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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

Certiorari to the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch
Probate Judge

Supreme Court Case No. 2024-001115

Julia B. Brooker,…….Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually and as a Beneficiary of the Janet B. Brooker Trust,…….Petitioners

APPENDIX VOL I

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,…….Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually and as a Beneficiary of the Janet B. Brooker Trust,…….Appellants

---

AMENDED RECORD ON APPEAL-VOL 1

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ELECTRONICALLY FILED - 2021 Mar 22 8:14 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2019-CP-40-03582 (Appeal)
	)	2017-GC-40-0036 (Probate Case)
	)	
Julia B. Brooker,	)	
Respondent	)	
-vs-	)	ORDER AFFIRMING RULING
	)	OF THE PROBATE COURT
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Appellants	)	
_____	)	

PROCEDURAL HISTORY

This matter is before the Court on appeal from a decision of the Probate Court of three orders, the first dated June 22, 2019 and filed June 20, 2019; second, an Order Allowing Attorney's Fees dated August 5, 2019; and lastly, an Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP dated October 29, 2019.

The appeals originated from a Petition for Declaratory Relief filed in Richland County Probate Court filed on March 17, 2017 by Julia Brooker against Beacham Brooker, in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen Corontzes, individually as a Beneficiary of the Janet B. Brooker Trust; which sought relief based on the interpretation of the Trust Agreement, specifically an equalization provision. Cross motions for Summary Judgment were denied on October 16, 2018. The action was tried from February 5 to February 7, 2019. On February 28, 2019, Respondent filed an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses. A hearing on the issue of attorneys' fees was held on May 22, 2019. On June 20, 2019, Judge McCulloch issued her Order Calculating Equalization Distribution of Lifetime Gifts. Appellants appealed this Order on July 1, 2019

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(Appeal Case No. 2019-CP-40-03582), and filed a Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP in the Probate Court and Motion for Limited Remand in the Circuit Court. On August 5, 2019, Judge McCulloch issued her Order Allowing Attorney Fees. Beacham and Ellen appealed this order on August 13, 2019 (Appeal Case No. 2019-CP-40-004463). On August 27, 2019, the Circuit Court entered the Consent Order for Limited Remand and to Stay. On October 28, 2019, Judge McCulloch denied the motion for reconsideration via Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP. Beacham and Ellen appealed this Order on November 5, 2019 (Appeal Case No. 2019-CP-40-06229). On November 13, 2019, the Parties filed a Consent Motion to consolidate the appeals. By Order dated November 19, 2019, the Order Consolidated the Appeals under Civil Action Number 2019-CP-40-03582.

FACTS

The Decedent, Janet B. Brooker, died on April 15, 2015. At her death, she had three children: Beacham O. Brooker, Jr., Ellen Corontzes, and Julia B. Brooker. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and has no children.

Before her death, W. Steven Johnson represented the Decedent. In 2007, Mr. Johnson assisted the decedent in the creation of estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, named Beacham O. Brooker, Jr. to serve as Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust. Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the trust were her three children, Beacham, Ellen and Julia. Beacham

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was named Trustee of the Trust. Contemporaneously with the execution of the Will and Trust, Beacham was appointed as Agent by the Decedent under a Durable Power of attorney.

A family meeting occurred on September 25, 2007. The Decedent, Appellants and Respondent were present, along with W. Steven Johnson. During this meeting, Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate. As a part of this plan, all children of the Decedent received equal gifts, and the spouses and issue of Beacham and Ellen received gifts. Pursuant to the Trust, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the decedent. To accomplish this, the Trust provided for an equalization distribution that reads as follows:

(2) Equalization distribution to the Settlor's Daughter Julia B. Brooker. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children. Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughters siblings' spouses or siblings' issue which equalizing distributions will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor

Following the death of Janet B. Brooker, Beacham, Ellen and Julia had a meeting with Mr. Johnson that included discussion of the lifetime gifts made by the Settlor/Decedent and the equalization distribution to Julia. Subsequently, Beacham, in his role as Trustee, made two separate offers to Julia with regard to the equalization distribution. Julia rejected those offers, and

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thereafter filed a Petition for Declaratory Relief in the Richland County Probate Court. After a two day hearing, the Probate Court awarded Respondent $1,471,031.84 as her equalization distribution of the Janet B. Brooker Trust. The Probate Court also awarded Respondent attorneys' fees pursuant to S.C. Code Ann. § 62-7-1004. Respondents' Motion for Reconsideration was denied on October 28, 2019.

Appellants raise four issues on appeal:

I. Did the Probate Court Err in Ruing that the Settlor Intended for Lifetime Gifts to Predate the Trust Agreement, which was Dated October 16, 2007?

II. Did the Probate Court Err in allowing testimony that violated the Dead Man's Statute and ignoring the testimony of the estate planner W. Stephen Johnson and his law partner William Reynolds?

III. Did the Probate Court Err in Admitting and Relying on the Testimony of the Settlor's Daughter, Julia Brooker in violation of the Dead Man's Statute?

IV. Did the Probate Court Err in Awarding Attorney's Fees to Julia Brooker?

STANDARD OF REVIEW

A circuit court, sitting in an appellate capacity with respect to probate court orders, must apply the same standard of review that the Supreme Court or the Court of Appeals would apply on appeal. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). A proceeding in probate court may be at law or in equity, depending on the nature of the action. *In re Estate of Holden*, 343, S.C. 267, 278, 539 S.E.2d 703, 709 (2000). "Whether the action is one at law or in equity is determined by the nature of the pleadings and the character of the relief sought." *Id.* An action to construe or interpret a trust is equitable in nature. *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992) (stating "[i]t is firmly recognized as a rule and principle of law in this State

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that all possible trusts, whether express or implied, are within the jurisdiction of the chancellor… if [t]here is an element of trust in this case, which, wherever it exists, always confers jurisdiction in equity.")

In an action in equity, tried by a Judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Townes Associates Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976). This standard of review is de novo. Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 224 (3d ed. 2016). However, this broad scope of review does not require the Appellate court to disregard the findings below or ignore the fact that the trial Judge is in the better position to assess the credibility of witnesses. *Dorchester County Department of Social Services v. Miller*, 477 S.E.2d 476 (Ct. App. 1996). Moreover, the Appellant is not relieved of his burden of convincing the appellate court that the trial judge committed error in his findings. *Id.*

De novo review is the broadest form of appellate review, as it permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011).

RULING

The Probate Court found that the Settlor of the Trust intended for Julia not to be disadvantaged or treated differently because she did not have a spouse or children, and that Julia should be equalized at the time of the Settlor's death. The Probate Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. *See Schulmyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct.App. 1989). The Probate Court considered the plain language of the Trust as a

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whole, and found that the phrase "equal shares" appeared twice, indicating the Settlor's desire for her children to receive equally under the Trust. The plain language of the Trust required the Settlor's personal and household effects be distributed to her children in approximately equal shares. Further, Article VI, Trust Estate to Settlor's Issue, requires the Trust Estate shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares. The Probate Court considered the context in which the phrase "equal shares" is used elsewhere in the Trust document and concluded that the intent of the equalization provision was also to ensure her children received equally, and that Julia would be made equal as to all lifetime gifts made to the spouses and children of Beacham and Ellen.

The Probate Court further found that the language of the equalization provision in the Trust is ambiguous. In determining the intent of the Settlor with regard to the equalization provision, the Probate Court relied on the testimony of W. Steven Johnson, who testified on behalf of the Respondents. Johnson testified that the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen because she was not married and had no children. Based on this desire of the Settlor, Johnson testified he told the Settlor that he could add a provision to "catch up" Julia for gifts made to Beacham and Ellen's spouses and children. The Probate Court further relied on a Draft First Codicil to the Last Will and Testament of Janet Bloom Brooker, which while never executed, exhibited the Settlor's intent to "equalize for gifts given to any child of mine during my life." The Draft Codicil made no distinction between gifts made before and after the Trust was created.

Additionally, the Probate Court relied upon the To Do List of Mr. Johnson's estate paralegal, which states, "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in May 1997. The amount

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of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia." The Probate Court's ruling that the Settlor intended for Lifetime Gifts to predate the Trust is supported by evidence in the record, and the Court finds no basis to reverse the Probate Court's ruling.

Appellants argue that the Probate Court allowed testimony from Julia Brooker which violated the Dead Man's Statute, and ignored the testimony of W. Steven Johnson and William Reynolds with regard to the Settlor's intent as to Lifetime Gifts made before the execution of the Trust on October 16, 2007. At the hearing, Julia was permitted to testify as to what she believed her mother's intent was as to the 2007 estate plan and Trust. The hearing transcript shows that the Probate Court limited the scope of Julia's testimony with regard to communications with her mother regarding the provisions of the Trust. She was permitted to testify about family meetings and that W. Steven Johnson told her that her mother intended to "catch her up at the end."

The Probate Court relied upon the testimony and documents of W. Steven Johnson in determining the Settlor's intent. As stated previously, Mr. Johnson testified the Settlor's Intent was to catch Julia up at the end and because she did not want Julia disadvantaged.

The admission of evidence is within the trial court's discretion. *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App.2000) (citing *Washington v. Whitaker,* 317 S.C. 108, 451 S.E.2d 894 (1994)); *Haselden v. Davis,* 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000), 353 S.C. 481, 579 S.E.2d 293 (2003); *Cudd v. John Hancock Mut. Life Ins. Co.,* 279 S.C. 623, 310 S.E.2d 830 (Ct.App.1983). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. *R & G Construction* at 439, 540 S.E.2d at 121; *Elledge v. Richland/Lexington School Dist. Five,* 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002); *see also Whaley v. CSX Transp., Inc.,* 362 S.C.

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456, 609 S.E.2d 286 (2005) (observing admission of evidence will not be reversed absent an abuse of discretion); *Gamble v. Int'l Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996) (noting admission or exclusion of evidence will not be disturbed on appeal absent clear abuse). The trial judge's decision will not be reversed on appeal unless it appears she clearly abused her discretion and the objecting party was prejudiced by the decision. *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (Ct.App.2001); *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct.App.1995); *Cudd*, 279 S.C. 623, 310 S.E.2d 830. The Court finds no evidence was admitted in violation of the Dead Man's Statute.

Appellants claim that the Probate Court erred in ordering Julia B. Brooker's attorney's fees and cost reimbursements be paid from the corpus of the Trust. Pursuant to S.C. Code Ann. § 62-7-1400, the Probate Court has the authority to award attorney's fees in a trust matter. S.C. Code Ann. § 62-7-1400 states, "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party to be paid by another party or from the trust that is the subject of the controversy." The Probate Court's award of fees and costs must be affirmed if any evidence supports it. *Deborah Dereede Living Trust dated December 18, 2013 v. Karp*, 427 S.C. 336, 831 S.E.2d 435 (Ct.App. 2019), *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

Here, the Probate Court reviewed the legal bills and professional fees of both Appellants and Respondent and found them comparable. The Probate Court found after balancing the equities of the case, the prevailing party was entitled to reimbursement for legal fees and costs. This Court finds no grounds to reverse the fee and costs award.

Based upon the foregoing, the Orders of the Probate Court are AFFIRMED.

AND IT IS SO ORDERED this _____ day of March 2021.

_____
R. Kirk Griffin
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julie B Brooker

Case Number: 2019CP4003582

Type: Order/Form 4

So Ordered

s/ R. Kirk Griffin 2768

ELECTRONICALLY FILED - 2019 Nov 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	Civil Action Number: 2019-CP-40-03582
	)	Civil Action Number: 2019-CP-40-04463
	)	Civil Action Number: 2019-CP-40-06229
The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662)	)	
	)	
	)	
Julia B. Brooker, Petitioner,	)	
	)	
vs.	)	
	)	**ORDER CONSOLIDATING APPEALS AND BRIEFING SCHEDULE**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

This matter came before the Court upon Consent Motion of Petitioner Julia B. Brooker ("Julia") and Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach") and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen") to consolidate three appeals by Beach and Ellen of three probate court orders ("Orders") and for a briefing schedule for the consolidated appeal pursuant to Rule 214 of the South Carolina Appellate Rules. Because the three appeals of three orders involve the same questions and issues, it is hereby

ORDERED the three appeals be consolidated under the first appeal filed bearing case number 2019-CP-40-03582.

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In addition, the following briefing schedule based on Section 62-1-308 is hereby ordered under case number 2019-CP-40-03582:

1. The Amended Statement Issues on Appeal shall be filed within 30 days after this Order is entered;
2. Beach and Ellen shall file their brief and Designation of Matter within 30 days after the Amended Statement of Issues on Appeal is filed.
3. Julia shall file her brief within 30 days after the service of Beach and Ellen's brief; and,
4. Beach and Ellen shall file their Reply Brief within 10 days after service of Julia's brief; and
5. Beach and Ellen shall file the Record on Appeal within 30 days after service of Julia's brief.

IT IS HEREBY ORDERED.

_____
The Honorable Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

November _____, 2019
Columbia, South Carolina

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julia B Brooker

Case Number: 2019CP4006229

Type: Order/Consolidate

So Ordered

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

ELECTRONICALLY FILED - 2019 Aug 28 2:50 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	Civil Action Number- 2019-CP-40-04463
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	**CONSENT ORDER FOR**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	**LIMITED REMAND AND TO STAY**
	)	
Respondents.	)	
	)	
	)	

This matter is before this Court on Respondents' Motion for Limited Remand filed with this Court on July 1, 2019 2019-CP-40-03582[1]. This matter is an appeal of an Order Calculating Equalization Distribution of Lifetime Gifts ("Order") issued by the Probate Court for Richland County. The Respondents have appealed this Order to this Court, but they also filed a Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP ("Motion for Reconsideration") with the Probate Court. Respondents also filed the present motion with this Court so that the Probate Court could hear and rule on the Motion for Reconsideration in the

[1] Respondents have filed a separate appeal bearing Civil Action Number 2019-CP-40-04463, in which Respondents appeal an Order regarding the award of attorney's fees. This second appeal arises, however, out of the same probate litigation. In this Consent Order, Respondents seek the same relief of a stay in both appeals until the Probate Court rules on the Motion for Reconsideration.

interests of judicial economy and efficiency. Specifically, Respondents request that this Court (1) remand this case to the Probate Court solely for the purpose of considering and ruling on the Motion for Reconsideration and any other post-trial motions, if any, and (2) hold all appellate deadlines in abeyance until the Probate Court rules on the Motion for Reconsideration. Petitioner has consented to the present motion, and this Court finds that the Motion for Limited Remand is in the interests of judicial economy and efficiency.

WHEREFORE, this matter is remanded to the Probate Court solely for the purpose of considering and ruling on the Motion for Reconsideration. All appellate deadlines in Civil Action No. 2019-CP-40-03582 and Civil Action No. 2019-CP-40-04463 shall be held in abeyance until the Probate Court rules on the Motion for Reconsideration. Once the Motion for Reconsideration is heard and ruled upon, this Court will resume jurisdiction over the matter.

IT IS SO ORDERED.

_____

The Honorable Jocelyn Newman
Chief Administrative Judge for the
Fifth Judicial Circuit

ELECTRONICALLY FILED - 2019 Aug 28 2:50 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

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WE SO MOVE:

s/Bess J. DuRant

_____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

WE SO CONSENT:

s/James M. Griffin

_____

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julie B Brooker

Case Number: 2019CP4003582

Type: Order/Stay

So Ordered

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

STATE OF SOUTH CAROLINA) **)** **COUNTY OF RICHLAND)**	**IN THE PROBATE COURT** **Case Number: 2017-GC-40-00036**
IN THE MATTER OF THE) **JANET B. BROOKER TRUST)** **)** **Julia B. Brooker,)** **Petitioner,)** **)** **vs.)** **)** **Beacham O Brooker, Jr., in his official)** **Capacity as Trustee and individually as a)** **Beneficiary of the Janet B. Brooker Trust;)** **and Ellen B. Corontzes individually as a)** **Beneficiary of the Janet B. Brooker Trust,)** **)** **Respondents.)**	**ORDER REGARDING MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP**

FILED
2019 OCT 28 P 2:32

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and to Alter or Amend Under Rules 52 and 59(e) (hereinafter "Motion") by Beacham O. Brooker (hereinafter "Beacham"), in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontez (hereinafter "Ellen"), individually as a Beneficiary of the Janet B. Brooker Trust, (hereinafter collectively "Respondents") through their attorneys Thornwell F. Sowell, III and Bess J. DuRant, filed on July 1, 2019. Julia B. Brooker (hereinafter "Julia"), through her attorneys James M. Griffin and Margaret N. Fox, filed a Response in Opposition to the Motion for Reconsideration on August 29, 2019. Rule 59(f), SCRCP, allows for a Rule 59(e) motion "in the discretion of the Court [to] be determined on briefs filed by the parties without oral argument."

The Motion asks this Court to reconsider and to alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts (hereinafter "Order") dated June 22, 2019 and filed June 20, 2019. In the Order, the Court concludes that the language "lifetime gifts" in the equalization provision of the Janet B. Brooker Trust (hereinafter "Trust") included gifts Janet B. Brooker (hereinafter "Decedent" or "Settlor") made to the spouses and children of Beacham and Ellen prior to the creation of the Trust on October 16, 2007. The Court found that it was the Decedent's intent to have Julia B. Brooker (hereinafter "Julia") equalized at her death, therefore, the equalization provision was interpreted so that Julia would receive half of the sum total of all

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lifetime gifts made to the spouses and children of Beacham and Ellen, plus five percent interest, as calculated on the date of payment so that she may be equalized.

Respondents request the Court explicitly rule on the threshold question of whether the Trust Agreement is ambiguous (Motion at 2). Respondents also argue that the Court ignored the intent of the Settlor in making its findings and rendered the phrase "[f]rom the date of this trust forward, the Trustee shall…" meaningless (Motion at 2, 3). Respondents' further claim the Court erroneously relied on the testimony of Julia in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3, 4).

This Court considers Respondent's Motion and offers clarifications of its Order as set forth below.

The Equalization Provision of the Janet B. Brooker Trust Is Ambiguous

Respondents argue that the Court did not explicitly rule on the threshold question of whether the Trust Agreement or its equalization provision is ambiguous (Motion at 2). The Court has previously determined that the equalization provision is ambiguous, however, for clarification, the Court explicitly rules that the equalization provision of the Janet B. Brooker Trust is ambiguous. Even Beachum and his witness, drafting attorney Steven Johnson, had different interpretations of the Settlor's intent regarding how to interpret the equalization calculation in the Trust document.

The Court Made Specific Findings and Conclusions Regarding the Settlor's Intent

Respondents argue that the Court ignored the intent of the Settlor in making its findings (Motion at 2). The Court determined that the Settlor's intent was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children and that Julia should be equalized at the time of Janet's death (Order at 10, 11). The Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. *See Schulmeyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

When considering the plain language of the Trust as a whole, "equal shares" appears twice, indicating that the Settlor intended her children to receive equally under the Trust:

- Article V (1)(b), General Distribution of Personal and Household Effects with a Mandatory Memorandum: "In default of such memoranda, or to the extent that such memoranda do not completely or effectively dispose of such property, the rest of the

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Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares…"

- Article VI, Trust Estate to Settlor's Issue: "Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's General Estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares…"

Considering the context in which the Trust uses the phrase "equal shares" to indicate that the Settlor's intent was for her surviving children to receive equal shares of personal and household effects and of the Trust Estate, it follows that the Settlor's intent of the equalization provision in Article V(2) was also to ensure her children received equally, and therefore that Julia would be made equal as to all the lifetime gifts made to the spouses and children of Beacham and Ellen upon the Settlor's death.

Further, in determining the situation and purposes of the Settlor at the time the Trust was created, the Court also relied on the testimony of Steven Johnson, who testified on behalf of the Respondents. According to Johnson, the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen since Julia was not married and had no children (Trial Tr. 102:6-11). Based on this express desire by the Settlor, Johnson testified that he told the Settlor that he could put in a provision to "catch up" Julia for gifts made to Beacham and Ellen's spouses and children (Trial Tr. 102:11-14).

Mr. Johnson further testified that, after the family meeting on September 25, 2001, he asked his paralegal to "prepare a codicil with an equalization provision in it" (Trial Tr. 135:4-8). The Court found persuasive the Draft First Codicil to Last Will and Testament of Janet Bloom Brooker, Plaintiff's Exhibit 9, which in pertinent part reads:

> "I give, devise and bequeath such amount necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon."

Mr. Johnson agreed that this draft codicil created by his paralegal does not make a distinction between gifts given before and after the Trust was created (Trial Tr. 136:25 – 137: 1-5).

Additionally, the Court relies on the To Do List of Mr. Johnson's estate paralegal, submitted as Plaintiff's Exhibit 11, which states: "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in

May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia." This exhibit clearly indicates the Trust's equalization provision included the lifetime gifts made before the Trust was created.

Based on the above testimony and the evidence submitted, the Court considered the Settlor's intent and determined that it was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children (Order at 10, 11). As such, the Court determined that all lifetime gifts made to the spouses and children of Beacham and Ellen were to be included in the equalization distribution in order to ensure Julia were made equal (Order at 8).

The Court Determined that the Phrase "[F]rom the Date of This Trust Forward, the Trustee Shall…" Indicates the Beginning of Beacham's Duties as Trustee

Respondents argue that the Court rendered the phrase "[f]rom the date of this trust forward, the Trustee shall…" within the equalization provision meaningless (Motion at 3). The Court determined that this phrase plainly marks the beginning of Beacham's duties as Trustee.

Respondents argue that this language was not "imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust and the Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust" (Motion at 3.) Respondents quote *In re Matter of Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995), claiming that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...." however the portion cited applies to statute interpretation, not contract interpretation. Contract precedent determines that interpretation of the language in a testamentary trust must be reasonably supported by a plain reading of the document as a whole. *See Epworth Children's Home v. Beasley,* 365 S.C. 157, 167, 616 S.E.2d 710, 715 (2005); *Harper v. South Carolina Tax Commission,* 267 S.C. 144, 149, 226 S.E.2d 699, 701 (1976). Therefore, the Court determined that the plain reading of the phrase "[f]rom the date of this trust forward, the Trustee shall…" indicates the beginning of the Trustee's duties.

Further, although the Settlor may have had substantially better knowledge of the gifts she made to each child and grandchild prior to the Trust, the gifts were accurately identified by accountant George Durant via bank and investment statements of the Settlor (Order at 12). The sum total of all lifetime gifts was calculated to be $997,869.83 (Order at 8). Therefore, this point is moot.

The Court's Order is not Based on Evidence Prohibited by the Dead Man's Statute

Respondents contend the Court erroneously relied on Julia's testimony in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3-4). This argument is without merit. There is no indication under the "Findings of Facts and Conclusions of Law" section of the Order that supports the assertion that the Court's decision is based, in whole or in part, on the testimony of Julia Brooker. The only allusion to Julia's testimony in the Order is found under a summary of all testimony provided by witnesses at the hearing. As set forth in the summary, Julia was permitted to testify as to what she believed her mother's intent was "as to the 2007 estate plan and the Trust" (Order at 5). A review of the transcript of her testimony illustrates that the Court carefully circumscribed the scope of her testimony. Julia was not permitted to testify as to any communications she had with her mother about her mother's intentions regarding the equalizing provision in the Trust. Rather, she was permitted to provide background information and to testify that in family meetings with Steve Johnson, she was told by Steve Johnson that her mother intended to "catch her up at the end" (Trial Tr. 254:1). This Court correctly ruled that such testimony is not prohibited by the Dead Man's Statute, nor is it prohibited from the Court's consideration based on a claim of attorney-client privilege (Id. at 254:23-255:11).

Moreover, the information provided to Julia in her testimony was duplicative of the information provided through Steve Johnson's testimony and documents introduced in to evidence. As recognized by the Court (Id. at 254:5-8), Mr. Johnson mimicked Julia's testimony that it was the Settlor's intent to catch Julia up at the end because Janet did not want Julia to be disadvantaged (Id. at 102:6-14). The gifts made by Janet Brooker prior to 2007, as testified by George Durant, were identified by the bank and investment account statements of Janet Brooker. Given the introduction of this evidence from permissible sources other than Julia, Respondents cannot support their argument that the Order necessarily relied on impermissible testimony provided by Julia.

The Court's Order Need Not Address the Admissibility of Parol Evidence

Lastly, Respondents never objected to parol evidence being considered by the Court during the hearing. A party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to judgment but failed to do so. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Therefore, the Court need not address the admissibility of parole evidence.

Upon review of the Order and consideration of Respondent's Motion for Reconsideration and to Alter or Amend and Petitioner's Response, the Court confirms and clarifies its Order

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Calculating Equalization Distribution of Lifetime Gifts dated June 22, 2019 and filed June 20, 2019.

THEREFORE, IT IS HEREBY ORDERED THAT respondents Motion to Reconsider and to Alter or Amend the Order issued by this Court dated June 22, 2019 and filed June 20, 2019, has been considered, and the Court hereby clarifies its Order.

AND IT IS SO ORDERED.

The Honorable Amy McCulloch
Judge, Richland County Probate Court

October 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-00036**
COUNTY OF RICHLAND)	
	)
IN THE MATTER OF THE JANET B. BROOKER TRUST	)
	)
Julia B. Brooker,	)
Petitioner,	)
	)
vs.	)
	) **ORDER ALLOWING ATTORNEY'S FEES**
Beacham O Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)
	)
Respondents.	)

FILED
2019 AUG -5 P 3:29
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon the filing of an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses, by Attorney James. M. Griffin on behalf of his client Julia Brooker ("Petitioner") on February 28, 2019. The Affidavit asks for this Court to award attorney's fees and reimbursement to Julia Brooker for cost paid by her in the matter of the Janet B. Brooker Trust, case number 2017-GC-40-00036, from the Janet B Brooker Trust ("Trust"). Respondents, through their attorneys Thornwell F. "Biff" Sowell, III and Bess J. DuRant, of the law firm Sowell Durant, filed a Memorandum in Opposition to Petitioner's Fee Affidavit on April 10, 2019.

A hearing on the matter was scheduled and held on May 22, 2019. All parties were sent Notice of Hearing. All parties were present at the hearing with their respective counsels.

At the hearing, the Court heard arguments from both sides about the appropriateness of awarding attorney's fees in this case, including arguments based on the experience of the attorneys' on either side, and the differences in hourly rate charged by each set of attorneys based on that experience. Mr. Griffin argued that Respondents' legal fees are being paid by the Janet B. Brooker Trust, while Petitioner personally paid the fees and costs of her attorney. This court notes that after the hearing on the fee issue, this court issued its ruling in the case in favor of the Petitioner.

Because the remaining Trust corpus is to be split evenly between Respondents and Petitioner after the distribution ordered in this Court's Order filed June 20, 2019, having the Trust be responsible for some attorney's fees advantages some beneficiaries over others, reducing the amount of corpus left to be distributed to all beneficiaries. The Court views this as inequitable. For

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this reason, the Court required Respondents' to provide their itemized legal bill so that a comparison could be made with that of the Petitioner's.

The Probate Court has authority to award attorney's fees in this trust matter pursuant to S.C. Code Ann. § 62-7-1004 which states "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

After reviewing the legal bills and professional fees of both Respondents and Petitioner and finding them comparable, and weighing the equities of the case, Petitioner's Motion for Attorney's Fees and Reimbursement **IS HEREBY GRANTED**.

THE COURT FURTHER ORDERS THAT Petitioner's attorney's fees and reimbursement be paid out of the corpus of the Janet B. Brooker Trust, along with Respondents' attorney's fees.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

August 5, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF RICHLAND)**	**IN THE PROBATE COURT** **Estate Number: 2017-GC-40-36**
IN THE MATTER OF THE JANET B. BROOKER TRUST Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**

FILED
2019 JUN 20 P 5:18
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts,* as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

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additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker**. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

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Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts ***[to be made]***, ***[that will be made]***, ***[that Settlor intends to make pursuant to the gifting program]*** to such daughter's siblings' spouses or siblings' issue."

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Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

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receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

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of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

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include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

7 8 10 am

Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

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was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments…"
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

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12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

10 of 10 am

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-00036**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE)	
JANET B. BROOKER TRUST)	
)	
JULIA B. BROOKER,)	
Petitioner,)	**ORDER DENYING**
)	**MOTIONS FOR SUMMARY**
vs.)	**JUDGMENT**
)	
BEACHAM O. BROOKER, JR. in his)	
official capacity as Trustee and)	
Individually as a Beneficiary of the Janet)	
B. Brooker Trust; and ELLEN B.)	
CORONTZES individually as a)	
Beneficiary of the Janet B. Brooker Trust,)	
)	
Respondents.)	

FILED
2018 OCT 24 PM 3:35
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon presentment of Petitioner's Motion for Summary Judgment and Respondents' Motion for Summary Judgment, both filed August 3, 2018. Following briefing by the parties on these motions, the Court held a hearing concerning the same on October 16, 2018. Based on the filings with the Court and argument of counsel at the hearing, the Court DENIES Petitioners' Motion for Summary Judgment and DENIES Respondents' Motion for Summary Judgment.

IT IS SO ORDERED.

Amy W. McCulloch

The Honorable Amy McCulloch
Richland County, SC Probate Judge

October 24, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jul 01 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	**MOTION FOR LIMITED REMAND**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust[1] ("Appellants") hereby file this motion for a limited remand to the Probate Court for the sole purpose of ruling on Appellants' post-trial motion and other post-trial motions (if any), with all appellate timelines being held in abeyance pending the Probate Court's ruling(s) on the same. The grounds for this motion are as follows:

[1] The Respondents/Appellants are Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Beach and Ellen"). Beach and Ellen were the Respondents in the lower Probate Court matter. They are the Appellants in this appeal. For purposes of this motion, Beach and Ellen will identify themselves as the Appellants.

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1. On June 20, 2019, the Probate Court for Richland County, South Carolina issued its Order Calculating Equalization Distribution of Lifetime Gifts ("Order") in the above referenced estate matter.

2. On July 1, 2019, Appellants filed Respondents' Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP ("Motion for Reconsideration") with the Probate Court, a filed copy of which is attached hereto as **Exhibit A.**

3. Soon thereafter, on July 1, 2019 Appellants filed a Notice of Intent to Appeal to Circuit Court with the Richland County Circuit Court pursuant to section 62-1-308 of the South Carolina Code of Laws. A copy of the notice of each Appellant is attached hereto as **Exhibit B**.

4. In the interests of judicial economy and efficiency, Appellants desire for the Probate Court to rule on the Appellants' Motion for Reconsideration and any other post-trial motions before the parties engage in the appellate process, other than filing the Notice of Intent to Appeal to the Circuit Court.

5. Therefore, Appellants request that this Court (1) remand this case to the Probate Court solely for the purpose of considering and ruling on Appellants' Motion for Reconsideration and other post-trial motions, if any, and (2) hold all appellate deadlines in abeyance until the Probate Court rules on the same.

For the above reasons, Appellants respectfully request that this Court remand this case to the Probate Court solely for the purpose of considering and ruling on Appellants' Motion for Reconsideration and other post-trial motions, if any, by the Probate Court. Additionally, Appellants request that all appellate deadlines are held in abeyance pending a decision on the same.

[Signature page follows.]

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Respectfully submitted,

By: s/Bess J. DuRant

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Columbia, South Carolina
July 1, 2019

ELECTRONICALLY FILED - 2019 Jul 01 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT A

MOTION FOR LIMITED REMAND

Respondents' Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP

ELECTRONICALLY FILED - 2019 Jul 01 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

FILED
2019 JUL -1 P 2:45
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF RICHLAND)	Civil Action No.: 2017-GC-40-0036
)	
IN THE MATTER OF:)	
The Janet B. Brooker Trust)	
(C.A. No. 2015-ES40-00662))	
)	
Julia B. Brooker,)	
Petitioner,)	
)	
vs.)	
)	**RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,)	
)	
Respondents.)	
)	

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach"), and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen"), hereby move the Court to reconsider and/or alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts ("Order"), dated June 22, 2019[1] and filed June 20, 2019. Respondents received written notice of the entry of this Court's Order via an email from this Court's Judicial Law Clerk, Matthew Brock, on June 20, 2019. The grounds for this motion are as follows:

[1] Respondents believe the Order was inadvertently dated June 22, 2019 because the Order was filed on and Respondents received notice of the Order on June 20, 2019.

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First, this Court did not explicitly rule on the threshold question of whether the Trust Agreement is ambiguous. The question of whether a trust is ambiguous is a question of law. *See Wallace v. Day*, 390 S.C. 69, 74-75, 700 S.E.2d 446, 449 (Ct. App. 2010). The answer to this question determines if extrinsic or parol evidence may be used. "If the language of the trust instrument is plain and capable of legal construction, that language determines the force and effect of the instrument. Under such circumstances, extrinsic evidence will not be admitted to alter the plain language of the instrument. Conversely, when there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor's intent." *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) (internal citations omitted). Here, the Order contains no explicit finding as to whether the Trust Agreement or its equalization distribution provision is ambiguous, which would allow for parol or extrinsic evidence. The question of ambiguity should be explicitly ruled upon by the Court.

Second, the Settlor Janet Brooker's ("Settlor" or "Janet") intent was ignored by this Court. The Settlor's intent is of paramount concern. *Bowles v. Bradley*, 319 S.C. at 380, 461 S.E.2d at 813. If this Court determined that the Trust Agreement was ambiguous, it should have relied upon the testimony of the estate lawyer, W. Steven Johnson, Esquire, and his partner, William Reynolds, III, Esquire, who knew the Settlor's intent, unlike any of the other witnesses who testified. Yet, Johnson's testimony that the Settlor did not intend for the equalization distribution to capture any gifts prior to the execution of the Trust Agreement was not relied upon by this Court. (*See, e.g.* Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23, attached hereto as **Exhibit A.**) Similarly, Reynolds' testimony that Johnson accurately captured the Settlor's intent was not relied upon by this Court. (Trial Tr. 182:8 – 183:6, attached hereto as **Exhibit B.**) If the Trust Agreement is

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ambiguous, the only witnesses competent to testify about the Settlor's intent are Johnson and Reynolds, but their testimony about the Settlor's intent was ignored. Importantly, their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced appropriately.

Additionally, the Court's interpretation of the equalization provision renders the phrase "[f]rom the date of this trust forward, the Trustee shall . . . ." meaningless, which is not favored by South Carolina courts. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) (holding "an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." (internal citation and quotation marks omitted)). The Settlor was not imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust. The Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust. To the extent the Court's Order intended to adopt Petitioner's argument that the phrase, "From the date of this trust forward ..." simply serves to establish the date the Trustee began exercising his authority, it would be redundant to his actual appointment as Trustee in the same instrument. The Court should read the clause so "that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous." *In re Matter of Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. *Statutes* § 346). The Settlor expressed her intent though this phrase, and her intent was for Beach, as Trustee, to calculate all of the gifts from the date of the Trust forward to provide the figures for the equalization distribution. The Settlor's intent should not be thwarted.

Third, this Court erroneously relied on the testimony of Petitioner Julia Brooker ("Julia"), which is in violation of both the Dead Man's Statute and the parol evidence rule. Even if the Court ruled the Trust Agreement is ambiguous, Julia's testimony regarding the Settlor's intent cannot be

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permitted or relied upon by this Court. The Dead Man's Statute precludes testimony from a witness in four classes:

1. A party to the action;
2. A person having an interest which may be affected by the trial's outcome;
3. A person who previously had an interest which may be affected by the trial; and,
4. An assignor of the thing in controversy.

Estate of Mason v. Mason, 289 S.C. 273, 278 n.2 346 S.E.2d 28, 31 (Ct. App. 1986); S.C. Code Ann. § 19-11-20 (Dead Man's Statute). Julia, as Petitioner and beneficiary, clearly falls under the scope of the Dead Man's Statute, and she was allowed to testify, over the objection and motion in limine of Respondents, regarding communications and transactions at issue. (*See, e.g.* Trial Tr. 8:15 – 14:19; 250:16 – 255:11, attached hereto as **Exhibit C**.) Under the Dead Man's Statute, Julia should not have been allowed to testify as to any matters related to her mother's intent, gift giving, or estate planning.

In addition to the Dead Man's Statute, the parol evidence rule should have precluded her from offering any testimony regarding the Trust Agreement if this Court determined the Trust Agreement was unambiguous. *See Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) ("Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of an integrated agreement. However, where a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." (internal citations omitted)). This Court allowed such testimony, and it appears from the Order that the Court relied on the same in contravention of the Dead Man's Statute and possibly the parol evidence rule. Stated simply, Julia should not have been allowed to testify if the Trust Agreement was ambiguous or unambiguous. Rather, the only witnesses competent to testify under the Dead Man's Statute

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are Johnson and Reynolds, and their testimony was ignored. Their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced accordingly.

For the above reasons, Respondents respectfully request the Court to reconsider and/or alter or amend its Order, dated June 22, 2019 and filed June 20, 2019, consistent with the points made herein.

Respectfully submitted,

By: _____

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Columbia, South Carolina
July 1, 2019

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

EXHIBIT A

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23

ELECTRONICALLY FILED - 2019 Jul 01 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

State of South Carolina) In the Probate Court
)
County of Richland) Case No: 2017-GC-40-00036

IN THE MATTER OF:
The Estate of Janet B. Brooker Trust
(C.A. 2015-ES-40-00662

Julia B. Brooker

Petitioner,

vs.

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Respondents.

Transcript

of

Proceeding

The within proceeding was taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., February 5 & 7, 2019, at the Richland County Judicial Center, Probate Court, Columbia, South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

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of the children. And when I mentioned to her about making gifts to the spouses --

MR. GRIFFIN: Your Honor, I'm not sure if he's still in this family meeting or some other, so I'm going to object.

THE COURT: This is a private conversation with her?

THE WITNESS: This was a conversation on September 25th, and I believe at that time, Your Honor, my time records will indicate that all the family members were there. That it was a family --

THE COURT: I also think I found a case that deals with it. It's the concept of a lawsuit between the beneficiary's heirs that the conversations between the deceased and the deceased's attorney are not privileged in the sense that the testimony of that particular witness is necessary to resolve litigation between the heirs of the devisees, which is what we have here, in my opinion.

BY MR. SOWELL:

Q All right. Now, was there ever any discussion with Janet Brooker about an equalization for retrospective gifts?

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A No.
Q Was the only conversation with her related to prospective gifts?
A Yes.
Q Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c, which is denominated equalizing distribution to the Settlor's daughter Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by subparagraph (a)'s language, "From the date of this trust forward?"
A That is correct?
MR. GRIFFIN: Objection, Your Honor, as to Mrs. Brooker's intent. He can testify to his intent; he can testify what she told him, but he's in her mind now and that's not permissible.
MR. SOWELL: That's precisely what he's here to testify about is her intent.
THE COURT: Right.
MR. SOWELL: He's the only person who can do it.
THE COURT: He can testify about the conversation that they had. What she said is more important that what he thinks she said, is the

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conversations that were retrospective in the equalization. If you want to ask him a different question that gets more to your point.

BY MR. SOWELL:

Q Did Janet Brooker make statements to you that led you to believe that she only wanted to equalize going forward?

A We never had a discussion about retroactive gifts, so the discussion, the whole discussion centered around gifts going forward.

Q Was there ever any discussion whatsoever about gifts going backward?

A No.

Q I'm going to show you Defendant's Exhibit No. 1 and ask you if you can identify it?

A Yes, this is a schedule that was done by a paralegal in my office that comes up with a figure of $525,528, which is the amount that we computed in determining the amount of the equalization that we felt was due to Julia.

Q Do you continue to believe, along with the Trustee, that amount, the 525,000 and some odd dollars is the amount owed to Julie for the equalization?

A Yes. With this exception: That computation of

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A Apparently so, yes.
Q Is there any reason you didn't give them to Mrs. Brooker when she was there signing the documents?
A I don't remember why they were given to Dino, but I would not have given them to Dino had Janet not told me it was okay to give them to Dino.
Q I understand. And you have a specific recollection of discussing with her the terms of the equalization provision?
A I do. I said we'll catch Julie up at death for gifts made from the Trust Agreement forward so that she won't be prejudiced.
Q You remember saying "from the Trust Agreement forward?"
A I do.

MR. GRIFFIN: Your Honor, this is the deposition that Mr. Johnson gave on January 12, 2018. I'd like to show it to him. It's sealed. I'm going to unseal it. For the record, it's being unsealed.

THE COURT: The deposition of Mr. Johnson is completely attached to your Motion in Limine. A full copy, right?

MR. SOWELL: Yes, Your Honor.

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BY MR. GRIFFIN:

Q Mr. Johnson, if you'll turn to page 27 of your deposition.

A Okay.

Q And I'm asking you beginning at line 10 about her Will and Trust, and then at line 13, I say, "Do you recall whether you explained to her or not." And your answer was, at line 15?

A Right.

Q And you said "I do," correct?

A Right.

Q Then line 16 I asked you, "What do you recall doing." And if you'll read your answer in the record, please.

A (As read) I recall saying to her we're going from a straight will, which she had in 1988, to a will and revocable trust. And I remember discussing with her that we would be funding the trust. I remember discussing the equalization provision with her, and I remember telling her that her estate, as far as Julie was concerned, would go outright to Julie, but the portion that would go to Ellen and Beach would go to them in the form of a trust.

Q And then page 20, I asked, "Do you recall any

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questions she had of you about the equalization provision." And your answer was?

A "I don't recall any question she had about it."

Q And then 28, line 4, I said, "When you spoke with her, did you use the phrase "lifetime gifts?" And you said what?

A "I don't know."

Q And then you said, then I asked, "Do you know whether you explained to her that there could be a difference in lifetime gifts, I mean gifts given prior to the date of the execution of the trust versus gifts given after the entry of the trust?" And you said?

A "The whole conversation with Janet was about prospective gifts, not retrospective gifts."

Q And I said "okay," and you said it was going forward not looking back?

A Right.

Q So that was the conversation?

A Right.

Q And then I asked you, "Is there any language in the Trust Agreement that references past gifts?" In line 18, you say "no." Is that right?

A That's right.

Q But there is -- I mean, in the Trust Agreement, it

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says that Settlor has previously made lifetime gifts, correct?

A Yeah, but, Jim, that was just to give a history of what had happened, you know. I mean, that was my drafting style.

Q Now, you're drafting style also -- you're saying that we can read from your drafting style that the sum of (a) and (b) above shall be distributed to Settlor's daughter to mean that you look at the pots of gifts and you give her the greatest amount?

A I wanted to determine the gifts that had been given to Ellen's side of the family, the gifts that had been given to Beach's side of the family, and then to add five percent to the greater amount. And that was equalizing for Julie; that was making sure that Julie was not disadvantaged; that she received at least the higher number. That's what I intended to do; that's what Janet Brooker intended to do. Under your reading of the Trust Agreement, she gets twice as much. There is no way that Janet Brooker wanted Julie to get twice as much as Beach or Ellen. That is just not what she wanted.

Q Let's talk about the language you used. The sum

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of (a) and (b) above. So is (a), when we say (a) and (b), we're talking (a), in the same paragraph, right?

A Well, first you've got to determine the amount of the gifts.

Q And that would be in (a)?

A Yeah, but you've got to determine what was given to Ellen and you've got to -- Ellen's side of the family and what was given to Beach's side of the family.

Q And then from that you add the interest?

A The five percent onto those two amounts. You create two columns, Ellen's column and Beach's column, and then you add five percent, and whichever would be the higher. I didn't want Julie to be disadvantaged. Whichever the higher, she would get. Now what was confusing about that is Beach kept the gifts even.

Q Let's go to the language. Would you agree that there's no word "higher" in (a), (b), or (c)?

A I would agree to that.

Q Do you agree that there is nothing in (a), (b), or (c) that talks about separating the pots out from Ellen's issue and spouses to Beach's issue and spouses?

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A Well, if there's ambiguity there, I want you to understand what Janet Brooker wanted. And she wanted her daughter, Julie, to not be disadvantaged because gifts had been given to spouses and grandchildren. And this schedule accomplishes that.

Q Are you aware that before the date of this Trust, that Mrs. Janet Brooker had given the spouses and issues of Ellen and Beach $900,000 in gifts?

A I wasn't aware of that, but Janet, you know, was only going from 2007 forward.

Q So you think she was aware that she had been giving Ellen and Beach $900,000 in gifts?

A I don't know, but I'll tell you what, she never brought it up. If she did, if she'd have said to me Julie should be equalized for that, I would have said to her let's equalize it right this minute, let's make a gift to her right this minute, let's give her -- let's make a gift to Julie right now if she's been so disadvantaged. We're trying to reduce the size of your estate, let's give her an amount right now that will make her equal.

Q So then after Mrs. Brooker passes away, the -- was a -- well, let me just ask you. What's this

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

EXHIBIT B

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 182:8 – 183:6

provision that we've been discussing today.
Q Did you do that?
A I did that.
Q What did you conclude from reviewing that provision?
A I thought it was appropriate for the circumstances that I knew about.
Q And what circumstances did you understand before you had that conversation?
A I knew that Janet Brooker had a fairly large taxable estate. There was an attempt, pretty aggressive attempt, to give nontaxable gifts, but also an attempt to equalize for Julia Brooker. And so that was the context I looked at the provision for.
Q Was there ever any discussion with Steve about equalizing these payments going backwards?
A No. He basically told me this is a -- because we're starting this aggressive gifting program, and of course, annual exclusion gifts, gifts for tuitions, for medical payments, are really the lowest hanging fruit in estate planning. There was never any discussion about retrospective or looking back. I think, at least in my experience, if you look back, you gotta start somewhere. And

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if they had decided to look back, Steve would have asked Mrs. Brooker what were the gifts you've given thus far; let's start with an amount or let's write a check to even up Julia. But that was never part of the discussion between Steve and I.

Q Looking at this document, which is the Trust Agreement, and we're looking here at the board, which is 2(a), is there any reference in there to a starting date for looking backwards?

A Well, the date that he references in 2(a), says, "From the date of this Trust forward."

Q Right. Which was October of 2007?

A Right.

Q Now, you've heard the arguments Mr. DuRant made about (a)+(b). What you think is the proper interpretation and what did you think then was the proper interpretation of (a), (b), and (c)?

A Well, when I first looked at it, reading the first paragraph number 2, the main paragraph, it shows what Janet's intent was. It was clear that she said Julia's not married, she doesn't have children; Ellen's married and has children; Beach is married and has children, and we want to equalize going forward. And (a) says to determine

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

EXHIBIT C

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 8:15 – 14:19; 250:16 – 255:11

be number one and hand it up to the Court.

MR. SOWELL: No objection.

(Whereupon, Trust Agreement was introduced as Petitioner's Exhibit No. 1.)

MR. GRIFFIN: Your Honor, we have two witnesses, Julia Brooker and then George DuRant. And I'll call Ms. Brooker at this time.

Whereupon,

Julia Brooker,

being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

MS. DURANT: Your Honor, if I may object right now just to Ms. Brooker's testimony today as outlined in our motion in limine. We believe Ms. Julia Brooker is an interested party and therefore disqualified under the dead man's statute. Interestingly enough the dead man's statute is not about the admissibility of Ms. Brooker's testimony; it's more about the competency of her to testify. I do have a case for you, Your Honor. This is Estate of Mason B Mason 289 SC 273, Court of Appeals 1986. And if I

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may approach, Your Honor.

THE COURT: I may have it. Let me just look and see. I'm going to let you hand it to me.

MS. DURANT: And what I've done, Your Honor, is marked the salient provisions and I've also marked the salient provisions for Mr. Griffin, Ms. Fox and you and your law clerk. If you'll note where I have the blue flag, Your Honor, I've highlighted the relevant language that talks about how the dead man's statute has to deal with competency and not admissibility. It starts on page 31 of the South Carolina Reporter, it's page four of this PDF. And then at 278 of the Southeastern 2nd Reporter, it says, "the dead man's statute §19-11-20 Code of Laws of South Carolina in substance provides that a witness may not testify (will not be a competent witness) should the witness be in either of the four designated classes." And as outlined in our brief, Your Honor, we believe Ms. Brooker is in all four classes and therefore she's disqualified from testifying in toto.

THE COURT: All right, Mr. Griffin.

MR. GRIFFIN: Your Honor, the case that she cited goes on to say that if you're in that

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category, then you can't testify if one, the testimony is regarding any communication or transaction between the witness and the deceased; two, if the testimony is offered against the party prosecuting or defending the action as executor or administrator, heir-at-law, next of kin, assignee, devisee, or survivor; and three, does the testimony potentially affect the present or previous interest of the witness.

So the first of those three tests, we don't intend to offer any testimony, Your Honor, from Ms. Julia Brooker about communications or the transaction. I'd also -- and so the dead man's statute does not preclude her testimony. There's also a number of exceptions to the dead man's statute. I'll hand up the case to Your Honor, Hanahan v. Simpson. There's a flag on it that says it's been overruled and superseded by statute. I'll tell Your Honor the statute they're talking about is the Frivolous Civil Proceedings Act. It's a sanction statute that doesn't really have -- had nothing to do with the dead man's statute. And then in the case, the -- there's a number of exceptions to the dead man's statute. And it's -- it says first, the benefit of the

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statute may be waived; they're not waving it. Second, the testimony of an attorney preparing the will is generally held admissible on the ground that he's not an interested person. Third, a witness is prohibited from testifying only if his or her present or previous interest would be affected by the event of trial, and if such, a person is only disqualified if he has certain legal and vested equitable interest which may be affected. Fourth, a party may testify against his own interest. Fifth, a witness may testify to a transaction between the deceased and a third party. Sixth, the statute's directed to the competency of witnesses rather than the transaction or communication itself, and thus, it does not prohibit the introduction of documentary evidence. And seventh, the Court has recognized that notwithstanding the testimony of an interested witness may generally fall within the inhibition of the statute as to evidence of transactions or communications with the decedent. He may testify to acts, demeanor, or conduct of the decedent where the testimony is offered on the bearing of mental competency. So those are some of the exceptions. I do have documents I plan to

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introduce through Ms. Brooker that would not be precluded under the dead man's statute. And, like I said, her testimony proffered she plans to testify as to who her mother was, who her father was, who her sister is, her brother is, her nieces and nephews are and the dates of their births and the family history and the assets of the mother as well as, frankly, the mother's history of gift giving to the third parties. That would be the proffer of the testimony.

MS. DURANT: Your Honor, briefly, I don't disagree with Mr. Griffin's recitation of the exceptions. However, I don't think any of them apply with maybe the exception that it does not prohibit -- the dead man's statute does not prohibit the obstruction of documentary evidence. The problems that I do have with what he said that Ms. Brooker may testify to are the assets of the mother and the history of the gift giving. That goes straight to the communications and transactions that are at issue in this case. And Ms. Brooker should be precluded from testifying regarding the mother's intent or history of gift giving and the assets of the mother. That goes directly to communications and transactions

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between Ms. Julia Brooker and the decedent, Ms. Janet Brooker.

MR. GRIFFIN: The issue in the case is the interpretation of a trust agreement entered into October of 2007, I believe it was, October 17th or 19th, 2007. She's not going to testify about any communication she had with her mother about that agreement, about any catch up provisions, or anything of that nature.

THE COURT: I do think the dead man statute applies to certain potential testimony she may want to tell us. It doesn't preclude her from being a witness. We'll get started; I'm sure you've instructed her what she should or shouldn't get into, and I'm sure you'll be careful with your questions, and I'll hear you. If you hear something that is objectionable, please rise.

MS. DURANT: Yes, Your Honor, I will. And may I add one more point and then I'll sit down and be quiet?

THE COURT: Certainly.

MS. DURANT: I do want to add, Your Honor, that under Merck v Merck, 89 SC 347 South Carolina Supreme Court 1911, the term "transaction" under the dead man's statute is a very comprehensive

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term. It means the carrying of or through any matter or affair. So not only is she precluded from talking about the communications with the mother, but we are talking about a very broad transaction that renders Ms. Julia Brooker incompetent from testifying about those matters. And with that, I will be quiet.

THE COURT: I'll certainly hear you. If you think we're tiptoeing into an area you're concerned about, I will hear you.

MS. DURANT: Yes, Your Honor, thank you.

THE COURT: It's complicated. This is a very complicated family dynamic; it's a complicated prohibition that you can't talk about communication within the family. So that lay witnesses and people that are struggling with this, it's an honest struggle. Can I get you just to move that behind the table so that it doesn't in any way interfere with Ms. Brooker's --

MR. SOWELL: If you don't need it, we'll just put it down. You've got the document.

THE COURT: I do, but if you want it just to stay in the room as a reminder to everybody, just put it behind. Thank you. Of all the cases I've been in statute, I didn't have this. And let me

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Bring your water and your glasses and anything else you need. Just a reminder you're still under oath, okay.

THE WITNESS: Thank you.

- - - - -

FURTHER EXAMINATION (Julia Brooker)

BY MR. GRIFFIN:

Q Julia, I want to talk about first your efforts to determine the amount of lifetime gifts. Now, I know there's an issue as to what those encompass, what period of time, but I just want to ask what steps did you undertake to try to determine how your mother's money was spent since 2007 when Beach Brooker was given power of attorney?

A How was it spent?

Q What efforts did you undertake to try to find out after your mother died what you were entitled to under this clause?

A Can I start from kind of the beginning or whatever?

Q Sure.

A Back in 1997, May of '97, my mother started doing some estate planning. She opened up three family trusts for my brother, sister and myself that we, you know, put money in it. She wanted to -- she

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called me and brought me over and said that she was talking to me --

MS. DURANT: Your Honor, if I may, move to strike that testimony. That's squarely within the dead man's statute. She's talking about communications with her mother.

THE WITNESS: Okay.

THE COURT: Well, maybe that last little piece, but the history of this, unless it's false information, should be very easily documented. And I just need it to understand what her timeframe is. If these trusts were created in May of 1997, you can tell me that. They obviously exist. Do you disagree that Mrs. Brooker created three trusts for her children to May of '97?

MS. DURANT: No, ma'am.

THE COURT: This is just a factual piece that I'm gonna capture. I hear you suggesting that -- tread carefully.

MR. GRIFFIN: You can't talk about what your mother said about anything.

BY MR. GRIFFIN:

Q So you created these trusts?

A Uh-huh.

Q She did in 1997?

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A Uh-huh. Gave gifts of about $400,000.
Q To each of you?
A No, total gifts. I believe if you look in the gift rank in 1997, there's over $400,000 that she gave gifts to. I think it's included. She did DeBordieu in '92. She -- wait a minute, let me get my dates right. We did a qualified residential trust too where she did the condominium at DeBordieu at this time, and in about '94, I've got where she gave us gifts too, or said that she was going to start giving us gifts.

MS. DURANT: Again, Your Honor, she just referenced what her mother did.

THE COURT: Yeah, I'm not sure what we're doing here. I know you want to tell the whole story and I know it would feel really good that you tell the whole story, but we've got to be really careful.

THE WITNESS: Okay.

THE COURT: Can we just go back to the timeframe about -- I thought we were talking about interest timeframe. Where were you going with your first question?

MR. GRIFFIN: I'm trying to figure it out.

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THE COURT: I think your question was, and it's legitimate, what efforts did she personally make to determine what gifts her mother had made that met this provision.

MR. GRIFFIN: Yes.

BY MR. GRIFFIN:

Q I guess, let's just start here. You see this document?

A Yes.

Q At some point in time, did you get a copy of this document?

A Yes.

Q Did you agree with the numbers on this document?

A No.

Q Why did you not agree with the numbers on this document? And when I say "this document," I'm talking about Defendant's Exhibit No. 1. And don't tell me what your mother said.

A Can I tell you what Steve said?

Q Tell us what Steve said, yes.

A Okay. The family had two meetings with Steve. One after my mother died and one prior to my mother dying. He brought us in and talked about that mother was going to exaggerate some gifts, give more gifts, and that what she was going to do

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is catch me up at the end.

MS. DURANT: Again, Your Honor --

Q That's what Steve said, not your mother.

A That's what Steve said.

MS. DURANT: She said -- and then she said, "my mother" --

THE COURT: That's already been testified by Mr. Johnson.

MS. DURANT: I'm just really, Your Honor, I'm just preserving the record.

THE COURT: And I hear you, but I heard her say that's what Mr. Johnson said to her at the family meeting. Did you hear her say that's what her mother said?

MS. DURANT: I heard that Mr. Johnson said my mother said she wants to catch up.

MR. GRIFFIN: That's certainly not precluded by the dead man's statute.

THE COURT: I am hearing that Mr. Johnson has already testified and told Julia at the very family meeting he testified about that it was the intention to catch her up at her mother's death.

MS. DURANT: Your Honor, Mr. Sowell brings up a good point. Mr. Johnson is or was Ms. Janet Brooker's lawyer, so he is just repeating what his

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client said. So I think that also falls on the teeth of the dead man's statute.

THE COURT: I'm going to disagree on the concept that number one, he's already testified to that himself, and at a family meeting, he is sharing this information. He had a family meeting, which means you have on some level a waiver of the attorney-client privilege as to the issues he's talking about at the family meeting that he had with the family. The deceased Mrs. Brooker was there. So overruled.

BY MR. GRIFFIN:

Q In the meeting after your mother died, what was discussed?

A The lifetime gifts and that the lifetime gifts, I was gonna be equalized with the lifetime gifts that were given to my brother and sister.

Q Your brother and sisters' children?

A Children, family. Brother and sister's family. Children and family.

Q Then when you got this document at some point in time, you said you didn't disagree with it, but you didn't agree with it. What were the parts you didn't agree with?

A The year that the gifts began.

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CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the document hereinbelow specified by electronic mail and by hand delivery to the following address(es):

Document: RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

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Attorneys for Petitioner Julia B. Brooker

Amy A. Kelly

July 1, 2019

ELECTRONICALLY FILED - 2019 Jul 01 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT B

MOTION FOR LIMITED REMAND

Notice of Intent to Appeal to Circuit Court

ELECTRONICALLY FILED - 2019 Jul 01 2:09 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 but filed on June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2024

Signature:
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205
Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Jul 01 3:06 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 and filed June 20, 2019 . Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for: South Carolina

My Commission Expires: May 27, 2026

Signature:

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive
Columbia, SC 29205

Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223
Email: ecorontzes@sc.rr.com
Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Jul 01 3:09 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE JANET B. BROOKER TRUST	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**
Julia B. Brooker, Petitioner,	
v.	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	

FILED
2019 JUN 20 P 5:08
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts,* as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

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additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker**. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

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Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts ***[to be made]***, ***[that will be made]***, ***[that Settlor intends to make pursuant to the gifting program]*** to such daughter's siblings' spouses or siblings' issue."

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Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

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receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

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of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

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include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

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Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

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was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments…"
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

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12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

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ELECTRONICALLY FILED - 2019 Nov 13 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	Civil Action Number: 2019-CP-40-03582
	)	Civil Action Number: 2019-CP-40-04463
	)	Civil Action Number: 2019-CP-40-06229
The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker, Petitioner,	)	
	)	
vs.	)	
	)	**CONSENT MOTION FOR CONSOLIDATION OF APPEALS AND TO ESTABLISH BRIEFING SCHEDULE**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

Pursuant to Rule 214 of the South Carolina Appellate Court Rules, Petitioner Julia B. Brooker ("Julia") and Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach") and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen") move this Court for an Order consolidating the three appeals by Beach and Ellen of three probate court orders ("Orders") and for a briefing schedule for the consolidated appeal. The grounds for this motion are as follows:

1. On March 17, 2017, Julia filed a petition in the Probate Court for Richland County, in which she sought relief based on the interpretation of a trust agreement ("Trust") signed by her

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mother Janet Brooker. She filed her petition against her two siblings Beach, individually and as Trustee of the Trust, and Ellen, individually.

2. The matter was tried before the Honorable Amy W. McCulloch, and then she issued three orders, which have all been appealed to this Court by Beach and Ellen.

3. The three orders, their filing dates, the dates on which they were appealed to this Court, and the resulting case number given to the appeal are as follows:

Name of Order	**Filing Date of Order**	**Date of Appeal**	**Appeal Number**
Order Calculating Equalization Distribution of Lifetime Gifts	June 20, 2019	July 1, 2019	2019-CP-40-03582
Order Allowing Attorney's Fees	August 5, 2019	August 13, 2019	2019-CP-40-04463
Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP	October 28, 2019	November 5, 2019	2019-CP-40-06229

4. These three orders all arise from the trial of allegations asserted in Julia's Petition. The Order Allowing Attorney's Fees was issued based on the fees and expenses incurred by Julia in connection with her prosecution of her case. The Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP is a ruling on Beach's and Ellen's motion for the Probate Court to reconsider its Order Calculating Equalization Distribution of Lifetime Gifts. In other words, these three orders are related and involve the same questions. *See* Rule 214, SCACR ("Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated."); *see, e.g., State v. Thompson*, 420 S.C. 192, 196 n.1, 802 S.E.2d 623, 625 (Ct. App. 2017) (consolidating appeals of

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defendants tried jointly); *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 196 n.6, 750 S.E.2d 78, 82 (2013) (consolidating appeals when one of the orders was an order on attorney's fees); *Crawford v. Central Mortg. Co.*, 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013) (consolidating appeals is appropriate when orders involve same legal issues).

5. Judicial economy and efficiency require these three appeals from three orders to be consolidated as all three orders involve the same issues and arise from the same Petition and trial.

6. Should this Court agree and consolidate the three appeals into one appeal, the parties wish to establish a briefing schedule for the consolidated appeal.

7. Section 62-1-308 of the South Carolina Code provides proposed deadlines for the various stages of the appeal. The parties aim to establish a briefing schedule consistent with the timeframes outlined in section 62-1-308. To that end, the parties propose a briefing schedule as follows:

a. Amended Statement Issues on Appeal:[1] 30 days after this Court's order on this matter is issued;

b. Transcript of Proceeding: Already provided to the Court;

c. Designation of Matter: 30 days after service of the statement of issues on appeal;

d. Briefs:

i. Beach and Ellen's Brief: 30 days after service of the statement of issues on appeal (contemporaneously filed and served with the designation of matter);

[1] Beach and Ellen need to amend their statement of issues on appeal. Beach and Ellen filed a motion for reconsideration with the Probate Court after they filed their first notice of appeal. Then Beach and Ellen filed a motion for limited remand with this Court so that the Probate Court could rule on the motion for reconsideration. Before this Court could rule on the motion for limited remand, the deadline under § 62-1-308(b) for filing statement of issues on appeal occurred, requiring Beach and Ellen to file their statement of issues on appeal before Judge McCulloch ruled on the motion for reconsideration. This Court subsequently granted the motion for limited remand, and Judge McCulloch clarified her order when she ruled on the motion for reconsideration. Her order on the motion for reconsideration has changed the statement of issues on appeal, and therefore, Beach and Ellen need to amend their statement of issues.

ii. Julia's Brief: 30 days after the service of Beach and Ellen's brief;

iii. Beach and Ellen's Reply Brief: 10 days after service of Julia's brief;

e. Record on Appeal: 30 days after service of Julia's brief.

8. Consolidation and the briefing schedule serve to streamline the appellate process and preserve resources, both for the judiciary and the parties.

9. The parties request that if the Court grants the motion to consolidate, that it consolidates the three appeals under one case number to streamline the filing process.

WHEREFORE, the parties request that this Court consolidate the three appeals, bearing case numbers (a) 2019-CP-40-03582; (b) 2019-CP-40-04463; and, (c) 2019-CP-40-06229 into one appeal, having one case number. Should the Court grant this motion to consolidate, the parties also request that the Court adopt the briefing schedule as detailed above. Consolidating these three appeals and issuing a briefing schedule will greatly simplify the appellate process and encourage judicial economy and efficiency.

[Signature page follows.]

ELECTRONICALLY FILED - 2019 Nov 13 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

ELECTRONICALLY FILED - 2019 Nov 13 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

WE SO MOVE AND CONSENT:

s/Bess J. DuRant

_____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

WE SO MOVE AND CONSENT:

s/James M. Griffin

_____

James M. Griffin, SC Bar # 9995
Margaret N. Fox, SC Bar # 76228
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Attorneys for Petitioner Julia B. Brooker

FILED
2017 MAR 17 AM 11:44
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-EC-40-0036
Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**SUMMONS**

TO THE RESPONDENTS LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you , and to serve a copy of your Answer upon the Petitioner listed above at the following address:

James M. Griffin & Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to Answer the Petition within that time, the Petitioner will ask the Court for a judgment by default for the relief demand in the Petition.

Attorney for Petitioner

March 17, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-GC-40-0036

FILED
2017 MAR 17 AM 11:44
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**PETITION FOR DECLARATORY RELIEF**

Petitioner Julia B. Brooker, by and through undersigned counsel, files the foregoing Petition against the above-named Respondents and alleges as follows:

PARTIES

1. Petitioner Julia B. Brooker ("Julia" or "Petitioner") is a citizen of South Carolina and resides within Richland County at 1325 Sinkler Road in Columbia, South Carolina. She is a beneficiary of the Janet B. Brooker Trust dated October 16, 2007.

2. The Janet B. Brooker Trust (the "Trust") is an inter vivos trust that was fully funded upon the death of Janet B. Brooker ("Mother" or "Settlor") through her last will and testament dated October 16, 2007 and is part of the estate probation pending before this Court, C.A. No. 2015 – ES40 – 00662.

3. Beacham O. Brooker, Jr. ("Respondent Brooker") is a citizen of Richland County, South Carolina and the trustee, as well as a beneficiary, of the Trust.

4. Ellen B. Corontzes ("Respondent Corontzes") is a citizen of Richland County, South Carolina and a beneficiary of the Trust.

JURISDICTION/VENUE

5. This Court has exclusive jurisdiction to determine questions arising in the distribution of the Trust, including questions of its construction. *See* S.C. Code § 62-7-201.

6. Venue is appropriate in Richland County because the Trust was created by a will being administered in this county and the estate is not yet closed. *See* S.C. Code Ann. § 62-7-204.

FACTS

7. Settlor is the mother of Petitioner Brooker, Respondent Brooker and Respondent Corontzes (collectively the "Beneficiaries").

8. Following the death of Mother's spouse, she gave monetary gifts ("Lifetime Gifts") to the Beneficiaries as well as to the children of Respondent Brooker and Respondent Corontzes and their spouses (collectively the "Respondents' Children and Spouses").

9. Petitioner Julia is not married and has no children and from the time Mother began making the Lifetime Gifts it was always Mother's intent that Petitioner Julia would be given an amount equal to what was given to Respondents and Respondents' Children and Spouses at Mother's death.

10. Thus, to account for the Lifetime Gifts given to Respondents' Children and Spouses, Mother included an "Equalizing Distribution" in the Trust for Julia's benefit.

11. Mother executed her last will and testament and the Trust on October 16, 2007. *See* Last Will & Testament and Trust Agreement, attached hereto as Exhibit A.

12. The Trust contains the following language regarding the "Equalizing Distribution,"

> (2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue

such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

13. The Equalizing Distribution was one of two distributions of Settlor's estate that was carved out from the Trust Estate available for distribution to the Beneficiaries. *See* Trust Article V(3) & Article VI.

14. Thus, per the terms of the Trust, Julia's "Equalizing Distribution" is not available for distribution to the Respondents.

15. Following Mother's death on April 16, 2015, Mother's estate entered probate before this Court.

16. Despite the explicit language of the Trust explaining that **Mother "has previously made lifetime gifts** and intends to continue such gifting program until the date of the [Mother's] death" and **that "[Mother] intends** that at the [Mother's] death, **an equalizing distribution will be made to the Settlor's said daughter** [Julia] pursuant to the terms of this paragraph **for lifetime gifts made to such daughter's siblings' spouses or siblings' issue**," *See* Ex. A, Article V(2),

Respondent Brooker, as Trustee, interprets the "lifetime gifts" language to be limited to gifts made after the date of the Trust.

17. Respondent Brooker's interpretation is contrary to the plain language of the Trust and contrary to the Mother's intent to make an equalizing distribution from the Trust to Julia for all Lifetime Gifts previously made to the Respondents' Children and Spouses.

18. Therefore, there is a judiciable controversy between the parties as to the meaning of the term "lifetime gifts" used in the language of the Trust and whether through the use of such language Mother intended for her daughter Julia to receive an equal share of all lifetime gifts made to the Respondents' Children and Spouses, or did Mother only intend for Julia to receive an equal share of those gifts made during the part of Mother's life beginning on October 16, 2007, the date of the Trust.

FOR A FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT
(S.C. Code § 15-53-30 and §62-7-201)

19. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth herein verbatim.

20. S.C. Code Ann. § 15-53-30 permits Petitioner Brooker to "obtain a declaration of rights, status or other legal relations" of the Beneficiaries under the Trust.

21. S.C. Code Ann. § 62-7-201(a)(1) grants the probate court exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts, including the construction of a trust instrument and declaration of the rights of the beneficiaries under a trust.

22. As set forth in the Trust, Petitioner Brooker's Equalizing Distribution is for "**any lifetime gifts made** by the Settlor to issue of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr." *See* Ex. A, Article V(2)(a). The language is not limited to those gifts made after the execution of the Trust.

23. The Trust agreement delegates to the Trustee the authority to make the determination of the amount of "any lifetime gifts." Specifically, the Trust states that "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts." *See* Ex. A, Article V(2)(a). This provision however was not intended to limit Julia's Equalizing Share to only those gifts made by Mother to the Respondents' Children and Spouses from the date of execution of the Trust, October 16, 2007.

24. Instead, the plain language of the Trust expresses Mother's intent to include all Lifetime Gifts made to the Respondents' Children and Spouses in the Equalizing Distribution to Julia.

25. If Mother had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [***to be made***], [***that will be made***], [***that Settlor intends to make pursuant to the gifting program***] to such daughter's siblings' spouses or siblings' issue." *See* Ex. A, Article V(2)

26. Instead, the Trust using the past tense of the verb "make," stating that "an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for **lifetime gifts made** to such daughter's siblings' spouses or siblings' issue." *Id.*

27. Accordingly, Petitioner Brooker moves this Court for an order declaring the Equalizing Share to include all Lifetime Gifts Mother previously made to the Respondents' Children and Spouses, which includes those gifts made before the date of the Trust, October 16, 2007, and those gifts made pursuant to the gifting program that Mother continued after the date of the Trust.

28. In the alternative, Petitioner Brooker moves this Court to reform the Trust so as to effectuate the intent of the Settlor to have Petitioner Brooker's Equalizing Distribution include all Lifetime Gifts to the Respondents' Children and Spouses – including those made before October 16, 2007. *See* S.C. Code § 62-7-415.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Brooker prays for judgment against Respondents providing Petitioner with the following relief:

a) An order declaring the Equalizing Share to include all Lifetime Gifts, including those made previous to October 16, 2007, to Respondents' Children and Spouses, or in the alternative, to reform the Trust so as to effectuate the Settlor's intent that Petitioner Brook's "Equalizing Distribution" include all Lifetime Gifts, including those prior to October 16, 2007;

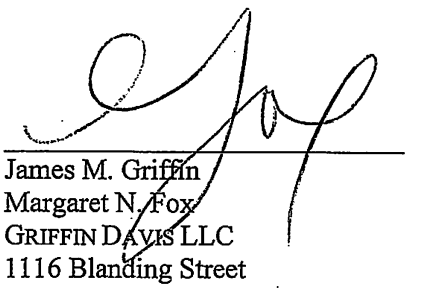
b) An order determining the date and the amount of all Lifetime Gifts made by the Settlor to Respondents' Children and Spouses, as required under Article V of the Trust;

c) An order determining the total amount of distributions to which Julia is entitled under Article V(2)(c) of the Trust;

d) An order compelling Respondent Brooker to make such distribution to Julia as required under Article V(2)(c) of the Trust;

e) Attorney fees and costs of this action; and

f) For such other and further relief as this Court deems just and proper.

By: 

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Attorneys for Petitioner Julia B. Brooker

March 17, 2017
Columbia, South Carolina

FILED
2017 MAR 17 AM 11:45
AMY W. MacMILLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

EXHIBIT A

Last Will & Testament and Trust of Janet B. Brooker

FILED
2017 MAR 17 AM 11:45
RICHLAND COUNTY, S.C.
2015 MAY 26 AM 11:31

LAST WILL AND TESTAMENT OF JANET B. BROOKER

Introductory Clause. I, **JANET B. BROOKER**, a resident of and domiciled in the County of Richland and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have three living children: **ELLEN B. CORONTZES, JULIA B. BROOKER**, and **BEACHAM O. BROOKER, JR.**

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM II

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

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

(1) Naming an Individual Personal Representative. I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) Naming Individual Successor or Substitute Personal Representative. If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER.**

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust

for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or

against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, **JANET B. BROOKER**, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Janet B Brooker
JANET B. BROOKER

We, W. Steven Johnson and Barbara Hammond, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(Witness)

(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by **JANET B. BROOKER**, the Testatrix, and subscribed and sworn to before me by Barbara Hammond, witness, this the 16th day of October, 2007.

(Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

FILED
2017 MAR
FILE COPY
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

TRUST AGREEMENT

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beacham

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

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

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand ($50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

Personally appeared the undersigned witness and made oath that she saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this

16th day of October, 2007.

Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B Brooker
JANET B. BROOKER

SETTLOR

Janet B Brooker
Beacham O. Brooker Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
Julia B. Brooker, Petitioner,	)	
vs.	)	**ANSWER TO PETITION FOR DECLARATORY RELIEF**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust ("Respondents") hereby answer Petition for Declaratory Relief ("Petition") in this action and deny each and every allegation thereof not hereinafter specifically admitted, qualified, or explained, and further alleges as follows:

FOR A FIRST DEFENSE

1. Respondents admit the allegations of paragraph 1 of the Petition, upon information and belief.

2. Respondents admit the allegations of paragraph 2 of the Petition.

3. Respondents admit the allegations of paragraph 3 of the Petition.

4. Respondents admit the allegations of paragraph 4 of the Petition.

5. The allegations of paragraph 5 of the Petition state a legal conclusion to which no

response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 5 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

6. The allegations of paragraph 6 of the Petition state a legal conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 6 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

7. Respondents admit the allegations of paragraph 7 of the Petition.

8. Respondents admit the allegations of paragraph 8 of the Petition.

9. Responding to paragraph 9 of the Petition, Respondents admit that Petitioner Julia B. Brooker ("Petitioner") is not married and has no children, but Respondents deny the remaining allegations of paragraph 9 of the Petition.

10. Responding to paragraph 10 of the Petition, Respondents admit that their mother Janet B. Brooker ("Settlor") included a section entitled "Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER" in the Trust Agreement ("Trust"), but Respondents deny the remaining allegations of paragraph 10 of the Petition.

11. Respondents admit the allegations of paragraph 11 of the Petition, upon information and belief. Further responding to paragraph 11 of the Petition, the Last Will & Testament and Trust Agreement attached to Petition appears to be incomplete as it is missing page 13 of the Trust Agreement, which presumably is the signature page of the Trust Agreement.

12. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 12 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

13. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 13 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

14. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 14 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

15. Respondents admit the allegations of paragraph 15 of the Petition.

16. Responding to paragraph 16 of the Petition, Respondents admit that Respondent Brooker, as Trustee, interprets the "lifetime gifts" language to be limited to gifts made after the date of the Trust. Responding to the remaining allegations of paragraph 16 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 16 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

17. Respondents deny the allegations of paragraph 17 of the Petition.

18. Responding to paragraph 18 of the Petition, Respondents admit a justiciable controversy exists.

19. Paragraph 19 of the Petition incorporates prior paragraphs. To the extent a response is required, Respondents reincorporate their responses to prior paragraphs.

20. The allegations of paragraph 20 of the Petition are statements of law or legal conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 20 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

21. The allegations of paragraph 21 of the Petition are statements of law or legal

conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 21 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

22. Responding to paragraph 22 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 22 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof. Further responding to paragraph 22 of the Petition, Respondents deny that the calculation of the equalizing distribution includes gifts made prior to the execution of the Trust.

23. Responding to paragraph 23 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 23 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof. Further responding to paragraph 23 of the Petition, Respondents deny that the calculation of the equalizing distribution includes gifts made prior to the execution of the Trust.

24. Respondents deny the allegations of paragraph 24 of the Petition.

25. Respondents deny the allegations of paragraph 25 of the Petition.

26. Responding to paragraph 26 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 26 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

27. Responding to paragraph 27 of the Petition, Respondents deny that Petitioner is entitled to her requested order.

28. Responding to paragraph 28 of the Petition and the Prayer for Relief, Respondents deny that Petitioner is entitled to her requested relief.

FOR A SECOND DEFENSE

29. Respondents plead the applicable statute of limitations.

FOR A THIRD DEFENSE

30. Petitioner's claims are barred or limited by all equitable doctrines available to Respondents, including but not limited to, waiver, estoppel, and laches.

WHEREFORE, having fully answered the Petition, Respondents pray that this matter be dismissed, with costs, and for such other and further relief as is just and proper.

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: _____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
May 17, 2017

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Answer to Petition for Declaratory Relief

Counsel Served: James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Attorneys for Petitioner Julia B. Brooker

Amy E. Lovette

May 17, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-GC-40-0036
Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Petitioner Julia B. Brooker ("Petitioner") by and through undersigned counsel, files her motion for summary judgment and moves the Court for an Order declaring Petitioner is entitled to an Equalizing Share comprised of all Lifetime Gifts made to Respondents' Children and Spouses by or on behalf of Settlor, to include those made before and after October 16, 2017, along with applicable interest. Summary judgment in favor of Petitioner is appropriate because the plain language of the Trust is unambiguous and evidences Settlor's clear intent that the Equalizing Distribution was to account for all gifts made to Respondents' Children and Spouses during the lifetime of the Settlor.

FACTS

The Janet B. Brooker Trust (the "Trust") is an inter vivos trust that was fully funded upon the death of Janet B. Brooker ("Mother" or "Settlor") through her last will and testament dated October 16, 2007 and is part of the estate probation pending before this Court, C.A. No. 2015 –

ES40 – 00662. See Last Will & Testament and Trust Agreement, attached hereto as **Exhibit A**. Following Mother's death on April 16, 2015, Mother's estate entered probate before this Court.

Settlor was the mother of Petitioner, Respondent Beacham O. Brooker, Jr. ("Respondent Brooker"), and Ellen B. Corontzes ("Respondent Corontzes") [collectively the "Beneficiaries"). Following the death of her spouse, Mother gave monetary gifts ("Lifetime Gifts") to the Beneficiaries as well as to the children of Respondent Brooker and Respondent Corontzes and their spouses (collectively the "Respondents' Children and Spouses"). Petitioner Julia is not married and has no children and from the time Mother began making the Lifetime Gifts it was always Mother's intent that Petitioner Julia would be given an amount equal to what was given to Respondents and Respondents' Children and Spouses at Mother's death. Thus, to account for the Lifetime Gifts given to Respondents' Children and Spouses, Mother included an "Equalizing Distribution" in the Trust for Julia's benefit.

Mother executed her last will and testament and the Trust on October 16, 2007. The Trust contains the following language regarding the "Equalizing Distribution,"

> (2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:
>
> (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift

which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

See Ex. A, Article V(2). Despite the explicit language of the Trust explaining that Mother **"has previously made lifetime gifts** and intends to continue such gifting program until the date of the [Mother's] death" and that **"[Mother] intends** that at the [Mother's] death, **an equalizing distribution will be made to the Settlor's said daughter** [Julia] pursuant to the terms of this paragraph **for lifetime gifts made to such daughter's siblings' spouses or siblings' issue**," see id. (emphasis added), Respondent Brooker, as Trustee, interprets the "lifetime gifts" language to be limited to gifts made after the date of the Trust. See Dep. of B. Brooker Jr., Jan. 24, 2018, 27:10-24, excerpts attached hereto as **Exhibit B**.

STANDARD OF REVIEW

Summary judgment must be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); see Citizens & S. Nat'l Bank of South Carolina v. Lanford, 443 S.E.2d 549, 551 (S.C. 1994). The Court must view "the evidence and all reasonable inferences ... in the light most favorable to the non-moving party." Fleming v. Rose, 567 S.E.2d 857, 860 (S.C. 2002) "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Rite v. Hitachi Constr. Mach. Ltd., 609 S.E.2d 565, 568 (S.C. Ct. App. 2005).

The moving party bears the initial burden of showing an absence of a genuine issue of material fact. Regions Bank v. Schmauch, 582 S.E.2d 432, 438 (S.C. Ct. App. 2003). Once this initial hurdle is met, "the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Id. "Rather, the nonmoving party must come forward with specific facts showing

there is a genuine issue for trial." Id.

ARGUMENT

The unambiguous language of the Trust evidences Mother's intent that Petitioner's Equalizing Share was to include **any lifetime gifts** by or on behalf of the Settlor to Respondents' Children and Spouses. The Court's primary consideration when interpreting and construing a trust is to discern the settlor's intent. Holcombe-Burdette v. Bank of America, 640 S.E.2d 480, 484 (S.C. Ct. App. 2006) (citing Epworth Children's Home v. Beasley, 616 S.E.2d 710, 715 (S.C. 2005); Bowles v. Bradley, 461 S.E.2d 811, 813 (S.C. 1995)). The intent of the settlor must be ascertained from the four corners of the instrument. See S.C. Code Ann. § 62-7-112 ("The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property") and Allison v. Wilson, 411 S.E.2d 433, 436 (S.C. 1991) ("In seeking to ascertain the intent of a testator, his intent must be ascertained from the four corners of the will.") "[I]f the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument." Holcombe-Burdette, 640 S.E.2d at 485 (citing Chiles v. Chiles, 242 S.E.2d 426, 429 (S.C. 1978)). "Extrinsic evidence is not admissible to alter the plain language of a trust instrument." Id. (citing Bowles, 461 S.E.2d at 813).

Examination of the plain language found in the four corners of the Trust necessitates a finding that Petitioner is entitled to an Equalizing Share equivalent to the sum of all lifetime gifts to Respondents' Children and Spouses, with five (5%) percent interest applied to the amount of each gift. That Settlor intended for this provision to apply to all lifetime gifts is evidenced by her acknowledgement in the first sentence of the applicable provision that she "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to

the Settlor's children, the Settlor's issue and spouses of the Settlor's children." See Ex. A, Article V(2) (emphasis added).

Contrary to Respondents' position, Petitioner's Equalizing Share is not limited to only those gifts made after execution of the Trust on October 16, 2007.[1] In support of this argument, Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts." See Ex. A, Article V(2)(a); Ex. C, 28:22-29:11. However, the language - "from the date of this trust forward," merely establishes the date on which Respondent Brooker could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts. It cannot be read to negate the Settlor's intent that the Equalizing Share was to account for all lifetime gifts as clearly expressed from the outset of this operative provision.

Moreover, if Mother had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts ***[to be made]***, ***[that will be made]***, ***[that Settlor intends to make pursuant to the gifting program]*** to such daughter's siblings' spouses or siblings' issue." See Ex. A, Article V(2). However, such language does not exist. Instead, the Trust using the past tense of the verb "make," stating that "an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this

[1] On this point, the attorney who prepared the Trust, Steven Johnson, (see Dep. of S. Johnson, Jan. 12, 2018, 10:4-17, excerpts attached as **Exhibit C**) and the Trustee disagree. Mr. Johnson includes certain gifts made prior to the execution of the trust document in the equalizing distribution calculation. See Johnson Lifetime Gifts Spreadsheet, attached hereto as **Exhibit D**. The Trustee, Respondent Brooker, however contends that only gifts made after the date of the execution of the Trust are to be included. See Ex. B, 27:10-33:7.

paragraph for **lifetime gifts made** to such daughter's siblings' spouses or siblings' issue." Id. (emphasis added).

Finally, pursuant to the plain language of the Trust document, it is clear that Petitioner's Equalizing Share should be calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. For example, if Respondents' Spouses and Children all received a gift of $10,000 on January 1, 2017, Petitioner's Equalizing Share would be $63,000 on January 1, 2018 ($60,000 (2 spouses and 4 children) plus 5% interest from the date the gifts were made). Respondents argue that the Trust provision should be construed so as to divide Petitioner's Equalizing Share in half. See Ex. B, 38:19-40:14; Ex. C 32:1-35:24. Thus, in the previous hypothetical, Petitioner's Equalizing Share would be $31,500 under Respondents' unsupported construction of the Trust. However, such interpretation must be rejected because it is contrary to the plain language of the Equalizing Distribution and if Settlor had intended for such result, she could have included language to effectuate the same. See Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945) ("Party cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.").[2]

Because the Settlor's intent is clear from the plain language found within the four corners of the document, extrinsic evidence of Settlor's intent is not admissible. See Holcombe-Burdette, 640 S.E.2d at 485 (citing Bowles v. Bradley, 461 S.E.2d 811, 813 (S.C. 1995)). Accordingly,

[2] Petitioner's expert George DuRant, CPA, has accurately identified the lifetime gifts to be included and correctly calculated the distribution to which Petitioner is entitled, along with interest through May 31, 2018. See DuRant Expert Report, attached hereto as **Exhibit E**.

Petitioner is entitled to summary judgment because there exists no evidence from which Respondent could argue the existence of a material issue of fact.

CONCLUSION

Accordingly, the Court should grant Petitioner's motion and enter judgment in favor of Petitioner declaring the Equalizing Share includes all Lifetime Gifts Mother previously made to the Respondents' Children and Spouses, to include all gifts made prior to the date of the Trust, October 16, 2007, and those gifts made pursuant to the gifting program that Mother continued after the date of the Trust.

Respectfully submitted,

By: _____

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August 3, 2018
Columbia, SC

Exhibit A

Last Will & Testament and Trust Agreement

FILED
2017 MAR 17 AM 11:45
RICHLAND COUNTY, S.C.
2015 MAY -5 AM 11:31
RICHLAND COUNTY, S.C.

LAST WILL AND TESTAMENT
OF
JANET B. BROOKER

Introductory Clause. I, **JANET B. BROOKER**, a resident of and domiciled in the County of Richland and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have three living children: **ELLEN B. CORONTZES, JULIA B. BROOKER**, and **BEACHAM O. BROOKER, JR.**

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

PETITIONER'S EXHIBIT
PENGAD-Bayonne, N. J.
4/19/18

ITEM II

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

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

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER.**

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust

for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or

against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, **JANET B. BROOKER**, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Janet B. Brooker
JANET B. BROOKER

We, W. Steven Johnson and Barbara Hammond, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

W S Johnson
(Witness)

Barbara Hammond
(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by JANET B. BROOKER, the Testatrix, and subscribed and sworn to before me by Barbara Hammond, witness, this the 16th day of October, 2007.

(Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

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TRUST AGREEMENT

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beacham

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

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

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand ($50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

JANET B. BROOKER

SETTLOR

BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

Personally appeared the undersigned witness and made oath that she saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Barbara Hammond

Sworn to before me this

16th day of October, 2007.

Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR

Janet B. Brooker
Beacham O. Brooker Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

Exhibit B

Beacham Brooker's Deposition Excerpts

In the Matter Of:

Julia B. Brooker v.

Beacham O. Brooker, Jr., et al.

Beacham O. Brooker, Jr.

January 24, 2018

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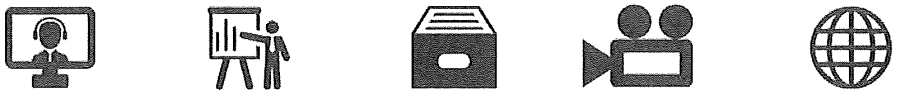

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STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF RICHLAND

IN THE MATTER OF:
THE JANET B. BROOKER TRUST
(C.A. NO. 2015-ES40-00662)

JULIA B. BROOKER,

Petitioner,

vs. C.A. 2017-GC-40-0036

BEACHAM O. BROOKER, JR., IN HIS OFFICIAL CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST; AND ELLEN B. CORONTZES INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST,

Respondents.

DEPOSITION OF: BEACHAM O. BROOKER, JR.

DATE: January 24, 2018

TIME: 2:02 P.M.

LOCATION: Law Offices of Griffin Davis
1116 Blanding Street
Columbia, SC

TAKEN BY: Counsel for the Petitioner

REPORTED BY: Wanda K. Cecil
Certified Court Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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Q. Okay: You indicated earlier it was discussed at the meeting. Is that accurate?

A. Sure.

Q. Do you remember the contents of those discussions?

A. No. Just that we would begin an aggressive gifting to non-blood relatives, spouses and grandchildren, and then would catch Julia up in the unequal amount upon her mother's death.

Q. Okay. What was your understanding as to the date that the equalization provision began?

A. The date of the trust.

Q. Where did you get that understanding?

A. Because there was no equalization provision in any of the estate documents prior to that time.

Q. Did anyone tell you that date?

A. The date of the trust? I have a copy of it.

Q. Right. I'm asking if an individual ever said to you that October 16, 2007 is the date that the equalization provision begins?

A. No. But it's obvious from the face of the document.

Q. All right. Did you attend any other

meetings when the equalization provision was discussed?

A. Not that I know of, no.

Q. I asked because your response to one of your requests for -- to our interrogatories, excuse me, did not list the conversation that you just mentioned. So I just want to make sure that there are no other instances in which you had a conversation about the equalizing provision.

A. I remember a meeting at Steve Johnson's office where we executed all of these latest estate documents, the will and the trust, and that was when he explained everything to us, how it would work.

Q. He explained it the day that you signed it?

A. I think so. Well, I don't know. According to this, it was in September. The execution of the trust was in late October, I believe.

Q. Okay.

(Off-the-record conference.)

BY MS. FOX:

Q. In response to one of my questions regarding the equalization clause, you indicated that your understanding was that it was meant to

facilitate aggressive gift giving to non-blood family members and grand kids?

A. That's correct.

Q. Okay. Was the funding of $240,000 for the 529 education plans part of that?

A. No. No, it's not.

Q. Why?

A. Because the 529 plan was funded prior to the revocable trust being established.

Q. Do you know when it was funded?

A. Early October of 2007, I believe.

Q. So it was funded after the meeting on 9/25?

A. Yes, I believe that's correct.

Q. Okay. And this was the meeting in which you discussed that the goal was aggressive gift giving?

A. Correct.

Q. Also in that meeting, you said that you discussed the will; correct?

A. Correct.

Q. Do you ever remember any mention of a codicil?

A. No, I do not.

Q. Okay. Let me --

A. Let me back up and amend an answer I gave you a minute ago of, no, the 529 funding was not part of this, what I referred to as aggressive gift giving to spouses and children. It's a separate gift tax exemption that we took advantage of. We were doing other things other than the annual exclusionary gifting. The QPRTs with the two homes and that sort of thing. The family limited partnership, which was called BBB&C, that was part of it as well.

Q. So is it your position that tuition payments are not gifts?

A. They are not part of the aggressive gifting that we established in that trust going forward.

Q. And your position is based on what?

A. Well, based on the fact that the Internal Revenue Service Code allows grandparents or anyone, I would presume, to fund education without exceeding the annual exclusion for gift tax.

Q. Okay.

A. In other words, on top of the annual exclusion.

MR. GRIFFIN: Let's take a quick break.

(A recess transpired.)

BY MS. FOX:

Q. Go back on the record. Did you have any conversations with your mother about the $240,000 tuition payment made to the grandchildren?

A. Not specifically as to that dollar figure, but I presume that is some IRS limit, 60,000 per child.

Q. So that's a no?

A. No.

(PET. EXH. 11, Respondents' Answers to Petitioner's First Set of Interrogatories, was marked for identification.)

BY MS. FOX:

Q. And in your -- I'm going to hand you what I'm marking as Petitioner's Exhibit 11.

A. (Reviewing.)

Q. If you'll look at Number 4, your response to Number 4.

A. Yes. (Complying.)

MR. GRIFFIN: That's Exhibit 9?

THE COURT REPORTER: Eleven.

MR. GRIFFIN: Eleven? I'm sorry.

THE WITNESS: I've read it.

BY MS. FOX:

Q. Do you have personal knowledge of the oral statements referred to in this answer between Janet Brooker and Steve Johnson?

A. I do not.

Q. So what information and belief is the this based upon?

A. I do not know.

Q. But your mother never had a discussion with you about whether the $240,000 was intended to be a gift?

A. Well, it didn't -- if you're talking about gifts as defined by the Internal Revenue Service Code, then you have a $13,000 -- and it has changed over the years. I believe at some time it was a $10,000 annual exclusion that doesn't trigger a gift tax. A contribution to a 529 plan is a separate section of the IRS Code, which, yes, it is a gift; but it is not a gift in the terms of pay outs under the $13,000 annual gift tax exclusion.

Q. Okay. My question has nothing to do with tax consequences.

A. Right.

Q. Regardless of what the IRS Code says, did your mother ever have a conversation with you wherein she said the $240,000 that was put into the

529 accounts for the grandchildren was not part of the aggressive gift giving that you referred to when you answered my question earlier?

A. Did she ever say that that was not part of the aggressive gift giving?

Q. Yes.

A. No.

Q. Okay. All right. Did I give you 12 yet? I don't think I did.

(PET. EXH. 12, Todd & Johnson Invoice to Janet B. Brooker, Dated October 29, 2007, was marked for identification.)

BY MS. FOX:

Q. I've marked this as Exhibit 12.

A. (Reviewing.)

Q. I'm going to hand you --

MR. GRIFFIN: And I'll leave you alone.

MS. FOX: You promise?

MR. GRIFFIN: Yes, I promise.

(PET. EXH. 13, First Codicil to Last Will and Testament of Janet Bloom Brooker, was marked for identification.)

BY MS. FOX:

Q. I'm going to hand you 13 as well. Look at that in conjunction.

codicil or about the trust?

A. Did he mention anything?

Q. Anything to her about the codicil.

A. No.

Q. Did he explain anything to her about the equalization provision in the trust?

A. I do not know. Do not recall.

Q. Okay. So you know he definitely didn't talk about the codicil, but you don't recall whether he talked about the trust? Is that your answer?

A. Obviously, he would have talked about it because he was having her sign it.

Q. I'm referring to a substantive conversation explaining to her how it would operate.

A. I do not recall that.

Q. Okay. Let's see. If you will turn to Page 3 for me.

A. (Complying.)

Q. Are you familiar with the language of Paragraph 2?

A. I am.

Q. Okay. And let me ask you. If under this language, if for example, you and your family, including your wife and grand kids, received $10,000 and Ellen's family, including her spouse and grand

kids received $10,000, how much would Julia be entitled to?

A. $10,000 plus five percent from the date of.

Q. Okay. And where do you get $10,000 from?

A. I thought your $10,000 was a hypothetical.

Q. It is, but the language in (a) says the sum of (a), which reads as the amount of lifetime gifts made to the issue of Ellen and of Beacham. So under that language, it would be 10 plus 10 equals 20?

A. It would be unless you read Paragraph 2 and then it's -- the intent is to equalize the amount given to each of myself and Ellen's spouses and children, an equal -- equal amount to Julia.

Q. So you're dividing (a) by two based on which specific language in Paragraph 2?

A. Settlor intends that at settlor's death an equalizing distribution will be made to settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue, which equalizing distribution will be determined as

follows.

Q. And it's your position that supports dividing it by two?

A. Yes. Otherwise it wouldn't be equal.

Q. Okay. Well, how about if Ellen gets 20, her family gets 20 and you get 10, then how much does Julia get?

A. I don't know. I would think 10.

Q. Why?

A. So Julia would get an equal amount given to the other two children and the spouses.

Q. If one gets 20 and the other gets 10, Julia gets 10?

A. I don't know.

Q. Following your mother's death, was there ever a disagreement between you and Steve Johnson regarding the date the equalization provision began?

A. No. We both were in agreement that it was the date of the revocable trust.

Q. Okay. So why would Steve Johnson's office request the total amount of lifetime gifts to the spouses and grandchildren since 1997?

A. Probably because of a demand by Julie's previous counsel, Mr. Siddons.

(PET. EXH. 15, E-main Chain from Beacham

Exhibit C

Steven Johnson's Deposition Excerpts

In the Matter Of:

Julia B. Brooker vs.

Beacham O. Brooker, Jr.

W. Steven Johnson

January 12, 2018

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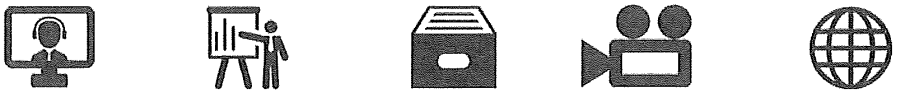

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STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF RICHLAND

IN THE MATTER OF:
THE JANET B. BROOKER TRUST
(C.A. NO. 2015-ES40-00662)

JULIA B. BROOKER,

Petitioner,

vs. C.A. 2017-GC-40-0036

BEACHAM O. BROOKER, JR., IN HIS OFFICIAL CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST; AND ELLEN B. CORONTZES INDIVIDUALLY AS BENEFICIARY OF THE JANET B. BROOKER TRUST,

Respondents.

DEPOSITION OF: W. STEVEN JOHNSON

DATE: January 12, 2018

TIME: 10:55 A.M.

LOCATION: Law Offices of Griffin Davis
1116 Blanding Street
Columbia, SC

TAKEN BY: Counsel for the Petitioner

REPORTED BY: Wanda K. Cecil
Certified Court Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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A W R A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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Janet B. Brooker and Trust Agreement, was marked for identification.)

BY MR. GRIFFIN:

Q. Mr. Johnson, I'll show you what I've marked as Petitioner's Exhibit 3, which is really two documents. One is the Last Will and Testament and then attached to that is the Janet B. Brooker Trust. Do you recognize these documents?

A. I do.

Q. Okay. Did you prepare these documents?

A. I did.

Q. And on Page 3 of the trust document, which is under Article V, Section 2, there's a provision entitled equalization distribution to settlor's daughter, Julia B. Brooker. Did you prepare that paragraph?

A. I did.

Q. Okay. The software that you mentioned that produces wills and trusts after you insert the data, does it contain a template for equalization distribution?

A. No.

Q. So Paragraph 2 here on Page 3, was it generated as a result of any template that you have?

A. No.

Q. Do you recall any questions that she had of you about the equalization provision?

A. I don't.

Q. When you spoke with her, did you use the phrase lifetime gifts?

A. I don't know.

Q. Do you know whether you explained to her that there could be a difference in lifetime gifts? I mean, gifts given prior to the date of the execution of the trust versus gifts given after the entry of the trust?

A. The whole conversation with Janet was about prospective gifts, not retrospective gifts.

Q. Okay.

A. It was going forward, not looking back.

Q. Is there language in the trust agreement that references past gifts?

A. No.

Q. Okay. If you'll look at Page 3 of the trust.

A. (Complying.)

Q. And under Paragraph 2, says the settlor has previously made lifetime gifts and continues -- and intends to continue such gifting program until the date of settlor's death. When there's reference

here to previously made lifetime gifts, isn't that referencing gifts that had been made before the execution of this trust?

A. Yes, but that was -- that was qualified by Paragraph (a), which says from the date of this trust forward. You have to read the four corners of Paragraph 2 and it says from the date of the trust forward looking at the lifetime gifts.

Q. The trustee shall determine the date and amount of any lifetime gifts?

A. From the date of the trust.

Q. Okay. And we can quarrel -- and I don't want to quarrel with you, Mr. Johnson; but is there room to read this to say that, from the date of the trust forward, the trustee will make that determination as to what the lifetime gifts are and have been?

A. No.

MS. DuRANT: Object to the form.

BY MR. GRIFFIN:

Q. Okay. So let's go from this, from the date of this trust forward, the trustee shall determine the amount and any lifetime gifts made by the settlor to the issue of Ellen Corontzes. The issue of Ellen Corontzes would be her children?

Q. Okay. So under Paragraph (a) for example, just follow me on a hypothetical. If in 2010, Ms. Janet Brooker gave cumulatively between the four grandchildren and the two spouses, cumulative for those six individuals, round number $100,000 in 2010.

A. Each one got --

Q. No. Cumulative they all got $100,000, you know, gross between all six of them. So would the total gifts for that year under my hypothetical be $100,000?

A. Correct.

Q. And then compounding interest at five percent a year would be 5,000?

A. Not compounding.

Q. I'm sorry. Non-compound. So straight interest would be 5,000 a year?

A. Right.

Q. And it says until the distribution is satisfied, but let's just make it simple and say five years under my hypothetical. That'd be five years of interest at $25,000?

A. That's correct if the math is correct.

Q. Yes. Right.

A. Okay.

Q. And that's a leap of faith. I appreciate that. So then the total under -- if my math is correct, would be $125,000 under this hypothetical; correct? And that would be -- if there's nothing else that happened, then that would be Ms. Julia Brooker's equalized distribution?

A. You have to divided that by two to keep her equal with -- I mean, if Ellen got half of that money -- Ellen's family got half of that money and Beach's family got half of that money, of that $125,000, then to keep Julie equal with them, she would get half that figure.

Q. Is that what Subparagraph (b) says?

A. That's what it says to me.

Q. I'm sorry. What does Subparagraph (c) say?

A. The sum of (a) and (b) shall be distributed to the settlor's daughter.

Q. Under my --

A. So the equalizing distribution. Equalizing distribution, plus the five percent would be given to Julie.

Q. Well, under my hypothetical --

A. It wouldn't be -- it wouldn't be equalizing if she got the whole 125,000. She would

be that much ahead of the other two because they had to divide it by two in your example.

Q. Well, let me read the language here. It says the sum of (a) and (b) above shall be distributed to the settlor's daughter. So if we apply the sum of (a) and (b) in my hypothetical, would you agree you'd get $125,000 to Julia?

A. No. She'd get half that figure.

Q. All right. So the sum of (a) in my hypothetical is $100,000 to all six.

A. But the intent is to keep her equal with the others.

Q. Okay.

A. Not for her to get ahead, but to keep her equal.

Q. Well, are you aware that the gift tax returns show that Ms. Janet Brooker gifted over $400,000 to Beach and Ellen's children up until October 2007?

A. I'm not sure about your math, but I reviewed the gift tax returns and I know significant gifts were made to the spouses and to the grandchildren.

Q. Right. Well, can you point to any language in (a), (b) or (c) that says you divide (a)

in half before you distribute it under (c)?

A. Jim, if you -- if you read the four corners of Paragraph 2, it intends to keep Julie equal with what Beach got and what Ellen got, but not to get her ahead. It says an equal. Equal means equal to me.

Q. And under your analysis, Julia gets ahead if you only consider the gifts given after October 2008 -- 2007, I'm sorry?

A. Under the example you gave me, if you don't divide it by two, Julie would get ahead, because she would get 100,000. Okay? Or 125,000. And then Ellen and Beach would have to split 125,000. So under your scenario, she would get ahead.

Q. Well, let me throw up one more hypothetical in there. What if in Year 2005, Ms. Brooker gave those same six individuals cumulative $200,000?

A. Well, the equalization only took place from 2007 forward.

Q. Right. And that's to my point. Under your analysis, Julia only gets ahead if you ignore what happens before 2007; correct?

MS. DuRANT: Object to the form.

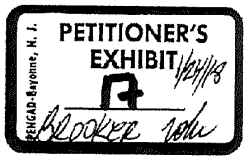
Exhibit D

Johnson Lifetime Gifts Spreadsheet

Janet B. Brooker Estate

Gifts made from 2007 through 2015

		Gifts	Interest	Total
09/26/07	Tuition for grandchildren	85,850.00		
Interest	Interest from 9/26/07 to 4/16/15		32,446.60	118,296.60
09/26/07	$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33,070.68
10/01/07	$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
	Total Gifts and Interest	**937,850.00**	**231,502.75**	**1,169,352.75**
	One half given is Ellen's family		**584,676.37**	
	One half given is Beach's family		**584,676.37**	1,169,352.74
	Amount due to Julia to equalize		**584,676.38**	



Janet B. Brooker Estate

Gifts made from 2007 through 2015

	Gifts	Interest	Total

Exhibit E

DuRant Expert Report

GEORGE DURANT, LLC

GEORGE W. DURANT, CPA/ABV, ASA, CFF

May 31, 2018

James M. Griffin, Esquire
Margaret N. Fox, Esquire
Griffin Davis
1116 Blanding Street
Columbia, South Carolina

Re: In the Matter of: The Janet B. Brooker Trust; Julia Brooker v. Beacham O. Brooker, Jr. et al.
Case No.: 2017-GC-40-0036

Dear Mr. Griffin and Ms. Fox:

The following is a summary of lifetime gifts made by Janet B. Brooker to the spouse and issue of Ellen B. Corontzes and to the spouse and issue of Beacham O. Brooker, Jr. Interest was calculated at the annual rate of 5% from the date of each gift through May 31, 2018. Appendix 1 hereto is a detailed listing of lifetime gifts and interest calculations. Appendix 2 hereto is a detailed listing of payments made to Hammond School on behalf of Mrs. Brooker's four grandchildren (the total of payments to Hammond School and interest thereon was divided by four and included as a lifetime gift to each grandchild in the detailed listing in Appendix 1).

	Lifetime Gifts	Interest	Total
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	139,926.23	59,207.01	199,133.24
Arthur B. Corontzes	384,926.33	251,954.57	636,880.90
Beacham O. Corontzes	374,208.58	238,304.49	612,513.07
Totals - spouse & issue of Ellen B. Corontzes	899,061.15	549,466.07	1,448,527.21
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	158,400.00	60,089.12	218,489.12
Elizabeth K. Brooker	371,219.33	245,338.77	616,558.11
Grace H. Brooker	373,688.58	238,056.88	611,745.46
Totals - spouse & issue of Beacham O. Brooker, Jr.	903,307.92	543,484.78	1,446,792.70
TOTALS	1,802,369.06	1,092,950.85	2,895,319.91

Article V, Section 2 of the Janet B. Brooker Trust Agreement dated October 16, 2007 requires an equalizing distribution to Julia B. Brooker equal to the sum of lifetime gifts to the spouses and issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., plus interest. In my opinion, the required equalizing distribution is $2,895,319.91 as of May 31, 2018 (daily interest thereafter is $246.90).

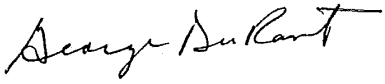
The following information was considered in forming my opinion:

P.O. Box 2746
COLUMBIA, SOUTH CAROLINA 29202
(803) 212-8974
GEORGE@GDURANT.COM

- Salomon Smith Barney account number 607-61224-12 for the period September 1999 through September 2010. This account was closed during September 2010 by transfer of remaining assets to Stephens account number 137607881. This was Janet Brooker's IRA account. No distributions were made to a subject beneficiary from this account during the period reviewed.
- Salomon Smith Barney account number 607-81026-10 for the period December 1998 through November 2010. Substantially all of the assets in this account were transferred during August 2010 to Stephens account number 137616296. This was a personal investment account of Janet Brooker from which she wrote checks and made transfers to and for the benefit of the subject beneficiaries.
- Salomon Smith Barney account number 607-10172-11 for the period December 1998 through September 2007 when substantially all assets were transferred to Salomon Smith Barney account number 607-81026-01.
- Salomon Smith Barney account number 607-81027-19 for the period December 1998 through June 2002 when substantially all of the assets were transferred to other Salomon Smith Barney accounts including those of the subject beneficiaries. This account was designated as Janet Brooker's "Special Account."
- Stephens account number 137616296 for the period August 6, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-81026-10) through June 2015. Substantially all of the assets held in this account were transferred to Stephens account number 322500645 during May 2015 subsequent to Janet Brooker's death.
- Stephens account number 322500645 for the(when opened with the transfer of period beginning May 29, 2015 through January 2018. This account is owned by the Janet B. Brooker Irrevocable Trust under Trust dated October 16, 2007.
- Stephens account number 137607881 for the period beginning September 16, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-61224-12) through August 11, 2015 (when the account was closed by transfers to IRA accounts for Beacham, Julia and Ellen).
- Stephens account number 208048369 for the period beginning May 21, 2015 through January 2018. This is the Estate of Janet B. Brooker account.
- First Community Bank account number __0729 for the period April 2000 through January 31, 2018 when the account was closed. This was Mrs. Brooker's savings account.
- First Community Bank account number __1536 for the period May 12, 2015 through January 31, 2018. This is the Estate of Janet Brooker account.
- First Community Bank account number __1063 for the period December 23, 2002 through May 22, 2015 when the account was closed. This account was a personal account primarily used by Mrs. Brooker to pay living expenses.
- First Community Bank account number __8788 for the period January 31, 2008 through May 22, 2015 when the account was closed. This was Mrs. Brooker's money market account; transfers out were only made to First Community account number __1063.

- Documents produced by William Sellars – SELLARS1-1492.
- Documents produced by W. Steven Johnson – T&J0001-4946.
- Deposition transcripts of Julia B. Brooker on September 1, 2017; Ellen B. Corontzes on January 24, 2018; Beacham O. Brooker, Jr., on January 24, 2018; W. Steven Johnson on January 12, 2018; and William Sellars on January 11, 2-18.
- Copy of the Petition in this matter.

Sincerely,



George W. DuRant

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #		Account	File	Ref
	6/1/92	191 sh. Martin Marietta	Arthur B. Corontzes	9,979.75	9,495	12,980.51	SELLARS	10	03W-101125		
	1/8/93	146 sh. Martin Marietta	Arthur B. Corontzes	9,891.00	9,274	12,565.63	SELLARS	104			
	1/10/94	230 sh. Martin Marietta	Arthur B. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127			
	1/10/95	217 sh. Martin Marietta	Arthur B. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164			
	1/11/96	130 sh. Lockheed Martin	Arthur B. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174			
	1/16/97	96 sh. Lockheed	Arthur B. Corontzes	8,436.48	7,805	9,020.10	SELLARS	194			
	1/16/97	100 sh. First Community	Arthur B. Corontzes	1,100.00	7,805	1,176.10	SELLARS	194			
	1/15/98	98 sh. Lockheed Martin	Arthur B. Corontzes	9,793.88	7,441	9,983.05	SELLARS	354			
	1/4/99	215 sh Amsouth	Arthur B. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400			
	1/18/00	607-81040-01	Arthur B. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012	SB607-81027-19	Sellars	436
	1/11/01	607-81040-01	Arthur B. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS	469
1031	4/25/01	Arthur B. Corortzes	Arthur B. Corontzes	110.00	6,245	94.10	MORGAN ST	1511	SB607-81026-10		
	4/17/02	607-81040-01	Arthur B. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS	518
1233	4/17/04	Arthur B. Corontzes	Arthur B. Corontzes	114.00	5,157	80.53	MORGAN ST	4448	SB607-10172-11		
472	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	50.00	4,905	33.60	First Com Ban	323	1063		
473	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	100.00	4,905	67.19	First Com Ban	323	1063		
1295	12/24/05	Arthur B. Corortzes	Arthur B. Corontzes	100.00	4,541	62.21	MORGAN ST	2577	SB607-81026-10		
1234	4/15/06	Arthur B. Corontzes	Arthur B. Corontzes	115.00	4,429	69.77	MORGAN ST	4520	SB607-10172-11		
1337	4/17/06	Arthur B. Corortzes	Arthur B. Corontzes	116.00	4,427	70.35	MORGAN ST	2646	SB607-81026-10		
1162	12/26/06	Arthur B. Corontzes	Arthur B. Corontzes	350.00	4,174	200.12	First Com Ban	402	1063		
1182	4/26/07	Arthur B. Corontzes	Arthur B. Corontzes	117.00	4,053	64.96	First Com Ban	390	1063		
	10/1/07	Future Scholar	Arthur B. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3070	SB607-81026-10	SELLARS	567
1633	2/28/08	Arthur B. Corortzes	Arthur B. Corontzes	190.00	3,745	97.47	MORGAN ST	3249	SB607-81026-10		
226	5/1/08	Arthur B. Corontzes	Arthur B. Corontzes	118.00	3,682	59.52	First Com Ban	429	1063		
	12/31/08	Cash	Arthur B. Corontzes	12,000.00	3,438	5,651.51	SELLARS	668			
	1/8/09	607-81040-01	Arthur B. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10		
114	4/9/09	Arthur B. Corontzes	Arthur B. Corontzes	119.00	3,339	54.43	First Com Ban	475	1063		
211	12/24/09	Arthur B. Corontzes	Arthur B. Corontzes	200.00	3,080	84.38	First Com Ban	559	1063		
	1/6/10	607-81040-01	Arthur B. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10		
	1/6/10	607-81040-01	Arthur B. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10		
302	4/12/10	Arthur B. Corontzes	Arthur B. Corontzes	120.00	2,971	48.84	First Com Ban	545	1063		
	1/5/11	Gift to A/C 114517817 A B Corontzes T	Arthur B. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
343	5/9/11	Arhtur Corontzes	Arthur B. Corontzes	121.00	2,579	42.75	GWD	174	1063		
	1/5/12	125 sh JP Morgan Chase & Co. Arthur I	Arthur B. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296		
	1/5/12	200 sh Intel Arthur B. Corontzes	Arthur B. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296		
	1/5/12	65 sh Progress Energy Inc. Arthur B. Co	Arthur B. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296		
	1/2/13	Arthur Corontzes	Arthur B. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	2/8/13	Arthur Corontzes	Arthur B. Corontzes	1,000.00	1,938	265.48	STEPHENS	652	137616296		
	1/3/14	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	863	137616296		
	1/2/15	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		
		AVG HAMMOND / GRANDCHILD	Arthur B. Corontzes	109,361.37		68,361.44					
			Arthur B. Corontzes Total	384,926.33		251,954.57					
	8/10/93	125 sh. Martin Marietta	Beacham O. Corontzes	10,000.00	9,060	12,410.96	SELLARS	105			
	1/10/94	230 sh. Martin Marietta	Beacham O. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127			
	1/10/95	217 sh. Martin Marietta	Beacham O. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164			
	1/11/96	130 sh. Lockheed Martin	Beacham O. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174			

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #		Account	File	Ref
	1/16/97	96 sh. Lockheed	Beacham O. Corontzes	8,436.48	7,805	9,020.10	SELLARS	193			
	1/16/97	100 sh. First Community	Beacham O. Corontzes	1,100.00	7,805	1,176.10	SELLARS	193			
	1/15/98	98 sh. Lockheed Martin	Beacham O. Corontzes	9,793.88	7,441	9,983.05	SELLARS	353			
	1/4/99	215 sh Amsouth	Beacham O. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400			
	1/18/00	607-81033-01	Beacham O. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012	SB607-81027-19	SELLARS	436
	1/11/01	607-81033-01	Beacham O. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS	469
1080	7/5/01	Beacham Owens Corontzes	Beacham O. Corontzes	100.00	6,174	84.58	MORGAN ST	1595	SB607-81026-10		
	4/17/02	607-81033-01	Beacham O. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS	518
1080	7/6/03	Beach I Corontzer	Beacham O. Corontzes	100.00	5,443	74.56	MORGAN ST	1978	SB607-81026-10		
1081	7/6/06	Beacham O Corontzes	Beacham O. Corontzes	113.00	4,347	67.29	First Com Ban	344	1063		
1211	7/25/07	Beacham O Corontzes	Beacham O. Corontzes	114.00	3,963	61.89	First Com Ban	381	1063		
	10/1/07	Future Scholar	Beacham O. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3069	SB607-81026-10	SELLARS	566
1658	7/13/08	Beacham Coroutzes	Beacham O. Corontzes	115.00	3,609	56.85	MORGAN ST	3418	SB607-81026-10		
	12/31/08	Cash	Beacham O. Corontzes	12,000.00	3,438	5,651.51	SELLARS	667			
1690	1/6/09	Beacham O. Corontzes	Beacham O. Corontzes	100.00	3,432	47.01	MORGAN ST	3614	SB607-81026-10		
	1/8/09	607-81033-01	Beacham O. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10		
147	7/2/09	Beacham O Corontzes	Beacham O. Corontzes	116.00	3,255	51.72	First Com Ban	464	1063		
212	12/24/09	Beacham O Corontzes	Beacham O. Corontzes	200.00	3,080	84.38	First Com Ban	559	1063		
	1/6/10	607-81033-01	Beacham O. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10		
	1/6/10	607-81033-01	Beacham O. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10		
310	7/5/10	Beacham O Corontzes	Beacham O. Corontzes	117.00	2,887	46.27	First Com Ban	533	1063		
	1/5/11	Gift to A/C 138770708 B O Corontzes T	Beacham O. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
349	7/5/11	Beach Corontzes	Beacham O. Corontzes	118.00	2,522	40.77	GWD	176	1063		
	1/5/12	125 sh JP Morgan Chase & Co. Beachar	Beacham O. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296		
	1/5/12	200 sh Intel Beacham Corontzes TT	Beacham O. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296		
	1/5/12	65 sh Progress Energy Inc. Beacham Co	Beacham O. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296		
	1/2/13	Beach Corontzes	Beacham O. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	2/8/13	Beach Corontzes	Beacham O. Corontzes	1,000.00	1,938	265.48	STEPHENS	651	137616296		
	1/3/14	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	862	137616296		
	1/2/15	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		
		AVG HAMMOND / GRANDCHILD	Beacham O. Corontzes	109,361.37		68,361.44					
			Beacham O. Corontzes Total	374,208.58		238,304.49					
1094	10/8/01	Elizabeth K. Brooker	Beth Brooker	3,400.00	6,079	2,831.32	MORGAN ST	1595	SB607-81026-10		
	9/26/07	Beth Brooker	Beth Brooker	12,000.00	3,900	6,410.96	MORGAN ST	3011	SB607-81026-10	SELLARS	563
	1/9/08	Beth Brooker	Beth Brooker	12,000.00	3,795	6,238.36	MORGAN ST	3190	SB607-81026-10		
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	664			
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	667			
	1/8/09	Beth Brooker	Beth Brooker	13,000.00	3,430	6,108.22	MORGAN ST	3585	SB607-81026-10		
	1/6/10	Beth Brooker	Beth Brooker	13,000.00	3,067	5,461.78	MORGAN ST	3885	SB607-81026-10		
	1/5/11	Gift to A/C 207459752 E K Brooker Tr	Beth Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
	1/5/12	Elizabeth K. Brooker	Beth Brooker	13,000.00	2,338	4,163.56	STEPHENS	379	137616296		
	1/2/13	Beth Brooker	Beth Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	1/10/13	Beth Brooker	Beth Brooker	13,000.00	1,967	3,502.88	STEPHENS	625	137616296		
	2/12/13	Beth Brooker	Beth Brooker	1,000.00	1,934	264.93	STEPHENS	652	137616296		
	1/3/14	Beth Brooker	Beth Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296		
	1/2/15	Beth Brooker	Beth Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		

Appendix 0198
ROA 197

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #		Account	File	Ref
			Beth Brooker Total	158,400.00		60,089.12					
	12/31/95	Debt forgiveness on 6/28/95 note	Dino Corontzes	9,883.00	8,187	11,083.85	SELLARS	163			
	9/26/07	607-81034-01	Dino Corontzes	12,000.00	3,900	6,410.96	MORGAN ST	3011	SB607-81026-10	SELLARS	564
	1/9/08	607-81034-01	Dino Corontzes	12,000.00	3,795	6,238.36	MORGAN ST	3190	SB607-81026-10		
	12/31/08	Cash	Dino Corontzes	12,000.00	3,438	5,651.51	SELLARS	664			
	1/8/09	Dino Corontzes	Dino Corontzes	13,000.00	3,430	6,108.22	MORGAN ST	3585	SB607-81026-10		
158	7/18/09	Dino Corontzes	Dino Corontzes	43.23	3,239	19.18	First Com Ban	465	1063		
	1/6/10	607-81034-01	Dino Corontzes	13,000.00	3,067	5,461.78	MORGAN ST	3885	SB607-81026-10		
	1/5/11	Gift to A/C 160600418 Dino Corontzes	Dino Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
	1/5/12	Gift to Dino A. Corontzes	Dino Corontzes	13,000.00	2,338	4,163.56	STEPHENS	379	137616296		
	1/2/13	Dino Corontzes	Dino Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	2/8/13	Dino Corontzes	Dino Corontzes	1,000.00	1,938	265.48	STEPHENS	652	137616296		
	1/3/14	Dino Corontzes	Dino Corontzes	14,000.00	1,609	3,085.75	STEPHENS	862	137616296		
	1/2/15	Dino Corontzes	Dino Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		
			Dino Corontzes Total	139,926.23		59,207.01					
	6/1/92	191 sh. Martin Marietta	Elizabeth K. Brooker	9,979.75	9,495	12,980.51	SELLARS	10	03W-101125		
	1/8/93	146 sh. Martin Marietta	Elizabeth K. Brooker	9,891.00	9,274	12,565.63	SELLARS	104			
	1/10/94	230 sh. Martin Marietta	Elizabeth K. Brooker	9,975.00	8,907	12,170.87	SELLARS	127			
	1/10/95	217 sh. Martin Marietta	Elizabeth K. Brooker	9,982.00	8,542	11,680.31	SELLARS	164			
	1/11/96	130 sh. Lockheed Martin	Elizabeth K. Brooker	9,880.00	8,176	11,065.60	SELLARS	174			
	1/16/97	96 sh. Lockheed	Elizabeth K. Brooker	8,436.48	7,805	9,020.10	SELLARS	193			
	1/16/97	100 sh. First Community	Elizabeth K. Brooker	1,100.00	7,805	1,176.10	SELLARS	193			
	1/15/98	98 sh. Lockheed Martin	Elizabeth K. Brooker	9,793.88	7,441	9,983.05	SELLARS	353			
	1/4/99	215 sh Amsouth	Elizabeth K. Brooker	9,675.00	7,087	9,392.70	SELLARS	400			
	1/18/00	607-81025-01	Elizabeth K. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011	SB607-81027-19	SELLARS	436
	1/11/01	607-81025-01	Elizabeth K. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS	469
	4/17/02	607-81025-01	Elizabeth K. Brooker	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS	518
108	6/27/06	Elizabeth Brooker	Elizabeth K. Brooker	115.00	4,356	68.62	First Com Ban	344	1063		
	10/1/07	Future Scholar	Elizabeth K. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3069	SB607-81026-10	SELLARS	567
	1/8/09	607-81025-01	Elizabeth K. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10		
144	6/23/09	Elizabeth Brooker	Elizabeth K. Brooker	118.00	3,264	52.76	First Com Ban	464	1063		
175	7/5/09	Elizabeth Brooker	Elizabeth K. Brooker	100.00	3,252	44.55	First Com Ban	378	1063		
	1/6/10	607-81025-01	Elizabeth K. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10		
	1/6/10	607-81025-01	Elizabeth K. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10		
	1/5/11	Elizabeth K. Brooker	Elizabeth K. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
	1/5/12	125 sh JP Morgan Chase & Co. Elizabet	Elizabeth K. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382	137616296		
	1/5/12	200 sh Intel Elizabeth K. Brooker TR	Elizabeth K. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382	137616296		
	1/5/12	65 sh Progress Energy Inc. Elizabeth K.	Elizabeth K. Brooker	3,531.45	2,338	1,131.03	STEPHENS	381	137616296		
	1/2/13	Elizabeth Brooker	Elizabeth K. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	2/8/13	Elizabeth Brooker	Elizabeth K. Brooker	1,000.00	1,938	265.48	STEPHENS	651	137616296		
	1/3/14	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296		
	1/2/15	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		
		AVG HAMMOND / GRANDCHILD	Elizabeth K. Brooker	109,361.37		68,361.44					
			Elizabeth K. Brooker Total	371,219.33		245,338.77					
	8/10/93	125 sh. Martin Marietta	Grace H. Brooker	10,000.00	9,060	12,410.96	SELLARS	105			
	1/10/94	230 sh. Martin Marietta	Grace H. Brooker	9,975.00	8,907	12,170.87	SELLARS	127			

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #		Account	File	Ref
	1/10/95	217 sh. Martin Marietta	Grace H. Brooker	9,982.00	8,542	11,680.31	SELLARS	164			
	1/11/96	130 sh. Lockheed Martin	Grace H. Brooker	9,880.00	8,176	11,065.60	SELLARS	174			
	1/16/97	96 sh. Lockheed	Grace H. Brooker	8,436.48	7,805	9,020.10	SELLARS	193			
	1/16/97	100 sh. First Community	Grace H. Brooker	1,100.00	7,805	1,176.10	SELLARS	193			
	1/15/98	98 sh. Lockheed Martin	Grace H. Brooker	9,793.88	7,441	9,983.05	SELLARS	353			
	1/4/99	215 sh Amsouth	Grace H. Brooker	9,675.00	7,087	9,392.70	SELLARS	400			
	1/18/00	607-81032-01	Grace H. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011	SB607-81027-19	SELLARS	436
	1/11/01	607-81023-01	Grace H. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS	469
	4/17/02	607-81032-01	Grace H. Brooker	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS	518
1219	7/25/03	Grace H. Brooker	Grace H. Brooker	100.00	5,424	74.30	MORGAN ST	4702	SB607-10172-11		
1288	7/25/05	Grace H. Brooker	Grace H. Brooker	112.00	4,693	72.00	MORGAN ST	2478	SB607-81026-10		
1086	7/26/06	Grace Brooker	Grace H. Brooker	113.00	4,327	66.98	First Com Ban	340	1063		
	10/1/07	Future Scholar	Grace H. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3070	SB607-81026-10	SELLARS	566
1659	7/13/08	Gradi Brooker	Grace H. Brooker	115.00	3,609	56.85	MORGAN ST	3362	SB607-81026-10		
	12/31/08	Cash	Grace H. Brooker	12,000.00	3,438	5,651.51	SELLARS	666			
	1/8/09	607-81032-01	Grace H. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10		
162	7/24/09	Grace Brooker	Grace H. Brooker	116.00	3,233	51.37	First Com Ban	461	1063		
	1/6/10	607-81032-01	Grace H. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10		
	1/6/10	607-81032-01	Grace H. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10		
313	7/9/10	Grace Brooker	Grace H. Brooker	117.00	2,883	46.21	First Com Ban	533	1063		
	1/5/11	Gift to A/C 253004244 G H Brooker TR	Grace H. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296		
	1/5/12	125 sh JP Morgan Chase & Co. Grace H	Grace H. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382	137616296		
	1/5/12	200 sh Intel Grace H. Brooker TR	Grace H. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382	137616296		
	1/5/12	65 sh Progress Energy Inc. Grace H. Br	Grace H. Brooker	3,531.45	2,338	1,131.03	STEPHENS	381	137616296		
	1/2/13	Grace Brooker	Grace H. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296		
	2/8/13	Grace Brooker	Grace H. Brooker	1,000.00	1,938	265.48	STEPHENS	651	137616296		
	1/3/14	Grace Brooker	Grace H. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296		
	1/2/15	Grace Brooker	Grace H. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296		
		AVG HAMMOND / GRANDCHILD	Grace H. Brooker	109,361.37		68,361.44					
			Grace H. Brooker Total	373,688.58		238,056.88					
			Grand Total	1,802,369.06		1,092,950.85					

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #		Account	File	Ref
1153	3/4/00	Hammond School	Average (4)	1,000.00	6,662	912.60	MORGAN ST	4147	SB607-10172-11		
1154	6/5/00	Hammond School	Average (4)	25,800.00	6,569	23,216.47	MORGAN ST	4171	SB607-10172-11	SELLARS	456
1034	5/30/01	Hammond School	Average (4)	28,900.00	6,210	24,584.79	MORGAN ST	1512	SB607-81026-10	SELLARS	503-506
1119	1/28/02	Hammond School	Average (4)	100.00	5,967	81.74	MORGAN ST	1679	SB607-81026-10		
1124	3/2/02	Hammond School	Average (4)	2,000.00	5,934	1,625.75	MORGAN ST	1679	SB607-81026-10		
1145	5/24/02	Hammond School	Average (4)	31,500.00	5,851	25,247.47	MORGAN ST	1715	SB607-81026-10		
1169	8/26/02	Hammond School	Average (4)	17.00	5,757	13.41	MORGAN ST	1806	SB607-81026-10		
1207	2/12/03	Hammond School	Average (4)	2,000.00	5,587	1,530.68	MORGAN ST	1887	SB607-81026-10		
1061	6/23/03	Hammond School	Average (4)	33,440.00	5,456	24,992.96	MORGAN ST	1941	SB607-81026-10		
1231	2/9/04	Hammond School	Average (4)	2,000.00	5,225	1,431.51	MORGAN ST	2105	SB607-81026-10		
1238	3/17/04	Hammond Parent Assoc	Average (4)	200.00	5,188	142.14	MORGAN ST	2148	SB607-81026-10		
1245	5/26/04	Hammond School	Average (4)	37,205.00	5,118	26,084.27	MORGAN ST	2169	SB607-81026-10		
1313	2/17/05	Hammond School	Average (4)	2,000.00	4,851	1,329.04	MORGAN ST	2355	SB607-81026-10		
955	4/13/05	Hammond School	Average (4)	200.00	4,796	131.40	First Com Ban	314	1063		
1324	5/23/05	Hammond School	Average (4)	40,963.00	4,756	26,687.68	MORGAN ST	2416	SB607-81026-10		
1294	11/18/05	Hammond Auction	Average (4)	200.00	4,577	125.40	MORGAN ST	2538	SB607-81026-10		
1328	1/13/06	Hammond School	Average (4)	100.00	4,521	61.93	MORGAN ST	2577	SB607-81026-10		
1330	2/21/06	Hammond School	Average (4)	2,000.00	4,482	1,227.95	MORGAN ST	2623	SB607-81026-10		
1339	5/8/06	Hammond School	Average (4)	11,620.00	4,406	7,013.39	MORGAN ST	2667	SB607-81026-10		
1341	5/8/06	Hammond School	Average (4)	11,115.00	4,406	6,708.59	MORGAN ST	2668	SB607-81026-10		
1342	5/8/06	Hammond School	Average (4)	11,620.00	4,406	7,013.39	MORGAN ST	2668	SB607-81026-10		
1343	5/8/06	Hammond School	Average (4)	11,115.00	4,406	6,708.59	MORGAN ST	2668	SB607-81026-10		
1140	11/1/06	Hammond School	Average (4)	200.00	4,229	115.86	First Com Ban	330	1063		
1356	2/6/07	Hammond School	Average (4)	4,000.00	4,132	2,264.11	MORGAN ST	2850	SB607-81026-10		
1235	5/14/07	Hammond School	Average (4)	48,030.49	4,035	26,548.36	MORGAN ST	4538	SB607-10172-11		
1371	6/21/07	Hammond School	Average (4)	166.00	3,997	90.89	MORGAN ST	2930	SB607-81026-10		
1631	2/27/08	Hammond School	Average (4)	1,000.00	3,746	513.15	MORGAN ST	3249	SB607-81026-10		
1635	3/11/08	Hammond School	Average (4)	2,000.00	3,733	1,022.74	MORGAN ST	3249	SB607-81026-10		
1648	5/26/08	Hammond School	Average (4)	38,250.00	3,657	19,161.68	MORGAN ST	3334	SB607-81026-10		
1693	2/2/09	Hammond School	Average (4)	1,000.00	3,405	466.44	MORGAN ST	3614	SB607-81026-10		
1699	3/14/09	Hammond School	Average (4)	2,000.00	3,365	921.92	MORGAN ST	3639	SB607-81026-10		
1620	6/8/09	Hammond School	Average (4)	13,225.00	3,279	5,940.38	MORGAN ST	3691	SB607-81026-10		
142	6/13/09	Hammond School	Average (4)	13,403.00	3,274	6,011.15	First Com Ban	469	1063		
142	6/15/09	Hammond School	Average (4)	13,225.00	3,272	5,927.70	First Com Ban	468	1063		
248	1/20/10	Hammond School	Average (4)	1,000.00	3,053	418.22	First Com Ban	554	1063		
220	3/2/10	Hammond School	Average (4)	1,000.00	3,012	412.60	First Com Ban	550	1063		
	5/24/10	Hammond School	Average (4)	27,606.00	2,929	11,076.43	First Com Ban	535	1063		
421	4/7/11	Hammond School	Average (4)	1,000.00	2,611	357.67	GWD	173	1063		
346	6/7/11	Hammond School	Average (4)	15,245.00	2,550	5,325.31	GWD	175	1063		
		TOTAL HAMMOND		437,445.49		273,445.75					
		AVG HAMMOND / GRANDCHILD		109,361.37		68,361.44					

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-GC-40-0036
Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**CERTIFICATE OF SERVICE**

I, Jaime Harmon, the undersigned employee of Griffin Davis LLC, attorneys for the Petitioner in this matter do hereby certify that I have served a copy of the foregoing **Petitioner's Motion for Summary Judgment**, in connection with the above-referenced case by Electronic and U.S. Mail, to the following address:

Thornwell F. Sowell III
Bess J. DuRant
Sowell & Durant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
Bsowell@sowelldurant.com
Bdurant@sowelldurant.com

Jaime Harmon

August 3, 2018
Columbia, South Carolina

FILED
2018 AUG -3 PM 4:42
AMY W. HEGGLESON
PROBATE JUDGE
RICHLAND COUNTY, S.C

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	IN THE PROBATE COURT Civil Action No.: 2017-GC-40-0036
Julia B. Brooker, Petitioner, vs. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Defendants.	**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in their favor in this above-captioned matter. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law. The grounds for this motion are as follows:

First, the unambiguous terms of the Trust Agreement provide that Petitioner Julia Brooker ("Julia") is entitled to a distribution from the date of the trust until the death of her mother, the Settlor Janet Brooker ("Janet"). The distribution has been made available to her, and she has no viable claim against her siblings Defendants Beacham O. Brooker, Jr. ("Beach") and Ellen B. Corontzes ("Ellen"). *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495,

579 S.E.2d 132, 134 (2003) ("If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."). The Trust Agreement, dated October 16, 2007, provides as follows:

> **(2) Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:
>
> (a) From the date of this trust forward, the Trustee shall determine the date and amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(Trust Agreement, Art. V, § 2 (emphasis added in underline; bold text in original.) A copy of the Trust Agreement is attached hereto as **Exhibit A.**). The plain language of the Trust Agreement provides that "[f]rom the date of this trust forward," the Trustee Beach shall determine the amount of the gifts made to the children and spouses of Beach and Ellen. Once that figure is calculated, interest is added and the distribution is to be offered to Julia. This was accomplished, and Julia has no claim against her siblings, as a matter of law.

Second, Beach, as Trustee, has no power to calculate gifts made prior to the execution of the Trust. Under Julia's theory of the case, she is entitled to include all gifts made to her siblings' children and spouses for their lifetimes. However, Beach was not appointed as trustee until

October 16, 2007 when he and his mother signed the Trust Agreement. His mother provided that he should determine the date and amount of lifetime gifts to spouses and grandchildren "[f]rom the date of this trust forward[.]" (Ex. A. Art. V, § 2(a).) He lacked the authority, and from a practical perspective, did not need to (and could not) calculate any gifts that were made prior to October 16, 2007. His mother Janet knew those gifts already. This fact further supports the conclusion that the Trust Agreement is unambiguous. *See Stevens Aviation, Inc. v. DynCorp Intl LLC,* 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) (providing contracts are "unambiguous if they are not 'susceptible to more than one reasonable interpretation . . . .'")(quoting *TEG—Paradigm Envtl., Inc. v. U.S.,* 465 F.3d 1329, 1338 (Fed. Cir. 2006)). It is possible only for Beach to calculate the gifts once he has been given the authority and knows he needs to calculate the gifts. He was under no obligation to calculate the gifts prior to October 16, 2007 and had no authority to do so. He could not compute every gift his mother made to her grandchildren and the spouses of her children. There is only one reasonable interpretation of this Trust Agreement, and its clear and unambiguous terms provide that Julia's claims fail as a matter of law.

This motion is based upon the pleadings in this case, as well as case law, statutory law, and any documents, affidavits, deposition testimony, discovery responses, or memorandum of law which may be submitted prior to the hearing on this matter.

[Signature page follows.]

SOWELL & DuRANT, LLC

By: _____

Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
August 3, 2018

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr.. in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Counsel Served: James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Attorneys for Petitioner Julia B. Brooker

Amy Kelly

August 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
	)	
Julia B. Brooker, Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Defendants.	)	

EXHIBIT A

TRUST AGREEMENT

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TRUST AGREEMENT

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) General Distribution of Personal and Household Effects With a Mandatory Memorandum. All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beacham

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

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

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand ($50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

JANET B. BROOKER

SETTLOR

BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

RECEIVED
Oct 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,…….Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually and as a Beneficiary of the Janet B. Brooker Trust,…….Appellants

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AMENDED RECORD ON APPEAL- VOL II

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

Personally appeared the undersigned witness and made oath that she saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Barbara Hammond

Sworn to before me this

16th day of October, 2007.

Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR

Janet B. Brooker
Beacham O. Brooker Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Counsel Served: James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Attorneys for Petitioner Julia B. Brooker

Amy Kelly

August 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
Julia B. Brooker, Petitioner,	)	
vs.	)	**RESPONDENTS' MOTION IN LIMINE**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Respondents") hereby move pursuant to Section 19-11-20 of the South Carolina Code, the South Carolina Rules of Evidence, and the South Carolina Rules of Civil Procedure for an order precluding the Petitioner Julia B. Brooker ("Julia") from testifying in the trial and George W. DuRant, CPA from testifying about the settlor's intent and the construction or interpretation of the Trust and its Equalization Distribution in the above referenced matter.

Julia is the child of the Settlor Janet B. Brooker ("Janet" or "Mother"), as are Respondents Beacham O. Brooker, Jr. ("Beach") and Ellen B. Corontzes ("Ellen"). Julia is to receive funds pursuant to the at-issue Equalization Distribution, which is in Article V of the Trust Agreement, which in turn is an attachment to the Last Will and Testament of Julia B. Brooker, a copy of which is attached hereto as **Exhibit A**. Because Julia is a party to the action, who has an interest which

will be affected by the trial, she is precluded from testifying in the trial of this matter. Moreover, her witnesses and counsel should be precluded from making arguments about, introducing, referring to or offering any evidence that contains Julia's deposition or other testimony about the Equalization Distribution and the intent of her Mother.

Next, George W. DuRant is the expert witness for Julia who calculated how much he believes she is entitled to under the Equalization Distribution. Mr. DuRant is not a lawyer or this Court, who is tasked with the duty of construing the intent of the Trust and its Equalization Distribution. He can only testify as to the figure that Julia would be entitled to if her interpretation of the Equalization Distribution is correct, which Respondents vigorously deny.

In anticipation of Petitioner's argument, Respondents also address the ability of W. Steven Johnson, the mother's estate planner, and William M. Reynolds, III, Johnson's partner, to testify. At the hearing on motion for summary judgment, Petitioner's counsel made a reference to whether the Dead Man's Statute precludes Steve Johnson from testifying, but South Carolina law is well-established on this issue. Attorneys who handled the estate planning are not subject to the Dead Man's Statute, as a matter of law.

I. JULIA IS PRECLUDED FROM TESTIFYING UNDER THE DEAD MAN'S STATUTE.

The Dead Man's Statute, codified at Section 19-11-20 of the South Carolina Code, serves to prohibit "any interest person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest." *Hanahan v. Simpson*, 326 S.C. 140, 151, 485 S.E.2d 903, 909 (1997), *superseded by statute on unrelated grounds*. "The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted." *Id.*

The Dead Man's Statute provides, in pertinent part, as follows:

> [N]o party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding . . . shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased . . . as a witness against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person . . . when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness . . . .

S.C. Code Ann. § 19-11-20. In other words, the Dead Man's Statute disqualifies a party's testimony in the following circumstances:

1. in regard to any transaction or communication between the witness and a person deceased, insane or lunatic, and

2. against a party prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or as assignee or committee of such insane person or lunatic, and

3. when the present or previous interest of the witness may in any manner be affected by the testimony or by the event of trial.

Long v. Conroy, 246 S.C. 225, 232, 143, S.E.2d 459, 462 (1965). The Dead Man's Statute does not apply unless the putative witness possesses all of these disqualifying characteristics. *Id.* "'The test of the interest of a witness in the event which disqualifies him, under statute, from testifying in his own behalf against the personal representative of a deceased person, is that he will either gain or lose by the direct legal operation and effect of the judgment.'" *Long*, 246 S.C. at 234, 143 S.E.2d at 463 (quoting *Riddle v. George*, 181 S.C. 360, 187 S.E. 524 (1936)).

Julie falls squarely within the teeth of the Dead Man's Statute. She would be testifying about conversations with her mother about what the intent of the Equalization Distribution. Second, she would be testifying against a party defending the action as the trustee and heir-at-law of his mother. Third, her interest in the Equalization Distribution under the Trust will be directly affected by the testimony and the trial of this matter. She cannot be permitted to testify under the Dead Man's Statute.

II. GEORGE W. DuRANT, CPA MAY NOT TESTIFY AS TO THE CONSTRUCTION OR INTERPRETATION OF THE TRUST AND ITS EQUALIZATION DISTRIBUTION OR THE MOTHER'S INTENT.

George DuRant may not testify about the intent of the Mother or the construction or interpretation of the Trust and the Equalization Distribution. He is a certified public accountant; but he is not a lawyer, nor he is the Court who is tasked with now determining the intent of the Mother and how to construe and interpret the Trust and Equalization Distribution. With all due respect, Mr. DuRant is not qualified to determine such matters, and his testimony cannot invade the province of this Court. *See* Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). Mr. DuRant has no legal training or specialized knowledge that would allow him to offer any testimony about the Mother's intent or the construction and interpretation of the Equalization Distribution. Mr. DuRant cannot construe the Trust Agreement for his own reasons, and he cannot give his opinion on the ultimate issue regarding the Trust, as he has no knowledge, skill, experience, training, or education to form such an opinion. Mr. DuRant's testimony must be limited to the calculation of Julia's distribution under her theory of the construction of the Equalization Distribution.

III. STEVE JOHNSON AND BILL REYNOLDS ARE NOT PRECLUDED UNDER THE DEAD MAN'S STATUTE.

On the other hand, Steve Johnson, the Mother's estate attorney, and his partner Bill Reynolds may be allowed to testify. South Carolina law unambiguously holds that "testimony of the attorney preparing the will is generally held admissible on the ground that the attorney is not an 'interested person.'" *Hanahan*, 326 S.C. at 152, 485 S.E.2d at 910 (quoting *Havird v. Schissell*, 252 S.C. 404, 166 S.E.2d 801). This is true even when the attorney is entitled to fees or a lien for

his services as a result of the trial. *Havird*, 252 S.C. at 412-13, 166 S.E.2d at 805-06. The attorney's entitlement to compensation is not a "legal or equitable interest" which "may be affected by the direct, legal operation and effect of the judgment." *Id.* at 412, 166 S.E.2d at 805.

While not addressed by a South Carolina appellate court, the issue of whether an attorney facing a malpractice claim has been addressed by other jurisdictions. They have concluded that the malpractice claim is not an "interest" that subjects the lawyer to the Dead Man's Statute. For example, in Illinois, an attorney was allowed to testify about the settlor's intent to transfer real property to a trust for the benefit of some, but not all, of their children and grandchildren. *Michalski v. Chicago Title & Trust Co.*, 365 N.E.2d 654, 655-57 (Ill. Ct. App. 1997). The attorney prepared the deeds, and was allowed to testify about their preparation and execution, although no deeds could be found. *Id.* The court allowed the attorney to testify, noting that he had no direct interest in the suit and that there was no suit against him, causing the alleged "interest" to be speculative. *Id.* Illinois also allows an attorney to testify even if the malpractice claim is already pending. *See Estate of Hurst v. Hurst*, 769 N.E.2d 55, 63 (Ill. App. Ct. 2002) (permitting the attorney to testify where a related malpractice claim was pending, noting that for the attorney to be disqualified under the Dead Man's Statute, "[t]he interest of the witness must be direct and be such that a pecuniary gain or loss will inure to the witness directly as the immediate result of the judgment.").

Similarly, Colorado allowed attorneys facing malpractice claims to testify and not be disqualified under the Dead Man's Statute. *David v. Powder Mountain Ranch*, 656 P.2d 716, 718 (Colo. App. 1982) (finding attorney lacked direct interest in suit). The Colorado appellate court further held as follows:

> We are aware of only one instance in which an attorney, by reasons of his services, was determined to have gained an interest in the outcome of the litigation to warrant disqualification of his testimony. This arises when the attorney has entered into a contingent fee arrangement with his client.

Id; see also Lee v. Leibold, 79 P.2d 1049, 1051-52 (Colo. 1938) (disqualifying lawyer's testimony when he represented client in contractual dispute against estate on a contingency fee basis).

Here, neither Johnson nor Reynolds has any interest in the present lawsuit. They have nothing to "gain or lose by the direct legal operation and effect of the judgment.'" *Long*, 246 S.C. at 234, 143 S.E.2d at 463. Johnson, who was the estate planner, and Reynolds, who consulted with Johnson about the Equalizing Distribution, should be allowed to testify to assist the Court in gleaning Janet Brooker's intent regarding the Equalizing Distribution. Steve Johnson will testify, in part, to the following:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts of behalf of Janet Brook to lessen the estate taxes. (Johnson Dep. 11:7-16, Steve Johnson's Deposition is attached hereto as **Exhibit B**.)
- On September 25, 2007, Johnson met with the Brooker family to discuss the need to accelerate the gifts. (Johnson Dep. 11:17 – 13:1.)
- Janet did not want to disadvantage Julia so Johnson said he could put a provision in the will to "catch up" Julia for any gifts to the children's spouses. Additionally, they discussed the acceleration of gifts through 529 plans. (*Id.*)
- Janet did not want Julia to suffer as a result of these gifts. (*Id.*)
- Janet's major concern was the gifting to the children's spouses. (*Id.* 14:10-13.)
- Equalization meant to Johnson "don't let Julie be disadvantaged because gifts have been made to in-laws. (*Id.* 16:4-11.)
- Johnson talked with his partner Bill Reynolds about the equalization. He wanted a second set of eyes to review the language. (*Id.* 25:23 – 26:7.)
- "The whole conversation with Janet was about prospective gifts, not retrospective gifts." (*Id.* 28:12-13.)

- "You have to read the four corners of Paragraph 2, and it says from the date of the Trust forward looking at the lifetime gifts." (*Id.* 29:6-8.)

- "You have to divide that by two to keep her equal with – I mean, if Ellen got half of that money – Ellen's family got half of that money and Beach's family got half of that money . . . then to keep Julie equal with them, she would get half that figure." (*Id.* 33:7-12.)

- "[I]f you read the four corners of Paragraph 2, it intends to keep Julie equal with what Beach got and what Ellen got, but not to get her ahead." (*Id.* 35:2-5.)

- "If there had been discussion of prior gifts, under the theory of accelerated gifts in 2007, I would have said, Janet, catch Julie up right this minute." (*Id.* 36:4-7.)

In sum, this Court should not allow Julia to testify as she is the textbook example for the need and application of the Dead Man's Statute. Additionally, George DuRant should not be allowed to testify about the Mother's intent or the construction and interpretation of the Trust and Equalization Distribution. On the other hand, Steve Johnson and Bill Reynolds should be allowed to testify regarding the estate plan, the Equalizing Distribution, and Janet Brooker's intent regarding the same.

SOWELL & DuRANT, LLC

By: _____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
February 4, 2019

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
Julia B. Brooker, Petitioner,	)	
vs.	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

EXHIBIT A

RESPONDENTS' MOTION IN LIMINE

Last Will and Testament

FILED
2017 MAR 17 AM 11:45
RICHLAND COUNTY
PROBATE JUDGE
KATHIE McCULLOUGH
FILED
2018 MAY -5 AM 11:31

LAST WILL AND TESTAMENT OF JANET B. BROOKER

Introductory Clause. I, **JANET B. BROOKER**, a resident of and domiciled in the County of Richland and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have three living children: **ELLEN B. CORONITZES, JULIA B. BROOKER**, and **BEACHAM O. BROOKER, JR.**

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

PETITIONER'S EXHIBIT
PENDAD-Boynton, N. J.
11-12-18

ITEM II

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

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

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER.**

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust

for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or

against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, **JANET B. BROOKER**, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Janet B Brooker
JANET B. BROOKER

We, W. Steven Johnson and Barbara Hammond, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

W S [illegible]
(Witness)

Barbara Hammond
(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by **JANET B. BROOKER**, the Testatrix, and subscribed and sworn to before me by Barbara Hammond, witness, this the 16th day of October, 2007.

(Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

FILED
MAR 17 AM 11:46
FILE COPY

TRUST AGREEMENT

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beacham

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

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

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand ($50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

JANET B. BROOKER

SETTLOR

BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

Personally appeared the undersigned witness and made oath that she saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this

16th day of October, 2007.

Notary Public for South Carolina

My Commission expires: 2/24/2013

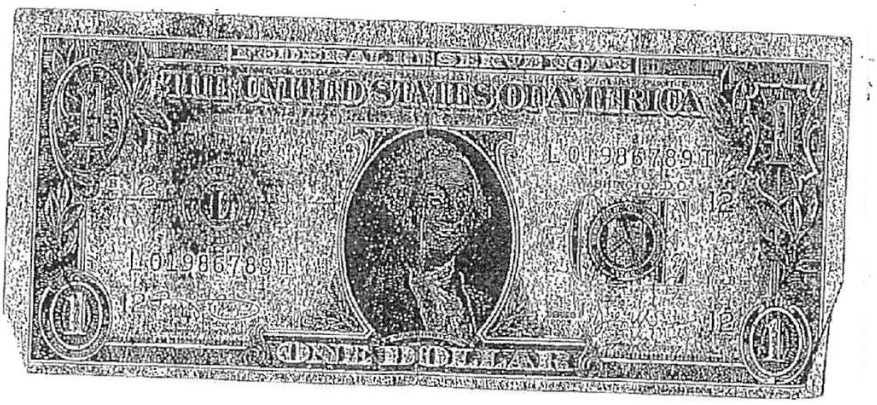
SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Janet B. Brooker
Beacham O. Brooker Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE



STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
Julia B. Brooker, Petitioner, vs. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

EXHIBIT B

RESPONDENTS' MOTION IN LIMINE

DEPOSITION TRANSCRIPT OF STEVE JOHNSON

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF RICHLAND

IN THE MATTER OF:
THE JANET B. BROOKER TRUST
(C.A. NO. 2015-ES40-00662)

JULIA B. BROOKER,

Petitioner,

vs. C.A. 2017-GC-40-0036

BEACHAM O. BROOKER, JR., IN HIS OFFICIAL CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST; AND ELLEN B. CORONTZES INDIVIDUALLY AS BENEFICIARY OF THE JANET B. BROOKER TRUST,

Respondents.

DEPOSITION OF:	W. STEVEN JOHNSON
DATE:	January 12, 2018
TIME:	10:55 A.M.
LOCATION:	Law Offices of Griffin Davis 1116 Blanding Street Columbia, SC
TAKEN BY:	Counsel for the Petitioner
REPORTED BY:	Wanda K. Cecil Certified Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PETITIONER
JULIA B. BROOKER:

GRIFFIN DAVIS LAW FIRM
BY: JAMES MIXON GRIFFIN
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ATTORNEYS FOR THE RESPONDENTS
BEACHAM O. BROOKER, JR., IN HIS OFFICIAL CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST; AND ELLEN B. CORONTZES INDIVIDUALLY AS BENEFICIARY OF THE JANET B. BROOKER TRUST:

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BY: BESS J. DuRANT
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(803) 929-1400
bdurant@sowellgray.com

ATTORNEYS FOR THE WITNESS:

TURNER PADGET GRAHAM & LANEY, PA
BY: THOMAS C. SALANE
1901 Main Street
17th Floor
Columbia, SC 29201
(803) 227-4289
tsalane@turnerpadget.com

ALSO PRESENT:

Julia B. Brooker

(INDEX AT REAR OF TRANSCRIPT)

W. STEVEN JOHNSON,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. GRIFFIN:

Q. Good morning, Mr. Johnson.

A. Good morning.

Q. My name is Jim Griffin. I represent Julia Brooker in a matter pending in Probate Court regarding interpretation of a trust and application of a trust. We're here to take your deposition in connection with that proceeding and I appreciate your cooperation being here today.

Have you ever given a deposition before?

A. I have.

Q. All right. So I'm not going to explain what a deposition is to you. I know you're well aware of it and you're a licensed lawyer. Under the rules, they do require me to give you, I believe, two instructions and so I'm going to do that. One is, if during my questioning if what I ask you is unclear to you, then I'm required to tell you to ask me to clarify the question and don't ask your lawyer what's that guy talking about. Could we do that?

A. Yes.

Q. And then secondly, the rules don't

permit off-the-record conversations about your testimony now that you're sworn in and undergoing examination unless it deals with a privilege issue. And I'm supposed to tell you that, too. You understand that?

A. I do.

MR. GRIFFIN: As to privilege issues, I'm going to mark Petitioner's Exhibit Number 1, an agreement that we've previously entered into in this case that covers by agreement the file that you produced and your testimony here today. And it essentially is an agreement that all parties agree that your act in producing the files that you did is not a waiver of attorney/client or work product privilege and that your testimony here today about your file or any substance of your communications with Ms. Janet Brooker would not be a waiver of that privilege and that no one will use the deposition here today in any further proceedings absent notice to everyone and try to work out that.

And I'm going to mark Petitioner's Exhibit Number 1 so we have it in the record.

(PET. EXH. 1, Agreement Regarding Privilege, was marked for identification.)

MR. GRIFFIN: Then I'm going to mark Petitioner's Exhibit Number 2.

(PET. EXH. 2, Letter to Steve Johnson from Jaime Harmon, Dated August 22, 2017, With Attachments, was marked for identification.)

MS. DuRANT: Thank you.

BY MR. GRIFFIN:

Q. Mr. Johnson, Petitioner's Exhibit Number 2 is a subpoena for documents that we served on you back in the fall. I think it's August something and I just -- what I want to ask you, did you get a copy the subpoena and have you, best of your knowledge, fully complied with that subpoena?

A. To the best of my knowledge.

Q. Okay. And as part of this Petitioner's Exhibit Number 1, agreement was that that allowed you to produce your entire file without withholding any documents for privilege. And is it your understanding that you have produced your entire file?

A. I have.

Q. And we have, gosh, over 4,000 documents and so I don't intend to go over any of them. I've copied a few of them here; but what I want to ask

you though, structurally, how do you maintain the file here for Ms. Brooker? Do you have a box of hard paper and then computer documents? Just structurally, how is the file maintained?

A. I have an estate planning file that was composed primarily of the written materials that I had in connection with doing planning for Mrs. Brooker. And then after her death, I had an estate administration file, where most of the documents that pertained to the administration of the estate were kept.

Q. Okay. The estate planning file. Well, first, does that comprise of paper?

A. Yes.

Q. Do you also have some component of that that's on a computer server?

A. I have some drafts and scanned copies of what she signed electronically saved on the computer.

Q. Right. And one of the -- the petition in this case involves a trust, the Janet B. Brooker Trust, and it's dated October 20, 2007. To your knowledge, do you know if you have that document on a word processing software system on your current computers?

A. No. I just have the original scanned onto my server at the office.

Q. Okay. And that document has been produced. Do you still have the software that -- well, excuse me. The Word -- I don't if it was prepared in Word or Word Perfect. Do you know what processing software your firm used back in 2007?

A. Well, the document was produced by software known as Drafting Wills and Trust Agreements. And it asks you relevant questions and then you answer the questions and then it produces a document for you. And I always had it produced in Word. And after it was produced in Word, I would save that document to my -- to my server and I would make modifications to that document on the server as I needed to.

Q. And thank you. And my question really, now that we've narrowed it down, is is that final document still residing somewhere on your computer?

A. Just a hard copy of it. Just a copy of it.

Q. But not the Word version?

A. Not the Word version.

Q. Okay. What happened to the Word version?

A. Jim, you know, let me go back. I think maybe the Word version is still on the -- on the server. So I think a scanned copy and the Word version is still on the server.

Q. Would you please not -- if it's there, will you please not erase it?

A. Sure.

Q. So I can talk to your lawyer because --

A. Sure.

Q. And the next question is, you mentioned you made modifications to the document. And do you recall what modifications were made once it was exported to Word?

A. Well, once you -- you get it in Word, then I proofread it, you know. And it never is -- it never is a perfect document when you get it from the software, so I go back and make the changes in Word. I would go back and make the changes in Word.

Q. Okay. And the reason I'm asking you not to delete that, people who know a lot more about this than I do may be able to go and see a history of changes that were made from the document that currently resides.

A. All right.

Q. I have no idea.

A. Right.

Q. But people charge me a lot of money because they say they can do that.

A. Right.

Q. The file that I've looked through, it did not appear that there were various drafts that were printed out and saved to the file. Do you recall whether you did that?

A. When I got the document from the software, I would make the modifications. I would make the modifications to the document in the software. So, you know, there was only one draft. And I would make -- I would make changes and save the changes, so there's only -- there's only one Word document.

Q. Right. Some firms, lawyers, they keep on their system Version 1, Version 2, Version 3 as the document changes with the different modifications. Did you do that for this trust agreement that we're talking about?

A. No.

MR. GRIFFIN: Okay. I'm going to mark the agreement Petitioner's Exhibit 3. Let me mark that Number 3.

(PET. EXH. 3, Last Will and Testament of

Janet B. Brooker and Trust Agreement, was marked for identification.)

BY MR. GRIFFIN:

Q. Mr. Johnson, I'll show you what I've marked as Petitioner's Exhibit 3, which is really two documents. One is the Last Will and Testament and then attached to that is the Janet B. Brooker Trust. Do you recognize these documents?

A. I do.

Q. Okay. Did you prepare these documents?

A. I did.

Q. And on Page 3 of the trust document, which is under Article V, Section 2, there's a provision entitled equalization distribution to settlor's daughter, Julia B. Brooker. Did you prepare that paragraph?

A. I did.

Q. Okay. The software that you mentioned that produces wills and trusts after you insert the data, does it contain a template for equalization distribution?

A. No.

Q. So Paragraph 2 here on Page 3, was it generated as a result of any template that you have?

A. No.

Q. Had you previously ever drafted an equalization distribution paragraph in a trust?

A. Yes.

Q. Okay. Had you ever done one for Ms. Brooker?

A. No.

Q. What do you recall about any discussions you had specifically with Ms. Brooker about this provision? When I say Ms. Brooker, I'm speaking of Janet B. Brooker.

A. In September of 2007, I believe that Mrs. Brooker's son came to me, Beach, and there was a -- there was heightened awareness of a need to make gifts on behalf of Mrs. Brooker to lessen the amount of estate taxes that she might have to -- have to pay.

And there was subsequently -- according to my time sheets, there was subsequently a meeting at the end of September. I think it was September the 25th, where I met with the -- time sheets say I met with the family. So the family to me could have meant all or part of the family; but at that time, I remember discussing the need to make gifts, to accelerate the gifts.

And I said to Janet, I said, Janet, you

know you can make gifts. You can make gifts of course to children. You've made them in the past. You can make gifts to grandchildren and you can make gifts to spouses of children. And her comment to me at that particular point in time was that, if I make gifts -- if I make gifts to Dino and to Ellen's -- excuse me, Beach's wife, that that will disadvantage Julie. She said, that will disadvantage Julie.

And I said to her at that time, well, if you decide to go ahead and make those gifts, you can put a provision in the document that at your death will catch the -- will catch Julie up for the gifts going forward that have been made to the spouses of children. Also, we talked about accelerating the pace of the gifts to the children through what's known as a 529 account.

Q. The grandchildren?

A. The grandchildren. Excuse me.

Q. Right.

A. The grandchildren. And so that discussion was part of the general discussion. And Mrs. Brooker, I would say my impression was that she didn't want -- she didn't want Julie to -- she wanted to save the taxes, but she didn't want Julie to suffer as a result of making these prospective

gifts that were going to be made.

Q. Petitioner's Exhibit 3, under Article V, Subparagraph 2, the paragraph reads that -- it says the settlor. The settlor would be Ms. Janet Brooker; correct?

A. Correct.

Q. Has previously made lifetime gifts and intends to continue such gifting program until the date of settlor's death to the settlor's children. Children here would be Beach, Julia and Ellen; correct?

A. Correct.

Q. The settlor's issue and spouses. So settlor's issue would be the same as settlor's children?

A. Issue is a multigenerational term, which could have included children, grandchildren, or great grandchildren.

Q. So issue here includes the grandchildren?

A. Yes.

Q. And were you aware in September of 2007 that Ms. Janet Brooker had been gifting to the grandchildren?

A. I was.

Q. I think they had trusts set up for each one?

A. They did.

Q. And spouses of the settlor's children is what it reads. Okay. In your conversation, did Ms. Janet Brooker express any concern about Julia being disadvantaged because of the gifting to the grandchildren?

A. No.

Q. So it was the disadvantage resulting from gifting to the spouses of her issue, her children?

A. That was her major concern.

Q. To your knowledge, had there been gifts to Dino and Beth, the --

A. I didn't know at that time; but in going back and looking through the file, it appears that no -- no gifts were made to Dino and to Beth up until 2007.

Q. And you said going back and looking at the file. What are you looking at in the file that makes you say that?

A. Gift tax returns.

Q. Now, have you looked at all the gift tax returns that were filed?

A. Yes.

Q. And you're aware there's significant years where there are no gift tax returns filed?

A. There were significant years where no gift tax returns were filed.

Q. And a gift tax return not necessarily needs to be filed unless gifts were made over the exclusion amount?

A. That's correct.

Q. Okay. So it's possible that Ms. Janet Brooker could have gifted sums less than the annual exclusion amount to Dino and Beth and it wouldn't show up on a gift tax?

A. That's possible.

Q. You mentioned your bills and I have and I plan to go over some of those with you. Let me ask you if you don't mind. You said you looked at your bills. Are there any other documents that you looked at that refreshed your recollection of events?

A. Yeah. I looked at my notes. Unfortunately, on my notes, I didn't have dates on my notes. So my primary source of information were my bills.

Q. Okay. And I've got some of your notes,

too, and I noticed there weren't dates on those as well.

A. Right.

Q. Did you see in any of your notes where you made entries from your conversations with Ms. Janet Brooker about her concern that it would be unfair to Julia if she gave gifts to Dino and Beth?

A. I didn't see that specific reference; but I did see a specific reference to equalization, which meant to me, don't let Julie be disadvantaged because gifts have been made to in-laws.

MR. GRIFFIN: Okay. I'm going to start with Petitioner's Exhibit 4, I believe.

(PET. EXH. 4, Todd & Johnson, L.L.P. Invoice Dated February 1, 2007 To Janet B. Brooker, Bates Stamped T&J 02397, was marked for identification.)

BY MR. GRIFFIN:

Q. Do you recognize Petitioner's Exhibit 4?

A. I do.

Q. And what is it?

A. It's a bill that was sent to Mrs. Brooker.

Q. And what's the date?

A. The date is February the 1st, 2007.

Q. Okay. And it references -- well, you have two entries. One January 17, 2007 and one January 19, 2007; is that correct?

A. That's correct.

Q. And the 19th entry says, to client's house to have health care power of attorney signed. Do you recall performing this service?

A. I do.

Q. And tell me first, had Ms. Brooker had a health care power of attorney up until that date to your knowledge?

A. I don't believe she'd had one previously and I think that was the reason that I went out to her house, because Beach had called me and said Mom doesn't have a health care power of attorney. And I think I prepared one and went to her house to get it signed.

Q. Was there a concern about her declining health in January 2007 that prompted the execution of the health care power of attorney?

A. No.

Q. When you met with her -- did you meet with her personally?

A. I did.

Q. And how was her health?

A. Fine. She was -- you know, she was an elderly lady at that time; but certainly conversant and, you know, capable of understanding what she was signing.

Q. And the first entry, it says telephone conversation with Beach Brooker. And then it says telephone conversation with Janet and Beach. Did Beach call you first?

A. I don't remember.

Q. Okay. Does it appear to you from your time entry that that would be the sequence of events?

A. I don't -- I couldn't say yes or no to that.

MR. GRIFFIN: Okay. Show you what's Petitioner's --

THE COURT REPORT: Number 5.

MR. GRIFFIN: -- 5.

(PET. EXH. 5, Todd & Johnson, L.L.P. Telephone Conference Notes by Barbara Hammond, Dated September 27, 2007, Bates Stamped T&J_02906, was marked for identification.)

BY MR. GRIFFIN:

Q. Mr. Johnson, show you what we've marked

as Petitioner's Exhibit 5 and this was a document that was produced to us.

A. (Reviewing.)

Q. Do you recognize this document?

A. I do.

Q. Okay. And at the top, it says telephone conference notes of Barbara Hammond. Who is Barbara Hammond?

A. She's a receptionist at my office.

Q. And this document, this is her normal practice to maintain messages received by clients or just people calling in when they leave a message, to do it on this type of form?

A. Sometimes.

Q. Sometimes? Okay. Was this a message for you to your knowledge?

A. Yes, it was a message to me. I was out of town and Barbara sent me this message.

Q. Okay. And it says, Steve, Dino Corontzes called and asked if he could have a copy of Janet Brooker's power of attorney. I called Ms. Brooker to see if this was all right and she said she didn't know what he would want it for and she called Dino. Dino then called me back and said that she got very confused and didn't answer him. He

said that I should not have called her and to please not call her again and that I should have just called Beach and talked to him directly. I told him I would wait until you returned on Monday.

Do you remember this event?

A. I do.

Q. What do you remember about it?

A. Exactly what's reported here, that. . .

Q. Did it strike you as odd that Ms. Brooker -- that Ms. Brooker didn't want -- well, it says, I called Ms. Brooker to see if this was all right and she said she didn't know what he would want it for and she called Dino. I mean, did any of this struck you as odd?

A. No.

Q. Okay. When you would deal with issues pertaining to Ms. Janet Brooker, did you speak with Beach about those?

A. Beach had his mom's power of attorney, so I felt comfortable in speaking with Beach about Mrs. Brooker's business.

Q. Did he have power of attorney in September 2007 to your knowledge?

A. No. The power of attorney was not executed -- the power of attorney I did was not

executed until the time the trust agreement was signed, which was October the 16th of '07, so. . .

Q. Right. Okay. Did you have a conversation with Dino about his request for health care power of attorney? I'm sorry, it's just power of attorney. A copy of Janet Brooker's power of attorney?

A. I subsequently provided Dino with a power of attorney because he had accounts at Stephens for Mrs. Brooker and he needed the power of attorney for the -- for his back office at Stephens.

Q. Do you recall who had the power of attorney or who was appointed under this power of attorney in September 2007?

A. Beach was primary. Julie was alternate and Ellen was second alternate.

MR. GRIFFIN: Okay. Six?

THE COURT REPORTER: Yes.

(PET. EXH. 6, Todd & Johnson, L.L.P. Invoice Dated October 3, 2007 To Janet B. Brooker, Bates Stamped T&J 02395, was marked for identification.)

MS. DuRANT: Thank you.

BY MR. GRIFFIN:

Q. Show you Petitioner's Exhibit 6. Is

this an invoice from your firm?

A. It is.

Q. And there's two entries here. One is September 6, 2007 and it appears to be an entry by WSJ. Is that you?

A. That's correct.

Q. Okay. Says telephone conference with Beach Brooker to discuss his mother's possible gifts. And then there's another entry of 9/25/2007, WSJ again. It says office conference with family to discuss gifts of assets to children. And that entry is -- 1.51 is the hours at a rate of $250 an hour.

Is the September 25th meeting the one that you mentioned earlier in your testimony?

A. Yeah, I believe it is.

Q. And 1.51, is that an hour and a half?

A. It is.

Q. And it says family and it doesn't say which family members, but do you believe Julie was there?

A. I don't know. I don't remember.

Q. Okay. But do you remember that Ms. Janet Brooker was there?

A. I do remember that Janet was there.

Q. Do you remember if Beach was there?

A. Jim, I can't say for certain that Beach was there with certainty.

Q. Sure. Do you remember if Ellen was there?

A. Again, I can't say with certainty.

Q. Can you remember any other family members besides Ms. Janet Brooker being at this meeting on September 25, 2007?

A. I only remember Janet because that was the meeting that I talked with Janet about the equalization provision being added to the. . .

Q. Okay.

(PET. EXH. 7, Todd & Johnson, L.L.P. Invoice Dated October 29, 2007 To Janet B. Brooker, Bates Stamped T&J_02392, was marked for identification.)

THE COURT REPORTER: Number 7.

BY MR. GRIFFIN:

Q. Mr. Johnson, I show you another bill we've marked Petitioner's Exhibit Number 7. This is another invoice from your firm?

A. That's correct.

Q. To Ms. Janet Brooker; correct?

A. Correct.

Q. Does it record services rendered during

the month of October 2007?

A. It does.

Q. Okay. And again October 1, 2007, there's an entry with -- it says telephone conference with client's son and son-in-law. Who is the son here?

A. Beach.

Q. Okay. And the son-in-law would be?

A. Dino.

Q. Dino? And there's another entry for CKO. Who is CKO?

A. Paralegal.

Q. And what's his or her name?

A. Cindy Owen.

Q. She still work with you?

A. She does.

Q. Okay. And then October 4 entry with WSJ, telephone conference, Bill Sellars. Do you remember what that conference was about?

A. I don't.

Q. Then the next entry is October 20 -- excuse me, October 15, 2007, an entry from WSJ. It says, preparation of client's revocable trust and pour over will. Now, that entry, does that reference the document that we have marked as

Petitioner's Exhibit Number 3, although it obviously was a first draft or some iteration of this document? Is that what this entry is for?

A. That's correct.

Q. And then here again it says telephone conference with client's son. Did you speak with Beach at the time you were preparing the will and trust?

A. We undoubtedly had a conversation sometime that day while I was working on the document.

Q. Do you know if you spoke with Beach about the equalization provision in the trust?

A. I don't.

Q. You don't know one way or the other?

A. I don't know.

Q. Okay. Then the next entry is interoffice conference with Steve Johnson to discuss equalization provision. Proof, revise and edit same. And the initials for that is BR. Who is that?

A. Bill Reynolds.

Q. And who is Bill Reynolds?

A. He is my partner.

Q. Is he currently your partner?

A. He is.

Q. And do you recall what this entry is documenting or what did you do?

A. Yes. I walked into Bill's office, gave Bill a copy of the equalization provision and said to Bill, will you review this for me. Just for a second set of eyes.

Q. Okay. To your knowledge, did he make any changes to it?

A. It says proof, revise and edit the same, so I would assume he gave me some suggestions.

Q. And then on the 16th, there's an entry from you, WSJ. It says revisions made to client's estate planning documents. The estate planning documents referenced in this entry, would that include the Last Will and Testament of Janet B. Brooker and the Janet B. Brooker Trust that are in Exhibit 3?

A. It would.

Q. Okay. Were there other estate planning documents?

A. The general durable power of attorney.

Q. Okay. And then it says office conference with client to sign her estate planning documents. And the client here would Ms. Brooker?

A. That's correct.

Q. And do you have an independent recollection of this meeting?

A. Jim, I can't say that I remember the meeting, other than to get her into the office to sign the documents.

Q. Okay. Do you know if she came with anyone?

A. I don't.

Q. Do you know whether before October 16, 2007 she had received a draft of the will and trust?

A. I don't think she had.

Q. Do you recall whether you explained it to her or not?

A. I do.

Q. What do you recall doing?

A. I recall saying to her, we're going from a straight will, which she had from 1988, to a will and revocable trust. And I remember discussing with her that we would be funding the trust. I remember discussing the equalization provision with her and I remember telling her that her estate, as far as Julie was concerned, would go outright to Julie; but the portion of her estate that would go to Ellen and to Beach would go to them in the form of a trust.

Q. Do you recall any questions that she had of you about the equalization provision?

A. I don't.

Q. When you spoke with her, did you use the phrase lifetime gifts?

A. I don't know.

Q. Do you know whether you explained to her that there could be a difference in lifetime gifts? I mean, gifts given prior to the date of the execution of the trust versus gifts given after the entry of the trust?

A. The whole conversation with Janet was about prospective gifts, not retrospective gifts.

Q. Okay.

A. It was going forward, not looking back.

Q. Is there language in the trust agreement that references past gifts?

A. No.

Q. Okay. If you'll look at Page 3 of the trust.

A. (Complying.)

Q. And under Paragraph 2, says the settlor has previously made lifetime gifts and continues -- and intends to continue such gifting program until the date of settlor's death. When there's reference

here to previously made lifetime gifts, isn't that referencing gifts that had been made before the execution of this trust?

A. Yes, but that was -- that was qualified by Paragraph (a), which says from the date of this trust forward. You have to read the four corners of Paragraph 2 and it says from the date of the trust forward looking at the lifetime gifts.

Q. The trustee shall determine the date and amount of any lifetime gifts?

A. From the date of the trust.

Q. Okay. And we can quarrel -- and I don't want to quarrel with you, Mr. Johnson; but is there room to read this to say that, from the date of the trust forward, the trustee will make that determination as to what the lifetime gifts are and have been?

A. No.

MS. DuRANT: Object to the form.

BY MR. GRIFFIN:

Q. Okay. So let's go from this, from the date of this trust forward, the trustee shall determine the amount and any lifetime gifts made by the settlor to the issue of Ellen Corontzes. The issue of Ellen Corontzes would be her children?

A. Correct.
Q. Ms. Corontzes' children?
A. Correct.
Q. And Beach Brooker, Jr. and that would be his children?
A. Correct.
Q. And the spouses of Ellen and Beach. That would be -- I think her name is Beth or Elizabeth and Dino; correct?
A. Correct.
Q. Okay. So according to this document, the trustee being Beach Brooker; correct?
A. Correct.
Q. Is to make a determination from the date and the amount of any -- from this trust forward, shall determine the date and amount of any lifetime gifts; right?
A. Correct.
Q. Now, is there any qualification on what type of gift? I mean, is lifetime gifts defined to mean, you know, annual 10,000, more than 5,000 or would it include Christmas presents and birthday presents?
A. It could have.
Q. Was that clarified?

A. No.

Q. Okay. But it's clear that the trustee is to make a determination of the lifetime gifts made to Ellen's children, Beach's children and Beth and Dino?

A. From the date of the trust forward.

Q. Okay. And then from -- and then from those amounts under Paragraph (b) it says, to such amounts specified above from the date of such gift an interest rate of five percent shall be applied to the amount of such gift, which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

Can you explain what that means to me, please?

A. I didn't think it was fair for the gift to be made and for Julie not to receive some appreciation on that. So I built into the trust agreement that she would receive an equalizing distribution, plus she would be entitled to five percent because she essentially was losing the money. So that was my way of saying let's kept Julie equal with what the other grandchildren and spouses of children have received. I thought that was the fair way to do it.

Q. Okay. So under Paragraph (a) for example, just follow me on a hypothetical. If in 2010, Ms. Janet Brooker gave cumulatively between the four grandchildren and the two spouses, cumulative for those six individuals, round number $100,000 in 2010.

A. Each one got --

Q. No. Cumulative they all got $100,000, you know, gross between all six of them. So would the total gifts for that year under my hypothetical be $100,000?

A. Correct.

Q. And then compounding interest at five percent a year would be 5,000?

A. Not compounding.

Q. I'm sorry. Non-compound. So straight interest would be 5,000 a year?

A. Right.

Q. And it says until the distribution is satisfied, but let's just make it simple and say five years under my hypothetical. That'd be five years of interest at $25,000?

A. That's correct if the math is correct.

Q. Yes. Right.

A. Okay.

Q. And that's a leap of faith. I appreciate that. So then the total under -- if my math is correct, would be $125,000 under this hypothetical; correct? And that would be -- if there's nothing else that happened, then that would be Ms. Julia Brooker's equalized distribution?

A. You have to divided that by two to keep her equal with -- I mean, if Ellen got half of that money -- Ellen's family got half of that money and Beach's family got half of that money, of that $125,000, then to keep Julie equal with them, she would get half that figure.

Q. Is that what Subparagraph (b) says?

A. That's what it says to me.

Q. I'm sorry. What does Subparagraph (c) say?

A. The sum of (a) and (b) shall be distributed to the settlor's daughter.

Q. Under my --

A. So the equalizing distribution. Equalizing distribution, plus the five percent would be given to Julie.

Q. Well, under my hypothetical --

A. It wouldn't be -- it wouldn't be equalizing if she got the whole 125,000. She would

be that much ahead of the other two because they had to divide it by two in your example.

Q. Well, let me read the language here. It says the sum of (a) and (b) above shall be distributed to the settlor's daughter. So if we apply the sum of (a) and (b) in my hypothetical, would you agree you'd get $125,000 to Julia?

A. No. She'd get half that figure.

Q. All right. So the sum of (a) in my hypothetical is $100,000 to all six.

A. But the intent is to keep her equal with the others.

Q. Okay.

A. Not for her to get ahead, but to keep her equal.

Q. Well, are you aware that the gift tax returns show that Ms. Janet Brooker gifted over $400,000 to Beach and Ellen's children up until October 2007?

A. I'm not sure about your math, but I reviewed the gift tax returns and I know significant gifts were made to the spouses and to the grandchildren.

Q. Right. Well, can you point to any language in (a), (b) or (c) that says you divide (a)

in half before you distribute it under (c)?

A. Jim, if you -- if you read the four corners of Paragraph 2, it intends to keep Julie equal with what Beach got and what Ellen got, but not to get her ahead. It says an equal. Equal means equal to me.

Q. And under your analysis, Julia gets ahead if you only consider the gifts given after October 2008 -- 2007, I'm sorry?

A. Under the example you gave me, if you don't divide it by two, Julie would get ahead, because she would get 100,000. Okay? Or 125,000. And then Ellen and Beach would have to split 125,000. So under your scenario, she would get ahead.

Q. Well, let me throw up one more hypothetical in there. What if in Year 2005, Ms. Brooker gave those same six individuals cumulative $200,000?

A. Well, the equalization only took place from 2007 forward.

Q. Right. And that's to my point. Under your analysis, Julia only gets ahead if you ignore what happens before 2007; correct?

MS. DuRANT: Object to the form.

THE WITNESS: In 2007, she was -- she was directed to be made whole for the gifts. There was no discussion -- there was no discussion of 2005. There was no discussion of 2004. If there had been discussion of prior gifts, under the theory of accelerated gifts in 2007, I would have said, Janet, catch Julie up right this minute.

BY MR. GRIFFIN:

Q. And what would have happened had she caught Julie up right that minute? Would there have been tax consequences?

A. Yeah, but that would have actually been good. Been good for the family because you take the gift tax out of the equation, so that would have been good. There was a taxable gift made in 2008 and there was actually some gift tax paid. So to make the gift and to generate the tax is not a bad idea.

Q. There would have been tax consequences if Ms. Brooker had gifted Julie $200,000 in --

A. I'd have to go back and look and see where they were on the gift tax returns relative to how much credit was left to be applied against gift tax before I could really answer that question.

Q. But it --

A. Likely -- you're likely correct. You're likely correct. There would have been some gift tax due at that time.

Q. And if there would have been gift tax due at that time under this, you know, under this assumption, then there would have been gift tax due from every gift going forward?

A. No. That's not correct.

Q. If it was above the exclusionary limits?

A. Yeah. But the exclusion kept going up. It kept being a moving target. It went from 625 to 650 to a million to a million five to two million to three million. And it actually even went away in a year and then it came back at higher levels. So the exemption was a moving target.

Q. It moved in the future; but at the time, you didn't know it was going to move? In 2007, you didn't predict it was going to go up?

A. I'm not sure that I know the answer to that because it might have been built into the statute, where the statute projected what the future amounts were going to be.

Q. Okay.

A. I don't know the answer to your question.

Q. Well, let me see if I can try one more time to address (a), (b) and (c) here. If you just apply the math of the sum of (a) and (b) above under (c) here, if you just apply the math as it's written. The sum of (a) and (b) above shall be distributed to the settlor's daughter. Under my earlier hypothetical, when there's a total of $125,000, then as written she would get $125,000; correct?

A. No. She'd get half of that number.

Q. And you --

A. Because the equalizing amount would have been half of the figure that went to Beach and Ellen.

Q. So in order to make it equal, (c) should have read the sum of (a) and (b) divided by two?

A. Not necessarily, because I didn't know if the gifts were going to be made equal or unequal. In other words, you know, Beach's side of the family could have gotten 100,000 and Ellen's could have gotten zero. Under my theory, in that case, to keep Julie equal, she would have gotten $100,000.

Q. Then Ellen gets shortchanged?

A. She would have. I didn't equalize to Ellen. I equalized to Julie.

Q. Okay. Or you could -- or depending on how things occurred, I mean, Beach could have been shortchanged if Ellen had gotten more than Beach, her family; correct?

A. That's correct.

Q. But as you explained the disproportionate hypothetical, disproportionate gifts to Beach versus Ellen, as I understood what you just said is you would take the higher amount. Say Beach gets 200,000, Ellen gets 150,000, you would take Beach's 200,000 and then equalize that?

A. I think under that scenario, she would get the higher amount.

Q. Okay. And if you did that, then Ellen is getting it twice?

A. She would have been disadvantaged.

Q. Two times?

A. I don't understand your question.

Q. Well, she's getting the equivalent of Beach and so Ellen is --

A. She would -- she would only get one gift.

Q. Right.

A. Julie would only get one gift of what was given to Beach.

Q. But if you average what Beach and Ellen got, then. . .
A. I didn't address that.
Q. Right.
A. I didn't address that.
Q. And you didn't address that, dividing (a) and (b) by two here, did you?
A. No, but I don't think that was necessary.
Q. Okay.
MR. SALANE: Can we take a break to feed the parking meters?
MR. GRIFFIN: Oh, absolutely. Sorry.
(A recess transpired.)
BY MR. GRIFFIN:
Q. Thank you, Mr. Johnson. Two more questions on this trust agreement. The first sentence under Article V, Paragraph 2 on Page 3 of the agreement, trust agreement.
A. (Complying.)
MR. SALANE: I'm sorry. What page?
MR. GRIFFIN: Page 3 of the trust agreement, Subparagraph 2, which is Article V, Subparagraph 2.
Q. The first sentence says the settlor has

previously made lifetime gifts and intends to continue such gifting program until the date of settlor's death. My question is, for what purpose did you include this sentence and the reference to prior lifetime gifts and continue such gifting program?

A. Just to give some history.

Q. Okay. And then the history is -- well, your testimony earlier was that Ms. Janet Brooker was concerned about disproportionate gifts to the spouses of Beach and Ellen and that since Julie didn't have a spouse that'd be not fair to her. Why are the grandchildren included in the equalization provisions here?

A. Because there was going to be accelerated gifts made to the grandchildren by way of the 529 accounts.

Q. Okay.

A. You could -- under 529, you could make a $60,000 gift per grandchild. And she recognized again that that was -- accelerated gifts like that were disadvantageous to Julie and she wanted to make sure that Julie was adequately provided for.

MR. GRIFFIN: Okay. I don't know what number we're on.

THE COURT REPORTER: Eight.

(PET. EXH. 8, Todd & Johnson, L.L.P. Revised Invoice Dated November 5, 2007 To Janet B. Brooker, Bates Stamped T&J_02388 and 02389, was marked for identification.)

BY MR. GRIFFIN:

Q. Let me show you Exhibit 8 and, at the top, it says revised invoice. It's for the same period of time as Exhibit 7, I believe. Do you recognize this document? Do you have 7 in front of you or did it get lost?

A. This is Number 8. I don't have 7. Where is 7? Oh, here it is. Excuse me. Excuse me. (Reviewing.) Okay.

Q. It appears that Exhibit 8 is a revised invoice for the month of October and there's just additional work that was not included in 7; is that correct?

A. It appears that Bill Reynolds' time was left off, the 10/31 time. It appears that Bill Reynolds' time was left off. We were -- we were working on a trust for Mrs. Brooker, where she gave away or was to give away her house to the children. And so that appears to me to be the revision.

Q. All right. Thanks.

(PET. EXH. 9, Todd & Johnson, L.L.P. Invoice Dated January 4, 2008 To Janet B. Brooker, Bates Stamped T&J_02380, was marked for identification.)

BY MR. GRIFFIN:

Q. And show you Exhibit 9. If you could identify that for the record, please.

A. It is an invoice dated January of '08 that includes December time.

Q. Okay. And here there's CKO. That's your paralegal again?

A. It is.

Q. And does this deal exclusively with this qualified property trust or whatever it's called?

A. There were two things that were going on. We were going to make the gift of the house to the qualified trust and the lease of the beach house. The condominium at Debidue had come to an end, where the children now owned the property and it was advantageous for Mrs. Brooker to lease the condominium back to the children. And you see the reference there of the lease. That was the reason for the lease because the Debidue condominium was leased back to the -- to Mrs. Brooker and she made

the lease payments over to the kids. And the kids took the lease payments and paid the expenses of the Debidue condominium. Actually, from a tax standpoint, it was a very good thing for that to happen.

Q. Now, I want to be sure that there's no misunderstanding. I think everyone believes you did some very fine work when it comes to the Brooker estate and the IRS.

The entry on December 6, 2007. There's a reference to office conference with Julie Brooker. I assume that's Julia. Julie, Julia; is that right?

A. Yes.

Q. Do you recall what that was about? Was that about the deed, lease, et cetera?

A. Probably both. The qualified trust that going to be created, as well as the -- as well as the lease.

MR. GRIFFIN: Okay. Now, I've marked some handwritten notes and frankly -- I guess this will be Number 10.

(PET. EXH. 10, Handwritten Notes, Bates Stamped T&J_03003 through 03006, was marked for identification.)

BY MR. GRIFFIN:

Q. And, Mr. Johnson, look through this because I have to tell you I stapled them together based on they look like similar handwriting; but as you mentioned earlier, there are no dates, so I mean I don't even know if these relate to one another. The way I have organized it was not intended to trick you in any way. I'm just trying to keep things together, but if you could tell us. After you look through those, tell us, first, are these your notes, which ones are your notes, none of them are your notes?

A. These are not my notes.

Q. None of these are your notes?

A. No.

Q. Do you know -- do you recognize the handwriting?

A. I do.

Q. Whose notes are they?

A. Artie White.

Q. And who is Artie White?

A. He was an associate in my firm.

Q. Is he no longer with the firm?

A. He's of counsel to the firm. He actually lives in Kentucky --

Q. Okay.

A. -- but he continues to do work for us.
Q. Now these -- I just want to mark mine. What exhibit?
A. Ten.
Q. So it says Livingston at the top. Do you know what that might be referencing?
A. I don't.
Q. And then underneath that it says, Janet Brooker, I guess that's dementia, 24-hour nurses. Gifting plan/program, look at QPRT or residence to check out the time or something like that. Do you remember whether you had assigned Mr. White to do any work?
A. He was doing a family limited partnership in about 2013 --
Q. Right.
A. -- where Mrs. Brooker contributed the assets to a family limited partnership and the children contributed assets to a family limited partnership and then Mrs. Brooker subsequently gave away her interest to the children in the family limited partnership.
Q. Okay. If you'll look at the third page in --
A. (Complying.)

Q. -- which has a Bates number at the bottom, 3005 and 3006. Are these Mr. White's notes as well or do you know Mr. Reynolds, whose name appears at the top of this document?

A. These would be Mr. White's notes.

Q. Okay. And there's a date here 11/5/13, so -- okay. Exhibit 11.

(PET. EXH. 11, Handwritten Notes, Bates Stamped T&J_02954, 02955, 02969 through 02972, was marked for identification.)

BY MR. GRIFFIN:

Q. So I guess we'll take them one page at a time. The first page, are these -- is this your handwriting?

A. Okay. It is.

Q. And the second page, is that your handwriting?

A. It is.

Q. Is the third page your handwriting?

A. It is.

Q. Is the fourth page your handwriting?

A. That's my handwriting.

Q. How about the fifth page?

A. That is not my handwriting.

Q. It says Janet Brooker and maybe Cyndi on

the left-hand side of it something. Do you know whose handwriting this is?

A. Bill Reynolds.

Q. Okay. And then the last page of this exhibit, is --

A. That's my handwriting.

Q. On the first page of Exhibit 11, Entry Number 1 it says -- maybe I should get you to read that, but it says do codicil. Is that what that is?

A. That's correct.

Q. With equalization provision. What does that refer to?

A. Initially, when I was going to revise Mrs. Brooker's documents in '07, I thought I could do it with a codicil and I actually got the paralegal to come up with a codicil that had language in there. But I didn't like the language and I subsequently decided that we would go from just doing a codicil to a will and a revocable trust to avoid probate. So we -- initially, the paralegal roughed up a codicil for me; but I scrapped it.

Q. Okay. Now, I'm definitely outside of my area here.

A. Okay.

Q. So a codicil is limited to a codicil to

a will or codicil to an existing trust or. . .

A. In 1988, that was when Mrs. Brooker's last estate planning document that was in effect. And I initially thought I could just do an amendment to that '88 will and so I toyed with doing a codicil with an equalization provision in it; but then subsequently, I went to the -- to doing a new will and a revocable trust.

Q. And we've got --

A. And there were several reasons for doing that.

Q. Well, let me ask you first. We've got 4,000-something documents.

A. Right.

Q. And I didn't come across a codicil, but I can't tell you that I looked at every page twice.

A. Right.

Q. Do you know whether you produced the draft codicil?

A. I don't, but I've looked at it recently. It's on my server.

Q. So please don't delete that.

A. All right.

Q. And do you recall, after looking at it recently, if the language is any different from what

you ultimately used in the trust document?

A. It was totally different.

Q. In what ways?

A. It tried to equalize for gifts to all of the children and I was only trying to equalize for Julie.

Q. And did you begin work -- well, let me ask you. These notes are not dated, but you believe you started on these notes?

A. Well, if you go back and look at my time records, you'll see CKO and she started generating those documents. So she generated drafts of those documents on or about the first of October of '07.

Q. So these notes, your work papers would have been generated early October of '07, you think?

A. This?

Q. Yes, sir.

A. Yes.

Q. Okay. Now, Number 3, it says -- well, Number 2 says annual gifts of 12,000 in '07 and '08. Do you know what that's referring to?

A. Just that we were contemplating making, you know, gifts to the spouses.

Q. Oh, okay. And then Number 3 says Janet pay -- what does that say?

A. Tuition.

Q. For tuition. And then it says college and private school?

A. Right.

Q. It says, being done?

A. Right.

Q. Is private school referring to K through 12?

A. Either Hammond or Heathwood. I'm not sure where the kids were going -- the grandchildren were going.

Q. And the 529 plan, Entry Number 4, $60,000, that's what -- we talked about that earlier?

A. Yes.

Q. And then Number 5, can you tell me what that is?

A. It says FLP, which stands for family limited partnership. So I was trying to throw out as much as I could to get the -- to give the family a buffet on what gifts they could make. And one of those ideas was a family limited partnership, which was not done until 2013 by Artie White. And that's the notes that you were looking at previously.

Q. Okay. And does your note read, look

into doing? Is that look? Instead of cook, is that look?

A. It's look. Look.

Q. Then Number 6 says QPRT on house and we talked about that?

A. Which was subsequently done at the end of '07.

Q. Okay. And Number 7 says 300,000 of the one million exemption. What does that mean if you know?

A. I don't know.

Q. And then there's some notes about trustee income, five percent of something die. Do you know what your note is referring to there?

A. I do. I do. In '07, when we were revising Mrs. Brooker's documents, Julie said I don't want my share of the estate to go into a trust. I want it to go outright. This circle, this diagram represents the benefits that Beach and Ellen would receive through their inheritance going into a trust.

Q. I see. And then below that, it says gift something to?

A. Not to trust. That was Julie saying I don't want my share of the estate to go into a

trust.

Q. So that last note gift, it references Julie?

A. Right.

Q. Does this indicate that Julie was present at maybe the family -- do you know whether this was taken at the family meeting, sometime afterwards?

A. I don't know.

Q. Okay. Then the next page, it says -- there's an arrow and then it says LM 100-plus shares. I take it that's Lockheed Martin. Do you know?

A. Probably.

Q. Right. And then below that, it says -- what's your -- aggressive something?

A. Aggressive gifting.

Q. And what's that last abbreviation?

A. I'm not sure.

Q. Okay. Then below that, there's -- is that the word Julie?

A. It is.

Q. And below that it says equalization clause?

A. Yes.

Q. Okay. Is that the entry in your notes that you mentioned earlier?

A. It is.

Q. And then below that, it says PRT trust?

A. Personal residence trust. That's the gift of her house --

Q. Okay.

A. -- to a trust.

Q. And then Bill Sellars, he's the --

A. He was going to do the gift tax returns.

Q. Then there's something below Bill Sellars. I can't make that out.

A. I can't. I'm not sure what that is.

Q. Okay. And then there's an entry that says non-Lockheed Martin. Do you know what that refers to?

A. I don't.

Q. And then below that, it looks like you're diagramming another something, structure, I take it?

A. I'm diagramming there how a family limited partnership would work. Trying to explain how the family limited partnership works and showing a gift of assets or a transfer of assets into a family limited partnership. And see where it says

expensive and high profile? I was telling the clients that a family limited partnership was a fairly -- was a fairly expensive transaction from the standpoint of professional fees and that it had a very high profile with the IRS because the IRS really did not like them because the government had been losing a good bit of revenue through the implementation of these family limited partnerships. So I was trying to warn them that it was, Number 1, expensive and, Number 2, was a fairly high profile thing to do.

Q. So do you believe that these notes at the bottom, that this was a diagram that you made and showed to somebody in a meeting?

A. I would say yes. That it was my attempt to explain to the family how a family limited partnership worked.

Q. Do you have any recollection who was participating in the meeting?

A. Jim, I don't.

Q. Okay. And then the next entry -- I mean, the next page says, Word Perfect, Janet Brooker, print out and book. Do you know what that means?

A. Yeah. That would have been the general

durable power of attorney.

Q. I see. I mean, you've got Word Perfect down here; but then right below HPCOA, I guess that's health care power of attorney information entry, there's Brooker - L.W. Do you know what that means?

A. Living well.

Q. And then below that, it says do assignment of P&H something. What is that?

A. Once you form the trust agreement, you assign personal and household effects over into the trust to avoid probate.

Q. Okay. So then the next page looks like another diagram of a structure. Can you tell me what this is?

A. This is a diagram that attempts to explain how a generation-skipping trust would work. Money would be placed into a trust. The beneficiaries of the trust would receive a stipend from the trust for the rest of their life and, on their death -- on the children's death, it would drop down to the grandchildren.

This circle right below that is my attempt to explain how a charitable remainder trust works.

Q. Okay. And then we'll skip over Mr. Reynolds' notes and go to the last page of Exhibit 11.

A. (Complying.)

Q. I think you said these were your notes?

A. They are.

Q. Do you know what these are -- well, that's Barbara Howell. Do you know who that is?

A. I think that's another client.

Q. Unrelated? Okay.

A. Unrelated.

Q. There's an entry for Janet Brooker, says Janet, 695,000 of her one million exclusion. Bill Sellars. Do you know what that refers to?

A. I think that's a reference to the fact that Janet has used up 695,000 of her one million dollar exclusion.

Q. Okay. The entry at bottom, reference to John Timmerman, Sr. Is that an unrelated matter?

A. That's an unrelated matter.

(PET. EXH. 12, E-mail Chain from David Siddons to W. Steve Johnson, Bates Stamped T&J_03177, was marked for identification.)

THE COURT REPORTER: Twelve.

BY MR. GRIFFIN:

Q. Mr. Johnson, I'm going to show you another document that was produced, Exhibit 12. It appears to be an e-mail communication between you and David Siddons?

A. Correct.

Q. Okay. And Mr. Siddons was representing Julia in connection with the estate issues?

A. Yes.

Q. And your e-mail at the bottom says, David, attached are statements of Ms. Brooker's brokerage accounts at Stephens Securities beginning in 2011. These accounts should provide documentation for the gifts from 2011 through 2015. Speaking of 2015, the figures previously furnished to you by me do not include the gifts made in 2015, so the figures previously provided to you will have to be adjusted upwards to reflect such gifts. And then it goes on to talk about documentation and firms.

What I want to ask you is, where were you getting the information for gifts? I guess the lifetime gifts. Who was providing that to you?

A. I was requesting the information from Beach. My impression is that the information was

coming from Dino Corontzes.

Q. Okay. And the information you were getting, I guess you had available to you the -- is it 709 or 706, the gift tax return?

A. Well, I had those available to me; but they had given me a handwritten list of the gifts that were made from '07 forward. I mean, they provided -- they provided me with the list of the information. I wasn't pulling the information off a statement. That information was being given to me by Beach. And I think Beach had gotten the information from Dino as to the amount of the annual gifts.

Q. Okay. And do you know whether or not college tuition was included in the information you were provided by Beach?

A. The last figure that I gave to David Siddons had an entry for tuition. It didn't initially. When I initially gave David the figures, it did not have that entry. It subsequently included tuition paid in 2007.

Q. That was the contribution to the 529 plan?

A. No. That was in addition to the contributions made to the 529 plan.

Q. Were there any tuition payments included after '07 to your knowledge?

A. No, not according to the figures they gave me.

Q. Okay.

(PET. EXH. 13, E-mail Chain from David Siddons to W. Steve Johnson, Bates Stamped T&J_03175, was marked for identification.)

THE COURT REPORTER: Number 13.

BY MR. GRIFFIN:

Q. And do you recognize Exhibit 13?

A. I do.

Q. And what is that?

A. That's an e-mail to David, where I gave him revised calculations as to the equalization amount.

Q. Okay. And then it looks like there's a -- at the bottom of the e-mail, it looks like there's an attachment description, gifts made during lifetime.2-23-16.xls.

A. I don't know what that is.

Q. Well, my experience, that would appear to be an Excel spreadsheet attachment. Do you know if your office prepared an Excel spreadsheet?

A. I think we did and I think it was done by a paralegal in my office, whose name was Billy McMann.

MR. GRIFFIN: Right. Now, I have -- we'll mark this as Exhibit 14.

(PET. EXH. 14, Gifts Made from 2007 Through 2015, was marked for identification.)

BY MR. GRIFFIN:

Q. I have this Exhibit 14, which I did not get from your production, Mr. Johnson; but the native version of it, which was e-mailed to me from Mr. Siddons, the author on this document is Billy McMann. And I don't -- but I didn't see in your production where you produced --

A. This should have been in there.

Q. Okay. It could be, I just. . .

A. Yeah.

Q. I had a lot of stuff to look through.

A. I've looked through it several times in preparation for the deposition, so I have copies of it or the original of it.

Q. And this one has an entry for January 2, 2015. And I guess the question, you think this is the most up-to-date version you've got?

A. No. Actually, I think there's another version of this which adds the tuition back up at the top up here.

Q. Okay.

A. So I think this was like further revised, too. I don't see the tuition, but I have another one with Billy's handwritten notes that have tuition written up at the top.

Q. Okay.

A. And I have an additional figure up there.

Q. Well, that's helpful to know. I'll look for that.

A. Okay.

Q. Because that was going to be my question, if there's additional tuition here that's not shown. Okay. That's all. But this one, it's not the most recent one; but the information you got to include -- your office got to include on this spreadsheet came from Beach, Dino or Ellen?

A. It came from -- it came from Beach by way of Dino.

Q. Okay. The allocation at the bottom under this version of the spreadsheet, where it says one half given to Ellen's, one half given to Beach,

amount due Julia to equalize. I'm not to repeat all the questions and the debate we just had.

A. Right.

Q. But was this an entry by you, your paralegal or --

A. By the paralegal.

Q. At your direction?

A. At my direction.

Q. Okay. Before you made this allocation, did you have any conversations with Beach about how it should be allocated?

A. I don't believe so. I think I just took Beach's figures. I didn't -- I didn't -- I didn't quarrel with his figures. I just took his figures.

Q. Okay.

(PET. EXH. 15, E-mail Chain to Julia Brooker from Steve Johnson, Bates Stamped T&J_03131 and 03132, was marked for identification.)

THE COURT REPORTER: Number 15.

BY MR. GRIFFIN:

Q. Mr. Johnson, 15 is an e-mail. The second page is from Julia to you and then the first page is your response to her and it's pretty lengthy. I'll give you time to review it.

A. Okay.
Q. And just let me know when.
A. (Reviewing.) Okay.
Q. So the second page of the e-mail from Julia to you is dated September 2, 2016; correct?
A. Correct.
Q. And in the second paragraph of this e-mail, Ms. Julia is talking about a conversation she had with her brother, Beach. And I'm going to read it. It says, then he called me and I told him I would like to review --
A. Wait a second. You're on the second page?
Q. I'm sorry. The second paragraph.
A. Okay.
Q. Down in the middle, where the sentence begins, then he called me. Are you there?
A. Yes.
Q. He called me and I told him I would like it review Stephens statements prior to mom's death and asked for documentation and he refused saying that anything prior to mom's will of 2008 is none of my business.
And then below that, the last paragraph it looks like or maybe there's a -- I don't know.

There's a big gap here. But then it says, as far as the equalization, ask him to provide an accounting of the lifetime gifts to the families with supporting documents. To my knowledge, I've not received anything from him.

And then you respond to this e-mail on -- actually, this particular document doesn't have a date, but says you're on your way out of town for vacation. And then I want to direct your attention at the end, where you say we are at an impasse on the equalization of gifts prior to 2008; but we made what I consider to be a careful search of gifts from and after 2008. I do not have a recommendation as to the gifts before 2008.

What do you mean? What do you mean by saying I do not have a recommendation as to the gifts before 2008?

A. That we were at an impasse. That, you know, I didn't have any suggested solution to her position that the gifts prior to 2007 should be included and our position that the gifts should only include gifts made after 2007.

Q. Okay. So is the recommendation as to resolving the impasse?

A. Right.

MR. GRIFFIN: Okay. I think I may be done. Let me take a break and talk to my brains and my client and then --

MR. SALANE: That's fine.

(A recess transpired.)

BY MR. GRIFFIN:

Q. Mr. Johnson, going back to Number 3 again. That's the will.

A. (Complying.)

Q. Are you at Number -- do you have Number 3 in your hand?

A. Yes.

Q. So I want to ask you about the will first. The will was -- at the bottom of every page of the will, there are initials and a number. Did Ms. Brooker write her initials and number these pages?

A. She did.

Q. Did you instruct her to do that?

A. I did.

Q. Now the trust agreement, there are no initials or numbers on the bottom of each page. Why is that?

A. Just my office procedure. It's just too long. Just takes forever. And the trust agreement

is incorporated back into the will.

Q. Okay. Under the trust agreement, at the end there's a signature witnessed. Is that you witnessing?

A. It is.

Q. W --

A. Yes.

Q. And then Barbara Hammond?

A. Yes.

Q. And then the settlor, it says Janet B. Brooker and Beacham O. Brooker, Jr.?

A. Right.

Q. And he's the settlor because he had power of attorney?

A. The settlor applies to the signature up above and the individual trustees.

Q. Okay. And was Beach present when this document was executed?

A. This indicates to me that he was.

Q. And the next page actually says -- the probate page says, personally appeared the undersigned witness and made oath that she saw the within named settlor and trustee sign, seal. So that would indicate they were together?

A. Yes.

Q. After Ms. Brooker passed away, do you recall having a discussion with Beach where he was trying to get you to understand something about either the will or the trust and that y'all had a disagreement over?

A. I actually read Julie's deposition and I could not follow that and do not remember Beach and I having any controversy or discussion about the -- about the gifts. I don't remember that.

Q. And so give her the benefit of the doubt and maybe she's wrong about the gifts. Do you recall anything that y'all had a -- I wouldn't say a disagreement over, but viewed something differently?

A. No.

Q. Okay.

A. No.

Q. And lastly, in response to the interrogatories that were served upon Beach as trustee and then Ellen and Beach individually, we had asked that they identify any statements that they contend support their interpretation of the equalization distribution of the trust to apply only to lifetime gifts made after the date of the trust.

In response, they say statements were made by Janet Brooker to Steve Johnson that the

equalization distribution of the trust applied only to lifetime gifts made after the date of the trust. These statements were oral, and upon information and belief, Janet Brooker and Steve Johnson were the only parties that heard such statements.

Do you know if you had provided that information to anyone before today?

A. No.

Q. Okay. Then it says, additionally Steve Johnson asked Bill Reynolds about the trust language regarding the equalization distribution of the trust. The statement was oral and no other individuals heard the statement.

Do you recall any conversations you had with Bill Reynolds about the equalization provision in the trust?

A. You remember looking at my time records, that I went into Bill's office and asked him to review the equalization provision just to have a second set of eyes on the equalization provision? That was the only conversation I had with Bill about the equalization provision.

MR. GRIFFIN: Okay. That's all the questions I have. Thank you.

THE WITNESS: Okay.

MS. DuRANT: Nothing from me.

MR. SALANE: No questions.

(The witness, after having been advised of his right to read and sign this transcript, waives that right.)

(The deposition was concluded at 12:55 p.m.)

CERTIFICATE OF REPORTER

I, Wanda K. Cecil, Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 16th day of January, 2018 at Columbia, Richland County, South Carolina.

_____

Wanda K. Cecil
Certified Court Reporter
My Commission expires
December 28, 2026

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(No Information Requested)

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CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENTS' MOTION IN LIMINE**

Counsel Served: James M. Griffin
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Amy A Kelly

Amy Kelly

February 4, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-GC-40-0036
Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**AFFIDAVIT OF JAMES M. GRIFFIN IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

1. I am an attorney with Griffin & Davis LLC and I submit this affidavit in support of Ms. Julia Brooker's claim for attorneys' fees and costs.

2. The schedule attached hereto as Exhibit A is a summary of professional fees actually paid by Ms. Brooker to my firm, indicating the amount of time spent by each attorney and professional support staff of my firm who were involved in investigating and litigating the claims alleged in this action. The total amount of professional fees paid by Ms. Brooker to my firm is $99,644.00.

3. The schedule attached hereto as Exhibit B. is a summary of reimbursed expenses paid by Ms. Brooker that our firm incurred on her behalf. The total amount of expenses are $71,022.28. This amount includes payments made to George Durant, the expert forensic accountant retained by me, in the amount of $62,026.25.

James M. Griffin

Sworn to and subscribed Before Me,
this 27th day of February, 2019

Notary Public State of South Carolina
My Commission Expires: September 1, 2019

Exhibit A

Summary of Professional Fees

	JMG HOURS	JMG FEES	MNF HOURS	MNF FEES	JH HOURS	JH FEES	
6/6/2017	12.6	6930	22.3	6690	0.3	25.5	
9/5/2017	5.4	2970	7	2100	0.3	25.5	
11/6/2017	0.9	495	10.2	3060	0.4	34	
12/5/2017	1	550	0.4	120			
1/31/2018	21.5	11825	39.3	11790	10.4	884	
3/2/2018			1.2	360	32.5	2762.5	
4/9/2018	11.7	6435	13.3	3990	1.8	153	
5/3/2018			2	600	2	170	
6/4/2018			2.1	630			
7/9/2018	4.5	2475	1.3	390	0.9	76.5	
8/3/2018	2.4	1320	5.6	1680			
9/5/2018	6.8	3740	6.9	2070	1.8	153	
10/3/2018	11.7	6435	2.7	810	0.7	59.5	
11/5/2018	6.5	3575	0.5	150			
1/2/2019	0.8	440	0.2	60	0.3	25.5	
2/6/2019	1	550					
2/27/2019	23.7	13035					
	110.5	60775	115	34500	51.4	4369	99644

Exhibit B

Summary of Reimbursed Expenses

COSTS	
6/6/2017	75.27
9/5/2017	138.4
11/6/2017	578
12/5/2017	15
1/31/2018	1064.13
3/2/2018	1923.97
4/9/2018	864.93
5/3/2018	28.8
6/4/2018	1162.77
7/9/2018	69
8/3/2018	43.68
9/5/2018	262.95
10/3/2018	49.4
11/5/2018	2104.1
1/2/2019	
2/6/2019	
2/27/2019	615.63
	8996.03

DURANT	
4/18/2018	4143.75
7/2/2018	20036.25
11/5/2018	30,582.50
1/2/2019	1,901.25
2/27/2019	5,362.50
	62026.25

71022.28

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015 – ES40 – 00662)	IN THE PROBATE COURT C.A. 2017-GC-40-0036
Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**CERTIFICATE OF SERVICE**

I, Jaime Harmon, the undersigned employee of Griffin Davis LLC, attorneys for the Petitioner in this matter do hereby certify that I have served a copy of the foregoing **Affidavit of James M. Griffin in Support of Award of Attorneys' Fees and Reimbursement of Expenses**, in connection with the above-referenced case by U.S. Mail, to the following address:

Thornwell F. Sowell III
Bess J. DuRant
Sowell & Durant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201

Jaime Harmon

February 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662	)	
Julia B. Brooker, Petitioner, vs. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	**RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S ATTORNEY FEE AFFIDAVIT**

Respondents submit this memorandum in opposition to Petitioner's claim for an award of attorney fees and in objection to the sufficiency of the *Affidavit of James M. Griffin in Support of Award of Attorneys' Fees and Reimbursement of Expenses* to support any such award, on the following grounds:

Under well-established South Carolina law,

> Six factors are normally considered in determining an award of attorney's fees: '(1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained.'

Rowell v. Whisnant, 360 S.C. 181, 185–86, 600 S.E.2d 96, 99 (Ct. App. 2004) (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). "Trial courts should make specific findings of fact on the record for each of the factors set out above." Id.

The factual record is insufficient to support an award of attorney fees where the attorney affidavit "merely provides a general description of the tasks he performed." Id. at 186. An affidavit providing only "conclusory information of total time expended and hourly rate charged . . . is insufficient to provide the evidentiary basis necessary to support the award, even with [client] confirming the amounts actually paid." Griffith v. Griffith, 332 S.C. 630, 646, 506 S.E.2d 526, 534 (Ct. App. 1998) (reversing award where "attorney's fees affidavit consists of two paragraphs which provide in summary form that the wife's attorney expended 57.5 hours on the case at the rate of $175 per hour, for a total attorney's fee of $10,062.50."). An attorney's "vague estimations of time and labor devoted to the case and extent of legal services rendered do not support an award of $35,000 in attorney's fees." Johnson v. Johnson, 288 S.C. 270, 278, 341 S.E.2d 811, 816 (Ct. App. 1986) (finding insufficient "a one half page statement of estimated time spent on the case, totalling ninety hours.").

As the S.C. Supreme Court explained in Strickland v. Strickland,

> The record does not support the award of attorney's fees. The only evidence introduced was an affidavit stating that more than 20 hours had been spent on the preparation of the case. Therefore, the factors cited above could not have been considered by the court because of the lack of evidence. Each party shall be responsible for their own attorney's fees.

297 S.C. 248, 253, 376 S.E.2d 268, 270 (1989).

The Courts have also emphasized the centrality of the results of the case in determining the appropriateness of attorney fees. In Cox v. Cox, for example, the Court of Appeals rejected an argument that a litigant was entitled to attorney fees where he prevailed on some but not all of the claims in the case. ("[T]he husband contends the trial judge erred in denying him attorney's fees and costs. We disagree . . . . [W]hile the husband relies heavily on the fact that he prevailed

in the wife's suit against him in arguing his entitlement to fees, he ignores the fact that he lost on his counterclaims."). 310 S.C. 127, 131, 425 S.E.2d 761, 764 (Ct. App. 1992).

In the case at hand, even assuming that the Petitioner is entitled to an award of attorney fees, which is disputed, the evidentiary record is grossly insufficient to support any such award:

1.) Petitioner has articulated no statutory or contractual right, and no basis in justice or equity, for an award of attorney fees and expenses.

2.) The affidavit of Petitioner's counsel provides no information whatsoever regarding the "(1) nature, extent, and difficulty of the legal services rendered; . . . (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; [or] (6) beneficial results obtained." Rowell, supra.

3.) With regard to the sixth factor, "beneficial results obtained", the issue is not yet ripe as the matter is under advisement. Accordingly, Petitioner has no basis at this time to argue that any beneficial result has been obtained. *See* Cox, supra.

4.) The affidavit provides only broadly conclusory and wholly inadequate information regarding the "time and labor devoted to the case." Rowell, supra. The affidavit includes as an attachment a table of claimed attorney/staff time and associated fees. The table provides absolutely no description of how any of this time was spent, completely precluding any analysis of the fundamental question of whether the claimed fees are reasonable.

5.) The attorney fee table also lists dates associated with hourly totals for each attorney and staff. It is assumed that these dates are associated with monthly billing totals, which makes it even more difficult to identify what work was

performed, when, and why. If, on the other hand, the dates are intended to correspond with hours worked on each specific date, then the table is even more problematic, as it includes single entries of 21.5, 23.7, 22.3, 39.3, 32.5 hours by individual attorneys and/or staff.

6.) While the affidavit lists no hourly rates, the professional fee table indicates an hourly rate of $550 per hour for James M. Griffin, Esq. Petitioner has provided no indication, and Respondents dispute, that this hourly fee is in the range of what is customarily charged for similar services in the Columbia area.

7.) As with attorney fees, the table attached to the affidavit purporting to itemize litigation costs and expert witness fees includes only expenses associated with certain months (or days) and no explanation of the nature or purpose of the expenditures. There is no detail whatsoever to indicate or support the reasonableness of the DuRant fees and costs.

8.) All of the deficiencies listed above are of increased importance due to the size of the award Petitioner is claiming, which includes $99,644 in attorney/staff fees and $62,026.25 in litigation and expert costs.

9.) The evidentiary record, including Petitioner's attorney affidavit, provides the Court with no possible basis to make "specific findings of fact on the record for each of the factors set out above." Rowell, supra.

Accordingly, Respondents' respectfully request that the Court reject the Petitioner's claim for an award of attorney fees and costs.

[Signature Page Follows]

Respectfully submitted,

By: _____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
April 8, 2019

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S ATTORNEY FEE AFFIDAVIT**

Counsel Served: James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29202

Attorneys for Petitioner Julia B. Brooker

Amy Kelly

April 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker, Petitioner,	)	
	)	
vs.	)	
	)	**RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

FILED
2019 JUL -1 P 2:45
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach"), and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen"), hereby move the Court to reconsider and/or alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts ("Order"), dated June 22, 2019[1] and filed June 20, 2019. Respondents received written notice of the entry of this Court's Order via an email from this Court's Judicial Law Clerk, Matthew Brock, on June 20, 2019. The grounds for this motion are as follows:

[1] Respondents believe the Order was inadvertently dated June 22, 2019 because the Order was filed on and Respondents received notice of the Order on June 20, 2019.

First, this Court did not explicitly rule on the threshold question of whether the Trust Agreement is ambiguous. The question of whether a trust is ambiguous is a question of law. *See Wallace v. Day*, 390 S.C. 69, 74-75, 700 S.E.2d 446, 449 (Ct. App. 2010). The answer to this question determines if extrinsic or parol evidence may be used. "If the language of the trust instrument is plain and capable of legal construction, that language determines the force and effect of the instrument. Under such circumstances, extrinsic evidence will not be admitted to alter the plain language of the instrument. Conversely, when there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor's intent." *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) (internal citations omitted). Here, the Order contains no explicit finding as to whether the Trust Agreement or its equalization distribution provision is ambiguous, which would allow for parol or extrinsic evidence. The question of ambiguity should be explicitly ruled upon by the Court.

Second, the Settlor Janet Brooker's ("Settlor" or "Janet") intent was ignored by this Court. The Settlor's intent is of paramount concern. *Bowles v. Bradley*, 319 S.C. at 380, 461 S.E.2d at 813. If this Court determined that the Trust Agreement was ambiguous, it should have relied upon the testimony of the estate lawyer, W. Steven Johnson, Esquire, and his partner, William Reynolds, III, Esquire, who knew the Settlor's intent, unlike any of the other witnesses who testified. Yet, Johnson's testimony that the Settlor did not intend for the equalization distribution to capture any gifts prior to the execution of the Trust Agreement was not relied upon by this Court. (*See, e.g.* Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23, attached hereto as **Exhibit A.**) Similarly, Reynolds' testimony that Johnson accurately captured the Settlor's intent was not relied upon by this Court. (Trial Tr. 182:8 – 183:6, attached hereto as **Exhibit B.**) If the Trust Agreement is

ambiguous, the only witnesses competent to testify about the Settlor's intent are Johnson and Reynolds, but their testimony about the Settlor's intent was ignored. Importantly, their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced appropriately.

Additionally, the Court's interpretation of the equalization provision renders the phrase "[f]rom the date of this trust forward, the Trustee shall . . . ." meaningless, which is not favored by South Carolina courts. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) (holding "an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." (internal citation and quotation marks omitted)). The Settlor was not imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust. The Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust. To the extent the Court's Order intended to adopt Petitioner's argument that the phrase, "From the date of this trust forward ..." simply serves to establish the date the Trustee began exercising his authority, it would be redundant to his actual appointment as Trustee in the same instrument. The Court should read the clause so "that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous." *In re Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. *Statutes* § 346). The Settlor expressed her intent though this phrase, and her intent was for Beach, as Trustee, to calculate all of the gifts from the date of the Trust forward to provide the figures for the equalization distribution. The Settlor's intent should not be thwarted.

Third, this Court erroneously relied on the testimony of Petitioner Julia Brooker ("Julia"), which is in violation of both the Dead Man's Statute and the parol evidence rule. Even if the Court ruled the Trust Agreement is ambiguous, Julia's testimony regarding the Settlor's intent cannot be

permitted or relied upon by this Court. The Dead Man's Statute precludes testimony from a witness in four classes:

1. A party to the action;
2. A person having an interest which may be affected by the trial's outcome;
3. A person who previously had an interest which may be affected by the trial; and,
4. An assignor of the thing in controversy.

Estate of Mason v. Mason, 289 S.C. 273, 278 n.2 346 S.E.2d 28, 31 (Ct. App. 1986); S.C. Code Ann. § 19-11-20 (Dead Man's Statute). Julia, as Petitioner and beneficiary, clearly falls under the scope of the Dead Man's Statute, and she was allowed to testify, over the objection and motion in limine of Respondents, regarding communications and transactions at issue. (*See, e.g.* Trial Tr. 8:15 – 14:19; 250:16 – 255:11, attached hereto as **Exhibit C**.) Under the Dead Man's Statute, Julia should not have been allowed to testify as to any matters related to her mother's intent, gift giving, or estate planning.

In addition to the Dead Man's Statute, the parol evidence rule should have precluded her from offering any testimony regarding the Trust Agreement if this Court determined the Trust Agreement was unambiguous. *See Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) ("Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of an integrated agreement. However, where a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." (internal citations omitted)). This Court allowed such testimony, and it appears from the Order that the Court relied on the same in contravention of the Dead Man's Statute and possibly the parol evidence rule. Stated simply, Julia should not have been allowed to testify if the Trust Agreement was ambiguous or unambiguous. Rather, the only witnesses competent to testify under the Dead Man's Statute

are Johnson and Reynolds, and their testimony was ignored. Their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced accordingly.

For the above reasons, Respondents respectfully request the Court to reconsider and/or alter or amend its Order, dated June 22, 2019 and filed June 20, 2019, consistent with the points made herein.

Respectfully submitted,

By: _____

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Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
July 1, 2019

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker, Petitioner, vs. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

EXHIBIT A

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23

State of South Carolina) In the Probate Court
)
County of Richland) Case No: 2017-GC-40-00036

IN THE MATTER OF:
The Estate of Janet B. Brooker Trust
(C.A. 2015-ES-40-00662

Julia B. Brooker

Petitioner,

vs.

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Respondents.

Transcript

of

Proceeding

The within proceeding was taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., February 5 & 7, 2019, at the Richland County Judicial Center, Probate Court, Columbia, South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

APPEARANCES

For the Petitioner:
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of the children. And when I mentioned to her about making gifts to the spouses --

MR. GRIFFIN: Your Honor, I'm not sure if he's still in this family meeting or some other, so I'm going to object.

THE COURT: This is a private conversation with her?

THE WITNESS: This was a conversation on September 25th, and I believe at that time, Your Honor, my time records will indicate that all the family members were there. That it was a family --

THE COURT: I also think I found a case that deals with it. It's the concept of a lawsuit between the beneficiary's heirs that the conversations between the deceased and the deceased's attorney are not privileged in the sense that the testimony of that particular witness is necessary to resolve litigation between the heirs of the devisees, which is what we have here, in my opinion.

BY MR. SOWELL:

Q All right. Now, was there ever any discussion with Janet Brooker about an equalization for retrospective gifts?

A No.
Q Was the only conversation with her related to prospective gifts?
A Yes.
Q Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c, which is denominated equalizing distribution to the Settlor's daughter Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by subparagraph (a)'s language, "From the date of this trust forward?"
A That is correct?

MR. GRIFFIN: Objection, Your Honor, as to Mrs. Brooker's intent. He can testify to his intent; he can testify what she told him, but he's in her mind now and that's not permissible.

MR. SOWELL: That's precisely what he's here to testify about is her intent.

THE COURT: Right.

MR. SOWELL: He's the only person who can do it.

THE COURT: He can testify about the conversation that they had. What she said is more important that what he thinks she said, is the

conversations that were retrospective in the equalization. If you want to ask him a different question that gets more to your point.

BY MR. SOWELL:

Q Did Janet Brooker make statements to you that led you to believe that she only wanted to equalize going forward?

A We never had a discussion about retroactive gifts, so the discussion, the whole discussion centered around gifts going forward.

Q Was there ever any discussion whatsoever about gifts going backward?

A No.

Q I'm going to show you Defendant's Exhibit No. 1 and ask you if you can identify it?

A Yes, this is a schedule that was done by a paralegal in my office that comes up with a figure of $525,528, which is the amount that we computed in determining the amount of the equalization that we felt was due to Julia.

Q Do you continue to believe, along with the Trustee, that amount, the 525,000 and some odd dollars is the amount owed to Julie for the equalization?

A Yes. With this exception: That computation of

A Apparently so, yes.
Q Is there any reason you didn't give them to Mrs. Brooker when she was there signing the documents?
A I don't remember why they were given to Dino, but I would not have given them to Dino had Janet not told me it was okay to give them to Dino.
Q I understand. And you have a specific recollection of discussing with her the terms of the equalization provision?
A I do. I said we'll catch Julie up at death for gifts made from the Trust Agreement forward so that she won't be prejudiced.
Q You remember saying "from the Trust Agreement forward?"
A I do.

MR. GRIFFIN: Your Honor, this is the deposition that Mr. Johnson gave on January 12, 2018. I'd like to show it to him. It's sealed. I'm going to unseal it. For the record, it's being unsealed.

THE COURT: The deposition of Mr. Johnson is completely attached to your Motion in Limine. A full copy, right?

MR. SOWELL: Yes, Your Honor.

BY MR. GRIFFIN:

Q Mr. Johnson, if you'll turn to page 27 of your deposition.

A Okay.

Q And I'm asking you beginning at line 10 about her Will and Trust, and then at line 13, I say, "Do you recall whether you explained to her or not." And your answer was, at line 15?

A Right.

Q And you said "I do," correct?

A Right.

Q Then line 16 I asked you, "What do you recall doing." And if you'll read your answer in the record, please.

A (As read) I recall saying to her we're going from a straight will, which she had in 1988, to a will and revocable trust. And I remember discussing with her that we would be funding the trust. I remember discussing the equalization provision with her, and I remember telling her that her estate, as far as Julie was concerned, would go outright to Julie, but the portion that would go to Ellen and Beach would go to them in the form of a trust.

Q And then page 20, I asked, "Do you recall any

questions she had of you about the equalization provision." And your answer was?

A "I don't recall any question she had about it."

Q And then 28, line 4, I said, "When you spoke with her, did you use the phrase "lifetime gifts?" And you said what?

A "I don't know."

Q And then you said, then I asked, "Do you know whether you explained to her that there could be a difference in lifetime gifts, I mean gifts given prior to the date of the execution of the trust versus gifts given after the entry of the trust?" And you said?

A "The whole conversation with Janet was about prospective gifts, not retrospective gifts."

Q And I said "okay," and you said it was going forward not looking back?

A Right.

Q So that was the conversation?

A Right.

Q And then I asked you, "Is there any language in the Trust Agreement that references past gifts?" In line 18, you say "no." Is that right?

A That's right.

Q But there is -- I mean, in the Trust Agreement, it

says that Settlor has previously made lifetime gifts, correct?

A Yeah, but, Jim, that was just to give a history of what had happened, you know. I mean, that was my drafting style.

Q Now, you're drafting style also -- you're saying that we can read from your drafting style that the sum of (a) and (b) above shall be distributed to Settlor's daughter to mean that you look at the pots of gifts and you give her the greatest amount?

A I wanted to determine the gifts that had been given to Ellen's side of the family, the gifts that had been given to Beach's side of the family, and then to add five percent to the greater amount. And that was equalizing for Julie; that was making sure that Julie was not disadvantaged; that she received at least the higher number. That's what I intended to do; that's what Janet Brooker intended to do. Under your reading of the Trust Agreement, she gets twice as much. There is no way that Janet Brooker wanted Julie to get twice as much as Beach or Ellen. That is just not what she wanted.

Q Let's talk about the language you used. The sum

of (a) and (b) above. So is (a), when we say (a) and (b), we're talking (a), in the same paragraph, right?

A Well, first you've got to determine the amount of the gifts.

Q And that would be in (a)?

A Yeah, but you've got to determine what was given to Ellen and you've got to -- Ellen's side of the family and what was given to Beach's side of the family.

Q And then from that you add the interest?

A The five percent onto those two amounts. You create two columns, Ellen's column and Beach's column, and then you add five percent, and whichever would be the higher. I didn't want Julie to be disadvantaged. Whichever the higher, she would get. Now what was confusing about that is Beach kept the gifts even.

Q Let's go to the language. Would you agree that there's no word "higher" in (a), (b), or (c)?

A I would agree to that.

Q Do you agree that there is nothing in (a), (b), or (c) that talks about separating the pots out from Ellen's issue and spouses to Beach's issue and spouses?

A Well, if there's ambiguity there, I want you to understand what Janet Brooker wanted. And she wanted her daughter, Julie, to not be disadvantaged because gifts had been given to spouses and grandchildren. And this schedule accomplishes that.

Q Are you aware that before the date of this Trust, that Mrs. Janet Brooker had given the spouses and issues of Ellen and Beach $900,000 in gifts?

A I wasn't aware of that, but Janet, you know, was only going from 2007 forward.

Q So you think she was aware that she had been giving Ellen and Beach $900,000 in gifts?

A I don't know, but I'll tell you what, she never brought it up. If she did, if she'd have said to me Julie should be equalized for that, I would have said to her let's equalize it right this minute, let's make a gift to her right this minute, let's give her -- let's make a gift to Julie right now if she's been so disadvantaged. We're trying to reduce the size of your estate, let's give her an amount right now that will make her equal.

Q So then after Mrs. Brooker passes away, the -- was a -- well, let me just ask you. What's this

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT B

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 182:8 – 183:6

provision that we've been discussing today.
Q Did you do that?
A I did that.
Q What did you conclude from reviewing that provision?
A I thought it was appropriate for the circumstances that I knew about.
Q And what circumstances did you understand before you had that conversation?
A I knew that Janet Brooker had a fairly large taxable estate. There was an attempt, pretty aggressive attempt, to give nontaxable gifts, but also an attempt to equalize for Julia Brooker. And so that was the context I looked at the provision for.
Q Was there ever any discussion with Steve about equalizing these payments going backwards?
A No. He basically told me this is a -- because we're starting this aggressive gifting program, and of course, annual exclusion gifts, gifts for tuitions, for medical payments, are really the lowest hanging fruit in estate planning. There was never any discussion about retrospective or looking back. I think, at least in my experience, if you look back, you gotta start somewhere. And

if they had decided to look back, Steve would have asked Mrs. Brooker what were the gifts you've given thus far; let's start with an amount or let's write a check to even up Julia. But that was never part of the discussion between Steve and I.

Q Looking at this document, which is the Trust Agreement, and we're looking here at the board, which is 2(a), is there any reference in there to a starting date for looking backwards?

A Well, the date that he references in 2(a), says, "From the date of this Trust forward."

Q Right. Which was October of 2007?

A Right.

Q Now, you've heard the arguments Mr. DuRant made about (a)+(b). What you think is the proper interpretation and what did you think then was the proper interpretation of (a), (b), and (c)?

A Well, when I first looked at it, reading the first paragraph number 2, the main paragraph, it shows what Janet's intent was. It was clear that she said Julia's not married, she doesn't have children; Ellen's married and has children; Beach is married and has children, and we want to equalize going forward. And (a) says to determine

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF: The Janet B. Brooker Trust (C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker, Petitioner, vs. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	)	

EXHIBIT C

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 8:15 – 14:19; 250:16 – 255:11

be number one and hand it up to the Court.

MR. SOWELL: No objection.

(Whereupon, Trust Agreement was introduced as Petitioner's Exhibit No. 1.)

MR. GRIFFIN: Your Honor, we have two witnesses, Julia Brooker and then George DuRant. And I'll call Ms. Brooker at this time.

Whereupon,

Julia Brooker,

being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

MS. DURANT: Your Honor, if I may object right now just to Ms. Brooker's testimony today as outlined in our motion in limine. We believe Ms. Julia Brooker is an interested party and therefore disqualified under the dead man's statute. Interestingly enough the dead man's statute is not about the admissibility of Ms. Brooker's testimony; it's more about the competency of her to testify. I do have a case for you, Your Honor. This is Estate of Mason B Mason 289 SC 273, Court of Appeals 1986. And if I

may approach, Your Honor.

THE COURT: I may have it. Let me just look and see. I'm going to let you hand it to me.

MS. DURANT: And what I've done, Your Honor, is marked the salient provisions and I've also marked the salient provisions for Mr. Griffin, Ms. Fox and you and your law clerk. If you'll note where I have the blue flag, Your Honor, I've highlighted the relevant language that talks about how the dead man's statute has to deal with competency and not admissibility. It starts on page 31 of the South Carolina Reporter, it's page four of this PDF. And then at 278 of the Southeastern 2nd Reporter, it says, "the dead man's statute §19-11-20 Code of Laws of South Carolina in substance provides that a witness may not testify (will not be a competent witness) should the witness be in either of the four designated classes." And as outlined in our brief, Your Honor, we believe Ms. Brooker is in all four classes and therefore she's disqualified from testifying in toto.

THE COURT: All right, Mr. Griffin.

MR. GRIFFIN: Your Honor, the case that she cited goes on to say that if you're in that

category, then you can't testify if one, the testimony is regarding any communication or transaction between the witness and the deceased; two, if the testimony is offered against the party prosecuting or defending the action as executor or administrator, heir-at-law, next of kin, assignee, devisee, or survivor; and three, does the testimony potentially affect the present or previous interest of the witness.

So the first of those three tests, we don't intend to offer any testimony, Your Honor, from Ms. Julia Brooker about communications or the transaction. I'd also -- and so the dead man's statute does not preclude her testimony. There's also a number of exceptions to the dead man's statute. I'll hand up the case to Your Honor, Hanahan v. Simpson. There's a flag on it that says it's been overruled and superseded by statute. I'll tell Your Honor the statute they're talking about is the Frivolous Civil Proceedings Act. It's a sanction statute that doesn't really have -- had nothing to do with the dead man's statute. And then in the case, the -- there's a number of exceptions to the dead man's statute. And it's -- it says first, the benefit of the

statute may be waived; they're not waving it. Second, the testimony of an attorney preparing the will is generally held admissible on the ground that he's not an interested person. Third, a witness is prohibited from testifying only if his or her present or previous interest would be affected by the event of trial, and if such, a person is only disqualified if he has certain legal and vested equitable interest which may be affected. Fourth, a party may testify against his own interest. Fifth, a witness may testify to a transaction between the deceased and a third party. Sixth, the statute's directed to the competency of witnesses rather than the transaction or communication itself, and thus, it does not prohibit the introduction of documentary evidence. And seventh, the Court has recognized that notwithstanding the testimony of an interested witness may generally fall within the inhibition of the statute as to evidence of transactions or communications with the decedent. He may testify to acts, demeanor, or conduct of the decedent where the testimony is offered on the bearing of mental competency. So those are some of the exceptions. I do have documents I plan to

introduce through Ms. Brooker that would not be precluded under the dead man's statute. And, like I said, her testimony proffered she plans to testify as to who her mother was, who her father was, who her sister is, her brother is, her nieces and nephews are and the dates of their births and the family history and the assets of the mother as well as, frankly, the mother's history of gift giving to the third parties. That would be the proffer of the testimony.

MS. DURANT: Your Honor, briefly, I don't disagree with Mr. Griffin's recitation of the exceptions. However, I don't think any of them apply with maybe the exception that it does not prohibit -- the dead man's statute does not prohibit the obstruction of documentary evidence. The problems that I do have with what he said that Ms. Brooker may testify to are the assets of the mother and the history of the gift giving. That goes straight to the communications and transactions that are at issue in this case. And Ms. Brooker should be precluded from testifying regarding the mother's intent or history of gift giving and the assets of the mother. That goes directly to communications and transactions

between Ms. Julia Brooker and the decedent, Ms. Janet Brooker.

MR. GRIFFIN: The issue in the case is the interpretation of a trust agreement entered into October of 2007, I believe it was, October 17th or 19th, 2007. She's not going to testify about any communication she had with her mother about that agreement, about any catch up provisions, or anything of that nature.

THE COURT: I do think the dead man statute applies to certain potential testimony she may want to tell us. It doesn't preclude her from being a witness. We'll get started; I'm sure you've instructed her what she should or shouldn't get into, and I'm sure you'll be careful with your questions, and I'll hear you. If you hear something that is objectionable, please rise.

MS. DURANT: Yes, Your Honor, I will. And may I add one more point and then I'll sit down and be quiet?

THE COURT: Certainly.

MS. DURANT: I do want to add, Your Honor, that under Merck v Merck, 89 SC 347 South Carolina Supreme Court 1911, the term "transaction" under the dead man's statute is a very comprehensive

term. It means the carrying of or through any matter or affair. So not only is she precluded from talking about the communications with the mother, but we are talking about a very broad transaction that renders Ms. Julia Brooker incompetent from testifying about those matters. And with that, I will be quiet.

THE COURT: I'll certainly hear you. If you think we're tiptoeing into an area you're concerned about, I will hear you.

MS. DURANT: Yes, Your Honor, thank you.

THE COURT: It's complicated. This is a very complicated family dynamic; it's a complicated prohibition that you can't talk about communication within the family. So that lay witnesses and people that are struggling with this, it's an honest struggle. Can I get you just to move that behind the table so that it doesn't in any way interfere with Ms. Brooker's --

MR. SOWELL: If you don't need it, we'll just put it down. You've got the document.

THE COURT: I do, but if you want it just to stay in the room as a reminder to everybody, just put it behind. Thank you. Of all the cases I've been in statute, I didn't have this. And let me

Bring your water and your glasses and anything else you need. Just a reminder you're still under oath, okay.

THE WITNESS: Thank you.

- - - - -

FURTHER EXAMINATION (Julia Brooker)

BY MR. GRIFFIN:

Q Julia, I want to talk about first your efforts to determine the amount of lifetime gifts. Now, I know there's an issue as to what those encompass, what period of time, but I just want to ask what steps did you undertake to try to determine how your mother's money was spent since 2007 when Beach Brooker was given power of attorney?

A How was it spent?

Q What efforts did you undertake to try to find out after your mother died what you were entitled to under this clause?

A Can I start from kind of the beginning or whatever?

Q Sure.

A Back in 1997, May of '97, my mother started doing some estate planning. She opened up three family trusts for my brother, sister and myself that we, you know, put money in it. She wanted to -- she

called me and brought me over and said that she was talking to me --

MS. DURANT: Your Honor, if I may, move to strike that testimony. That's squarely within the dead man's statute. She's talking about communications with her mother.

THE WITNESS: Okay.

THE COURT: Well, maybe that last little piece, but the history of this, unless it's false information, should be very easily documented. And I just need it to understand what her timeframe is. If these trusts were created in May of 1997, you can tell me that. They obviously exist. Do you disagree that Mrs. Brooker created three trusts for her children to May of '97?

MS. DURANT: No, ma'am.

THE COURT: This is just a factual piece that I'm gonna capture. I hear you suggesting that -- tread carefully.

MR. GRIFFIN: You can't talk about what your mother said about anything.

BY MR. GRIFFIN:

Q So you created these trusts?

A Uh-huh.

Q She did in 1997?

A Uh-huh. Gave gifts of about $400,000.
Q To each of you?
A No, total gifts. I believe if you look in the gift rank in 1997, there's over $400,000 that she gave gifts to. I think it's included. She did DeBordieu in '92. She -- wait a minute, let me get my dates right. We did a qualified residential trust too where she did the condominium at DeBordieu at this time, and in about '94, I've got where she gave us gifts too, or said that she was going to start giving us gifts.

MS. DURANT: Again, Your Honor, she just referenced what her mother did.

THE COURT: Yeah, I'm not sure what we're doing here. I know you want to tell the whole story and I know it would feel really good that you tell the whole story, but we've got to be really careful.

THE WITNESS: Okay.

THE COURT: Can we just go back to the timeframe about -- I thought we were talking about interest timeframe. Where were you going with your first question?

MR. GRIFFIN: I'm trying to figure it out.

THE COURT: I think your question was, and it's legitimate, what efforts did she personally make to determine what gifts her mother had made that met this provision.

MR. GRIFFIN: Yes.

BY MR. GRIFFIN:

Q I guess, let's just start here. You see this document?

A Yes.

Q At some point in time, did you get a copy of this document?

A Yes.

Q Did you agree with the numbers on this document?

A No.

Q Why did you not agree with the numbers on this document? And when I say "this document," I'm talking about Defendant's Exhibit No. 1. And don't tell me what your mother said.

A Can I tell you what Steve said?

Q Tell us what Steve said, yes.

A Okay. The family had two meetings with Steve. One after my mother died and one prior to my mother dying. He brought us in and talked about that mother was going to exaggerate some gifts, give more gifts, and that what she was going to do

is catch me up at the end.

MS. DURANT: Again, Your Honor --

Q That's what Steve said, not your mother.

A That's what Steve said.

MS. DURANT: She said -- and then she said, "my mother" --

THE COURT: That's already been testified by Mr. Johnson.

MS. DURANT: I'm just really, Your Honor, I'm just preserving the record.

THE COURT: And I hear you, but I heard her say that's what Mr. Johnson said to her at the family meeting. Did you hear her say that's what her mother said?

MS. DURANT: I heard that Mr. Johnson said my mother said she wants to catch up.

MR. GRIFFIN: That's certainly not precluded by the dead man's statute.

THE COURT: I am hearing that Mr. Johnson has already testified and told Julia at the very family meeting he testified about that it was the intention to catch her up at her mother's death.

MS. DURANT: Your Honor, Mr. Sowell brings up a good point. Mr. Johnson is or was Ms. Janet Brooker's lawyer, so he is just repeating what his

client said. So I think that also falls on the teeth of the dead man's statute.

THE COURT: I'm going to disagree on the concept that number one, he's already testified to that himself, and at a family meeting, he is sharing this information. He had a family meeting, which means you have on some level a waiver of the attorney-client privilege as to the issues he's talking about at the family meeting that he had with the family. The deceased Mrs. Brooker was there. So overruled.

BY MR. GRIFFIN:

Q In the meeting after your mother died, what was discussed?

A The lifetime gifts and that the lifetime gifts, I was gonna be equalized with the lifetime gifts that were given to my brother and sister.

Q Your brother and sisters' children?

A Children, family. Brother and sister's family. Children and family.

Q Then when you got this document at some point in time, you said you didn't disagree with it, but you didn't agree with it. What were the parts you didn't agree with?

A The year that the gifts began.

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the document hereinbelow specified by electronic mail and by hand delivery to the following address(es):

Document: RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Counsel Served:
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Attorneys for Petitioner Julia B. Brooker

Amy A. Kelly

July 1, 2019

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 but filed on June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2024

Signature: Beacham O. Brooker, Jr.
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205
Telephone (Work): _____
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 and filed June 20, 2019 . Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for: South Carolina

My Commission Expires: May 27, 2026

Signature: Ellen B. Corontzes

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive
Columbia, SC 29205

Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223
Email: ecorontzes@sc.rr.com
Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE JANET B. BROOKER TRUST	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**
Julia B. Brooker, Petitioner,	
v.	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	

FILED
2019 JUN 20 P 5:18
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts,* as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

1 & 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker**. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

2 @ 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts ***[to be made]***, ***[that will be made]***, ***[that Settlor intends to make pursuant to the gifting program]*** to such daughter's siblings' spouses or siblings' issue."

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Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

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receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

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of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

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include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

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Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

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was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments…"
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

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12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

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ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated August 5, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on August 5, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 8th day of August, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2026

Signature: Beacham O. Brooker, Jr.
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205

Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated August 5, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on August 5, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 9 day of August, 2019.

Notary Public for: Lincoln County, Wyoming
My Commission Expires: 2-11-23

LORI BELL - NOTARY PUBLIC
County of Lincoln — State of Wyoming
My Commission Expires February 11, 2023

Signature: Ellen B Corontzes
Print Name: Ellen B. Corontzes
Address: 809 Woodland Drive
Columbia, SC 29205
Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223
Email: ecorontzes@sc.rr.com
Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-00036**
COUNTY OF RICHLAND)	
	)
IN THE MATTER OF THE JANET B. BROOKER TRUST	)
	)
Julia B. Brooker,	)
Petitioner,	)
	)
vs.	)
	) **ORDER ALLOWING ATTORNEY'S FEES**
Beacham O Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)
	)
Respondents.	)

FILED
2019 AUG -5 P 3:29
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon the filing of an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses, by Attorney James. M. Griffin on behalf of his client Julia Brooker ("Petitioner") on February 28, 2019. The Affidavit asks for this Court to award attorney's fees and reimbursement to Julia Brooker for cost paid by her in the matter of the Janet B. Brooker Trust, case number 2017-GC-40-00036, from the Janet B Brooker Trust ("Trust"). Respondents, through their attorneys Thornwell F. "Biff" Sowell, III and Bess J. DuRant, of the law firm Sowell Durant, filed a Memorandum in Opposition to Petitioner's Fee Affidavit on April 10, 2019.

A hearing on the matter was scheduled and held on May 22, 2019. All parties were sent Notice of Hearing. All parties were present at the hearing with their respective counsels.

At the hearing, the Court heard arguments from both sides about the appropriateness of awarding attorney's fees in this case, including arguments based on the experience of the attorneys' on either side, and the differences in hourly rate charged by each set of attorneys based on that experience. Mr. Griffin argued that Respondents' legal fees are being paid by the Janet B. Brooker Trust, while Petitioner personally paid the fees and costs of her attorney. This court notes that after the hearing on the fee issue, this court issued its ruling in the case in favor of the Petitioner.

Because the remaining Trust corpus is to be split evenly between Respondents and Petitioner after the distribution ordered in this Court's Order filed June 20, 2019, having the Trust be responsible for some attorney's fees advantages some beneficiaries over others, reducing the amount of corpus left to be distributed to all beneficiaries. The Court views this as inequitable. For

this reason, the Court required Respondents' to provide their itemized legal bill so that a comparison could be made with that of the Petitioner's.

The Probate Court has authority to award attorney's fees in this trust matter pursuant to S.C. Code Ann. § 62-7-1004 which states "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

After reviewing the legal bills and professional fees of both Respondents and Petitioner and finding them comparable, and weighing the equities of the case, Petitioner's Motion for Attorney's Fees and Reimbursement **IS HEREBY GRANTED**.

THE COURT FURTHER ORDERS THAT Petitioner's attorney's fees and reimbursement be paid out of the corpus of the Janet B. Brooker Trust, along with Respondents' attorney's fees.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

August 5, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

FILED
2019 NOV -5 P 12:03

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated October 28, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on October 28, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 31st day of October, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2026

Signature: _____
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205
Telephone (Work): _____
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

s/ Bess J. DuRant (SC Bar # 77920)
Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(I) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

FILED
2019 NOV 5 P 12:02

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-365**
COUNTY OF RICHLAND)	
IN THE MATTER OF:)	
THE JANET B. BROOKER TRUST)	
)	
Julia B. Brooker,)	
Petitioner,)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.)	
)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,)	
Respondents.)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated October 28, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on October 28, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of November, 2019.

Notary Public for: South Carolina

My Commission Expires: May 27, 2026

Signature: Ellen B Corontzes

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive
Columbia, SC 29205

Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223

Email: ecorontzes@sc.rr.com

Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC

Address: 1325 Park Street, Suite 100
Columbia, SC 29201

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IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

FORM #356ES (1/2014)
62-1-308

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

STATE OF SOUTH CAROLINA)) **COUNTY OF RICHLAND**)	**IN THE PROBATE COURT** **Case Number: 2017-GC-40-00036**
IN THE MATTER OF THE JANET B. BROOKER TRUST **Julia B. Brooker,** **Petitioner,** **vs.** **Beacham O Brooker, Jr., in his official Capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,** **Respondents.**	**ORDER REGARDING MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP**

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and to Alter or Amend Under Rules 52 and 59(e) (hereinafter "Motion") by Beacham O. Brooker (hereinafter "Beacham"), in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontez (hereinafter "Ellen"), individually as a Beneficiary of the Janet B. Brooker Trust, (hereinafter collectively "Respondents") through their attorneys Thornwell F. Sowell, III and Bess J. DuRant, filed on July 1, 2019. Julia B. Brooker (hereinafter "Julia"), through her attorneys James M. Griffin and Margaret N. Fox, filed a Response in Opposition to the Motion for Reconsideration on August 29, 2019. Rule 59(f), SCRCP, allows for a Rule 59(e) motion "in the discretion of the Court [to] be determined on briefs filed by the parties without oral argument."

The Motion asks this Court to reconsider and to alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts (hereinafter "Order") dated June 22, 2019 and filed June 20, 2019. In the Order, the Court concludes that the language "lifetime gifts" in the equalization provision of the Janet B. Brooker Trust (hereinafter "Trust") included gifts Janet B. Brooker (hereinafter "Decedent" or "Settlor") made to the spouses and children of Beacham and Ellen prior to the creation of the Trust on October 16, 2007. The Court found that it was the Decedent's intent to have Julia B. Brooker (hereinafter "Julia") equalized at her death, therefore, the equalization provision was interpreted so that Julia would receive half of the sum total of all

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lifetime gifts made to the spouses and children of Beacham and Ellen, plus five percent interest, as calculated on the date of payment so that she may be equalized.

Respondents request the Court explicitly rule on the threshold question of whether the Trust Agreement is ambiguous (Motion at 2). Respondents also argue that the Court ignored the intent of the Settlor in making its findings and rendered the phrase "[f]rom the date of this trust forward, the Trustee shall..." meaningless (Motion at 2, 3). Respondents' further claim the Court erroneously relied on the testimony of Julia in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3, 4).

This Court considers Respondent's Motion and offers clarifications of its Order as set forth below.

The Equalization Provision of the Janet B. Brooker Trust Is Ambiguous

Respondents argue that the Court did not explicitly rule on the threshold question of whether the Trust Agreement or its equalization provision is ambiguous (Motion at 2). The Court has previously determined that the equalization provision is ambiguous, however, for clarification, the Court explicitly rules that the equalization provision of the Janet B. Brooker Trust is ambiguous. Even Beachum and his witness, drafting attorney Steven Johnson, had different interpretations of the Settlor's intent regarding how to interpret the equalization calculation in the Trust document.

The Court Made Specific Findings and Conclusions Regarding the Settlor's Intent

Respondents argue that the Court ignored the intent of the Settlor in making its findings (Motion at 2). The Court determined that the Settlor's intent was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children and that Julia should be equalized at the time of Janet's death (Order at 10, 11). The Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. *See Schulmeyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

When considering the plain language of the Trust as a whole, "equal shares" appears twice, indicating that the Settlor intended her children to receive equally under the Trust:

- Article V (1)(b), General Distribution of Personal and Household Effects with a Mandatory Memorandum: "In default of such memoranda, or to the extent that such memoranda do not completely or effectively dispose of such property, the rest of the

2/4 am

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Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares…"

- Article VI, Trust Estate to Settlor's Issue: "Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's General Estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares…"

Considering the context in which the Trust uses the phrase "equal shares" to indicate that the Settlor's intent was for her surviving children to receive equal shares of personal and household effects and of the Trust Estate, it follows that the Settlor's intent of the equalization provision in Article V(2) was also to ensure her children received equally, and therefore that Julia would be made equal as to all the lifetime gifts made to the spouses and children of Beacham and Ellen upon the Settlor's death.

Further, in determining the situation and purposes of the Settlor at the time the Trust was created, the Court also relied on the testimony of Steven Johnson, who testified on behalf of the Respondents. According to Johnson, the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen since Julia was not married and had no children (Trial Tr. 102:6-11). Based on this express desire by the Settlor, Johnson testified that he told the Settlor that he could put in a provision to "catch up" Julia for gifts made to Beacham and Ellen's spouses and children (Trial Tr. 102:11-14).

Mr. Johnson further testified that, after the family meeting on September 25, 2001, he asked his paralegal to "prepare a codicil with an equalization provision in it" (Trial Tr. 135:4-8). The Court found persuasive the Draft First Codicil to Last Will and Testament of Janet Bloom Brooker, Plaintiff's Exhibit 9, which in pertinent part reads:

> "I give, devise and bequeath such amount necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon."

Mr. Johnson agreed that this draft codicil created by his paralegal does not make a distinction between gifts given before and after the Trust was created (Trial Tr. 136:25 – 137: 1-5).

Additionally, the Court relies on the To Do List of Mr. Johnson's estate paralegal, submitted as Plaintiff's Exhibit 11, which states: "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in

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May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia." This exhibit clearly indicates the Trust's equalization provision included the lifetime gifts made before the Trust was created.

Based on the above testimony and the evidence submitted, the Court considered the Settlor's intent and determined that it was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children (Order at 10, 11). As such, the Court determined that all lifetime gifts made to the spouses and children of Beacham and Ellen were to be included in the equalization distribution in order to ensure Julia were made equal (Order at 8).

The Court Determined that the Phrase "[F]rom the Date of This Trust Forward, the Trustee Shall..." Indicates the Beginning of Beacham's Duties as Trustee

Respondents argue that the Court rendered the phrase "[f]rom the date of this trust forward, the Trustee shall..." within the equalization provision meaningless (Motion at 3). The Court determined that this phrase plainly marks the beginning of Beacham's duties as Trustee.

Respondents argue that this language was not "imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust and the Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust" (Motion at 3.) Respondents quote *In re Matter of Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995), claiming that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...." however the portion cited applies to statute interpretation, not contract interpretation. Contract precedent determines that interpretation of the language in a testamentary trust must be reasonably supported by a plain reading of the document as a whole. *See Epworth Children's Home v. Beasley,* 365 S.C. 157, 167, 616 S.E.2d 710, 715 (2005); *Harper v. South Carolina Tax Commission,* 267 S.C. 144, 149, 226 S.E.2d 699, 701 (1976). Therefore, the Court determined that the plain reading of the phrase "[f]rom the date of this trust forward, the Trustee shall..." indicates the beginning of the Trustee's duties.

Further, although the Settlor may have had substantially better knowledge of the gifts she made to each child and grandchild prior to the Trust, the gifts were accurately identified by accountant George Durant via bank and investment statements of the Settlor (Order at 12). The sum total of all lifetime gifts was calculated to be $997,869.83 (Order at 8). Therefore, this point is moot.

The Court's Order is not Based on Evidence Prohibited by the Dead Man's Statute

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Respondents contend the Court erroneously relied on Julia's testimony in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3-4). This argument is without merit. There is no indication under the "Findings of Facts and Conclusions of Law" section of the Order that supports the assertion that the Court's decision is based, in whole or in part, on the testimony of Julia Brooker. The only allusion to Julia's testimony in the Order is found under a summary of all testimony provided by witnesses at the hearing. As set forth in the summary, Julia was permitted to testify as to what she believed her mother's intent was "as to the 2007 estate plan and the Trust" (Order at 5). A review of the transcript of her testimony illustrates that the Court carefully circumscribed the scope of her testimony. Julia was not permitted to testify as to any communications she had with her mother about her mother's intentions regarding the equalizing provision in the Trust. Rather, she was permitted to provide background information and to testify that in family meetings with Steve Johnson, she was told by Steve Johnson that her mother intended to "catch her up at the end" (Trial Tr. 254:1). This Court correctly ruled that such testimony is not prohibited by the Dead Man's Statute, nor is it prohibited from the Court's consideration based on a claim of attorney-client privilege (Id. at 254:23-255:11).

Moreover, the information provided to Julia in her testimony was duplicative of the information provided through Steve Johnson's testimony and documents introduced in to evidence. As recognized by the Court (Id. at 254:5-8), Mr. Johnson mimicked Julia's testimony that it was the Settlor's intent to catch Julia up at the end because Janet did not want Julia to be disadvantaged (Id. at 102:6-14). The gifts made by Janet Brooker prior to 2007, as testified by George Durant, were identified by the bank and investment account statements of Janet Brooker. Given the introduction of this evidence from permissible sources other than Julia, Respondents cannot support their argument that the Order necessarily relied on impermissible testimony provided by Julia.

The Court's Order Need Not Address the Admissibility of Parol Evidence

Lastly, Respondents never objected to parol evidence being considered by the Court during the hearing. A party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to judgment but failed to do so. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Therefore, the Court need not address the admissibility of parole evidence.

Upon review of the Order and consideration of Respondent's Motion for Reconsideration and to Alter or Amend and Petitioner's Response, the Court confirms and clarifies its Order

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Calculating Equalization Distribution of Lifetime Gifts dated June 22, 2019 and filed June 20, 2019.

THEREFORE, IT IS HEREBY ORDERED THAT respondents Motion to Reconsider and to Alter or Amend the Order issued by this Court dated June 22, 2019 and filed June 20, 2019, has been considered, and the Court hereby clarifies its Order.

AND IT IS SO ORDERED.

The Honorable Amy McCulloch
Judge, Richland County Probate Court

October 28, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) COURT OF COMMON PLEAS) 2019-CP-40-03582
In The Matter of the Janet B. Brooker, et. al. vs. Beacham O. Brooker, Jr., et. al. DEFENDANT	) TRANSCRIPT OF RECORD) March 3, 2021) WebEx

B E F O R E:

THE HONORABLE R. KIRK GRIFFIN.

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

THORNWELL F. SOWELL, III, ESQ.
Attorney for the Plaintiffs

JAMES M. GRIFFIN, ESQ.
Attorney for the Defendants

KESHIA REED
Official Court Reporter

Judge McCollough relied upon this. And you'll see it in the transcript. We broke the trial down so that Beach, who was the trustee and who was the PR, could compare George Durant's calculations with his own records and come back to court and say are there issues here, do we have problems and that's why it didn't go from day one to day two. It went from day one, there's a break and the break for the trustee to examine our forensic accountant's records and to see are there issues with it, do you have problems with it. And it came back and the records were solid, the math is solid and there was no significant issue. I mean, there's interpretation of the trust, but the fact that $997,000 was given before Ms. Brooker executed the trust is undisputed. And, again, as I say down here, Steven Johnson testified that he was not aware of the mother giving this amount of money in lifetime gifts prior to the date of the trust.

Now, I'm going back to what I mentioned earlier. Judge McCollough then concluded that lifetime gifts mean lifetime gifts, not gifts after a certain date of a trust that was executed. But then she also said because the reason she concludes that is because mother's intent as glean from the documents, glean from, you know, the testimony of Steve Johnson that Julia not be disadvantaged. And that Steven Johnson was unaware of the

significant contributions before, but Judge McCollough has to then take a equally -- well, frankly she has to take a more aggressive interpretation of the plain language in this provision in order to equalize it. And, again, as I said, the mathematical formula is that you would add up as what we said that Julia would get 2.9 million dollars because that's the grand total of lifetime gifts plus interest at 2.9 million dollars.

Judge McCollough said, no, that be a windfall and the goal was to equalize it. So in order to get Julia's award, we're going to take the sum of A and B and we're going to divide it by two because each one of them are brother and sister would have gotten half of this. Well, they wouldn't have gotten half of this. They wouldn't have gotten any of the interest, but they would have got half of this. And so we're dividing that by two. Otherwise, Julia would get a windfall.

Now, we didn't appeal that because what Judge McCollough's ruling does it catches Julia up. It makes her equal. It doesn't get anybody a windfall. They're not complaining about this application because it provides equality, but what they want is a $997,000 windfall here plus interest at 1.8 million, you know, net that back. They want your Honor to give them a windfall by cutting off $970,000 of lifetime gifts that were given before the

date of the trust even when Steven Johnson who prepares an equalization document includes gifts that predated the trust and his evaluation because that's what he knew about. He did not know $997,000. And, you know, for that reason your Honor, we think strongly believe that Judge McCollough got it right. She didn't -- she took her time. And I know your Honor will, but she had the benefit of weighing the credibility of the witnesses, comparing the contradictory internal documents of Steven Johnson's office, comparing the limitations in his testimony that he was unaware of the roughly one million dollars of lifetime gifts that were given. And he says to that had I known what I would have told her is to catch up today and then we'll go from there, but he didn't know about it. So he couldn't give that advice.

And there's only one way to interpret this trust agreement where it's equal for the three children, which is all Ms. Janet Brooker ever wanted and that is how Judge McCollough did. If you reverse this case, if you apply their interpretation, Brother Beach and Brother Ellen get a windfall to the tune of $997,000 plus interest. And we respectfully request you shouldn't do that. Thank you.

THE COURT: Thank you, Mr. Griffin.

Mr. Sowell.

MR. SOWELL: Your Honor, may I have about four

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State of South Carolina)In the Probate Court
)
County of Richland) Case No: 2017-GC-40-00036

IN THE MATTER OF:
The Estate of Janet B. Brooker Trust
(C.A. 2015-ES-40-00662

Julia B. Brooker

Petitioner,

vs.

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust

Respondents.

Transcript

of

Proceeding

The within proceeding was taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., February 5 & 7, 2019, at the Richland County Judicial Center, Probate Court, Columbia, South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

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also recognize that we don't have a jury, and I think primarily we have these prohibitions because we don't want the jury pool tainted and you certainly can argue well, the judge is the fact finder and the law determiner shouldn't be tainted either, but I feel like I can separate. If we tap over, I can separate.

MS. DURANT: Yes, Your Honor, thank you.

- - - - -

DIRECT EXAMINATION

BY MR. GRIFFIN:

Q Julia, how old are you?

A Sixty-five.

Q Where were you born and raised?

A I was born in Columbia, South Carolina and raised in Columbia, South Carolina.

Q Who are your parents?

A Janet Bloom Brooker and Beacham Owens Brooker.

Q Have you had any siblings?

A Yes, two.

Q Who are your siblings?

A My brother Beacham Owens Brooker, Jr. and my sister Ellen Brooker Corontzes.

Q Are they here in the courtroom today?

A They are.

and then they spinned off another company, Lockheed Martin Aggregates, which we were allowed to buy stock in that company or switch to that company if we choose to.

Q And how has Lockheed Martin done over the years as an investment?

A Nice. It's done very well. It's defense stock, and one of the biggest I guess defense stocks in the country along with Boeing.

Q Julia, have you ever been married?

A No.

Q Do you have any children?

A No.

Q How about your brother Beach?

A He's married with two daughters.

Q Do you roughly remember when he got married?

A 1988 or '87.

Q And he's been married ever since?

A Yes.

Q And what is his wife's name?

A Elizabeth Kennedy Brooker. And I call her Beth.

Q So Beach and Beth. Do Beach and Beth have children?

A They have two daughters, yes.

Q What are their children's names?

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A From my understanding, yes, they did. They started in South Kilbourne kindergarten, I think. Kilbourne Park Kindergarten. And then went to Hammond from first grade on, I believe.
Q Did they go to college?
A Yes. Elizabeth went to the University of South Carolina, and Grace went to the University of Colorado.
Q Do you know whether they went to grad school?
A Grace is in grad school right now. Elizabeth has not gone to grad school.
Q Your sister, her name is Ellen?
A Right.
Q And is Ellen married?
A Yes.
Q Do you remember roughly when she got married?
A Yeah, she got married in '89, May of '89.
Q Who is her husband?
A Arthur Constantine Corontzes. He goes by Dino.
Q So Dino and Ellen were married in '89?
A May of '89, Mother's Day weekend.
Q Did Dino and Ellen have children?
A They have two boys.
Q What were the boys' names?
A The oldest one is Arthur Brooker Corontzes, and

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Q Did she set up trusts for the grandkids when they were born?
A Right, yes. Each grandchild got a trust set up by my mother.
Q Do you remember when?
A Let's see, probably -- Arthur was born in '90, so maybe starting in '92 or '93. Maybe '91. I don't know. Each child got it, I think, as close to their birth.
Q Do you know who your mother's estate lawyer was after your father died?
A Well, at the end, it was Steven Johnson. He had a -- was it a Brice in there with Todd, Al Todd was part of it. And then SCN had -- did some estate work.
Q Did the law firm of Todd & Johnson, as far as you know, always do the estate work for your father?
A No. I don't even know -- I don't know when they came, starting the corporation or the LLC started, but they did a lot of work. South Carolina National was the company's bank and my father and mother's bank and they did some wills and stuff through the trust department there.
Q In addition to trusts set up for the grandchildren, did your mother set up trusts for

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you and Ellen and Beach?
A She did. In 1997, in May.
Q In May of '97. Do you remember what kind of trusts those were?
A It was a family trust. It was a generation skipping trust that what she put in the trust goes to the children of us.
Q It would skip your generation?
A We were allowed to take income, the interest out of the trust. I went back and read it, and I think it was either $5,000 or 10 percent of the principal per year.
Q Was your generation skipping trust, did it remain in place?
A My generation -- it's still in place.
Q Were there other estate planning -- Well, let me ask, was there a family partnership that was created?
A Yeah. It was the partnership of BBB&C for Brooker Brooker, Brooker, and Corontzes. That was my mom, my brother, and mine and Ellen's first initial of our last name.
Q Who were the members of the family limited partnership?
A Originally, it was my mother, my sister, my

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brother, myself.
Q Who are the current members?
A My brother and sister and myself.
Q And the three of you own equal shares?
A Equal shares.
MR. GRIFFIN: I'm going to show you what I'm going to mark as Exhibit No. 2, and I'll give the Court Reporter a chance to mark it.
(Whereupon, Handwritten Letter to William Sellers was introduced as Petitioner's Exhibit No. 2.)

BY MR. GRIFFIN:
Q Can you identify what Exhibit No. 2 is for Judge McCulloch?
A It's a handwritten letter from my mother faxed to Bill Sellers.
Q Did you find this document?
A Did I find it? Yes.
Q Where did you locate it?
A Back before my brother was here and my sister lived in Colorado, Dad had surgery, open heart, and at the time, Mom and Dad gave me a lot of documents to hold onto just because I was the only child here and for safekeeping. So I'm just

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THE COURT: -- based on what you asked him to do.

MR. GRIFFIN: And that's all I want him to testify to.

THE COURT: And I will fully receive that information because God knows not everybody on the street in their boxer shorts can calculate.

MR. SOWELL: Thank you.

THE COURT: You're welcome.

BY MR. GRIFFIN:

Q Knowing I will drawn an objection to this letter to me. I'm going to mark Exhibit No. 3, please.

(Whereupon, List of Documents Examined by Mr. George DuRant was introduced as Petitioner's Exhibit No. 3.)

BY MR. GRIFFIN:

Q Mr. DuRant what is Exhibit No. 3 that I've just marked?

A The first page of Exhibit No. 3 is a listing of the documents that I examined. And these are, the first one, Salomon Smith Barney account. These are brokerage statements for the period indicated. So there are 12 different sets of documents for the periods indicated.

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Q And then what's behind in the exhibit?
A Page two is a listing of other documents in addition to the monthly statements on page one, including deposition transcripts. Just the information I reviewed in my work. The third page is marked in the lower right-hand corner, Appendix One. This is a summary of other spreadsheets where I've -- if you look at the first -- the fourth column beneficiary, Arthur B. Corontzes, these are the transfers that I've identified as going to or being gifted to Arthur B. Corontzes for the period indicated in column two. The amount column, of course. The number of days represents, I believe those are the days to May 31, 2018. That was the date of my report. Interest is computed at five percent from the date in column two on the amount in column five.
Q Just before we get into all that. Are the spreadsheets that are attached to Exhibit No. 3 the summary of your work?
A Yes.
Q A detailed summary?
A Yes.
MR. GRIFFIN: Your Honor, we offer Exhibit No. 3 in evidence at this time.

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MR. SOWELL: No objection beyond the one we've already made.

THE COURT: Admitted.

(Petitioner's Exhibit No. 3 was admitted into evidence without objection.)

BY MR. GRIFFIN:

Q Now, George, now that Judge McCulloch has a copy of what you're talking about, can you sort of go back through and explain the first page. There's a listing of accounts. What are these accounts?

A These are Mrs. Brooker's accounts that she had control of. These were produced, I presume, I'm not sure of that, by Salomon Smith Barney or Stephens or First Community Bank. Copies of monthly bank statements, monthly brokerage statements. This is what I used to identify transfers to children and grandchildren and spouses of children.

Q So you actually had the financial statements going back until -- how far back did you have? Do you recall?

A December of 1998 for some.

Q And then you've got on the second page, it says documents produced by William Sellers and there is 1400 pages. Do you recall whether you had access

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to gift tax returns that Mr. Sellers had prepared?
A Yes. They were gift tax returns. I don't recall this letter you were speaking of earlier, but I -- yes, they were gift tax returns.
Q And did you use the information from the gift tax return as well as the financial statements to do what? What did you do when you gathered all this information?
A Well, for example, if there was a transfer of shares of stock to Arthur Corontzes, that transfer was likely -- I picked it up on the monthly brokerage statement and likely saw it on a gift tax return, reported to the government on a gift tax return. So any clues to what was given, Mrs. Brooker gave to these people, I tried to document it and record it.
Q And the spreadsheets in Exhibit No. 3, Appendix One, the first page identifies the beneficiary and in fourth column from the left, and that says Arthur B. Corontzes?
A Let me just go through this and acclimate all of us. The first column, some of these were actually checks written by Mrs. Brooker. So if it was a check, I recorded the check number; the date of the transfer, second column; a description of the

transfer. Like the first line is a 191 shares of Martin Marietta stock on June 1, 1992, and that was given to Arthur B. Corontzes. The value was $9,979.75. The next column is the number of days from June 1, 1992, to May 31, 2018, the day of my report to you. The next column is interest computed at five percent. The next column is a reference to that transfer, and that is from Mr. Sellers' documents that we were just talking about, Bates stamped number ten. It's also from an account, and right now I'd have to determine what account that is. The next column file and reference. So if I picked up a transfer in brokerage statement and also picked it up on a gift tax return, I would try to document it where it can be located in both places.

Q Okay. Now, you said you did interest calculation of five percent. Did you do that because I asked you to do five percent?

A I did it because you asked me and because I'm working off of the Trust Agreement.

Q So it says to such amounts specified above the date such gift and interest rate of five percent shall be applied. Did you do that?

A Yes.

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BY MR. GRIFFIN:

Q So explain, please.

THE COURT: And if we interrupted your thought, go ahead and kind of collect yourself again.

A Well, I was just thinking, this is what I do. I put numbers to what lawyers write. I'm asked to do this all the time in buy/sell agreements and partnership --

THE COURT: And there could be six different interpretations of what that writing is to mean. And that's where we're going to get into other testimony based on the decedent's intent and conversations, specifically Mr. Johnson's testimony. Which is going to have the heavy weight. So let's understand what you thought you were reading, why you interpreted it that way, and then how you calculated. I fully respect what you're trying to tell me.

THE WITNESS: Thank you, Your Honor. Would you ask me that question again.

BY MR. GRIFFIN:

Q The question is did it make a difference whether one child got 400-and-something thousand dollar

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MR. SOWELL: Other than the prior objection, I have no objection to this. I mean, I think it's just -- let me ask this. It's just a summary, right, of these things you've been talking about?

MR. GRIFFIN: Right.

BY MR. GRIFFIN:

Q So what's Exhibit No. 4?

A Exhibit No. 4 is the information we were just talking about except interest has been calculated until today instead of May 31, 2018.

Q Did I ask you to prepare Exhibit No. 4 and split the gifts from the date of the trust document?

A Yes.

Q And you've done that on Exhibit No. 4?

A Yes.

Q So that if Judge McCulloch determined the gifts before the date of the trust document are not included, then she could use this document --

A Yes.

Q -- in her ruling?

A That's right.

MR. GRIFFIN: We move Exhibit No. 4 into evidence at this time.

MR. SOWELL: No objection beyond what we've objected to before.

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THE COURT: His interpretation, to be clear?

MR. SOWELL: Yes.

(Petitioner's Exhibit No. 4 was admitted into evidence without objection.)

BY MR. GRIFFIN:

Q So can you walk through this document for Judge McCulloch, please.

A Okay. It's divided, the top half of the analysis is a summary of the gifts prior to October 16,2007. That date is the -- October 16, 2007 is the date of the Trust Agreement. So these are the gifts that I identified in those bank statements and brokerage statements prior to October 16, 2007. And it shows by individual Dino, Arthur, Beacham and Beth, Elizabeth and Grace, the six individuals subject to this Article 5. So that the total of gifts prior to the date of the Trust Agreement was $997,869.83, and interest at five percent from the date of each one of those gifts to today is $829,712.87. The second half are the gifts, again coming exactly off the same spreadsheet that we've been talking about, gifts after October 15, 2007. So a total of gifts to those six people $804,499.23, with interest from the date of the gift through today

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at five percent, interest was $309,981.94.
Q So what's the grand total of the gifts?
A The grand total of the gifts, $1,802,369.06.
Q Of that, were more given before the date of the trust or after the date of the trust?
A Well, more was given before the date of the trust. $997,869.83 was given before the date of the trust.
Q And the total gifts you've calculated plus interest is what?
A $2,942,063.87.
Q And that is through what date?
A Through today.
Q Okay. You calculated it for today's hearing?
A Yes.
Q And then you have daily interest after February 5, 2019, $246.90?
A On the total. On the grand total, yes.

(Whereupon, Todd & Johnson Documents was introduced as Petitioner's Exhibit No. 5.)

BY MR. GRIFFIN:
Q I'll show you what's marked as Exhibit No. 5. Were you provided a copy of Exhibit No. 5 as part

A I analyzed any transfers to Julia along with Beacham, the son, and Ellen, the daughter. Her brother and sister. Same type of investigation.
Q So is that in Exhibit No. 3?
A No.
Q Did you conclude that there had been some gifts to Julia during this time period?
A In my production to you, there were spreadsheets on all those transfers and -- what was your question?
Q Did you investigate for gifts to Julia?
A I analyzed them, all of that. They weren't relevant to Article 5 of the Trust.
Q Not even if every time a check was written to or on behalf of Dino, Liz, Grace, or Arthur, one went to Julia. You did not care about that?
A I don't know how to answer that. What I did, in my work papers you will see where I analyze all the transfers to the children including the grandchildren with respect to the children. And then the gifts were, I eliminated all the gifts that were equal between Julia, Beacham, and Ellen. After that I really wasn't -- I didn't do anything because it wasn't relevant.
Q Okay. Well, let's look at Appendix One, page

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Steve Johnson on page 35 of his deposition, "If you read the four corners of paragraph 2, it intends to keep Julie equal with what Beach got and what Ellen got, but not to get her ahead. It says equal, equal means equal to me"?

A Well, you know, my point again is that --

Q I know your point, but you got to answer my question first, with all due respect. Did you read that?

A Did I read what?

Q The extract from his deposition, or his deposition?

A I've already testified that I remember reading it because I testified about it in my deposition. I don't recall it right now. But, again, the four corners, here are the four corners; there's nothing outside of the four corners that I was asked to assume or even -- you know, I have great respect for Steve Johnson. I've relied on him all my career just about since 1986; he's a top lawyer, and I don't dispute a word he says.

Q So you totally disregarded his testimony as the trust and estate's lawyer, the trusted counsel for Janet Brooker and came up with your own construction of this Trust Agreement?

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A I was not asked to look at all the testimony and make a decision about what this will should have said. I was asked to do an accounting based on what the will actually said, not what it should have said. That's not my area.

Q Let me ask you a couple of different questions and I'll be through, I think. Now, with respect to Exhibit No. 3, which is all of these appendices, and going to a little bit broader question than my question about Hammond donations or tuition payments or whatever they were, you did not try to differentiate in this exhibit whether this was a gift or something else?

A No.

Q So it could have been, you know?

A You're talking in general, any of these.

Q Yeah, in general any of these?

A If a transfer to any of these individuals was documented here, if it was for something else, if it wasn't a gift, I don't know, other than there are certain things not subject to dispute, those of the items reported on a gift tax return, those are obviously gifts. But if there's a transfer or a check for --

THE COURT: I'm interrupting. Do we have the

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gift tax returns? Are they coming into evidence? Did you rely on any gift tax returns in commuting your document? There's a lot of questions and only one of those you may be able to answer. Why aren't we relying on gift tax returns if we're arguing lifetime gifts?

MR. GRIFFIN: Your Honor, the gift tax returns are incomplete and so --

THE COURT: Why are they incomplete?

MR. GRIFFIN: The didn't file them in all the years. So there were years where they weren't filed. Gifts that are under $12,000 don't have to go on a gift tax return; they were not included on these tax returns.

THE COURT: Did you see any gift tax returns in creating your document?

A Oh yes, Your Honor.

THE COURT: Did you see what was available?

MR. GRIFFIN: Yeah, absolutely.

THE COURT: In my notes, I didn't write down gift tax return. In his initial testimony, I wrote brokerage statements and bank statements, I'm sorry. Thank you.

MR. GRIFFIN: And I think he clarified. He has Sellers reference, that's probably a gift tax

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return, but I mean he could clarify it.

THE COURT: Sorry to interrupt.

MR. SOWELL: No problem.

BY MR. SOWELL:

Q In your deposition, I wrote down a couple things. One, on line 15 I think you said, "I could not differentiate whether it was a gift or something else." That is still true?

A Yes -- Well, for all items that's true. Some certainly were clearly gifts or not subject to dispute.

Q And you also testified in your deposition, page 17, "As I said, I did not make a determination that they were not gifts."

A Page 17?

Q Yes, it would be page 17 of your deposition.

A What line?

Q I don't know, but I can find it.

A I'm looking at page 17, tell me again what your referring to.

Q Let me see if I can find it. Down at the bottom. Right there, it's line 25.

A I was asked about a $114 transfer to Arthur Corontzes and another for $100, I believe, to Arthur and another for $350, and I answered

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well -- I was asked, "How did you know that those were gifts to Arthur?' My answer was, "Well, I didn't. As I said, I did not make a determination that they were not gifts. Some of these had 'happy birthday'; some were for Christmas, obviously, December 25th."

MR. SOWELL: Your Honor, I'm through with cross-examination, but I move to strike Mr. DuRant's report and his testimony on the ground that whatever's in here, we don't know whether they're gifts or what the are, particularly Hammond school?

THE COURT: I'm not striking them, but I hear your argument and it's valid.

MR. SOWELL: Thank you.

THE COURT: That is an interpretation that is difficult at best. It would have been lovely had the family sat down through this list and said these are the definite things we agree were gifts. Only they would know collectively.

MS. DURANT: Your Honor, may I --

THE COURT: Are you both going to talk to me?

MR. SOWELL: She wants to confer.

MS. DURANT: Just briefly, I just want to confer with Mr. Sowell before he closes up his

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cross.

THE COURT: It sounds like you better listen to your attorney.

MS. DURANT: One minute.

[Off the Record]

MS. DURANT: No further questions.

- - - - -

RE-DIRECT EXAMINATION

BY MR. GRIFFIN:

Q Just very briefly. George, did you look at gift tax returns?

A I did.

Q Were there gift tax returns for every year?

A Not for every year.

Q What's required to be reported on a gift tax return? Is there a threshold amount?

A Well, what's required -- the amount has differed 10,000, 12,000, $14,000 at different times, but a lot of times you will report some of these gifts just to document the value, establish that you're claiming this value for the gift so going forward there's no dispute with the IRS later on. But the statute run on the gift tax return, I believe that's kind of a posture that Bill Sellers might have been following.

Q The initial report you prepared was dated May 31, 2018. Is that right?
A That's right.
Q That was eight months ago?
A Yes.
Q And do you know, have they come forward until today and questioned any of the payments to Hammond or any of these other things?
A I think the only time we've spoken is at my deposition.

MR. GRIFFIN: That's all I have, Your Honor.

MR. SOWELL: Nothing further, Your Honor.

THE COURT: Thank you very much. I assume he can be released from his subpoena, if he's even under subpoena?

MR. GRIFFIN: Please. Please, Your Honor.

THE COURT: No objection?

MR. SOWELL: That's fine, Your Honor.

THE COURT: Sir, you are free to leave.

THE WITNESS: Thank you.

THE COURT: Can we break for lunch without any motions, please?

MR. GRIFFIN: Sure.

THE COURT: I see that it's about 12:30. Can we say two, please?

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Brooker, who has the privilege. To the extent that they're seeking to waive it through Beach Brooker, to assist him in litigation for him, you would certainly have a conflict to be serving in that capacity as the Trustee. So, if she doesn't have standing, then nobody has standing, and actually, I'm sure that Mr. Johnson would not violate the attorney-client privilege. So I'm -- whether I got standing or not, I feel confident that he would not violate the attorney-client privilege unless it's lawfully been waived.

THE COURT: I need to ask Mr. Johnson a few questions before I rule, please.

Mr. Johnson, it is my understanding based on conversations with the attorneys and possibly at a previous hearing, that after this Trust was drafted and executed, you had a family meeting with the decedent/Settlor was present with her children. Is that an accurate restatement of the facts?

THE WITNESS: Your Honor, I need to look at my time records. I had a meeting with Mrs. Brooker on the 25th of September, with Mrs. Brooker and her family. And then she subsequently came to my office in October, the day

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the Trust Agreement was signed.

THE COURT: At some point, she authorized you to have a meeting with her family with her present?

THE WITNESS: Yes.

THE COURT: Did you discuss her planning, the reason for this trust document?

THE WITNESS: I did discuss her planning before Mrs. Brooker as well as family members.

THE COURT: I think she waived the privilege by inviting the family to a family meeting where they discussed the issues that relate to this planning document. So I'm going to allow his testimony.

MR. GRIFFIN: Your Honor, just to be clear, there was a subsequent meeting to execute and no family members were present for that.

THE COURT: If the discussion was allowed, and obviously, Mr. Johnson, Mr. Sowell, it's going to be really important that you provide the testimony that established these meetings or this meeting and what, if anything, the conversation was at the meeting and did it differ in private. That would be something they need to reconsider in terms of a form of a privileged communication. If

BY MR. SOWELL:
Q Mr. Johnson --
THE COURT: Mr. Griffin, I welcome your objection at the appropriate time and we will --
MR. GRIFFIN: Thank you, Your Honor.
THE COURT: -- as we did with the dead man's statute, handle it as we get it. I'm sorry, Mr. Sowell.
MR. SOWELL: No problem.
BY MR. SOWELL:
Q Give the court, if you would, your deep background as a lawyer.
A I graduated from law school in 1973. I practiced law with a real estate firm here in Columbia for approximately three years. I worked in the trust department at Bankers Trust of South Carolina for approximately three years. And then in 1980, Al Todd and I formed a law firm of Todd & Johnson.
Q And that law firm has been extant or existing ever since that time?
A That's correct.
Q Although Al Todd prematurely passed away?
A That's correct.
Q Now, Bill Reynolds who is sitting back here, he has been your partner for a period of what years?

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A Well, Bill has been my partner for at least 15 years.
Q And both of you have been highly regarded by your peers in terms of being elected to Best Lawyers and such stuff as that?
A Well, I have been elected to the Best Lawyers. I have been elected to Super Lawyers. I'm a certified specialist by the South Carolina Supreme Court. I have held various positions in the South Carolina Bar Association, and I currently serve as the Chairman of the Commission on CLE and Special Sanctions for the South Carolina Supreme Court.
Q What field were you given your certification?
A Estate planning and probate.
Q Before the drafting of the Will and the Trust in 2007, had your firm represented the Brooker family?
A According to our records, Al Todd first did some work for the Brookers in the early 80s. He did some estate planning for them. Subsequently, Mr. Brooker died, as Julie testified, in '89 or '90, I don't remember. And I assisted with the administration of Mr. Brooker's estate. After helping with the administration of Mr. Brooker's estate, I assisted Janet Brooker in setting up

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trusts for the grandchildren. I assisted her in doing a what's known as the QPRT, which stands for qualified personal residence trust on a condominium at DeBordieu. As Julie testified, I assisted her with setting up generation-skipping trusts for the three children, and I believe that was in '97. From '97 up through the time that she came back to see me in 2007, I frankly don't remember that much contact with Mrs. Brooker.

Q Now, during that period of time, say the approximate ten-year period of time leading up to September 2007, had the Martin Marietta stock, now Lockheed Martin stock, appreciated in a significant way?

A I think it was not only the Lockheed Martin stock, but Mrs. Brooker, she owned a house in Columbia, she had an investment account at one of the brokerage firms. The Lockheed Martin stock, as I remember, it paid a good dividend. She didn't have any debts, so her estate in 2007, had become quite large. And I think the person who recognized that was son Beach, and Beach knew that there were going to be some significant estate taxes that were going to have to be paid when Mrs. Brooker died. So Beach recognized that, and

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Mrs. Brooker came back to me in 2007 to revise her estate planning. It was not just because of the taxes, the taxes are always important, but she went from having a will which would send everything through probate, she wrote a will in a revocable trust. She partially funded that trust so as to avoid probate. She assigned her personal and household effects over into that revocable trust in order to avoid probate. At that point in time, there was a heightened awareness of the -- this was in '07 -- of the need to make some gifts to accelerate her gifting program so that at her death the estate taxes would be somewhat lessened.

MR. SOWELL: One minute, please, Your Honor. Ms. Thompson, will you mark that as Defendant's Exhibit No. 2.

(Whereupon, LWAT Janet B. Brooker was introduced as Defendant's Exhibit No. 2.)

BY MR. SOWELL:

Q I'm going show you what's marked as Plaintiff's Exhibit No. 1. Is that the Trust Agreement you prepared for Mrs. Brooker?

A It is.
Q I'm going show you Defendant's Exhibit No. 2. Is that the Last Will and Testament of Janet B. Brooker with the Trust Agreement appended to it?
A It is, and the Trust Agreement is attached to it.
Q So you prepared both of those documents?
A I did.
Q Now, after this heightened awareness in September of 2007 to make gifts to lessen estate taxes for Janet at her death, did you schedule a family meeting on September 25, 2007?
A There was a meeting on September 25, 2007.
Q Was that to discuss the acceleration of gifts?
A It was, among other things.
Q What was discussed at that meeting?
A That we would accelerate the gifts that Mrs. Brooker was going to make; that we were going to make gifts not only to children and grandchildren, but that we would also make gifts to in-laws. As an estate planner, you know, I was primarily relying on Internal Revenue Code Section 2503 and Code Section 529. And I talked with Mrs. Brooker at that time about the avenues that would be available to her to make gifts to the children, the grandchildren, and the spouses

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of the children. And when I mentioned to her about making gifts to the spouses --

MR. GRIFFIN: Your Honor, I'm not sure if he's still in this family meeting or some other, so I'm going to object.

THE COURT: This is a private conversation with her?

THE WITNESS: This was a conversation on September 25th, and I believe at that time, Your Honor, my time records will indicate that all the family members were there. That it was a family --

THE COURT: I also think I found a case that deals with it. It's the concept of a lawsuit between the beneficiary's heirs that the conversations between the deceased and the deceased's attorney are not privileged in the sense that the testimony of that particular witness is necessary to resolve litigation between the heirs of the devisees, which is what we have here, in my opinion.

BY MR. SOWELL:

Q All right. Now, was there ever any discussion with Janet Brooker about an equalization for retrospective gifts?

A No.
Q Was the only conversation with her related to prospective gifts?
A Yes.
Q Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c, which is denominated equalizing distribution to the Settlor's daughter Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by subparagraph (a)'s language, "From the date of this trust forward?"
A That is correct?

MR. GRIFFIN: Objection, Your Honor, as to Mrs. Brooker's intent. He can testify to his intent; he can testify what she told him, but he's in her mind now and that's not permissible.

MR. SOWELL: That's precisely what he's here to testify about is her intent.

THE COURT: Right.

MR. SOWELL: He's the only person who can do it.

THE COURT: He can testify about the conversation that they had. What she said is more important that what he thinks she said, is the

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point.

MR. SOWELL: Correct. And I agree and thank you.

BY MR. SOWELL:

Q What did she say, Janet Brooker?

A As I was testifying earlier, when I suggested to her that she could make annual gifts not only to children and grandchildren, she could make gifts to spouses of children, and she gave me some pushback at that time saying that would disadvantage Julie. And I said well, it will not disadvantage Julie if we catch Julie up at your death as to gifts that are going to be made to the grandchildren as well as the spouses.

Q Did you understand and appreciate from what she said that she was interested in an equalization going forward?

MR. GRIFFIN: Objection, Your Honor. He's testifying what she said --

THE COURT: I think it's in the way you're phrasing your question, Mr. Sowell.

MR. SOWELL: It's fine. Yes, thank you.

THE COURT: I think you asked him if they ever had conversations that were retrospective in this equalization, and he remembers no

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conversations that were retrospective in the equalization. If you want to ask him a different question that gets more to your point.

BY MR. SOWELL:

Q Did Janet Brooker make statements to you that led you to believe that she only wanted to equalize going forward?

A We never had a discussion about retroactive gifts, so the discussion, the whole discussion centered around gifts going forward.

Q Was there ever any discussion whatsoever about gifts going backward?

A No.

Q I'm going to show you Defendant's Exhibit No. 1 and ask you if you can identify it?

A Yes, this is a schedule that was done by a paralegal in my office that comes up with a figure of $525,528, which is the amount that we computed in determining the amount of the equalization that we felt was due to Julia.

Q Do you continue to believe, along with the Trustee, that amount, the 525,000 and some odd dollars is the amount owed to Julie for the equalization?

A Yes. With this exception: That computation of

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interest only takes you through the date of death. So she would be entitled to some additional amount of interest on that money.

Q Now, with respect to that issue, additional amount of interest, this number, this $525,000 and some change, was it ever offered or tendered to Julia Brooker or her counsel?

A Well, during the administration of the estate, Julie was represented by a lawyer whose name is David Siddons, and David and I had a number of conversations, and these numbers on this particular page were communicated to David on two occasions by me and then on another occasion brother Beach, who in May of '16, in May of '16, wrote an email --

MR. GRIFFIN: Your Honor, I'm not sure he can testify to what brother Beach told somebody. I'm sorry. Hearsay, objection.

THE COURT: As to what you think Beach told Mr. Siddons, sustained.

A Your Honor, this --

THE COURT: Mr. Sowell, I think --

MR. SOWELL: I thought it was an email.

A It was.

Q -- that you were copied on where Beach made it --

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THE COURT: That's different.

MR. SOWELL: I know it is.

THE COURT: Am I going to see the email?

MR. SOWELL: Well, I don't think we have -- do we have it?

THE COURT: We got to back off from this.

MR. SOWELL: I don't know whether we have it or not, but he saw it.

THE COURT: Mr. Brooker, who is being referred to as Beach, just so we're clear for the record, can testify what he told Mr. Siddons or we can hear from Mr. Siddons. If we have the email and Mr. Johnson was copied on it, I'll be glad to let you pursue it.

MR. SOWELL: Do we have it? We might.

THE COURT: Show it to Mr. Griffin.

(Whereupon, Email was introduced as Defendant's Exhibit No. 3.)

BY MR. SOWELL:

Q Do you recognize Defendant's Exhibit No. 3?

A I do.

Q What is that?

A It's a letter -- or an email between Julia Brooker and myself. And in paragraph three it says, "I've

of gifts prior to '08." Which should've been '07.
Q Now, this doesn't have a date on it, but it makes a reference to you will be out of town until when? Sometime September 21st?
A September.
Q You think that is '16 or '15?
A I'm sorry, I didn't understand your question.
Q All right. Well, let me show you this.
MR. SOWELL: Let's have this marked as Defendant's Exhibit No. 4.
(Whereupon, Email was introduced as Defendant's Exhibit No. 4.)
BY MR. SOWELL:
Q I'm going to show you Defendant's Exhibit No. 4. It's three pages. Do you recognize Defendant's Exhibit No. 4?
A I do.
Q What is Defendant's Exhibit No. 4?
A Attached are the revised calculations on the equalization due Julie pursuant to her mother's Trust.
Q So that's the Trust's position with respect to what she's owed?
A That's correct.
Q And that has the spreadsheet that's already been

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put into evidence that has the $525,000 on it?
A That was the calculation that was sent to me.
Q Was it clear from this email and other emails that that money was available to Julia if she wanted it, the 525 plus change?
A As far as I was concerned, and as far as the Trustee was concerned, that money was available to her.
Q And that would've been sometime in 2016, February through May?
A February 24th of '16.
Q With respect to the discussion that I had with Mr. DuRant over (a), (b) and (c) of paragraph 2, which is the equalizing distribution, do you recall his testimony that he believes in his construction, which we object to, that the sum of (a) and (b) above shall be distributed to the Settlor's daughter, Julia B. Brooker, if she shall survive the Settlor. Did you hear that testimony?
A I did.
Q Do you agree with that?
A No.
Q Why not?
A My interpretation or my instructions of Mrs. Brooker's intent was to look at gifts that

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were given to Ellen's family and to look at gifts that were given to Beach's family from 2007, not looking back looking forward, to determine which was the larger number to add five percent to it and to distribute that much to Julie as an equalizing distribution. So she would not be disadvantaged; she would receive at least as much as of the higher amount that was either going to Ellen's side of the family or to Beach's side of the family. I was not attempting to equalize all gifts between all children. I was just trying to make sure that Julie did not get disadvantaged.

MR. GRIFFIN: Your Honor, just for the record, I move to strike that testimony because it's extrinsic evidence that directly conflicts with the language of the document. Thank you.

THE COURT: It just took me to another place. Yeah. This is a combo of the children.

MR. SOWELL: True.

THE COURT: Not the higher of. Where's that document?

MR. SOWELL: Well, I'll have to ask Steve about that, I guess.

THE COURT: Where's that document?

BY MR. SOWELL:

Q Do you understand what Her Honor is saying?

A Well, the only reason that sheet is prepared like it is is because the gifts were kept equal. But I would stress to the Court that, at that time I wrote the document, I didn't know that the gifts were going to be equal. I mean, one child could've had his tuition paid to Vanderbilt.

THE COURT: Here's the problem. I don't have the documents that were relied on to create this. Where are they? Where are they?

MR. SOWELL: Well, we've got Billie.

THE COURT: We've got Mr. -- who's Billie?

MR. SOWELL: That was Steve's paralegal. She lives somewhere in Montana now.

THE COURT: You can't keep doing this first name thing.

MR. SOWELL: Billie McMahan.

THE COURT: Well, she might've been the paralegal that created it, but this cannot be relied upon if I don't have the documents behind it. Have y'all looked at the documents behind this?

MR. GRIFFIN: No, Your Honor. We've looked at all the documents, and George DuRant did

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testimony and let's get moving on.

MR. SOWELL: Okay, thank you.

THE COURT: That's not what this is. This chart is not showing me he knew the numbers were equal. This chart D1 is very clearly a combination of what all children and all spouses got and the interest and how they got to this offer of 525.

BY MR. SOWELL:

Q Okay, Mr. Johnson, I'm gonna ask you to take D1 and to explain how D1 was prepared and what the underlying data was that went into D1 as a summary.

A This information was supplied by Beach and we had some notes that were given to us. And from those notes, we prepared these figures. This indicates that on 9/26/07, two gifts of $12,000 were made; that on 10/1/07, $240,000 in gifts were made to a future scholars plans for the grandchildren. It shows that on 1/9/08, two more gifts were made in the amount of $12,000. And it goes from '09 through '15. And each year, the annual exclusion amount, which was $13,000, was multiplied times six. That is two spouses and four grandchildren, to come up with either 78 or $84,000 per year.

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You accrued interest, you accrued interest on those numbers and it was divided by two. Now, this is what happened. This is what was reported to me by Beach or reported to Billie by Beach. It didn't necessarily have to happen like this. And I didn't envision that it was going to be equal. And here's why I didn't envision that it was going to be equal. Internal Revenue Code Section 2503 says you can make an annual gift, and in addition to the annual gift, you can pay for tuition at a college and it doesn't count toward the annual amount. Well, when I was drafting these documents, when I was drafting these documents, as I said earlier, I didn't know whether one spouse would die, one grandchild would die, one grandchild would go to Vanderbilt, one child would go to USC. I didn't anticipate that the gifts would be equal. If they were unequal, if the gifts were unequal, I did not want Julia Brooker to be disadvantaged. So I wanted her to get the higher amount plus I wanted to add five percent to that higher amount for the time value of money. In other words, if you're given a hundred dollars in '07 and you have to wait until mom dies in '15, then you're entitled to the time value of some

Q Do you remember the date of this trust document?
A October 16th '07 .
Q Which is after 9/26/07, correct?
A That's correct.
Q But yet, your position is it should be included in the equalization provision, right?
A Those numbers were provided to me by Beach. My impression was that after the meeting that was held in September of '07, he went out and immediately made the gifts. But when he was compiling the numbers, I don't think he wanted Julie to be disadvantaged on that technicality.
Q When you said Beach went out and made the gifts, did he have her power of attorney back in September 2007?
A He did have her power of attorney. No, no excuse me. The power of attorney was not done until October of '07. The power of attorney was done at the same time the will was done. There was an existing power of attorney that dated back to 1988. I could never locate that power of attorney. I don't know whether it named Mr. Brooker, Sr. and Beach as the alternate. I never found that power of attorney. That's a long way of saying to you when the gift was made prior

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to October of '07, I'm not sure whether Beach had a power of attorney or not.

Q The other entry that predates the date of the Trust is October 1, 2007, and that's the $240,000 529 contribution?

A That's correct.

Q And that does predate the date of the Trust, correct?

A It does.

Q Now, you testified that in your mind -- you said, "As far as I was concerned, this money was available to Julie." And I think you're referring to the $529,528.

A That's correct.

Q As far as you were concerned, the money was available to Julie. That's as far as you know, correct?

A As far as I know, we would have made that distribution to her at that particular point in time.

Q Was there anything to prevent you from saying "Julie we owe you 525; I know you think you're entitled to more, but here's the 525 that we admit that we owe you." Was there any reason you couldn't do that?

A Client never instructed me to do that.
Q And you didn't do it, did you?
A No.
Q And are you aware that the client is a client?
A The client that I represent was Beach Brooker as Executor of the Estate and Trustee of the Trust.
Q Are you aware that Beach Brooker as Executor of the Estate and Trustee of the Trust looked at your Exhibit No. 1 in his deposition on January 24th 2018 and said there's too much money here going to Julie? Did you know that?
A I wasn't aware of that.
Q Do you know that he disagrees that $240,000 should go to Julie?
A I'm not aware of that.
Q And he didn't offer $525,000, to your knowledge, did he?
A To my knowledge, going back to that email that I saw, he wrote an email to Julie in May of '16 and said to her we've provided you with the figures. That would be the 525 figure, and encouraged her to make a decision on the 525 figure.
Q You were here this morning when George DuRant testified, correct?
A Right.

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Q I think we've got some of those.

(Whereupon, Handwritten Meeting Notes of Steve Johnson was introduced as Petitioner's Exhibit No. 8.)

BY MR. GRIFFIN:

Q Do you recognize Plaintiff's Exhibit No. 8?

A I do.

Q Are these your notes from the meeting?

A Probably, Jim.

Q I think we went over them in your deposition.

MR. GRIFFIN: I'd like to introduce eight into evidence.

MR. SOWELL: No objection.

(Plaintiff's Exhibit No. 8 was admitted into evidence without objection.)

BY MR. GRIFFIN:

Q Mr. Johnson, number one on the list says -- can you read that, it's your handwriting?

A It says, "Do codicil with equalization provision."

Q What do you mean by that?

A I was gonna look at her existing documents and see if I could make just an amendment to her existing documents by doing a codicil with an equalization provision for the gifts that were going to be

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given to Julie from that date forward.
Q When you say "existing documents," you mean her existing Will?
A Yes.
Q And then there's other notes down here. It says, "Janet paid for tuition college and private school being done." What do you mean by that?
A I think that I made that recommendation to her in that meeting, and apparently, she was doing that.
Q As part of the gifting program?
A As part of the gifting program.
Q And you don't consider tuition to Hammond to be outside the gifting program?
A No.
Q And then there's an entry for 529 plans, and it says 60,000. What do you recall that being about?
A That was my telling her that she had the availability to make a $60,000 gift into a 529 plan for each one of the grandchildren. So basically, what you could do is take $12,000 multiply it times five, because you could give five years of annual gifts, and that comes up to the $60,000 figure. If you take 60,000 and you multiply it times four grandchildren, that's where the $240,000 gift came in.

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Q And that's what we see on Exhibit No. 1?
A Yes.
Q And then there's an "FLP, look into doing." Is that a family limited partnership?
A It's a family limited partnership. I was encouraging that they consider a family limited partnership to cut down on the estate taxes.
Q And that was done, correct?
A It was not done until 2013.
Q QPRT, I think you mentioned that, qualified --
A Well, she had done in '92, she had done a qualified personal residence trust on her condominium at DeBordieu. The Internal Revenue Code allows you to do two QPRTs. So that recommendation was to do a QPRT on her house here in Columbia.
Q And then there's some notes on the next page. Going back to the first entry, "do codicil with equalization provision," I think you testified that you don't recall any discussions about retroactive gifts. Is that right?
A Right.
Q But you're not telling Judge McCulloch that Ms. Brooker said I do not want to equalize Julie for previous gifts?

A The subject never came up; we never discussed it.
Q Then you prepared, first, a draft codicil, correct?
A I did. I didn't prepare it; I had it done by a paralegal in the office. After the meeting on the 26th, I went to the paralegal and said to her, will you prepare a codicil with an equalization provision in it.
Q And you told her about the meeting that you had with the family?
A I told her to do an equalization provision and I would edit it up from what she was going to give me.

(Whereupon, Codicil was introduced as Petitioner's Exhibit No. 9.)

MR. SOWELL: No objection.

BY MR. GRIFFIN:
Q Is Exhibit No. 9 the draft of the equalization provision?

MR. GRIFFIN: Your Honor, they don't object, I move it into evidence formally. And if I didn't move Exhibit No. 9 formally into evidence, I would do so at this time.

MR. SOWELL: Without objection.

(Plaintiff's Exhibit No. 8 & 9 were

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admitted into evidence without objection.)

BY MR. GRIFFIN:

Q So this is a codicil, that's what this document purports to be, a draft codicil?

A It's a draft of a codicil that was done by a paralegal in my office.

Q Under item number four, subparagraph one, can you read that into the record, please?

A (As read) I give, devise and bequeath such amount as may be necessary to equalize the gifts given to any child of mine during my life. Thus to the extent that I have not equalized such gifts during my lifetime, I direct that at the time of my death, my personal representative determine what gifts I made, whether to accomplish equalization, and if not, then I direct my personal representative to make equalizing gifts to my children or such children's issue per stirpes. Such equalization shall be made for the value of the gift given at the time the gift was made and no interest thereon. My personal representative's best faith efforts to determine the value shall be final and binding upon the beneficiaries.

Q Now, you would agree that this draft codicil makes

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no distinction between before and after gifts, correct?

A I would agree to that, but I want to stress to you that that was done by a paralegal without my being able to edit it up. And when I got it from the paralegal, my thought process was this is totally inadequate, this is totally inadequate. So then I went to my software and I drafted the pour-over will and the Trust Agreement with the equalization provision in it.

Q If we go back to exhibit, whatever your time records are, Exhibit No. 7, Plaintiff's Exhibit No. 7, and if you could go to page 2392. The first entry on October 1, 2007, is a telephone conference that you had with the client's son and son-in-law. And that would be Beach and Dino?

A It would be.

Q Did you talk to them about the codicil equalization provision?

A No.

Q And then CKO on that same day, is that your paralegal?

A It is.

Q Is this documenting the draft codicil that she did?

A That's correct.
Q And then there's an entry on 10/4, you had a call to Bill Sellers. Is that correct?
A That's correct.
Q And then 10/15, it says that you prepared the revocable trust and pour-over will on 10/15. You also spoke to, I guess, Beach again?
A I did.
Q And then -- well, BR, is that Mr. Reynolds back here?
A It is.
Q And what's this entry indicate?
A After I drafted the document, I went into Bill Reynolds' office and asked him to take a look at it.
Q .25, does that mean a quarter of an hour or 25 minutes?
A Means a quarter of an hour.
Q So it was 15 minutes?
A Yeah.
Q So you met with Mr. Reynolds for 15 minutes after drafting the --
A I gave it to Bill and I said look at it. He probably spent 15 minutes looking at it.
Q Do you recall whether he made changes to it?

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A Apparently so, yes.
Q Is there any reason you didn't give them to Mrs. Brooker when she was there signing the documents?
A I don't remember why they were given to Dino, but I would not have given them to Dino had Janet not told me it was okay to give them to Dino.
Q I understand. And you have a specific recollection of discussing with her the terms of the equalization provision?
A I do. I said we'll catch Julie up at death for gifts made from the Trust Agreement forward so that she won't be prejudiced.
Q You remember saying "from the Trust Agreement forward?"
A I do.

MR. GRIFFIN: Your Honor, this is the deposition that Mr. Johnson gave on January 12, 2018. I'd like to show it to him. It's sealed. I'm going to unseal it. For the record, it's being unsealed.

THE COURT: The deposition of Mr. Johnson is completely attached to your Motion in Limine. A full copy, right?

MR. SOWELL: Yes, Your Honor.

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BY MR. GRIFFIN:

Q Mr. Johnson, if you'll turn to page 27 of your deposition.

A Okay.

Q And I'm asking you beginning at line 10 about her Will and Trust, and then at line 13, I say, "Do you recall whether you explained to her or not." And your answer was, at line 15?

A Right.

Q And you said "I do," correct?

A Right.

Q Then line 16 I asked you, "What do you recall doing." And if you'll read your answer in the record, please.

A (As read) I recall saying to her we're going from a straight will, which she had in 1988, to a will and revocable trust. And I remember discussing with her that we would be funding the trust. I remember discussing the equalization provision with her, and I remember telling her that her estate, as far as Julie was concerned, would go outright to Julie, but the portion that would go to Ellen and Beach would go to them in the form of a trust.

Q And then page 20, I asked, "Do you recall any

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questions she had of you about the equalization provision." And your answer was?

A "I don't recall any question she had about it."

Q And then 28, line 4, I said, "When you spoke with her, did you use the phrase "lifetime gifts?" And you said what?

A "I don't know."

Q And then you said, then I asked, "Do you know whether you explained to her that there could be a difference in lifetime gifts, I mean gifts given prior to the date of the execution of the trust versus gifts given after the entry of the trust?" And you said?

A "The whole conversation with Janet was about prospective gifts, not retrospective gifts."

Q And I said "okay," and you said it was going forward not looking back?

A Right.

Q So that was the conversation?

A Right.

Q And then I asked you, "Is there any language in the Trust Agreement that references past gifts?" In line 18, you say "no." Is that right?

A That's right.

Q But there is -- I mean, in the Trust Agreement, it

A Well, if there's ambiguity there, I want you to understand what Janet Brooker wanted. And she wanted her daughter, Julie, to not be disadvantaged because gifts had been given to spouses and grandchildren. And this schedule accomplishes that.

Q Are you aware that before the date of this Trust, that Mrs. Janet Brooker had given the spouses and issues of Ellen and Beach $900,000 in gifts?

A I wasn't aware of that, but Janet, you know, was only going from 2007 forward.

Q So you think she was aware that she had been giving Ellen and Beach $900,000 in gifts?

A I don't know, but I'll tell you what, she never brought it up. If she did, if she'd have said to me Julie should be equalized for that, I would have said to her let's equalize it right this minute, let's make a gift to her right this minute, let's give her -- let's make a gift to Julie right now if she's been so disadvantaged. We're trying to reduce the size of your estate, let's give her an amount right now that will make her equal.

Q So then after Mrs. Brooker passes away, the -- was a -- well, let me just ask you. What's this

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document? It came from your file. Do you recognize the document?

A I recognize it. I'm trying to figure out whether it's not -- whether it's an attachment to the estate tax return. And what it's attempting to do is to show what Julie got; it's attempting to show what Beacham O. Brooker, Jr. family trust got; and an attempt to show what the Ellen Corontzes' family trust is. So this is like looking at the estate tax return and determining who gets what. And according to this, Julie would have received $2,173,000 --

Q What's Julie's catch up? What's her equalization amount?

A $311,000. But that was a preliminary figure, Jim. That was a preliminary figure that was refined later on. When we did the estate tax return, we refined that figure and communicated to David Siddons what our refinement was.

(Whereupon, Billie McMahan Notes was introduced as Petitioner's Exhibit No. 11.)

BY MR. GRIFFIN:

Q I'll show you what we've marked as Plaintiff's Exhibit No. 11. It came from your files. Can you

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identify this?
A Yes. This looks like notes that were taken by Billie McMahan to complete the estate tax return.
THE COURT: The document before this, did you enter that into evidence?
MR. GRIFFIN: No, I withdrew it. I'd like to introduce Plaintiff's Exhibit No. 11 at this time. Any objection?
MR. SOWELL: No, no objection.
(Petitioner's Exhibit No. 11 was admitted into evidence without objection.)
BY MR. GRIFFIN:
Q Will you read into the record and for Judge McCulloch's benefit number one on this to do list by your estate paralegal?
A "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as spouses of Beach and Ellen, beginning in May of 1997. These amounts will accrue interest at five percent."
Q Now, 1997 goes a long way back compared to what you've offered Julie in this Exhibit No. 1 going back to September 2007?
A Jim, I think Billie was simply mistaken about what

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she wrote in her notes right here. Because I corrected her later on. She was a paralegal.

Q Was she the paralegal that wrote the codicil or was that a different paralegal?

A That was another paralegal.

MR. GRIFFIN: That's all the questions I have, Your Honor.

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RE-DIRECT EXAMINATION

BY MR. SOWELL:

Q May it please the Court very briefly.

Mr. Johnson, with respect to Defendant's Exhibit No. 1, which is the spreadsheet that notes the distributions of $525,528.07, that spreadsheet went to David Siddons?

A It did.

Q Did David Siddons ever object to that spreadsheet?

A No. As a matter of fact, he said it looks reasonable to me. He said that.

MR. GRIFFIN: Objection to what --

THE COURT: Sustained. Sustained. Hearsay. He's telling you what Mr. Siddons said.

MR. SOWELL: May I argue? If you don't want me to, I won't, obviously. I'll shut up.

THE COURT: You can put anything on the

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up with this. What was he told to keep a record of? So starting in -- if the argument is that this is from the Trust forward and the Trustee is now responsible for this, was he given instruction or was there communication about how he was to accumulate this information over the years? Was that something you remember?

A I don't, Your Honor.

THE COURT: You're very firm in your statement that Beach kept them equal, them being the spouses and the children, that they are virtually equal. How did he keep them equal? Did he review them annually and do some kind of equalization annually between them that kept them equal or do you even know?

A I don't know, Your Honor. I didn't orchestrate the gifts.

THE COURT: It's all him.

A I advised the client in '07 that they could use the 529, Internal Revenue Code Section 529. I told them that they could make annual gifts. At that time, the annual gift exclusion was $12,000. And I told them that, under 2503, you could pay tuition, you could pay tuition at colleges and it would not count against the $12,000. So you can

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make the 12,000 plus you can pay for tuition. That was a way of maximizing the gifts and pushing the gifts forward, but I certainly intended for those gifts to be cataloged and to make sure that when mom died, Julie got the higher amount plus five percent. She was not to be disadvantaged; she was to be kept equal. And I think that happened, Your Honor.

THE COURT: Did my questions make you want to ask anything else, Mr. Sowell?

MR. SOWELL: Yes, Your Honor. You know, something I had this morning, I had about four copies of it, now I cannot for the life of me find it, is that document where Billie McMahan said this may not be the right date. Do you remember your question about that?

THE COURT: I haven't seen it.

MR. SOWELL: I haven't found it, the second time. But I do want to ask him about another document.

THE COURT: If my questions brought something back around or something new, then you certainly have that right. Both of you do.

MR. SOWELL: He has no objection, so I'm going to ask Ms. Thompson to mark this.

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MR. GRIFFIN: I'm happy for him to talk about that, but that's not what his testimony was just now. He was talking about how every year how they determined to give gifts.

THE COURT: Well, isn't that his behavior?

MR. GRIFFIN: These are transactions involving his mother's money --

THE COURT: I've yet to hear him say "my mother said."

MR. GRIFFIN: They're transactions involving his mother's money.

THE COURT: That he did; that is not dead man.

A Each year we would determine --

THE COURT: Who's the "we" in this?

A Dino Corontzes and I would determine what the amount of the annual gift tax exclusion, what the federal gift tax exclusion was, and it began at $12,000; and therefore, we would give out $12,000 to each of the four grandchildren and the two spouses plus, of course, the three children. And that was the maximum you could give without incurring a gift tax. And that's what we did continuing the succeeding years. And during those succeeding years, the annual gift tax exclusion,

the IRS's annual gift tax exclusion, went up from 12 to 13 to 14. Now, this chart also includes at the top two gifts, one of $24,000. Two times $12,000, which went to my wife and Ellen's husband, and then a couple weeks later, the funding of the 529 plan of 240,000. Even though those two gifts I just mentioned predated the date of the Trust, I didn't feel it was fair to exclude them because we had already had that meeting and decided what we were going to do, this aggressive gifting program. So I included that in what I gave Steve's office as the equalization amount. The backup documents, of course, the January statements from Stephens, and I think a couple years before that when he was at Morgan Stanley. So if you got the January statements in each of these years, you would see doling out of $12,000 to Elizabeth Brooker's account at Stephens drawing out to Beacham Brooker's account at Stephens, drawing out to Arthur Corontzes, and then the only unusual one would be a check to my wife Beth because she had no account at Stephens. But that would also be shown on that statement. So it was simple. I didn't consider it even though I'm sure it is discretionary either with my mother or

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BY MR. GRIFFIN:

Q Mr. Brooker, it's your understanding of this Exhibit No. 1 that you have in front of you, the gift amounts starting 1/09/2008 times two, 13,000 times six, et cetera, are you saying those are the gift tax exclusion amounts?

A Yes, it would be 12,000 times two, that's correct.

Q Okay. Well, so -- and you said you went back to source documents -- I guess, let me ask you first. Did you prepare this document or was this something that Mr. Johnson's office prepared?

A Mr. Johnson's office.

Q And you provided who what underlying source documents to prepare Exhibit No. 1?

A I don't know. I would imagine it would've been an email or maybe it was on a telephone call, but what I was saying is the evidence of it would be the Stephens statements.

Q So did you provide an email or telephone call giving this information and they just recorded it?

A Yes.

Q And at the time you gave this information, were you working off the Stephens statements?

A I think what I did was I may have called Bill Sellers and said I know that I gave these tax

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exclusion amount each year to each of these people, what was the tax exclusion amount, and then conveyed that information.

Q So you just took what you understood to be the maximum exclusion amount per person, and that's the information you gave Mr. Sellers?

A That's correct, yes, sir.

Q So that I understand, there's no tuition payments to Hammond over and above the maximum exclusion amount in Exhibit No. 1, right?

A That's correct.

Q You had two children went through Hammond?

A Yes.

Q Did your mother pay their tuition?

A Yes.

Q The entire time?

A Yes.

Q When did your oldest daughter graduate from Hammond? Do you remember?

A No.

Q How old is she?

A She's 26.

Q So let's say she graduated eight years ago, that should be 18, that would be 2011? Does that sound about right?

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A 2010, 2011.
Q So from -- so from all of 2008, 2009, 2010, 2011, your mother would've paid full tuition for your oldest daughter?
A Correct, as she had since the first grade.
Q And as well as your second daughter?
A Correct.
Q Paid full tuition all the way through?
A Correct.
Q What about Ellen's children? Did your mother pay full tuition to Hammond all the way through for them?
A The same, yes, sir, that's correct.
Q And none of those tuition payments are showing up on Exhibit No. 1, correct?
A That's correct.
Q Are you aware whether your mother gave, like, some big scholarship or donation to Hammond or Hammond Foundation?
A I'm not aware, no.
Q You did take the position in your deposition that the 240,000 should not be included in the equalization?
A That's correct, because it predated the Trust, and the Trust is the first equalization clause and

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then in her estate documents.
Q And you did take the position that the other entry, 24,000, on this exhibit, should not be included?
A That's correct.
Q And you never wrote a check to Julia for any amount of money that you considered not to be in dispute for her catch up provision?
A No, I didn't. At that time, Julie was represented by David Siddons, the estate was represented by Steve's firm, they were communicating. I was not to communicate with David Siddons directly.

MR. GRIFFIN: That's all the questions I have.

MR. SOWELL: Nothing for me, Your Honor.

THE COURT: Just a couple.

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EXAMINATION

BY THE COURT:
Q Mr. Brooker, the numbers that you sent to Mrs. McMahan and either Mr. Johnson in either an email or a letter or a phone call, the numbers that you gave, when did you give them?
A Let me explain, Your Honor. It's a bit embarrassing. I kept my emails at my former