for what it was: working through
14 the steps. At that point, I just --- it didn't feel sincere.
15 It felt proforma. And I just dismissed it as a self-serving
16 effort.

17 Q. When you mention working through the steps, you're
18 speaking of the 12-step AA program?

19 A. That's right.

20 Q. And time marches on. Do you have any feeling that
21 Marshall reaching out and apologizing, that he was sincere in
22 that?

23 A. No, I didn't feel it was sincere.

24 Q. As a recovering alcoholic, is he entitled to his own
25 perceptions about your dad's drinking?

1 A. As a recovering alcoholic or not, he's entitled to
2 his own perceptions.

3 Q. Did you share that feeling? That your dad may have
4 had a ---

5 A. That Dad was an alcoholic?

6 Q. Yes.

7 A. No, I don't share that feeling. In fact, when
8 Marshall went on a rant, Dad had been dry for...he was dry for
9 --- dry is the wrong word. He just didn't drink. And he'd
10 lost all interest in having any drinks in the last few years of
11 his life. So he stopped, even his evening cocktail.

12 Q. Do you know, is that what ticked your dad off? Or
13 was it something else about that e-mail chain between you and
14 Marshall and the graduation?

15 A. I don't think Dad gave a rat's ass what Marshall's
16 diagnosis of him was. So I don't think that that particular
17 comment had any bearing on Dad's thinking about Marshall or his
18 decision-making process. You know, there's plenty of other
19 material in that e-mail for Dad to be irritated at.

20 Q. And I guess that's what I'm asking. You think it
21 was something other than that? Something ---

22 A. I think it's a lifetime accumulation of...to use
23 Dad's word...discord, which is very diplomatic. But,
24 nastiness. Volatility. Explosions. I mean, Marshall's like a
25 ticking time bomb: he's gonna go off eventually and you don't

1 wanna be around him when he does. And he seems to always end
2 up that way when visiting Mom and Dad.

3 I was at my niece Mary's graduation and, you know,
4 the Sunday after there was a brunch. You know. Got through
5 the weekend pretty well, until that brunch, and Marshall found
6 something that triggered him to explode, and there was a big
7 scene in the restaurant. So, yeah, it's predictable.

8 Q. Was it a mutual thing, or was it a one-sided thing?
9 In other words, were either of your parents ever explosive or
10 volatile, or was it only Marshall?

11 A. Well, you want me to talk about a whole lifetime, or
12 what?

13 Q. Yeah. I mean, how you would describe it.

14 A. My dad had...he would...he was not nice some --- he
15 would go into rages when we were little. And I'll be straight
16 up: one of the reasons I maintained any contact with Marshall
17 over the years was that we shared a similar experience growing
18 up, on the receiving end of Dad's anger and rage. And it was
19 expressed with a belt on many occasions. And not lightly. And
20 so, you know --- and I'll be honest, I think in today's world
21 some of the behavior would be considered abuse. But it was a
22 different day back then, where, you know, it...it wasn't
23 exposed publicly. Whatever. And so Dad had, certainly, some
24 periods when we were younger when he would rage, and it was
25 really scary. And Marshall and I have that common history.

1 And I will validate that. But he mellowed over time.

2 And I didn't see --- I mean, once I moved to
3 Colorado, there was a long period of time when I wasn't very
4 interactive with him, frankly, because I needed to get some
5 space. But I never --- once I was out of the household, living
6 my own life, I didn't see any...any other examples of that kind
7 of raging at all, directed towards me. So that volatility, I
8 saw Marshall as the exploder, as the bomb, if you will. But it
9 takes two to tango and I think Marshall was responding to the
10 things that were said, or perceived to be said, or interpreted
11 to be said by Dad.

12 Q. You mentioned --- and you have been gone a long
13 time. Maybe we all have. But are you aware of explosions
14 between Marshall and your dad that you were not a part of but
15 that you found out about some kind of way?

16 A. You know, they didn't go at it blow by blow, every
17 event, with me. But it was inevitable that it would come up,
18 that, you know, "Yeah, Marshall was here a month ago," or "We
19 talked to Marshall," and "it ended badly." And it always ended
20 badly, it seemed like, you know. There was the rare exception
21 that it didn't. And it got to the point where Dad really
22 didn't wanna deal with him. Mom was peacemaker in the family,
23 was the go-between. And Marshall was abusive to her, based on
24 her reporting of it.

25 MR. BLINCOW: All right. We've been at it

1 about an hour, so let's take a break. It's a little
2 after twelve. I would prefer to plow on through, but
3 I'm happy to stop, if people wanna stop. I'm proposing
4 we take a little five-minute break and finish up. But
5 I'll be glad to do it however the majority wanna do
6 it.

7 THE WITNESS: I prefer to plow on through,
8 too. I could take a pee break and then come back.

9 MR. BLINCOW: Let's do that.

10 THE WITNESS: Five minutes?

11 MR. BLINCOW: Five minutes.

12 (BREAK)

13 Mr. Blincow Resuming:

14 Q. Sloan, let's hope these are in sequence, but would
15 you look at what we've marked as Exhibit 6, please. (Referring
16 to Exhibit 6 to Jonathan Shoemaker Deposition)

17 (Off-record discussion regarding exhibit numbering)

18 (PETITIONER'S EXHIBIT NO. 4 MARKED AND ENTERED)

19 MR. HAYNSWORTH: So 6 to Jonathan will be 4
20 here; right?

21 REPORTER: Right.

22 MR. HAYNSWORTH: From Jonathan, Subject: Re:
23 night nurses, March 2nd, 2018.

24 Q. So this is in early March. And you make two points
25 to Jonathan, you know, "Seems like checking in on them is

1 warranted..." And I take it from your earlier testimony that
2 we're getting to a point in March where you might need to be
3 more involved in their care.

4 A. Sure. Yeah.

5 Q. And you mentioned, "...sounds like things are
6 getting a little whacky (sic) there..." Tell me what you mean
7 by that, please.

8 A. Well, Mom had a hospitalization in there somewhere,
9 and surgery for gallbladder removal or something, I think? And
10 what became increasingly clear over time is that Mom, when she
11 was having some sort of medical problem, one of the
12 manifestations, or signs, of that was her cognition. I'm not
13 sure if that's the right word or not, it sounds too clinical.
14 But when her chemistry, her blood chemistry, got off because
15 she was dehydrated, or had a gallbladder issue, or had fallen,
16 or wasn't taking care of herself, she had trouble. Trouble
17 tracking. And, you know, in reviewing the exhibits this
18 morning, there's talk of dementia. But over time it became
19 increasingly clear that us amateur diagnosticians might not
20 have penned that correctly. It seemed like much of her mental
21 clarity problems could often be attributed to her blood
22 chemistry being off, due to dehydration, or gallbladder
23 problems, or whatever, which would sort of cascade into meds
24 mismanagement, which further cascades into more confusion. But
25 when she didn't have an underlying medical condition, you know,

1 more acute, like gallbladder, or hadn't just fallen and was,
2 you know, in and out of the hospital, and on pain meds, or
3 whatever, and when things were stable and she was taking care
4 of herself and stayed hydrated, she was good.

5 Q. I see.

6 A. But this particular period of time...(audio/video
7 frozen)

8 Q. Uh oh.

9 REPORTER: You froze, Sloan. "But this particular
10 period of time..." and then you froze!

11 Q. Sloan, you froze. So if there's something important
12 in that last answer, would you repeat it.

13 A. Yeah. Well, the take-home is that there's a lot of
14 conversation in our e-mail exchanges back and forth about Mom
15 seeming to have early-onset dementia, or whatever it was. And
16 the take-home is: we're not doctors, and there's not a lot of
17 credibility to that kind of diagnosis from me and Dad. And
18 what I noticed over time, though, is that often her periods of
19 confusion or lack of clarity were associated with an underlying
20 medical condition, like her gallbladder. Or, you know, she had
21 these falls, one where she damaged her eye quite badly and was
22 hospitalized for a while. And it took her a long time to
23 recover from that ---you know, weeks if not months--- to get
24 her body stabilized again so her mental clarity returned. And
25 so my point is that when she didn't have one of the underlying

1 otherwise medical conditions, she was fine.

2 Q. Yeah. If you look at the second page of your
3 Exhibit 4, Jonathan's 6, you mention, "The doctor's nurse
4 called me trying to reach Mom yesterday. I called Dad to pass
5 the message." Is that what you're referring to when you say
6 that she was not on her game with regard to her cognition? Or
7 do you remember what was going on?

8 A. So Jonathan's the one that said the doctor's nurse
9 called him. But, yeah, it's during this period of time where
10 she showed jaundice but I think it wasn't real clear yet that
11 she had an underlying gallbladder problem going.

12 Q. Okay. But it would be in a period of time like
13 there, where perhaps your mom's not reliable in relaying
14 messages from a nurse and so forth?

15 A. Yeah, right.

16 Q. Okay. And you mentioned to Jonathan, just below
17 that, that you had a discussion with Debbie, the housekeeper,
18 and "we don't wanna get her in trouble with Dad." What did you
19 mean by that?

20 A. What I mean by that is, Mom and Dad were sometimes
21 pretty stingy with information, and it was hard, from afar, to
22 get a good sense of what was going on. And, you know, I think
23 that's a generational thing. They're very private people and
24 weren't, you know, real forthcoming and revealing about things
25 that were personal or uncomfortable for them. And Debbie was a

1 very helpful conveyor of information, because she was there
2 every day. So I was in pretty close touch with Debbie the
3 last, what?, five to eight years or something like that.
4 Because she was eyes on the ground that shared information that
5 we couldn't get otherwise. And I didn't wanna jeopardize that
6 by, you know, letting Dad know that Debbie was sharing
7 information in ways that he might not appreciate. And,
8 clearly, it's an awkward, uncomfortable position: he's the
9 employer but, you know, we were trying to do the best thing for
10 our parents. And her providing information was a key component
11 for that.

12 Q. Let's go to...this is Jonathan's 7, and it'll be the
13 next number exhibit for you. And this is an e-mail from the
14 financial advisor, Mr. Clauss.

15 (PETITIONER'S EXHIBIT NO. 5 MARKED AND ENTERED)

16 Q. You with me?

17 A. Yes.

18 Q. And I believe you've --- well, maybe not. Tell me
19 what is going on. So this is in April of '18. What prompted
20 this e-mail from him to you and your brother?

21 A. (Reviewing document) I'm scrolling through to re-
22 create the sequence of events here. I mean, I think it's
23 pretty clear in Ben's e-mail that he's just filling us in, that
24 he's filled out the 529 accounts that Dad set up for our kids.

25 Q. Again, from Jonathan's deposition, I believe

1 Marshall's children were older and would have been out of
2 school by 2018?

3 A. Well, that's when Peter's graduating, that spring,
4 yeah. And Mary was out. Right.

5 Q. Mary is a touch older than Peter.

6 A. That's correct.

7 Q. Okay. Do you know if your dad helped with the
8 finances of Marshall's children's education?

9 A. I have no knowledge of that one way or the other.

10 Q. So this is not related to the earlier "Let's sit
11 down and talk about your dad's estate plan," this is a funding
12 of these 529 accounts; right?

13 A. Yeah. Hang on a second. April 11th...April 14th...
14 Well, actually, it looks like that thread starts on April 11th
15 with me, at the bottom there, e-mailing Jonathan. And Ben was
16 just doing his due diligence, part of which I think was self-
17 serving, because he wanted to keep our business, you know,
18 after the estate changed hands. But he was just trying to get
19 us to think ahead a little bit about how, once the estate
20 transferred, our financial situation would be significantly
21 different than it is currently. And he wanted us to think
22 ahead about that, and some tax implications that would ensue.

23 Q. And I understand that you have sat down with him
24 about your dad's plan. Have you had any other in-person or
25 phone meetings with him?

1 A. Yeah. Yeah. I'm in regular touch with him.

2 Q. And tell me about that, please.

3 A. Well, he's just --- he'll say, "Hey, I was thinking
4 about this, and the investment...your portfolio looks like it's
5 heavy on this, and it could do better if you do this," and,
6 "What do you think? Wanna make a change?" And, "Are you
7 considering the tax implications if there's a change of
8 administration?" and, "The estate tax rate changes
9 significantly." Conversations like that.

10 Q. I gotcha. And is that in connection with your dad's
11 trust, or both parents' trusts?

12 A. It's Dad's. And I frankly get confused about this.
13 And I think it's the IRA. Lesley could help clarify. Yeah. I
14 mean, there are some things that are bound up in this process
15 that we can't do anything about, and other parts are free. And
16 I think it's the IRA that's free, and so we're having
17 conversations about that. It's in trust for me. Lesley's the
18 manager of it.

19 Q. All right. I'm looking at No. 8, which will be the
20 next numbered exhibit to your deposition.

21 REPORTER: Number 6.

22 (PETITIONER'S EXHIBIT NO. 6 MARKED AND ENTERED)

23 Q. It's a one-page... Yeah. So what documents --- it
24 mentions that you had a Living Will. How did you come to have
25 that?

1 A. Well, I was in conversation with Dad about that,
2 and, you know, asked him what his wishes were. And he said,
3 "Oh, I've got it all spelled out in this Living Will here," and
4 he sent it to me. I read it.

5 Q. He e-mailed you that Living Will.

6 A. E-mail or post, I can't remember. But, yes, I got a
7 copy of it, and read it, and that's when it became clear to me
8 that it was --- it didn't really address the in-between, where
9 the hard decisions needed to be made. And that's when we
10 started having conversations about a DNR.

11 Q. And that led to the DNR order in early May.

12 A. Yeah. Right.

13 Q. Let's look, please, at Jonathan's No. 9, which will
14 be the next numbered exhibit to your deposition.

15 (PETITIONER'S EXHIBIT NO. 7 MARKED AND ENTERED)

16 Q. All right. So I think it makes some sense. This is
17 an e-mail that your aunt sent to you, I believe. And then you
18 sent everything on to Jonathan. Is that accurate?

19 A. It is confusing, you're right. It looks like...
20 Well, it's initiated by Katya on May 14th.

21 Q. And she'd been in Greenville for a visit with both
22 parents.

23 A. Yeah.

24 Q. And she says what she says about your mom being
25 wobbly, and so on and so on. And big discussion about the fact

1 that perhaps neither of your parents should be driving.
2 A. Right.

3 Q. This is your e-mail the middle of May, sort of
4 saying, "Here's my take on it."

5 A. Yeah, exactly. And Katya, bless her heart, she's a
6 big personality, and has a lot of strong opinions, and isn't
7 constrained by her lack of full understanding of a situation
8 when she expresses those opinions. And so I just wanted to
9 give her a little more background: yeah, Mom is wobbly, but
10 that's nothing new, she's been wobbly for a decade. And, you
11 know, Katya parachuted in for a 12-hour visit and then left.
12 And she drew a bunch of conclusions from a snapshot she had.
13 And I just wanted to make sure she had the rest of the context.

14 Q. And you say your mom has trouble tracking
15 conversations.

16 A. Because her hearing was terrible and she didn't like
17 to wearing her hearing aids. But I acknowledged in there that
18 it wasn't just hearing; she'd always seemed to be not fully
19 engaged in the larger conversations going on around her.

20 Q. I'm gonna switch gears. I wanna back up a little
21 bit and make sure I'm understanding your testimony.

22 You mentioned Mary, your niece's graduation, and it
23 had been a happy family time until the last day. Something
24 like that?

25 A. Yeah.

1 Q. Tell me about what happened on the last day when
2 things got sideways.

3 A. I was staying in the same hotel as Mom and Dad. I
4 think. I think so. But, anyway, we met for breakfast on a
5 Sunday morning. The brunch. And something happens, there was
6 some comment made by Mom or Dad that was insensitive to
7 something that Marshall was sensitive to and he exploded and
8 was raging at my dad in this restaurant.

9 Q. Do you recall what triggered it? Do you remember?

10 A. No. And I didn't care to, really. Because it's
11 just another --- it's just like he's got buttons all over him,
12 waiting, looking for an opportunity to get pushed. And I don't
13 key in to the particulars of each one anymore. Or stopped
14 caring, really.

15 Q. And did your parents get up and leave?

16 A. No, Marshall's the one that stormed out.

17 Q. Did it have to do with Marshall's divorce, do you
18 know?

19 A. You know, the clouds are clearing a little bit.
20 There was some comment about his divorce. He didn't wanna talk
21 about it. Yeah, I mean... Sure. I don't know. Maybe it was
22 his divorce, maybe it was something else.

23 Q. You mentioned that your dad would be short of
24 breath, you know, getting dressed, maybe taking his meals, and
25 that kinda thing. And I believe you mentioned panting. Tell

1 me what you can recall about that.

2 A. Well, you know, as his lung capacity declined and
3 the regulator on his oxygen was getting turned up from two to
4 six, to eight, whatever it was, ultimately ---to max flow--- he
5 wasn't getting enough oxygen when he was not at rest. So,
6 moving across the house, getting dressed, going to the
7 bathroom, taking a shower, eating a meal ---all of that---
8 caused exertion. Any output of energy, he quickly got an
9 oxygen deficit. And I think it was extremely --- I think it
10 was really scary for him. I know it would be scary for me.
11 And really uncomfortable. And really frustrating, too. I
12 think it may have been in May ---maybe April, maybe March, I
13 don't remember, I was there so much--- but I remember having a
14 meal and him moving from his den chair to the dining room
15 chair, and trying to manage his oxygen cord, and tripping over
16 it and sort of crashing into the refrigerator or something.
17 And I remember him saying, "God, I'm so sick of this, I just
18 wish it was over." And so at some point he was kinda like,
19 "I'm done. I'm done with this. I'm done with the hassle. I'm
20 done with the panic and the fear, and the discomfort and the
21 humiliation of it all."

22 Q. How long would it take to --- you know, say he got
23 up in the morning and got dressed. Something like that. Or
24 moved from bed to chair. How long would it take for him to
25 recover and get back to his baseline?

1 A. A few minutes. Couple of minutes. And it changed.
2 It was a dynamic situation, so I can't --- there's no number.

3 Q. You mentioned "I'm tired of this, I've been at it a
4 while and I'm sick of it." Was the normal routine to get up
5 and get in a chair, or did there just come a time when he said,
6 "To hell with it, I'm gonna stay in bed."?

7 A. No. You know, he was an old-school, formal guy. He
8 got up and got dressed every day. And has his routine.

9 Q. I'm pretty sure that would include khakis and a Rush
10 Wilson button-down; right?

11 A. You got it. Got the uniform on. What are you
12 wearing, are you wearing khakis?

13 Q. (Indicating)

14 A. Yep, there you go. You look like dad. Yeah, he'd
15 get up and get dressed and have his breakfast. And if he went
16 to the office, still, he would do that. Doctor's appointments.
17 Help Mom with her stuff. Whatever.

18 Q. But, obviously, you mentioned it was dynamic and it
19 would depend on the stress. But once he got in a chair and got
20 the oxygen flowing and so forth, the recovery time would be how
21 long, before he was back to baseline?

22 A. A minute or two. Not long.

23 Q. Okay. Were you ever able to --- you mentioned this
24 miscommunication, or poor communication, from Uncle Ned's
25 perspective there, you know, at the end. Were you ever able to

1 --- and, obviously, people have different perspectives, but
2 were you ever able to put your finger on what was causing that,
3 what was causing the difficulty in that relationship?

4 A. I mean, I know of one particular thing, but I think
5 it was an accumulation of things. But there was one particular
6 thing, where there is a cemetery plot at Christ Church, that my
7 grandparents are buried in, that was willed to Mom and Ned.
8 And then at some point, Ned did a quiet, sort of...what's the
9 right...I don't know the term of art here, but gave it to Mom.
10 And then she became the decider on what happens with the plot.
11 And something happened with Courtney, my cousin Courtney who
12 died young, being...and I don't know the details here, I think
13 Jonathan might know it better. But I think something happened
14 with regards to Courtney being buried --- he was in an urn, he
15 was cremated--- in a place that Mom hadn't approved, or there
16 hadn't been clear communication or agreement on, or whatever,
17 and Ned just did it anyway. And I think that made Mom and Dad
18 really angry.

19 But Dad, you know, would routinely tell me how
20 disappointed he was in Ned's outreach and concern over Mom's
21 condition. And Mom had multiple falls, multiple
22 hospitalizations for one thing or another over the years, and
23 it was just crickets from Ned. And I think Dad was upset by
24 that and kinda wrote Ned off.

25 Q. In a perfect world, were your mom and her brother

1 Ned close, or not so much?

2 A. In a very reserved, Victorian kind of way, maybe.

3 Q. I get it.

4 A. Yeah. I mean, I think there was love, but it just
5 wasn't expressed.

6 Q. Did your dad ever faint as a result of this
7 pulmonary business?

8 A. I never witnessed him faint. And I'm not aware of
9 him fainting. I do know there was an instance ---maybe more
10 than one--- where he got out of bed too quickly, in the
11 morning, and lost his balance and fell over. And in one
12 instance he fell into a bedside table and it, you know, blew
13 apart into matchsticks, because he's a big dude.

14 Q. Right.

15 A. And then, eventually, they figured out a management
16 for that, which was to put a chair that he could fall into, if
17 he got out of bed too quickly, rather than hard furniture or
18 the floor.

19 Q. Tell me what you know of this...well, there's an
20 emergency and they need to wire some money down to Honduras, or
21 something. What do you know and how did you come to find out
22 about it?

23 A. I didn't know anything about it in real time. I
24 think I found about it months later when... I don't remember
25 who told me. I don't remember if it was a conversation with

1 Mom and Dad, or Debbie mentioned something, or Jonathan filled
2 me in. Frankly, I don't remember. I wasn't part of that loop
3 at the time.

4 Q. Okay. What happened, though, is, you know, they did
5 get in the car and go and take some money out and send it
6 somewhere.

7 A. The details of that, or all that I know, are in
8 that...in one of those exhibits that you shared. And, truly, I
9 haven't --- that's the only place I've heard the details
10 articulated.

11 Q. I gotcha. As I recall, and we can look at it, it's
12 No. 11 to Jonathan's. It'll be the next numbered one for
13 yours.

14 (PETITIONER'S EXHIBIT NO. 8 MARKED AND ENTERED)

15 Q. But Marshall sent an e-mail to the law enforcement;
16 correct?

17 A. I don't know exactly how it unfolded. I'm surmising
18 from the e-mail that there was a conversation with the
19 detective first, followed up by an e-mail that you have there
20 in the exhibit.

21 Q. Right. And then I think, as I read it, Jonathan
22 weighed in to the detective; you did not.

23 A. I did.

24 Q. Oh, you did?

25 A. Yeah. And that was in the disclosure that I

1 provided to Knox. But I simply said --- first of all, Jonathan
2 copied me there, or blind copied me on it, maybe. And I said,
3 "Hey, what's that?" And then I sent the detective a note,
4 saying, you know, "I'm sorry you're getting dragged into the
5 middle of this family drama. But just so you know who you're
6 dealing with, this is a brother who just issued a death threat
7 to me because of a misunderstanding about a bedroom over a
8 graduation." And I never heard back from the detective.

9 Q. All right. Have you seen that e-mail?

10 A. What?

11 Q. Where you weighed in with the detective.

12 A. Have I seen it?

13 Q. Yes.

14 A. I wrote it. I don't understand your question,
15 sorry.

16 Q. No, no, that's all right. I'm probably confusing
17 myself. Is it in this...

18 A. I don't think so. I thought it was in the packet of
19 stuff I provided to Knox. If I overlooked it, I'll dig it up
20 and share it with you.

21 Q. Would you mind sending it to Knox, please, if you
22 don't mind?

23 A. No, I don't mind.

24 THE WITNESS: Knox, will you make a note of
25 that and remind me, please?

1 MR. HAYNSWORTH: I will. And this is your
2 e-mail back to Drew Palmer?

3 THE WITNESS: The detective, yeah.

4 MR. HAYNSWORTH: Who has a landscaping
5 business now, in case anyone wants to know what
6 Detective Palmer's up to recently. Lots less
7 dangerous than being a detective.

8 Q. Do you know anything about any other situations
9 where someone tried to defraud your parents?

10 A. I don't have any firsthand information about that.
11 All I know is, and I think it's in the record here, that it
12 happened again but that time they didn't fall for it.

13 Q. Now, I have seen that.

14 MR. BLINCOW: All right. Give me one...
15 Hold on a second. (Reviewing notes)

16 All right. Let me --- we're gonna go off
17 the record for a minute and I'm gonna shuffle my
18 notes and finish up. All right? Give me five
19 minutes, please.

20 THE WITNESS: Sure. In the meantime,
21 I'll look for that e-mail.

22 (BREAK)

23 Mr. Blincow Resuming:

24 Q. So I understand you were there, you know, sometimes
25 for weeks at a time: Has any hospice nurse, or any hospice

1 person, besides Debbie the housekeeper, that was there a good
2 bit of the time, that sticks out in your mind?

3 A. Let's see. There was this wonderful woman who was
4 there when dad died. So who was employed by the last hospice
5 business that we contracted with. I can't remember her name.
6 Jonathan's got a good memory, maybe he knows, but I don't know.
7 But, yeah, she was there that last week.

8 Q. And you would say she was sharp and had a good
9 handle on things.

10 A. Yeah. Yeah, absolutely.

11 Q. Okay.

12 A. And prior to that, I mean, I think the first hospice
13 people we engaged with, they just...they didn't feel good, for
14 some reason or another. And then the second one had kind of a
15 rotating personnel, so I didn't get to know any of them really
16 well. And I didn't spend that much time with them there,
17 personally, either. And it was the last group, the last week,
18 that one particular woman who I connected with the most.

19 Q. Got it. Okay. Jonathan's Exhibit 12, which will be
20 the next exhibit to your deposition...

21 (PETITIONER'S EXHIBIT NO. 9 MARKED AND ENTERED)

22 Q. And I wanna zero in...the fourth page of that is an
23 e-mail that you sent to your brother. And now we're into
24 January. So this is six months or so before your dad passed
25 away. Right?

1 A. Yeah.

2 Q. To use the vernacular, "situation is normal, all
3 fucked up." What's going on in late January at the Cascades?

4 A. (Laughing)

5 Q. Those are your words, not mine.

6 A. Yeah, I know. I know. You know, I think that
7 everybody was struggling to figure out how to manage this
8 situation that was fluid, with dad on a decline. I mean, he'd
9 been stable for a long time during this three-to-five-year
10 sentence that he was given. And it wasn't until really the
11 last year that the decline really sort of...the curve got a lot
12 steeper. And everybody was sort of reacting. And I also think
13 that there was some medical issue with Mom that winter, in
14 January, and I can't remember what it was. I probably can
15 reconstruct it, looking back. But there was a medical issue, I
16 think, that had her sort of a little less than clear-headed.
17 And so she wasn't able to really and constructively engage in
18 Dad's care. And, you know, I'll acknowledge that my colorful
19 language there was a little dramatic.

20 Q. Well, you are sending it to your brother, so I get
21 it.

22 A. Yeah, but also --- because I was struggling to
23 understand, too. And, you know, I'm, like, trying to
24 understand it is that Cascades actually did, if anything, to
25 help out these people in need. And I assume that since they

1 bought into this full-service care facility that they would get
2 full service. And I was just flummoxed by the fact that they
3 wouldn't show up when one of my parents was on the floor and
4 can't get up. And Mom and Dad never gave me a clear
5 explanation for that. And I finally figured out, when I talked
6 to someone at Cascades, that it's this liability issue with, if
7 they're not in the care unit, then they can't touch 'em. And
8 independent means independent, there's no gray area there. So,
9 anyway, I'm figuring that out. Dad's figuring out how to
10 manage his life attached to an oxygen cord and, you know,
11 turning the dial up on it on a monthly basis. Mom was a little
12 loopy because of some medical issue that was going on there.
13 And they just weren't...they weren't their best selves at that
14 period of time.

15 Q. You would acknowledge, in this period of time, that
16 if your dad did take a fall he wouldn't be able to get up.

17 A. Yeah. Exactly. And there'd been instances where
18 that had happened. He just didn't have the strength to get
19 himself up off the floor.

20 Q. Yeah. And then you ---

21 A. Let me clarify that.

22 Q. Sure.

23 A. He didn't have the strength, but also it was a
24 technique thing. And he learned, somebody taught him, about
25 rolling over on his hands and knees first and then raising

1 himself up slowly, using the four-poster bed, or something like
2 that. And so he was in a learning curve as well.

3 Q. I got you. And you mention here at the bottom that
4 you had dinner, and then Uncle Ned wanted to have breakfast the
5 next morning. You've told us about that.

6 A. Yeah.

7 Q. Do you think ---and I get it, and I get that these
8 places are expensive--- do you think back in this period of
9 time your parents needed a higher level of care than the
10 independent living business?

11 A. You know, it's hard to know when that moment was,
12 John. You know. They're on a spectrum, and there's a lot of
13 gray area, and the nursing needs weren't consistent. Clearly,
14 we identified --- I identified in here that the need is gonna
15 be increasing over time. Were we there at that moment? I
16 think that I had a sense that that was the case. But they
17 didn't want anybody, they thought Debbie was fine. So that's
18 where we ended up at that moment.

19 Q. I get it. All right.

20 MR. BLINCOW: Knox, have you sent that
21 e-mail? I don't wanna jeopardize this link.

22 MR. HAYNSWORTH: I have. You should have
23 it.

24 MR. BLINCOW: Well, hold on a minute.

25 MR. HAYNSWORTH: Take a peak.

(Pause)

MR. BLINCOW: All right, hold on, here it is.

MR. HAYNSWORTH: And I was gonna say, John, I think another option ---although I don't know how to do it, Irveta might--- if I sent it to Irveta, I think there's a way she can throw it up on the screen.

MR. BLINCOW: Hold on.

MR. HAYNSWORTH: But if you've got it and Sloan's got it, that'll be good enough.

MR. BLINCOW: And I don't know that we need --- well, maybe since we've referred to it, we should mark it some kinda way.

MR. HAYNSWORTH: I'm gonna send it to you, Irveta.

MR. BLINCOW: And you can make it No. 10.

(PETITIONER'S EXHIBIT NO. 10 MARKED AND ENTERED)

Mr. Blincow Resuming:

Q. Sloan, the take-away is: You are weighing in, after finding out about this scan, for lack of a better word, just as you described a bit ago, and giving your two cents worth to the police detective.

A. Well, I told him I'd be happy to talk to him about it. And I just wanted him to know who he's dealing with. I mean, Marshall's e-mail to the detective is full of this

1 fanaticized conspiracy, that somehow Debbie Wine is involved in
2 an international conspiracy to defraud my parents. And it's
3 just paranoid delusion in my mind. And I wanted this detective
4 to know who he's getting involved with, if he's gonna follow up
5 on this. You know. And this was very soon after Marshall's
6 death threat to me and I was pretty...you know, I was still
7 kinda fired up about that. And I wanted to make sure that the
8 detective went in eyes wide open. And, clearly, he --- because
9 we never heard --- nobody ever heard from him again. He saw
10 that shit show coming and opted out of it.

11 Q. Right. There was no follow-up by the cop.

12 A. Nope. There was no follow-up.

13 Q. And you mentioned that you were fired up at the time
14 with this e-mail about the graduation. Fair to say you're less
15 fired up about that now?

16 A. Sure.

17 MR. BLINCOW: Okay. I believe those are all
18 my questions. Thank you very much.

19 MR. HAYNSWORTH: I have no questions. We'll
20 read and sign.

21
22 (Deposition concluded at 1:15 p.m.)
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

C E R T I F I C A T E

Be it known that I took the deposition of EDWARD SLOAN SHOEMAKER;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

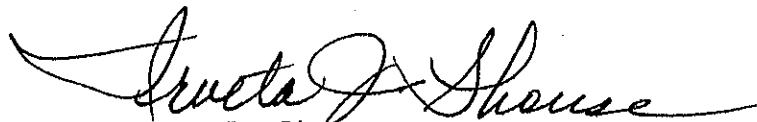
That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 4 through 60 is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 13th day of December, 2020.



Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

RECEIVED

Jun 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

James Marshall Shoemaker, III.....Appellant,

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee, and Edward Sloan Shoemaker
and Jonathan Evans Shoemaker.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Second Supplemental Record on Appeal complies with
Rule 211(b), SCACR.

June 5, 2024



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