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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
ROBERT J. BONDS, CIRCUIT COURT JUDGE

Appellate Case No. 2025-000076

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

Merrill B. Light, Merrill U. Barringer as Personal Representative of the Estate of Paul Brandon Barringer II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, Defendants,

Of which Merrill U. Barringer as Personal Representative of the Estate of Paul Brandon Barringer II, is a, ...Respondent,

--and--

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

RECORD ON APPEAL
VOLUME IX OF XII

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2016-CP-07-01919
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, v. MERRILL B. LIGHT , MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST, Defendants.	)))))))))))))))))	**DEFENDANTS' SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' JOINT MOTION TO BIFURCATE TRIAL**

At the hearing on Defendant Merrill B. Light's Motion for Summary Judgment, the Court invited additional memoranda to explain and/or support bifurcation of certain claims in the pending cases. Because of the importance of this issue, particularly due to the need to prevent jury confusion and severe prejudice to the Defendants, Defendants submit this Second Supplemental Memorandum in Support of Defendants' Joint Motion to Bifurcate to provide additional support for the Court first conducting a trial on the discreet issue of whether Mrs. Barringer is prevented,

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whether at law or in equity, from exercising her Power of Appointment to change the beneficiary of any assets held in the Paul Barringer, II, Revocable Trust after 1998.[1]

ARGUMENT

As addressed in prior memoranda, South Carolina courts grant bifurcation to promote simplicity, clarity or efficiency or to avoid prejudice. See Brian A. Comer, Bifurcation of Civil Cases in South Carolina and the Fourth Circuit What to Consider and How Parties Can Benefit, S.C. Lawyer, November 2007. The South Carolina Supreme Court has encouraged trial courts to bifurcate trials in complex cases. See Durham v. Vinson, 360 S.C. 639, 644, 602 S.E.2d 760, 762 n. 2 (2004). Not only is this case designated complex, but it is the epitome of complex under any definition.

Simplicity

Because Plaintiff has alleged twenty-four causes of action in the two cases and based them on inventive legal theory supported only by circumstantial evidence, the resolution of these two actions will never be simple. Other than dismissing Plaintiff's causes of action through summary judgment, the only real vehicle this Court has to simplify the issues is to grant Defendants' Joint Motion to Bifurcate Trial.[2]

The recent summary judgment hearing provides an example of why granting Defendants' Motion to Bifurcate Trial is necessary. The Court went through three days of argument related to Mr. Barringer's relationship with various family members over decades, the history of Mr. Barringer's companies, the history of Randy Light's business decisions, the history of Kevin

[1] Defendants have defined the issue presented in Plaintiff's second and third causes of action in the Barringer II action as Plaintiff's "Contract-Based Claims." Although Plaintiff prefers the term "power of appointment claims," regardless of what it is called, if, as Plaintiff contends, the September 2012 voting stock transaction should be "unwound," then whether Mrs. Barringer can decide where the asset goes at her death will be dispositive on the most crucial asset in this case.

[2] Defendants' Joint Motion to Bifurcate Trial was filed on October 23, 2020.

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Luzak's role and choices at CFRC, Kevin Luzak's termination from CFRC, Plaintiff's litigation in Virginia, and other complicated issues that will only get more complicated at trial should they survive summary judgment. **None of these issues will have anything to do with whether Mrs. Barringer is precluded from appointing assets pursuant to the 1998 documents.**

Efficiency

Plaintiff's counsel has repeatedly argued that, if bifurcated, that an initial trial as Defendants propose will require all of the same witnesses as a second trial on any remaining claims. Plaintiff is bluffing. Many of the named witnesses did not even know the Barringers in 1998; most will not know what a power of appointment is; and none have any knowledge of the alleged contract/promise made in 1998. Plaintiff is pretending that each trial will take just as long because a trial on all twenty-four causes of action at one time will be complex and confusing and will aid her in pushing her frivolous claims forward. If all a party has to do is tell the Court that each trial will take just as long, no trial would ever be bifurcated.

There is nothing unusual about bifurcating a trial, even in this area of law, contrary to Plaintiff's assertion at the hearing. See, e.g., Matter of Will of Hester, 320 N.C. 738, 743, 360 S.E.2d 801, 805 (1987) (citing cases and stating that bifurcation is an "effective method" to deal with a mental capacity and undue influence case); Barber v. Cangelosi, No. 01-08-00781-CV, 2010 WL 143424, at *6 (Tex. App. Jan. 14, 2010) ("Lena complains that the bifurcation prevented her from presenting evidence of intertwined issues among the wills, including evidence of Anna Lee's love and affection toward all of her children. Love and affection for possible heirs, however, is not a consideration in determining testamentary capacity, the only issue before the jury in connection with the 2004 will."); Colley v. Estate of Dees, 266 So. 3d 707, 715 (Ala. 2018) ("A will contest is limited to the issue of whether the writing in question is a valid will of the

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decedent."). In Colley, as in the cases at hand, a plaintiff brought two separate actions, which were consolidated, but then severed for trial. The Court first held a trial on the "will contest" which limited the plaintiff to causes of actions related to whether the will was a valid product of the testator, and then held a second trial on plaintiff's allegations of undue influence and breach of fiduciary duty regarding a separate document. Defendants' Motion asks this Court to similarly sever this case for trial.

At the hearing, in yet another attempt to confuse this Court, Plaintiff took the position that she must attack the post-1998 testamentary documents in order to prove her second and third causes of action in Barringer II. There is simply no reason why she would need to address these documents for purposes of Barringer II. See Matter of Will of Hester, 320 N.C. 738, 745, 360 S.E.2d 801, 806 (1987) ("Simple bifurcation of the sub-issues does not create two proceedings. In a bifurcated trial the entire action and all issues therein remain under the control of one court; bifurcation of issues normally results in only one judgment."). Moreover, other courts have bifurcated mental capacity and undue influence cases when resolution of the first trial will moot other issues in the case. See, e.g., Matter of Will of Hester, 320 N.C. 738, 743-44, 360 S.E.2d 801, 805 (1987) (finding that the issues in the second trial were "premature" until the issues in the first trial were answered); see generally, ABA Civil Trial Practice Standards § 10.e (2007) (trial court should consider submitting issues to jury sequentially if determination of one issue may moot others).

Prejudice

Defendants thoroughly addressed the issue of prejudice in Merrill Barringer's Memorandum in Support of Defendants' Motion and subsequent Supplemental Memorandum and incorporate those arguments here. In sum, the damages, as presented by Plaintiff, are complicated

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and will require extensive expert analysis and testimony that may be unnecessary depending on the outcome of the first trial. Defendants' defenses and presentation of their case will necessarily change depending on the outcome of the first trial. Moreover, a trial on all twenty-four causes of action simultaneously would cause the type of jury confusion that would severely prejudice Mrs. Barringer's ability to defend against Plaintiff's attempts to prevent her from ever changing her will.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Defendants' prior memoranda, Defendants respectfully request that the Court issue an Order bifurcating the trial in this litigation such that the Contract-Based Claims are tried first, and any remaining claims are tried in a separate, later trial.

Respectfully submitted,

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December 3, 2020
Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II. Hampton B. Luzak, Plaintiff, vs. Merrill B. Light, Merrill U. Barringer, As Personal Representative of the Estate of Paul Brandon Barringer, II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer, II, Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No.: 2016-CP-07-1919 **NOTICE OF MOTION AND MOTION TO RECONSIDER ORDER TO BIFURCATE OF DECEMBER 30, 2020 AND MEMORANDUM IN SUPPORT**
STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton Barringer Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 and 2019-CP-07-01294

TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Hampton Barringer Luzak, by and through her undersigned attorneys, hereby moves this Court pursuant to Rules 54(b) and

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59(e), SCRCP, to reconsider or amend its Order Granting Defendants' Motion to Bifurcate filed December 30, 2020 (the "Order"), attached hereto as Exhibit 1 and received on December 30, 2020, which Order granted Defendants' Joint Motion to Bifurcate Trial. The Court in its Order determined that a separate trial of the Second and Third Causes of Action set forth in Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294 shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action in 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253, and 2019-CP-07-01294. Plaintiff respectfully disagrees with the Order and moves the Court to reconsider its Order for the reasons stated below.

As discussed below, the factual and legal requirements for bifurcation under Rule 42 are not met. Moreover, "[a] trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." *Wright v. Hiester Construction Co., Inc.*, 389 S.C. 504, 698 S.E.2d 822 (S.C. App. 2010). As also discussed below, the issues are not distinct and involve a substantial overlap of witnesses and evidence because the validity and intent of all the estate planning documents must be determined, not just the 1998 estate planning documents. Not only have Defendants failed to show how failure to bifurcate creates an injustice, they have shown no prejudice under Rule 42.

I. Bifurcation will substantially increase total trial time and inefficiency.

The Court erred in granting the motion because bifurcation will substantially increase total trial time and inefficiency, not reduce it. According to the Court's Order filed December 30, 2020, its decision was based on the oral argument and legal memoranda submitted. Consequently, as demonstrated below, the Court's reliance on Defendants' assertions in oral argument and memoranda was in error. Simply put, the second and third causes of action in Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294 ("power of appointment causes of

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action") will need many, and maybe all, of the same witnesses and evidence as for the rest of the causes of action in both cases. Bifurcation will not create judicial economy, expedition, or convenience, or avoid prejudice, as required by Rule 42. The opposite is the case.

A. All post-1998 estate planning documents must be considered in both trials.

Defendants' assertion that a separate trial of the power of appointment causes of action will need to consider *only* the 1998 testamentary estate planning documents is simply wrong, both as to the law and the facts in this case. The Court cannot wave a magic wand and consider *only* the power of appointment allegedly provided in the 1998 testamentary documents because the Court must first consider, in reverse chronological order, Mr. and Mrs. Barringer's subsequent testamentary documents executed in 2012, 2014, 2015, and 2016, all involving alleged powers of appointment. Regardless of what the 1998 testamentary documents provide as to any power of appointment, those 1998 documents were expressly supplanted by the subsequent testamentary documents, to the extent they might be valid. Unless Defendants are willing to stipulate that all post-1998 documents are invalid,[1] then all post-1998 documents must *first* be *examined in reverse chronological order* as to validity and intent with regard to the power of appointment causes of action. By analogy, if a court were construing a contract, it would begin its analysis with the most recent contract that rescinded an earlier version, not with the earlier version rescinded by the most recent contract.

[1] Understandably, Defendants' declined the invitation offered to them on several occasions at the summary judgment hearings on November 17-19, 2020, to stipulate that all the post-1998 documents were invalid. Thus, they take exactly contradictory positions: they need the post-1998 documents to be valid to justify the alleged transfer of voting stock to Defendant Merrill Light, yet they assert to this Court that only the 1998 documents are valid as to the power of appointment causes of action. Defendants are judicially estopped from taking those contradictory positions.

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Most of the same witnesses and other evidence relevant to the remaining causes of action – for example, the duplication of the documentary evidence will be overwhelming –[2] will be necessary for this examination of the validity and intent of all these post-1998 documents, not simply the 1998 documents:

1. The 1998 documents were supplanted by Mr. Barringer's estate planning documents in February 2012, July 2012, June 2014, and February 2015, if any was valid.

2. To consider the power of appointment causes of actions, the validity of all of the documents must be determined in reverse chronological order:

a. if the 2015 documents are valid, they, not the 1998 documents, will be the operative documents;

b. if the 2015 documents are not valid, then the 2014 documents must be examined: if they are valid, they, not the 1998 documents, will be the operative documents;

c. if the 2014 documents are not valid, then the July 2012 document must be examined: if it is valid, it, not the 1998 revocable trust, will be the operative document;

d. if the July 2012 revocable trust is not valid, then the February 2012 documents must be examined: if they are valid, they, not the 1998 documents, will be the operative documents;

[2] See Plaintiff's Response to Mrs. Barringer's First Set of Interrogatories, Exhibit A to Defendants' Joint Motion to Bifurcate, in which Plaintiff listed dozens of documents, including some after Mr. Barringer's death, that could serve as evidence for the power of appointment issue and would also serve as evidence in the liability and damages portion of the trial. Moreover, the voluminous record of documents noted by Defendants — including some of the tens of thousands of documents freely produced by Kevin Luzak at great cost pursuant to the overly-broad discovery demands from Defendants — will be relevant in both the power of appointment portion and the liability and damages portion of the case.

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e. Only if all of the above documents are not valid, as examined in reverse chronological order, will the 1998 documents be the operative documents, assuming they are valid.

3. To determine the validity of all of the above documents, in reverse chronological order, essentially the same types of issues, witnesses, testimony, documents, and any other relevant evidence must be separately examined for each of those documents to determine whether they are valid — *essentially the same witnesses, evidence, etc., that will be involved in the remaining causes of action*. The witnesses, testimony, documents, and any other relevant evidence for each set of documents will be essentially the same as those regarding the following: a. Capacity; b. Undue influence; c. Tortious interference; d. Mistake; e. Fraud; f. Civil Conspiracy; g. Constructive and Resulting Trust; h. Mr. Barringer's intent about any power of appointment as to each document in reverse chronological order; and i. Mrs. Barringer's intent about any power of appointment as to each document in reverse chronological order.4. Similarly, to determine whether Mrs. Barringer understood whether she had a power of appointment, the extent to which she had any power of appointment, and whether she agreed not to exercise any such power under the several theories advanced by Plaintiff for the summary judgment hearing held on October 15, 2020, will require an examination of her estate planning documents as well, again in reverse chronological order.[3] These would include not only the

[3] As demonstrated at the summary judgment hearing and briefly reiterated in her previous Memorandum, which Plaintiff incorporates herein, Plaintiff's arguments about the power of appointment are not limited to a contract claim, although she has a compelling argument on that issue. Plaintiff also argues (1) that Mr. Barringer did not intend to give Mrs. Barringer a power of appointment over the voting stock; (2) that Mrs. Barringer had a confidential and fiduciary duty based on an express promise; (3) that Mrs. Barringer had a confidential and fiduciary duty based on an implied promise, which under the law can be determined even from silence; and (4)

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same dates as above but also documents that she executed after PBB's last putative estate planning documents: in September 2016, March 2017, February 2018, and May 2019. As discussed before in this case, patterns matter. Mrs. Barringer failed to exercise any power of appointment, purportedly given to her by Mr. Barringer, until after his death. The evidence of her acts post-2011 would inform the liability and damages portion of the trial as well as the power of appointment claim, including any witness who observed or heard any discussion about such issues post-2011. Again, most if not all of the witnesses and evidence would overlap.

B. Same witnesses will be needed in both trials.

Defendants have listed scores of witnesses, discussed in more detail below in Part IIIA, who presumably have relevant information about the time frames for all the documents listed above. Plaintiff will need to examine those witnesses, and others that Plaintiff will offer in addition. The concept advanced by Defendants that only a few witnesses and limited evidence will be necessary is based on the completely false assertion that the trial would focus only on the 1998 documents. Again, essentially the same witnesses and evidence will be needed as will be necessary for the trial of the remaining causes of action. Defendants' lack of understanding of the necessity of all the witnesses is demonstrated by Defendants' statement that "Many of the named witnesses did not even know the Barringers in 1998." That is meaningless because, as discussed above, the determination of the power of appointment causes of action cannot be based solely on the 1998 documents, as much as Defendants may want to wish that into actuality.

C. Regardless of outcome of first trial, a second trial will still be necessary.

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that Mrs. Barringer had a duty that can be asserted through equitable estoppel, which again can be determined even from silence.

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Any assertion by Defendants that a second trial on the remaining causes of action will be avoided if they prevail on a first trial involving the power of appointment causes of action is also a false premise.

1. Even if Defendants prevail at a first trial so that Mrs. Barringer is determined to have an unfettered power of appointment over the voting stock, that does not avoid, or significantly shorten, a second trial, where capacity, undue influence, fraud, etc., will still be relevant and still require essentially the same witnesses and evidence for the following reasons:

a. Plaintiff's experts show tens of millions of dollars in damages from 2012 until today, regardless of Mrs. Barringer's eventual exercise of any power of appointment. Importantly, a substantial focus of the damages report is on the loss to Plaintiff since 2012, regardless of whether Mrs. Barringer has a power of appointment over the voting stock, and if so, if and how she exercises it. All Plaintiff's claims — including intentional interference with an expectancy — show that she suffered monumental damages from 2012 through today and up until Mrs. Barringer's death, regardless of Mrs. Barringer's testamentary exercise of any power of appointment over the voting stock. Simply put, Plaintiff has tens of millions of damages claimed against Defendants regardless of the power of appointment causes of action, and the liability and damages portion of the trial will go on regardless of the outcome of any bifurcated power of appointment trial; the liability and damages portion of the trial will not be avoided or made more efficient by any premature determination of the power of appointment issue.

b. Mrs. Barringer cannot effectively exercise any such power of appointment until her death and can change her mind until then.

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c. Even if Mrs. Barringer's documents purport to exercise any power of appointment at death, her documents must be scrutinized similar to Mr. Barringer's as to capacity, undue influence, etc. This will require additional witnesses and evidence.

II. Bifurcation exacerbates health risks facing all participants.

The Court erred because of the health risks of bifurcation. Having two trials likely enhances the danger of the spread of Covid, particularly for the Court, the staff, the parties, the witnesses who are necessary in both trials, and counsel.[4] Each of the foregoing will be subjected to two lengthy trials in public circumstances; this would be problematic even if the first trial were considerably shorter (which it won't be, as discussed herein). Plaintiff and her counsel appreciate the Court's expressed concerns about health and safety, but at a time when the number of current cases, hospitalizations, and deaths in South Carolina is at an all-time high, holding two trials enhances the risk of infection for those participating. Based on the spike, the Chief Justice has recently issued an Order staying jury trials. The numbers have worsened since that Order. Given the number of witnesses, parties, counsel, and court personnel with potential susceptibility due to age and health reasons, taking any longer than necessary to try all of the case — which will result if the case is bifurcated — creates an additional risk not found in normal times.

III. Various remaining arguments of Defendants do not support bifurcation of Plaintiff's closely-related causes of action.

To the extent the Court based its decision on other arguments asserted by Defendants, the Court erred because, again, Defendants' arguments are incorrect:

[4] A number of the parties, counsel, and witnesses are elderly and/or could have co-morbidity factors.

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A. Numerous witnesses and other evidence are essential in both actions.

Defendants cite Plaintiff's response to Mrs. Barringer's First Set of Interrogatories, contending that Plaintiff responded the promise "would have been made no later than December 4, 1998 [the date of execution of the wills and revocable trusts]." That response by Plaintiff was simply to Defendant's instruction to "identify the date the promise was made."[5] Not only does evidence before the execution of the 1998 documents prove Plaintiff's case, but other subsequent evidence does as well — for example, but not limited to, the shareholders agreement in 2010, the court modification of the 1998 irrevocable trust in 2006, and numerous letters and family meetings before — and after — 2012. Witnesses, testimony, and evidence will be necessary for these matters, and not limited to seven witnesses, as Defendants assert. Mrs. Barringer has listed 40 witnesses in the 2019 action, and 39 of those are listed by the Light Defendants in the 2016 action. The Light Defendants have listed 45 witnesses in the 2016 action, and 39 are listed in the 2019 action. Plaintiff has identified other witnesses for both actions, and would intend to examine most, if not all, of Defendants' witnesses for both the power of appointment issue and the liability and damages issue. Plaintiff is in the process of conducting at least 27 additional

[5] Defendants want to expand Plaintiff's response to a limited question in time in a response to an interrogatory to somehow preclude her from discovering and using other witnesses for trial. As discussed in the power of appointment summary judgment hearing, the South Carolina Probate Code allows extrinsic evidence to prove a contract not to revoke (not limited to time) and the other arguments related to confidential/fiduciary promise and estoppel (which are not covered by the probate code) are similarly not limited as to time by any case law. And, as discussed above, the broader issue of the post-2011 documents' validity will have to be explored for the power of appointment causes of action. Furthermore, Plaintiff's other power of appointment arguments, in addition to the contract argument, would implicate testimony and evidence to confirm Mrs. Barringer's promise/obligation.

depositions, which does not include the experts Defendants so far refuse to name. The depositions could lead to additional witnesses, increasing the total number.

Importantly, all of these witnesses may have relevant evidence and/or testimony about proving the lack of a power of appointment as intended by Mr. Barringer, or the legal methods discussed in footnote 3 that would preclude Mrs. Barringer from exercising the power of appointment over the voting stock even if Mr. Barringer intended her to have one. Also importantly, many, if not all, of these witnesses, would have relevant evidence and testimony as to the liability and damage portion of the trial, which would overlap with the power of appointment *portion.*

B. Evidence of a fiduciary/confidential relationship/implied promise per Chapman will be required in both trials.

Defendants assert that the power of appointment trial will not need as many witnesses: maybe only seven. As discussed in IIIA above, that is a false premise. Many witnesses over a long time span, beginning in 1996 and up to the time of trial, will be relevant for both issues. Importantly, the evidence of a fiduciary/confidential relationship/implied promise — implied promise being one of the legal arguments asserted by Plaintiff per the *Chapman* case, as discussed at the power of appointment summary judgment — can be inferred even from silence. The witnesses listed by Defendants and Plaintiff will be asked, inter alia, whether they heard anything about (i) a power of appointment over voting control, and/or (ii) whether Mrs. Barringer ever mentioned anything about any power of appointment over voting control. Again, the same witnesses will need to be available for both the power of appointment claim and the liability and damages issues, and the witnesses, evidence, and testimony will overlap.

C. Bifurcating the claims will not avoid resolution of issues related to the Dead Man's Statute.

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Defendants assert that bifurcation will avoid jury confusion over the Dead Man's Statute and further assert that the Dead Man's Statute would apply to Hampton and Kevin Luzak. Again, this is a false premise. Kevin Luzak is not a party, and he does not have a legal or equitable interest that can be affected by the proceeding. Numerous exceptions to the Dead Man's Statute would apply to Hampton. Even if Defendants are accurate in asserting that Hampton and Kevin will be subject to the Dead Man's Statute, they will be witnesses in both the power of appointment and liability and damage portions of the trial. The other parties will be witnesses in both parts of the trial as well, and they too are subject to the Dead Man's Statute under Defendants' rationale. The power of appointment claim will include, inter alia, testimony about documents executed post-1998, and the capacity of Mr. Barringer during that time, which Defendants admit is not subject to the Dead Man's Statute; that testimony will be relevant for the power of appointment claim. The parties and non-parties to the contract claim and the liability and damages issue will all be testifying, and they will all be testifying about capacity in both situations. To the extent it applies to the parties, the Dead Man's Statute will arise in both parts of the trial, so the jury confusion argument is baseless.

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D. Separate trials of claims involving common questions of law and facts will frustrate the purposes of Rule 42.

Defendants assert that Rule 42 is served by bifurcation. Again, this is a false premise. Rule 42 gives a court discretion to conduct separate trials (i) in furtherance of convenience, (ii) to avoid prejudice, or (iii) when conducive to expedition and economy. As discussed above, separate trials will not create convenience or be conducive to expedition and economy. Rather, judicial economy — saving time and resources (including the additional cost of impaneling two juries and conducting two trials) — is exactly why the consolidation order should be maintained. Furthermore, there would be no avoidance of prejudice: Plaintiff would have to prosecute two lengthy, complex, and overlapping trials. Thus, bifurcation creates prejudice.[6] None of the discretionary factors of Rule 42 is met by bifurcation. In fact, bifurcation contradicts the policy underlying Rule 42. The bifurcation order reverses the Court's consolidation consent order of December 3, 2019, which consolidated the cases' discovery and trials. Unlike the bifurcation order, the consolidation consent order did further convenience, avoid prejudice, and was conducive to expedition and economy. Defendants suffer no prejudice or injustice by a refusal to bifurcate.

IV. Conclusion

Bifurcation would in no way reduce time and costs or increase efficiency but instead would cause an increase in time and costs and a severe diminution of efficiency. For the reasons stated above, bifurcating the trial might double the total amount of trial time, if not more. For example, the power of appointment issue will involve issues about Mr. Barringer's capacity and

[6] Moreover, since December 3, 2019, the date of the consolidation order, Plaintiff's trial strategy has been prepared based on the consolidation of the cases.

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the validity of the post-2011 documents; the damages claim applies regardless of whether Mrs. Barringer has a power of appointment over the voting stock and, if she does, a right to exercise it. The witnesses and the evidence will largely, if not completely, overlap between the power of appointment trial and the liability and damages trial. Simply put, the power of appointment causes of action will need many, and maybe all, of the same witnesses and evidence as for the rest of the case, as well as additional witnesses and evidence. Bifurcation will not create judicial economy and expedition, convenience, or avoid prejudice, as required by Rule 42. The opposite is the case. Moreover, in this continuing unsafe environment, Defendants' proposal would subject the Court and its staff, the parties, the witnesses, and their counsel to two trials and increased risk of exposure.

Plaintiff respectfully requests that this Court reconsider its Order filed December 30, 2020, and deny Defendants' Motion to Bifurcate.

Respectfully submitted,

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HAMPTON BARRINGER LUZAK

Dated: January 8, 2021
Greenville, South Carolina.

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Exhibit 1

Order of December 30, 2020

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, v. MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST, Defendants.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2016-CP-07-01919

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, v. Merrill U. Barringer, Defendant.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-1294

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ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE

This Court has considered Defendants' Joint Motion to Bifurcate Trial filed October 23, 2020. Based on the legal memoranda submitted and oral argument presented, the Court grants the motion. In accordance with SCRCP Rule 42(b), this Court has determined that a separate trial of the Second and Third Causes of Action set forth in Hampton Luzak v. Merrill Barringer, Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294, shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in Civ. Action Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

IT IS SO ORDERED.

_____
CARMEN T. MULLEN
Judge of the Fourteenth Judicial Circuit

_____, 2020

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
IN THE MATTER OF:)	
ESTATE OF PAUL B. BARRINGER, II)	CIVIL ACTION NO. 2016-CP-07-1919
)	
HAMPTON BARRINGER LUZAK,)	**DEFENDANT MERRILL LIGHT'S MOTION AND MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AS TO FEBRUARY 28, 2012 WILL AND AMENDMENT TO THE PAUL B. BARRINGER, II REVOCABLE TRUST**
)	
Plaintiff,)	
)	
v.)	
)	
MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal Representative of the Estate of Paul Brandon Barringer, II J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as putative trustee of the Paul B. Barringer, II, Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust,)	
)	
Defendants.)	
_____)	

Defendant Merrill Light hereby moves pursuant to South Carolina Rules of Civil Procedure 56 for summary judgment as to the validity of the will and trust executed by Paul B. Barringer, II, on February 28, 2012. There is no question of fact as to any material issue, and Defendants are entitled to judgment as a matter of law.[1] This motion seeks summary judgment as to the Seventh, Eighth, and Ninth Causes of action as they apply to the February 28, 2012, will and trust executed by Paul B. Barringer, II.

[1] Defendant Light previously moved for summary judgment as to all causes of action. Based on new deposition testimony, she submits this motion for summary judgment as to only the February 28, 2012, will and trust amendment.

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UNDISPUTED FACTS [2]

In 2011, Mr. Barringer and his wife, Defendant Merrill Barringer, began working with attorney John Jolley, an estate planning lawyer who worked near their home in Hilton Head, to update their estate plan—which consisted of prior wills and trusts dated December 4, 1998.

At Christmas in 2011, Paul Barringer "was having trouble with his memory and he was having trouble speaking." HL Deposition, p. 169. Plaintiff Hampton Luzak attended a family meeting on February 18, 2012, with her father, Paul Barringer, her sister, Merrill Light, and her husband, Kevin Luzak. HL Depo., p. 182. At that meeting, Mr. Barringer was not upset with Kevin about the direction of CFRC. HL Deposition, p. 37. Neither Plaintiff nor her husband were present when Paul Barringer executed his estate planning documents on February 28, 2012, and July 20, 2012. HL Deposition, p. 222. Plaintiff testified that she did not know whether any of Defendants did anything wrong prior to Mr. Barringer's execution of these testamentary documents in February of 2012. HL Depo., pp. 241-42.

In Para. 12 of his Affidavit, Kevin Luzak, stated that, starting in early 2011, Mr. Barringer needed help with numbers and that his memory started to deteriorate, while his behavior became erratic.

Tom Evans, COO for Coastal Forest Resources Company, sent an email on September 9, 2011, that Mr. Barringer was very confused and not himself. In an email in February of 2011, Randy Light expressed concern that Mr. Barringer was "experienc[ing] different health issues that

[2] These facts are accepted as true for the purpose of this motion only.

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effect [sic] his judgement regarding everyday decisions personally and business wise."[3] In January of 2012, Mr. Light emailed that Mr. Barringer was exhibiting "irrational behavior."[4]

Mr. Barringer executed a Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998, on February 28, 2012. Lawyer Jolley met with Mr. and Mrs. Barringer, and their insurance and wealth management agent, Robert Slane, during late 2011 and early 2012. Mr. Jolley met extensively with Mr. Barringer on multiple occasions and had no reservations that Mr. Barringer was being unduly influenced or lacked capacity to execute the testamentary documents on February 28, 2012. Jolley Deposition, pp. 47-48. Mr. Slane participated in a number of those discussions and had no concerns about Mr. Barringer's capacity or being unduly influenced. He testified that Merrill Light was present at one meeting, because she brought her father from a doctor's appointment. When asked what role she played, he replied, "None." Slane Deposition, pp. 120-124. Rebecca Bostick, Mr. Jolley's long-time paralegal met with Mr. Barringer on February 28, 2012, and witnessed his execution of the testamentary documents. She saw no evidence of confusion or lack of cognition. Bostick Deposition, pp. 46-47.

The medical evidence concerning events prior to February 28, 2012 include the medical records and testimony of Mr. Barringer's internal medicine doctor, Paul Long. His testimony and his medical records reflect that Mr. Barringer first complained of memory problems or cognitive dysfunction to Dr. Long at an office on November 23, 2011. Long Deposition, pp. 22-23 and Defendant's Exhibit at tab 6. In a medical record, Dr. Long stated that, based on tests conducted

[3] When asked what he was referring to in this email, Mr. Light testified that the combination of Mr. Barringer's diagnosis with prostate cancer and the failure of his son Victor's business placed stress on Mr. Barringer. Deposition of Randy Light, Day 2, pp. 174-175.

[4] Mr. Light testified that the 2012 email referred to the same issues, Mr. Barringer's prostate cancer and concerns about his son. Randy Light Depo., Day 2, pp. 185-186.

by the Mind Center, Mr. Barringer had a prediction that he had significant dementia in the 60 percent range. In his testimony, Dr. Long explained that the test he used at the time, which he no longer uses today, was not an effective measure to determine dementia. It merely existed to give the percentage of chance that a person *might* have dementia. Dr. Long testified that he gave very little weight to this test. Long Deposition, pp. 23-30.

Dr. Long had a letter, dated December 27, 2011, from Dr. William Garret, a neurologist to whom he had referred Mr. Barringer. Dr. Long interpreted Dr. Garret's findings as Mr. Barringer had some difficulty with abstract reasoning but he did not "have any significant dementia." Long Deposition, pp. 32-34; Defendant's Exhibit Tab 7A.

On January 3, 2012, Mr. Barringer again visited Dr. Long complaining of "short term memory loss." Dr. Long testified that he performed another version of the test used by the Mind Center and the prediction was that Mr. Barringer had a 37% change of having significant dementia. He further testified that, because he gave him the Mini Mental Examination and Mr. Barringer scored a perfect score, he was not concerned about his cognition. Long Deposition, pp. 31-32; Defendant's Exhibit Tab 7.

On January 26, 2012, Dr. Long testified that Mr. Barringer's cognition was improved and that Dr. Garrett had sent him a letter in which he said that he did not believe that Mr. Barringer had Alzheimers Disease, and that he (Dr. Long) agreed with that assessment. Long Deposition, pp. 35-36; Defendant's Exhibit Tab 8. On February 16, 2012, Mr. Barringer visited Dr. Long again expressing concerns about his heavy urination. There is no mention of dementia or cognitive issues. Long Deposition, pp. 36-37; Defendant's Exhibit Tab 9. On February 27, 2012, Mr. Barringer returned because of his urinary issues, and the only mention on the medical record is Dr. Long's note that says "he has dementia but it is mild according to the test that we give." Long

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Deposition, pp. 37-38; Defendant's Exhibit Tab 10. On the following day, Mr. Barringer executed his First Amended Will and First Trust Amendment, both of which are claimed to be invalid in this action.

Prior to February 28, 2012, Merrill Light held no fiduciary positions with regard to her father. Plaintiff presented no evidence of undue influence in her opposition to Mrs. Light's first motion for summary judgment but simply bundled together circumstances that occurred after February 28, 2012. Similarly, Plaintiff presented no evidence of mistake with regard to the execution of the February 28, 2012 will and trust.

The February 28, 2012, Will and Trust Amendment treated all three Barringer children, including the Plaintiff, Hampton Luzak exactly the same. If Mr. Barringer predeceased Mrs. Barringer, all of his assets went to Mrs. Barringer, and, on Mrs. Barringer's death, if she failed to exercise the power of appointment given to her by Mr. Barringer to treat the children unequally, each child, including Plaintiff, was to receive one-third of Mr. Barringer's remaining assets.[5]

LEGAL ARGUMENTS

I. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER LACKED TESTAMENTARY CAPACITY ON FEBRUARY 28, 2012, WHEN HE EXECUTED HIS WILL AND TRUST AMENDMENT.

Plaintiff has claimed in her Seventh Cause of Action that "Decedent Paul Barringer was mentally incompetent and suffering from Alzheimer's disease and/or other dementia and lacked the requisite mental capacity to make valid amendments to his Revocable Trust" on February 28, 2012.[6] Plaintiff's only evidence is her testimony that Mr. Barringer was confused when she saw him on February 18, 2012, and Plaintiff's husband's vague statements that Mr. Barringer had told

[5] See February 28, 2012 Will and Trust Amendment attached hereto as Exhibits A and B respectively.

[6] Plaintiff has no claim that the February 28, 2012 Will was invalid, but Defendant's arguments apply to both the Will and the Trust Amendment and are asking that the Court find that Decedent had testamentary capacity to execute each of them.

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him that he was having trouble with numbers and his memory.[7] The only medical evidence prior to February 28, 2012, is that Mr. Barringer reported to Dr. Paul Long that he was having cognitive issues and that Dr. Long sent him to the Mind Center, a center focused on cognitive issues, and then to Dr. William Garrett, who, after examining Mr. Barringer, informed Dr. Long that he did not believe that Mr. Barringer had Alzheimer's disease. Dr. Garrett also told Dr. Long that he did not recommend any treatment for Mr. Barringer at that time. Plaintiff presented no evidence that Mr. Barringer did not know his children, his assets, or the persons to whom he wanted to leave his estate. Plaintiff has no witness at the time of the testamentary act supporting her position. Defendant, as demonstrated above, has several witnesses that have attested to Mr. Barringer's capacity at the time of the testamentary act.

In Hairston v. McMillan, 387 S.C. 439, 445-446, 692 S.E.2d 549 (Ct. App. 2010), the Court stated:

> "[T]he party alleging incompetence bears the burden of proving incapacity **at the time of the transaction** by a preponderance of the evidence." In re Thames, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct. App. 2001) (emphasis added). The test of whether a testator had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. In re Estate of Weeks, 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997). "[T]he legal test for determining whether or not a person has sufficient mental capacity to dispose of his property by will does not include the proviso that he must have a reasonable basis on which to found his like or dislike of the natural objects of his bounty." Id. "Further, the capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." Id.
>
> "A person may execute a valid will, even if he or she is not competent to transact ordinary, everyday affairs." Speegle v. Oswald, 774 So.2d 595, 597 (Ala. Civ. App. 2000). "Ability to transact important business, or even ordinary business, is not the legal standard of testamentary capacity, though it seems to be quite generally but mistakenly supposed, outside the ranks of the legal profession, that a capacity to transact important business is the criterion of fitness to make a valid will." In re Nelson's Estate, 227 Cal. App. 2d 42, 38 Cal. Rptr. 459, 466-67 (1964). [Emphasis added.]

[7] Mr. Luzak's vague and self-serving statements are likely barred by the Dead Man's Statute, but for purposes of this motion, Defendant accepts them as true.

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That Court also referenced "the somewhat limited requirements for testamentary capacity" in upholding the lower court's determination that the Decedent has legal capacity to execute his Will. 387 S.C. at 446.

As set forth hereinabove, the burden is on the Plaintiff to prove that Paul Barringer lacked testamentary capacity "at the time of the transaction." She has deposed all the witnesses to the February 28, 2012 testamentary acts, and all of them confirm that Mr. Barringer possessed testamentary capacity "at the time of the transaction" and at all other times when they dealt with him.

In her memorandum opposing Defendant's prior motion for summary judgment as to all of Mr. Barringer's wills and trusts from 2012 through 2015, Plaintiff stated:

> Mental capacity is determined based on the circumstances and evidence around the time of execution of donative documents. Testimony of doctors and others, along with evidence of the behavior of the testator or settlor/donor, can be relevant in showing the existence or lack of mental capacity. The examination of mental capacity is not determined only by examining evidence at the execution of the document, but rather on facts and circumstances surrounding execution, both before and after the actual execution. The case law is replete with circumstances where the court examined relevant evidence of capacity both before and after the execution of the document…

However, none of the cases cited by Plaintiff in her memorandum support her position. She cited Gaddy v. Douglas, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004) (testamentary capacity not raised in the trial court so was not discussed in the decision); Macauley v. Wachovia Bank, 351 S.C. 287, 569 S.E.2d 371 (Ct. App. 2002) (Court discussed contractual capacity and not testamentary capacity but held "[t]he party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence" and reversed the Probate Court's finding of no contractual capacity.); Lee v. Lee's Heirs, 4 McCord 183 (S.C. 1827) (Court held that eccentricity, however great, is not the same as insanity and thus is insufficient to invalidate a

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will.); Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993) ("First, the contestant argues that the testator did not understand his will and for this reason lacked capacity. The test of capacity necessary to make a will is whether the testator knew his estate, the objects of his affections and to whom he wished to give his property…. Moreover, the presumption arises upon proof of due execution of the will that the testator knew its contents, and this is sufficient to establish testator's knowledge thereof….").

Plaintiff has failed to present any evidence that Paul Barringer did not know his children, his assets, or the persons to whom he wanted to leave his property on February 28, 2012, or at any time relevant to the testamentary actions in this case. Despite the many doctors, colleagues, and family members around Mr. Barringer at or near the time of execution, Plaintiff and her husband are the *only* people that do not believe Mr. Barringer had testamentary capacity at this time.

Because Plaintiff has not even a scintilla of evidence to support her claim that the Decedent lacked testamentary capacity at the time that he executed his Will and Trust Amendment on February 28, 2012, Defendants are entitled to summary judgment as to the Seventh Cause of Action as it relates to these testamentary transactions.

II. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER WAS UNDULY INFLUENCED BY DEFENDANT MERRILL LIGHT OR ANY OTHER PERSON TO EXECUTE THE FEBRUARY 28, 2012 WILL AND TRUST AMENDMENT.

In Hembree v. Estate of Hembree, 311 S.C. 192, 196-197 (Ct. App. 1993), the Court held:

> The mere existence of influence is not enough to void a will as all influences are not unlawful. Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946). For influence to vitiate a will, it must destroy free agency and amount to force and coercion. Todd v. Woodard, 297 S.C. 264, 376 S.E.2d 276 (1989); Calhoun, 277 S.C. at 532, 290 S.E.2d at 418; Smith, 209 S.C. at 83, 39 S.E.2d at 129. Circumstances **must unmistakably and convincingly** point to the substitution of

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> another's will for that of the testator. Calhoun, 277 S.C. at 530, 290 S.E.2d at 417 (emphasis added). In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution. See Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948); Byrd v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983).
>
> However, even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion. Calhoun, 277 S.C. at 532, 290 S.E.2d at 419. The court's directing of a verdict in that instance is proper. Id.

In Swiger v. Smith, 426 S.C. 408, 415, 827 S.E.2d 200, 203 (Ct. App. 2019), the Court of Appeals affirmed the grant of summary judgment in an action attempting to set aside a will for undue influence and explained the burden of proof with regards to Rule 56: "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." See, also, Russell v. Wachovia Bank, N.A., 353 S.C. 108, 218, 578 S.E.2d 329, 334 (2003). As Swiger further held, "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.'" Swiger, supra. See, also, Russell, supra.

Plaintiff has presented no evidence, much less than more than a scintilla of evidence, of *any* influence (undue or otherwise) brought to bear on Paul Barringer's execution of the February 28, 2012, Will and Trust Amendment.[8] There is no evidence of threats or force wielded against Mr. Barringer by anyone, at any time. There is no evidence that Mr. Barringer's visitation and/or communications were restricted in any way prior to February 28, 2012. Indeed, Merrill Light did not become a co-trustee of Mr. Barringer's Revocable Trust until he executed the Trust Amendment on February 28, 2012, so she had no fiduciary relationship to even create an inference

[8] In Plaintiff's Memorandum in Opposition of Merrill Light's Motion for Summary Judgment as to all causes of action, she fails to mention any evidence of alleged undue influence that preceded the February 28, 2012 testamentary actions. See Memo, pp. 22-35.

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of undue influence. Even if she did, Mr. Barringer had many unhampered opportunities to change his will and trust after February 28, 2012, and actually took advantage of those opportunities by amending his trust three times thereafter. As the case law concludes, that unhampered opportunity vitiates any undue influence that might have occurred in February of 2012. *See* Russell v. Wachovia Bank, N.A., 353 S.C. at 220, 578 S.E.2d at 335 (2003) (affirmed the grant of summary judgment as to no undue influence); Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946).

Robert Slane, John Jolley, and Rebecca Bostick, who met with, discussed, and witnessed the execution of the February 28, 2012, will and trust amendment with Mr. Barringer, have all testified that Mr. Barringer's February 28, 2012, testamentary actions were what Mr. Barringer determined and wanted to do at that time and that no one exerted any influence, undue or otherwise, over Mr. Barringer to force him to execute these documents.

South Carolina law is clear that the "contestant must show that the influence was brought directly to bear upon the testamentary act," and Plaintiff has no evidence of this. Defendants are clearly entitled to summary judgment as to the Eighth Cause of Action as it applies to the February 28, 2012, Will and Trust Amendment.

III. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER WAS MISTAKEN WHEN HE EXECUTED THE FEBRUARY 28, 2012, WILL AND TRUST AMENDMENT.

Plaintiff's Memorandum in Opposition to Defendant Merrill Light's Motion for Summary Judgment as to all causes of action stated, with regard to its Ninth Cause of Action alleging that Mr. Barringer and Plaintiff were victims of mistake that should vitiate the February 28, 2012, Will and Trust Amendment:

> If a testator or settlor/donor suffers from mistake, the part of the will resulting from mistake is invalid. South Carolina Probate Code section 62-2-601(B) authorizes the reformation of a will that results from mistake; South

> Carolina Trust Code section 62-7-415 authorizes the reformation of a trust that results from mistake.[9]

When Plaintiff's Memorandum gets to the "Facts Supporting Mistake," it sets forth no specific facts regarding any of the wills or trust amendments at issue in this matter.[10] There is no allegation of any "mistake" with regard to the February 28, 2012 testamentary documents, and there could not be, because those documents left all assets in equal shares to the Barringers' three children, including the Plaintiff.

Defendants are clearly entitled to summary judgment as to the Tenth Cause of Action as it applies to the February 28, 2012 Will and Trust Amendment of Paul Barringer.

CONCLUSION

Plaintiff brought this action nearly (5) years ago based "upon information and belief." During these many years, Plaintiff has been unable to present even a scintilla of competent evidence to support her claims that the will and trust amendment executed by Paul B. Barringer, II, on February 28, 2012, are invalid. Because Plaintiff has not, and cannot, meet her burden with respect to the February 28, 2012, documents, Defendant Merrill Light is entitled to summary judgment as to the Seventh, Eighth, and Ninth Causes of action as they relate to the validity of these documents.

[SIGNATURE ON FOLLOWING PAGE]

[9] Memo, p. 8.
[10] Memo, p. 36.

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Respectfully submitted,

s/ Alice F. Paylor

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Charleston, South Carolina
May 14, 2021

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EXHIBITS A & B TO BE FILED UNDER SEAL

February 28, 2012 Will and Trust Amendment

EXHIBIT A

LAST WILL
OF
PAUL B. BARRINGER, II

John M. Jolley, Esquire
McNair Law Firm, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938
(843) 785-2171

Original document held for safekeeping by:
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Fax: (843) 686-5991

LAST WILL AND TESTAMENT
OF
PAUL B. BARRINGER, II

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

I am married to **Merrill U. Barringer** and I have three living children: **Victor C. Barringer**; **Hampton Barringer Luzak**; and **Merrill Barringer Light**.

ITEM I
PAYMENT OF DEBTS

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. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II
PAYMENT OF TAXES

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. If my residuary estate is inadequate to pay such taxes, they shall be paid from the assets of my Revocable Trust.

(2) **Apportion Taxes on Nonprobate Property. QTIP Marital Trust to Pay Full Share.** 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, and 2042 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

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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. Notwithstanding the above allocation and in lieu thereof, the estate tax liability to my estate due to the inclusion of any property pursuant to the provisions of section 2044 of the Internal Revenue Code shall be charged against such donee, trust, or recipient and paid in full with the amount of the contribution required to be paid calculated in accordance with the provisions of section 2207A of the Internal Revenue Code.

ITEM III
BEQUEST OF PERSONAL EFFECTS

General Bequest of Personal and Household Effects with 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 wife, **Merrill U. Barringer**, if she shall survive me. If my wife shall not survive me, I give and bequeath all this property to my children surviving me, in approximately equal 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.

(3) 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.

(4) The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM IV
QTIP ELECTION

Discretionary Authorization for Personal Representative to Elect Reverse QTIP Trust and Trust C Assets as Qualified Terminable Interest Property in Testator's Revocable Trust Agreement. Under the Trust Agreement between me as Settlor and me and Merrill Barringer Light as Trustee dated the 4th day of December 1998, as amended, the Trustee is empowered to allocate certain assets to the Reverse QTIP Trust and Trust C. I give my Personal Representative the discretion to elect, as provided in Internal Revenue Code section 2056(b)(7)(B)(v), to cause all, part, or none of the assets of the Trust to be allocated to Reverse QTIP Trust and Trust C and be treated on my federal estate tax return as qualified terminable interest property. If my wife is a co-Personal Representative of this Last Will and Testament, then the other co-Personal Representative(s) shall have the sole authority to make this discretionary decision. If my wife is the sole serving Personal Representative then the next appointed alternate Personal Representative shall become empowered to be a special Personal Representative for the purpose of making this discretionary decision. If no alternate Personal Representative is appointed by this Last Will and Testament, then the court shall appoint a special Personal Representative for the purpose of making this discretionary decision. My wife shall not have the authority to make this discretionary QTIP election.

ITEM V
RESIDUE DISPOSITION

Pourover Gift to Trustee of Testator'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 the successor Trustee under that certain Trust Agreement between me as Settlor and me and Merrill Barringer Light as Trustee executed prior to the execution of this Will on December 4, 1998, as amended. 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 VI
PERSONAL REPRESENTATIVE APPOINTMENT

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 **Merrill U. Barringer** and direct that she shall serve without bond.

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(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 **Merrill Barringer Light**.

(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 the next person willing to serve from the list below in the order named:

Hampton Barringer Luzak
Victor C. Barringer

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

ITEM VII
MEANING OF PERSONAL REPRESENTATIVE

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 VIII
PERSONAL REPRESENTATIVE POWERS

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

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my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM IX
TREATMENT OF MINOR BENEFICIARY'S SHARE

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 X
DISCRETION REGARDING TAX MATTERS

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

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My Personal Representative shall have discretion to allocate and transfer to my wife, if she shall survive me, any remaining federal estate tax credit that is unused by my estate after my death. 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 XI
DEFINITIONS RELATING TO FAMILY

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 descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful 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 descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

(2) **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 XII
DEFINITION OF INTERNAL REVENUE CODE TERMS

Definition of Words Relating to the Internal Revenue Code. As used herein, any word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. 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 XIII
SIMULTANEOUS DEATH

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator. Reverse Presumption as to Wife. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me; provided, however, that if my wife shall die with me as aforesaid, I direct that she shall be conclusively presumed to have survived me.

Testimonium, Attestation, and Self-Proving Affidavit. I, **Paul B. Barringer, II**, the Testator, sign my name to this instrument this the 28th day of February, 2012, 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.

Paul B. Barringer II

Paul B. Barringer, II
TESTATOR

We, John M. Jolley and Rebecca L. Bostick, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WITNESS

WITNESS

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Subscribed, sworn to, and acknowledged before me by **Paul B. Barringer, II**, the Testator, and subscribed and sworn to before me by John M. Jolley, witness, this the 28th day of February, 2012.

(Seal)
Notary Public for South Carolina
My commission expires: 05/20/2020

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EXHIBIT B

FIRST AMENDMENT AND RESTATEMENT OF

TRUST AGREEMENT

OF

PAUL B. BARRINGER, II

John M. Jolley, Esquire
McNair Law Firm, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938
(843) 785-2171

FIRST AMENDMENT AND RESTATEMENT OF TRUST AGREEMENT

Introductory Clause. This First Amendment and Restatement of Trust Agreement made the 28th day of February, 2012, between **Paul B. Barringer, II**, hereinafter referred to as the Settlor and **Paul B. Barringer, II** and **Merrill Barringer Light** hereinafter referred to as the Trustee.

The Settlor is married to **Merrill U. Barringer** and has three living children: **Victor C. Barringer; Hampton Barringer Luzak**; and **Merrill Barringer Light**.

WHEREAS, the Settlor and the Trustee entered into a Trust Agreement dated December 4, 1998, hereinafter called the Trust Agreement, and

WHEREAS, ITEM I of the Trust Agreement provided that the Settlor reserved the right to amend in any manner or revoke in whole or in part the Trust Agreement, and

WHEREAS, the Settlor is desirous of modifying and amending the Trust Agreement and the Trustee is agreeable to the modifications and amendments contained herein,

NOW, THEREFORE, IT IS AGREED that the entire Trust Agreement (except any Schedules which are not modified hereby) as modified and amended will read as follows:

This Trust shall be known as the "**Paul B. Barringer, II Revocable Trust, dated the 4th day of December, 1998**."

ARTICLE I
DESCRIPTION OF PROPERTY TRANSFERRED

Description of Property Transferred. The Settlor upon original execution of this Trust Agreement paid over, assigned, granted, conveyed, transferred, and delivered unto the Trustee certain property described in Schedule A, annexed hereto and made a part hereof. Any 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 DURING LIFE

Provisions for Settlor and Settlor's Wife During Settlor's 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) **Discretionary Payment of Income.** During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor all the net income from this Trust. Any income not distributed shall be accumulated annually and thereafter treated as principal.

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(2) **Discretionary Payment of Principal.** 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 the Trustee's 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.

(3) **Discretionary Payment for Wife.** In the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to handle the Settlor's own affairs properly, then and in that event the Trustee may during the Settlor's lifetime, in addition to the payments of income and principal for the benefit of the Settlor, pay to or apply for the benefit of the Settlor's wife, **Merrill U. Barringer**, such sums from the net income and 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's wife, taking into consideration to the extent the Trustee deems advisable any other income or resources of the Settlor's wife known to the Trustee.

(4) **Authorization for Additional Estate Planning.** During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to handle the Settlor's own affairs properly, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability and to provide for additional resources for family transfers and, if consistent with the Settlor's desires, charitable purposes. The estate planning which is specifically authorized may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any. *Provided however*, that if the Trustee is an individual and also a beneficiary, the Trustee/beneficiary's authority to implement such changes in the estate plan in a manner that would benefit the Trustee/beneficiary or the Trustee/beneficiary's family shall be restricted such that the amount of such transfers, gifts, or other changes to or for the benefit of the Trustee/beneficiary shall not exceed the greater of Five Thousand Dollars ($5,000.00) or five percent (5%) of the aggregate value of the Trust Estate as of the date of the planning change.

(5) **Authorization for Additional Gifting.** During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to handle the Settlor's own affairs properly, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine. Provided however, that if the Trustee is an individual and

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also a beneficiary, then the Trustee's authority to make gifts to a group of individuals, which includes the Trustee/beneficiary shall be restricted such that the amount of such gift to the Trustee/beneficiary shall not exceed in each year the greater of Five Thousand Dollars ($5,000.00) or five percent (5%) of the aggregate value of the Trust Estate as of the date of the gift.

ARTICLE III
RIGHT TO MODIFY TRUST AGREEMENT

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; and (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
PAYMENT OF DEBTS AND TAXES

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 Barringer Family Trust (Credit Shelter Trust) 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 Barringer Family Trust (Credit Shelter Trust). The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the Internal Revenue Code regulations now in effect or subsequently promulgated.

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ARTICLE V
SPECIFIC DISTRIBUTIONS

Specific Distributions Introduction. 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 wife, **Merrill U. Barringer**, if she shall survive the Settlor. If she shall not survive the Settlor, all this property shall be distributed to the 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. The Trustee shall have full discretion to sell all or any part of said property and apply the proceeds to ensure a fair and equitable division.

(c) 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.

(d) The cost of storing, packing, and shipping such property shall be charged as an expense of administration.

(2) **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.

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ARTICLE VI
ALLOCATION INTO SHARES

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

(1) **Creation of Trust C, the Reverse QTIP Trust, and the Barringer Family Trust.** If the Settlor is survived by the Settlor's wife, **Merrill U. Barringer**, the Trustee shall initially divide the Trust Estate into two (2) separate shares, hereinafter designated as "the Marital Share" and "the Barringer Family Trust." The Marital Share shall be a fraction of the Trust Estate (undiminished by estate, inheritance, succession, death, or similar taxes), the numerator of which shall be an amount equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's wife otherwise than pursuant to the provisions of this Article; provided, however, the amount of the Marital Share numerator hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Barringer Family Trust numerator shall be equal to the amount of the Trust Estate minus the amount of the Marital Share numerator. The Marital Share shall be further divided into two shares (the Reverse QTIP Trust and Trust C) as follows: the Reverse QTIP Trust shall be a fraction of the Trust Estate, the numerator of which shall be an amount equal to the Settlor's available generation-skipping transfer exemption as hereafter defined minus the amount of generation-skipping transfer exemption allocated to the Barringer Family Trust as finally determined above (but not to exceed the amount of the Marital Share numerator above determined). Trust C shall be a fraction of the Trust Estate, the numerator of which shall be an amount equal to the Marital Share numerator as above determined minus the amount of the Reverse QTIP Trust numerator. The Settlor recognizes that the numerator of one of the fractions may be zero (or less), in which case no property shall be allocated to that share. The denominator of the fraction shall be an amount equal to the value of the Trust Estate as finally determined in the Settlor's federal estate tax proceedings. For purposes of establishing such fractions the values as finally determined in the Settlor's federal estate tax proceedings shall be used. The Barringer Family Trust, Trust C, and the Reverse QTIP Trust shall be administered as hereinafter set forth.

(2) **Creation of the Barringer Family Trust and the Charitable Share.** If the Settlor's said wife shall not survive the Settlor, the Trustee shall divide the Trust Estate into two (2) separate shares, hereinafter designated as "**the Barringer Family Trust**" and the "**Charitable Share**." The **Charitable Share** shall be composed of cash, securities, or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death, or similar taxes); provided, however, the amount for the **Charitable Share** hereunder shall be reduced by the amount, if any, needed to

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increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in up to but not greater than Three Million Five Hundred Thousand Dollars ($3,500,000.00) federal estate tax being imposed on the Settlor's estate. The Trustee shall have the sole discretion to select the assets which shall constitute the **Charitable Share**. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of the **Charitable Share** hereunder at the value of such asset at the date of distribution of such asset. The **Charitable Share** shall be administered as hereinafter set forth. **The Barringer Family Trust** shall be the balance of the Trust Estate after the assets have been selected for the **Charitable Share**.

The Barringer Family Trust shall be administered as hereinafter set forth (Article VIII hereinbelow).

The **Charitable Share** shall be distributed to a charitable lead trust ("CLT") that the Trustee is specifically authorized and directed to create upon the death of the last to die of the Settlor and the Settlor's wife. It is the Settlor's direction to the Trustee that the CLT created shall (i) meet the requirements of a "qualified CLT" as defined in Rev. Proc. 2007-46, or Rev. Proc. 2008-46, such that the transfer to the CLT shall qualify for an estate tax charitable deduction under Internal Revenue Code Section 2055(e)(2); (ii) contain such terms and be structured so to produce an estate tax charitable deduction equal to (or as nearly equal as possible) one hundred (100%) percent of the initial net fair market value of the **Charitable Share**; (iii) designate the Paul and Merrill Barringer Donor Advised Fund (held at the High Point Community Foundation) as the charitable lead beneficiary, or the successor of such Donor Advised Fund; (iv) if the Donor Advised Fund is not then in existence, designate one or more charitable lead beneficiaries which shall be charitable organization(s) described in Sections 2055(a) of the Internal Revenue Code, and selected by the Trustee in the Trustee's sole discretion; and (v) designate the remainder beneficiaries which shall be the same remainder beneficiaries as provided hereinafter in Article VIII, Paragraph (4) (in default of the Settlor's said wife's exercise of the special power of appointment contained therein). Further, the Trustee is directed to provide that upon the expiration of the charitable interest in such trust, any interest passing to or for the benefit of a non-charitable remainder beneficiary to which generation-skipping transfer tax exemption is applicable (GST EXEMPT) shall be held in a long-term generation-skipping trust for the issue of the Settlor and the Settlor's said wife. Further, the Trustee is directed to provide that upon the expiration of the charitable interest in such trust, any interest passing to or for the benefit of a non-charitable remainder beneficiary to which generation-skipping transfer tax exemption is not applicable (GST NON-EXEMPT) shall be distributed pursuant to the terms of **The Barringer Family Trust**.

ARTICLE VII
DISPOSITION OF TRUST C

Trust C Introductory Provision. Trust C shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all

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the net income from Trust C in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's wife shall be paid with the entire remaining principal as provided in this Trust C.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's wife such sums from the principal of Trust C 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's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

(3) **Power in Wife to Cause Nonproductive Property to be Made Productive.** The Settlor's wife may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

(4) **Payment of Death Taxes from Trust C on Death of Wife.** Unless the Settlor's wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of Trust C be paid otherwise, the Trustee shall pay to the personal representatives of the estate of the wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's wife's death shall be increased as a result of the inclusion of the assets of Trust C in her estate for such tax purposes.

(5) **Special Power of Appointment in Wife at Death. Default Clause Over to the Barringer Family Trust.** Upon the death of the Settlor's wife, the entire remaining principal of Trust C shall be paid over, conveyed, and distributed to or in trust for such appointee or appointees from among the Settlor's issue, spouses of the Settlor's issue and charities as defined under Section 2055 of the Internal Revenue Code in such manner and in such proportions as the Settlor's wife may appoint in and by the Last Will of the Settlor's wife, making specific reference to the power of appointment herein conferred upon her. In disposing of Trust C, the Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the Last Will of the Settlor's wife or in acting upon the assumption that the Settlor's wife died intestate in case the Trustee has no notice of the existence of a Will of the Settlor's wife within six (6) months after the death of the Settlor's wife. In default of the exercise of such power of appointment by the Settlor's wife, or insofar as any part of such Trust C shall not be effectively appointed, then upon the death of the Settlor's wife the entire remaining principal of Trust C, or the part of such trust not effectively appointed shall be added to and become a part of the Barringer Family Trust and shall be held and administered or distributed in whole or in part, as if it had been an original part of the Barringer Family Trust.

ARTICLE VIII
DISPOSITION OF THE BARRINGER FAMILY TRUST

The Barringer Family Trust Introductory Provision. The Barringer Family Trust shall be held, administered, and distributed as follows:

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(1) **Discretionary Distribution To Irrevocable Trust.** Upon the death of the Settlor, if the Settlor's said wife shall survive the Settlor, the Trustee may pay to the Trustee of The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust Dated December 22, 1998 a sum of up to Two Hundred Thousand Dollars ($200,000.00) for such purposes and uses as the Trustee of such Trust shall deem appropriate. The Trustee of this Trust shall have the sole discretion regarding the amount of such distribution, limited, however, to no more than $200,000.00.

(2) **Discretionary Payment of All Income to Wife and Children.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of any one or more of the Settlor's wife and children until distribution under the special power of appointment or division into shares for children in default of the exercise of the power as hereafter provided all the net income from the Barringer Family Trust in convenient installments in such shares and proportions as the Trustee in its sole discretion shall determine primarily for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife and children, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife and children known to the Trustee.

(3) **Discretionary Payments of Principal for Wife and Children.** Prior to distribution under the special power of appointment or division into shares for children in default of the exercise of the power as hereafter provided, the Trustee may pay to or apply for the benefit of any one or more of the Settlor's wife and children such sums from the principal of the Barringer Family Trust in such shares and proportions 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's wife and children, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife and children known to the Trustee. Any payment or application of benefits for a child of the Settlor pursuant to this paragraph shall be charged against this Trust as a whole rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

(4) **Special Power of Appointment in Wife. Default Clause for Children.** If the Settlor's wife shall survive the Settlor, then upon the death of the Settlor's wife, the entire remaining principal of the Barringer Family Trust, together with any accrued and undistributed income therefrom, shall be paid over, conveyed, and distributed to or in trust for such appointee or appointees from among the Settlor's issue, spouses of the Settlor's issue and charities qualified under Section 2055 of the Internal Revenue Code in such manner and in such proportions as the Settlor's wife may appoint in and by the Last Will of the Settlor's wife, making specific reference to the power of appointment herein conferred upon her. In disposing of the Barringer Family Trust, the Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the Last Will of the Settlor's wife or in acting upon the assumption that the Settlor's wife died intestate in case the Trustee has no notice of the existence of a Will of the Settlor's wife within six (6) months after the death of the Settlor's wife. In the event the Settlor's wife does not survive the Settlor or in default of the exercise of such power of appointment by the Settlor's wife, or insofar as any part of such the Barringer Family Trust shall not be effectively appointed, then upon the death of the survivor of the Settlor's wife and the Settlor, the entire remaining principal of the Barringer Family Trust, or the part of such trust not effectively appointed shall be divided into equal separate shares so as to provide one (1) share for each then living child of the Settlor and one

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(l) share for each deceased child of the Settlor who shall leave issue then living. Each share shall be distributed or retained in trust as hereinafter provided in the following paragraphs. A share provided for a living child of the Settlor shall be distributed to such child, outright and free of trust. A share provided for the then living issue of a predeceased child of the Settlor shall be held, administered, and distributed in accordance with Paragraph (5) hereinbelow. If the Settlor's wife shall effectively and fully exercise her power of appointment granted herein then the following paragraphs shall be of no effect.

(5) **Division into Shares for a Child's Issue.** After division into shares for children, a share that has been provided for the then living issue of a predeceased child of the Settlor shall be divided into equal separate shares so as to provide one (1) share for each then living child of that deceased child of the Settlor and one (1) share for each deceased child of that deceased child of the Settlor who shall leave issue then living. Each share for a living child of that deceased child of the Settlor shall be held, administered, and distributed for such living child (hereinafter singularly "beneficiary" and collectively "beneficiaries") as herein provided. The share for each beneficiary shall be vested in such beneficiary subject only to the provisions hereof. The share provided for the issue of a deceased child of that deceased child of the Settlor shall be distributed per stirpes to such issue.

(a) **Income and Discretionary Invasion of Principal for Beneficiaries.** All the net income from the share so provided for a living beneficiary shall be paid in convenient installments to or applied for the benefit of such beneficiary until complete distribution of the share as herein provided. In addition to income, the Trustee may pay to or apply for the benefit of such beneficiaries such sums from the principal of his or her share as in its sole discretion shall be necessary or desirable from time to time for his or her medical care, education, support and maintenance in reasonable comfort, taking into consideration to the extent the Trustee deems advisable, any other income or resources of such beneficiary known to the Trustee.

(b) **Distribution of a Beneficiary's Share.** When a beneficiary attains the age of twenty-five (25) years, the Trustee shall distribute to the beneficiary one-half (1/2) of the principal of his or her share as then constituted; and when a beneficiary attains the age of thirty (30) years, the Trustee shall distribute to the beneficiary the undistributed balance of his or her share. If a beneficiary has already attained age twenty-five (25) or age thirty (30) at the time this Trust is divided into separate shares, the Trustee shall, upon making the division, distribute to the beneficiary one-half (1/2) or all of his or her share respectively.

(c) **Upon Beneficiary's Death to Personal Representatives.** Upon the death of a beneficiary prior to complete distribution of his or her share, the undistributed balance of the beneficiary's share shall be paid over and distributed to the beneficiary's personal representatives.

ARTICLE IX
DISPOSITION OF THE REVERSE QTIP TRUST

The Reverse QTIP Trust Introductory Provision. The Reverse QTIP Trust shall be held, administered, and distributed as follows:

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(1) **Direction to Pay All Income to Wife.** Commencing with the date of the Settlor's death, the Settlor's Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from the Reverse QTIP Trust in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's wife shall be paid with the entire remaining principal as provided in this the Reverse QTIP Trust.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's wife such sums from the principal of the Reverse QTIP 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's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

(3) **Power in Wife to Cause Nonproductive Property to be Made Productive.** The Settlor's wife may at any time by written notice, require the Trustee either to make any nonproductive property of this Trust productive or to convert such nonproductive property to productive property within a reasonable time.

(4) **Statement of The Settlor's Request that the Reverse QTIP Trust Taxes be Paid from Wife's Property.** The Settlor expects (and by this paragraph requests) the Settlor's wife to provide for the payment of the estate taxes caused by the inclusion of the assets of the Reverse QTIP Trust in the Settlor's wife's estate from her own property rather than from the Reverse QTIP Trust assets.

(5) **Disposition of Trust Property on Wife's Death.** Upon the death of the Settlor's wife, the entire remaining principal of the Reverse QTIP Trust shall be held, administered or distributed, pursuant to Article VI, Paragraph (2) of the Settlor's said wife's revocable trust known as the Merrill U. Barringer Revocable Trust Dated the 4th Day of December, 1998, as amended.

ARTICLE X
TRUSTEE SUCCESSION

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) **Authority For Individual Trustee to Act Alone.** During the Settlor's lifetime, during such period as the Settlor and **Merrill Barringer Light** shall be serving as Co-Trustees, either shall have the express authority to act alone on behalf of the Trust or any subtrusts created hereunder.

(2) **Individual Trustees Succession.** During the Settlor's lifetime, if either 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. Upon or after the death of the Settlor, should **Merrill Barringer Light** fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be shall be such individual, bank or trust company

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as shall be designated in a writing signed by **Merrill Barringer Light** and delivered to the then current income beneficiary of this Trust. Such a designation of Successor Trustee by Merrill Barringer Light shall have priority over Section (3) hereinbelow.

(3) **Naming Individual Successor or Substitute Trustee.** If 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 next person willing to serve from the list below in the order named:

Hampton Barringer Luzak
Victor C. Barringer

(4) **Final Succession if All Individual Trustees Cannot Act.** If all of 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 such individual, bank or trust company as shall be designated in a written instrument and signed by a majority of the adult beneficiaries of this Trust.

(5) **Indemnification of Trustee.** The Trust Estate shall indemnify and hold harmless the Trustee from and against any and all liabilities, losses, damages, and costs, including but not limited to legal fees, surcharges, and penalties, which may arise from the Trustee's actions or inactions performed in the capacity as Trustee, except for those liabilities, losses, damages, and costs which may arise as a result of the Trustee's bad faith, gross negligence, and/or willful misconduct.

(6) **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.

(7) **Fee Schedule for Corporate Trustee.** For its services as Trustee, the corporate Trustee shall receive an amount determined by its standard fee schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

(8) **Change in Corporate Fiduciary.** Any corporate successor to the trust business of the corporate fiduciary designated herein or at any time acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

(9) **Appointment of Co-Trustee.** Any serving individual Trustee may, at any time during the period such individual Trustee is serving, appoint another individual, bank, or corporate fiduciary as a co-trustee of the Trust or the Trust share. The co-trustee shall serve only so long as the appointing Trustee shall be serving as a Trustee. The appointing individual Trustee may revoke this appointment at any time with or without cause by written notice to the appointed co-trustee. Such appointed co-trustee shall have either all of the powers of the appointing individual Trustee or such lesser or limited powers as the appointing individual Trustee may determine at the time of the appointment.

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(10) **Appointment of Independent Special Trustee.** If a Trustee is unable or unwilling for any reason to act with regard to any property comprising the Trust Estate, the Trustee may appoint an Independent Special Trustee to act with regard to such property. Such Special Trustee may be either an individual or a corporate Trustee. If the Special Trustee is an individual, such individual shall not be related to or subordinate to any beneficiary of this Trust as defined by section 672(c) of the Internal Revenue Code. If appointed, the Independent Special Trustee shall act with respect to such property of the Trust Estate in accordance with the provisions of this Trust. The Trustee may revoke the appointment of any such Independent Special Trustee at any time. Any Independent Special Trustee shall exercise all of the fiduciary powers granted to the Trustee, unless specifically limited by the Trustee. The Independent Special Trustee may resign at any time.

(11) **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.

(12) **Designation of Successor Trustee as HIPAA Personal Representative.** During the administration of this Trust, it may be necessary for a successor Trustee to inquire about the mental or physical capacity of a currently serving individual Trustee. Each serving individual Trustee therefore grants and confirms that each such successor Trustee shall be treated as a "personal representative" under the Health Insurance Portability and Accountability Act of 1996 and its regulations (including 45 C.F.R. § 164.502(g)(2)) for all purposes relating to the "protected health information" of any currently serving individual Trustee. Any serving individual Trustee does hereby authorize all health care providers, including, but not limited to, hospitals, nursing homes, treatment facilities, and other covered entities, and all physicians, nurses, therapists, and other persons who may have provided in the past or are currently providing any currently serving individual Trustee with any type of medical, mental, or other types of health care, to disclose to the HIPAA personal representative and any other successor HIPAA personal representative all of the currently serving individual Trustee's health care information and all "protected health information" for the purpose of determining the currently serving individual Trustee's capacity to continue to serve as a Trustee of this Trust, or as may be required or permitted by state law. The HIPAA personal representative may also give this authorization to the Settlor's lawyer and/or other substitute individuals to so act in addition to such HIPAA personal representative. This authorization is intended to provide the currently serving individual Trustee's health care providers with the authorization necessary to allow each of them to disclose such general medical information and protected health information regarding the currently serving individual Trustee to the above designated successor Trustee of this Trust. The information disclosed by any such health care provider pursuant to this authorization is subject to further disclosure and use by such successor Trustee and may thereafter no longer be protected by such privacy rules. Any successor individual Trustee waive any and all liability and hold such physicians or other health care

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providers harmless for providing such information, rendering an opinion concerning the mental or physical incapacity of the individual Trustee, or for signing a certificate of incapacity concerning the individual Trustee. This authorization shall have no expiration date and shall remain in effect until the earlier of its revocation by the currently serving individual Trustee or the death of such person. By agreeing to serve as a Trustee, each successor individual Trustee grants the authority provided above to that individual Trustee's successor Trustee.

(13) **Determination of Incapacity of Individual Trustee.** If any serving individual Trustee either is adjudicated to be incompetent or in the event that the individual Trustee is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the fiduciary responsibilities of the trusteeship, then and in that event the Trustee next designated herein shall serve as the successor Trustee. The disqualified Trustee may regain the position as Trustee, if and when such incompetency is removed, as determined by two licensed physicians in the same manner as was followed to initially establish the Trustee's incapacity. Third parties may rely on an affidavit by the Trustee stating that the successor Trustee is now acting as Trustee hereunder.

(14) **Waiver of Court Supervision.** A Trustee may act without qualifying before any court and, unless otherwise required by law to do so, shall not be required to file with any court an inventory, accounting, or other report relating to the administration of the Trust.

(15) **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

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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.

(16) **Limitation of Liability and Duties of Successor Trustee for Acts of Prior Trustee.** No successor Trustee shall have any liability or responsibility for any acts or omissions of any prior Trustee. The Trust shall indemnify and hold harmless any currently serving Trustee for the acts or omissions of any such prior Trustee. A current Trustee may, but shall not have the obligation to, audit or investigate the accounts or administration of any prior Trustee. In the event that any present or future beneficiary shall request in writing that the Trustee investigate or take any action against a prior Trustee, the current Trustee may, but not be required to, either: i) determine if such action is either inappropriate or unlikely to result in a favorable conclusion for the Trust and therefore decline to take such action, or ii) require that the beneficiary requesting such action indemnify the Trust and Trustee and fund all the expenses of such action to the extent that the Trustee deems appropriate. The Trustee shall have the sole discretion to act with regard to these decisions.

ARTICLE XI
MEANING OF TRUSTEE

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

ARTICLE XII
TRUSTEE POWERS

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.

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(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 material percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit assets of the Trust 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 or any Trust share created hereunder 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. References to powers herein related to shares of stock shall include such powers over other types of securities, including interests in partnerships, limited liability companies, and other similar entities.

(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 or any Trust share created hereunder, 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 option, subscription, or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate or any Trust share created hereunder 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 or Trust share.

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(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. If money is borrowed from the Trustee, the Trustee may charge interest thereon at a prevailing rate. In no event shall any mortgagee be under any obligation to verify the proper application of the loaned proceeds.

(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, and 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 bad faith, gross negligence, and/or willful misconduct; 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 issue receipt for rents, issues, profits, and income of the Trust Estate.

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(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, extend, assign, adjust or give partial release from, arbitrate, sue on, discharge, foreclose, or otherwise 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 advisors, 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. A Trustee may employ any firm with which the Trustee is affiliated to provide services for and on behalf of the Trust for the proper administration of the Trust.

(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, including the power and authority in the exercise of its fiduciary responsibilities and in accordance with state law to credit realized capital gains to income and to charge income expenses 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 consolidate, 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

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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 (2) 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.

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(36) For any Trust share being held hereunder, 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, to divide such Trust share (a) with an inclusion ratio of neither one (1) nor zero (0) into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one (1) and the other to have an inclusion ratio of zero (0), or (b) into separate Trust shares for the benefit of one or more of the Trust beneficiaries, provided however, that (i) each beneficiary's interest in the resulting trusts (collectively) equals the beneficiary's interests in the original Trust share; (ii) the terms of each of the resulting trusts are the same as the terms of the original Trust, even though each permissible distributee of the original Trust is not a beneficiary of all of the resulting Trust shares, and (iii) such severance must neither shift the beneficial interest in the Trust to any beneficiary in a lower generation nor extend the time for vesting of any beneficial interest beyond the period provided for in the original Trust. The Trustee, in its sole discretion, may also create Trust shares to receive property with an inclusion ratio of either one (1) or zero (0), and if this cannot be done, refuse to accept property which does not have a matching inclusion ratio to the receiving Trust's ratio.

(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 Internal Revenue 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 Internal Revenue Code section 2612, then to the Reverse QTIP Trust, 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 Internal Revenue Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

(38) In the absence of any Personal Representative appointment for the Settlor's estate, the Trustee shall have discretion to allocate and transfer to the Settlor's wife, if she shall survive the Settlor, any federal estate and gift tax credit that remains unused by the Settlor's estate after the Settlor's death (the deceased spousal unused exclusion amount).

ARTICLE XIII
MANAGEMENT OF NATURAL RESOURCES

Trustee Authority to Deal with Oil, Gas, and Mineral Interests. In addition to any other powers granted to the Trustee, the Trustee may acquire, maintain, develop, improve, sell, or otherwise deal with oil, gas, coal, mineral, or other natural resource interests whether alone or in conjunction with others. The Trustee is empowered to drill, test, explore, extract, mine, develop, manage, store, sell, or exchange any such mineral rights or interests in such rights on such terms and conditions as the Trustee deems prudent. The Trustee may enter into leases, pooling, and other types of agreements for such oil, gas, coal, mineral, or other types of natural resources. The Trustee may execute transfers, assignment, division orders, and other instruments that the Trustee deems proper. The Trustee may employ the services of engineers, consultants, or specialists to advise the Trustee in the management, development, and disposition of such mineral or natural resource interests.

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ARTICLE XIV
BENEFICIARY OCCUPATION OF REAL ESTATE

Trustee Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee in its sole discretion may permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the Trust assets for such beneficiary or beneficiaries. In such event, the Trust share shall be responsible for the payment of all the expenses of maintaining the residence, real estate taxes and assessments thereon, expenses of maintaining the residence in suitable repair and condition, and hazard and other appropriate insurance premiums on the residence. The Trustee shall charge such expenses against the principal of the Trust share containing the residence.

ARTICLE XV
MARITAL DEDUCTION SAVINGS

Marital Deduction Savings Clause for the Marital Share. It is expressly provided that the grant of rights, powers, privileges, and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in the Marital Share hereof. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing intention.

ARTICLE XVI
TREATMENT OF S CORPORATION SHARES

Special Provisions for "S Corporation" Stock. Any "S Corporation shares" held in this Trust, or any share of this Trust, shall be held in accordance with the following terms. Although this Trust Agreement may create a single trust share for one (1) or more beneficiaries, the Trustee shall instead hold all shares of S Corporation stock in a separate sub-share for the appropriate beneficiary. The Trustee shall apportion expenses of the several shares in a manner that is not inconsistent with the Internal Revenue Code and regulations. No person shall be a beneficiary of an S Corporation Trust share unless that person is either a citizen of the United States or a resident of the United States for federal income tax purposes. Notwithstanding any other provision in this Trust Agreement to the contrary, the Trustee shall annually distribute all of the trust share's "net income" (as defined in Internal Revenue Code section 643(b)) from the S Corporation shares to the beneficiary, together with as much of that trust's principal as is appropriate under the standard contained in the trust in which such S Corporation shares would otherwise have been held. The Trustee shall not distribute S Corporation income or principal to anyone other than the beneficiary. The Trustee shall assist the beneficiary in electing under section 1361 of the Internal Revenue Code to cause the trust to be treated as a Qualified Subchapter S Trust for federal income tax purposes. The Trustee shall administer the trust to be a Qualified Subchapter S Trust, as defined in section 1361 of the Internal Revenue Code.

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ARTICLE XVII
CONTINUING TRUST FOR BENEFICIARY'S SHARE

Provision for Trustee to Act as Trustee for Beneficiary Under Age 30. If any share hereunder becomes distributable to a beneficiary who has not attained the age of thirty (30) years, 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(s) specified in accordance with the following provisions. 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.

(1) **Discretionary Payment of Income.** Commencing with the funding of this Trust share, the Trustee may pay to or apply for the benefit of the beneficiary for whom a share has been created under this Article such sums from the income of that beneficiary's share as the Trustee, in its sole discretion, shall deem to be necessary or advisable from time to time 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 known to the Trustee. Any income not distributed during any calendar year shall be accumulated and added to principal.

(2) **Discretionary Payment of Principal.** Commencing with the funding of this Trust share and in addition to the distribution of income, the Trustee may pay to or apply for the benefit of the beneficiary for whom a share has been created under this Article such sums from the principal of that beneficiary's share as the Trustee, in its sole discretion, shall deem to be necessary or advisable from time to time 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 known to the Trustee.

(3) **Distribution of Beneficiary's Share.** After the establishment of the Trust share for the beneficiary, when the beneficiary attains the age of twenty-five (25) years, the Trustee shall distribute to the beneficiary one-half (1/2) of the principal of his or her share as then constituted; and when a beneficiary attains the age of thirty (30) years, the Trustee shall distribute to the beneficiary the undistributed balance of his or her share. If a beneficiary has already attained age twenty-five (25) or age thirty (30) at the time the beneficiary's distribution would have otherwise been made thereby creating this continuing Trust share, the Trustee shall, upon funding this continuing Trust share, distribute to the beneficiary one-half (1/2) or all of his or her share, respectively.

(4) **Death of Beneficiary.** If any beneficiary shall die before such beneficiary's share shall be fully distributed, the undistributed balance of such beneficiary's share shall be paid over, conveyed, and distributed to his or her executors or administrators for inclusion in the beneficiary's estate.

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ARTICLE XVIII
TREATMENT OF MINOR OR INCOMPETENT BENEFICIARY'S SHARE

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated. 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 XIX
PROTECTION OF DISABLED BENEFICIARY'S SHARE

Trustee Authority Regarding Beneficiaries Receiving Certain Government Assistance. If the Trustee reasonably believes that a beneficiary is receiving (or may receive) governmental benefits under the Supplemental Security Income Act ("SSI"), 42 U.S.C. §§1381 et seq., Medicaid, 42 U.S.C. §§1396 et seq., or other federal or state means-tested government benefit programs, then the Trustee may, in the Trustee's sole discretion, withhold any distribution due under this Trust Agreement to or for such beneficiary and retain such distribution amount as a discretionary, non-support, spendthrift trust share for the benefit of such beneficiary. In the alternative, the Trustee may establish a separate third-party supplemental needs trust for such beneficiary with such terms as the Trustee shall deem appropriate. It is the Settlor's intent that any supplemental needs retained trust share or separate trust provide the maximum benefit to the beneficiary without the principal and/or income of the trust share or separate trust being available to the beneficiary for the determination of the beneficiary's continued eligibility to receive such governmental assistance programs. If any such trust share or separate trust is created for the life of a beneficiary, then upon the death of such beneficiary, the trust share or separate trust shall be distributed to the beneficiary's issue, if any, per stirpes, or if there are no such issue, to the Settlor's issue, per stirpes. If either such continuing share or a separate trust for the beneficiary cannot be established, then the Trustee may create a first-party supplemental needs trust for the beneficiary pursuant 42 U.S.C. §1396p(d)(4).

ARTICLE XX
TREATMENT OF ADDICTED BENEFICIARY

Trustee Authority Regarding Beneficiaries Under Addictive Conditions. If the Trustee reasonably believes that a beneficiary is suffering from an alcohol, drug, gambling, chemical, or other addictive or compulsive disorder, the Trustee may require that the beneficiary participate in rehabilitation and/or therapy programs in order to continue to receive payments of income or principal provided for under this Trust Agreement. The Trustee shall have the sole discretion to determine the nature and the extent of the rehabilitative programs and medical treatments designed to treat the addiction or disorder in order to receive benefits under this Trust

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Agreement. The Trustee may consult with counselors and treatment providers to develop and implement medical, custodial, and rehabilitative programs for the beneficiary. The Trustee may pay the expenses of such therapy or treatments from the beneficiary's share of this Trust.

ARTICLE XXI
TRUSTEE RESIGNATION AUTHORITY

Power of Trustee to Resign. Any Trustee may resign this trusteeship by giving thirty (30) days' notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, if the Settlor is then living, or to all of the then income beneficiaries, if the Settlor shall then be deceased. The resignation shall become effective as hereinafter provided. If a successor Trustee is appointed pursuant to the terms of the Trust Agreement, then such successor Trustee shall become the Trustee. If no successor Trustee is appointed by this Trust Agreement, then upon receipt of such notice, the Settlor, if living (or the income beneficiaries, by majority vote if the Settlor is then deceased), shall appoint a successor Trustee which may be either and individual or a bank or trust company to replace an individual Trustee or shall be a bank or trust company with regulated fiduciary powers to replace a corporate Trustee. Upon the failure of the Settlor (or the income beneficiaries, as appropriate) to appoint a successor Trustee who accepts the Trust within thirty (30) days from the time notice was delivered in person or mailed to the Settlor (or the income beneficiaries, as appropriate), the Trustee may resign to the court having jurisdiction over this Trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be a bank or trust company with regulated fiduciary powers. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this Trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority, and responsibility conferred upon the Trustee originally named herein.

ARTICLE XXII

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 One Hundred Thousand ($100,000.00) 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 XXIII
DESIGNATION OF SUBSTITUTE TRUSTEE

Settlor's Wife to Designate Substitute or Successor Trustee. After the Settlor's death and notwithstanding any other appointment provision of this Trust Agreement, the Settlor's wife may name a substitute or successor Trustee. If the Trustee being replaced is an individual Trustee,

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then the Settlor's wife shall appoint a successor Trustee which may be either another individual Trustee or a bank or trust company. If the Trustee being replaced is a corporate Trustee, then the Settlor's wife shall appoint a successor Trustee which shall be a bank or trust company qualified to do business in the Settlor's wife's domicile, by delivering to the Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee. Upon receipt of such notice the Trustee shall pay over, deliver, assign, transfer, or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor's wife and the other beneficiaries under this Trust Agreement, whereupon the Trustee named herein shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make the conveyance, the Settlor's wife may apply to the court having jurisdiction of this Trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this Trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority, and responsibility conferred upon the Trustee originally named herein.

ARTICLE XXIV
DEFINITIONS RELATING TO FAMILY

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 descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful 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 descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

(2) **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 XXV
DEFINITION OF INTERNAL REVENUE CODE TERMS

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "applicable credit amount," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to 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

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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 XXVI
SIMULTANEOUS DEATH

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. Reverse Presumption as to Wife. 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; provided, however, that if the Settlor's wife shall die with the Settlor as aforesaid, the Settlor directs that she shall be conclusively presumed to have survived the Settlor.

ARTICLE XXVII
PAYMENT OF FUNERAL AND OTHER EXPENSES

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXVIII
GOVERNING STATE LAW

State Law to Govern. The following provisions shall govern the application of law to this Trust. It is not intended that the laws of only one particular state shall necessarily govern all questions pertaining to this Trust nor shall one state's laws be applicable to all shares of this Trust. Any references to "state" in this Trust shall include the District of Columbia, if and when applicable.

(1) **Law Applicable for Interpretation of Document.** The validity of this Trust, the validity of the particular provisions of this Trust, and the meaning and effect of the terms of this Trust Agreement (and of any amendments) shall be governed by the laws of the State of South Carolina.

(2) **Law Applicable for Trust Administration.** The administration of this Trust shall be governed from time to time by the laws of the state in which this Trust is then being administered (based on the location of the administrative office, or residence, of the Trustee then having custody of that Trust's principal assets and records), which state's courts shall have exclusive jurisdiction over the administration of that trust with respect to any period during which it was then being administered in that state. The foregoing rules shall apply even though the situs of some trust assets or the home of the Settlor's, a trustee, or a beneficiary may at some time or times be elsewhere. Furthermore, to the greatest extent permitted by law, this Trust (and its then serving Trustee) shall be exempt from the supervision of any court or other governmental entity.

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(3) **Trustee Discretion to Change Applicable Law.** Notwithstanding either the location of the Trustee or the location of the Trust Estate, the then serving Trustee may, in the Trustee's sole and absolute discretion, change the situs or governing law of any trust share established under this Trust Agreement to a different state. If the Trustee elects to change the situs to another state, the Trustee will administer the Trust (or the applicable Trust share) in accordance with the law of that new state. The Trustee shall no longer be required to maintain qualification within any prior state nor account to any prior state. The powers granted to the Trustee may be exercised multiple times, it being the Settlor's intent to grant the Trustee maximum flexibility with respect to choosing the state whose laws will govern this Trust, or any sub-trust created under this Trust Agreement.

(4) **Limitation of Trustee's Rights.** If by the exercise of any choice of law discretion granted in this article, any Trustee could be deemed to possess a general power of appointment for federal estate or gift tax purposes, such Trustee shall have none of the powers granted above in this Article. Instead, such powers shall be exercisable by a co-trustee (and if no co-trustee, if a successor trustee), who is not a beneficiary of this Trust. If there is no appointed co-trustee or successor trustee, then the Trustee may appoint a special trustee, who shall have the limited powers needed to make the decisions contemplated in this article.

ARTICLE XXIX
PERPETUITIES SAVINGS LIMITATION

Perpetuities Savings Clause. Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than the day preceding the maximum permissible statutory limitation on the length of trusts as specified in the laws of the State of South Carolina. Upon such date, the Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

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Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustees have executed this First Amendment and Restatement of Trust Agreement.

PAUL B. BARRINGER, II

SETTLOR

PAUL B. BARRINGER, II

MERRILL BARRINGER LIGHT

INDIVIDUAL TRUSTEES

WITNESSES:

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STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing First Amendment and Restatement of Trust Agreement was this day produced to me in the above State and County by **Paul B. Barringer, II**, Settlor, party hereto and was executed and acknowledged by the Settlor to be the Settlor's free act and voluntary deed.

WITNESS my signature this the 28th day of February, 2012.

Signature of Notary Public
Notary Public for South Carolina
My commission expires: 05/20/2020

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing First Amendment and Restatement of Trust Agreement was this day produced to me in the above State and County by **Paul B. Barringer II**, Individual Trustee, party hereto and was executed and acknowledged by the Individual Trustee to be the free act and voluntary deed of the Individual Trustee.

WITNESS my signature this the 28th day of February, 2012.

Signature of Notary Public
Notary Public for South Carolina
My commission expires: 05/20/2020

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STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing First Amendment and Restatement of Trust Agreement was this day produced to me in the above State and County by **Merrill Barringer Light** Individual Trustee, party hereto and was executed and acknowledged by the Individual Trustee to be the free act and voluntary deed of the Individual Trustee.

WITNESS my signature this the 2nd day of March, 2012.

Signature of Notary Public
Notary Public for South Carolina
My commission expires: 05/20/2020

ELECTRONICALLY FILED - 2021 May 14 4:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

IN THE MATTER OF:
ESTATE OF PAUL B. BARRINGER, II,

HAMPTON BARRINGER LUZAK,

Plaintiff,

vs. CASE NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II, REVOCABLE TRUST DATED DECEMBER 4, 1998 AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST,

Defendants.

DEPONENT: HAMPTON BARRINGER LUZAK

DATE: JUNE 12, 2019

TIME: 9:39 A.M.

LOCATION: ROSEN HAGOOD, LLC
151 MEETING STREET
SUITE 400 HARBOR ROOM
CHARLESTON, SC 29401

REPORTED BY: GLORIA ANZALONE, RPR
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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A. Yes, ma'am.

Q. And you testified in the next line that neither Merrill, Randy nor your mother ever said anything about disagreeing with your husband's direction for the company, correct?

A. Yes. Kevin had a family meeting in February, he talked about the direction of the company in great detail. Merrill, my father, my mother, no one ever disagreed, and they gave him the go to start moving in that direction. This is in February of 2012. Then there were board meetings. Kevin also talked about the direction of the company and everyone was fine about that. There was also a letter from my dad talking about how he was excited about the direction in real estate and it was a great new path, something like that, for the company to go in.

Q. But it was your father who got upset with Kevin, your husband, correct?

A. My father and --

MR. GILREATH: Object to the form of that question. Go ahead.

THE WITNESS: My father in 2011, 2012 was not upset with Kevin about the direction, it was when he was being fed

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Kevin. And he mentioned in the spring when we were all on the beach together he wanted Kevin to take over responsibility for the family and the company.

Q. And you're saying that was in 2012, is that right?

A. That was when we were on the beach in March of 2012, all of us.

Q. So did you personally observe your father having erratic behavior and losing his memory in 2011?

A. Yes.

Q. Tell me what you saw.

A. It was at Christmas and he was having trouble with his memory and he was having trouble speaking. And I asked my mother, you know, what should we be doing? You know, he was unusually quiet, and that's when she said the comment about Victor and how it crushed my father. Victor had no remorse with what happened with Coastal Lumber.

Q. Do you recall when your father was diagnosed with prostate cancer?

A. I know it was in the year 2011.

Q. And was he having issues with that at the same time?

A. He was having an issue with radioactive

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Kevin Luzak prepared regarding the February 18, 2012 family discussion about a possible long-term strategy for CFRC and Kevin Luzak's compensation. Were you present at that discussion?

A. At these family strategy meeting. But with discussions about Kevin's compensation, he was just trying to get references on what he should be paid for. This $1 million salary thing is made up because Kevin did not ask for the million dollars, it's Travis Bryant's salary that he's getting, so I don't know why that keeps coming up about Kevin asking for a million dollars and getting greedy.

Q. I did not ask you anything about Kevin asking for a million dollars.

(More than one person spoke at the same time.)

BY MS. PAYLOR:

Q. My question to you was were you present at the February 18, 2012 family discussion?

A. Right.

Q. You were present?

A. Right.

Q. And what was discussed about the long-term strategy for CFRC?

A. Kevin had a strategy for going into real estate, also for tax purposes with the company

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have hurt you or your stock value?

A. Diluting me by 5 percent and hiding it from me.

Q. How did she dilute you by 5 percent?

A. She gave Travis Bryant 5 percent with a loan from the company, so it was basically for free. And she, Travis and Randy hid the transaction for over a year from the shareholders.

Q. And just to be clear, when your father executed his estate planning documents in 2012 and thereafter, you were not present when he signed those documents, correct?

A. The July 20th?

Q. All of his documents, all of his estate planning documents that he executed after 2012, you were not present when he executed them, correct?

A. Correct.

Q. And your husband wasn't there when he executed them, correct?

A. Correct.

Q. And you did not see him or have any contact with him on the days that he signed those documents, correct?

A. Correct. I believe my mother under oath said that Merrill and Randy Light were never

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lawyer, King & Spalding, writing a letter saying there was going to be a suit, a lawsuit, if he didn't get the information he wanted?

A. Michael Smith was hired to be special counsel for an investigation into the allegations of my husband and he was hired in the summer of 2012. So I don't know what you're talking about; I don't know.

Q. So that doesn't refresh your memory?

A. No.

Q. Did you allege that anybody did anything improper prior to February of 2012?

A. Before February --

Q. And I'm not trying to trick you, I'm just saying February of 2012 is when your father made an amendment to his trust and I believe executed a new will, he appointed Merrill as co-trustee, and I'm talking prior to that do you believe that anybody did anything wrong?

A. I don't know.

Q. Well, are you contenting in this lawsuit, are you making any factual allegation at trial that anybody did anything wrong prior to that time?

A. I'm sorry, can you be specific about

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the question?

Q. I understand you don't know, but I'm trying to find out what's going to be the basis of your claims at, you know, at trial. So I'm trying to find out if you contend, do you believe, do you assert that anybody did anything wrong prior to February of 2012?

A. I don't know.

Q. Do you know of any evidence? Do you know of any evidence that anybody did anything wrong?

MR. GILREATH: Object to form, that calls for a legal conclusion. Send us an interrogatory.

THE WITNESS: I don't know the answer to that. My sister has 19 actions against her, not one was dismissed. I think they speak for themselves.

BY MR. TWOMBLEY:

Q. I'm trying to talk about facts to support the allegations, not just the allegations. Can you tell us anything today that you believe that anyone did wrong prior to February of 2012?

MR. GILREATH: Object to the form of that --

THE WITNESS: I don't know.

DEPOSITION EXCERPTS OF JOHN JOLLEY TO BE FILED UNDER SEAL

ELECTRONICALLY FILED - 2021 May 14 4:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF: ESTATE OF
PAUL BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,
Plaintiff,
vs. CASE NO. 2016-CP-07-1919
MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal Representative of the Estate of PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as Putative Trustee of PAUL BRANDON BARRINGER, II Revocable Trust Dated December 4, 1998, and MERRILL B LIGHT, as Trustee of the MERRILL BARRINGER LIGHT Revocable Trust,
Defendants.
(Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE

DATE: March 16, 2021

TIME: 10:08 a.m.

LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

Q. Okay. And did you witness Mr. Barringer sign this document?

A. I did.

Q. Okay. And was Ms. Bostick there with you when that -- when that occurred?

A. She was.

Q. All right. Turn to the next page, 0441. Tell me what this page is.

A. These are the notarial -- the acknowledgments for each of -- this really is split out above. It is an acknowledgment that the notary signed, that is Rebecca Bostick as notary, with respect to Paul B. Barringer as settlor, and then below with respect to Paul B. Barringer as trustee.

Q. Okay. And did you see Ms. Bostick notarize these documents after Mr. Barringer signed them?

A. Yes. That would have happened when we were all together. That is, when Mr. Barringer and myself and Mr. Bostick -- and Ms. Bostick were together.

Q. At any point in time prior to Mr. Barringer signing this February 28, 2012 will and trust, did you ever have any concern that Mr. Barringer was being unduly influenced or forced

to sign these documents against his will?

A. I had no reservations about Mr. Barringer.

Q. Did you ever have any concern that he lacked the capacity to understand and sign the documents?

A. I did not.

Q. Okay. I'd like to -- I'd like to turn now to the second amendment and restatement to Mr. Barringer's trust, which was done on July 20, 2012, which is at tab 16 at Bates range 443. And it's 443 through 471. Do you see this?

A. I see the second amendment and restatement.

Q. Okay. Now, tell me about the circumstances that led to the preparation and execution of an amendment to Mr. Barringer's trust in July of 2012.

A. Mr. Barringer told me that he wished for his documents to be changed to provide for the transfer of his voting shares in CFRC -- excuse me, Coastal Forest Resources Company to Merrill Barringer Light.

Q. Okay. Do you know why he -- did he tell you why he wanted to do that?

A. He did.

ELECTRONICALLY FILED - 2021 May 14 4:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS, FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II,

Case No. 2016-CP-07-1919

Hampton B. Luzak,

Plaintiff,

vs.

MERRILL B. LIGHT, et al.,

Defendants.

_____/

VIDEOTAPED DEPOSITION OF: ROBERT CLARK SLANE AND 30(B)(6) DEPOSITION OF THE WEALTH TRANSFER GROUP, INC.

DATE: FRIDAY, NOVEMBER 15, 2019

TIME: 9:50 A.M. - 4:20 P.M.

PLACE: 180 PARK AVENUE NORTH, SUITE 2A WINTER PARK, FLORIDA 32789

STENOGRAPHICALLY REPORTED BY: ANEESHA WILLIAMS, RPR

what Mr. Jolley -- the work Mr. Jolley did?

A. No.

Q. Did you ever tell anybody that you had any concern about Mr. Jolley?

A. No.

Q. Did you ever express to Mr. Barringer that he should use a different attorney other than Mr. Jolley?

A. No.

Q. If you had thought that Mr. Barringer needed to use a different attorney or if there was a problem with Mr. Jolley, would you have communicated that to Mr. Barringer?

A. Yes.

Q. Were you surprised that Mr. Barringer no longer wanted to use Mr. McBryde and was using a different attorney?

A. No.

Q. Is that pretty common in your work, that a client will, you know, have one lawyer for one period of time, and then at a later point in life they'll have a different lawyer, and then at a later point, perhaps, even a different lawyer?

A. It is common.

Q. You were asked about these meetings that you had with Mr. Barringer. And correct me if I'm wrong, but

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it was my understanding that although you could not remember which one, you do recall that one of the four meetings Merrill Light was present; is that correct?

A. Yes.

Q. Okay. And so even though you can't remember which one, that wouldn't necessarily mean that at the other three meetings she was not present?

A. I know -- I know she was not present at the July 2011 meeting --

Q. Okay.

A. -- in Linville, North Carolina.

Q. But you only have a memory of her being at one meeting?

A. I have a memory of her being at least at the February or April meeting.

Q. Okay.

A. Because she brought Mr. Barringer to Mr. Jolley's office, is what I remember.

Q. While she was present at whichever meeting it was, what role did she play in the meeting, if any?

A. None.

Q. During the time period -- and I'll just -- let's just say 2011 and 2012, which is pretty active involvement -- your involvement with Mr. Barringer, did you talk to Mr. Barringer on -- you know, on the phone

and in person about his financial affairs and his estate planning?

A. I'm sure I did.

Q. And did you talk about some of the tax concepts and issues that you -- you thought should be implemented or might be considered?

A. Yes.

Q. Did you ask Mr. Barringer questions?

A. Yes.

Q. Did he ask you questions?

A. Yes.

Q. Was he able to respond to your questions?

A. Yes.

Q. Did he ask appropriate questions?

A. Yes.

Q. Was there anything at all about any of your interactions or involvement with him in 2011 and 2012 that caused you concern about whether or not he was in the position to sign estate planning documents?

A. Nothing that caused me concern.

Q. Did you ever have concern that someone was influencing him to do something with respect to his estate plan that he did not want to do?

A. No.

Q. Was he able to have private conversations with

ELECTRONICALLY FILED - 2021 May 14 4:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

you?

A. Yes.

Q. Did anyone restrict his ability, to the best of your knowledge, to talk with you and to ask you questions?

A. No.

Q. If you would have thought, or if you would have had some concern that Mr. Barringer was not acting freely and voluntarily, that he was being forced to do something that he really did not want to do, what would you have done?

A. I can only address that in what has happened in prior circumstances with other clients; and in a circumstance, I alerted the children in a hospital that I thought the attorney was doing something inappropriate.

Q. Another way to say that might be, you would have reached out to other people in the person's family and expressed your concern to them?

MR. GILREATH: Object to the form of that question.

THE WITNESS: At least that and, perhaps, advising any other advisors or friends.

BY MR. TWOMBLEY:

Q. I'm sorry, "advising any advisors" --

A. Advisors or friends.

Q. Okay. All right. Did you have a specific

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discussion with Mr. Barringer about his decision to make Merrill Light a co-trustee of his trust?

A. I'm sure I did.

Q. Do you know why he chose her as opposed to the -- the other children, other than the fact that her physical -- Merrill Light's physical proximity was closer to Mr. Barringer? Is there any other reasons?

A. Closest, local, qualified person; just a local person.

Q. You told us about when you talked to Mr. Luzak in 2012, I believe, July, and he told you that he thought Paul had lost his mind.

Was he being -- Was that a serious comment, or was he -- said it in jest, or how did you interpret it?

A. I interpreted it as serious. I understand when he called me, it was very early Hawaii time. I was on vacation with my family, and he informed me he had been fired; and his statement was, "I think Paul has lost his mind," and so I was shocked.

Q. Did you have any interaction with Mr. Barringer after that call? I guess you did. You talked about the golf course presentation.

A. I know I spoke to him at The Floridian in Stuart; and, again, I don't remember if that was '13 or '15. I think it was '15. I can't recall any other

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II.

HAMPTON B. LUZAK,

Plaintiff,

vs. CASE NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR.,

(Case caption continued on Page 2.)

VOLUME II

VIDEO
DEPOSITION OF: JAMES RANDOLPH LIGHT, JR.

DATE: August 21, 2019

TIME: 9:33 AM

LOCATION: Home2 Suites by Hilton
3658 Trask Parkway
Beaufort, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: KELLY B. BAEKELANDT, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Charleston, SC (843) 722-8414
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Charlotte, NC (704) 573-3919
Asheville, NC (828) 785-5699

ELECTRONICALLY FILED - 2021 May 14 4:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

different health issues that affect his judgment regarding everyday decisions personally and business-wise. It appears that this makes it harder for you to exercise your authority as president of CFRC if he will not listen. Merrill and I have absolutely no say in the operations of CFRC which PBB has made clear on many occasions. Merrill and I have total confidence in your ability to guide the company in the direction that will benefit the stockholders the most. Our fee is -- our fear is PBB is going to attempt some irrational move that will harm the profitability of the company simply to satisfy his desire to underwrite Victor or keep the stockholders graveling.

Is that an e-mail that you sent on February 21st?

A. I did.

Q. Okay. Now, tell me a little bit about what you're talking about there about the health issues that affect Mr. Barringer's judgment on -- regarding everyday decision -- decisions.

A. He had been diagnosed with prostate cancer in the fall of -- or late fall of 2010, so he was having to deal with that. He also at the same time his son Victor Barringer was experiencing

ROA 004090

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financial difficulty within his company. He was very stressed on that. He had made reference on several occasions that -- not only to myself but to Merrill, Travis Bryant, Tom Evans, and I don't know who else, that the company should take over Victor's debt, which I understand was sizable, and put him back into the -- make him an officer of the company. As far -- and -- and Merrill discussed this with Hampton and I can't say that she discussed it with Kevin, I'm not -- I don't -- I don't know that one way or the other, but they were not in favor of Victor -- or -- or, first of all, the company taking on debt, having Victor come back in the company. And one of Paul's phrases was when he would follow up on this, he never followed through on it, was it's my company and I'll do what -- I'll do what I want with it.

The combination of the diagnosis of prostate cancer, his son whose business was in -- not doing well at all, and I basic -- probably misworded that, I -- I wouldn't choose those words today because it -- no, he was under stress based on those two things.

As far as my statement about the operations, Merrill had been on the board for I

ROA 004091

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(Counsel conferring off the record.)

BY MR. GILREATH:

Q. I don't -- I don't need to go to that one. Excuse me, that's the wrong one. I want to go to Tab 85. I got mixed up there. So you can close it.

MR. TWOMBLEY: Did you say 85, Jim?

MR. GILREATH: 85, yeah.

BY MR. GILREATH:

Q. This is an e-mail from you to Robert Slane on January the 3rd, 2012, and -- regarding the Barringer trust. And you say: Robert, Merrill was asking me if Barringers are considering her with power of attorney for them in the near future. She is concerned that PBB, being Mr. Barringer, is starting to show more irrational behavior on certain family issues which is distributing to all siblings. And then you make some comment about close friend.

Tell -- tell me what you're talking about there about this irrational behavior.

A. Well, first of all, I don't -- I don't remember sending the e-mail.

Q. But that is -- that is an e-mail address you used, Randy at Merrill -- Merrill --

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A. Yeah. Yes.
Q. -- Merrillg@aol.com [sic]?
A. It was, yeah.
Q. Okay.
A. I -- I'm sure it related to the same situation as I mentioned before, Paul had been diagnosed with prostate cancer in 2011. He had an operation that did not go as well as planned in twenty --
(Counsel conferring off the record.)
THE WITNESS: -- no, 2010 is when he was diagnosed. 2011 was when he was -- had the operation. He had complications from that --
(Counsel conferring off the record.)
THE WITNESS: -- and he was still very concerned about his son Victor who evidently his business wasn't going as well as he had -- and -- and Paul was still had -- still making the comments that the company should take over Victor's debt and bring him into the company. That's the only -- only thing I can think of of why I would have written that.
BY MR. GILREATH:
Q. Okay. Now, I believe you just testified a few minutes ago that Mr. Barringer was

ROA 004093

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II

HAMPTON B. LUZAK,

Plaintiff,

vs. C/A NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST,

Defendants.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

IN THE MATTER OF:
ESTATE OF PAUL B. BARRINGER, II
HAMPTON B. LUZAK,

Plaintiff,

vs. C/A NO. 2019-CP-07-01253
and 2019-CP-07-01254

MERRILL U. BARRINGER,

Defendants.

VIDEO
DEPOSITION OF: REBECCA L. BOSTICK

DATE/TIME: December 3, 2020 at 2:30 PM

(TITLE PAGE CONTINUED ON NEXT PAGE)

BY MR. GILREATH:

Q. Is that the time frame --

MR. TWOMBLEY: Same objection.

BY MR. GILREATH:

Q. -- bracket when you saw him and last time you met him?

MS. KIRK: You can answer.

THE WITNESS: Mr. Barringer was a long-time client of the firm. It is hard for me to determine when exactly I met him.

BY MR. GILREATH:

Q. Do you have any recollection of the last time you saw him?

A. Approximately five years ago. I'm not sure of the exact date ever.

Q. According to the record in this case Mr. Jolley I believe prepared a first, second, third and fourth amendment to his revocable trust. Do you remember working on those?

A. Yes, sir.

Q. And the first amendment was in February of 2012 and the fourth amendment was in February of 2015. So that kind of brackets a three-year period.

During that time especially towards the

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end of it which would have been in February of 2015 did you notice any change in Mr. Barringer?

A. As far as --

Q. Just the way he handled himself, how he remembered things, those kinds of things.

A. No. He was a very engaging gentleman.

Q. What?

A. He was a very engaging gentleman. There was -- there was no issue there.

Q. A very engaging gentleman?

A. Yes.

Q. Tell me exactly what you mean by that.

A. That means that he and John had lengthy conversations. There was no doubt that there was -- he was fully competent and had no issues whatsoever from my standpoint.

Q. That he was fully competent and had what?

A. And that he -- he could certainly make decisions.

Q. Okay. Are you -- were you around or have anything to do with a certificate of competency that Mr. Jolley prepared for Mr. Barringer to sign?

MS. KIRK: Object to the form.

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

IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II,

HAMPTON BARRINGER LUZAK,

Plaintiff,

vs. CIVIL ACTION NUMBER 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST,

Defendants.
----------/

IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II,

HAMPTON BARRINGER LUZAK,

Plaintiff,

vs. CIVIL ACTION NUMBER 2019-CP-07-01253 2019-CP-07-01294

MERRILL U. BARRINGER,

Defendant.
----------/

VIDEO DEPOSITION OF
PAUL M. LONG, M.D.
JANUARY 13, 2021

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A Which is a complication of all the types.

Q Okay. It also says he has trouble urinating sometimes and it is somewhat debilitating.

Why would trouble urinating have a debilitating effect on someone?

A Well, it depends on the trouble you're having. I had prostate surgery five weeks ago and I urinate basically every hour around the clock, that's a complication of that. It happens to a lot of different people. What happens is they urinate in small amounts and they have to do it all the time. They get urgency incontinence, and I'm not sure what I was referring to in that statement, but that is not a uncommon complication.

Q Okay. He's clearly having some type of problem with his urinary function?

A Yes, mm-hmm.

Q Okay. All right. If we turn to the next record on Tab 6, this is the November 23rd, 2011 record. Now, in this record, I -- this is the first reference I saw to dementia or any type of cognitive dysfunction.

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Do you have any memory Mr. Barringer having any type of memory problem or cognitive dysfunction prior to November 23, 2011?

A No. I don't have any memory of that. Prior to this?

Q Correct.

A No.

Q Okay. All right. Now, it says, number one, dementia.

Tell me what it means or what you meant when you wrote dementia here?

A Well, dementia is a spectrum, and you can use a scale of 1 to 10. Some people leave their keys in the car and can't remember people's names, that's very common. 50 percent of people over the age of 85 have some dementia. Maybe two and a half percent of the population gets dementia at an early age. It can go up to number ten, they can't remember anything, they don't time, place, and person, they don't know anybody around them. So it is spectrum.

Q Okay.

A And, you know, back at this time, it was more like leaving the keys in the car and not remembering somebody's name at a cocktail

party.

Q Okay.

A You know, that kind of deal. So I would classify that back here -- I mean, it -- I didn't think it was critical back here.

Q Okay. It says here next that you sent him down to the mind center, briefly tell us what -- what is the mind center and why did you send Mr. Barringer there?

A We had -- we were getting very busy at this particular time in our office and so we set up a clinic just to have our patients that had dementia, and we treated a lot of patients with dementia, and we had a -- you know, consults with neurologists if we needed it. And just to handle their medication and explain to the family what's going on.

Q Okay.

A We also had a spot where people that were obese, that we would send them and talk about diets and things.

Q Okay. What age -- would a urinary problem or inability to urinate, could that affect someone's cognition?

A Absolutely.

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Q Okay. Why is that and how is that?
A If somebody comes into my office and they are, let's say, 80, and they have become demented in some form, the first thing you do is a urinalysis.
Q And why is that?
A Because urine infections in elderly people cause dementia.
Q Okay.
A It's a -- we see that -- I mean, I bet I see it five, six, eight times a week.
Q Okay.
A People coming in from a nursing home or from the home and they're demented, we treat the urinary infection and the dementia goes away.
Q Okay. On November 23rd of 2011, did you know exactly why Mr. Barringer was exhibiting these signs of dementia?
A No.
Q Okay. And let's go back to the note. The note says you sent him to the mind center and they inscribed 31 percentile, 30th percentile, and a 55th percentile and a 15th percentile. This gives him a prediction that he has significant dementia in the 60 percent

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range.

I've been trying to do this math for a while, can you tell me what you mean by or how you came up with that 50 percent number?

A That is a good question. I don't have a clue. That was in vogue at this time to do a test called CANS-MCI, computer -- C-A-N -- assisted neurological testing something, mild cognitive impairment, and that -- it didn't tell you if you had dementia. A mini medical exam tells if have you dementia, but this gives it the percentage of chance that you might have dementia.

Q Okay.

A That's why it fell out of vogue.

Q Okay.

A I didn't -- I don't put much weight in it.

Q Okay.

A It was done, it was in vogue to do it. Came out of the state of Washington and everybody did it, but I'm not sure anybody does it now. I don't know.

Q Okay. Thank you for clarifying that. The note says, this gives him a prediction that

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he had significant dementia in a 60 percent range.

Do you know how you came up with the 60 percent number?

A Yeah. Basically, I did a miscalculation there. He's got -- there are three things that checks executive function and two others, and one was 30 and the other was 30 and I think I added them together. Well, you can't do that.

Q Okay.

A It is 30 percent for executive function and 30 percent for cognitive. What are the percentage chance that an individual has dementia? It's 30 for executive function and 30 percent for cognitive. I'd have to look at the test again, but that is my rec -- remember.

Q Okay. So if I heard you correctly -- do you need to take that?

A Can I get this?

Q Sure. We'll go off the record.

THE VIDEOGRAPHER: Off the video.

(Whereupon, a break was taken at 4:10 p.m.)

THE VIDEOGRAPHER: Back on video.

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(Back on the record at 4:10 p.m.)

BY MR. TWOMBLEY:

Q Okay. So if I understood you correctly, the 60 percent number is a miscalculation?

A It has to be because it wasn't -- as I recall, and what it says here, it's 30 percent.

Q Okay. All right.

A As I recall. Do you have a copy of that test?

Q No. That was going to be my next question to you. We --

A A year ago, whenever the -- we were looking at this, I tried my best to find it and I -- we don't have it.

Q Okay. All right. Well, let me just ask you based on your memory and your -- you know, the time you spent evaluating Mr. Barringer in November of 2011, did Mr. Barringer have significant dementia, in your opinion, by any criteria?

A I don't think he had significant dementia, he clearly had Swiss cheese, being great for a while and occasionally, like I said, he forgot things, he forgot people's names on

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occasion. They call that swiss cheese because it comes and goes.

Q Okay. All right. It says here under the -- under the -- under the P for soap, I told him, since he really cannot calculate or do anything with short-term memory, we will start him on Aricept or Namenda. He is to see Will Garret, who is a neurologist.

What did you mean by he was not able to calculate?

A Well, generally, we ask people to count backwards from 100 by sixes or sevens or fives or whatever, and, you know, he had a difficult time doing that.

Q Okay. Other than that, were you able to have an intelligent conversation with Mr. Barringer?

A I had many. I mean, the guy was a genius. He was one of the brightest people I've ever talked to. We had long talks about airplanes and airplane engines. As a licensed -- I have an airplane. And we spent a lot of time talking about aviation. You know, he -- he had a very deep understanding of a lot of very complicated things.

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Q Okay.
A Excuse me.
Q And would you describe -- I mean, do you remember having those conversations --
A I do.
Q -- with Mr. Barringer during this period of time?
A I can take ten patients over the last 40 years that I remember having discussions with, and these are people that are out of the mainstream, they are like Paul. He was amazing.
Q Okay.
A I do remember talking with him.
Q It says, down at the bottom, that you prescribed him Cipro.
What was the Cipro for?
A Urinary tract.
Q Okay. And did you believe he may have had a urinary tract infection?
A That's why I gave it to him.
Q Okay.
A I thought that may have been the case.
Q Okay. And that --
A Because he -- can I go back?
Q Sure.

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A Says he had to urinate all the time, six to ten times a night. So that means he's not getting much sleep, he's sleep deprived. His urinary tract was a mess. It was a mess.

Q Okay. Okay. Let's turn to the next tab, Tab No. 7. This is the first note I was able to find in 2012. It says at the top, you'll note, it says second note.

Do you know why it says second note?

A I don't have any idea.

Q Okay. If you -- if you read this note for a moment, down about three quarters of the way down, now you say that he scored a 37 percentile above the dementia scale.

What does that mean? Says we checked three different scales and this took us about an hour.

A Yeah. This was another CANS-MCI thing, test, and basically, I can imagine that this is 37 percent chance of having significant dementia.

Q Okay. All right. Down at the bottom, it says, he can now pass a mini mental with a perfect score of 30 so I do not see where we need to do anything more than what we are doing.

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Do you remember administering the mini mental to Mr. Barringer during this time period?

A I can't put myself that day and what chair, but I did mini mental exams and I was surprised that he had a perfect score of 30.

Q Okay. All right. But you wouldn't have put this in your record unless you had actually performed the test and he scored a 30?

A Absolutely would not have done that.

Q Okay.

MR. GILREATH: Objection to the form of the question.

THE COURT REPORTER: Who was that?

MR. TWOMBLEY: That was Jim Gilreath.

BY MR. TWOMBLEY:

Q Why did you put in your record that he can pass a mini mental with a perfect of 30?

A It says -- because we did it.

Q Okay.

A I wouldn't have put it in there.

Q Okay. Okay. All right. That's great.

A I don't know where that is.

Q Okay. If you'll turn to the -- turn to the next document, it's 7-A, and do you have the

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7-A there?
A I've got something that says A.
Q Okay. Are --
A December 27th?
Q Yeah. This is the December 27th, 2011 letter from Dr. William Garret to you about Paul Barringer.
Previously, we saw that you referred Mr. Barringer to Dr. Garret; is that right?
A That's right.
Q Okay. And do you remember receiving this letter from Dr. Garret?
A Apparently I did. I don't remember that, but --
Q Okay.
A -- apparently I sent it to him.
Q Okay.
A Yeah.
Q On the third page under the impression section, Dr. Garret says he does have some difficulty with abstract reasoning, which is a documented on his neurological exam, but overall, he has excellently preserved short-term memory and visual spacial difficulty, which would make the diagnosis a primary degenerative

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dementia unlikely.

What did that mean to you?

A Well, it means that -- like I said, there is -- dementia is not one disease, it is a spectrum. It means that, you know, he had some little bits -- small amount of difficulty, but he could pass a mini mental exam. He doesn't have any significant dementia.

Q Okay. And is that consistent with your memory of Mr. Barringer during this time?

A Yes, it is.

Q Okay. If you turn to the next record, this is a January 26, 2012 medical record of you for Mr. Barringer. It says here that he is markedly improved, he had a dementia study which was very abnormal. We treated him and he is markedly improved.

A Where are we now?

Q This is number eight.

A Oh, yeah. 1/26/12?

Q Yes. 1/26/12.

A Okay.

Q How had Mr. Barringer improved in between the time you saw him -- the last time you saw him and this visit on January --

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A I must have been referring to the CANS-MCI test when I said abnormal, because that was abnormal.

Q Okay.

A Improved, I mean, I can only think of what I was thinking about back then and I -- you know, when you're improved, your short-term memory is improved and he -- you know, he can score a perfect 30. If you have any significant dementia, nobody can score a perfect 30.

Q Gotcha. Down at the bottom, it says, I probably spent one hour and thirty minutes with him and his doctors on the telephone today.

Was that a significant period of the time for you to spend with one of your patients?

A Not to spend with this gentleman.

Q Okay.

A I mean, I hate to keep saying this, but this is not the ordinary citizen.

Q I gotcha. It says, about halfway down, Dr. Will Garret -- it says that we sent him to Dr. Will Garret who felt that he did not have Alzheimer's disease.

A Correct.

Q Did you agree with that in January --

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A Yes, I did. Absolutely.

Q Okay. All right. If we'll turn to the next document, which is Tab No. 9, and I would ask you to briefly review the record. And I don't see any mention or reference during this visit, which is February 16th of 2012, of any type of the dementia or any type of memory or cognitive problem.

Do you see anything?

A Yeah, I just read that. I didn't mention anything.

Q Okay. If he was having cognitive problems or memory disorder on February 16, 2012, is that something you would have recorded?

A Probably.

Q Okay. It says here you put him back on Cipro, 500 milligrams, is that for the same urinary --

A Yes. Yes.

Q Okay. And it says he -- at the top, the patient had been urinating heavily all night.

Where did you get that information?

A I don't remember. It could have been his wife.

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Q Okay.
A It was probably from Paul.
Q Okay. The note says, at the top, Paul comes in for care.
A Right.
Q I notice some say Paul comes in with his wife.
Would you have noted who the patient came in with?
A Not necessarily.
Q Okay.
A I mean, I might -- it might have been one or ten people and I didn't put it down.
Q Okay. Let's turn to the next record, which is February the 27th of 2012. Take a moment and review this record. The only reference I see is at the end of the last -- first paragraph, it says, he has dementia but it is mild according to the test that we give.
Do you see anything else dealing with any memory problem?
A There's nothing on the note that I -- except for that.
Q Okay. If there had been anything else other than a mild problem, would you have

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recorded that in your record?
A Almost certainly.
Q On the next record behind Tab 11 is a visit from March 15th of 2012.
Do you see that?
A Yes, 3/15/12?
Q Yes, sir.
A Yep.
Q On March the 15th of 2012, did you notice any type of cognitive problems with Mr. Barringer?
A I didn't put anything down, so I didn't.
Q Okay. And that's my next question, if you had noticed any type of cognitive problem, is that something you would have recorded in your record?
A I would think I would.
Q Okay. All right. Now, Dr. Long, I want to go out of order in the exhibits for a moment and I want to ask you to turn to page 35 or to Tab 35.
A Thirty-five.
MR. MOLSTER: Is there a page number for that, Ashley?

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BARRINGER, PAUL 11/23/11

Paul comes in with multiple problems. He is 81 years old.

1. Dementia.
S: He has dementia.
O: We sent him down to The Mind Center and they inscribed a 31st percentile, a 30th percentile, and a 55th percentile, and a 15% percentile.
A: This gives him a prediction that he has significant dementia in a 60% range. He is not depressed.
P: I told him since he really cannot calculate or do anything much with short-term memory that we are going to start him on Aricept 5 mg a day and Namenda 5 mg twice a day. He is to see Dr. Wil Garrett, who is a neurologist and we will start him on a diet and I am going to meet with him and his wife.

2. Frequency of urination.
S: He had seed implants for cancer of the prostate. He now has to urinate all the time, six to ten times a night but it is getting better.
O: The left testicle is tender. The rectal examination shows a small prostate.
A: Epididymitis.
P: We are going to give him Cipro 500 mg b.i.d. for eight days and an anti-inflammatory medication. Dr. DeLisio from Richmond, Virginia is the urologist.

This patient has chronic Coumadin because he has Factor V Leiden deficiency, which is a major problem but we will keep him on the Coumadin.

He does not smoke. He does not drink much.

Paul M. Long, M. D.

PML:ksc
D: 11/27/11 T: 11/30/11

Job #11120

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BARRINGER, PAUL 01/03/12 (second note)

Paul comes in for care.

1. Cancer of the prostate.
S: As above. He had seed implants after being found to have cancer of the prostate. Details are in the chart.
O: As above. Rectal examination shows prostate is flat. Testicles are not tender.
A: Marked frequency of urination following seed implants.
P: I talked to Dr. DeLisio at the University of Virginia, who considers himself the patient's urologist. He says he wants to see him and he will see him on January 19, 2012 and, in the meantime, he does not want him to do anything. We did a urinalysis and it was normal.

I spent 15 minutes on the telephone with Dr. DeLisio. I spent 1 hour face-to-face with Mr. Barringer.

2. Dementia.
S: He scored a 37th percentile above the dementia scale. We checked three different scales.

This took us about 1 hour.

P: We put him on Namenda 5 mg twice a day, Aricept 10 mg. He is on a fairly special diet that takes away inflammatory foods. I went over all of this again. He now can pass a Mini Mental Examination with a perfect score of 30. So, I do not see where we need to do anything more than what we are doing.

Paul M. Long, M. D.

PML:ksc
D: 01/04/12 T: 01/09/12

Job # 15110

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SAVANNAH NEUROLOGY SPECIALISTS

REYNOLDS STREET:
Thomas M. Stanley, MD, F.A.A.N., F.A.C.P.
J. Michael Hemphill, MD, F.A.A.N.
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Angie Moye, NP

WATERS AVENUE:
Herbert F. Sanders, MD
Julia L. Mikell, MD
Richard A. Bodzimer, MD
E. Frank Lafranchise, MD
William T. Garrett, MD
Wallette G. Widener, NP
Wendy Holland, NP

December 27, 2011

NAME: Paul Barringer
DOB:

Paul M Long, MD
PO Box 21743
Hilton Head, SC 29925

Dear Dr. Long:

I had the pleasure of seeing your patient in neurological consultation today for evaluation of his cognitive impairment.

As you know, he is a very pleasant 81-year-old right-handed white male who has a very interesting family history. A lot of his family members were physicians' including his dad who was Dr. Barringer who donated the Barringer Wing at the University of Virginia. This wing is where the neurology department and clinic are housed and so I spent many of my formative years in his father's building.

In any event, Mr. Paul also shares several friends in common with me from Augusta including Mr. Edo Douglas.

Mr. Paul states that he has noted some difficulty with his cognition for the last one to two years. He primarily notes difficulty remembering people's names as well as having some word finding difficulty. He does feel that these symptoms have progressed slightly. He also may lose his train of thought on occasion and overall states that he does not feel that his mind works as well as it once did. He states that his gait has not changed appreciably and he denies any significant abnormal movements. He has not developed any hallucinations and there is no significant incontinence.

He apparently has already undergone an MRI scan of the brain, however this study is not available for review today.

Additional historical information is contained in the body of his chart and reviewed and documented on his worksheet dated 12/27/2011.

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On examination, he is very well developed and well nourished in no acute distress. Cardiovascular exam is regular rate and rhythm. There are no carotid bruits.

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Detailed testing of his cognition demonstrates him to be oriented x3 including date, day and time. He is able to name the president. He recalls a tsunami in Japan in the spring without difficulty. He is able to describe the similarity between a bicycle and a train without difficulty, but has more difficulty with a complex similarity such as a watch and a ruler. He does however remember 3/3 objects after five minutes and is able to complete his clock drawing without difficultly showing no visual spatial difficulty.

NEUROLOGIC EXAMINATION:

Mental Status:	Alert and oriented. Speech is fluent. Normal language function. No signs of neglect or apraxia.
Cranial Nerves:	Discs are sharp bilaterally. Pupils are equal, round, and reactive to light. Visual fields are full to confrontation. Extraocular movements are intact. Face is symmetrical with normal sensation. Hearing is intact bilaterally. Tongue, uvula, and palate are in midline. Sternocleidomastoid and trapezius strength is full.
Motor:	Strength is 5/5 in all four extremities with normal bulk and normal tone.
Sensory:	Sensation is intact to temperature and vibration in all four extremities.
Reflexes:	Symmetrical and 2+. Plantar responses are flexor bilaterally.
Coordination:	Fine finger movements, rapid alternating movements, and finger to nose are all done well bilaterally. Gait is normal.

IMPRESSION: Overall, Mr. Paul is complaining of cognitive dysfunction that would be associated with mild cognitive impairment and age related memory loss. He does have some difficulty with abstract reasoning, which is documented on his neurological examination, but overall has excellently preserved short-term memory and visual spatial difficulty, which would make the diagnosis of a primary degenerative dementia unlikely.

However, based on his cognitive complaints, I believe additional diagnostic workup is indicated including an EEG and laboratory assessment for treatable causes of cognitive impairment including a comprehensive metabolic profile, B12, folate, and thyroid function tests.

He states he has already undergone his MRI scan and I will need to review this report as well as to study myself.

He is to return after his EEG is completed for further evaluation and treatment.

Sincerely,

William T. Garrett, MD
Dictated but not read unless signed

SUD

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BARRINGER, PAUL 01/26/12

Paul comes in for care. The patient is here to discuss medication. Basically, he looks and feels well but he has certain problems.

1. Dementia.
S: He is on Cerefolin, Namenda 5 mg twice a day, Aricept 5 mg daily. He is markedly improved.
O: He had a dementia study which was very abnormal. We treated him and he is markedly improved.
A: Dementia, stable.
P: None. Incidentally, we sent him to Dr. Wil Garrett who felt that he did not have Alzheimer's disease.

2. Difficulty urinating.
S: He had brachythcrapy with seed implants at Richland Urology in Richmond, Virginia and he is not doing very well. He has to urinate every 15 minutes. He saw his urologist, Dr. Bradford at the Stony Point Clinic, Virginia Urology, Richmond, Virginia who did a culture. I called Virginia and talked to his nurse who told me it was E. coli, sensitive to everything including Cipro. He was given ten days of Cipro.
O: His urine today is normal.
A: He still has problems. He might be on the tail end of the problem. He might be getting better.
P: I am going to call back to Dr. Bradford and discuss this with him. His PSA was down to 1.8. It was around 10 before.

3. Factor V Leiden deficiency, S&C.
S: He is on Coumadin. His Protime was done and we will keep treating him with Coumadin, which he will need for life.

I probably spent 1 hour and 30 minutes with him and his doctors on the telephone today.

Paul M. Long, M. D.

PML:ksc
D: 01/27/12 T: 01/30/12

Job #17940

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BARRINGER, PAUL 02/16/12

Paul comes in for care. The patient has been urinating heavily all night. He has some pain, but this is the way it is all time after he had his seed implant. He developed a fever of 101.6 last night and he has got some aching. We are in the middle of an epidemic of viral illness but with his urine propensity for developing urinary sepsis, I am worried about that. We did a urinalysis today and I could not do a urine stick because it is overshadowed with all the particulate matter from the other medications he is taking, so we are going to do a culture. We know he can take Cipro and we know the bugs that he had before. I believe it was E. coli that was sensitive to the Cipro. I worry about his Coumadin. Cipro will raise the Protime artificially. So, we decided to do the following things:

1. We are going to give him Cipro 500 mg b.i.d.
2. He is to get a urine culture before the Cipro and we are doing that now.
3. He is to get a Protime in three days and then again in seven days. So, three days from today and then seven days from today to make sure his Protimes remains stable. We did a Protime today and it is 3.5 with the INR, so we are going to hold it for two days while we get him the Cipro.

If he gets worse, we will address that at the time. I am going to send a copy of this to his urologist and we will go from there.

Paul M. Long, M. D.

cc: Timothy Bradford, M. D.

PML/ksc
D: 02/16/12 T: 02/20/12
20569

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BARRINGER, PAUL 02/16/12

Paul comes in for care. The patient has been urinating heavily all night. He has some pain, but this is the way it is all time after he had his seed implant. He developed a fever of 101.6 last night and he has got some aching. We are in the middle of an epidemic of viral illness but with his urine propensity for developing urinary sepsis, I am worried about that. We did a urinalysis today and I could not do a urine stick because it is overshadowed with all the particulate matter from the other medications he is taking, so we are going to do a culture. We know he can take Cipro and we know the bugs that he had before. I believe it was E. coli that was sensitive to the Cipro. I worry about his Coumadin. Cipro will raise the Protime artificially. So, we decided to do the following things:

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If he gets worse, we will address that at the time. I am going to send a copy of this to his urologist and we will go from there.

Paul M. Long, M. D.

cc: Timothy Bradford, M. D.

PML:ksc
D: 02/16/12 T: 02/20/12
20569

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BARRINGER, PAUL 02/27/12

Paul has had a problem. Since he had his brachytherapy for cancer of the prostate with seed implants in Richmond, Virginia, he has been weak and debilitated, urinates every hour and has discomfort in his pelvis, but mainly weak and debilitated. He has dementia but it is mild according to the test that we give.

Now, he is terribly weak all the time with nocturia. He has been on Coumadin. We gave him Cipro. It did not change the symptoms, but he did have E. coli greater than 100,000 colonies, which was sensitive to Cipro, but his symptoms are the same. He has knee pain but it does not bother him a great deal. He does not smoke. He does not drink. He keeps active.

PHYSICAL EXAMINATION
Blood pressure is 108/78. Heart rate is 70. Weight is 199 pounds. Height is 6'4" tall. HEENT is negative. Oropharynx is normal. Neck is supple, no bruits. He has decreased range of motion of the neck. Lungs are clear. Cardiothoracic examination is normal. Abdomen is soft and nontender. No organomegaly. Extremities are negative. Neurologically symmetrically weak, but cranial nerves II through XII are normal.

ASSESSMENT
As above.

PLAN
The general plan is to do the following:

1. Complete set of laboratory studies.
2. Stress Cardiolite study.
3. Echocardiogram.
4. Total body CT scan.
5. I have told him that his urologists are in Richmond, Virginia and although he has a private jet, he needs to have a urologist here. He probably has radiation toxicity and hyperbaric oxygen should be obtained.
6. I have told him to see Dr. John Coursey who I think is a very formidable urologist in this area. He has agreed and we are getting him an appointment.
7. We will see him back in a week to go over his results.

Paul M. Long, M. D.

cc: John Coursey, M. D.

PML:ksc
D: 02/28/12 T: 02/29/12
21754

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ELECTRONICALLY FILED - 2021 Jun 14 6:12 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, v. MERRILL U. BARRINGER, Defendant	)	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S SECOND CAUSE OF ACTION**

This litigation began in South Carolina in 2016 as a will contest over the estate of Paul B. Barringer, II (decedent/Mr. Barringer). Hampton Luzak, Paul and Merrill Barringer's youngest child, has now sued her 89-year-old mother and is asking the Court to order her mother not to make a new will. Hampton Luzak's new legal theory is that her parents had a side agreement about their wills: if Mr. Barringer died first, Mrs. Barringer could ***not*** and would ***not*** decide, in her own will, who would receive what was left in Mr. Barringer's estate upon the death of Mrs. Barringer — even though the estate planning documents that Mr. Barringer executed over a 16-year period all expressly gave Mrs. Barringer the right to do just that.

Because South Carolina has a statute that requires agreements regarding wills to be at least referenced in a written document, Ms. Luzak reframes her claim as one for constructive/resulting trust, although her argument is — in substance — that Mr. and Mrs. Barringer had an oral

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agreement about their estate plans. Mrs. Barringer now moves for summary judgment in her favor as to Plaintiff's second cause of action on the basis that 1) S.C. Code Section 62-2-701 bars Plaintiff's second cause of action for constructive trust/injunction; and 2) the undisputed facts, in the light most favorable to Ms. Luzak, do not support the claim.

ARGUMENT

Hampton's second claim is that Mrs. Barringer, ***through her silence***, somehow promised her husband that [if he left her his estate at his death] and if he died first, she would never use the powers of appointment he gave her, which are indisputably contained in all of his estate planning documents from 1998 to 2015. According to Hampton, (Plaintiff's "second cause of action", *see* Compl. ¶¶ 135-39), Mrs. Barringer "made ***an express or implied promise*** not to exercise her testamentary power of appointment in a manner that would direct the subject property in a manner other than set forth in the default provisions of Decedent Paul Barringer's estate plan" and "Decedent Paul Barringer relied on Mrs. Barringer's ***express or implied promise*** not to exercise the testamentary power of appointment given her." *Id.* ¶ 137-138. (emphasis added). Mrs. Luzak asks for an equitable remedy, not money damages, including injunction and a constructive trust, alleging that she "is entitled to an order from this Court directing Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise the testamentary power of appointment given her and to impose a constructive trust for the benefit of Hampton Luzak in the subject property with respect to the intended equal treatment of Plaintiff Hampton Luzak."

I. S.C. Code Section 62-2-701 bars Plaintiff's second cause of action.

Plaintiff's second claim is just another version of her claim to enforce the alleged "contract not to revoke" between Mr. and Mrs. Barringer (alleged as her third cause of action[1]), which cannot

[1] Defendant has filed a separate motion addressing Plaintiff's third cause of action.

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be proven without a signed writing, and Plaintiff should not be allowed to circumvent the terms of the unambiguous South Carolina statute, which is directly on point. In her third cause of action, Plaintiff alleges that Mr. and Mrs. Barringer entered into a binding contract that means Mrs. Barringer cannot revoke her will. In her second cause of action, Plaintiff alleges that Mrs. Barringer made an "express or implied promise" to Mr. Barringer and that Mr. Barringer made his estate plan in reliance on her promise. Both claims are based on an alleged secret agreement between Mr. and Mrs. Barringer.

Plaintiff should not be allowed to pursue either cause of action unless she can present written evidence that satisfies S.C. Code 62-2-701. Section 62-2-701 of the South Carolina Code governs contracts regarding wills (succession) executed after July 1, 1987, allowing a person to prove a contract to make a will or devise (or not to revoke one) ***only*** when (1) provisions of the decedent's will state the material provisions of the contract, (2) the decedent's will contains an express reference to the contract and extrinsic evidence proves the terms of the contract, or (3) when the decedent signed a writing that evidences the contract.[2] The alleged agreement between Mr. and Mrs. Barringer does not meet any of these requirements. Like many other states, South

[2] This statute specifically addresses contracts concerning succession—including contracts not to revoke a will—and provides that such a contract can be established *only* by way of a signed writing:

> A contract to make a will or devise, or to revoke a will or devise, ***or not to revoke a will or devise***, or to die intestate, if executed after [July 1, 1987], can be established ***only by*** (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

S.C. Code § 62-2-701 (emphasis added).

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Carolina enacted the statute based on Section 2-701 of the Uniform Probate Code, which was drafted in an effort to "tighten the methods" for proving oral agreements about wills:

> It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

See Unif. Probate Code § 2-701, Comment.

Plaintiff argues that even if she cannot prove the agreement she alleges by any of the three ***only*** means set forth in the statute, she should still be allowed to ask the Court to order Mrs. Barringer to comply with it. Essentially, she says, this was not a will contract; rather it was a promise relied on by Mr. Barringer, the promisee, which Plaintiff is somehow entitled to enforce through equitable remedies.

Ultimately, the promise that Mrs. Barringer allegedly made to her husband would have been an agreement not to revoke her then current will and make another one (the only way she could use or "exercise" the *testamentary* power of appointment) —in essence, a will contract. Plaintiff's argument otherwise completely disregards the clear intent of S.C. Code § 62-2-701 – to require proof by a writing and thereby reduce the number of lawsuits based on alleged oral agreements related to wills. S.C. Code § 62-2-701 expressly limits the methods of proving a contract concerning succession, and Plaintiff's allegation of an oral agreement — *and obviously her allegations that Mrs. Barringer's silence amounted to an implied promise as part of that agreement* — are insufficient to surmount this statutory barrier.

In passing Section 62-2-701, the South Carolina legislature prescribed the "only" manner of establishing a contract concerning succession, including a contract not to revoke a will. Allowing the Plaintiff to circumvent Section 62-2-701 by merely repackaging her "breach of

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contract not to revoke" claim as a constructive trust/promise claim would make the statute meaningless and violate the well-settled maxim that "equity follows the law."

While no South Carolina appellate court has addressed whether a Plaintiff should be allowed to pursue a constructive trust or other equitable claim following the legislature's passage of South Carolina Code Section 62-2-701, numerous other jurisdictions that have adopted substantively identical statutes have specifically held that a plaintiff may not circumvent the "signed writing" requirement of the statute by reframing the agreement under a promise theory or pursuing an equitable remedy. *See, e.g., Pool v. Diana*, No. 03-08-00363-CV, 2010 WL 1170234, at *8 (Tex. App. Mar. 24, 2010) ("Although Leslie attempts to avoid summary judgment by specifically describing her claim as one for constructive/resulting trust, her argument is—in substance—that there was an oral agreement to devise the property. However, she may describe the claim, Leslie's pleadings show that her claim is simply this: Donn made an oral promise to devise the 15–acres to her and to Danae. As a matter of law, an oral agreement to devise property otherwise disposed of in a will is unenforceable."); *Est. of Gilbert*, 513 S.W.3d 767, 772 (Tex. App. 2017) ("Having reviewed the statute and the relevant case law, we conclude the legislature intended to foreclose a claim relating to a promise to make a will or devise or not to revoke a will or devise if that promise is not in writing… We hold that section 254.004 bars a claim for promissory estoppel on an oral promise to devise property that is disposed of in a will."); *Matter of Estate of Cosman*, 475 A.2d 659, 661–62 (N.J. App. Div. 1984) ("The Legislature has seen fit to prescribe the 'only' way such a contract may be legally established. The statute's clear language leaves no room for judicial construction. This oral agreement is not enforceable. The principles of equitable fraud and promissory estoppel urged by respondents are unavailing in the face of the unequivocal legislative declaration. **Were we to enforce such principles we would nullify the**

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clear purpose of the statute.") (emphasis added); *Stanley v. Hendershot*, No. 1089 MDA 2017, 2018 WL 2275789, at *12-13 (Pa. Super. Ct. May 18, 2018) ("Thus, as a matter of law, any unjust enrichment claim, raised in the alternative to a breach of contract claim, must fail as legally insufficient when the breach of contract claim requires compliance with Section 2701. To hold otherwise simply renders Section 2701 meaningless."); *In re Est. of Shain*, No. 1 CA-CV 09-0252, 2010 WL 569843, at *1–2 (Ariz. Ct. App. Feb. 18, 2010) ("As a matter of law, Wauneita's alleged oral promise to include Appellant in her will was a promise to make a testamentary disposition. Section 14-2514(A) and public policy preclude such oral promises and therefore the trial court did not err in dismissing Appellant's claim."); *In re McKim Est.,* 238 Mich. App. 453, 459, 606 N.W.2d 30, 33 (1999) ("The clear language of the statute . . . evidences the Legislature's intent to bar agreements to make a will or devise absent a writing . . .. Accordingly, the trial court correctly rejected petitioner's claim for recovery under a contract implied in fact theory.*"); Matter of Est. of Hatten*, 440 P.3d 256, 258 (Alaska 2019) (In a case involving a man who died intestate following 20 year cohabitation, the court applied the statute substantially similar to South Carolina's and held: "And to the extent Toland argues Hatten orally promised or assured her after January 1, 1997 that he would give her the house or other property upon his death, we note AS 13.12.514(a) renders such oral agreements unenforceable."

Further, for well over a hundred years, the South Carolina Supreme Court has enforced the maxim that "equity follows the law." *See, e.g., Quail Hill, LLC v. Cty. Of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) ("Simply stated, equity follows the law."); *Kershaw Cty. V. Richland Cty*., 61 S.C. 75, 39 S.E. 263, 264 (1901) ("Equity follows the law."). Allowing Plaintiff to pursue the equitable claim of constructive trust based on the same theory that is barred by Section 62-2-701 — absent a signed writing — would turn this maxim on its head and allow

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Plaintiff to circumvent the law. Mrs. Barringer's alleged "promise" not to exercise her power of appointment is an alleged agreement not to revoke her will. The alleged agreement that Mrs. Barringer would not change her will and exercise the power of appointment can "only" be proven in the ways prescribed by the statute. As explained in the cases cited above, there is no reason why the legislature cannot establish rules for the manner of proving a contract not to revoke a will, which the South Carolina legislature did in fact establish in 1986.

II. Chapman v. Citizens & S. Nat Bank of S.C. should not prevent dismissal of Plaintiff's second cause of action.

Plaintiff's expected reliance on *Chapman v. Citizens & S. Nat. Bank of S.C.*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), a Court of Appeals decision issued more than 30 years ago, should not prevent the court from disposing of Plaintiff's second cause of action. The case is simply not applicable because 1) it addresses events that took place before Section 62-2-701 became effective, and 2) because it includes written evidence as proof of the agreement.

First, *Chapman* is inapplicable because although the case was decided in 1990 after the 1986 passage of Section 62-2-701, the Court of Appeals did not address the statute because the wills at issue were executed—and Mr. and Mrs. Chapman both died—prior to the statute's effective date. *See* 395 S.E.2d at 449-50 (discussing the wills executed by Mr. and Mrs. Chapman, all of which were executed between 1949 and 1977, and stating Mr. Chapman died in 1975 and Mrs. Chapman died in 1986); S.C. Code § 62-2-701, Reporter's Comment (providing that the statute, which was passed in 1986, "is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively). *Chapman*'s holding was that a constructive trust was appropriate on those facts at that time. After the passage of Section 62-2-701, for all of the reasons explained in the cases above, including that the statute uses the plain and unambiguous term *only*

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before describing the three methods of proof, a constructive trust remedy would not be appropriate unless there was compliance with the statute.

Second, even if *Chapman* remained applicable, it is easily distinguishable from this case. In *Chapman*, a husband (Mr. Chapman) and wife (Mrs. Chapman) were both widowers who had children from prior marriages. *Id*. at 448. Mrs. Chapman signed "numerous letters of record" wherein Mrs. Chapman "promised Mr. Chapman that, upon Mr. Chapman's death and the probate of his will, Mrs. Chapman would either during her lifetime make gifts of the subject property to Mr. Chapman's children or die without exercising the power of appointment contained in Mr. Chapman's will." *Id*. at 450. The Court found that there was "undisputed evidence that Mrs. Chapman agreed to either give the subject property to Mr. Chapman's children during her lifetime or, in the alternative, not exercise the power of appointment." *Id*. at 452.

Here, by contrast, no written document evidences an agreement that states that if Mr. Barringer died first, Mrs. Barringer would not make a new will and exercise her power of appointment. In fact, the undisputed facts in the record refute such an agreement.

III. The factual record does not support Plaintiff's second cause of action.

For Plaintiff to avoid summary judgment, she must come forward with more than a scintilla of evidence to support her allegations for a constructive trust.[3]

As noted above, Plaintiff's second cause of action alleges Mrs. Barringer promised Mr. Barringer she would not exercise the power of appointment expressly granted to Mrs. Barringer by Mr. Barringer's 1998 revocable trust and subsequent amendments to it in 2012, 2014 and 2015. In support of this claim, Plaintiff executed and submitted an affidavit stating that her father

[3] The burden is on the Plaintiff to establish a constructive trust by clear and convincing evidence. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). "In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

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intended for his assets to be distributed equally to his three children, that he intended voting stock to be distributed equally between his daughters, and that her mother was silent about these intentions. In the same affidavit, Hampton Luzak states her father never mentioned giving his wife a power of appointment. Hampton Luzak Affidavit ¶ 56, **Exhibit A**. It simply defies logic for Ms. Luzak to claim that Mrs. Barringer, by being silent, made an implied promise not to use her power of appointment and then suggest her claim is supported by evidence that no one ever said anything about the power of appointment. That is, if, as alleged by Hampton Luzak, no discussion of the power of appointment took place in Mrs. Barringer's presence, then Mrs. Barringer's silence could not constitute acquiescence to an agreement not to exercise that power. Thus, even if Mrs. Luzak's affidavit is true, it does not support her claim. For the same reasons, Kevin Luzak's affidavit also fails to support the claim.

Plaintiff suggests that various documents through which Mr. Barringer, prior to his death, transferred equal amounts of stock to each of his three children or alternatively to just his two daughters, constitute evidence to support her claim. Even if prior trusts or agreements could be considered evidence of Mr. Barringer's intent at the time, they do not prove an irrevocable intention to make distributions in identical proportions between their children into the future, regardless of what events may transpire. And these documents clearly do not constitute competent summary judgment evidence that Mr. Barringer or Mrs. Barringer intended to be *contractually bound* not to revoke their wills in a manner that their estate planning documents expressly allowed.

The parties have conducted additional discovery and now the two estate planning attorneys who prepared Mr. Barringer's various wills and revocable trusts have testified that they had no knowledge of any such agreement or promise between the Barringers. In 1998, attorney Neil G. McBryde drafted Mr. Barringer's estate planning documents and witnessed their execution. Mr.

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McBryde was not aware of and did not prepare any contract or agreement – oral, written or otherwise – related to Paul Barringer's estate or trust. Paul Barringer never mentioned any such contract or agreement to Mr. McBryde. Affidavits of Neil McBryde; McBryde Dep. 14-15, 39-41, **Exhibit B**.

Further, on February 28, 2012, attorney John Jolley prepared a new will and trust amendment for Mr. Barringer (and Mrs. Barringer). Mr. Jolley testified he had no knowledge of a contract or agreement between the Barringers as is alleged in the complaint. *See* Deposition of John Jolley, Jolley Dep. 86:11-90:5, **Exhibit C**.

CONCLUSION

In view of the foregoing, Defendant Mrs. Barringer asks the Court to grant summary judgment in her favor and dismiss Plaintiff's second cause of action on the grounds that 1) S.C. Code Section 62-2-701 bars Plaintiff's second cause of action for constructive trust/injunction; and 2) the undisputed facts, in the light most favorable to Ms. Luzak, do not support her claim for a constructive trust and injunction as stated in her second cause of action.

TWENGE + TWOMBLEY LAW FIRM

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Beaufort, South Carolina

June 14, 2021

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A Case No.: 2016-CP-07-01294 **AFFIDAVIT**

I, Hampton Luzak, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. Throughout his years of estate planning, my father Paul Barringer always treated his two daughters equally, particularly in respect to Coastal Forest Resources Company, Inc. ("CFRC"). By consenting to the restructuring of Coastal Lumber Company, which occurred at the request of my brother Victor Barringer, my father made other asset arrangements for my brother outside of CFRC. My father's intentions about his ownership plan for CFRC and his overall estate plan were discussed regularly at family gatherings I attended over a number of years. Based on those meetings, other discussions I had with him, and relevant documents, I understand that it was my father's long-held intent to keep CFRC in his family with equal control between his daughters. I never heard my father say otherwise.

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2. Consistent with his intent to maintain equal voting power between his daughters, on August 21, 1996, my father entered into a Stock Purchase Agreement with myself, my brother, my sister, and other shareholders in the predecessor company of CFRC. The purpose and effect of the agreement was to place certain restrictions on the transferability of the corporation's stock held by any of the Barringers so as to afford the corporation and each of the Barringers an equal right to acquire any stock of the corporation which a shareholder may desire to transfer to any outside person or entity.

3. Based on recurring family meetings and discussions, I understand that we children continued to recognize our father's central goals of his estate plan which were to keep the ownership of the shares in CFRC equal between my sister and me and to maintain the proportional ownership as my father had established. On September 21, 1998, my father, individually and as co-trustee of his mother's testamentary trust, along with myself, my sister, and my brother, entered into a Barringer Family Voting Agreement under my father's direction. The Barringer Family Voting Agreement shows that we children each held an equal number of shares of common stock (59,521 shares) in CFRC's predecessor company Coastal Lumber and that no one else held more shares than any one of us. As referenced above, my brother at his own request later surrendered his voting stock (and a majority of his ownership) in exchange for interests in other entities upon the restructuring.

4. On December 4, 1998 my father, as settlor, executed the Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("Revocable Trust) with my father serving as trustee.

5. Consistent with his frequently stated intention to treat his daughters equally in respect to CFRC ownership, on December 22, 1998, my father created the Paul B. Barringer, II Family Trust ("the Family Trust") under agreement dated December 22, 1998, which was an

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irrevocable trust. Under the terms of the Family Trust as originally created on December 22, 1998 and as existed on October 3, 2004, during the lifetime of my mother and father, the assets of the Family Trust were available to be used for the health, education, support and maintenance of my father's descendants at the trustee's discretion. After the death of my father and mother, the Family Trust was then to be divided into three separate and equal shares for the benefit of each of my father's children then living and a share for any predeceased child. In connection with the restructuring, my father placed 2,295,528 non-voting shares of CFRC stock into the Family Trust on October 3, 2004.

6. In keeping with my father's long-term estate planning arrangements of treating his daughters equally in respect to CFRC, on October 3, 2004 CFRC issued to both my sister and me 6,428,058 shares each of non-voting stock in CFRC as part of the Restructuring. This issuance of equal stock to his two daughters occurred at the same time my father conveyed the 2,295,528 non-voting shares to the Family Trust.

7. Also on or about October 3, 2004, CFRC, at my father's direction, issued approximately 31% of the voting shares in CFRC to my sister, consisting of 59,521 CFRC shares, and an equal 31%, consisting of 59,521 shares, to me. My father retained approximately 20% of the CFRC voting stock consisting of 38,272 shares. The family of Stephen H. Conger, who was unrelated and otherwise unaffiliated with the Barringers, owned the remaining 18% of the CFRC voting stock comprising 33,452 shares.

8. On or about September 22, 2006, my father filed a petition in Beaufort County Probate Court to modify the irrevocable Family Trust to provide that the trust assets would be divided immediately into equal, separate shares for my father's three children instead of at the death of my mother and father. This petition for modification to create immediately vested

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separate and equal shares for my father's children was approved by the probate court and carried out by a First Amendment to Trust dated October 16, 2006. On or about October 31, 2007 the 2,295,528 shares of non-voting stock held in the Family Trust were re-certificated into three separate and equal tranches of 765,176 shares for each of my father's three children. According to the CFRC Nonvoting Stock Register as of May 7, 2012, the three newly-created Family Trust shares were denominated as "Paul B. Barringer, II Irrevocable Family Trust fbo Victor Barringer, II", "Paul B. Barringer, II Irrevocable Family Trust fbo Merrill Barringer Light", and "Paul B. Barringer, II Irrevocable Family Trust fbo Hampton Barringer Luzak." The modified terms of the Family Trust continue to define the operation of the three newly-created shares for each of us children.

9. In further recognition of the importance my father placed on maintaining the existing proportionate ownership in my father's forest products business, including an equal ownership between my sister and me, we three siblings entered into an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010 (2010 Shareholders Agreement). In the Agreement the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between my sister and me by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder. CFRC was also a party to the 2010 Shareholders Agreement, but my father was not a party.

10. The first clear signs of my father's cognitive problems came to light to me when he began having speech and processing problems, and he became unusually quiet, beginning in 2011.

11. On February 18, 2012, members of the Barringer family met to discuss planning.

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Included in the meeting were my father and my mother, my sister, my husband Kevin Luzak, at that time the CEO of CFRC, and me. The discussion centered on my husband's recommendations on future strategy to the shareholders, which were focused on (i) actions that would both increase the cash flow generated by the Company's existing operating businesses; (ii) adding new business lines that would both diversify risk and generate tax and operating expense efficiencies for shareholders; and (iii) financing this diversification through the sale of a small portion of Company timberlands that had been deemed by management as no longer capable of generating acceptable returns to the shareholders. My father and my husband had worked together on the acquisition of commercial real estate properties in Alexandria Virginia during 2011 that created a useful example of the type of diversifying activity that I was recommending that the shareholders consider. At the meeting, however, my father was having trouble communicating and forming words due to his mental ailments.

12. During this time in early 2012 the mental afflictions of my father continued to worsen. During the CFRC board of director's meeting in February 2012, I understand that my father was completely confused and incoherent and had tremendous difficulty speaking.

13. Prior to the spring of 2012 my father and my husband had enjoyed a close personal and business relationship for more than 20 years during our marriage. For at least three years prior to this time, I understand my husband had been presenting and discussing with the board of directors and its committees ideas for a new long-term strategic plan for CFRC (which would be subject to board approval), and my father had participated in all the meetings and discussions. Following the February 2012 board of directors presentation, my father, as a result of the worsening of dementia, made completely unfounded accusations that my husband was trying in effect to steal the company.

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14. On or about April 25, 2012, the board of directors of CFRC held a regular meeting in Charleston. Present at the meeting were the four board members: my sister, my father, Michael Hagler, and my husband. Mr. Hagler, an attorney in Augusta, GA with Fulcher Hagler, LLP, was the sole independent member of the board of directors with no affiliation with any of the Barringers other than his role as a CFRC board member. Also present were corporate attorney Brad Herring, advisors Mark Sanford and Tom Rockwood, guest advisor Steve Jones, and CFRC officers Tom Evans and Travis Bryant. I understand that the meetings were uneventful as the company's operations and financial performance were discussed and an update on the strategic plan was presented. My father, however, again seemed very confused and was having trouble communicating and forming words as he did in the February 2012 meeting.

15. In the several days following the meeting, my father had an extremely negative reaction to the meeting and accused the "four people from New York" of trying to steal the company. He also falsely accused my husband of throwing my sister and him out of the meeting and of physically throwing a book at my sister during the meeting.

16. To my knowledge, at no time following the April 25, 2012 board meeting did my father contact my husband to discuss any of the matters that apparently agitated him, even though my husband was CFRC's CEO and a member of the board of directors.

17. The accusations by my father described above temporarily ended when he was hospitalized on May 2, 2012 at St. Joseph's Hospital in Savannah, Georgia. My father was diagnosed with dementia.

18. During his stay at St. Joseph, he was diagnosed by neurologist Jessica Carter, who stated in her report that he had difficulty following commands to touch his ear with his hand and to show two fingers.

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19. On May 4, 2012, my father was discharged home with prescriptions for Aricept and Seroquel "as needed for confusional state". The discharge papers concluded as the primary ailment "confusion, secondary to evolving semantic dementia." The discharge summary further stated one of my father's treating doctors opined that "[t]he patient had evolving semantic dementia and noted that at times Aricept might not be of very much help." The discharge papers further provided that the treating physicians concluded my father had semantic dementia.

20. After my father was discharged on Friday, May 4, 2012 from the hospitalization related to the progression of his previously diagnosed dementia, the CFRC stock register shows that, on the following business day, Monday May 7, 2012, my father allegedly transferred the 38,272 voting shares certificated in his name on CFRC share certificate number one to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998. According to the CFRC Stock Register, CFRC cancelled share certificate number one and re-certificated those shares to share certificate number 13 on May 7, 2012.

21. According to Dr. Long's medical records, on May 8, 2012, the day following the purported transfer of my father's voting shares to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998, Dr. Paul Long of Hilton Head examined my father. As part of the examination, Dr. Long also talked to three doctors at St. Joseph's Hospital where my father was hospitalized the previous week. Dr. Long noted that my father "is still confused and still has a poor memory." He assessed my father as having dementia. He further noted that my father's medical plans were to seek further treatment at the Medical University of South Carolina and the Cleveland Clinic.

22. During this time period in May of 2012, my father's relationship with my husband and with me was on good terms as it had always been. My husband was on the Board of

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Directors at the Medical University of South Carolina Foundation (MUSC) and helped my father obtain medical assistance at MUSC where my father spent a couple of days seeking medical help and observation.

23. During the week of May 7, 2012 after my father had been discharged from St. Joseph's Hospital, my sister asked me to fly down to Hilton Head from New York City to help my father with his follow-up care and medical appointments including making arrangements for medical evaluations with MUSC. I complied without hesitation. Later that week, after my father's May 8 appointment with Dr. Long, my father was examined and tested by Dr. David Bachman, a neurologist and Alzheimer's expert at MUSC. During the several days he was examined at MUSC, my father resided with my husband and me at our home in Charleston. While my mother and I were in the room with my father at MUSC, Dr. Bachman informed my father he was suffering from Alzheimer's disease.

24. I understand that, while I was helping my father through treatments at MUSC, my sister, unbeknownst to me, was involved in moving my father's voting stock in CFRC into my father's Revocable Trust for which my sister purportedly had become a co-trustee.

25. On Friday, May 11, 2012, share certificate # 13, issued in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Irrevocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares in CFRC, was purportedly cancelled according to the CFRC Stock Register. In the place of certificate # 13, CFRC issued on May 11, 2012 a new share certificate #14 in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Revocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares.

26. The 38,272 shares of CFRC voting stock, represented on CFRC share certificate number one, had been held by my father since October 3, 2004. These shares, which comprised

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approximately 20% of the voting shares of CFRC, effectively represented control of the company since the voting shares held by his two daughters (with each of us holding approximately 31% of the CFRC voting stock) were not sufficient to control the company without the 38,272 voting shares held by my father. Prior to this time, my father had fastidiously kept ownership of all stock in CFRC equal between his two daughters so that each of us owned equal shares of voting and non-voting stock. Without the block of voting shares held by my father, neither of us had voting control of the company.

27. When the purported transfer of my father's voting shares was made on May 11, 2012 to share certificate # 14 in the name of Paul B. Barringer, as Trustee of the Paul B. Barringer Revocable Trust (the Revocable Trust), the share certificate was signed by my husband as the chief executive officer of CFRC. At that time, though, my sister was a co-trustee of the Revocable Trust. I was never told that my sister was co-trustee at that time, and no mention is made on share certificate # 14 that she was a co-trustee of my father's Revocable Trust.

28. At this same time, my father was confused about a memorandum that my husband prepared regarding the February 18, 2012 family discussion about a possible long-term strategy for CFRC. My father denied participating in the meeting and denied receiving the memorandum summarizing the discussion that took place during the meeting. At this point in time, my father could not remember very recent and significant discussions and was unable to manage a mental timeline or distinguish between imagined and actual events.

29. On a number of occasions prior to June 2012, my sister and I discussed my father's mental issues.

30. My sister later admitted to me that she had given my father the PowerPoint presentations from the March 2012 board meetings and earlier management meetings which

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confused and upset my father, given his mental infirmities at that time. She also admitted that her husband Randy had lost everything and had nothing left to give their children.

31. On June 28, 2012, a special meeting of the board of directors of CFRC was called. The meeting was held by telephone conference in which all four directors participated – Michael Hagler, my sister, my father, and my husband. Also on the conference call was Bradley Herring, the company's legal counsel along with his law partner Samuel Johnson. My mother testified in a deposition that, before the June 28, 2012 board meeting, she and my father discussed the decision to fire my husband and they agreed he should be fired. Moreover, she testified that she attended the June 28, 2012 board meeting "to correct him in any manner" and "to hear how he was doing" in the meeting and "maybe to indicate to him something he should say that he may have forgotten."

32. During the June 28, 2012 board meeting, my father made a number of delusional accusations against my husband which were supported by my sister who joined in with, and helped coach my father in his motion to have my husband removed as president and CEO of the company. My father also moved that my husband be removed from all other offices with CFRC immediately and that my father should be appointed as president and CEO. The corporate minutes state that my father wanted my husband removed because he (falsely) claimed he and my sister had been thrown out of a recent meeting of the board of directors held in Charleston on April 24 and 25, 2012. He also claimed that he had found PowerPoint slides of various plans which he contended had been withheld from him by my husband. My father also claimed that my husband had requested a million dollar check from him and stated that he was the greediest person he knew and he should be dismissed due to his alleged greed. My husband responded that my father and my sister had not been thrown out of the preceding board meeting and that he

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had never requested a million dollar check from my father. Because of the outlandish and completely unfounded allegations my father was making, my husband made a motion that the company retain an independent person to investigate the allegations and to report these findings to the board. Michael Hagler, a respected attorney who was the independent and non-affiliated member of the board, voted for an independent investigator as did my husband, according to the board minutes. However, my sister and my father, with coaching, voted against it so the motion failed. My mother, who attended the meeting to "correct him in any manner," "to hear how he was doing" and "maybe to indicate to him something he should say that he may have forgotten," was also present with my father at the time my father was instructed to change his vote.

33. After voting down the motion for an independent investigation, the board of directors at the same June 28, 2012 meeting voted on my father's motion to remove my husband from all positions with CFRC. My sister supported and seconded my father's attacks and motions against my husband. Mr. Hagler indicated he needed more information about the accusations my father leveled against my husband and voted against firing him. My sister and my father, with coaching, voted in favor of the motion to remove my husband. My mother was present and involved in the meeting. The company counsel stated that my husband had a conflict of interest in the vote since he was the subject of the motions and therefore could not vote as a member of the board of directors. As a result, my father and my sister's votes to remove my husband outnumbered Mr. Hagler's opposition.

34. During the votes in the June 28, 2012 special board meeting, my father was confused about which way he should vote. My mother and sister were present together in the room at their attorney's office and knew he was suffering from Alzheimer's disease. My father was coached as to how to vote. Initially he voted in favor of an independent investigation of my

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husband's activities as CEO but then changed his vote after being coached. In the end my father and my sister voted to oust my husband. As soon as the third vote was taken, that being on a motion to appoint my father as president and CEO which was not approved, my mother (who has never been a member of the board) quickly interjected that the meeting should be adjourned before any extended discussion could occur about my father's health and other related issues. My mother's initial request for an adjournment was not approved by the board. Some discussions then occurred among the board members about the problems with my father's mental health and his having been coached during the votes taken during the meeting. After about ten minutes of discussion, my mother again instructed my father and my sister to adjourn the meeting and told everyone at the meeting that the meeting was adjourned. My mother, sister, and father attended the board meeting by telephone from a room at attorney John Jolley's office.

35. After the June 28th meeting adjourned, Michael Hagler, the sole independent member of the board of directors of CFRC, immediately wrote corporate counsel Bradley Herring that he was "concerned about my father's mental state. If my father is voting and acting based on facts that exist in his mind but nowhere else, is his vote valid? Can the directors and the company act when a fellow director appears to be confused? On more than one occasion during the meeting Paul actually cast his vote in the opposite way he meant to cast the vote until he was corrected and coached by whoever was in the room with him." My mother and my sister were present in the room and alone with my father at their attorney's office and involved in the meeting. Mr. Hagler disagreed that the vote to remove my husband was legitimate.

36. On July 1, 2012, Michael Hagler emailed my sister, then- corporate counsel Brad Herring, and my husband conveying his objection to the CFRC board vote removing him from his officer positions. The letter was principally addressed to my sister. Michael Hagler

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characterized my father's actions at the June 28, 2012 meeting as totally inconsistent with the man he had previously known. Mr. Hagler stated that the person who attended the April 2012 board meeting and the June 28, 2012 board meeting "was not Paul. He is in Paul's body, but he seems to be ill and not thinking or acting rationally." Mr. Hagler implored my sister to not follow her father blindly down the destructive path he was going. He also implored her to conduct an investigation of my father's accusations and his current status stating he could not understand why that should not be done. He then asked: "Do you know something about the situation that has not been discussed or disclosed to me? Is there something I do not understand?" Mr. Hagler reiterated: "From my observations, your father does not seem to be acting rationally." Mr. Hagler concluded by stating: "Merrill, I urge you to reconsider what is best for your father, your family and the company." To my knowledge, my sister never responded.

37. On July 12, 2012, independent board member Michael Hagler wrote my father, my sister and my husband about the ostensible firing of my husband at the prior board meeting. Mr. Hagler opined that my husband should not have been removed from the board. Michael Hagler emphasized he was against appointing my father as a replacement for my husband as CEO "without investigating [Paul Barringer's] current mental state." Mr. Hagler further stated that he had "personally observed behavior in at least two board meetings and in my call with Paul [Barringer] two weeks ago which suggests that there are issues with his mental capacity."

38. While my father was in a state of confusion and exhibiting irrational and erratic behavior, he, as grantor and as co-trustee with my sister, purportedly executed a second amendment and restatement of his Revocable Trust on or about July 20, 2012.

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39. On August 3, 2012 prior to the shareholder and board of director meetings that day, Michael Hagler emailed my sister, my father, and attorney John Jolley and others about the resolutions proposed for those meetings. Mr. Hagler reiterated that in his opinion, "Paul Barringer is ill, and his judgment is impaired. I personally experienced this at the last regular director's meeting held in Charleston. I heard it in the telephonic meeting held in June. I believe Merrill and her husband, Randy, are exercising poor judgment."

40. Prior to September 11, 2012, my father controlled 20% of the CFRC voting shares and my sister and I each owned 31% of the CFRC voting shares through equal gifts from my father. On September 11, 2012 essentially all of my father's voting shares were purportedly transferred from my father's Revocable Trust to my sister as trustee of her own revocable trust. This purported transfer of 20% of the voting stock of CFRC would give her voting control of the company through ownership of 51% of the voting stock.

41. My mother testified in a deposition that my father changed his estate plan in June of 2014. This would have been at least the third change to his estate plan of December 4, 1998. In that change, my father removed me as a beneficiary. My mother further testified that my father cut me out as a beneficiary because I had alienated him and he thought I was greedy. During this time period from July 2012 to June of 2014, I set up visits between my family and my parents only to have all of them cancelled by my mother. Also my mother instructed me to always call her on her mobile number and not to call the land-line number at the home where my father lived and had access to the phone.

42. On February 5, 2015, my father purportedly executed, amended, and restated

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for at least the fourth time the Paul B. Barringer Revocable Trust originally dated December 4, 1998. On that same day, he purportedly executed a Last Will and Testament. He disinherited his grandson Wade.

43. On April 15, 2015, CFRC, under the control of my sister, filed suit against me in a declaratory action in the Federal Court for the Eastern District of Virginia ("Virginia Federal Litigation") seeking, *inter alia*, declaratory relief regarding ownership interests in CFRC.

44. On August 28, 2015, my father ostensibly moved to intervene in that portion of the Virginia Federal Litigation addressing the 2010 Shareholders Agreement. My father's intervention on August 28, 2015 occurred 78 days after he was unable to answer a single question on the mini-mental exam, 13 days before he scored a 4, and 52 days before he scored a 10.

45. According to the sworn Declaration of Dr. Paul Mazzeo, a neurologist in Port Royal, South Carolina, Dr. Mazzeo examined my father on October 19, 2015 due to my father's history of memory loss. Dr. Mazzeo administered a Mini Mental State Exam ("MMSE") on October 19, 2015. My father scored a 10 out of 30 points on the MMSE which represented severe cognitive impairment. Dr. Mazzeo diagnosed my father with "severe senile dementia, Alzheimer's type." Dr. Mazzeo stated my father "exhibited severe memory loss and expressive aphasia (the inability to use language to express thoughts)." Dr. Mazzeo further stated that my father's "memory loss and expressive aphasia make it practically impossible for him to recall past events with accuracy and then find the words to express whatever recollection he may have, without his wife's assistance." Dr. Mazzeo's declaration was filed in the Virginia Federal Litigation by attorneys acting in the name of my father but not until January 20, 2016.

46. On January 20, 2016, the same date that Dr. Mazzeo's declaration was filed, Paul

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Barringer's attorneys filed in the Virginia Federal Litigation a sworn declaration signed by my father affirming under the penalties of perjury the contents of answers to interrogatories. On April 22, 2016, only two months after my father's ostensible February 17, 2016 court filings in the Virginia Federal Litigation, my father was examined by Dr. Paul Long and provided a Mini Mental State Exam. On this exam, my father scored a 1 out of 30.

47. In her deposition of March 14, 2019, my mother testified under oath that she was the only person who could influence my father.

48. In her deposition, my mother testified under oath that she and my father had discussed the removal of my husband as president and CEO of CFRC before the June 28 board meeting and had agreed to remove him.

49. In that deposition, my mother testified under oath that she attended the June 28, 2012 board meeting "to correct him in any manner" and "to hear how he was doing" in the meeting and "maybe to indicate to him something he should say that he may have forgotten."

50. In that deposition, my mother displayed her animus towards my husband and me -- e.g., by stating under oath that I had married the wrong man and that I was greedy, an agitator, irresponsible, and a coward. She also refused to acknowledge that she and my father had ever loved my son Wade.

51. I understand that my father intended, until his lack of capacity and the undue influence and tortious interference practiced on him, as described above, to treat his daughters equally with respect to the CFRC voting stock, as well as his other assets. This intention can be evidenced, inter alia, by family gatherings; the stock purchase agreement discussed above at paragraph 2; the Barringer Family Voting Agreement discussed above at paragraph 3; the irrevocable Paul B. Barringer, II Family Trust discussed above at paragraphs 5 and 8; the

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issuance by CFRC on October 3, 2004 to both my sister and me of 6,428,058 shares each of non-voting stock in CFRC as part of the restructuring as discussed above at paragraphs 6; the issuance by CFRC, also on or about October 3, 2004, at my father's direction, of approximately 31% of the voting shares in CFRC to my sister, consisting of 59,521 shares, and an equal 31%, consisting of 59,521 shares, to me, with my father retaining approximately 20% of the CFRC voting stock consisting of 38,272 shares, as discussed above at paragraph 7; and the execution of an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010, wherein the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between my sister and me by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder (CFRC was also a party to the 2010 Shareholders Agreement, but my father was not a party), as discussed above at paragraph 9.

52. The family often met annually over the holidays to discuss family assets. These conversations involved the performance of the company and various elements of the Barringers' estate plan. It was clear from these discussions that my father intended for certain of his assets to be distributed equally to his children and other of his assets (primarily financial assets) to go to various charitable causes. Among the assets that were to be distributed equally to his children was the stock that he held in the company. These discussions were often accompanied by a comment by my father about the fact that the children would have to work together to make decisions about the company after he was gone. I understand that he repeated this comment to my husband on numerous occasions during conversations that they had away from these family meetings. My father told me the same thing privately.

53. I do not recall my mother ever making a comment during any of these

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meetings other than to point out on a few occasions that she had or would put stickers on pieces of furniture to indicate which of her children was to inherit it. I also recall her discussing the allocation of various pieces of silver.

54. My father and I discussed the family business regularly and on numerous occasions. These discussions included countless discussions at dinners at his homes in Hilton Head SC and Weldon NC that were attended by other family members including my mother. I do not recall a single comment made by my mother in any of these dinners, which numbered in the many dozens and possibly more, that dealt with any aspect of company business or estate planning.

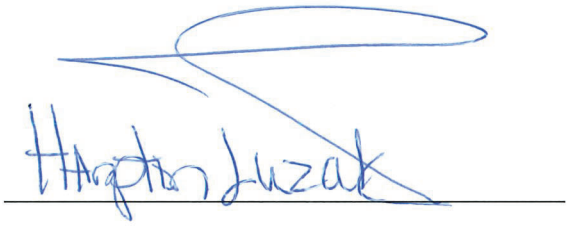
55. I do not recall my mother participating in a single business discussion. I cannot identify a single instance when she was engaged in any activity related to any type of business whatsoever.

56. In all the discussions I had with my father, either alone or with other family members, not one time did he ever mention that he had given my mother a power of appointment. Not one time did my mother mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor to us or shown to us mentioned any power of appointment. It was clear to me that my father was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after Victor spun off to Coastal Lumber, equally between his two daughters. Not one time did my mother object to the plan or suggest she had the power to change it or would change it. My mother always was acquiescent and compliant in accepting his statement of his plan for his estate and for his company. It is my understanding

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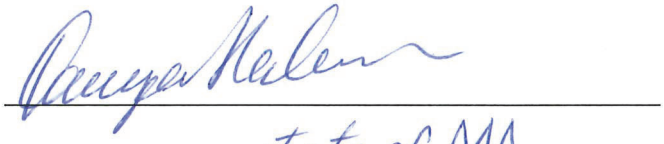
that, during their lengthy marriage, my father did not give any stock in his company to my mother nor did he give her any position in the company. My father was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way. No family member, including my mother, expressed any notion to the contrary. Neither my father or any family member ever suggested that anyone could change his plan for his company and his estate. It is inconceivable to me, based on a lifetime of observation and interaction, that it would ever have occurred to my father to empower my mother to make any single decision related to the company or about his estate plan. The notion that he would empower her, and burden her, with the decision of future leadership and control of his company is impossible for me to imagine. All of the experiences I shared with my father convince me of this. It was his way and no one else's, and he always intended for control to be shared equally among the children, until Victor spun off his company, after which he always intended for control to be shared equally between his daughters. As long as he was alive and competent and free from undue influence, tortious interference, etc., my mother never disputed or contested that his intentions about the company, and about equal control, would be upheld.

AND FURTHER THE AFFIANT SAYETH NOT.



Hampton Luzak

SWORN TO BEFORE ME this 25 day of September, 2020



Notary Public for state of MA

My commission expires: 02/06/2026



TAISIYA S. PALENCIA
Notary Public
Commonwealth of Massachusetts
My Commission Expires February 6, 2026

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EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**AFFIDAVIT**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. My name is Neill G. McBryde and I am a lawyer in Charlotte, North Carolina.

2. I currently practice with the law firm of Moore & Van Allen, one of the largest law firms in the southeast.

3. I am a member in good standing of the North Carolina and the Georgia Bar Associations.

4. In 1969, I received my Juris Doctor from the University of North Carolina at Chapel Hill, where I was Editor-in-Chief of the North Carolina Law Review. I was also a Morehead Fellow in Law.

5. For over 50 years, I have been actively engaged in the practice of law with primary emphasis in the areas of tax planning, business planning for closely-held businesses,

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insurance planning, estate and wealth transfer planning, estate administration, and trust and estate tax and fiduciary litigation. I have led Moore & Van Allen's closely held business, tax planning, estate and wealth transfer planning, and trusts and estates groups.

6. My primary areas of emphasis include providing:

- Tax and business planning advice for closely-held businesses;
- Tax, estate planning, and insurance planning for owners of closely-held businesses and high net worth individuals;
- Advice and counsel in connection with mergers and acquisitions involving stock, corporate assets, real estate and other assets;
- Specialized services in the wealth transfer, estate planning and estate administration areas;
- Charitable planning for individuals and non-profit representation; and
- Tax controversies.

7. I have lectured nationally and written extensively in areas relating to closely held businesses, tax planning, tax controversies, insurance planning, and estate planning and administration.

8. I have been included in Best Lawyers in America for Trusts and Estates, Tax Litigation & Controversy and Tax Law every year since 1983.

9. I am the Past President and Fellow of the American College of Trust and Estate Counsel; am a North Carolina Bar Board-Certified Specialist in Estate Planning and Probate; am the Past President and Trustee, Advisory Board, Southern Federal Tax Institute; and a Fellow of the American College of Tax Counsel.

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Paul Barringer

10. I was introduced to Paul Barringer around 1996, and I served as his attorney for the preparation of the following documents:

a. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 ("1998 Will");

b. Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("1998 Revocable Trust"); and

c. The Paul B. Barringer, II Family Trust executed on December 22, 1998.

11. I have been made aware of the litigation Hampton Luzak filed in South Carolina, and I understand Mrs. Luzak is asking the court to set aside all of the wills and trusts Paul Barringer executed after 1998.

12. If that relief were granted, I understand that the 1998 Will and 1998 Revocable Trust I prepared for Paul Barringer would be the operative will and trust, and further, that the 1998 Will and 1998 Revocable Trust would control the disposition of Paul Barringer's estate.

13. I submit this affidavit to explain Paul Barringer's 1998 Will and 1998 Revocable Trust, and the facts and circumstances surrounding their preparation and execution.

The Attorney Client Privilege

14. I have been provided a copy of the order entered by the Honorable Carmen Mullen dated August 23, 2017, finding that South Carolina recognizes the testamentary exception to the attorney client privilege.

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15. This affidavit is submitted in accordance with that ruling and with the consent and approval of Merrill Underwood Barringer ("Mrs. Barringer"), as Personal Representative of the Estate of Paul Barringer.

16. This affidavit is intended only to cover matters covered by Judge Mullen's order, and nothing more.

17. By executing and submitting this affidavit, there is no intended or implied waiver of the attorney client privilege.

18. In any event, the affidavit is submitted with the consent of Mrs. Barringer, the personal representative of Paul Barringer's estate.

Paul Barringer's 1998 Estate Plan

19. Paul Barringer's 1998 estate plan begins with a standard "pour over" will.

20. This means that after his estate is probated (if necessary) and administration is complete, any assets in his individual name – excluding certain personal property – would be transferred or "poured over" into his 1998 Revocable Trust.

Paul Barringer's 1998 Revocable Trust

21. Upon Paul Barringer's death, the 1998 Revocable Trust calls for his trust estate to be divided into three sub-trusts: two marital trusts, the "A Trust" and the "B Trust," and a residuary trust, the "Item V Trust" (collectively, the "sub-trusts").

22. For the A Trust and the B Trust, Mr. Barringer provided that "my said wife shall have the use of this trust property . . . as a life beneficiary" and that the principal in each marital trust can be distributed to Mrs. Barringer for the "support, health and maintenance of my wife."

23. For the Item V Trust, Mr. Barringer provided that the trustee could make distributions of income and principal to Mrs. Barringer for her "support, health, and maintenance"

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and that the Trustee could also make distributions of income and principal to Mr. Barringer's descendants for "support, maintenance, health and education." Mr. Barringer instructed that his "primary desire is that my wife be supported in reasonable comfort during my wife's lifetime and that my children be supported in reasonable comfort and properly educated, rather than that the principal of this trust be preserved until the division of the trust into separate shares."

24. For any assets remaining in the sub-trusts at the time of Mrs. Barringer's death, Mrs. Barringer is given a testamentary power of appointment over any assets of the sub-trusts at her death.

25. The language granting the testamentary powers of appointment is as follows:

a. For the A Trust and the B Trust:

- Upon the death of my said wife … the property remaining in the A Trust and the B Trust shall be distributed by the Trustee, free of the trust, to or among my descendants, and in such manner in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto, making express reference to this power, except that such wife shall have no power to appoint such property to such wife, to such wife's estate, to such wife's creditors or to the creditors of such wife's estate.

b. For the Item V Trust:

- My wife shall have the power upon her death by her last will and testament or codicil thereto, making express reference to this power, to appoint any part or all of the property in this trust to or among my descendants, and in such manner, in trust or otherwise, as she may in such will provide, except that she

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shall have no power under any circumstances to appoint any of such property to herself, to her estate, to her creditors or to the creditors of her estate.

26. Mrs. Barringer can exercise her power of appointment over all of the sub-trusts "to *or among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ."

Purpose of a Power of Appointment

27. A power of appointment is a power to direct the disposition of property.

28. The power can be broad or limited depending on desire of the creator, here, Mr. Barringer.

29. A power of appointment can also be presently exercised or postponed until a specified event occurs or a condition is met.

30. With respect to Mr. Barringer's 1998 Revocable Trust, the purpose of the powers of appointment is to confer authority upon Mrs. Barringer to designate – at the time of her death – who is to receive and enjoy the remaining assets of Mr. Barringer's estate.

31. These powers of appointment are called testamentary powers of appointment, which means Mrs. Barringer can only exercise them at the time of her death.

32. There are many reasons why a spouse (Mr. Barringer) would give a testamentary power of appointment to a surviving spouse (Mrs. Barringer).

33. A testamentary power of appointment builds flexibility into an estate plan and allows the surviving spouse to account for changes in circumstances that occur after a decedent's death.

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34. For example, individuals who may otherwise be beneficiaries at the first spouse's death might experience significant economic and other life changes in between the first spouse's death and the surviving spouse's death.

35. For example, after a decedent's death, potential beneficiaries may remarry; seek, lose or fail to maintain employment; become disabled or develop other health related issues; develop serious financial needs or experience a financial windfall; or experience other circumstances that make it desirable to leave them less, more or none of the decedent's estate.

36. After a decedent's death, potential beneficiaries may engage in behavior that is disfavored by the power holder.

37. Here, Mr. Barringer conferred authority upon Mrs. Barringer to decide who should benefit from the remaining assets of Mr. Barringer's estate at the time of her death.

38. This would include the opportunity to observe her children, their behavior, their life choices, and any other factors she deemed relevant – in her sole discretion – to decide who "*among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ." should benefit from the assets.

Language Selected by Paul Barringer for Powers of Appointment

39. The specific language used for the powers of appointment selected by Paul Barringer specifically empower Mrs. Barringer with the right to decide what portion – if any – of Mr. Barringer's estate each child should receive.

40. Nothing in the trust requires or otherwise suggests that Paul Barringer intended to obligate or require Mrs. Barringer to appoint any particular asset to any particular child, or treat the children equally.

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41. To the contrary, the language chosen by Paul Barringer specifically empowers Mrs. Barringer with the discretion to treat his descendants in an unequal fashion --- based upon her judgment.

Consequences of CFRC Voting Stock Gift Being Set Aside

42. I have been informed that in 2012, Paul Barringer individually owned 38,272 shares of voting stock in Coastal Forest Resources Corporation, Inc. (CFRC).

43. I have been further informed that in 2012, Paul Barringer engaged in transfers related to this stock, ultimately transferring all but one share to his daughter Merrill Light (hereinafter collectively referred to as the "Voting Stock Gift Transaction").

44. I understand that Hampton Luzak has asked the Court to set aside the Voting Stock Gift Transaction for various reasons.

45. Assuming Mrs. Luzak were to prevail in having the Voting Stock Gift Transaction set aside, and further assuming that Mrs. Luzak were to prevail in setting aside all of the estate planning documents Paul Barringer executed after 1998, then the 1998 Will and 1998 Revocable Trust outlined above would control the disposition of any assets in Paul Barringer's estate, including but not limited to the CFRC voting stock.

46. If the 1998 Will and 1998 Revocable Trust control the disposition of Mr. Barringer's estate, then Mrs. Barringer would have the power – at the time of her death – to appoint the stock to or among Mr. Barringer's descendants through her last will and testament or any codicil thereto.

Contract or Agreement

47. I have been informed that Hampton Luzak alleges that, prior to the execution of their 1998 estate plans, Paul Barringer and his wife Mrs. Barringer entered into a "contract" or

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other agreement wherein each agreed not to revoke their wills and trusts, such that Mrs. Barringer is now obligated not to change her will to exercise the powers of appointment given to her by Paul Barringer in the 1998 Revocable Trust.

48. I am not aware of, and did not prepare, any such contract – oral, written or otherwise – related to Paul Barringer's estate or trust.

49. Paul Barringer never mentioned the existence of any such contract, agreement or promise to me despite the fact that I was, at the time, intimately familiar with his estate planning and decisions related to his assets.

50. Mr. Barringer never expressed a desire to prevent Mrs. Barringer from having discretion in exercising her powers of appointment after Paul Barringer passed away, nor did he ever informed me that Mrs. Barringer had promised she would not exercise the powers of appointment.

51. To the contrary, Paul Barringer expressly wanted to include the power of appointment language in his 1998 estate plan to specifically empower his wife (Mrs. Barringer) to choose – at the time of her death – who among his descendants would receive assets from his estate following Mrs. Barringer's death.

52. Any such purported agreement would be directly at odds with the expressed directives Paul Barringer gave me and directly at odds with his 1998 estate plan.

53. I understand that despite the expressed terms of Paul Barringer's 1998 Revocable Trust, Hampton Luzak alleges Paul Barringer actually wanted his wife not to exercise the powers of appointment given to her.

54. As stated above, Paul Barringer never expressed that desire to me.

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55. In fact, such a result is expressly at odd with the terms of his estate plan, which gives Mrs. Barringer the absolute right to decide who among Mr. Barringer's descendants will receive assets from his estate, and which ones do not. Of course, Mrs. Barringer could choose not to exercise her powers of appointment, but she is certainly under no contractual obligation that I am aware of with respect to the exercise or nonexercise of the powers of appointment.

56. Should Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions given to me by Paul Barringer regarding his 1998 estate plan.

Tax Issues and Equality and Chapman

57. I have been provided with a copy of *Chapman v. Citizens & Southern National Bank of South Carolina.*

58. In 1981, the United States Congress passed the Economic Recovery and Tax Act of 1981 ("ERTA"), which made several watershed changes to the estate tax regime.

59. One important change was to allow a full marital deduction for "qualified terminable interest property" ("QTIP") trusts.

60. The tax motivations at issue in *Chapman* were no longer present after the passage of ERTA. In the documents at issue in the *Chapman* case, in order to obtain a marital deduction, the surviving spouse was required to have a power of appointment.

61. When Mr. Barringer's 1998 Revocable Trust was drafted and executed, granting a power of appointment to the spouse was no longer required to obtain a marital deduction.

62. If Mr. Barringer did not want to give Mrs. Barringer the power to exercise a power of appointment, he could have directed that the documents not grant her a power of appointment.

63. Moreover, if Mr. Barringer wanted to be certain his assets would be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Mrs. Barringer's death and then pass to his children equally without giving Mrs. Barringer a power to change that disposition.

64. There is no reason (tax or otherwise) for Mr. Barringer to give Mrs. Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me

This 8th day of September 2020.

Delores C Butler

NOTARY PUBLIC FOR NORTH CAROLINA

My Commission Expires: 1-17-24

DELORES C. BUTLER
NOTARY PUBLIC
CARTERET COUNTY, NC
My Commission Expires 1-17-24

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EXHIBIT B

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
HAMPTON BARRINGER LUZAK,	)	**SUPPLEMENTAL AFFIDAVIT**
Plaintiff,	)	
v.	)	
MERRILL U. BARRINGER,	)	
Defendant	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. I have personal knowledge of the matters stated herein. Being duly sworn, I hereby depose and state the following:

1. This affidavit will supplement the September 8, 2020 affidavit I provided related to the captioned case.

2. I have been provided with a copy the affidavit of James C. Hardin, III, Esquire, dated September 19, 2020, and the affidavit of Richard B. Allen, Esquire, dated September 28, 2020.

3. Mr. Hardin's affidavit addresses "whether tax reasons exist for clients to include powers of appointment in their estate planning documents" and discusses some of the tax reasons why "clients commonly include" power of appointment in estate planning documents.

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4. Similarly, Mr. Allen's affidavit addresses some of the "tax planning opportunities available" to estate planning clients through the use of powers of appointment.

No Tax Objectives

5. There was no tax objective associated with Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of Mrs. Barringer's death.

6. As stated in my prior affidavit, the purpose of Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of her death was to confer authority upon Mrs. Barringer to designate – at the time of her death – who among Paul and Merrill Barringer's children would receive and enjoy the assets of Mr. Barringer's estate.

7. The power of appointment specifically empowers Merrill Barringer with the discretion to treat Paul Barringer's children in an equal or unequal fashion – based solely upon her judgment – at the time of her death.

8. When Paul Barringer gave Merrill Barringer a power of appointment in his December 4, 1998 Revocable Trust that I drafted, I did not advise Paul Barringer regarding, or rely upon, any of the "tax reasons" or other "tax planning opportunities" generally discussed in the affidavits of Mr. Hardin or Mr. Allen because the purpose of the power of appointment was to provide distribution flexibility following Mr. Barringer's death..

Merrill Barringer Did Not Receive the Power of Appointment Until Paul Barringer's Death

9. Assuming Paul Barringer's December 4, 1998 Revocable Trust are operative, Merrill Barringer did not receive her power of appointment until Paul Barringer died.

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10. Because she did not receive the power of appointment until the time of Paul Barringer's death, Merrill Barringer could not have exercised the power of appointment until after Paul Barringer's death.

The Power of Appointment Can Only Be Exercised at Merrill Barringer's Death

11. The powers of appointment Paul Barringer gave Merrill Barringer in his December 4, 1998 Revocable Trust are "testamentary" powers of appointment, which means they can only be exercised by Merrill Barringer at the time of her death.

12. Therefore, not only did Merrill Barringer not receive the power of appointment until Paul Barringer's death, she cannot exercise the power of appointment until the time of her death.

Paul Barringer Chose to Give Merrill Barringer Dispositive Flexibility

13. If Paul Barringer did not want to give Merrill Barringer the power to exercise a power of appointment, he could have directed that his December 4, 1998 Revocable not grant her a power of appointment.

14. Moreover, if Paul Barringer wanted specific assets to be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Merrill Barringer's death and then pass to his children equally without giving Merrill Barringer a power to change that disposition.

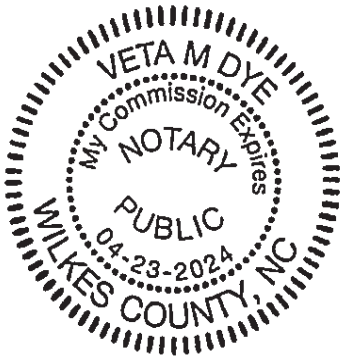
15. There was no reason (tax or otherwise) for Paul Barringer to give Merrill Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me,
This 2nd day of ~~September~~ October 2020.

NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 04-23-2024



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Deposition of:

Neill McBryde

March 26, 2021

In the Matter of:

Luzak, Hampton v. Light, Merrill

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want to make sure you have mine in front of you, and they are -- the notebook with 12 tabs, and I think they red numbers at the top that says "McBryde depo 1, McBryde depo 2." I -- I think you have them in that black binder, if you'll turn to tab -- Tab 1.

A. I do.

Q. Okay. Do you see the red numbers "McBryde depo 1, McBryde --"

A. Yes.

Q. Okay. Just for your reference and for mine, I'm going to be referring to those page numbers, the ones in red at the top, so if I direct you to page 1 or page 100, that -- those are the numbers I'm going to be referring to. Okay?

A. I understand.

Q. Okay. The first document that is labeled McBryde 1 through McBryde 11, do you recognize this document?

A. You mean the -- just the materials in there?

Q. Well, correct. This -- this is the affidavit that was signed by you --

A. Yep. Yes.

Q. -- on September 8th --

A. The first affidavit, yes.

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Q. Okay. All right. And so what is -- this document is the affidavit that you signed for this case?

A. This is the document that I prepared and signed for this case.

Q. Okay. All right. And was this -- was this affidavit true and accurate, to the best of your knowledge?

A. Yes, to the best of my knowledge, and I understand obligations of -- of my oath.

Q. All right.

I'm going to start asking you a few questions that related to page 3, McBryde deposition 3.

Tell us, please, approximately, when you recall first meeting and doing legal work for Paul Barringer.

A. I first met him and was introduced to him and he me somewhere in 1996, but the -- the subjective and substantive work really picked up or was culminated with respect to Mr. Barringer and his estate planning in 1998 in that period, the second half of that year.

Q. And it's my understanding that you prepared some of the estate planning documents for

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going to try to share my screen with you, and I want to show you a document --

A. Okay.

Q. -- 19 in the notebook. But it's one that's a matter of public record. And let me make sure I got it right here.

Okay. Are you able to see my screen now?

A. Yes. It's on -- yeah, separate screen.

Q. Okay. And what I want to show you -- and this is page 58 of the lawsuit that Hampton Luzak has.

A. Can you blow it up a little bit more.

Q. Yes, sir.

A. Yes. Yes, that's -- that's good. You need to move it. Yeah, there you go. Yeah, there you go. Thank you. Okay.

Q. All right. I'm -- I'm just going to read this to you starting in paragraph 142, and it says: "Upon information and belief, descendants Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plan. Upon..."

Well, let's just take that first sentence, okay? Are you aware of any contracts or other agreement between Mr. and Mrs. Barringer, where they agreed not to revoke their estate planning?

A. No. Did I -- did I -- I continued to do

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work for them, but never did that issue ever even arise or thought arise from my being counsel, and with at least Paul on several matters after this was done.

Q. Okay. What, if any -- and I'm -- that is all I want to ask you about at this moment.

But what, if any, discussions did you have with Mr. or Mrs. Barringer about their desire to ensure or otherwise guarantee that the kids were treated equally in the future no matter what?

A. Don't -- I can't answer that question because we got in in August. Because of the way you stated it is, we would and I'm sure did -- again, it's a long time ago, but I have a certain methodology that I find -- follow with virtually every client because I know what you need to do and what you don't need to do.

We make sure that both spouses clearly understand, agree and approve. And I feel very comfortable because I was intentionally involved in this, you can see from my hours, too little rate, but nevertheless, the -- that at the time of execution on December 4, this is what they wanted to do, and there was no -- no concern that -- I mean, just never heard a thing about that.

And I would say I'm sure I went over the

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document at the time of execution, and obviously, there is just nothing in the file and nothing that would tell me that they had any different direction in mind.

Q. If you -- if you would, Mr. McBryde, I know would like to look at -- behind Tab 7 at McBryde Depo 80.

A. Yes.

(Reporter Clarification.)

Q. 80?

BY MR. TWOMBLEY:

Q. Do you have this diagram in front of you, Mr. McBryde?

A. I do.

Q. And it says at the top "if his wife, Merrill Barringer, survives him."

What is -- what is this document?

A. This is a diagram that we provide to clients almost uniformly for a long time, but always hopefully, getting better and better each year, which lays out what will happen under the docs if you want to read the 50 pages, or however many it was -- if you get to the short version here, which is, of course, laid out, and we've just gone through the detail of the actual document.

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EXHIBIT C

John Jolley Deposition Excerpts pp. 86 - 90

this is the complaint that Hampton Barringer Luzak brought against her mother, Merrill Underwood Barringer, that was filed in the Beaufort County Court of Common Pleas on May 28, 2019. Before I hand it to you, I want to first draw your attention to paragraph 142 on page 58.

MR. KIRBY: Do you have any more copies?

MR. TWOMBLEY: No. I'm sorry. I don't.

THE WITNESS: You want -- you're drawing my attention to paragraph 142?

BY MR. TWOMBLEY:

Q. Right.

A. Okay.

Q. First of all, will you read paragraph 142 into the record?

A. 142. "Upon information and belief, decedent, Paul Barringer, and Ms. Barringer entered into a binding contract not to revoke their estate plans. Upon information and belief, other proof could be discerned from a review of Ms. Barringer's estate planning documents, which she has refused to produce in the case of Hampton B. Luzak versus Merrill B. Light, et al., Case No. 2016-CP-07-1919,

South Carolina Common Pleas. This contract not to revoke applied to the estate plans in place until his lack of capacity and the undue influence and tortious interference practiced on him as described above."

Q. Do you know of any evidence regarding any contract between Mr. and Ms. Barringer regarding their estate plans?

A. No.

Q. Do you know why anyone would say that?

A. I do not.

Q. Do you know anything about the terms of any such alleged contract?

A. I am unaware of any contract between Mr. and Ms. Barringer to make a will or any other testamentary documents.

Q. To your knowledge, is there any language in either Mr. Barringer's wills and trust or Ms. Barringer's wills and trust that was in any way intended to reflect or reference or otherwise memorialize any such contract?

A. No. In fact, I think the terms of their -- of Mr. Barringer's documents fly in the face of an argument that there's an agreement not to change their estate plan.

Q. Did Mr. Barringer ever mention anything

about any agreement with Ms. Barringer regarding their estate plans?

A. Mr. Barringer never mentioned to me anything about a contract to -- for their estate plan.

Q. Were you aware of any promises that may have been made by Mr. Barringer or Ms. Barringer with respect to the other's estate plan?

A. No.

Q. Do you know why someone would say that they had made promises to each other about their estate plans that are not reflected in the terms of the estate plan?

A. So I'm sorry. Repeat the question.

Q. Do you know why anyone would say that Mr. and Ms. Barringer had made promises to each other about their estate plan that are not reflected in the terms of their estate plan?

A. The only reason to do that is if there had been a contract to make an estate plan.

Q. And since we're not -- I think you testified you're not aware of any such contract, right?

A. I am definitely not aware of any contract between the Barringers to make -- you know, with

respect to their estate plan.

Q. Okay. Do you know why anyone would assert or why Ms. Luzak has asserted that there is some type of promise or a contract regarding their estate plan?

A. To the extent that Ms. Luzak had a written contract to make a will that was something that I didn't see and was contrary to the terms of the estate plan, that's the only reason I can imagine asserting such a claim.

Q. Have you ever seen this alleged contract?

A. I have not seen any -- any contract with respect to Mr. and Ms. Barringer.

Q. I'll also represent to you that in this complaint, Hampton Luzak accuses her mother of engaging in a conspiracy to harm Hampton Luzak. Do you know why Hampton Luzak would make that type of allegation about Merrill Barringer?

MR. TRAXLER: Object to form. This is Tom Traxler.

THE WITNESS: I don't think there's any basis for that. I can't -- I can't answer what Ms. Luzak's motivation for any of that, but I don't believe there's any basis for such a claim.

BY MR. TWOMBLEY:

Q. Okay. Did you ever observe any type of

behavior from Ms. Barringer that led you to believe that she was not acting in Paul's best interest?

A. I always believed -- no. I did not. I always believed that Ms. Barringer was acting in Paul's best interest.

Q. I think I might be done with my questioning. I'd like to take about a five-minute break and review my notes and use the restroom. And if I've got anything else, I'll hit it when I come back. Otherwise, I might be done. So we'll stand down for about five minutes.

THE VIDEOGRAPHER: We are going off record. The time is 12:47 p.m.

(Off the record.)

THE VIDEOGRAPHER: We are back on record. The time is 12:57 p.m.

MR. TWOMBLEY: I have no further questions at this time.

MR. TRAXLER: You ready to go ahead?

MR. TWOMBLEY: Yeah. I said I don't have any further questions. I'm sorry if y'all didn't hear.

MR. TRAXLER: I didn't hear that. Let's take a lunch -- Alice, you got anything? Let's take a lunch break, if we would. I guess it's up to

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S THIRD CAUSE OF ACTION**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

TO: PLAINTIFF AND HER COUNSEL

In her third cause of action — a claim for "Enforcement of Contract Not to Revoke and Injunction" — Plaintiff Hampton Luzak asks this Court to stop Mrs. Barringer from changing her will because her parents supposedly entered into a contract "not to revoke" their wills or estate plans. Because Plaintiff has not produced any evidence of a contract in Mr. Barringer's will, trust or any other signed writing, she is unable to establish the supposed contract by any of the three ***only*** means allowed by statute. *See* S.C. Code § 62-2-701 (South Carolina's statute on "contracts regarding succession" which sets forth the ***only*** three ways to establish such a contract.) For this reason, Mrs. Barringer is entitled to summary judgment on Plaintiff's claim to enforce the "contract regarding succession" she alleges.

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FACTS NOT IN DISPUTE

All of decedent Paul Barringer's wills — from December 1998 to February 2015 — are "pour-over wills" that he executed at the same time he executed a corresponding revocable trust. The result is that at his death, Mr. Barringer left his estate in trust, with the income to Mrs. Barringer for her life, and gave Mrs. Barringer a special power of appointment permitting her, through her own will, to decide who receives the assets remaining in Mr. Barringer's estate, when she dies. Each of Mr. Barringer's revocable trusts also include a default provision that provides what happens to the remainder of his estate at Mrs. Barringer's death if she does not use or "exercise" the special power of appointment through her own will.

Specifically, on December 4, 1998, Paul Barringer executed a "pour-over will" (the "1998 Will") that provided that, upon Mr. Barringer's death, his personal effects would pass to his wife, Mrs. Barringer, if she survived him, and provided that the remainder of his property would pass to the Paul B. Barringer, II Revocable Trust dated December 4, 1998 (the "1998 Revocable Trust").[1] Mr. Barringer's 1998 Revocable Trust provides that, upon his death and after the estate's administration, his trust estate is to be divided into three sub-trusts: Trust A, Trust B and a Residuary Trust. These three sub-trusts are, as discussed below, identical in all respects relevant to the current Motion.

Under the Trust's provisions governing Trust A, Trust B, and the Residuary Trust, Mrs. Barringer is entitled to all of the income generated by the assets of each of those sub-trusts during her life. Further, principal from each sub-trust may be distributed to Mrs. Barringer during her life for her "support, health and maintenance." Finally, Mr. Barringer granted Mrs. Barringer a "power of appointment" over any remainder assets in the three sub-trusts at the time of her death. Under

[1] Mr. Barringer's 1998 Will and 1998 Revocable Trust are attached as **Exhibit A**.

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this power of appointment, Mrs. Barringer is allowed to direct the sub-trusts remainders upon her death "to *or among* [Mr. Barringer's] descendants, and *in such manner in trust or otherwise*, as my said wife may appoint *in such wife's last will and testament or codicil thereto* . . . ." Nowhere in the 1998 Revocable Trust (or in any other document) did Paul Barringer place additional limitations on Mrs. Barringer's authority to exercise her power of appointment over assets remaining in the sub-trusts.

On February 28, 2012, Mr. Barringer executed a "pour-over will" (the February 28, 2012 Will) that provided that, upon Mr. Barringer's death, his personal effects would pass to his wife, Mrs. Barringer, if she survived him, and provided that the remainder of his property would pass to the Paul B. Barringer, II Revocable Trust dated December 4, 1998, as amended (the "February 28, 2012 First Amendment and Restatement of Revocable Trust").[2] The Trust Amendment provides for the division of Mr. Barringer's assets into various trusts at Mr. Barringer's death. Mr. Barringer's Trust Agreement further directs, through specific provisions termed "Special Power of Appointment in Wife…" that if his wife survived him, upon his wife's death, the remaining principal and interest is to be distributed to the appointees "in such manner and in such proportions as the Settlor's wife may appoint in and by the Last Will of the Settlor's wife, making specific reference to the power of appointment herein conferred upon her." February 28, 2012 First Amendment and Restatement of Trust Agreement of Paul B. Barringer, page 7 - 8.

The testimony of Neill G. McBryde and John Jolley, the two estate planning attorneys responsible for preparing Mr. Barringer's wills and revocable trusts from 1998-2015, confirms that Mr. Barringer's wills and trusts do not contain contractual language or evidence a contract between the Barringers. Attorney Neill G. McBryde submitted affidavits confirming that Mr. Barringer's

[2] Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Amendment and Restatement of Revocable Trust are attached as **Exhibit B.**

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1998 Will and 1998 Revocable Trust did not contain a contract with Mrs. Barringer or otherwise obligate Mrs. Barringer, which he affirmed in deposition testimony. Attorney John Jolley, who prepared and witnessed Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Restatement and Amendment of Trust Agreement[3], testified under oath that no language in Mr. Barringer's wills and trusts was intended to reflect, reference or otherwise memorialize any contract between Mr. and Mrs. Barringer, and that in fact "the terms of their – of Mr. Barringer's documents fly in the face of an argument that there's an agreement not to change their estate plans." John Jolley Deposition March 16, 2021 ("Jolley Dep. Day 1") 86:18 – 87:24, attached as **Exhibit D** and McBryde Affidavits, Neill McBryde Deposition 14-15, attached as **Exhibit E**.

ARGUMENT

I. Defendant is entitled to summary judgment on Plaintiff's third cause of action, which asks this Court to enforce a contract between Paul and Merrill Barringer "not to revoke their estate plans."

In her third cause of action, Ms. Luzak asks this Court to order her mother to comply with a contract that Ms. Luzak alleges was made between her father and mother "not to revoke their estate plans." Specifically, Ms. Luzak alleges as follows:

FOR A THIRD CAUSE OF ACTION
(ENFORCEMENT OF CONTRACT NOT TO REVOKE AND INJUNCTION)

[3] John Jolley also prepared Mr. Barringer's July 20, 2012 Second Amendment and Restatement of Trust, June 12, 2014 Will and June 12, 2014 Third Amendment and Restatement of Trust, and February 5, 2015 Will and February 5, 2015 Fourth Amendment and Restatement of Trust, attached as **Exhibit C**. Each of these trust amendments give a special power of appointment to Mrs. Barringer.

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> 141. Plaintiff Hampton Luzak realleges and reiterates all of the allegations contained in the preceding paragraphs as fully as if repeated herein verbatim.
>
> 142. Upon information and belief, Decedent Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans. Upon information and belief, other proof could be discerned from a review of Mrs. Barringer's estate planning documents, which she has refused to produce in the case of Hampton B. Luzak v. Merrill B. Light, et al, Case No. 2016-CP-07-1919 (S.C. Com.Pl.). This contract not to revoke applied to the estate plans in place until his lack of capacity and the undue influence and tortious interference practiced on him, as described above.
>
> 143. Consequently, Plaintiff Hampton Luzak is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke her will.

Compl. ¶¶ 142-43.

A contract not to revoke a will is an example of a "contract concerning succession." The South Carolina legislature has specifically addressed "contracts concerning succession" by statute— S.C. Code § 62-2-701. Section 62-2-701 of the South Carolina Code governs contracts regarding wills (succession) executed after July 1, 1987, allowing a person to prove a contract to make a will or devise (or not to revoke one) ***only*** if (1) provisions of the decedent's will state the material provisions of the contract, (2) the decedent's will contains an express reference to the contract and extrinsic evidence proves the terms of the contract, or (3) when the decedent signed a writing that evidences the contract and other evidence shows its terms.[4] Although a plaintiff may, under the third prong of the statute, rely on extrinsic evidence to prove the terms of a contract

[4] § 62-2-701. Contracts concerning succession.
A contract to make a will or devise, or to revoke a will or devise, ***or not to revoke a will or devise***, or to die intestate, if executed after [July 1, 1987], can be established ***only by*** (1) **provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will** of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) **a writing signed by the decedent evidencing the contract and** extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. S.C. Code § 62-2-701

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concerning a will, the existence of such a contract must be confirmed by a signed writing. *See id*., Comment ("Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract *whose mere existence is proved by a signed writing*.") (emphasis added).

S.C. Code § 62-2-701 was drawn from a section of the Uniform Probate Code. *See* Unif. Probate Code § 2-701. The Official Comment to UPC § 2-701 explains the rationale for this type of statute:

> It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

See id., Comment.

1. **Plaintiff has no evidence to establish a contract by Method One: Mr. Barringer's wills do not contain "material provisions of a contract" between Mr. and Mrs. Barringer not to revoke their wills.**

S.C. Code 62-2-701(1) states a contract not to revoke a will may be established by (1) **provisions of a will of the decedent stating material provisions of the contract.** An example of a provision of a contract in a will is below:

> My spouse and I are executing our wills at or about the same time and such wills are intended to be and should be construed [as] contractual and reciprocal wills. Neither wills [sic] shall be subject to revocation by it's [sic] make without the consent of the other party."

See Self v. Slaughter, 16 So. 3d 781, 785 (Ala. 2008) (quoting *Humphries v. Whiteley*, 565 So.2d 96, 97 (1990)).

Plaintiff could establish the purported contract through S.C. Code 62-2-701(1) if the decedent's will (the only decedent here is Paul Barringer) contained material provisions of a contract between Mr. and Mrs. Barringer. Plaintiff suggests such a provision is found in Paul

Barringer's Last Will and Testament dated December 4, 1998, Item III at pages 1-2, which is included below. However, these pages of the will do not contain a material provision of a contract.

ITEM III

All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise (but not including any property over which I

may have a power of appointment), I devise to the then acting Trustee or Trustees of The Paul B. Barringer, II Revocable Trust executed by me immediately prior to my execution of this Will on the 4th day of December, 1998, as the same may from time to time be amended prior to my death, to be held, managed, and distributed in accordance with the terms and provisions of such trust agreement as of the date of my death.

Plaintiff also suggests that Mr. Barringer's 1998 revocable trust (executed at the same time as his 1998 will) states material provisions of a contract between Mr. and Mrs. Barringer not to revoke their estate plans because the trust grants Mrs. Barringer powers of appointment. *See* Luzak's Memo in Opposition to Motion to Compel Response to Supp. Interrogatories, page 4, attached as **Exhibit F.** Thus, nonsensically, Plaintiff asks this Court to rule that the part of the trust that ***expressly gives*** Mrs. Barringer a power of appointment is a "material provision of the contract" between Mr. and Mrs. Barringer that somehow also ***prevents*** her from using that power of appointment. That is, Plaintiff would have this Court conclude that when Mr. Barringer specified that his assets should be distributed "to *or among* my descendants, and *in such manner in trust or otherwise*, as my said wife may appoint *in such wife's last will and testament or codicil thereto* . . . ." (*see id*. at pp. 8 and 13) he really meant the exact opposite – that his wife may not ever appoint who among his descendants would receive his assets. The logic of this argument is self-defeating.

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Plaintiff also indicates that the material provision of a contract is found in "Paul Barringer's Last Will and Testament dated February 28, 2012 (see entire document with no power of appointment exercised)" and Paul Barringer's First Restatement of Trust Agreement dated February 28, 2012. *See* Response to Defendant's First Interrogatories, attached as **Exhibit G,** Response to No. 2., p. 7, L. and K. For "material provisions of the contract" in the February 28, 2012 Will and the February 28, 2012 First Restatement and Amendment of Trust Agreement, Plaintiff refers to the whole document and the fact that Mr. Barringer did not exercise a power of appointment in the document. But the fact that Mr. Barringer did not exercise a power of appointment does not in any way constitute evidence of an agreement between Mr. and Mrs. Barringer that Mrs. Barringer was precluded from exercising her express power of appointment in her own will. The ***absence*** of a writing obviously does not prove the ***existence*** of a writing.

To be clear—Mr. Barringer's 1998 Will and his 1998 Revocable Trust, and his February 28, 2012 Will and February 28, 2012 Revocable Trust Amendment ***do not*** contain material provisions of a contract.[5] As attorney John Jolley, who prepared Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Restatement and Amendment of Trust Agreement testified, the language not only does not reference or state material provisions of a contract, its terms "fly in the face of an argument that there's an agreement not to change their estate plans." See Jolley Dep. Day 1, 86:18 – 87:24.

2. Plaintiff has no evidence to establish a contract by Method Two: Mr. Barringer's Will does not contain an express reference to a contract.

None of Mr. Barringer's wills or revocable trusts from 1998 to 2015 have an express reference to a contract, and Plaintiff concedes that she cannot establish that Mr. Barringer's wills

[5] Mr. Barringer's July 20, 2012 Second Amendment and Restatement of Trust, June 12, 2014 Will and June 12, 2014 Third Amendment and Restatement of Trust, and February 5, 2015 Will and February 5, 2015 Fourth Amendment and Restatement of Trust also do not contain material provisions of a contract.

meet the requirements of S.C. Code 62-2-701(2). *See* Response to Defendant's First Interrogatories, attached as **Exhibit F,** Response to No. 4, p. 11 ("As to part (2) of § 62-2-701,…there is no express reference to a contract in a will of Paul Barringer if the term "express reference" means a specific use of the term "contract" in a will.").

3. Plaintiff has no evidence to establish a contract by Method Three: There is no other "signed writing evidencing" the contract.

S.C. Code 62-2-701(3) allows a contract not to revoke a will to be established if (3) **a writing signed by the decedent evidences the contract and then extrinsic evidence proves the terms.** Although a plaintiff may, under the third prong of the statute, rely on extrinsic evidence to prove the terms of a contract concerning a will, the existence of such a contract must first be established by a ***signed writing***. *See* S.C. Code 62-2-701, Comment. ("Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract *whose mere existence is proved by a signed writing*.") (emphasis added).

Plaintiff attempts to argue that she has evidence compliant with 62-2-701(3), because "numerous other documents and evidence" serve as signed writings. Again, Plaintiff must set forth ***specific facts*** to create a genuine issue of material fact that a writing evidences a contract between Mr. and Mrs. Barringer not to revoke their wills. At a minimum, such proof would require a signed writing, but that does not exist, and Plaintiff can identify no such document.

Plaintiff lists the following categories of documents as somehow supporting her argument that a contract not to revoke exists—"family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even

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commented upon, by Defendant." *See* **Exhibit E** Luzak's MIO to Motion to Compel Response, at p. 5**.** But critically, Plaintiff does not argue—and cannot argue—that any of these documents evidence a contract whereby Mrs. Barringer agreed never to exercise the power of appointment that Mr. Barringer expressly granted to her. Indeed, Plaintiff does not provide any explanation at all as to how these documents supposedly relate to the requirements of Section 62-2-701, or otherwise support her argument.

Next, Plaintiff argues that the "simultaneous and symbiotic" estate planning documents of Mr. and Mrs. Barringer are signed writings. *See* Exhibit E, p. 6**.** But "simultaneous and symbiotic estate planning documents" is a dressed-up term for mutual wills — separate wills that are reciprocal or substantially similar. Mutual wills can contain clauses which state that they are not revocable unless the other party, usually a spouse, consents. Mr. Barringer's wills do not contain such a clause. In fact, Plaintiff's argument is expressly foreclosed by Section 62-2-701, which states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills." Plaintiff's entire argument seems to be that, because Mr. and Mrs. Barringer executed mutual wills in which Mr. Barringer granted Mrs. Barringer a power of appointment and Mrs. Barringer did not use such power at the time of the execution of the documents, a contract not to revoke was somehow created. But, once again, a signed writing ***granting*** an express right of appointment cannot be evidence of a written agreement ***not to exercise*** that right. There is ***no evidence of a writing in which*** Mr. and Mrs. Barringer agreed for their wills to be contractual or irrevocable[6], and Mrs. Barringer is entitled to summary judgment on this issue.

[6] To avoid summary judgment, the Plaintiff must set forth specific facts creating a genuine issue of material fact as to the existence of a contract. A contract to make a will or not to revoke one ***must have the essential elements of any legal contract***, which are: contractual intent, an actual meeting of the minds of the parties, and valid mutual consideration. Moreover, the terms of the contract must be definite and certain. *See* 32 S.C. Jur. Wills § 31.

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4. Accepting Plaintiff's argument would have devastating policy implications.

Accepting Plaintiff's argument would have devastating policy implications, upsetting estate plans containing a power of appointment and opening the door to lawsuits by descendants who are disinherited through the exercise of a power of appointment. If Plaintiff's argument is correct, then every testator who grants his spouse a power of appointment—and who intends for his spouse to hold that power of appointment up until the spouse's death—will not have his estate planning intentions carried out, because the spouse will be prohibited from exercising the power of appointment if he or she failed to do so during the testator's lifetime.

CONCLUSION

Defendant Mrs. Barringer asks the Court to grant summary judgment in her favor and dispose of Plaintiff's third cause of action on the grounds that Plaintiff is unable to establish the alleged contract between Mr. and Mrs. Barringer by any of the three *only* means allowed by statute.

TWENGE + TWOMBLEY LAW FIRM

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June 14, 2021

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EXHIBIT A
Paul Barringer 1998 Will & Trust

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EXHIBIT B

Paul Barringer 2-28-2012 Will & Trust

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EXHIBIT C

Paul Barringer 7-20-2012 Second Amendment and Restatement of Trust

Paul Barringer 6-12-2014 Will and 6-12-2014 Third Amendment and Restatement of Trust

Paul Barringer 2-5-2015 Will and 2-5-2015 Fourth Amendment and Restatement of Trust

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EXHIBIT D

John Jolley Deposition Excerpts pp. 86-87

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**AFFIDAVIT**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. My name is Neill G. McBryde and I am a lawyer in Charlotte, North Carolina.

2. I currently practice with the law firm of Moore & Van Allen, one of the largest law firms in the southeast.

3. I am a member in good standing of the North Carolina and the Georgia Bar Associations.

4. In 1969, I received my Juris Doctor from the University of North Carolina at Chapel Hill, where I was Editor-in-Chief of the North Carolina Law Review. I was also a Morehead Fellow in Law.

5. For over 50 years, I have been actively engaged in the practice of law with primary emphasis in the areas of tax planning, business planning for closely-held businesses,

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insurance planning, estate and wealth transfer planning, estate administration, and trust and estate tax and fiduciary litigation. I have led Moore & Van Allen's closely held business, tax planning, estate and wealth transfer planning, and trusts and estates groups.

6. My primary areas of emphasis include providing:

- Tax and business planning advice for closely-held businesses;
- Tax, estate planning, and insurance planning for owners of closely-held businesses and high net worth individuals;
- Advice and counsel in connection with mergers and acquisitions involving stock, corporate assets, real estate and other assets;
- Specialized services in the wealth transfer, estate planning and estate administration areas;
- Charitable planning for individuals and non-profit representation; and
- Tax controversies.

7. I have lectured nationally and written extensively in areas relating to closely held businesses, tax planning, tax controversies, insurance planning, and estate planning and administration.

8. I have been included in Best Lawyers in America for Trusts and Estates, Tax Litigation & Controversy and Tax Law every year since 1983.

9. I am the Past President and Fellow of the American College of Trust and Estate Counsel; am a North Carolina Bar Board-Certified Specialist in Estate Planning and Probate; am the Past President and Trustee, Advisory Board, Southern Federal Tax Institute; and a Fellow of the American College of Tax Counsel.

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Paul Barringer

10. I was introduced to Paul Barringer around 1996, and I served as his attorney for the preparation of the following documents:

a. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 ("1998 Will");

b. Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("1998 Revocable Trust"); and

c. The Paul B. Barringer, II Family Trust executed on December 22, 1998.

11. I have been made aware of the litigation Hampton Luzak filed in South Carolina, and I understand Mrs. Luzak is asking the court to set aside all of the wills and trusts Paul Barringer executed after 1998.

12. If that relief were granted, I understand that the 1998 Will and 1998 Revocable Trust I prepared for Paul Barringer would be the operative will and trust, and further, that the 1998 Will and 1998 Revocable Trust would control the disposition of Paul Barringer's estate.

13. I submit this affidavit to explain Paul Barringer's 1998 Will and 1998 Revocable Trust, and the facts and circumstances surrounding their preparation and execution.

The Attorney Client Privilege

14. I have been provided a copy of the order entered by the Honorable Carmen Mullen dated August 23, 2017, finding that South Carolina recognizes the testamentary exception to the attorney client privilege.

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15. This affidavit is submitted in accordance with that ruling and with the consent and approval of Merrill Underwood Barringer ("Mrs. Barringer"), as Personal Representative of the Estate of Paul Barringer.

16. This affidavit is intended only to cover matters covered by Judge Mullen's order, and nothing more.

17. By executing and submitting this affidavit, there is no intended or implied waiver of the attorney client privilege.

18. In any event, the affidavit is submitted with the consent of Mrs. Barringer, the personal representative of Paul Barringer's estate.

Paul Barringer's 1998 Estate Plan

19. Paul Barringer's 1998 estate plan begins with a standard "pour over" will.

20. This means that after his estate is probated (if necessary) and administration is complete, any assets in his individual name – excluding certain personal property – would be transferred or "poured over" into his 1998 Revocable Trust.

Paul Barringer's 1998 Revocable Trust

21. Upon Paul Barringer's death, the 1998 Revocable Trust calls for his trust estate to be divided into three sub-trusts: two marital trusts, the "A Trust" and the "B Trust," and a residuary trust, the "Item V Trust" (collectively, the "sub-trusts").

22. For the A Trust and the B Trust, Mr. Barringer provided that "my said wife shall have the use of this trust property . . . as a life beneficiary" and that the principal in each marital trust can be distributed to Mrs. Barringer for the "support, health and maintenance of my wife."

23. For the Item V Trust, Mr. Barringer provided that the trustee could make distributions of income and principal to Mrs. Barringer for her "support, health, and maintenance"

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and that the Trustee could also make distributions of income and principal to Mr. Barringer's descendants for "support, maintenance, health and education." Mr. Barringer instructed that his "primary desire is that my wife be supported in reasonable comfort during my wife's lifetime and that my children be supported in reasonable comfort and properly educated, rather than that the principal of this trust be preserved until the division of the trust into separate shares."

24. For any assets remaining in the sub-trusts at the time of Mrs. Barringer's death, Mrs. Barringer is given a testamentary power of appointment over any assets of the sub-trusts at her death.

25. The language granting the testamentary powers of appointment is as follows:

a. For the A Trust and the B Trust:

- Upon the death of my said wife … the property remaining in the A Trust and the B Trust shall be distributed by the Trustee, free of the trust, to or among my descendants, and in such manner in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto, making express reference to this power, except that such wife shall have no power to appoint such property to such wife, to such wife's estate, to such wife's creditors or to the creditors of such wife's estate.

b. For the Item V Trust:

- My wife shall have the power upon her death by her last will and testament or codicil thereto, making express reference to this power, to appoint any part or all of the property in this trust to or among my descendants, and in such manner, in trust or otherwise, as she may in such will provide, except that she

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shall have no power under any circumstances to appoint any of such property to herself, to her estate, to her creditors or to the creditors of her estate.

26. Mrs. Barringer can exercise her power of appointment over all of the sub-trusts "to *or among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ."

Purpose of a Power of Appointment

27. A power of appointment is a power to direct the disposition of property.

28. The power can be broad or limited depending on desire of the creator, here, Mr. Barringer.

29. A power of appointment can also be presently exercised or postponed until a specified event occurs or a condition is met.

30. With respect to Mr. Barringer's 1998 Revocable Trust, the purpose of the powers of appointment is to confer authority upon Mrs. Barringer to designate – at the time of her death – who is to receive and enjoy the remaining assets of Mr. Barringer's estate.

31. These powers of appointment are called testamentary powers of appointment, which means Mrs. Barringer can only exercise them at the time of her death.

32. There are many reasons why a spouse (Mr. Barringer) would give a testamentary power of appointment to a surviving spouse (Mrs. Barringer).

33. A testamentary power of appointment builds flexibility into an estate plan and allows the surviving spouse to account for changes in circumstances that occur after a decedent's death.

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34. For example, individuals who may otherwise be beneficiaries at the first spouse's death might experience significant economic and other life changes in between the first spouse's death and the surviving spouse's death.

35. For example, after a decedent's death, potential beneficiaries may remarry; seek, lose or fail to maintain employment; become disabled or develop other health related issues; develop serious financial needs or experience a financial windfall; or experience other circumstances that make it desirable to leave them less, more or none of the decedent's estate.

36. After a decedent's death, potential beneficiaries may engage in behavior that is disfavored by the power holder.

37. Here, Mr. Barringer conferred authority upon Mrs. Barringer to decide who should benefit from the remaining assets of Mr. Barringer's estate at the time of her death.

38. This would include the opportunity to observe her children, their behavior, their life choices, and any other factors she deemed relevant – in her sole discretion – to decide who "*among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ." should benefit from the assets.

Language Selected by Paul Barringer for Powers of Appointment

39. The specific language used for the powers of appointment selected by Paul Barringer specifically empower Mrs. Barringer with the right to decide what portion – if any – of Mr. Barringer's estate each child should receive.

40. Nothing in the trust requires or otherwise suggests that Paul Barringer intended to obligate or require Mrs. Barringer to appoint any particular asset to any particular child, or treat the children equally.

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41. To the contrary, the language chosen by Paul Barringer specifically empowers Mrs. Barringer with the discretion to treat his descendants in an unequal fashion --- based upon her judgment.

Consequences of CFRC Voting Stock Gift Being Set Aside

42. I have been informed that in 2012, Paul Barringer individually owned 38,272 shares of voting stock in Coastal Forest Resources Corporation, Inc. (CFRC).

43. I have been further informed that in 2012, Paul Barringer engaged in transfers related to this stock, ultimately transferring all but one share to his daughter Merrill Light (hereinafter collectively referred to as the "Voting Stock Gift Transaction").

44. I understand that Hampton Luzak has asked the Court to set aside the Voting Stock Gift Transaction for various reasons.

45. Assuming Mrs. Luzak were to prevail in having the Voting Stock Gift Transaction set aside, and further assuming that Mrs. Luzak were to prevail in setting aside all of the estate planning documents Paul Barringer executed after 1998, then the 1998 Will and 1998 Revocable Trust outlined above would control the disposition of any assets in Paul Barringer's estate, including but not limited to the CFRC voting stock.

46. If the 1998 Will and 1998 Revocable Trust control the disposition of Mr. Barringer's estate, then Mrs. Barringer would have the power – at the time of her death – to appoint the stock to or among Mr. Barringer's descendants through her last will and testament or any codicil thereto.

Contract or Agreement

47. I have been informed that Hampton Luzak alleges that, prior to the execution of their 1998 estate plans, Paul Barringer and his wife Mrs. Barringer entered into a "contract" or

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other agreement wherein each agreed not to revoke their wills and trusts, such that Mrs. Barringer is now obligated not to change her will to exercise the powers of appointment given to her by Paul Barringer in the 1998 Revocable Trust.

48. I am not aware of, and did not prepare, any such contract – oral, written or otherwise – related to Paul Barringer's estate or trust.

49. Paul Barringer never mentioned the existence of any such contract, agreement or promise to me despite the fact that I was, at the time, intimately familiar with his estate planning and decisions related to his assets.

50. Mr. Barringer never expressed a desire to prevent Mrs. Barringer from having discretion in exercising her powers of appointment after Paul Barringer passed away, nor did he ever informed me that Mrs. Barringer had promised she would not exercise the powers of appointment.

51. To the contrary, Paul Barringer expressly wanted to include the power of appointment language in his 1998 estate plan to specifically empower his wife (Mrs. Barringer) to choose – at the time of her death – who among his descendants would receive assets from his estate following Mrs. Barringer's death.

52. Any such purported agreement would be directly at odds with the expressed directives Paul Barringer gave me and directly at odds with his 1998 estate plan.

53. I understand that despite the expressed terms of Paul Barringer's 1998 Revocable Trust, Hampton Luzak alleges Paul Barringer actually wanted his wife not to exercise the powers of appointment given to her.

54. As stated above, Paul Barringer never expressed that desire to me.

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55. In fact, such a result is expressly at odd with the terms of his estate plan, which gives Mrs. Barringer the absolute right to decide who among Mr. Barringer's descendants will receive assets from his estate, and which ones do not. Of course, Mrs. Barringer could choose not to exercise her powers of appointment, but she is certainly under no contractual obligation that I am aware of with respect to the exercise or nonexercise of the powers of appointment.

56. Should Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions given to me by Paul Barringer regarding his 1998 estate plan.

Tax Issues and Equality and Chapman

57. I have been provided with a copy of *Chapman v. Citizens & Southern National Bank of South Carolina.*

58. In 1981, the United States Congress passed the Economic Recovery and Tax Act of 1981 ("ERTA"), which made several watershed changes to the estate tax regime.

59. One important change was to allow a full marital deduction for "qualified terminable interest property" ("QTIP") trusts.

60. The tax motivations at issue in *Chapman* were no longer present after the passage of ERTA. In the documents at issue in the *Chapman* case, in order to obtain a marital deduction, the surviving spouse was required to have a power of appointment.

61. When Mr. Barringer's 1998 Revocable Trust was drafted and executed, granting a power of appointment to the spouse was no longer required to obtain a marital deduction.

62. If Mr. Barringer did not want to give Mrs. Barringer the power to exercise a power of appointment, he could have directed that the documents not grant her a power of appointment.

63. Moreover, if Mr. Barringer wanted to be certain his assets would be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Mrs. Barringer's death and then pass to his children equally without giving Mrs. Barringer a power to change that disposition.

64. There is no reason (tax or otherwise) for Mr. Barringer to give Mrs. Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me

This 8th day of September 2020.

NOTARY PUBLIC FOR NORTH CAROLINA

My Commission Expires: 1-17-24

DELORES C. BUTLER
NOTARY PUBLIC
CARTERET COUNTY, NC
My Commission Expires 1-17-24

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EXHIBIT E

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
HAMPTON BARRINGER LUZAK,	)	**SUPPLEMENTAL AFFIDAVIT**
Plaintiff,	)	
v.	)	
MERRILL U. BARRINGER,	)	
Defendant	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. I have personal knowledge of the matters stated herein. Being duly sworn, I hereby depose and state the following:

1. This affidavit will supplement the September 8, 2020 affidavit I provided related to the captioned case.

2. I have been provided with a copy the affidavit of James C. Hardin, III, Esquire, dated September 19, 2020, and the affidavit of Richard B. Allen, Esquire, dated September 28, 2020.

3. Mr. Hardin's affidavit addresses "whether tax reasons exist for clients to include powers of appointment in their estate planning documents" and discusses some of the tax reasons why "clients commonly include" power of appointment in estate planning documents.

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4. Similarly, Mr. Allen's affidavit addresses some of the "tax planning opportunities available" to estate planning clients through the use of powers of appointment.

No Tax Objectives

5. There was no tax objective associated with Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of Mrs. Barringer's death.

6. As stated in my prior affidavit, the purpose of Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of her death was to confer authority upon Mrs. Barringer to designate – at the time of her death – who among Paul and Merrill Barringer's children would receive and enjoy the assets of Mr. Barringer's estate.

7. The power of appointment specifically empowers Merrill Barringer with the discretion to treat Paul Barringer's children in an equal or unequal fashion – based solely upon her judgment – at the time of her death.

8. When Paul Barringer gave Merrill Barringer a power of appointment in his December 4, 1998 Revocable Trust that I drafted, I did not advise Paul Barringer regarding, or rely upon, any of the "tax reasons" or other "tax planning opportunities" generally discussed in the affidavits of Mr. Hardin or Mr. Allen because the purpose of the power of appointment was to provide distribution flexibility following Mr. Barringer's death..

Merrill Barringer Did Not Receive the Power of Appointment Until Paul Barringer's Death

9. Assuming Paul Barringer's December 4, 1998 Revocable Trust are operative, Merrill Barringer did not receive her power of appointment until Paul Barringer died.

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10. Because she did not receive the power of appointment until the time of Paul Barringer's death, Merrill Barringer could not have exercised the power of appointment until after Paul Barringer's death.

The Power of Appointment Can Only Be Exercised at Merrill Barringer's Death

11. The powers of appointment Paul Barringer gave Merrill Barringer in his December 4, 1998 Revocable Trust are "testamentary" powers of appointment, which means they can only be exercised by Merrill Barringer at the time of her death.

12. Therefore, not only did Merrill Barringer not receive the power of appointment until Paul Barringer's death, she cannot exercise the power of appointment until the time of her death.

Paul Barringer Chose to Give Merrill Barringer Dispositive Flexibility

13. If Paul Barringer did not want to give Merrill Barringer the power to exercise a power of appointment, he could have directed that his December 4, 1998 Revocable not grant her a power of appointment.

14. Moreover, if Paul Barringer wanted specific assets to be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Merrill Barringer's death and then pass to his children equally without giving Merrill Barringer a power to change that disposition.

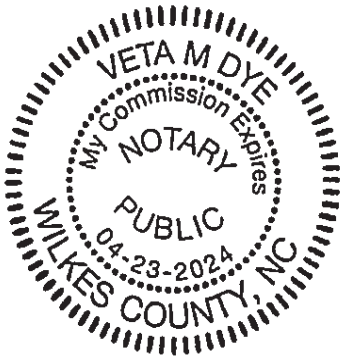
15. There was no reason (tax or otherwise) for Paul Barringer to give Merrill Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me,
This 2nd day of ~~September~~ October 2020.

NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 04-23-2024



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Deposition of:

Neill McBryde

March 26, 2021

In the Matter of:

Luzak, Hampton v. Light, Merrill

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want to make sure you have mine in front of you, and they are -- the notebook with 12 tabs, and I think they red numbers at the top that says "McBryde depo 1, McBryde depo 2." I -- I think you have them in that black binder, if you'll turn to tab -- Tab 1.

A. I do.

Q. Okay. Do you see the red numbers "McBryde depo 1, McBryde --"

A. Yes.

Q. Okay. Just for your reference and for mine, I'm going to be referring to those page numbers, the ones in red at the top, so if I direct you to page 1 or page 100, that -- those are the numbers I'm going to be referring to. Okay?

A. I understand.

Q. Okay. The first document that is labeled McBryde 1 through McBryde 11, do you recognize this document?

A. You mean the -- just the materials in there?

Q. Well, correct. This -- this is the affidavit that was signed by you --

A. Yep. Yes.

Q. -- on September 8th --

A. The first affidavit, yes.

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Q. Okay. All right. And so what is -- this document is the affidavit that you signed for this case?

A. This is the document that I prepared and signed for this case.

Q. Okay. All right. And was this -- was this affidavit true and accurate, to the best of your knowledge?

A. Yes, to the best of my knowledge, and I understand obligations of -- of my oath.

Q. All right.

I'm going to start asking you a few questions that related to page 3, McBryde deposition 3.

Tell us, please, approximately, when you recall first meeting and doing legal work for Paul Barringer.

A. I first met him and was introduced to him and he me somewhere in 1996, but the -- the subjective and substantive work really picked up or was culminated with respect to Mr. Barringer and his estate planning in 1998 in that period, the second half of that year.

Q. And it's my understanding that you prepared some of the estate planning documents for

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going to try to share my screen with you, and I want to show you a document --

A. Okay.

Q. -- 19 in the notebook. But it's one that's a matter of public record. And let me make sure I got it right here.

Okay. Are you able to see my screen now?

A. Yes. It's on -- yeah, separate screen.

Q. Okay. And what I want to show you -- and this is page 58 of the lawsuit that Hampton Luzak has.

A. Can you blow it up a little bit more.

Q. Yes, sir.

A. Yes. Yes, that's -- that's good. You need to move it. Yeah, there you go. Yeah, there you go. Thank you. Okay.

Q. All right. I'm -- I'm just going to read this to you starting in paragraph 142, and it says: "Upon information and belief, descendants Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plan. Upon..."

Well, let's just take that first sentence, okay? Are you aware of any contracts or other agreement between Mr. and Mrs. Barringer, where they agreed not to revoke their estate planning?

A. No. Did I -- did I -- I continued to do

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work for them, but never did that issue ever even arise or thought arise from my being counsel, and with at least Paul on several matters after this was done.

Q. Okay. What, if any -- and I'm -- that is all I want to ask you about at this moment.

But what, if any, discussions did you have with Mr. or Mrs. Barringer about their desire to ensure or otherwise guarantee that the kids were treated equally in the future no matter what?

A. Don't -- I can't answer that question because we got in in August. Because of the way you stated it is, we would and I'm sure did -- again, it's a long time ago, but I have a certain methodology that I find -- follow with virtually every client because I know what you need to do and what you don't need to do.

We make sure that both spouses clearly understand, agree and approve. And I feel very comfortable because I was intentionally involved in this, you can see from my hours, too little rate, but nevertheless, the -- that at the time of execution on December 4, this is what they wanted to do, and there was no -- no concern that -- I mean, just never heard a thing about that.

And I would say I'm sure I went over the

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document at the time of execution, and obviously, there is just nothing in the file and nothing that would tell me that they had any different direction in mind.

Q. If you -- if you would, Mr. McBryde, I know would like to look at -- behind Tab 7 at McBryde Depo 80.

A. Yes.

(Reporter Clarification.)

Q. 80?

BY MR. TWOMBLEY:

Q. Do you have this diagram in front of you, Mr. McBryde?

A. I do.

Q. And it says at the top "if his wife, Merrill Barringer, survives him."

What is -- what is this document?

A. This is a diagram that we provide to clients almost uniformly for a long time, but always hopefully, getting better and better each year, which lays out what will happen under the docs if you want to read the 50 pages, or however many it was -- if you get to the short version here, which is, of course, laid out, and we've just gone through the detail of the actual document.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 and 2019-CP-07-01294 **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT MERRILL U. BARRINGER'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES**

To understand Plaintiff's compliance with and appropriate responses to the interrogatories, it is helpful to understand the history of Defendant's own treatment of applicable procedural rules. Merrill U. Barringer continually resisted compliance with a court order to produce her estate planning documents pursuant to Plaintiff's request for production. Only under threat of the imposition of significant sanctions by the Court did she finally produce those documents. It is understandable why Defendant so strongly resisted the production of her estate planning documents. In 1998, Paul Barringer executed, inter alia, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him. Although Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, neither Paul Barringer or Defendant really understood that these documents gave Defendant a testamentary power of appointment, Plaintiff assumes arguendo that Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in

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1998. Even so, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment. Moreover, Defendant's 1998 revocable trust apparently gave Mr. Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume arguendo that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's 1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant a testamentary power of appointment in his 1998 documents, he also knew that Defendant expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. That understanding between Mr. Barringer and Defendant, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, serves as a foundation for all of Plaintiff's assertions: that a contract not to exercise existed, that there was an express promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer, that there was an implied promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer, and/or that Defendant is equitably estopped from exercising any such power of appointment. Although this was the foundation, it is certainly not all of the

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evidence Plaintiff asserts that proves that Mrs. Barringer is precluded from exercising any power of appointment; plenty of other evidence exists to prove the existence of an agreement and/or an express or implied promise not to exercise.

Attorney John Jolley prepared the documents and Defendant executed reciprocal documents between 2012 and Mr. Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant exercised any testamentary power of appointment. Defendant did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when Attorney Harley Ruff began representing her.

Even assuming arguendo that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant attempt to exercise any testamentary power of appointment. Defendants Merrill Barringer and Merrill Light characterized Paul Barringer as a man in control. Paul Barringer never involved Defendant in his legacy business: she was never given any stock or any position in that business. She testified that she attended the June 2012 meeting to ensure that Paul Barringer did not forget to fire Kevin Luzak. It is beyond reasonable belief that Paul Barringer, who excluded his wife from his business for the entirety of their marriage while including his children, would knowingly give her the ability to decide the control of that company after his death, which would include the power to give the controlling stock to grandchildren or great-grandchildren, who might not even have been born before his death.

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The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

South Carolina Probate Code (SCPC) section 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: "by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract."

Assuming arguendo that Plaintiff relies *solely* on the existence of a contract not to revoke a will or devise — which she does not — any of the three methods may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent's will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent's will, but rather only that the will state material provisions of the contract. Mr. Barringer's 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Mrs. Barringer's 1998 will, executed simultaneously and symbiotically with Mr. Barringer's 1998 will and revocable trust, stated material provisions as to

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the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Mr. Barringer's estate plan. Mr. Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant's estate plan. Although these Barringer 1998 estate planning documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Mrs. Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Mr. Barringer's will. The mutuality of the contract is confirmed by Mr. Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust. If Mr. Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Mrs. Barringer, then he also understood that Mrs. Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract.

The material provisions of the contract stated in their 1998 estate plans, and particularly in Defendant's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following: the pattern of the reciprocal wills and trusts executed by Mr. Barringer and Defendant beginning in 2012, none of which exercised any power of appointment, until Defendant breached the contract by executing wills after he died which purport to exercise a power of appointment; family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate

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documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant. These documents form a consistent pattern of evidence.

SCPC section 62-2-701(3) provides different requirements: "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term "contract." This is consistent with contract law, which of course does not require the word "contract" in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Mr. Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Mr. Barringer and Defendant's 1998 documents create special testamentary powers of appointment and Mrs. Barringer's will specifically and expressly declines to exercise any power of appointment. This alone "evidences" a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment.

Although Plaintiff prevails under either SCPC section 62-2-701 subsection (1) or (3), Plaintiff also prevails under other South Carolina law. Defendant was in a fiduciary relationship

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with Mr. Barringer: she was his wife and was the attorney-in-fact under his power of attorney. In *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (S.C. App. 1990), the surviving spouse had a fiduciary and confidential relationship with the deceased spouse because she was his wife. The *Chapman* court held that either an *express or implied* promise from the surviving spouse not to exercise a testamentary power of appointment was binding, and that such an implied promise could be implied even *from silence*.

As discussed more thoroughly above, Mr. Barringer and Defendant, represented by the same attorney, executed mutual and reciprocal estate planning documents in 1998. Mr. Barringer purportedly gave Defendant a special testamentary power of appointment, and her will specifically and expressly declined to exercise that power. For the rest of Mr. Barringer's life, Defendant did not execute a document purporting to exercise that power.

Defendant's 1998 will made an express promise by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Mr. Barringer's life. Mr. Barringer went to his grave believing that his wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, *Trusts*, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. Certainly Mr. Barringer could infer a promise from Defendant because of her specific and express declination to exercise any power in her 1998 will; her failure to exercise any power for the rest of his competent life, and even for the rest of his life once he was incompetent; and from the numerous other situations where she engaged in acts supporting Mr. Barringer's intent that his children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.

South Carolina law recognizes that a promise not to revoke can be enforced through

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equitable estoppel, which requires the enforcement of a promise on which a decedent detrimentally relied based on the expression of that promise. In *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535, the court enforced a grandfather's oral promise to leave property to his grandson because the grandson detrimentally relied on that promise. The court enforced the promise even though it was oral and made after the enactment of section SCPC 62-2-701. Mr. Barringer relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other acts evidencing the intent to treat the children equally.

Consequently, there is not necessarily a single signal moment in time when the evidence must be applied to show that Mrs. Barringer became precluded from exercising any power of appointment she may have. The responses to interrogatories are as thorough and complete as can be. Those responses address all of the arguments Plaintiff has for asserting that Mrs. Barringer either agreed by contract and/or by enforceable promise not to exercise the power of appointment. The pattern and history between Mr. and Mrs. Barringer, as set forth in the response to the interrogatories, constitute permissible evidence to prove Plaintiff's assertion, as thoroughly and completely as can be done presently, given the types of evidence that will be allowed to show the contract and/or promise. Additional discovery may well lead to additional information that will be provided to Defendant as appropriate.

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Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: May 26, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 2019-CP-07-01294 **RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: Defendant Merrill U. Barringer and her attorney of record, J. Ashley Twombley:

The Plaintiff, Hampton B. Luzak ("Plaintiff"), by and through her undersigned attorneys, sets forth below information in response to interrogatories propounded to her by Defendant Merrill U. Barringer ("Defendant" and/or "Barringer").

GENERAL OBJECTIONS

Plaintiff Hampton Barringer Luzak, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby answers Defendant's First Set of Interrogatories subject to the general objections set forth below. These general objections form a part of the response to each Interrogatory and are set forth here to avoid the duplication and repetition of restating them for each response. The general objections may be specifically referred to in response to an Interrogatory for the purpose of clarity; however, the failure to incorporate specifically a general objection should not be construed as a waiver of the objection.

1. Plaintiff objects to each interrogatory and production request to the extent that it seeks discovery of matters protected from disclosure by the attorney-client privilege and the work product doctrine.

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2. Plaintiff objects to responding to Interrogatories that seek information not reasonably calculated to lead to the discovery of admissible evidence or to the production of relevant information as required by the South Carolina Rules of Civil Procedure.

3. Plaintiff objects to responding to any Interrogatory which is overly broad, unduly burdensome, cumulative or duplicative under the South Carolina Rules of Civil Procedure.

4. Plaintiff objects to responding to any Interrogatory that exceeds the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.

5. Plaintiff objects to responding to any request for discovery as to any matters that are not relevant to the claims or defenses in this case.

6. Plaintiff objects to any Interrogatories to the extent they seek disclosure of mental impressions, conclusions, opinions and legal theories of Plaintiff's attorneys or other representatives concerning this litigation.

7. Plaintiff objects to those Interrogatories that seek identification of a specific document, paragraph, sentence or phrase since the meaning of contracts and estate planning instruments must be determined by reviewing all the applicable documents as a whole and not by viewing any one document, paragraph, sentence of phrase in isolation. Evidence of such matters as contracts not to revoke, fiduciary responsibility, and/or promises not to change an estate plan and/or exercise a testamentary power of appointment in a manner that would change an estate plan cannot necessarily be gleaned solely from references to specific terms, sentences, items, phrases, or paragraphs, and not even necessarily from an entire document, but rather from an analysis and/or comparison of a history of documents, discussions, meetings, patterns, agreements, and understandings.

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8. Plaintiff objects to those Interrogatories that seek identification of a specific document, paragraph, sentence, or phrase because the nature of the relationship between two persons' estate plans, and understandings and agreements about those estate plans, must be viewed in light of their pattern of estate planning over time and the historical symmetry (or lack thereof) of their estate planning documents and relevant documents and discussions. Accordingly, evidence of such matters as contracts not to revoke, fiduciary responsibility, and/or promises not to change an estate plan and/or exercise a testamentary power of appointment in a manner that would change an estate plan cannot necessarily be gleaned solely from references to specific terms, sentences, items, phrases, or paragraphs, and not even necessarily from an entire document, but rather from an analysis and/or comparison of a history of documents, discussions, meetings, patterns, agreements, and understandings.

9. Plaintiff objects under Rule 33(d), SCRCP, to the contention interrogatories contained in Defendant's First Set of Interrogatories as being premature at this stage of the litigation since essential discovery including but not limited to written discovery and the depositions of the Defendant and many other witnesses on the issues raised in these Interrogatories have not been completed.

10. In providing these responses and objections to the interrogatories and production requests, Plaintiff does not in any way waive nor intend to waive, but rather intends to preserve and is preserving:

a. All objections as to competency, relevancy, materiality and admissibility of the Interrogatory and/or production request or subject matter thereof;

b. All rights to object to the use of any said answer or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other action;

c. All rights to object on any ground to any request for further responses to these or any other interrogatories and/or request for production, or other discovery

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requests involving or related to the subject matter of the interrogatory and/or request for production; and,

d. All rights to supplement her responses since the objections and responses set forth below constitute the best information presently available to Plaintiff. Plaintiff has not completed discovery and/or investigation of the facts relevant to this proceeding, nor has Plaintiff completed preparation of this case for trial. Plaintiff reserves the right to supplement these responses as she completes preparation of this case for trial. Discovery requests from Defendant and third parties remain outstanding, and material factual witnesses have yet to be deposed. Accordingly, the following objections and responses are provided without prejudice to Plaintiff's right to amend, supplement, or change her objections and responses if and when additional, different, or more accurate information becomes available.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

As qualified and limited by the foregoing general objections, incorporated herein by reference, Plaintiff responds and objects specifically to Defendant's first set of interrogatories as follows:

Interrogatory No. 1. Identify all documents supporting your assertion Paul Barringer and Merrill Barringer entered into a "binding contract not to revoke their estate plans" (as stated in the third cause of action of the Complaint).

Response:

A. The Paul B. Barringer, II Revocable Trust dated December 4, 1998 (Bates numbered MUB's 1st Document Production 1-49);

B. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 (Bates numbered MUB's 1st Document Production 172-184);

C. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998 (unnumbered);

D. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998 (unnumbered);

E. The Paul B. Barringer Family Trust under Agreement dated December 22, 1998 as modified by the Beaufort County Probate Court in case no. 2006-GC-07-00040 (MUB's 1st Document Production 245-260; Hampton Luzak 3-37, 43-70, 400-455) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998;

F. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998 (MUB's 1st Document Production 261-300);

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G. Barringer Family Voting Agreement of September 21, 1998, as amended on or about September 30, 20004 (Bates numbered Hampton Luzak 926-34);

H. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company entered February 1, 2010 among Merrill Light, Hampton Luzak, Victor Barringer, and CFRC (Hampton Luzak 76-81);

I. First Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 28, 2012. (MUB's 1st Document Production 50-79)

J. Last Will and Testament of Paul B. Barringer, II dated February 28, 2012 (MUB's 1st Document Production 185-192);

K. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012. (unnumbered);

L. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered);

M. Second Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated July 20, 2012. (MUB's 1st Document Production 80-108);

N. Third Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 109-140);

O. Last Will and Testament of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 193-200);

P. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered);

Q. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered);

R. Fourth Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 141-171);

S. Last Will and Testament of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 201-209);

T. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered);

U. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered);

V. All documents showing equal gifts of nonvoting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflected in the CFRC stock register of nonvoting stock (see CFRC 629);

W. All documents showing equal gifts of voting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflecting in the CFRC stock register of voting stock (see CFRC_SC_000000004-6);

X. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001 (Hampton Luzak 1081-1082);

Y. E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Hampton 1-2);

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Z. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765);

AA. Various estate planning documents and diagrams from Robert Slane, including but not limited to those documents located at: (i) 12-19-17 Slane Subpoena Response 43-44, 628-642, 1627-1641, 1797-1816, and 2301-2302; (ii) MUB's Supplement to 1st Doc Production 684-700 and 740-758; (iii) 9-22-17 McNair Subpoena Response 205-211; and (iv) CFRC Harrell 287-294;

BB. Will of Merrill U. Barringer dated September 15, 2016 (unnumbered);

CC. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 (unnumbered);

DD. Will of Merrill U. Barringer dated March 2, 2017 (unnumbered);

EE. Will of Merrill U. Barringer dated February 22, 2018 (unnumbered);

FF. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 (unnumbered);

GG. Will of Merrill U. Barringer dated May 30, 2019 (unnumbered);

HH. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 (unnumbered);

II. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 (MUB's Supplement to 1st Doc Production 682-683);

JJ. All gift tax returns of Paul and Merrill Barringer (9-14-17 Davis Subpoena Response 53-72, 85-264); and

KK. All documents related to the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012.

Interrogatory No. 2. For each document you identify in response to interrogatory number 1 above, set forth the page number, paragraph number and specific sentence(s) that evidence the contract or contain any terms of the contract.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff identifies various page numbers, paragraphs and sentences that would be included in an analysis of a contract not to revoke their estate plans between Paul and Merrill Barringer, but any such analysis would

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encompass a review of the entire documents listed below and not be limited to the following isolated excerpts of documents:

A. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998, Item III at pages 1-2 (unnumbered);

B. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-42 (unnumbered);

C. The Paul B. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-41 (Bates numbered MUB's 1st Document Production 40-41);

D. The Paul B. Barringer Family Trust under Agreement dated December 22, 1998, Item XII, para. (d)(v) at pages 28-30 (MUB's 1st Document Production 237-239) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998;

E. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998, Item XV, para. (d)(v) at pages 32-34 (MUB's 1st Document Production 293-295);

F. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, wherein the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants (Hampton Luzak 76-81);

G. Barringer Family Voting Agreement, as amended, wherein the applicable sentences include but are not limited to: the introductory sentence, Recitals paragraphs A, B and C including the chart and footnote thereto in paragraph B, Agreement paragraphs 1-7, and the Amendment to Barringer Family Voting Agreement of September 2004 (Bates numbered Hampton Luzak 926-34);

H. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998, Item III at pages 1-2 (Bates numbered MUB's 1st Document Production 172-173);

I. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered) – see entire document with no power of appointment exercised;

J. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

K. First Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 28, 2012. (MUB's 1st Document Production 50-79) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

L. Last Will and Testament of Paul B. Barringer, II dated February 28, 2012 (MUB's 1st Document Production 185-192) – see entire document with no power of appointment exercised;

M. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered) – see entire document with no power of appointment exercised;

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N. Second Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated July 20, 2012. (MUB's 1st Document Production 80-108) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

O. Third Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 109-140) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

P. Last Will and Testament of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 193-200) – see entire document with no power of appointment exercised;

Q. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

R. Fourth Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 141-171) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

S. Last Will and Testament of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 201-209) – see entire document with no power of appointment exercised;

T. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered) – see entire document with no power of appointment exercised;

U. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

V. All documents showing equal gifts of nonvoting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflected in the CFRC stock register of nonvoting stock (see CFRC 629 – entries for nonvoting share certificates numbers 1, 2, and 39-41);

W. All documents showing equal gifts of voting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflecting in the CFRC stock register of voting stock (see CFRC_SC_000000004-6 – entries for voting share certificates 2 and 3);

X. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001: see entire letter (Hampton Luzak 1081-1082);

Y. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765) whose depictions include indistinguishable trusts to each of the three Barringer children from the Family Trust and Charitable Lead Trust (pgs. 762-765) and the description that funds coming from both "Paul's Death" and "Merrill's Death" would "Distribute equally" to trusts for each of the children (pg. 764); and

Z. Various estate planning documents and diagrams from Robert Slane, including but not limited to those documents located at: (i) 12-19-17 Slane Subpoena Response 43-44 [including but not limited to "Paul and Merrill's goals" paragraphs 3 and 4 dated Nov. 11,

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2011]; pg. 628 [1st and 3rd paragraphs of R. Slane memo after Feb. 22, 2012]; pg. 631 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated Nov. 10, 2011]; pg. 632 [Family By-pass Trust to "Distribute equally" to children, dated Nov. 10, 2011]; pg. 633 [Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated Nov. 10, 2011]; pg. 634 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 635 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 640 [Family Trust for the benefit of each of the 3 Barringer children, dated Feb. 23, 2012]; pgs.641-642 [Merrill Barringer estate plan options flowing into the Family Trust and use of the Paul & Merrill Barringer Insurance Trust, dated Feb. 23, 2012]; pg. 1798 [Barringer Family Trust for benefit of all 3 children, dated Dec. 6, 2011]; pg. 1799 [Barringer Family Trust for benefit of all 3 children to be funded with assets upon both Paul's death and Merrill's death and to "Distribute equally" to trusts for each of the children]; (ii) MUB's Supplement to 1st Doc Production 684 [estate plan overview addressed to both Paul and Merrill Barringer; pg. 687 [all factors listed in the Primary Goals as applied to Paul and Merrill Barringer]; pg. 692 [Gertrude H. Barringer Skip Trust distributions going to all children]; pg. 695 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated April 11, 20060]; pg. 696 [Family By-pass Trust to "Distribute equally" to children, dated April 11, 2006]; pg. 697 [PBB II Family Skip Trust & Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated April 11, 2006]; pg. 698 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated April 11, 2006]; pg. 699 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated April 1, 2006]; and (iv) CFRC Harrell 287-289, letter of Robert Slane to Paul Barringer dated March 7, 2001 including but not limited to paragraph 1 of page1 (Bates pg. 287), 2nd page, 6th paragraph (Bates pg. 288), and entirety of page 3 (Bates pg. 289); and

AA. Will of Merrill U. Barringer dated September 15, 2016 at Articles Two and Three of pages 1 and 2 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

BB. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

CC. Will of Merrill U. Barringer dated March 2, 2017 at Articles Two and Three of pages 1 through 3 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

DD. Will of Merrill U. Barringer dated February 22, 2018 at Articles Two and Three of pages 1 through 3 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

EE. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

FF. Will of Merrill U. Barringer dated May 30, 2019 at Articles Two and Three of pages 2 through 4 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

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GG. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

HH. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 – see entire handwritten letter (MUB's Supplement to 1st Doc Production 682-683); and

II. All gift tax returns of Paul and Merrill Barringer for tax years 1998, 1999, 2002, 2003, 2004, 2006 and 2012 at page 1, Part 1 (9-14-17 Davis Subpoena Response 53-72, 85-264 for tax years 1998, 1999, 2003, 2004, 2006 and 2012);

JJ. E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Hampton 1-2); and

KK. All documents related to the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012.

Interrogatory No. 3. S.C. Code 62-2-701 (1) provides that a contract not to revoke a will can only be established by "provision of a will of the decedent stating material provisions of the contract." If you contend any will ever executed by Mr. Barringer contains material provisions of such a contract, identify the will and set forth the page number, paragraph number and specific sentence(s) in the will stating the material provisions of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

South Carolina Code § 62-2-701 provides several methods of proving a contract not to revoke a will (see responses to Interrogatory numbers 4 and 5 below): "(1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." As to part (1) of § 62-2-701, however, the terms of the 1998 estate planning documents of Paul and Merrill Barringer, specifically their wills and trusts, identified above establish the material provisions of equal treatment of the siblings. The reciprocal provisions of Merrill U. Barringer's will, and her express failure to exercise the power of appointment, show similar contract terms. For the reasons stated in General Objections 7 and 8, the foregoing

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documents are construed in context with the other documents listed in Response Number 1 above.

Interrogatory No. 4. S.C. Code 62-2-701 (2) provides that a contract not to revoke a will can only be established by "an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract." If you contend any will ever executed by Mr. Barringer contains an express reference to a contract, a) identify the will and set forth the page number, paragraph number and specific sentence(s) in the will that reference the contract and b) set forth all extrinsic evidence proving the terms of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objection number 7 above, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

South Carolina Code § 62-2-701 provides several methods of proving a contract not to revoke a will (see responses to Interrogatory numbers 3 and 5). As to part (2) of § 62-2-701, however, there is no express reference to a contract in a will of Paul Barringer if the term "express reference" means a specific use of the term "contract" in a will.

Interrogatory No. 5. S.C. Code 62-2-701 (3) provides that a contract not to revoke a will can be established by "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." If you contend any writing ever signed by Mr. Barringer evidences any such contract, a) identify the writing and set forth the page number, paragraph number and specific sentence(s) in the writing signed by Mr. Barringer that evidences the contract and b) set forth all extrinsic evidence proving the terms of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the

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deposition of the defendant on the issues raised in this Interrogatory has not been completed. Plaintiff further objects on the grounds this Interrogatory is compound and in actuality comprises two interrogatories. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Subject to the above-stated objections, Plaintiff responds as follows:

As to part (3) of § 62-2-701, however, see all the documents listed in Responses Numbers 1 and 2 above, incorporated herein, along with the references and descriptions in Responses 1 and 2 above, incorporated herein, including the following documents:

A. The Paul B. Barringer Family Trust under Agreement dated December 22, 1998 as modified by the Beaufort County Probate Court in case no. 2006-GC-07-00040 (MUB's 1st Document Production 245-247; Hampton Luzak 3-37, 43-65, 400-455) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998 including Item XII, para. (d)(v) at pages 28-30 (MUB's 1st Document Production 237-239);

B. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, wherein the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants (Hampton Luzak 76-81);

C. Barringer Family Voting Agreement, as amended, wherein the applicable sentences include but are not limited to: the introductory sentence, Recitals paragraphs A, B and C including the chart and footnote thereto in paragraph B, Agreement paragraphs 1-7, and the Amendment to Barringer Family Voting Agreement of September 2004 (Bates numbered Hampton Luzak 926-34);

D. The Paul B. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-41 (Bates numbered MUB's 1st Document Production 40-41);

E. All documents showing equal gifts of nonvoting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflected in the CFRC stock register of nonvoting stock (see CFRC 629 – entries for nonvoting share certificates numbers 1, 2, and 39-41);

F. All documents showing equal gifts of voting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflecting in the CFRC stock register of voting stock (see CFRC_SC_000000004-6 – entries for voting share certificates 2 and 3);

G. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001: see entire letter (Hampton Luzak 1081-1082);

H. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765) whose depictions include indistinguishable trusts to each of the three Barringer children from the Family Trust and Charitable Lead Trust (pgs.

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762-765) and the description that funds coming from both "Paul's Death" and "Merrill's Death" would "Distribute equally" to trusts for each of the children (pg. 764); and

I. Various estate planning documents and diagrams from Robert Slane, including but not limited to those documents located at: (i) 12-19-17 Slane Subpoena Response 43-44 [including but not limited to "Paul and Merrill's goals" paragraphs 3 and 4 dated Nov. 11, 2011]; pg. 628 [1st and 3rd paragraphs of R. Slane memo after Feb. 22, 2012]; pg. 631 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated Nov. 10, 2011]; pg. 632 [Family By-pass Trust to "Distribute equally" to children, dated Nov. 10, 2011]; pg. 633 [Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated Nov. 10, 2011]; pg. 634 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 635 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 640 [Family Trust for the benefit of each of the 3 Barringer children, dated Feb. 23, 2012]; pgs.641-642 [Merrill Barringer estate plan options flowing into the Family Trust and use of the Paul & Merrill Barringer Insurance Trust, dated Feb. 23, 2012]; pg. 1798 [Barringer Family Trust for benefit of all 3 children, dated Dec. 6, 2011]; pg. 1799 [Barringer Family Trust for benefit of all 3 children to be funded with assets upon both Paul's death and Merrill's death and to "Distribute equally" to trusts for each of the children]; (ii) MUB's Supplement to 1st Doc Production 684 [estate plan overview addressed to both Paul and Merrill Barringer; pg. 687 [all factors listed in the Primary Goals as applied to Paul and Merrill Barringer]; pg. 692 [Gertrude H. Barringer Skip Trust distributions going to all children]; pg. 695 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated April 11, 20060]; pg. 696 [Family By-pass Trust to "Distribute equally" to children, dated April 11, 2006]; pg. 697 [PBB II Family Skip Trust & Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated April 11, 2006]; pg. 698 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated April 11, 2006]; pg. 699 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated April 1, 2006]; and (iv) CFRC Harrell 287-289, letter of Robert Slane to Paul Barringer dated March 7, 2001 including but not limited to paragraph 1 of page1 (Bates pg. 287), 2nd page, 6th paragraph (Bates pg. 288), and entirety of page 3 (Bates pg. 289).

The above-referenced documents signed by Paul Barringer include those listed in Response No. 1 at paragraphs A, B, E -- G, I, J, M -- O, R, S, V – X, and II – KK; and in Response No. 2 at paragraphs C – H, K, L, N – P, R, S, V – X, HH, II, and KK.

Interrogatory No. 6. With respect to your contention that Merrill Barringer owes a fiduciary duty to Paul Barringer to take or not take certain actions related to her estate plan, state a) what Merrill Barringer had a duty to do or not to do and b) set forth any evidence to support your assertion or believe.

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Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Plaintiff further objects on the grounds this Interrogatory is compound and in actuality comprises two interrogatories. Subject to the above-stated objections, Plaintiff responds as follows:

At family discussions and meetings, it was consistently explained by Paul Barringer that the company control would be divided equally between Plaintiff and Merrill Light. Merrill Barringer never indicated that she would override this plan and was always compliant. Neither Paul Barringer nor Merrill Barringer ever discussed exercising any powers of appointment. Merrill Barringer has a fiduciary duty to honor the plan to divide the company control equally between Plaintiff and Merrill Light and not exercise the powers of appointment. Merrill Barringer has a fiduciary duty not to change her estate plan established with and by Paul Barringer. Plaintiff anticipates this evidence will be presented in testimony of Plaintiff and Kevin Luzak and perhaps others. Plaintiff also incorporates all the documents listed in Response No. 1 above as responsive to this interrogatory request.

Interrogatory No. 7. In response to Interrogatory number 20 to Defendant's Third Set of Interrogatories in Civil Action No. 2016-CP-07-1919, you identified documents a - j as documents that provided for you to receive CFRC voting stock when Paul Barringer passed away. When respect to each document identified, set forth the page number, paragraph number and specific sentence(s) of each document that provides for you to receive CFRC voting stock.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

A. For document *a*, the Paul B. Barringer, II Revocable Trust dated Dec. 4, 1998, the applicable sentences include but are not limited to: (1) Item V(e), all sentences, on pages 13-14 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document Production 13-14 for GST exempt

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trusts and shares; (2) Item VI(a), all sentences, on page 17 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document production 17; and (3) Item XVII, paragraph (d), sub-paragraph (5) on pages 40-41 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document Production 40-41. The remaining provisions of the Revocable Trust of Paul Barringer of Dec. 4, 1998 not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

B. For document *b*, Last Will &Testament of Paul Barringer dated Dec. 4, 1998, the applicable sentences include but are not limited to the one sentence that comprises Item III of the Last Will &Testament of PBB dated 12/4/1998. The remaining provisions of the Last Will &Testament of Paul Barringer dated Dec. 4, 1998 not specified above are also included in this response as the provisions of the will are interrelated and provide context to the specific paragraphs and sentences identified above.

C. For document *c*, the First Amended and Restated Revocable Trust of Paul B. Barringer, II dated February 28, 2012, the applicable sentences include but are not limited to: (1) the last sentence of Article VII, ¶ (5) on page 7 thereof (MUB's 1st Document Production 57); and (2) the 3rd sentence of Article VII, ¶ (4) on pages 8-9 thereof (MUB's 1st Document Production 58-59); and (3) the one sentence consisting of Article IX, ¶ (5) on page 10 of the First Amended and Restated Revocable Trust of Paul B. Barringer dated 2/28/2012 which references and incorporates Article VI of Merrill U. Barringer's Revocable Trust of 12/4/1998. The remaining provisions of the Revocable Trust of Paul Barringer of Feb. 28, 2012 not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

D. For document *d*, Last Will &Testament of Paul B. Barringer dated February 28, 2012, the applicable sentences include but are not limited to Item V, first and second sentences, page 3 thereof (MUB's 1st Document Production 188). The remaining provisions of the Last Will &Testament of Paul Barringer dated Feb. 28, 2012 not specified above are also included in this response as the provisions of the will are interrelated and provide context to the specific paragraphs and sentences identified above.

E. For document *e*, the November 6, 2011 e-mails between Paul Barringer and Travis Bryant, the applicable sentences include but are not limited to all sentences of the Paul Barringer e-mail and the list of recipients in "CC:" line of the Travis Bryant response (Hampton Luzak 938).

F. For document *f*, estate plan diagrams of John Jolley and Robert Slane sent to Paul Barringer on 12/6/2011, the applicable sentences include but are not limited to: (1) MUB's Supplement to 1st Doc Production 762 showing three trusts for Paul Barringer's children; (2) MUB's Supplement to 1st Doc Production 763 showing three trusts for Paul Barringer's children; (3) MUB's Supplement to 1st Doc Production 764 showing three sub-trusts for Paul Barringer's children out of the Barringer Family Trust for the trustee to "distribute equally"; and (4) MUB's Supplement to 1st Doc Production 765 showing three trusts for Paul Barringer's children.

G. For document *g*, various estate planning documents from Robert Slane files, the applicable sentences include but are not limited to: (1) 12-19-17 Slane Subpoena Response 43, 1st paragraph 3 and 2nd paragraph 5, sub-paragraph *c*; (2) 12-19-17 Slane Subpoena Response 628 includes all 4 paragraphs and all sentences therein; (3) 12-19-17 Slane

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Subpoena Response 631 showing Family By-pass Trust at 1st Spouse's Death for the Barringer children with reference to the "PBB II Family Skip Trust" and the "P&M Irrevocable Insurance Trust" flowing "Outside of estate"; (4) 12-19-17 Slane Subpoena Response 632 showing Family By-pass Trust to "distribute equally" to the Barringer children and a new skip trust to support the Barringer children with reference to the "PBB II Family Skip Trust" and the "P&M Irrevocable Insurance Trust" flowing "Outside of estate"; (5) 12-19-17 Slane Subpoena Response 633 showing Insurance Skip Trust to "divide equally" for the benefit of all three Barringer children; (6) 12-19-17 Slane Subpoena Response 640 showing "Overall Estate Plan At Paul's Death" showing distributions from Paul Barringer's trusts for the benefit of all three Barringer children. The remaining parts of the above-stated estate planning documents of Paul Barringer not specified above are also included in this response as the various components of Paul Barringer's estate plan are interrelated and provide context to the specific documents identified above.

H. For document *h*, Assignment of Limited Partner Interest dated December 31, 2007, the applicable sentences include but are not limited to: (1) the second sentence of paragraph B of the Recitals (Hampton Luzak 66); paragraph 2 of the Agreement section (*Id.*); and consent signatures of Merrill Light and Hampton Luzak (Hampton Luzak 69-70). The remaining provisions of the Assignment of Limited Partner Interest dated Dec. 31, 2007 not specified above are also included in this response as the provisions of the Assignment are interrelated and provide context to the specific paragraphs and sentences identified above.

I. For document *i*, the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 as modified, the applicable sentences include but are not limited to: (1) Item II, paragraph (b), first sentence at pages 1-2 of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 3-4); (2) Item II, paragraph (e), first sentence of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 5); (3) Item XII(d)(v) of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 30 and 32); (3) First Amendment to The Paul B. Barringer, II Family Trust made October 16, 2006, paragraph FIRST, 2nd sentence (Hampton Luzak 52); (4) letter of Keith Martens, Esquire, dated September 22, 2006, first paragraph, 3rd and 4th sentences thereof (Hampton Luzak 64). The remaining provisions of the Paul B. Barringer Family Trust Under Agreement dated Dec. 4, 1998, as modified, not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

J. For document *j*, Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants. (Hampton Luzak 76-81). The remaining provisions of the Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated Feb. 1, 2010 not specified above are also included in this response as the provisions of the Agreement are interrelated and provide context to the specific paragraphs and sentences identified above.

The documents described in paragraphs A – J above are not the only documents and evidence responsive to this topic. Plaintiff also incorporates by reference the documents identified in response numbers 1 and 2 above.

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Interrogatory No. 8. Identify any and all writings and/or document(s) that are 1) signed by Merrill Barringer and 2) evidence a contract between Paul Barringer and Merrill Barringer not to revoke their estate plans.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Any analysis of the documents encompassed in a contract not to revoke an estate plan would entail a review of the entire documents listed below and not be limited to isolated excerpts from such documents. Subject to the above-stated objections, Plaintiff responds as follows:

A. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998 (unnumbered);

B. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998 (unnumbered);

C. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered);

D. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012. (unnumbered);

E. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered);

F. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered);

G. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered);

H. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered);

I. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 (MUB's Supplement to 1st Doc Production 682-683); and

J. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998 (MUB's 1st Document Production 261-300);

K. The split gift tax returns of Paul and Merrill Barringer (9-14-17 Davis Subpoena Response 53-72, 85-264);

L. Will of Merrill U. Barringer dated September 15, 2016 (unnumbered);

M. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 (unnumbered);

N. Will of Merrill U. Barringer dated March 2, 2017 (unnumbered);

O. Will of Merrill U. Barringer dated February 22, 2018 (unnumbered);

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P. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 (unnumbered);

Q. Will of Merrill U. Barringer dated May 30, 2019 (unnumbered); and

R. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 (unnumbered).

Interrogatory No. 9. If you allege Merrill Barringer promised Paul Barringer she would not exercise her testamentary powers of appointment contained in Paul Barringer's estate plans, please identify all documents referring to, relating to or evidencing this promise; identify the date the promise was made; and identify all persons present at the time the promise was made or who have knowledge of the promise.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

A. See all of the documents listed in Response to Interrogatory number 1 above.

B. The promise(s) would have been made no later than December 4, 1998.

C. The persons present or with knowledge of the promise(s) would include Hampton Luzak, Kevin Luzak, Merrill U. Barringer, Merrill B. Light, Randy Light, Victor Barringer, John Jolley, Robert Slane and perhaps others.

THE GILREATH LAW FIRM, P.A.

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ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: July 27, 2020
Greenville, South Carolina.

EXHIBIT G

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT In the Matter of: Estate of Paul B. Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A Nos.: 2019-CP-07-01253 2019-CP-07-01294 **CERTIFICATE OF SERVICE**

The undersigned attorney for the Plaintiff Hampton B. Luzak certifies that he served a true copy of the **Response to Defendant's First Set of Interrogatories to Plaintiff** regarding the above-captioned cases by the following means:

____	Hand Delivery	____	Facsimile
_X_	United States Mail	____	Overnight Delivery
_X_	Other: Electronic Mail		

with adequate payment or arrangements for payment to insure delivery thereof to the following opposing counsel of record:

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Attorneys for Plaintiff Hampton B. Luzak

Date: July 27, 2020
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 2019-CP-07-01294 **PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S SECOND AND THIRD CAUSES OF ACTION**

TO: DEFENDANT AND HER COUNSEL:

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Merrill U. Barringer ("Mrs. Barringer") made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property in a manner other than as set forth in the default provisions of the estate plan of Decedent Paul Barringer ("Mr. Barringer"). In particular, Mrs. Barringer has contended that she has a testamentary power of appointment to redirect the voting stock of Mr. Barringer in his legacy company Coastal Forest Resources Company ("CFRC") to Defendant Merrill Light. Plaintiff alleges that, if in fact Mr. Barringer intended to give Mrs. Barringer a testamentary power of appointment over such voting stock, which Plaintiff disputes, Mr. Barringer relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Mr.

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Barringer,[1] Mr. Barringer intended to treat his daughters --- Plaintiff and Defendant Merrill Light --- equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Mrs. Barringer and assertions made in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise any testamentary power of appointment given her and to impose a constructive trust for the benefit of Plaintiff in the subject property with respect to the intended equal treatment of Plaintiff.

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Mr. Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Mrs. Barringer's will(s) that did not exercise any power of appointment related to voting stock before Mr. Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Mr. Barringer resulting from those actions would be invalid. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke.

[1] Those that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

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Reserving all rights, Plaintiff seeks summary judgment as to her second and third causes of action. Plaintiff, hereby incorporating all prior pleadings, memoranda, and exhibits, will subsequently file accompanying memoranda.

Consequently, Plaintiff respectfully requests that this Court grant summary judgment in her favor on Plaintiff's second and third causes of action.

Respectfully submitted,

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July 30, 2021
Greenville, South Carolina.

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SC Court of Appeals

ELECTRONICALLY FILED - 2021 Aug 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
BENTLEY PRICE, CIRCUIT COURT JUDGE

Case Nos.:
2016-CP-07-01919
2019-CP-07-01253
2019-CP-07-01294

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

Merrill B. Light, Merrill U. Barringer as Personal Representative of the Estate of Paul Brandon Barringer II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, ...Respondents

--and--

Coastal Forest Resources Company ("CFRC").....Intervenor/Respondent.

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent.

NOTICE OF APPEAL

Appellant Hampton B. Luzak (hereafter "Appellant") appeals from the trial court's order dated June 7, 2021 granting the motion to intervene and protective relief (including the striking of

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damages sought) by nonparty/intervenor/respondent Coastal Forest Resources Company (CFRC) and finally adjudicating other rights of Appellant, including the striking of Appellant's civil conspiracy cause of action, which order was received by counsel for Appellant on June 7, 2021. A copy of the order dated June 7, 2021 granting the motion to intervene and protective relief by CFRC is attached hereto as **Exhibit A**.[1] In addition, Appellant appeals from the order denying the Appellant's Motion for Reconsideration of this order dated July 13, 2021, received by counsel for Appellant on July 13, 2021. A copy of the order denying the Motion for Reconsideration of this order dated July 13, 2021 is attached hereto as **Exhibit B**.[2]

Appellant also appeals from the trial court's order dated July 6, 2021 which granted Respondent Merrill Light's Motion for Summary Judgment as to the February 28, 2012 Will of Paul B. Barringer and the First Amendment to the Paul B. Barringer II Revocable Trust set forth in the Seventh (alleging lack of capacity), Eighth (alleging undue influence), and Ninth (alleging mistake) Causes of Action asserted by Plaintiff, ruling that these documents were valid.[3] This order was received by counsel for Appellant on or about July 6, 2021. **Exhibit C.** The trial court denied Appellant's Motion for Reconsideration of this order on August 4, 2021, which order was received by counsel for Appellant on August 4, 2021. A copy of the order denying reconsideration of the order granting Merrill Light's Motion for Summary Judgment as to the February 28, 2012

[1] This order struck Appellant's cause of action for civil conspiracy and struck the first, second, fourth and sixth elements of damages set forth in the damage report of Appellant's damages expert. The damage elements struck by the trial judge comprise 93% of the damages sought by Appellant in her 11th, 12th, 13th, 16th, 17th,and 19th causes of action. With the striking of the civil conspiracy cause of action, the order is immediately appealable. A trial on bifurcated causes of action is scheduled for August 30, 2021. Appellant's inability to litigate the civil conspiracy cause of action negatively impacts Appellant's ability to prove the invalidity of critical documents at the scheduled trial. The order also released intervenor CRFC as a party to the action, ending its involvement in the case with finality and making the order immediately appealable.

[2] The order dated July 13, 2021 denied a total of five (5) motions, only one of which was specifically identified in the order.

[3] The dismissal by summary judgment with finality on the causes of action is immediately appealable. *See* footnote 1 regarding a pending trial date of remaining causes of action.

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Will of Paul B. Barringer and the First Amendment to the Paul B. Barringer Revocable Trust set forth in the seventh, eighth and ninth causes of action is attached hereto as **Exhibit D**.

Appellant also appeals from that order dated June 7, 2021 entitled "Order on Motions" which, *inter alia*, ordered that trial "shall proceed on the bifurcated claims only. A trial on the first phase as indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021." A copy of this order is attached hereto as **Exhibit E**.[4] Appellant also appeals from that order filed July 13, 2021, also entitled "Order on Motions" which denied four Motions to Reconsider, one of which is related to the June 7, 2021 "Order on Motions" and denied Appellant's Motion to Reconsider the June 7, 2021 "Order on Motions." The July 13, 2021 "Order on Motions" is already attached to this filing as **Exhibit B**.

Lastly, Appellant appeals from the trial court's order dated December 30, 2020 captioned "Order Granting Motion to Bifurcate," a copy of which was received by Counsel for Appellant on December 30, 2020 and the Form 4 order dated January 13, 2021 denying Appellant's Motion for Reconsideration, a copy of which was received on that same date. This appeal is already pending at the Court of Appeals as Appellate Case No. 2021-000159, and Appellant prays that the current appeal be consolidated with Appellate Case No. 2021-000159. Copies of the order already on appeal are of record by filing with this court dated February 12, 2021.

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[4] This order ruled on thirteen (13) motions, including Plaintiff's motion for judgment on the pleadings as to a pending counterclaim, a motion to compel production of documents, and a motion for summary judgment on certain counterclaims. This order is included in this Notice of Appeal pursuant to S.C. Code Ann. Section 14-3-330(a), which permits review of any intermediate order or decree necessarily affecting the judgment which has since been issued. *See also* Rule 54.

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August 5, 2021

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ELECTRONICALLY FILED - 2021 Jun 07 8:58 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: ESTATE OF PAUL B. BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, vs. MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal Representative of the Estate of Paul Brandon Barringer, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as putative trustee of the Paul B. Barringer, II, Revocable Trust dated December 4, 1998, and MERRILL B. LIGHT as Trustee of the Merrill Barringer Light Revocable Trust, Defendants.	)	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-07-1919 **ORDER GRANTING CFRC'S MOTION FOR INTERVENTION AND PROTECTIVE RELIEF**

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Aug 05 2021
SC Court of Appeals

This matter is before the Court on the Motion for Intervention and Protective Relief of Coastal Forest Resources Company ("CFRC").

After reviewing the Motion and accompanying materials, the Court finds that the Motion should be GRANTED.

It is therefore ORDERED AND ADJUDGED as follows:

1. CFRC is granted leave to intervene in this matter pursuant to Rule 24(a)(2), SCRCP for the limited purpose of precluding the litigation of derivative claims on behalf of CFRC in this action.

2. Mrs. Luzak's cause of action for civil conspiracy is hereby dismissed for lack of standing and subject matter jurisdiction. That cause of action constitutes a derivative claim under

the law of Virginia, CFRC's state of incorporation. *Simmons v. Miller*, 261 Va. 561, 573, 544 S.E.2d 666, 674 (2001). Mrs. Luzak lacks standing to pursue those claims because she has not fulfilled the requirements for commencing a derivative action set forth in the Virginia Stock Corporation Act, *see* Va. Code § 13.1-672.1, and she has not complied with the exclusive forum provision in Article VIII, Section 7 of CFRC's bylaws. In addition, this Court lacks subject matter jurisdiction to consider claims arising out of the internal affairs of a foreign corporation. S.C. Code § 33-15-105(c); *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649–50, 817 S.E.2d 273, 277–78 (2018).

3. Mrs. Luzak's first, second, fourth, and sixth categories of damages, as identified in her damages report by Dr. Charles Alford, are hereby stricken, and Mrs. Luzak cannot recover damages based on those claims. Those four categories of alleged damages also constitute derivative claims under Virginia law. Mrs. Luzak lacks standing to pursue derivative claims, and the Court lacks the subject matter jurisdiction to adjudicate them. *See* Va. Code § 13.1-672.1; S.C. Code § 33-15-105(c); *Pertuis*, 423 S.C. at 649–50, 817 S.E.2d at 277–78.

4. Mrs. Luzak is not entitled to recover for her second category of damages arising from the 2013 sale of CFRC to J. Travis Bryant because of res judicata. The United States District Court for the Eastern District of Virginia granted summary judgment as to this exact claim. *See Luzak*, 2016 WL 3854118 at *3–8.

5. Pursuant to S.C. Code § 15-53-20, the Court hereby declares that Mrs. Luzak may not litigate any derivative claims on behalf of CFRC in this action.

SO ORDERED, this the _____ day of ___ 2021.

_____

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Intervene

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



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ELECTRONICALLY FILED - 2021 Jul 13 2:52 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, As Personal Representative of the Estate of Paul Brandon Barringer, II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer, II, Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

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SC Court of Appeals

ORDER ON MOTIONS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

These consolidated cases came before the Court for a hearing on July 2, 2021 related to Plaintiff's Motion to Recuse filed June 16, 2021, and four Motions to Reconsider, all filed by Plaintiff on June 17, 2021. After reviewing the transcript from the hearing held May 27, 2021, the parties' briefing, and carefully considering the motions, the Court finds that the motions are due to be, and are hereby, denied.

IT IS SO ORDERED!

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



ELECTRONICALLY FILED - 2021 Aug 06 9:30 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253
ELECTRONICALLY FILED - 2021 Jul 06 9:43 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, v. MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2016-CP-07-01919 **ORDER GRANTING DEFENDANT MERRILL LIGHT SUMMARY JUDGMENT AS TO FEBRUARY 8, 2012, WILL AND FIRST AMENDMENT TO THE PAUL B. BARRINGER, II, REVOCABLE TRUST, DATED DECEMBER 4, 1998**

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SC Court of Appeals

This matter came before me for a hearing on May 27, 2021, on Defendant Merrill Light's Motion for Summary Judgment as to the validity of the Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998, executed by Paul B. Barringer, II, on February 28, 2012 (hereinafter "February 2012 Testamentary Documents"). I hereby grant Defendant's motion and, for the reasons set forth below, find as a matter of law that Mr. Barringer had testamentary capacity, was not subject to undue influence and was not mistaken when he executed the February 2012 Testamentary Documents, and that the February 2012 Testamentary Documents are valid.

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PROCEDURAL OBJECTION TO MOTION

Plaintiff argues that this Court could not consider this motion because Judge Mullen denied a previously moved for summary judgment as to all causes of action and on the basis of judicial estoppel. The Court rejects these arguments.

First, the prior order denying summary judgment as to all causes of action does not preclude consideration of this motion. Defendant has the benefit of additional testimony and evidence in support of her new motion and a prior denial of summary judgment by a different judge does not preclude renewal of the motion later in the proceedings. *See Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) ("[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment."); *Smith v. Breedlove,* 377 S.C. 415, 662 S.E.2d 67 (2008) ("The fact that different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered.").

Second, Defendants are not estopped from bringing this motion. Plaintiff claims that Defendant Merrill Light is "estopped" from asserting that the February 2012 Testamentary Documents "are valid for purposes of this summary judgment motion" because Plaintiff "inconsistently assert[s] the validity of a prior will and trust in 1998 and subsequent amendments to the will and trust which were executed after February 2012." Defendants' motion "seeks summary judgment as to the Seventh, Eighth, and Ninth causes of action as they apply to the February 28, 2012, will and trust."[1] Defendants' summary judgment motion seeks no relief as to

[1] The Court notes that two different complaints were filed in this consolidated action. One version (2016-CP-07-01919) asserted nineteen causes of action and was filed in probate court and then removed to circuit court. A second complaint (2016-CP-07-1961) asserting sixteen causes of action was filed directly in circuit court. The Court consolidated these actions under Case No. 2016-CP-07-1919 with consent of the parties in Orders dated May 19, 2017. No new consolidated complaint was filed and the Consolidation Orders do not designate which version of the complaint is the consolidated complaint. This motion addresses the Seventh, Eighth and Ninth causes of action as designated in the complaint filed originally in probate court and removed to circuit court (1919). That complaint also

any other version of Mr. Barringer's wills or trusts. Although Plaintiff cites no authority in support of her estoppel argument, presumably she intends to assert judicial estoppel.

> For the doctrine of judicial estoppel to apply, the following elements must be satisfied: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013). Further, "[j]udicial estoppel generally applies only to inconsistent statements of fact." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997).

Plaintiff alleges in the Seventh, Eighth and Ninth Causes of Action in her Amended Complaint that the trust amendments in 2012 "and/or" 2015 are invalid, because Mr. Barringer lacked testamentary capacity (Seventh) and was under undue influence (Eighth), and due to a mistake (Ninth). Here, although the pending motion for partial summary judgment relates only to the February 2012 Testamentary Documents, the Court understands that Defendants contend that all of Mr. Barringer's trusts and amendments were executed when Mr. Barringer had testamentary capacity and was not under undue influence. Thus, Defendants deny these causes of action in their entirety and put Plaintiff to her proof as to her claims that the trust amendments in 2012 "and/or" 2015 are invalid. If Plaintiff is unable to meet her burden of proving that some or all of the trust amendments are void on the basis that Mr. Barringer lacked capacity or was under undue influence when he executed the documents, then the Court will determine which, if any, amendment of the trust is controlling. Merely arguing that the February 2012 Testamentary

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bears the consolidated case number. These same causes of action are designated as the Fourth, Fifth, and Sixth causes of action in the complaint filed directly in circuit court (1961). For clarity, this Order applies to the Fourth, Fifth and Sixth causes of action in 1961, as well as the Seventh, Eighth, and Ninth causes of action in the complaint filed in 1919.

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Documents are not void due to lack of capacity, undue influence, or mistake does not contradict taking the same position as to subsequent trust amendments.

Thus, Plaintiff establishes none of the elements required to establish judicial estoppel (nor did Plaintiff even attempt to do so in her opposition brief or at the hearing on this motion). Defendants' position that none of the trust amendments are void due to a lack of testamentary capacity, undue influence or mistake is perfectly consistent with filing a motion for summary judgment as to only the February 2012 Testamentary Documents. The Court perceives no inconsistency at all, much less a "total inconsistency," as to any factual issue. Further, Defendants have not "been successful" in maintaining any prior factually inconsistent position, and nothing in Defendants' summary judgment motion appears to be a part of an intentional effort to mislead the Court.

Accordingly, Defendants are not estopped from bringing this motion for partial summary judgment.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment is set forth in Rule 56(c), SCRCP, which states that "summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In cases with a higher burden of proof, such as will contests, "the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." *Hancock v. Mis-South Mgmt. Co., Inc.,* 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there

must be more than a scintilla of evidence in order to defeat a motion for summary judgment." *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003*).*

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." S.C. Code Ann. § 62-3-407. As our Supreme Court has said:

> When the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. The contestants continue to bear the burden of proof throughout the will contest. In determining whether the contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants.

Calhoun v. Calhoun, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

FINDING OF FACTS

After a careful review of the briefs, exhibits and extensive oral argument, the Court finds that the following facts are in evidence, are undisputed and are relevant to Defendant's motion:

On December 4, 1998, Paul Barringer and his wife Merrill Barringer executed wills and revocable trusts, each of which, on the death of a spouse, left all the decedent's assets to the surviving spouse, who had a power of appointment to designate which of their direct descendants would receive the assets at his/her death. If the surviving spouse did not exercise the power of appointment in a subsequent will, the remaining assets at the surviving spouse's death were to be distributed equally to the Barringers' three children, Defendant Merrill Light, nonparty Victor Barringer and Plaintiff Hampton Luzak. These wills and trusts were prepared by a lawyer in Charlotte, North Carolina.

In 2011, the Barringers, residents of South Carolina, retained Hilton Head lawyer John Jolley to prepare updated wills and trusts. In addition to Mr. Jolley, Mr. Barringer brought in his

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estate planning insurance agent, Robert Slane, to assist in the estate planning. Mr. Barringer met with Mr. Jolley and Mr. Slane on multiple occasions and had numerous telephone conversations with them. Mr. and Mrs. Barringer executed their updated wills and trusts at the offices of Mr. Jolley on February 28, 2012.

As to whether Mr. Barringer had testamentary capacity to execute the Testamentary Documents and whether he was being unduly influenced at the time, Mr. Jolley testified as follows:

> Q. At any point in time prior to Mr. Barringer signing this February 28, 2012 will and trust, did you ever have any concern that Mr. Barringer was being unduly influenced or forced to sign these documents against his will?
>
> A. I had no reservations about Mr. Barringer.
>
> Q. Did you ever have any concern that he lacked the capacity to understand and sign the documents?
>
> A. I did not.[2]

In addition, Rebecca Bostick, Mr. Jolley's paralegal, testified that, during the entire period in which Mr. Jolley represented Mr. Barringer (2011-2015), Mr. Barringer "was fully competent and had no issues whatsoever from my standpoint . . . He certainly could make

[2] Plaintiffs argue that Mr. Jolley is subject to impeachment because he failed to notice a decline in Mr. Barringer's cognitive functioning in later months and years after February 28, 2012, and that Mr. Jolley's opinion "is not gospel." Plaintiff also complains that Mr. Jolley represented the Lights in their estate planning for many years and that he later became general counsel to the family timber business. Plaintiff has presented no proof to undermine the credibility of the observations made by Mr. Jolley on February 28, 2012, and indeed, Plaintiff's counsel stated at the hearing on this motion that Mr. Jolley had an ethical duty not to allow the documents to be executed if he did not believe that his client had capacity or was under undue influence. The Court finds Mr. Jolley's observations of Mr. Barringer at the execution of the Testamentary Documents and in the preceding months to be relevant, but not conclusive on the question of whether Mr. Barringer had testamentary capacity or was under undue influence when he executed the Testamentary Documents. Plaintiff has presented no evidence to indicate that either Mr. Jolley, or any other witness to the execution of the Testamentary Documents, was untruthful in their assessment of Mr. Barringer's condition on that day. Further, Plaintiff offered no evidence to prove the Mr. Jolley had an actual conflict of interest on the basis of his representation of both the Lights and the Barringers, and the Court notes no such conflict based on the record. Also, Plaintiff presented no evidence to prove that any of his observations relevant to this motion were influenced by any duties he owed to the Lights as their estate planning counsel. For the Court to conclude he was improperly influenced would require pure speculation. His later retention as general counsel to the family business also does not seem relevant to the signing of the February 2012 Testamentary Documents.]

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decisions." Mr. Slane was not present at the execution, but he testified that, based on his interactions with Mr. Barringer in close proximity to the execution, he had no concerns about Mr. Barringer's capacity or being unduly influenced.

Although counsel at the hearing stated that Merrill Light "admitted she was involved in her father's estate planning" and that she was present at the execution of the documents, Plaintiff has presented no testimony or documentary evidence from Mrs. Light admitting she was involved with the February 2012 Testamentary Documents or that she was present at the execution of the documents. To the contrary, Mr. Slane testified that, although Mrs. Light drove her father to one estate planning meeting on February 23, 2012, she "played no role" in the meeting. Further, Mrs. Light signed the amended trust document as the co-trustee on March 2, 2012, indicating she was not in attendance when her parents signed the amended will and trust on February 28.

In 2011, Paul Barringer suffered from prostate cancer and had radioactive seeds implanted in his prostate. That procedure caused multiple issues for Mr. Barringer, including frequent urinary tract infections and increased frequency of urination. He visited with his treating physician, Dr. Paul Long, on a frequent basis. Dr. Long's testimony and medical records from 2011 through February 28, 2012, show:

a. Mr. Barringer first complained of cognitive issues on November 23, 2011.

b. Dr. Long referred Mr. Barringer to the Mind Center which gave Mr. Barringer a test that was a "predictor" of future significant dementia, and it gave a 60% chance that the patient might have significant dementia in the future. The test said nothing about his current abilities.

c. Dr. Long also referred Mr. Barringer to Dr. William Garrett, a neurologist. In a December 27, 2011, letter to Dr. Long, Dr. Garrett stated that Mr. Barringer had some difficulty with abstract reasoning but he did not believe that Mr. Barringer had Alzheimer's Disease or significant dementia. Dr. Garrett wrote in a letter to Dr. Long that Mr. Barringer had "excellently preserved short-term memory and visual spatial difficulty, which would make the diagnosis of a primary degenerative dementia unlikely."

d. On January 3, 2012, Mr. Barringer self-complained to Dr. Long of "short term memory loss." Dr. Long gave Mr. Barringer the Mini Mental Status Exam ("Mini Mental") on that date, and Mr. Barringer had a perfect score, 30 out of 30. Dr. Long testified that he was not worried about Mr. Barringer's cognition at that time.

e. Mr. Barringer visited Dr. Long again on January 16, 2012. Dr. Long testified that on this visit, Mr. Barringer's cognition was improved and that Dr. Long agreed with Dr. Garrett's assessment. Dr. Long did not believe Mr. Barringer was suffering from Alzheimer's disease as of this date.

f. On February 16 and 27, 2012, Mr. Barringer visited Dr. Long complaining about urinary issues. Dr. Long noted on the February 27 visit, just one day before Mr. Barringer signed the February 2012 Testamentary Documents, "he has dementia but it is mild according to the test we give." The record of that visit makes no other reference to Mr. Barringer experiencing any cognitive impairment.

Plaintiff's evidence included these and other medical records, as well as various medical records relating to Mr. Barringer's condition in the months and years after the relevant date, February 28, 2012.

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Plaintiff also submitted evidence from lay witnesses reflecting observations about Mr. Barringer's mental state in the time leading up to execution of the February 2012 Testamentary Documents. The record contains emails sent by Mrs. Light's late husband Randy Light and by Tom Evans, a CFRC employee, in February of 2011, September of 2011, and January of 2012, in which the author expressed concern that Mr. Barringer was "confused and not himself," was "experiencing different health issues that affect his judgment regarding everyday decisions personally and business wise," and was exhibiting "irrational behavior." More specifically, Plaintiff referenced an email from Mr. Light on January 3, 2012, in which Mr. Light stated Mrs. Light "is concerned that PBB is starting to show more Irrational [sic] behavior on certain family issues which is disturbing to all siblings. A close friend of hers had a similar situation with her older parents and before power of attorney could be transferred they were declared unsound and the State took took [sic] control which was devastating." Notably, as noted above, Mr. Barringer achieved a perfect score on a Mini Mental examination administered by Dr. Long on that same day.

Plaintiff stated in her affidavit that Mr. Barringer "began having speech and processing problems, and he became unusually quiet, beginning in 2011." She testified that at Christmas in 2011, Mr. Barringer "was having trouble with his memory and he was having trouble speaking." She also testified that he exhibited "erratic behavior."

Plaintiffs also submitted an affidavit of Mr. Luzak, which largely overlaps with her own sworn statement. In pertinent part, as summarized in Plaintiff's brief, Mr. Luzak testified in his affidavit that:

> starting in early 2011, Mr. Barringer needed help with numbers and that his memory started to deteriorate, while his behavior became erratic; that Mr. Barringer had difficulty following the bidding at an auction in February 2012; that Mr. Barringer had trouble communicating and forming words at a family meeting on February 18, 2012.

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Mr. Luzak further stated in his affidavit that Mr. Barringer was "completely confused and incoherent and had tremendous difficulty speaking" at a board of directors meeting in February 2018. Mr. Luzak also repeated nearly verbatim testimony in Mrs. Luzak's affidavit that following the February 2012 board of directors meeting, Mr. Barringer "made completely unfounded accusations that [Mr. Luzak] was trying in effect to steal the company." Neither of the Luzak affidavits, however, places any statement to this effect in February 2012 or otherwise relates the timing of that statement to the execution of the Testamentary Documents on February 28, 2012. Further, Mr. Luzak testified in his affidavit that as of May 2012, Mr. Barringer's "relationship with Hampton Luzak and with me was on good terms as it had always been." Neither Mr. nor Mrs. Luzak provides a specific example of Mr. Barringer falsely believing Mr. Luzak was stealing from him before spring 2012 at the earliest.

Neither Plaintiff nor her husband were present when Mr. Barringer executed his estate planning documents on February 28, 2012. Plaintiff testified that she is unaware of any evidence of lack of testamentary capacity at the time of the execution or around that time. At her deposition, Plaintiff testified that she "did not know" of any wrongdoing by any Defendants prior to February of 2012.

The remaining evidence referenced by Plaintiff in her argument was months to years after the execution on February 28, 2012, and not relevant to the issues presently before the Court.

I. TESTAMENTARY CAPACITY (SEVENTH CAUSE OF ACTION)

"The party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence." *In re Thames,* 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct. App. 2001).

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"The test of whether a testator had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." *Hairston v. McMillan,* 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010). "The legal test for determining whether or not a person has sufficient mental capacity to dispose of his property by will does not include the proviso that he must have a reasonable basis on which to found his like or dislike of the natural objects of his bounty . . . . Further, the capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." *In re Estate of Weeks,* 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997).

Plaintiff has failed to present evidence sufficient to create a genuine issue of material fact on any of the three elements of testamentary capacity as to the February 2012 Testamentary Documents. Specifically, none of the documents or testimony before the Court creates a dispute over whether Mr. Barringer had the capacity to understand his estate, the objects of his affection or to whom he wished to leave his property at the time that he executed the Testamentary Documents on February 28, 2012. In fact, Plaintiff presented no witness to testify that Mr. Barringer did not have the capacity to meet these elements on that date. Not even Plaintiff or her husband's affidavits state that Mr. Barringer's cognitive condition was such that he did not know (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property on February 28, 2012.

The Court has carefully considered the circumstantial evidence put forth by Plaintiff, but at most, Plaintiff has painted the picture of an elderly person who in the several months preceding execution of the Testamentary Documents sought medical attention as a result of having some memory problems and confusion. The treating physicians have testified that in this time frame Mr. Barringer did not have "any significant dementia," he had not been diagnosed

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with Alzheimer's Disease, and in his most recent Mini Mental examination, he scored a perfect 30.[3] On the day before he executed the Testamentary Documents, Mr. Barringer visited his doctor who noted only "mild" dementia. This is simply not sufficient evidence that Mr. Barringer was incapable of understanding his assets, his beneficiaries or to whom he wished to leave his estate. Accordingly, this evidence is insufficient to create a genuine issue of material fact as to the claim the Mr. Barringer lacked testamentary capacity at the time of the execution of the February 2012 Testamentary Documents.

Instead of addressing the three requirements to show the absence of testamentary capacity, Plaintiff instead argues that Mr. Barringer was "chronically incapacitated" beginning in 2011 in general. Plaintiff's reliance on *Gaddy v. Douglass*, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004), is misplaced. That case involved contractual capacity and not testamentary capacity of an elderly woman whose treating physician said she had the mind of a five to six year old. Importantly, in *Gaddy*, the Court pointed out in Footnote 12 that:

> We in no way suggest that all people suffering some degree of dementia, from Alzheimer's disease or otherwise, invariably lack contractual capacity. We hold that the subject of contractual capacity of one suffering dementia should be decided in a fact-driven, individualized manner. There may well be situations where an individual at the onset of Alzheimer's disease, or in the early stages of dementia, may retain sufficient capacity to contract. This, however, is not such a case, for Ms. M's capacity to contract had long since passed when her previously absent family members entered her life and attempted to gain control of her assets.

Id. at 346, 597 S.E.2d at 21 n.12. The undisputed evidence in this record, even when viewed in the light most favorable to Plaintiff, shows that in the time leading up to and including February 28, 2012, Mr. Barringer experienced some intermittent short-term memory issues, some

[3] Plaintiff argues that Mr. Barringer achieved very low scores on the Mini Mental exam at times, including a four, a twenty-four, and even a zero. But all of these scores were months or even years after the date in question and only tend to prove that Mr. Barringer did not have chronic incapacity in February 2012, which was shortly after he scored a perfect 30.

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confusion, some difficulty formulating words, and unspecified "irrational" behavior. Plaintiff's counsel argued at the hearing that "[i]f you can't remember what you do short-term, you can't know what you're doing when you are signing a will. You don't have the capacity to understand what the will does." These arguments and opinions of counsel, however, are not admissible evidence and no fact or expert witness testimony to this effect has been proffered. None of Mr. Barringer's treating physicians or others testified that his short-term memory was as advanced at this point as Plaintiff's counsel suggests. The record simply does not support a finding that as of February 28, 2012, Mr. Barringer was experiencing anything like the "chronic incapacity" at issue in the *Gaddy* decision. Further, the statements relied on by Plaintiff are not connected to Mr. Barringer's condition on the date of execution of the documents. No witness or document is in the record to indicate that Mr. Barringer was not aware of what he was signing on February 28, 2012, or that his short-term memory issues prevented him from understanding the three key elements required for capacity.

Plaintiff has failed to submit any evidence in opposition to this motion for summary judgment to indicate that Mr. Barringer did not know who his children were, that he did not know what his assets were, or that he did not know to whom he wanted to leave his assets. Accordingly, Plaintiff has failed to create a genuine issue of material fact as to whether Mr. Barringer lacked Testamentary Capacity on February 28, 2012. As a result, Defendants are entitled to summary judgment as a matter of law as to the Seventh Cause of Action as it applies to the February 2012 Testamentary Documents.

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II. UNDUE INFLUENCE (EIGHTH CAUSE OF ACTION)

Plaintiff admits that she has no direct evidence of undue influence of Paul Barringer at the time of his execution of the Testamentary Documents. Instead, she argues that she has sufficient circumstantial evidence to prove undue influence.

In *Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d 788 (1983), the Supreme Court discussed the sufficiency of evidence needed to submit an undue influence claim to a jury and held that "the circumstances must point unmistakenly and convincingly to the fact that the mind of the testator was subject to that of some other person so the will is that of the latter and not of the former." *Id.* at 427, 308 S.E.2d at 789. [4] Further, under South Carolina law:

> Undue influence, the influence necessary to void a will, "must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act . . .."

Calhoun v. Calhoun, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982) (quoting *Floyd v. Floyd*, 3 Strob. 44, 34 S.C.L. 23 (1848)). "A mere showing of opportunity and even of a motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized. It is not unlawful for a person, by honest intercessions and modest persuasions, to procure a will to be made in his behalf." *Id.* at 531, 290 S.E.2d at 418 (citations omitted).

Plaintiff argues the burden of proof on undue influence is on the proponents of the February 2012 Testamentary Documents because Mrs. Light owed fiduciary duties to her father.

[4] In that case, the evidence showed that the alleged undue influencer son had threatened the testator father with placement in a nursing home if the testator father did not do what the influencer son wanted him to do, that the undue influencer restricted the testator from talking to the influencer's brothers and sisters, and that the undue influencer was "calming down" the testator by giving him Valium. In addition, the influencer told his sister, when she volunteered to stay with the testator, that the influencer son had already gotten the testator to change his will and he could hire nurses to look out for the testator father, which was evidence that the alleged undue influencer son had made himself the chief beneficiary of the will executed by the testator.

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Plaintiff maintains Mrs. Light owed her father fiduciary duties because she was Mr. Barringer's daughter in whom he reposed trust and confidence, because she was on the board of directors of the family corporation in which Mr. Barringer was a shareholder, and because they were partners in a partnership. The Court makes no determination based upon the current record of whether Mrs. Light owed her father a fiduciary duty on February 28, 2012, but will nonetheless apply the burden-shifting that would be required if Mrs. Light was a fiduciary.

When the proponent of a will owes fiduciary duties to the testator, the proponent must offer evidence to rebut a presumption of undue influence, but the proponent of the will is not required to affirmatively disprove undue influence, and the contestant of the will retains the ultimate burden of proof. *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 418, 827 S.E.2d 200, 205 (Ct. App. 2019). As outlined above, the medical evidence from Dr. Long and Dr. Garrett indicates that although Mr. Barringer had some signs of dementia at this time, he scored a perfect score on the Mini Mental exam and did not demonstrate the type of vulnerability to undue influence that might exist in other cases, such as *Gaddy*. Mr. Barringer was represented by Mr. Jolley, who drafted the February 2012 Testamentary Documents in consultation with Mr. Barringer and his wife over several months. Mr. Slane, an insurance adviser, was also very involved in the preparation of the February 2012 Testamentary Documents. Mr. Jolley, Mr. Slane and a paralegal all testified that they had no concerns about undue influence being exercised over Mr. Barringer in the weeks leading up to, or on the day of, the execution of the February 2012 Testamentary Documents. Mrs. Light was not present when the February 2012 Testamentary Documents were executed and, according to Mr. Slane, she played no role in a meeting between Mr. Barringer, Mr. Jolley and Mr. Slane, although she may have driven her father to that meeting. Further, no record evidence indicates that Mrs. Light used any authority as

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a fiduciary to facilitate or influence the preparation or execution of the Testamentary Documents. This evidence is even more compelling than the proof the court in *Swiger* found "sufficient . . . to rebut any presumption of undue influence created by the existence of these fiduciary relationships." *Id*. at 421, 827 S.E.2d at 207.

Accordingly, Plaintiff has the burden to establish convincingly and unmistakably that Mr. Barringer's mind was overtaken by his daughter Mrs. Light when he executed the Testamentary Documents on February 28, 2012. Further, "for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " *Swiger*, 426 S.C. at 417, 827 S.E.2d at 204 (citations omitted). In *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003), the South Carolina Supreme Court affirmed the granting of summary judgment finding insufficient evidence to establish a genuine issue of material fact supporting a claim for undue influence. That court held that "when opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is metaphysical doubt as to the material fact but must come forward with 'specific facts showing that there is a genuine issue for trial . . . . A judgment for Appellants was not reasonably possible under the facts presented when measured against the level of unmistakable and convincing proof." *Id.* at 220, 578 S.E.2d at 335.

As in the *Russell* and *Swiger* cases, Plaintiff fails to meet her summary judgment burden. Here, at the outset, it is undisputed that the February 2012 Testamentary Documents did not change the beneficiary of Mr. Barringer's estate. His wife remained the sole beneficiary with a power of appointment and Mrs. Light, the alleged perpetrator of undue influence, gained no additional inheritance from these amendments. Although Mr. Barringer, in his previous will and trust, had named his son Victor as his first successor trustee, he changed that designation in the

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February 2012 Testamentary Documents and named Mrs. Light as a co-trustee. It is undisputed that this change was on the advice of Mr. Slane and Mr. Jolley. Plaintiff has provided the Court with no evidence that Mrs. Light unduly influenced -- or even attempted to influence -- her father in any way to name her as co-trustee, or that she even wanted to be in that position. Rather, testimony in the record from Mr. Jolley and Mr. Slane indicates that Mr. Barringer chose Mrs. Light, his oldest daughter, because she lived near him and was available if he needed anything. Last, although Plaintiff argues that Mrs. Light's now deceased husband Randy Light "was desperate for money" as a result of his own failed business ventures, Plaintiff fails to raise an inference beyond mere speculation that Mr. Light's financial difficulties had any effect on Mrs. Light's conduct, or that by becoming co-trustee she could have done, or did do, anything to assist her husband in his financial affairs. In short, the record is devoid of evidence indicating Mrs. Light had a motive or intention to influence her father into executing the February 2012 Testamentary Documents at all, much less through improper means.

Due to her residing in Hilton Head, Mrs. Light appears to have had the opportunity to have more access to her father at this time, but " 'a mere showing of opportunity or motive does not create an issue of fact regarding undue influence.' " *Swiger* , 426 S.C. at 417, 827 S.E.2d at 204 (Quoting *In re Estate of Cumbee*, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999)). Here, Plaintiff has presented no facts showing threats, coercion, isolation, or even general influence bearing upon the February 2012 Testamentary Documents. Rather, Plaintiff herself testified under oath that she had no knowledge of any wrong that occurred prior to February of 2012.

Instead of addressing facts showing that some act of undue influence was brought to bear upon Mr. Barringer in the weeks leading up to, and at the actual time that he executed the

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February 2012 Testamentary Documents, Plaintiff points to a number of actions which occurred after February 28, 2012, and which Plaintiff submits showed undue influence by Mrs. Light. The Court need not recount the documents and testimony relating to the alleged deterioration of Mr. Barringer's cognitive functioning after February 28, 2012, as none of that evidence is relevant to his condition when he executed the February 2012 Testamentary Document. Indeed, Plaintiff's excessive reliance on evidence from later time periods only underscores the absence of proof needed to meet her burden as to the February 2012 Testamentary Documents. Of course, the Court will continue to carefully consider the arguments and proof on both sides of this case, and nothing in this Order will preclude Plaintiff from having every opportunity to meet her burden of proving Mr. Barringer lacked testamentary capacity and/or that he was unduly influenced when he executed other documents after February 28, 2012.

Plaintiff, however, has failed to create a genuine issue of material fact as to the motion before the Court, and Defendant Merrill Light is entitled to summary judgment as to the Eighth Cause of Action as to the claim for undue influence about the February 28, 2012, Testamentary Documents.

III. MISTAKE (NINTH CAUSE OF ACTION)

Plaintiff's Ninth Cause of Action alleges that certain testamentary documents, including those executed by Mr. Barringer on February 28, 2012, are invalid due to mistake. Although Plaintiff stated that she would explain what constituted the alleged mistake in her legal memorandum, she never did. The only "mistake" that she argued was that Mr. Barringer did not intend to sign the February 2012 Testamentary Documents. Plaintiff did not present any evidence in support of this contention and did not even explain what Mr. Barringer supposedly intended to otherwise do in these documents. Plaintiff's only complaint is that Defendant Merrill

Light was named as co-trustee. There is no evidence that Mr. Barringer did not want to name Mrs. Light as his co-trustee. In fact, he named Plaintiff as Mrs. Light's successor co-trustee.

Hanahan v. Simpson, 326 S.C. 140, 148, 485 S.E.2d 903, 907 (1997), discussed "mistake" under South Carolina law:

> It is the general rule that the validity of a will is not affected by a mistake of either law or fact unless a mistake goes to the identity of the instrument or to fundamental error, as where, for example, two wills are drafted for different persons and one party signs that intended for another . . .. Where a testator is mistaken as to the contents of his will, the will may be invalidated in part . . .. The contestant has the burden of proof as to any alleged invalidity once due execution of the challenged will is proved.

Plaintiff has failed to create a genuine issue of material fact, and Defendant Merrill Light is entitled to summary judgment as to the Ninth Cause of Action as to Plaintiff's claim for invalidity due to mistake as to the February 28, 2012 Testamentary Documents.

IT IS, THEREFORE, ORDERED that Defendant Merrill Light's Motion for Summary Judgment as to the validity of the February 28, 2012 Will and First Amendment to the Revocable Trust of Paul Barringer, II, is hereby granted.

AND IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



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SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

Merrill B. Light ET AL.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-1919

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER AND AMEND ORDER GRANTING DEFENDANT MERRILL LIGHT SUMMARY JUDGMENT AS TO FEBRUARY 8 [sic], 2012, WILL AND FIRST AMENDMENT TO THE PAUL B. BARRINGER, II, REVOCABLE TRUST, DATED DECEMBER 4, 1998

The Plaintiff Hampton Luzak filed a motion asking this Court to reconsider its Order entered on July 6, 2021. Specifically, Plaintiff asks the Court to reconsider: (1) whether Defendant sought summary judgment on issues previously decided by Judge Mullen (2) whether the Court should have found Defendants were estopped from asserting the validity of the February 28, 2012 wills and trust (3) whether the February 28, 2012 will and trust were valid (4) whether the Court used the correct standard as to the burden of proof for summary judgment and (5) if the Plaintiff alleged sufficient facts to withstand summary judgment.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

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available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff's motion, the Court hereby DENIES Plaintiff Hampton Luzak's Motion for Reconsideration.

AND IT IS SO ORDERED.

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, As Personal Representative of the Estate of Paul Brandon Barringer, II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer, II, Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

RECEIVED
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SC Court of Appeals

ORDER ON MOTIONS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

This matter came before the Court for a hearing on May 27, 2021, upon various motions filed by plaintiff Hampton Luzak and defendants Merrill Light and Merrill Barringer. In addition, non-parties Coastal Forest Resources Company (CFRC) and John Jolley also had motions pending. Present before for the Court for Plaintiff were James Gilreath, William Hogan, Charles Macloskie, Alan Medlin, and Thomas Traxler. Present for Merrill Barringer were

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Ashley Twombley and Lee Anne Walters. Present for Defendant Merrill Light were Alice Paylor, Bijan Ghom, and Charles B. Molster, III. Present for CFRC were Ryan G. Rich, Edward Fuhr, and Jonathan Schronce. Present for John Jolley was Ariail Kirk.

After reviewing the briefing and hearing from counsel related to all of the pending motions, the Court enters the following rulings:

1. Merrill Barringer's Motion to Seal John Jolley's deposition transcript filed May 18, 2021 is granted. Plaintiff's pending motions to seal are also granted.
2. John Jolley's Motion to Terminate is denied. The deposition of John Jolley shall continue on a day within the next 6 weeks and shall begin at 9 a.m. and end at 5 p.m. with a sufficient lunch break. Plaintiff shall conclude its cross examination and provide Defendants a reasonable amount of time for re-direct. There will be no additional depositions of Mr. Jolley unless it is further ordered by the Court.
3. As to Merrill Light's Motion for Protective Order, CFRC's Motion for Protective Order and Merrill Barringer's Motion for Protective Order regarding the deposition of John Jolley, filed May 3, 2021, the Court declines to make any specific ruling on whether responding to a particular question would require Mr. Jolley to disclose confidential or otherwise privileged information. However, the undersigned, if informed by counsel of the date of the upcoming deposition, will try to make himself available by telephone to resolve issues related to privilege.
4. Merrill Light's Motion to Amend her Answer is granted.
5. Merrill Barringer's Motion for Protective Order as to Plaintiff's Fifth Set of Interrogatories filed October 23, 2020 is granted.
6. Merrill Barringer's Motion to Compel Docs from Truist Bank and Wells Fargo filed October 28, 2020 is granted. Plaintiff shall produce all documents to the defendants,

within 60 days of the hearing, pursuant to the confidentiality order allowing review by attorneys and experts only.

7. Plaintiff's Motion for Sanctions against Merrill Barringer filed April 27, 2021 was withdrawn.

8. Plaintiff's Amended Motion to Compel documents in response to the subpoena to McNair filed on December 31, 2020 is denied.

9. Plaintiff's Motion for Judgment on the Pleadings and Motion to Strike Merrill Barringer's Counterclaims filed January 26, 2021 is denied.

10. Plaintiff's Motion for Summary Judgment on Merrill Barringer's Counterclaims filed January 26, 2021 is denied.

11. As to Merrill Barringer's Motion for Protective Order regarding Mr. Scully's deposition, Plaintiff has 30 days to re-notice the deposition of Mr. Scully. If Plaintiff fails to re-notice the deposition within 30 days, Merrill Barringer's Motion is granted. This order is entered without prejudice to the rights of Mr. Scully, who is not a party to these proceedings.

12. Merrill Barringer's Motion to Compel Luzak's Complete Answers to Supplemental Interrogatories filed February 3, 2020 is granted. Plaintiff shall withdraw her objections to interrogatories number 2 and 3 and respond by identifying any specific instances when Mrs. Barringer remained silent including who was present and what was discussed. In addition, Plaintiff shall provide a list of the material terms of the contract/promise she alleges between Mr. and Mr. Barringer.

13. Regarding Merrill Barringer's Motion to Set Trial Date filed May 5, 2021, the Court rules that trial shall proceed on the bifurcated claims only. A trial on the first phase as

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indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021.

14. Regarding Merrill Light's Motion for Summary Judgment and CFRC's Motion to Intervene and Dismiss, the Court will address those motions in separate orders.

IT IS SO ORDERED!

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Beaufort Common Pleas

Case Caption: Hampton Barringer Luzak VS Merrill U Barringer

Case Number: 2019CP0701294

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, v. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. Nos.: 2019-CP-07-01253 2019-CP-07-01294 **PLAINTIFFS OPPOSITION TO DEFENDANT MERRILL U. BARRINGER'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S SECOND AND THIRD CAUSES OF ACTION**

TO: DEFENDANT AND HER COUNSEL:

Background

Defendant Merrill U. Barringer's Motion for Summary Judgment as to Plaintiff's Second and Third Cause of Action was denied after a hearing on October 15, 2020 by order of the Honorable Carmen Mullen filed on November 4, 2020. Defendant's present Motions for Summary Judgment as to Plaintiff's Second and Third Causes of Action are impermissible attempts to obtain a second bite of the summary judgment apple. Defendant has no new evidence[1] since Judge Mullen's Order filed on November 4, 2020 and does not even plead in her

[1] Defendant does not assert that there is new evidence but only that Defendant has conducted additional discovery, and then cites the affidavits of attorney McBryde, who drafted the 1998 documents, and the deposition testimony of attorney Jolley, who drafted the February 28, 2012 will and trust that, according to the order recently obtained by Defendants, is valid and thus supersedes the 1998 will and trust (again showing the flaws in Defendant's argument that only the 1998 documents need to be examined for the second and third causes of action). McBryde's evidence is not new; these same affidavits were filed in the prior summary judgment motions denied by Judge Mullen. Jolley's testimony is not new: he represented Defendants and Paul Barringer and Defendants have had access to him long before his deposition. Both attorneys are subject to impeachment. In any event, simply because two attorneys testify that they were unaware of any contract is hardly dispositive of the issue.

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motions that she has new evidence. Defendant's motions should be summarily dismissed under Rules 43(l)[2] and 59(e), SCRCP.

Nevertheless, reserving all rights, Plaintiff will address Defendant's motion, but in the interests of economy and efficiency, hereby incorporates all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from the prior summary judgment motion denied by Judge Mullen. This memorandum will address the relevant issues, but reference is made to the filings in the prior summary judgment motion, including Exhibit references.

Defendant makes separate motions for summary judgment for each of the second and third causes of action, as opposed to Defendant's previous summary judgment motion, which combined both causes of action. Plaintiff intends for this memorandum to address both of Defendant's present separate motions for summary judgment on the second and third causes of action.

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Merrill U. Barringer ("Mrs. Barringer") made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property other than as set forth in the default provisions of the estate plan of Decedent Paul Barringer ("Mr. Barringer"). In particular, Mrs. Barringer has contended that she has a testamentary power of appointment to redirect the voting stock of Mr. Barringer in his legacy company Coastal Forest Resources Company ("CFRC") to Defendant Merrill Light. Plaintiff alleges that, if in fact Mr. Barringer intended to give Mrs. Barringer a testamentary power of

[2] Rule 43(l), SCRCP states: "If any motion be made to any judge and be denied, in whole or in part or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action." Justice Pleicones wrote in *Smith v. Breedlove*, 377 S.C. 415, 419 (2008), that when considerable discovery has taken place and new evidence established, the trial court can rule on a second summary judgment motion even if made on the same legal basis as the first motion. However, Defendant has failed to produce new evidence in her motion and argument, nor has considerable additional discovery taken place.

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appointment over such voting stock, which she disputes, Mr. Barringer relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Mr. Barringer,[3] Mr. Barringer intended to treat his daughters --- Plaintiff and Defendant Merrill Light --- equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Mrs. Barringer and assertions made in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise any testamentary power of appointment given her and to impose a constructive trust for the benefit of Plaintiff in the subject property with respect to the intended equal treatment of Plaintiff.

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Mr. Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Mrs. Barringer's will(s) that did not exercise any power of appointment related to voting stock before Mr. Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Mr. Barringer resulting from those actions

[3] Those that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

would be invalid. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke.

Argument

Defendant continually resisted compliance with a court order to produce her estate planning documents pursuant to Plaintiff's request for production. Only under threat of the imposition of significant sanctions by the Court did she finally produce those documents. It is understandable why Defendant so strongly resisted the production of her estate planning documents. In 1998, Paul Barringer executed, inter alia, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him. Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, and others, there is no evidence that either Paul Barringer or Defendant knew about or really understood that these documents gave Defendant a testamentary power of appointment over voting stock. Even if Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in 1998, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment. Moreover, Defendant's 1998 revocable trust apparently gave Mr. Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume arguendo that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's

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1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant a testamentary power of appointment in his 1998 documents, he also knew that Defendant expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. Because Plaintiff has produced significant proof that Paul Barringer never made another will or trust when he was competent and/or free from improper influence,[4] he thus spent the rest of his cogent un-influenced life[5] understanding that Defendant had agreed not to exercise that testamentary power of appointment.[6] That understanding between Mr. Barringer and Defendant, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, if there was one, serves as a foundation for all of Plaintiff's assertions in addition to there being no intent for Paul Barringer to give Defendant a power of appointment over voting stock.

[4] Paul Barringer might have understood that Defendant could have changed her will without his knowledge, but presumably he trusted her not to do so — and she never did. She did not execute any document purporting to exercise the testamentary power of appointment until after he died. Every amendment Defendant made to her estate plan while Paul Barringer was alive occurred simultaneously with any purported amendment he made to his estate plan (except his purported July 2012 amendment to his revocable trust), although Plaintiff asserts that no estate planning document executed by Paul Barringer after 2011 is valid.

[5] Meaning that any document he executed after 2011 was invalid because he lacked capacity and was unduly influenced, etc., as to any documents he executed after 2011.

[6] The voluminous and detailed evidence of the invalidity of any post-1998 estate planning documents purportedly executed by Paul Barringer is found in the filings in the prior summary judgment motion incorporated herein.

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The pattern of other planning related acts[7] by Paul Barringer while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

Why would Paul Barringer establish or maintain a mechanism that would destroy his long -held company succession plan and potentially place his lifelong work under the control of persons in which he had no confidence or knowledge?

In brief, Plaintiff makes a number of assertions, any one of which successfully supports her second and third causes of action.

1. Paul Barringer never intended to give Defendant a power of appointment.
    a. Despite Defendant's assertions, there is no reliable evidence that any advisor explained the effect of the power of appointment language in the documents or discussed powers of appointment with Paul Barringer.
    b. Paul Barringer never involved his wife in the company business, gave her any stock, or named her trustee. Why would he give her the power to change his intentions about who would run his legacy company after his death?

[7] The voluminous and detailed evidence of these other estate planning related acts is found in the filings in the prior summary judgment motion incorporated herein.

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c. The power of appointment language in the documents purportedly gives Defendant the power to appoint to descendants. Why would Paul Barringer give her power to give control to a grandchild, great-grandchild, etc.: someone who might not have even been born by the time of his death?

d. Paul Barringer's intent is determined according to the facts and circumstances existing at the time of execution of the documents. On December 4, 1998, he could not have intended to give Defendant the power over stock with voting control because he did not own enough stock on that date to affect voting control.

2. Even if Paul Barringer intended to give Defendant a testamentary power of appointment, she does not have the power to exercise it for several reasons, any one of which successfully supports Plaintiff's second and third causes of action.

a. A contract not to exercise any power over the voting stock existed, pursuant to South Carolina statutes.

b. There was an express promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer

c. There was an implied promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer.

d. Defendant is equitably estopped from exercising any such power of appointment.

Although this was the foundation, it is certainly not all of the evidence Plaintiff asserts that proves that Mrs. Barringer is precluded from exercising any power of appointment; plenty of other evidence exists to prove the existence of an agreement and/or an express or implied promise not to exercise.

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Attorney John Jolley prepared the documents, and Defendant executed reciprocal documents between 2012 and Mr. Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant exercised any testamentary power of appointment. Defendant did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when Attorney Harley Ruff began representing her.

Even assuming arguendo that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant attempt to exercise any testamentary power of appointment. Defendants Merrill Barringer and Merrill Light characterized Paul Barringer as a man in control. Paul Barringer never involved Defendant in his legacy business: she was never given any stock or any position in that business. She testified that she attended the June 2012 meeting to ensure that Paul Barringer did not forget to fire Kevin Luzak. It is beyond reasonable belief that Paul Barringer, who excluded his wife from his business for the entirety of their marriage while including his children, would knowingly give her the ability to decide the control of that company after his death, which would include the power to give the controlling stock to grandchildren or great-grandchildren, who might not even have been born before his death.

The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while

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Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that his plan for his company — shared control after his death — would remain intact.

Applicable Law[8]

Defendant continues to contort and conflate applicable law, arguing that a contract not to exercise any power of appointment is required for Plaintiff to prevail. That is not correct. As discussed below, a contract not to exercise any power of appointment would suffice for Plaintiff to prevail as discussed below, Plaintiff has sufficient evidence to show such a contract --- but South Carolina law precludes the exercise of a power of appointment by a powerholder for other reasons, separate from a contract: an express or implied promise not to exercise that is binding, not because of any contract, but because of a fiduciary or confidential relationship --- such a promise can even be a silent one (for example, based on acquiescence) --- and/or equitable estoppel, which can also be based on silence. Defendant argues that these enforceable promises are the same as contracts, but they are clearly not: a contract requires an exchange of consideration, whereas an enforceable fiduciary promise is based on the fiduciary duty, not a contract, in which case the promisee does not need to provide consideration, which is why it is not a contract.

Contract Not to Revoke Will (Not to Exercise any Power of Appointment)

South Carolina Probate Code (SCPC) section 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: "by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a

[8] An additional discussion of the applicable law is found in the filings in the prior summary judgment motion incorporated herein.

contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract."

Assuming arguendo that Plaintiff relies solely on the existence of a contract not to revoke a will or devise — which she does not — any of these three methods may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent's will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent's will, but rather only that the will state material provisions of the contract. Mr. Barringer's 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Mrs. Barringer's 1998 will, executed simultaneously and symbiotically with Mr. Barringer's 1998 will and revocable trust, stated material provisions as to the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Mr. Barringer's estate plan. Mr. Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant's estate plan. Although these Barringer 1998 estate planning documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Mrs. Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Mr. Barringer's will. The mutuality of the contract is confirmed by Mr. Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust. If Mr. Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Mrs.

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Barringer, then he also understood that Mrs. Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract.

The material provisions of the contract stated in their 1998 estate plans, and particularly in Defendant's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following: the pattern of the reciprocal wills and trusts executed by Mr. Barringer and Defendant beginning in 2012 (although Plaintiff contends Mr. Barringer's wills and trusts are invalid), none of which exercised any power of appointment, until Defendant breached the contract by executing wills after he died which purport to exercise a power of appointment; family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant. These documents form a consistent pattern of evidence.[9]

SCPC section 62-2-701(3) provides different requirements: "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with

[9] The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

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subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term "contract." This is consistent with contract law, which of course does not require the word "contract" in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Mr. Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Mr. Barringer and Defendant's 1998 documents create special testamentary powers of appointment and Mrs. Barringer's will specifically and expressly declines to exercise any power of appointment. This alone "evidences" a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment. [10]

Fiduciary Relationship and Duty: Express or Implied Promise Is Binding

Although Plaintiff prevails under either SCPC section 62-2-701 subsection (1) or (3), Plaintiff also prevails under other South Carolina law. Defendant was in a fiduciary relationship with Mr. Barringer: she was his wife and was the attorney-in-fact under his power of attorney. In *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990),[11] the surviving spouse had a fiduciary and confidential relationship with the deceased spouse because she was his wife. The *Chapman* court held that either an express or

[10] The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

[11] Defendant argues that the applicable contract statute supplants *Chapman*. That is not correct. The statute deals only with contracts; *Chapman* deals with a fiduciary promise, not a contract. A statute dealing only with contracts cannot supplant a case that does not deal with contracts. See S.C. Code Ann. § 62-1-103: "Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions." *Chapman* was decided on July 23, 1990. The South Carolina Probate Code became effective on July 1, 1987. See S.C. Code Ann. § 61-1-100.

implied promise from the surviving spouse not to exercise a testamentary power of appointment was binding, and that such an implied promise could be implied even from silence.

As discussed more thoroughly above, Mr. Barringer and Defendant, represented by the same attorney, executed mutual and reciprocal estate planning documents in 1998. Mr. Barringer purportedly gave Defendant a special testamentary power of appointment, and her will specifically and expressly declined to exercise that power. For the rest of Mr. Barringer's life, Defendant did not execute a document purporting to exercise that power.

Defendant's 1998 will made an express promise by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Mr. Barringer's life. Mr. Barringer went to his grave believing that his wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, Trusts, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. Certainly Mr. Barringer could infer a promise from Defendant because of her specific and express declination to exercise any power in her 1998 will; her failure to exercise any power for the rest of his competent life, and even for the rest of his life once he was incompetent; and from the numerous other situations where she engaged in acts supporting Mr. Barringer's intent that his children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.

Equitable Estoppel

South Carolina law recognizes that a promise not to revoke can be enforced through equitable estoppel, which requires the enforcement of a promise on which a decedent detrimentally relied based on the expression of that promise. In *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002), the court enforced a grandfather's oral promise to leave

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property to his grandson because the grandson detrimentally relied on that promise. The court enforced the promise even though it was oral and made after the enactment of SCPC section 62-2-701. Mr. Barringer relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other acts evidencing the intent to treat the children equally.

Conclusion

Substantial evidence exists, through the pleadings, depositions, affidavits, and discovery on file, to show there is a genuine issue of material fact such that Plaintiff must prevail, especially when all the evidence and all reasonable inferences must be viewed in the light most favorable to Plaintiff. Plaintiff demonstrates substantial evidence of a contract not to revoke, an express promise not to revoke arising from a fiduciary and confidential relationship, an implied promise not to revoke arising from a fiduciary and confidential relationship, and equitable estoppel.

Reserving all rights, Plaintiff respectfully prays that this Court deny Defendant's motion for summary judgment.

Respectfully submitted,

THE GILREATHLAW FIRM, P.A.

By: s/ JAMES R. GILREATH
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harvey@desaballard.com

Attorneys for Plaintiff Hampton Barringer Luzak

August 6, 2021
Greenville, South Carolina.

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Exhibit 1

Affidavit of
Hampton Luzak

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2019-CP-07-01253
2019-CP-07-01294

AFFIDAVIT

I, Hampton Luzak, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. These statements are based on my own personal knowledge. I hereby incorporate my affidavit, which is also based on my own personal knowledge, in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, my father Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.

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4. I was present at these meetings, as was my husband Kevin Luzak. My mother Merrill Barringer was usually present during these discussions. Often, my sister Merrill Light and Randy Light were also present. My brother Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved my father discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat me and my sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, my mother remained silent as to any intent she may have had to exercise any power of appointment or to change my father's intent to treat me and my sister equally as to voting control of his forestry company or, for that matter, to change my father's intent about anything. My mother never spoke up to anyone, including my father, about my father's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all my mother ever mentioned about estate planning, on a few occasions, was that she had or would put stickers on pieces of furniture to indicate which of her children was to inherit it. I also recall her discussing the allocation of various pieces of silver.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change my father's estate plan.

8. To my knowledge, my mother never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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9. These discussions were often accompanied by a comment by my father about the fact that the children would have to work together to make decisions about the company after he was gone. It was clear to me that my father was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after my brother spun off Coastal Lumber, equally between his two daughters. Not one time did my mother object to the plan or suggest she had the power to change it or would change it.

10. During their lengthy marriage, my father did not give any stock in his company to my mother nor did he give her any position in the company. My father was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.

11. In all the discussions I had with my father, either alone or with other family members, not one time did he ever mention that he had given my mother a power of appointment. Not one time did my mother mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor to us or shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Hampton Luzak

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Exhibit 2

Affidavit of
Kevin Luzak

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A Case No.: 2019-CP-07-01253 2019-CP-07-01294
IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	**AFFIDAVIT**

I, Kevin Luzak, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. I hereby incorporate my affidavit in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.
4. I was present at these meetings, as was my wife Hampton Luzak. Merrill Barringer was usually present during these discussions. Often, Hampton's sister Merrill Light and

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Randy Light were also present. Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved Paul Barringer discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat Hampton and her sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, Merrill Barringer remained silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's intent to treat Hampton and her sister equally as to voting control of his forestry company or, for that matter, to change Paul Barringer's intent about anything. Merrill Barringer never spoke up to anyone, including Paul Barringer, about Paul Barringer's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all Merrill Barringer ever mentioned about estate planning, on a few occasions, was that she had or would put stickers on pieces of furniture to indicate which of her children was to inherit it. I also recall her discussing the allocation of various pieces of silver.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's estate plan.

8. To my knowledge, Merrill Barringer never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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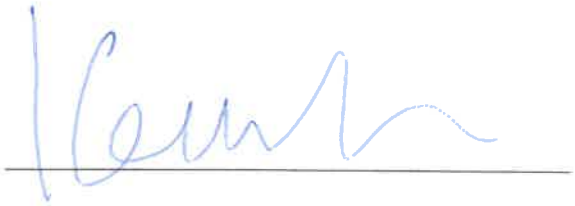
9. These discussions were often accompanied by a comment by Paul Barringer about the fact that the children would have to work together to make decisions about the company after he was gone. He repeated this comment to me on numerous occasions during conversations that we had away from these family meetings. It was clear to me that Paul Barringer was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after Victor Barringer spun off Coastal Lumber, equally between his two daughters. Not one time did Merrill Barringer object to the plan or suggest she had the power to change it or would change it.
10. During their lengthy marriage, Paul Barringer did not give any stock in his company to Merrill Barringer nor did he give her any position in the company. Paul Barringer was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.
11. In all the discussions I had with Paul Barringer, either alone or with other family members, not one time did he ever mention that he had given Merrill Barringer a power of appointment. Not one time did Merrill Barringer mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Kevin Luzak

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Exhibit 3

McBryde Documents 1-82, 109, 150, and 157
(Previously filed under seal on July 30, 2021)

(To be submitted to the Judge *in camera*)

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Exhibit 3

McBryde Documents 1-82, 109, 150, and 157
(Previously filed under seal on July 30, 2021)

(To be submitted to the Judge *in camera*)

Exhibit 3

McBryde Documents 1-82, 109, 150, and 157
(Previously filed under seal on July 30, 2021)

(To be submitted to the Judge *in camera*)

→ C → — Paul Berryhill - Coastal Lumber 8/20/98

Timber guy — his mother was Hamilton's aunt
— shared in paper profits
68 ⇒ poor health → written / died in late 70's or 80's →
66 —
3 children — married
— 2 have 2 kids each
mother when died — GST trust
income interest for life
#5 or 5¹
Coastal lumber // founder — old Skyline negs
↳ 200,000 acres ± — Such S — on/about Oct 4
↳ co. worth 3X then to 4X — 10²0 on common
book — 250,000,00 — Gave away 60's + years ago to kids
— 400,00,00 — other 20's - 25's owned by
children/family that worked in/
business —

Paul Co - Tutco — 70,000 acres of timberland carrying $30 M mortgage debt

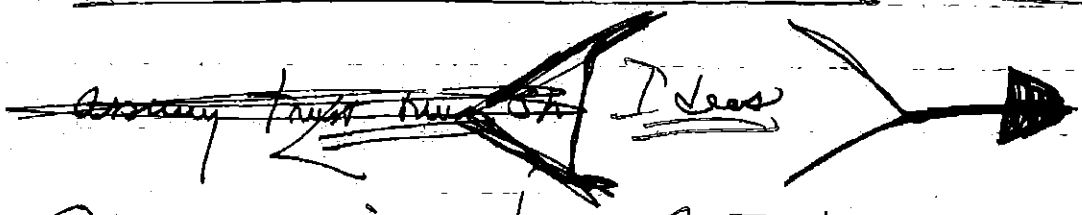
Paulson Bd of Dir — FNB ⇒
Coastal $25 M in net income before taxes in good year
$75,000,000 per Ted already

~~$ 10 in co.~~
Paul $22M to $25 M | 10 M of that in CO
wife 2-4M |

→ stop income from GST trust
→ stop "S + S"
→ Mike to attempt to pay/expend corpus for
→ Paul or his issue ~~etc~~ regard / Wheth

could end trust / distribute to Paul's "issue" —
would include after born grandchildren of Paul

has worked w/ Mike Henderson → Mike ~~said~~ said
~~to~~ go to K+S →



① Exclude income from GST trust
(a) Pa → reject it / doesn't receive it
(b) terminate trust

② Take 10% / ~~to~~ GRAT — Sale of remainder
interest ~~to~~ Skip Trust →

③ $1.10M → $500,000 → Children sell
remainder interest

↓

Remainder interest value

④ defective Skip Trust / installment purchase

in bad year B

(5) $12 M income / $6 M capital gains → 2/3 trusts

(6) will distribute 40% of ~~$12 M~~ $12 M
~~$8 M~~ → $600,000 extra burden / part reduce / part distribution

(6) ESBT → no part acquired by purchase — "remainder interest" in GRAT" → is that a problem
if do (2)

(7) CLT — can own S corp stock → — do CLT (4) ship trust buy the CLT remainder interest → — Student that work →

(8) sell remainder interest → GRAT → can you use joint lives w single life →

(2 year)
(9) GRAT ~ FUNB →

(10) $3 M def. comp. FV →

(11) no use of credits in OSI exemption / no gross with →

[redacted] 288,409 shares after Covenant → carry TO share

[redacted] → $227.07 value per share →

↳ question under §2703 →

↳ buy-sell agree. → may be binding →

↳ $500,000 GRAT gift →

↳

(12) will purchase $4M last to die —
gift dollar
new S corp.
[$3M BBT stock + warrants] 2 year GRAT →

(13) Notes due from Corp. → high payout notes →
→ $50,000 → high yield
→ $1,000,000 →

SUM: (a) Wills or Will/rev. trusts →
(b) Dom. DST revocable trusts →
(c) GRAT/Sale of remainder interest →

the Wealth Transfer group

THE WEALTH TRANSFER GROUP INC
706 TURNBULL AVENUE, SUITE 305, ALTAMONTE SPRINGS, FLORIDA 32701
407/339-5787 • FAX 407/834-6205
E-MAIL: robert@wealth-transfer.com
INTERNET: http://www.wealth-transfer.com

August 26, 1998

VIA UPS OVERNIGHT MAIL

Neill MyBryde
Moore and Van Allen
NationsBank Corporate Center
100 North Tryon Street, Floor 47
Charlotte, North Carolina 28202-4003

Re: Paul Barringer

Dear Neill:

Robert asked that I send you the following items for the above-referenced individual:

1) Paul Barringer's Last Will & Testament,
2) Merrill Barringer's Last Will & Testament,
3) Gertrude Barringer's Last Will & Testament,
4) Stock Purchase Agreement for Coastal Lumber Company of Virginia,
5) Personal Financial Statement dated 12/31/97,
6) 1040 Individual Income Tax Return for 1996,
7) Arthur Andersen letter/proposal dated 2/06/98,
8) Our presentation dated 8/25/98, and
9) Robert's notes from 8/25/98 meeting.

Please let me know if you need anything additional.

Sincerely,

Martte Davis

Martte Davis
Office Manager

:md
Enclosures

TO: File of PAUL BARRINGER
FROM: Robert Slane
DATE: August 25, 1998

Meeting with Paul at 5:00 pm at Piedmont Aviation in Winston-Salem. Paul brought me up to date on some of the steps they are about to implement.

First, the advisors were going to have Paul create a defective trust, he was not sure if it was to be a GST Trust or not. Trustees were to be his son, 2 daughters, wife, Collins Denny (Richmond atty) and Jason Eckford (uncle employed by business). Plan was to gift his and wife's unified credit to trust (not sure if stock or cash) and then have defective trust buy all of Paul's stock.

They also were going to execute an agreement that said "working" shareholders would have a "double vote" over non-working employees. He indicated the Barringer shareholders would then be:

Merrill Light (daughter)	59,521 shares
Victor Barringer (son)	59,521 shares
Hampton Luzak (daughter)	59,521 shares
Paul's defective trust	23,905 shares
Paul's Mom's GST trust	13,373 shares.

Trustees of Mom's GST trust are Paul, Collins Denny, and Jason Eckford. Paul felt this would effectively keep voting control with the working family (Paul and son).

Problems I see with this arrangement are:

1. Wife cannot give her unified credit to trust she is a trustee of.
2. Current earnings of company are expected to be $41.61 per year with only 40% or $16.64 distributed to shareholders.
3. Book value (purchase price) is $227.07 per share.
4. Cash flow to Paul if defective barely covers interest payments.
5. Net trust cash flow available can never pay down principal on note.

My recommendations presented to Paul:

1. New wills for Paul and wife to include:
   a. Unused unified credit to GST or children's trust.
   b. Remaining GST exemption to GST trust.
   c. Balance to marital trust(s).
   d. Disclaimer provisions to allow surviving spouse to disclaim a portion of marital trust to take advantage of estate tax bracket creep.
2. Paul establishes lifetime GST (defective) trust funded with $400K.

3. Merrill (wife) same as Paul but with gift of $350K.
4. Paul transfers 50% of his Coastal Lumber stock to wife.
5. Paul creates 10 yr GRAT with his $3M of CLC stock with 14% payout, remaindermen are children (GRAT calculated for optimizing single life gift).
6. Merrill does same (GRAT calculated for optimizing single life gift).
7. Paul's GST trust buys remainder interest from children for $392,449.
8. Merrill's GST trust buys remainder interest from children for $339,162.
9. Paul's GST trust buys $3M term policy on Paul ($27K) per year level for 10 years.
10. Merrill's GST trust buys $3M term policy on Merrill for $13,000 per year level for 10 years.
11. Each GST trust buys $2.5M+ last-to-die insurance on Paul and Merrill through split dollar with company.
12. Paul creates 2 year GRAT with $2.4 million of BB&T stock with 55.15719% payout. (If single life gift is $61,271 or if 2 life GRAT gift is $1,968).
13. As stock is distributed back to Paul, he creates new 2 year GRAT.
14. Mom's GST trust, Paul, and children form FLP. If FLP does not distribute income, Mom's GST trust will not distribute income to Paul (accounting income vs. trust income).

There are several items that must be verified for these steps to work:

1. Mom's GST trust should be a QSST.
2. Paul and Merrill's GST trust should qualify as QSST since they are defective, if not will they qualify as ESBT?
3. Can we do 2 life GRATs with company stock and then a remainder sale or must we do single life GRATs for this to work?

I told Paul that most can be accomplished by November 4th with the exception of the FLP.

RCS:md

PAUL B. BARRINGER II

ROBERT C. SLANE, C.L.U.
The Wealth Transfer Group, Inc.
706 TURNBULL AVENUE, SUITE 305
ALTAMONTE SPRINGS, FLORIDA 32701
(407) 339-5787

Executive Summary

You have asked for recommendations to accomplish your three primary goals. You defined these goals as (1) transferring the Coastal Lumber stock to or for the benefit of your grandchildren and later generations thereby skipping your children, (2) reducing your estate transfer costs as much as possible, and (3) eliminating yourself from the income portion of your mother's generation skipping trust and the inclusion of 5% of the value of this trust in your estate at your death.

My proposal is to implement five of my six initial recommendations on or before November 4, 1998. This is based on the assumption that you can provide 3 to 5 days devoted to the implementation of these steps and would also include a commitment from Merrill. Additionally, it also assumes that all the financial information will be readily available.

Recommendation #1 - Pages 14-15

First and foremost, you and Merrill should execute new last will & testaments. These wills should include provisions to create credit shelter trusts and generation skipping trusts at your respective deaths. Additionally, disclaimer options should be included at the death of the first spouse. This provision would enable the surviving spouse to disclaim any assets thereby creating a larger tax, albeit, a potentially smaller tax on a cumulative basis due to the bracket creep utilized in the federal estate tax system of up to $3,000,000 in value. The credit shelter trust and the generation skipping transfer exemptions would be included to "catch" any remaining unified credit equivalent amount and generation skipping transfer exemption amounts at the time of your respective deaths.

Recommendation #2 - Pages 16-24

You and Merrill should establish individual generation skipping trusts funded with a minimum of $400,000 and $350,000 respectively in cash now. Broad trustee powers particularly for making purchases should be included in this trust. This trust will tie in with the next recommendation.

Recommendation #3 - Pages 16-24

You and Merrill should establish individual grantor retained annuity trusts (GRATs) with the remainder beneficiaries being your children. Merrill will create this trust with 50% of your Coastal Lumber stock by you transferring 50% of your stock to her. Once the two GRATs are established, the trustees of your generation skipping trust and Merrill's generation skipping trust should purchase the remainder interest in the two GRATs from your children.

Executive Summary

The GRATs that are illustrated are 10 year GRATs, however, the terms can be either shorter or longer. The GRATs using Coastal Lumber stock with the sale of a remainder interest to your respective generation skipping trusts should remove between $5,700,000 and $12,000,000 of value from your estate at the end of 10 years. This value would be removed to generation skipping trusts for the benefit of your grandchildren and future generations.

Recommendation #4 - Pages 25-27

The generation skipping trusts should insure the grantors (you and Merrill) for the value of the Coastal Lumber stock gifted to the GRATs. The insurance would provide the cash necessary should either one of you die prior to the end of your GRAT term which would cause the respective GRAT assets to be included in your estates. The insurance could then be used to purchase assets (CLC stock) from the deceased's estate by the generation skipping trust. Additionally, each generation skipping trust should enter into a split dollar agreement with Coastal Lumber whereby the trust would purchase a survivorship policy on you and Merrill. Coastal Lumber would provide the majority of the premium during the initial premium payment years. Coastal Lumber would be repaid the premiums without interest at the last death of you and Merrill.

Recommendation #5 - Page 28 & 29

Any time there is a substantial drop in the price of BB&T stock or if you have reason to believe that, in the next 2 years, BB&T will appreciate at more than 7% per year, you should establish a 2 year short term GRAT for the benefit of your children. I have included an example of a short term GRAT based on 15% annual appreciation for 2 years.

The next recommendation is not likely to be accomplished prior to November 4th but potentially could be achieved by the end of the year.

Recommendation #6 - Page 30

Have the trustee's of your mother's generation skipping trust form a partnership with you and other family members contributing assets. Over time it is possible that the trustee of your mother's generation skipping trust could distribute units to your issue under the powers granted in her trust thereby reducing the value of the trust. This would reduce the value of your 5% inclusion ratio of the trust at the time of your death. Additionally, if the partnership elects not to distribute income or if it distributes income only equal to the income taxes that would be due by the various partners, the trust would only be able to distribute its actual trust income (income received) to you. Therefore, this would reduce your taxable income from this trust.

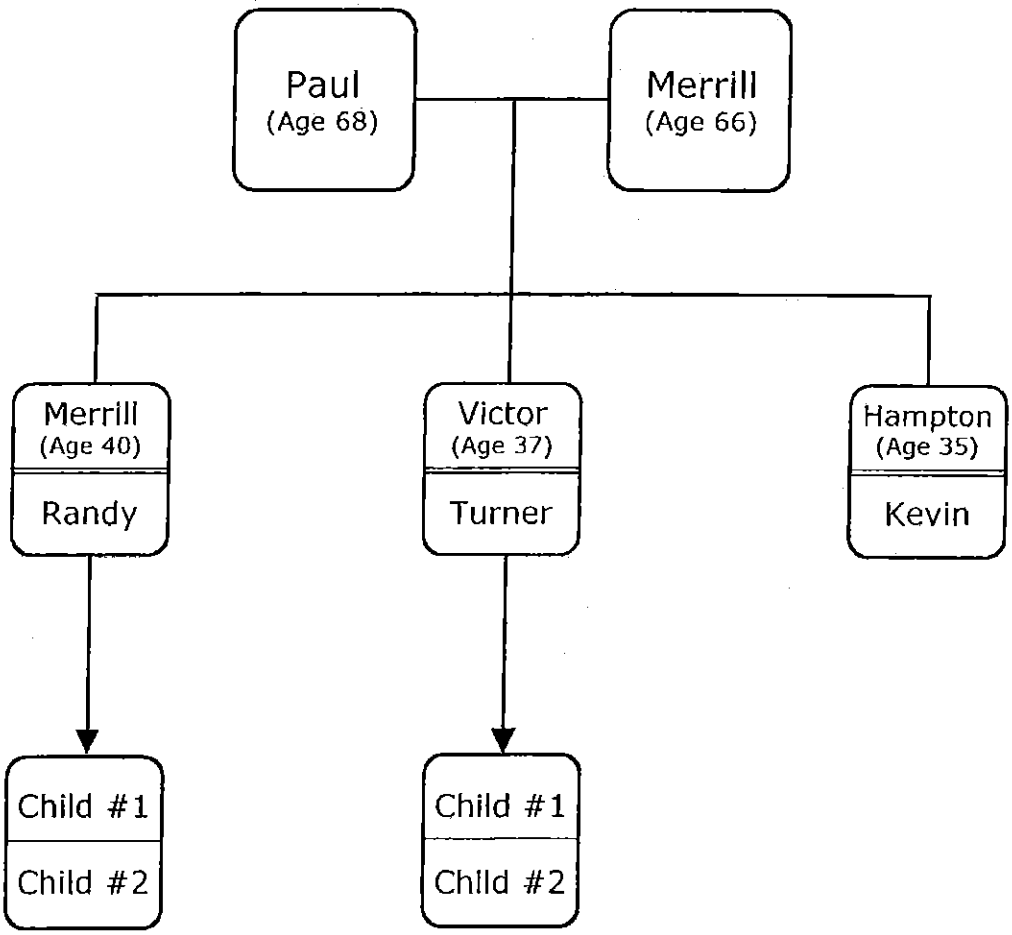
Executive Summary

Future Steps

From time to time there may be other opportunities available as I become more familiar with your personal situation. A gifting program that will include scheduled increases in the unified credit and annual exclusion amounts should be coordinated. This, in conjunction with estate planning steps that should be implemented by your children, can provide an efficient and effective multi-generation wealth transfer plan.

ROA 004337

Family Tree


Paul
(Age 68)
Merrill
(Age 66)
Merrill
(Age 40)
Randy
Victor
(Age 37)
Turner
Hampton
(Age 35)
Kevin
Child #1
Child #2
Child #1
Child #2

Financial Statement

Asset Description	Units	Value Per Unit	Asset Value	Totals
Bank Accounts			$142,932	
Life Insurance Cash Value			$50,000	
Tangible Personal Property			$150,000	
Sub-Total				$342,932
Liquid Stocks & Bonds				
BB&T Corporation (Shares)	35,972.00	$63.50	2,284,222	
BB&T Corporation (Warrants)	12,336.00	$45.27	558,461	
Winston Hotels, Inc.	54,512.00	$13.00	$708,656	
Winston -Perimeter Hotel	36,505.33	$11.23	$409,955	
CLC Notes @ 8.5% dated 6/07/94			$850,000	
CLC Notes @ 10% dated 2/27/95			$400,000	
CLC Notes @ 10.5% dated 9/16/91			$1,000,000	
Sub-Total				6,211,284
Non-Liquid Stocks & Bonds				
Racquet Shores	20.00	$100.00	2,000	
Chockoyotte Country Club	10.00	$550.00	5,500	
Sea Pines Association	158.00	$5,400.00	$853,200	
Sea Pines Country Club			$25,000	
Havana Steam Boilers, Inc.			$80,517	
Bailey Marketing Group	13.00	$1,923.08	$25,000	
Class A Preferred - CLC	37,591.00	$100.00	$3,759,100	
Class A Common - CLC	9,398.00	$225.27	$2,117,087	
Stock Appreciation Rights - CLC	2,112.00	$225.27	$475,770	
Class B Preferred - CLC	4,281.00	$100.00	$428,100	
Sub-Total				$7,771,275
Deferral/Retirement Plans				
BB&T Director's Deferred Comp Plan 1995			$269,938	
BB&T IRA			$502,425	
BB&T 401(k)			$222,332	
Executive Deferred Plan - CLC			$144,290	
1997 Incentive Plan (Deferred Value) - CLC			$320,624	
Sub-Total				$1,459,609
Miscellaneous				
Capitoline Investment Services			$2,054,303	
Sub-Total				$2,054,303
Partnerships				
Atlantic Venture Partners II LP			$300,000	
DaCourt Partnership			$20,000	
Winthrop Real Estate Venture Fund II			$150,000	
Red Mill Partnership			$50,000	
Huntington Place Apartment Partnership			$120,000	
Sub-Total				$640,000
Real Estate				
Chockoyotte CC Home + 6 Lots			$375,000	
Lake Gaston, NC Home	33.33%		$85,000	
Wintergreen, VA Lot	50.00%		$45,000	
Wintergreen, VA Home & Lot			$660,000	
Columbia, SC Ft. Jackson Blvd. 9.1 Acres			$950,000	
Columbia, SC 28.2 Acres			$1,100,000	
Hilton Head, SC Plantation Rd. 6.3 Acres			$415,800	
Hilton Head, SC S. Calibogue Cay Home & Lot			$1,800,000	
Columbia, SC Condo-Senate Plaza			$60,000	
St. George Island-Planation Lots			$100,000	
St. George Island-Sunset Beach Lot #15			$950,000	
Sub-Total				$6,530,800
G. H. Barringer Estate Residual Property				
Columbia, SC-Leesburg Rd. 13.50 Acres	33.33%	$756,700.00	$252,233	
Columbia, SC-Woodhill Cir. 7.57 Acres	33.33%	$313,700.00	$104,556	
Columbia, SC-Miscellaneous Lots	33.33%	$9,000.00	$3,000	
Afton Mountain, VA-3 Homes (48 Acres)	33.33%	$300,000.00	$99,990	
Sub-Total				$459,779
GHB Estate & Paul Barringer				
Brandon Acres, Inc.	20.349%	$354,286.00	$72,094	
Sub-Total				$72,094
Liabilities				($1,008,459)
Net Worth				$24,633,616

Paul B. Barringer II Family GST Trust
Financial Statement

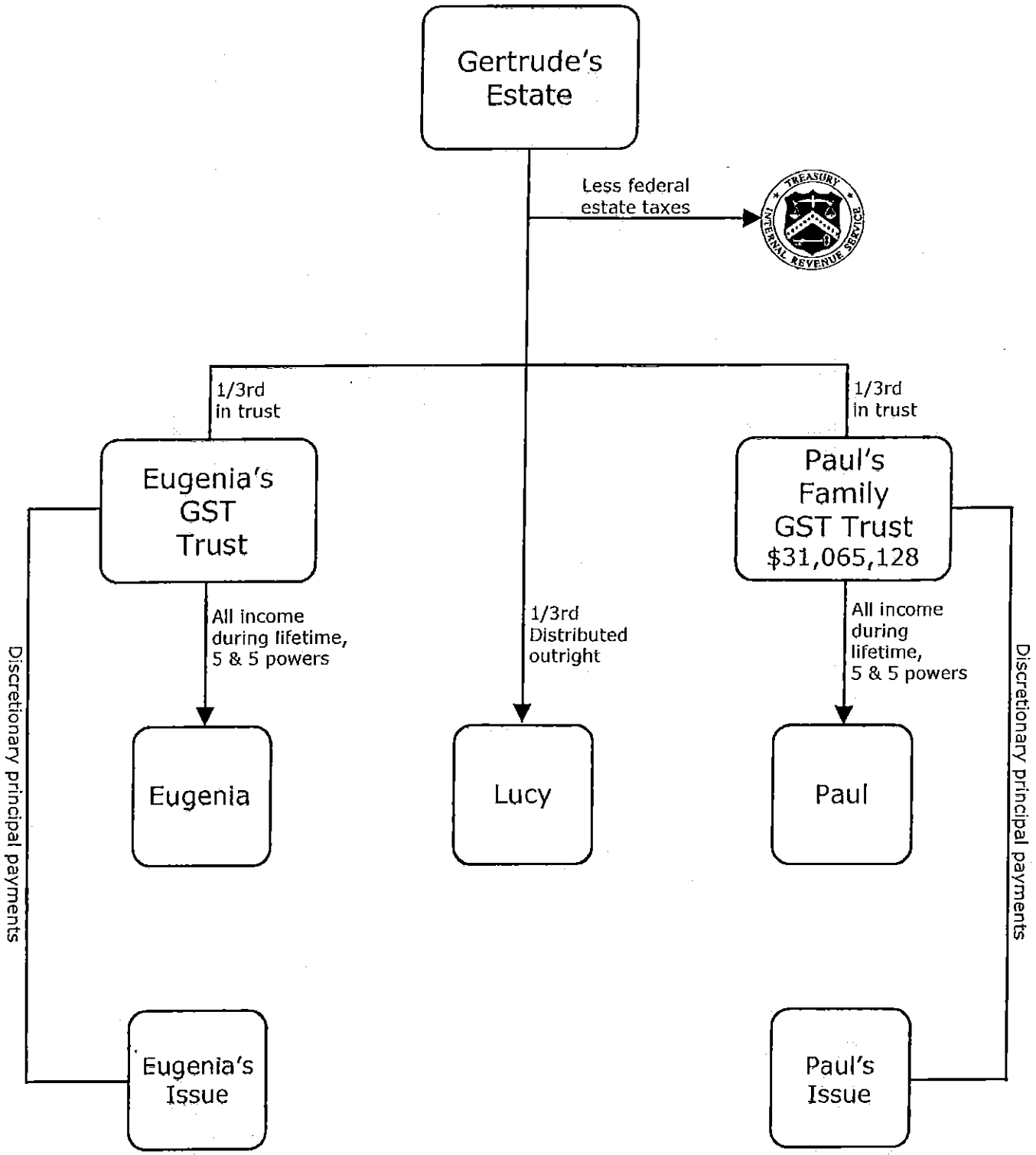
Asset Description	Units	Value Per Unit	Asset Value	Totals
Widen, WV-Timberland 70,142 Acres	70,142.00	$150.00	10,521,300	
Widen, WV-16" DBH Timber	67,463.00	$220.00	14,841,860	
Sub-Total				$25,363,160
TSWM Partnership			2,293,628	
MMI Global Fund LP			798,118	
Hartford Life Variable Annuity 8% Yield			1,543,637	
Coastal Lumber Company-Note @ 9%			425,000	
CLC Class B Common Stock	13,373.00	$225.27	3,012,536	
Bank Account			50,720	
PennWest Stock			80,000	
Sub-Total				$8,203,639
Liabilities - Mortgages to FLB				($2,501,670)
Net Worth				$31,065,129

B.V.

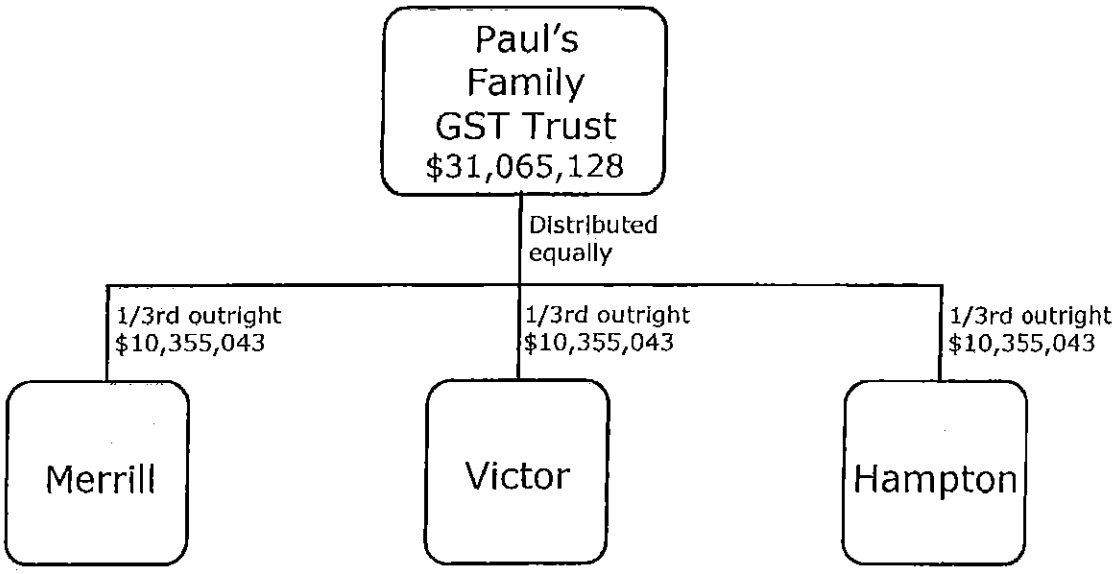
2-8.4

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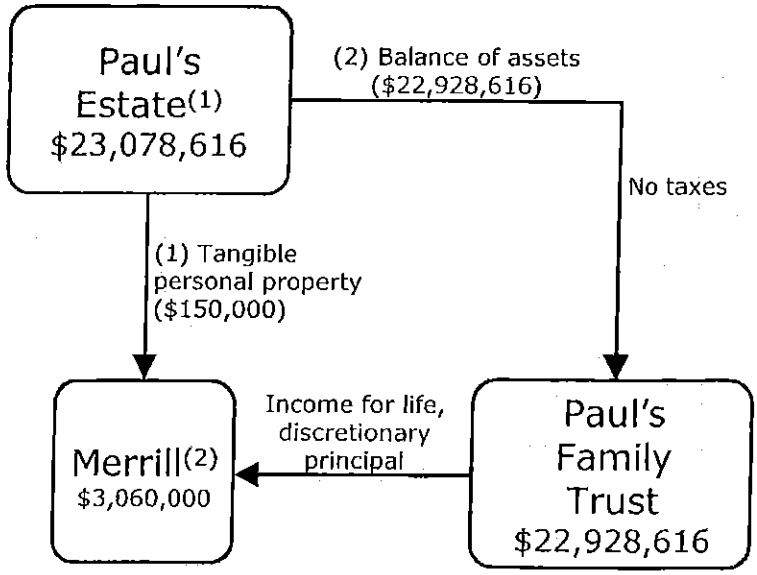
Gertrude H. Barringer's Last Will & Testament



Paul's Family GST Trust
At Paul's Death

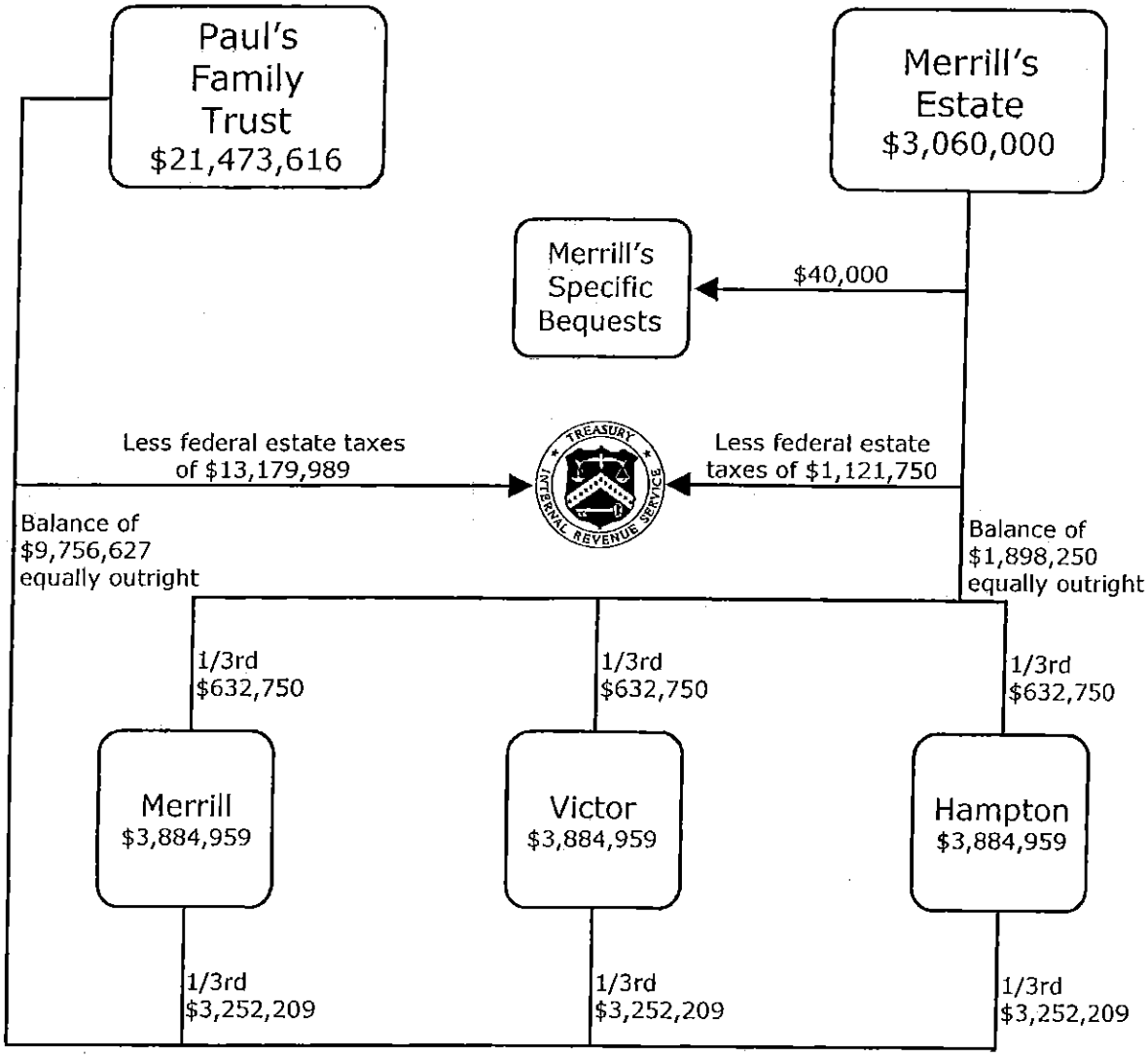


Paul's Last Will & Testament
Merrill Survives



(1) Assume 5% of mother's trust not included in Paul's estate.
(2) Merrill becomes sole owner of all jointly-titled property @ Paul's death. Jointly-titled property value of $2,910,000 + tangible personal property of $150,000 totals $3,060,000

Merrill's Last Will & Testament
Paul pre-deceases Merrill



Observations

(1) You and Merrill have not used your unified credit equivalent amounts ($625,000 each for 1998).

(2) You and Merrill are not taking advantage of by-pass trusts (unified credit trusts).

(3) You and Merrill are not taking advantage of generation skipping trusts for the benefit of future generations.

(4) Federal estate taxes will be approximately $14,300,000 at the last death of you & Merrill.

(5) Income taxes of up to $500,000 on retirement plans and deferred compensation plans will also be due at the last death.

Paul's Goals

(1) Transfer Coastal Lumber stock to grandchildren.

(2) Reduce estate transfer costs.

(3) Determine a way(s) to remove himself completely from his mother's GST trust.

Planning Assumptions

(1) Value of each CLC common share = $227.07

(2) CLC's earnings = $12,000,000 per year.

(3) Alternative earnings assumption, 18.32475% of book value per year.

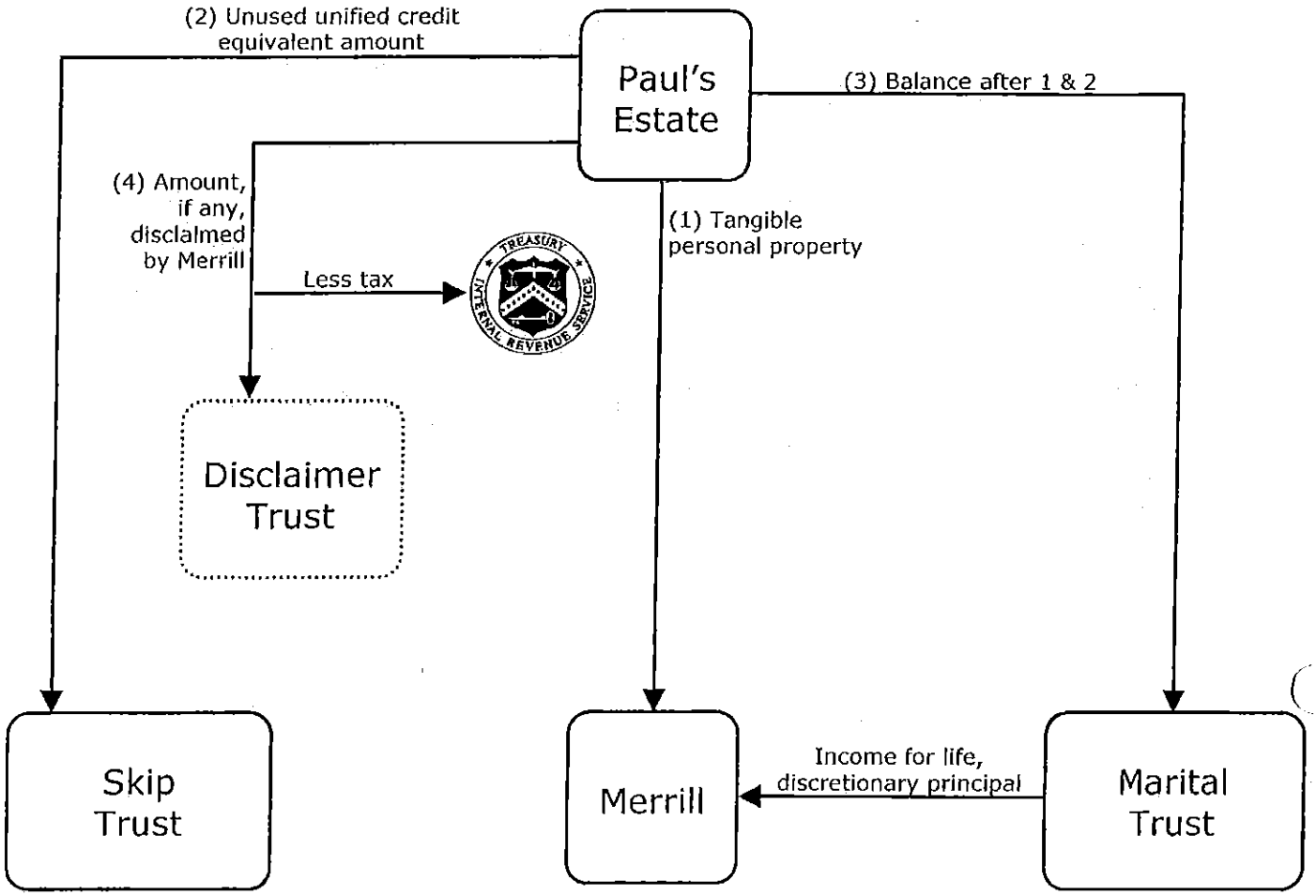
(4) CLC will distribute 40% of earnings.

(5) You & Merrill are in good health.

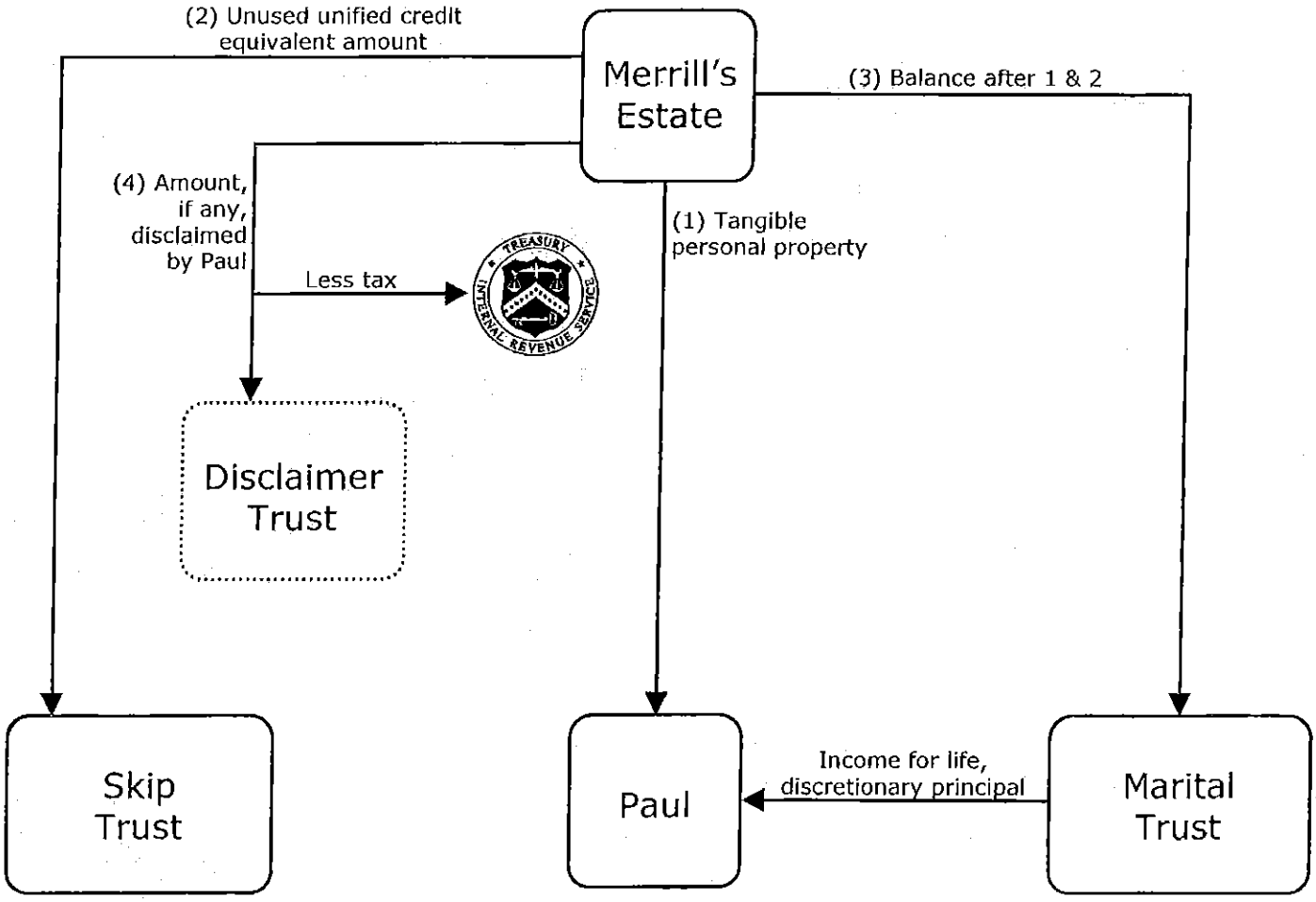
(6) You & Merrill should survive at least 10 years.

(7) You & Merrill are willing to make gifts.

Recommended Last Will & Testament for Paul



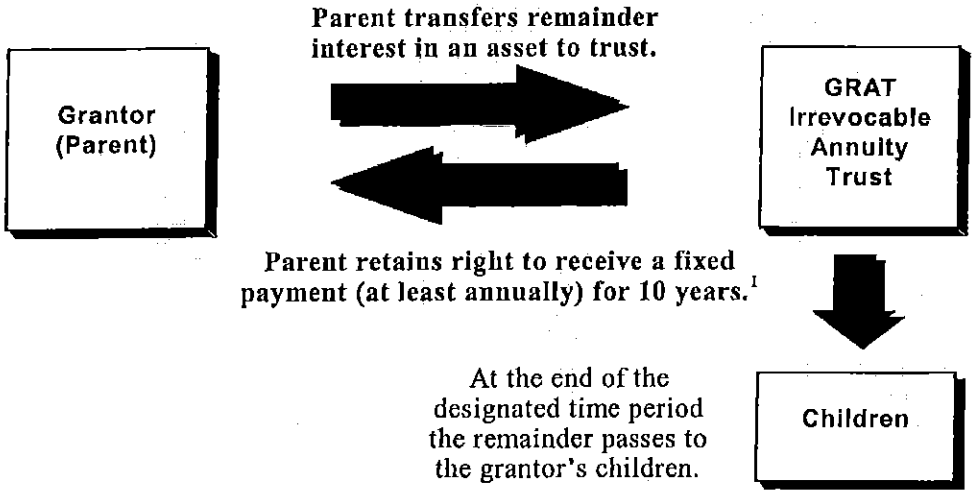
Recommended Last Will & Testament for Merrill



Grantor-Retained Annuity Trust Diagram

GRAT

The GRAT may be used by an estate owner to transfer assets and future appreciation to his or her children.



The value of the transferred asset minus the value of the retained annuity interest will equal the value of the remainder interest which is subject to gift taxation.

Assume a gift of a $500,000 asset to a GRAT:

Value of asset placed in trust:	$500,000
Age of grantor:	65
Term of payment:	10 years
Federal discount rate:	7.0% (changes monthly)

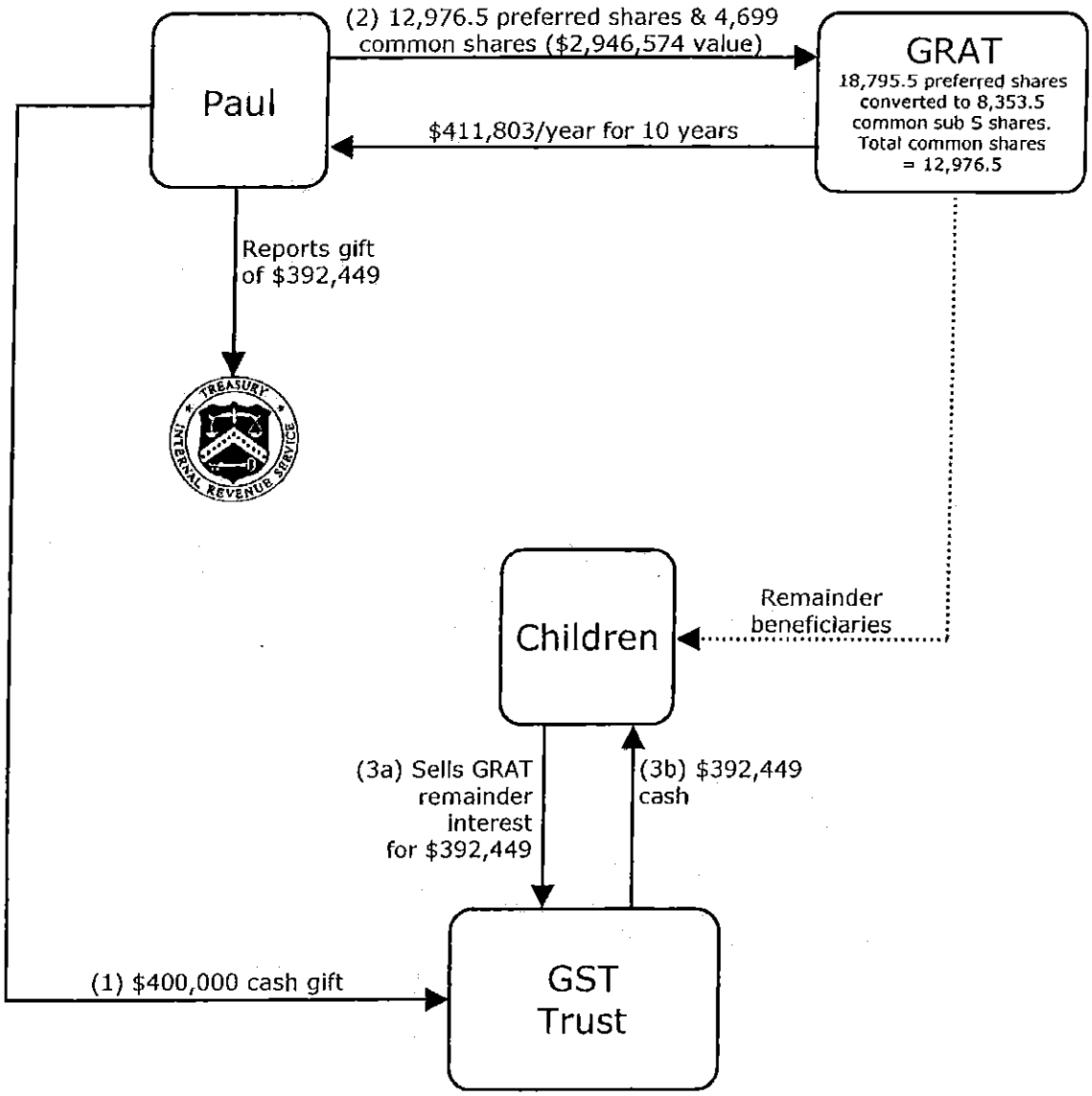
Payment At The End Of Each Year:

Annual Payment to the Grantor	First Year Payment as a Percentage of the Asset[2]	Value of the Retained Annuity Interest	Gift Tax Value of the Remainder Interest
$30,000	6%	$210,708	$289,292
40,000	8%	280,944	219,056
50,000	10%	351,180	148,820
60,000	12%	421,416	78,584

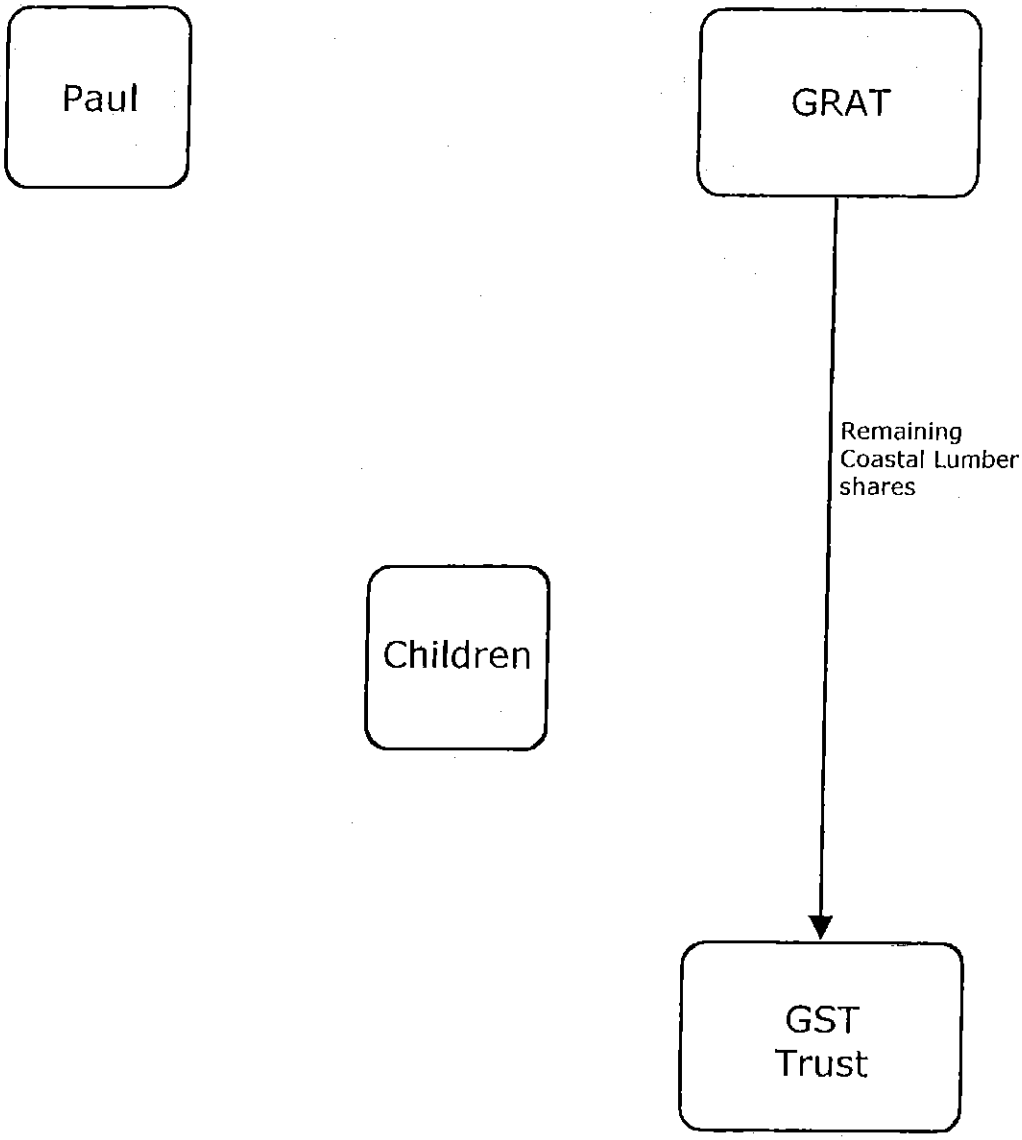
The cost of the transfer would be the gift tax on the value of the remainder interest. The gift is of a "future interest" and does not qualify for the annual gift tax exclusion. Therefore, either the gift tax must be paid or part of the unified credit (up to $625,000 of assets)[3] must be consumed.

[1] The payment period can be for the life of the grantor, or two or more joint lives, or a set number of years.
[2] In subsequent years the dollar amount of annual payment would remain the same but the percentage of trust assets distributed would vary.
[3] $625,000 in 1998. In 1999 this amount is $650,000, and increases periodically to $1,000,000 in 2006.

Paul creates a Grantor Retained Annuity Trust & Generation Skipping Trust (GST)



At End of GRAT Term



No Plan - Constant Earnings of $41.61 per Share

Year	Paul's Shares	Value per Share Beginning of Year	Total Value BOY	Earnings per Share	Distribution per Share	Growth per Share	End Of Year Value per Share	End Of Year Value per Share
1	25,953.00	$227.07	$5,893,148	$41.61	$16.64	$24.97	$252.04	$6,541,090
2	25,953.00	$252.04	$6,541,090	$41.61	$16.64	$24.97	$277.00	$7,189,033
3	25,953.00	$277.00	$7,189,033	$41.61	$16.64	$24.97	$301.97	$7,836,976
4	25,953.00	$301.97	$7,836,976	$41.61	$16.64	$24.97	$326.93	$8,484,918
5	25,953.00	$326.93	$8,484,918	$41.61	$16.64	$24.97	$351.90	$9,132,861
6	25,953.00	$351.90	$9,132,861	$41.61	$16.64	$24.97	$376.87	$9,780,803
7	25,953.00	$376.87	$9,780,803	$41.61	$16.64	$24.97	$401.83	$10,428,746
8	25,953.00	$401.83	$10,428,746	$41.61	$16.64	$24.97	$426.80	$11,076,688
9	25,953.00	$426.80	$11,076,688	$41.61	$16.64	$24.97	$451.76	$11,724,631
10	25,953.00	$451.76	$11,724,631	$41.61	$16.64	$24.97	$476.73	$12,372,574

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GRAT Plan - Constant Earnings of $41.61 per Share

Year	Shares in GRAT	Value per Share Beginning of Year	Total Value	Earnings per Share	Total Income	Distribution from CLC to GRAT	Grantor's Taxes	GRAT Cash Distribution to Grantor	Value per Share Post Distribution	Required Distribution	Cash Shortfall	Shares Distributed for Shortfall	Remaining Shares in GRAT	End of Year Value of GRAT
1	25,953.00	$227.07	$5,893,148	$41.61	$1,079,904.33	$431,962	-$323,971.30	$431,962	$252.04	$823,605.70	$391,643.97	1,553.92	24,399.08	$6,149,446.34
2	24,399.08	$252.04	$6,149,446	$41.61	$1,015,245.69	$406,098	-$304,573.71	$406,098	$277.00	$823,605.70	$417,507.42	1,507.24	22,891.84	$6,341,086.33
3	22,891.84	$277.00	$6,341,086	$41.61	$952,529.59	$381,012	-$285,758.88	$381,012	$301.97	$823,605.70	$442,593.86	1,465.70	21,426.15	$6,470,010.23
4	21,426.15	$301.97	$6,470,010	$41.61	$891,541.90	$356,617	-$267,462.57	$356,617	$326.93	$823,605.70	$466,988.94	1,428.39	19,997.76	$6,537,946.43
5	19,997.76	$326.93	$6,537,946	$41.61	$832,106.64	$332,843	-$249,631.99	$332,843	$351.90	$823,605.70	$490,763.04	1,394.61	18,603.15	$6,546,447.37
6	18,603.15	$351.90	$6,546,447	$41.61	$774,076.94	$309,631	-$232,223.08	$309,631	$376.87	$823,605.70	$513,974.92	1,363.81	17,239.33	$6,496,918.61
7	17,239.33	$376.87	$6,496,919	$41.61	$717,328.66	$286,931	-$215,198.60	$286,931	$401.83	$823,605.70	$536,674.23	1,335.57	15,903.76	$6,390,641.58
8	15,903.76	$401.83	$6,390,642	$41.61	$661,755.65	$264,702	-$198,526.69	$264,702	$426.80	$823,605.70	$558,903.44	1,309.53	14,594.24	$6,228,791.53
9	14,594.24	$426.80	$6,228,792	$41.61	$607,266.24	$242,906	-$182,179.87	$242,906	$451.76	$823,605.70	$580,699.20	1,285.40	13,308.83	$6,012,452.07
10	13,308.83	$451.76	$6,012,452	$41.61	$553,780.58	$221,512	-$166,134.17	$221,512	$476.73	$823,605.70	$602,093.47	1,262.97	12,045.87	$5,742,626.95
										Paul's remaining shares =		13,907.13		

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No Plan - 18.32475% of Book Value Earnings

Year	Paul's Shares	Value per Share Beginning of Year	Total Value Beginning of Year	Earnings per Share	Distribution per Share	Growth per Share	Value per Share End Of Year	End Of Year Value per Share
1	25,953.00	$227.07	$5,893,148	$41.61	$16.64	$24.97	$252.04	$6,541,090
2	25,953.00	$252.04	$6,541,090	$46.18	$18.47	$27.71	$279.75	$7,260,274
3	25,953.00	$279.75	$7,260,274	$51.26	$20.51	$30.76	$310.50	$8,058,530
4	25,953.00	$310.50	$8,058,530	$56.90	$22.76	$34.14	$344.64	$8,944,553
5	25,953.00	$344.64	$8,944,553	$63.16	$25.26	$37.89	$382.54	$9,927,993
6	25,953.00	$382.54	$9,927,993	$70.10	$28.04	$42.06	$424.60	$11,019,561
7	25,953.00	$424.60	$11,019,561	$77.81	$31.12	$46.68	$471.28	$12,231,145
8	25,953.00	$471.28	$12,231,145	$86.36	$34.54	$51.82	$523.10	$13,575,941
9	25,953.00	$523.10	$13,575,941	$95.86	$38.34	$57.51	$580.61	$15,068,596
10	25,953.00	$580.61	$15,068,596	$106.40	$42.56	$63.84	$644.45	$16,725,365

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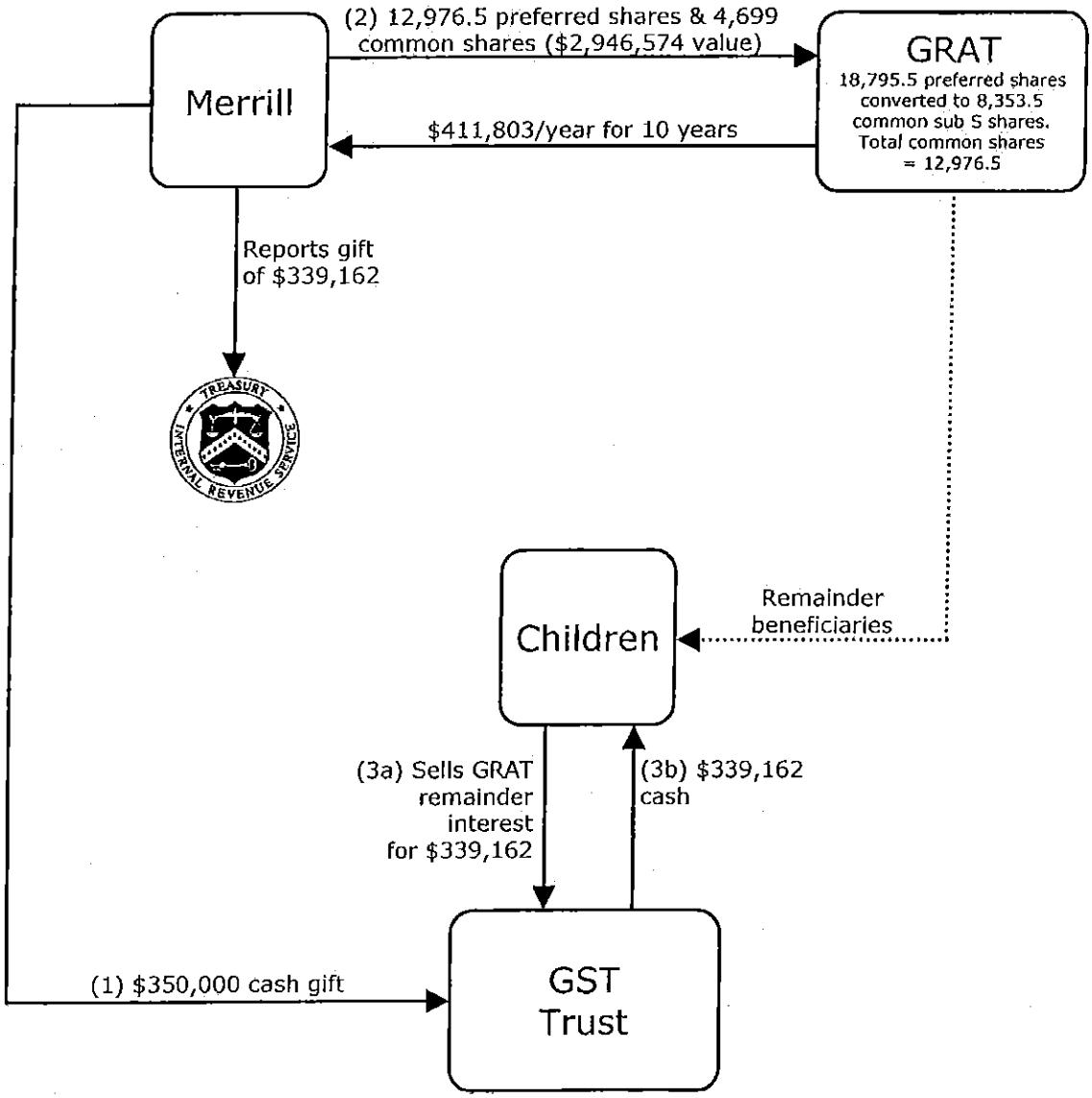
GRAT Plan - 18.32475% of Book Value Earnings

Year	Shares in GRAT	Value per Share Beginning of Year	Total Value	Earnings per Share	Total Income	Distribution from CLC to GRAT	Grantor's Taxes	GRAT Cash Distribution to Grantor	Value per Share Post Distribution	Required Distribution	Cash Shortfall	Shares Distributed for Shortfall	Remaining Shares in GRAT	Value of GRAT End of Year
1	25,953.00	$227.07	$5,893,148	$41.61	$1,079,904.33	$431,962	-$323,971.30	$431,962	$252.04	$823,605.70	$391,643.97	1,553.92	24,399.08	$6,149,446.34
2	24,399.08	$252.04	$6,149,446	$46.18	$1,126,870.40	$450,748	-$338,061.12	$450,748	$279.75	$823,605.70	$372,857.54	1,332.84	23,066.24	$6,452,711.05
3	23,066.24	$279.75	$6,452,711	$51.26	$1,182,442.89	$472,977	-$354,732.87	$472,977	$310.50	$823,605.70	$350,628.54	1,129.22	21,937.02	$6,811,548.24
4	21,937.02	$310.50	$6,811,548	$56.90	$1,248,198.89	$499,280	-$374,459.67	$499,280	$344.64	$823,605.70	$324,326.14	941.05	20,995.97	$7,236,141.43
5	20,995.97	$344.64	$7,236,141	$63.16	$1,326,004.51	$530,402	-$397,801.35	$530,402	$382.54	$823,605.70	$293,203.89	766.47	20,229.50	$7,738,540.25
6	20,229.50	$382.54	$7,738,540	$70.10	$1,418,067.82	$567,227	-$425,420.35	$567,227	$424.60	$823,605.70	$256,378.57	603.82	19,625.69	$8,333,002.37
7	19,625.69	$424.60	$8,333,002	$77.81	$1,527,001.49	$610,801	-$458,100.45	$610,801	$471.28	$823,605.70	$212,805.10	451.55	19,174.14	$9,036,398.16
8	19,174.14	$471.28	$9,036,398	$86.36	$1,655,896.98	$662,359	-$496,769.09	$662,359	$523.10	$823,605.70	$161,246.91	308.25	18,865.88	$9,868,689.44
	18,865.88	$523.10	$9,868,689	$95.86	$1,808,412.24	$723,365	-$542,523.67	$723,365	$580.61	$823,605.70	$100,240.80	172.65	18,693.24	$10,853,495.99
	18,693.24	$580.61	$10,853,496	$106.40	$1,988,875.54	$795,550	-$596,662.66	$795,550	$644.45	$823,605.70	$28,055.48	43.53	18,649.70	$12,018,765.82
										Paul's remaining shares =		7,303.30		

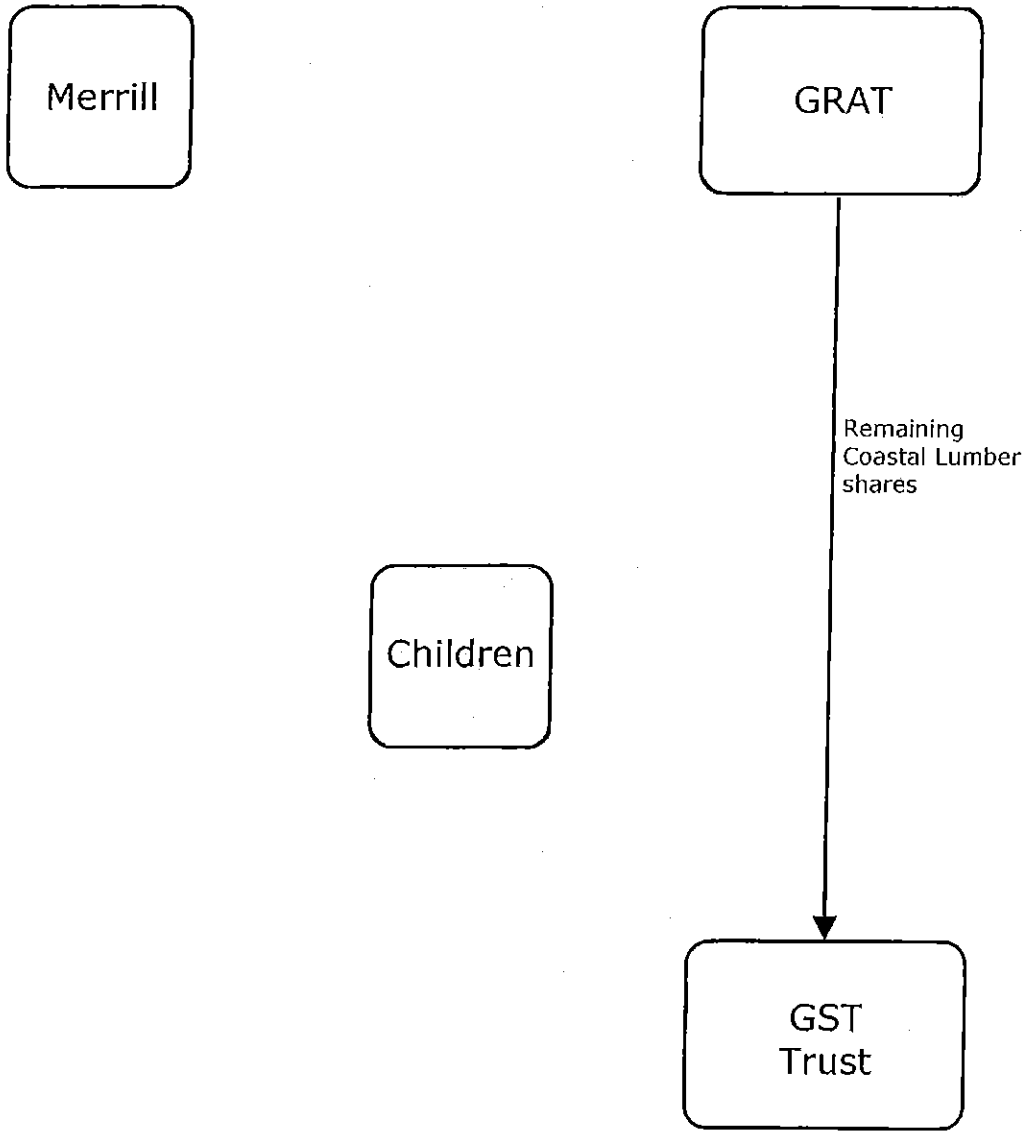
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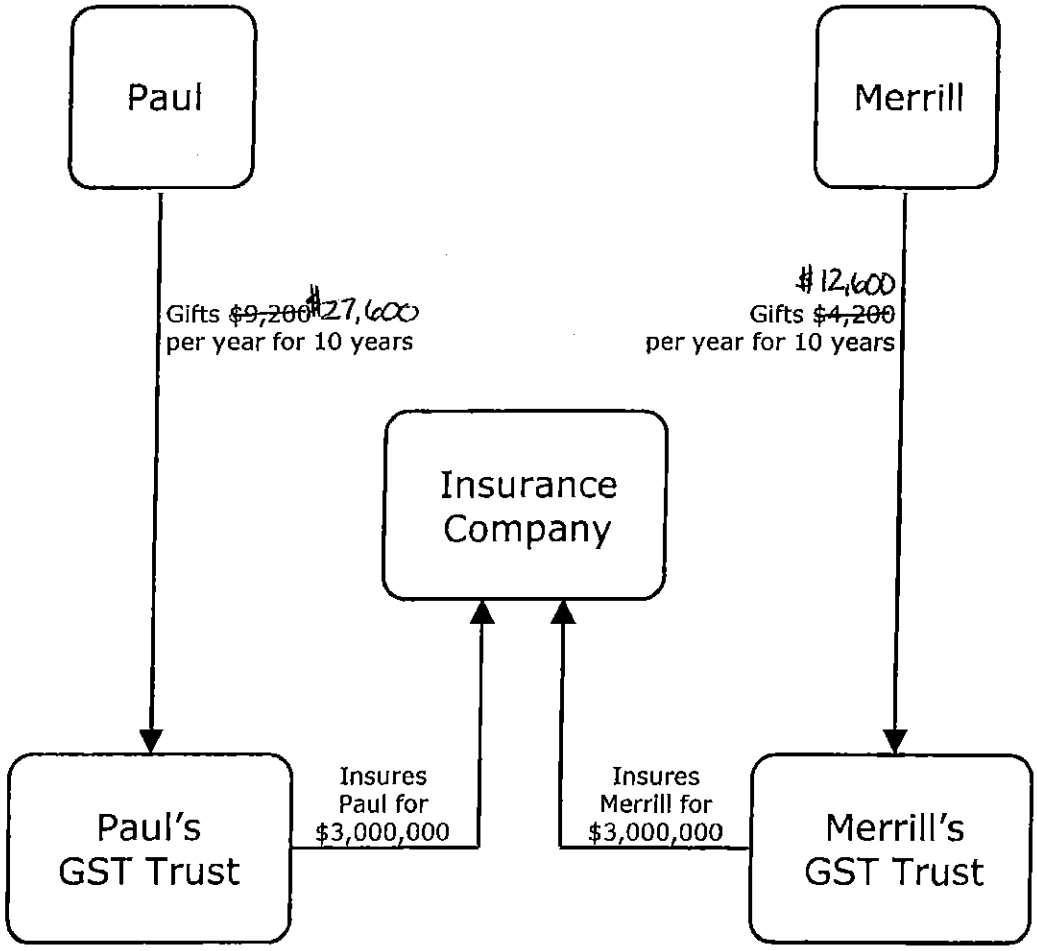
Merrill creates a Grantor Retained Annuity Trust & Generation Skipping Trust (GST)



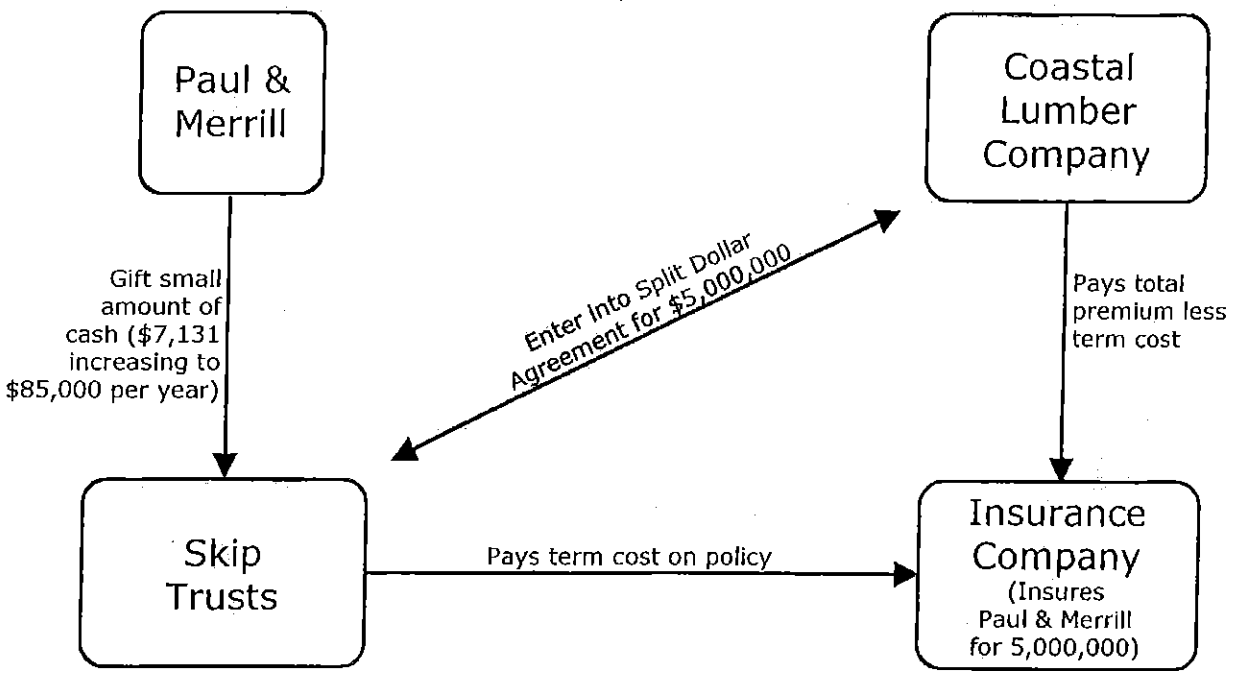
At End of GRAT Term



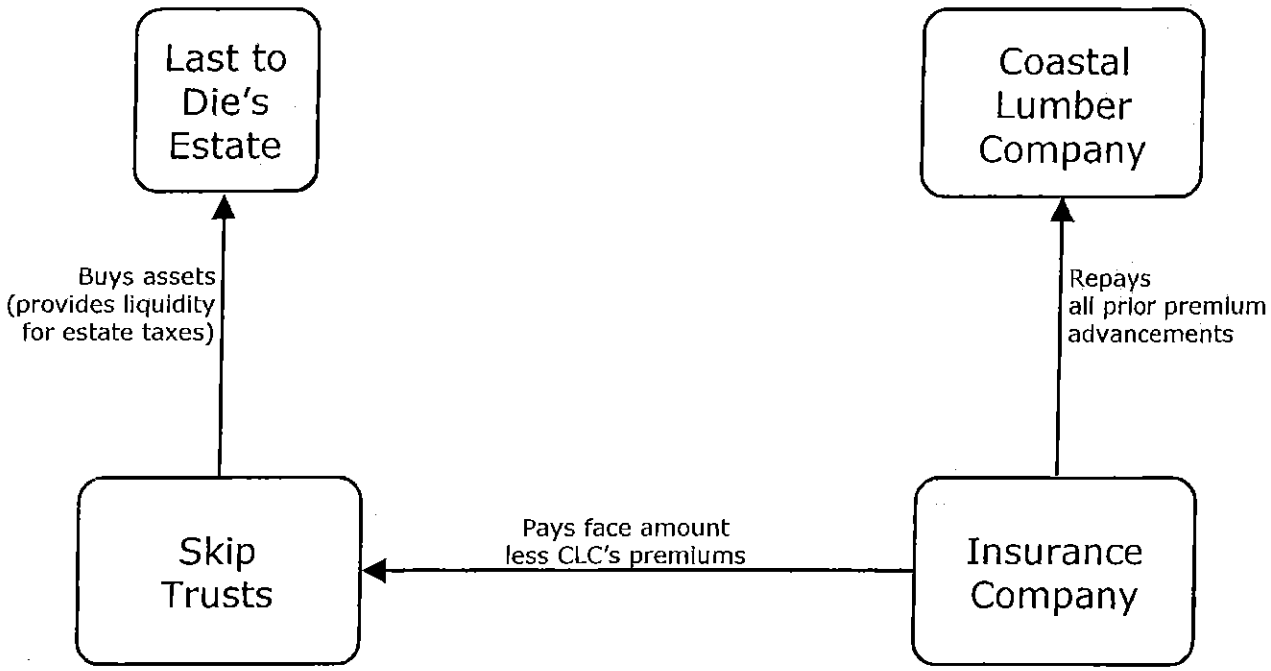
Insurance for Remainder Interest in GRATs



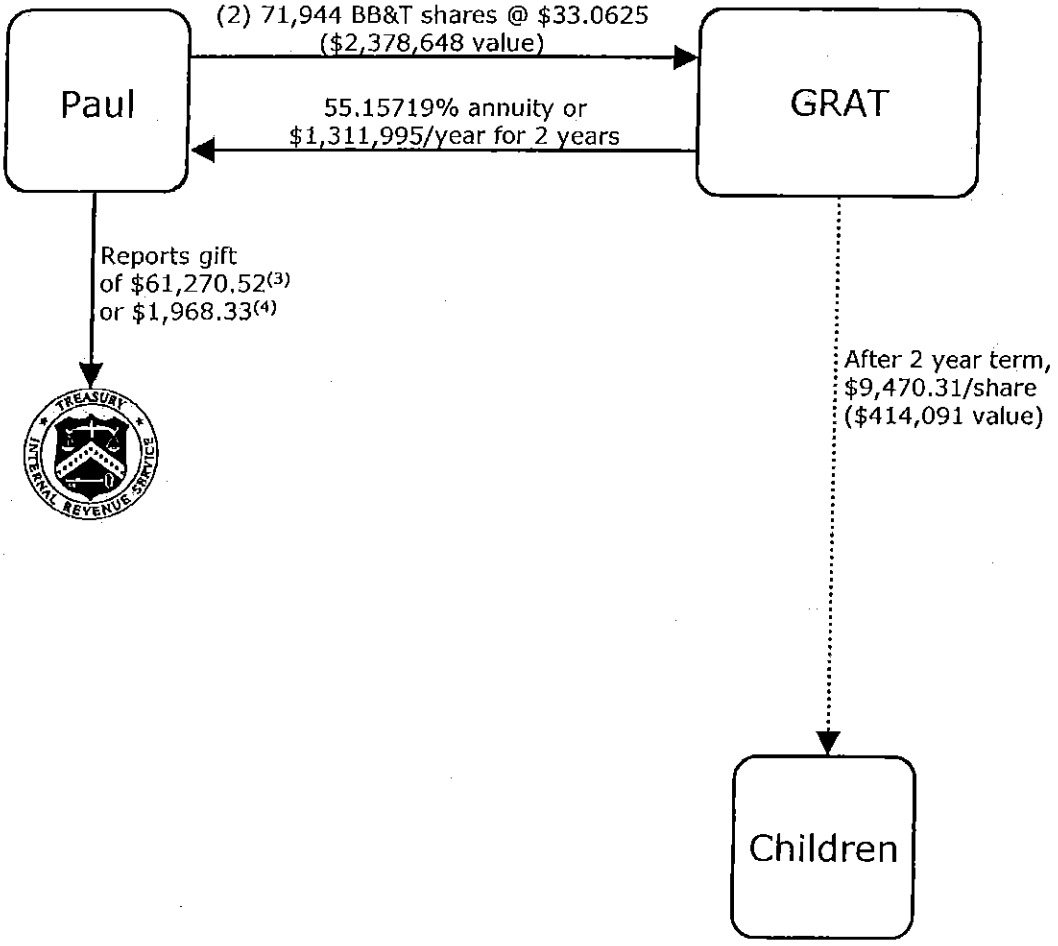
Split Dollar Agreement during Lifetime



Split Dollar Agreement
At Last Death of Paul & Merrill



2 Year Short Term GRAT



Year 1 - $50,360.08 in dividends and 33,181.81 shares of BB&T.

Year 2 - $31,203.56 in dividends and 29,291.84 shares of BB&T.

(3) Gift based on Paul's life only (single life calculation).
(4) Gift based on Paul & Merrill's life (two life calculation). IRS does not agree with two life GRATs.

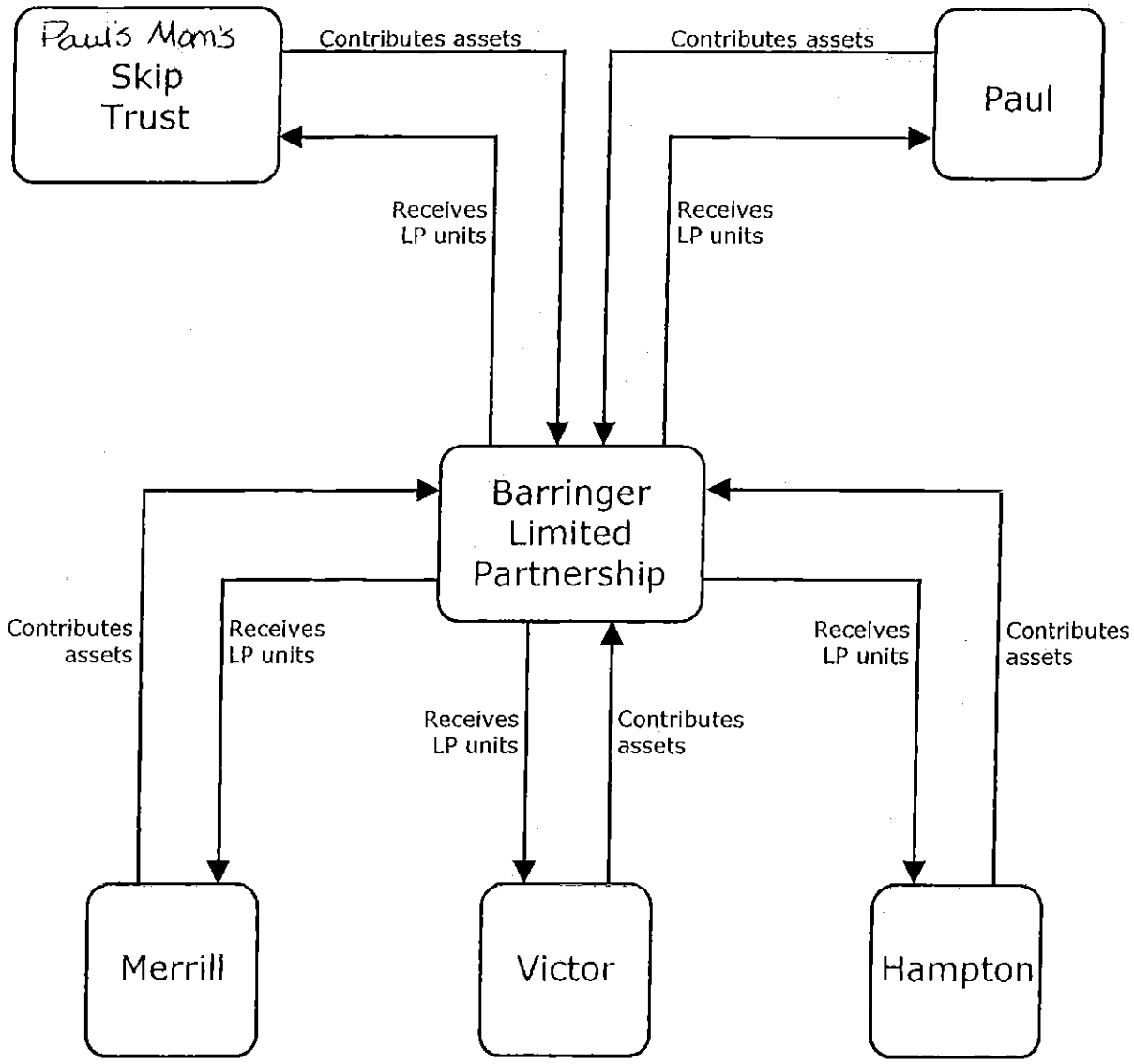
2 Year Short Term GRAT

Year	Shares in GRAT	Value per Share Beginning of Year	Total Value	Dividend per Share	Total Income	GRAT Cash Distribution to Grantor	Value per Share Post Distribution (15% Appreciation)	GRAT Required Distribution	Cash Shortfall	Shares Distributed for Shortfall	Remaining Shares in GRAT	End of Year Value of GRAT
1	71,944.00	$33.0625	$2,378,649	$0.70	$50,360.80	$50,360.80	$38.02	$1,311,995.40	$1,261,634.60	33,181.81	38,762.19	$1,473,811.18
2	38,762.19	$38.0219	$1,473,811	$0.81	$31,203.56	$31,203.56	$43.73	$1,311,995.40	$1,280,791.84	29,291.88	9,470.32	$414,091.01

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Limited Partnership



C

10/1/98

E

Paul Barringer
Robert Shaw
Neil McBryde
10/1/98

(1) ORAT issues —

(a) W-9 done →

(b) dividend reinvestment — have all shares invested to max extent possible via dividend reinvestment →

TO DO (c) confirm no short term during issue in the stock →

(d) [redacted] use of warrants up via proxy decision to distribute (there is not this planned today to this

(2) Options in ORAT stock — 2003 expiration date →

[redacted] knowledge this

④ Coastal lumber → no class of voting CS →
→ transfer takes place today + dividend
→ will use BV as of dividend →

⑤ ~~Today~~ ~~he~~ Banning Family Voting Agreement ⇒ has been executed by Victor & Hunter but Hunter gave Paul a hard time when asked to sign it, because it gives Victor two votes →

⑥ Paul → children may have all they should get →
→ ~~he~~ never had trouble with children before ④
particularly are concerned with co.'s impact →

⑦ ~~Tells~~ Explains: (a) want stock in Coastal Lumber Co to go to trust for children ④ ~~then~~ then grandchildren in GST trust →

(b) "5+5" ~~out~~ ④ reduce income - Jane Schuetzenfeld's [redacted] out (worked w/ accts) Then Hans Reimer did wills →

(c) Virginia trust →

(d) (i) may be some sites →

(ii) S.C. sites if possible →

(iii) has elderly trees →

(iv) Hyppy Garden → retreat lawyer →
→ mother's trusted lawyer →

⑧ Trustee issue: is concerned about S'rs ④ ng. for his dividends also

discussed ④ committee

(4) Victor can't run co. & he knows it but he is good person, excellent tree (5) Stewart owns → but problem if he is divorced/daughter in Victor

(10) M.P. = M's 2 for 1 voting ~~of Mom's trust will have same vote~~ is to prevent lawsuits from voting to force sale

Used 10% discount to BV

2 years ago → GM bad sale →

~~Victor's~~ Mom's trust has 13 M shares of ~~GST~~ Capital under — note QSST/ESST → bought from 3rd party years ago

(11) is concerned about BV → appraised several years ago by Steve Cohen who got all of his stock out upon IPO

(6) DM: check all appraisals

(4) purely intent discount → only 10% for non-voting. Comm →

~~(5) Capital Cost~~

(12) Robert blames & notes cash flow shortage - y ISDGT —

(13) is concerned about.

(14) discussed multiple entities ⇒

(15) " CLAT

(16) discussed Mom's / GST Trust ⇒ as W's company stock he has to for income

(17) If revenue — use BV ⇒

(18) Main asset is 7,000 acres of timberland ⇒ in hands GST Trust paid $110 acre //

(19) check how 5 of 5 works → if revenue income ① 5 in 5 ($10,000,000)

→ factual intent doesn't → 10% pardoned by Coastal →
or 10% disbursed under 5 in 5 →

(20) Coastal cuts $1M worth of timber → ~~sold~~ paid, as Timber, Save Coastal 2 year option to buy at $1M — expired in '93 ⇒

(21) Consider

TODAY: do sale if can extract capital of sale of 10% timber	$8.4 — cost 3.0 — 1.2 —
GST Trust Assets	
$7M - BV →	.4
$3M - BV from trust ⇒ push up all of the item stuff	3.0 .1
NW IRA → hardliff on LW @ DEATH → already have it	$16.1 (2.5)
GST ⇒ as long as possible // LPA in favor of descendants only ⇒	$13.6
wife/irrevocable trusts if regulary taxed	×50%
	$6.80

Timbers Sec. (21A) title (a) wife, friends ④ Barter (b) if either dies, resigns, etc. then 3 children

given to agent to ~~sell~~ ④ to ~~agent~~ ⑤ to agent

BOA 004368
CONFIDENTIAL
McBryde Documents
Page 42 of 206

~~22nd Post Winterqueen~~

3 children are members

[redacted]

(22) Consider distributions / copies to children —

(a) tax or liq. rebate ? ⇒ No

(b) withdrawal to new trustees ⇒

(c) check exposure to fix tax ⇒

(d) check timetable ⇒

(e) check law ⇒ N. Jones ⇒ check w/ counsel ⇒

~~(f)~~ (33) Bottom line ⇒ ⇒ request spousal distributions ⇒ ⇒ updating Va. trust ⇒ // what does this mean

Conclusion

TODO: (1) GST Trust ⇒ (timing) ⇒ set up of it ⇒

⇒ set up tax exposure ⇒

⇒ check Va. law ⇒

⇒ as customary standard provision / under Va. law

⇒ new trustee, O, others ⇒

⇒ will agree to same GST tax ⇒

⇒ pursuing GST Taxes in ~~it~~ do it ⇒ to T.O.

~~⇒ federal intent not relate~~

~~⇒ No~~

⇒ Remove "5 or 5"

— OR —

(2) CRT / CLAT ⇒ consider ⇒ but no action now

(3) ~~[redacted]~~ Coastal stock / MF ⇒ w/ GP/LP and in Sole Trustee Lifetime trust

(4) LLC ⇒ Winterqueen ⇒ other

in (1) set Widen Tract and new to children ⇒

& children to form LLC w/ Land ⇒ GP + LP

(5) Change Winterqueen Loan ⇒ May be demand note ⇒

TODO: Simple ⇒ are we OK. if total distributions exceed to Equity ⇒ even in case of it

(11)

Consider: do LP at trust level

then distribute LP to children

then distribute GP to Paul

⇒ exercise 5% withdrawal right

as homemaker, give to charity as owned by children

(2) go to Coastal & stock / do ~~[redacted]~~ non-voting 1st

then give [redacted] children

(23) Lee insurance ⇒ to pay $ upon / even if suicide prior to death ⇒

(24) Merrill's Estate ⇒

She has 2M stocks + bonds not listed ⇒

(25) back to Trustees // [Collins / Jam] ⇒ to old

nephews, Buzz Yount ⇒ IBM return ⇒

⇒ is in Brawl ⇒

⇒ straight arrow ⇒

[Victim / son] ⇒ but family issue ⇒

(26) Buzz Yount ⇒ w/ wife ⇒

⇒ w/ children ⇒

⇒ w/ each child as OST ⇒

(27) do 100 for 1 — now ⇒ at this point voting stock divided equally ⇒

(28) other people in advisory Bd ⇒ see Paul's effect

M & P's = check on issue

2e: reconsidered ?

(30) Sea Cliff — [GDJ, FO is on Board — is trying to put together deal to sell it]

[to whom he lives]

(31) Probate Ct vs 509(a)(3) [redacted] vs separate Trust ⇒

(32) is concerned about HH house ⇒

(33) is " " other non-family assets

↳ consider family wealth in RO ⇒
May be discount / not discount ⇒

Considerable to defective grantor trust ⇒ saving GS ⇒
selling ⇒

[limit hold period " "]

Corp. ⇒ limit 5,400 BV

put in RC 181

(32) Bill Bordeaux owns 5% ⇒
in Industrial

Notes – 10/1/98 – ~~Paul~~ Paul Barnugen
wife Meriel
daughter Haughton
~~Son~~ Victor
daughter Meriel

(CC) – not good letter

– transfer Coastal to GST
– delivery estate taxes
– eliminate income/accrued S Corp.

– Collins Denny – Richmond atty
– Jason Eckford – Uncle in business/brother-in-law guest

Married Sister
T.O. Jr NS 172

inclusion re: Mavis GST trust

– Mavis GST – ~~Paul~~ Paul, Collins, Jason

– new GST's ⇒ proposed: wife, son, daughter, Collins + Jason

– problem: need non-voting stock for Judge.

– Coastal Lumber

Share Plan – 2 GRATS
2 gifts
2 term ⊕ I last to die
1 split dollar from ~~GST~~ ~~IDGT~~ IDGT →

Other issues: ① convert def. comp (not vested) to split dollar

② Sale to ~~RLA~~ RLA Trust for FLP funded w/ real estate / AR's →

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RALEIGH, NC
DURHAM, NC
CHARLESTON, SC

October 22, 1998

VIA FEDERAL EXPRESS
PERSONAL AND CONFIDENTIAL

Mr. Paul B. Barringer, II
c/o Coastal Lumber Company
Green Street Extension
Weldon, NC 27890

Re: Tax Planning

Dear Paul:

I enjoyed meeting with you and Robert and believe that I understand, at least preliminarily, your objectives and the facts and circumstances that will have to be considered in meeting the objectives.

As you requested, we have reviewed all the materials provided prior to and during the meeting, have researched a number of issues, particularly those related to your mother's GSTT Trust, and would suggest the following recommendations and/or actions be considered with respect to the tax planning for you. Since we met, I also received a letter from Collins Denny and his comments are also reflected in these recommendations. These recommendations, which are consistent for the most part with Robert's initial recommendations, should be refined at our next meeting on October 30, 1998, when the facts and circumstances are better developed.

A. Transfer of Coastal Lumber Company Stock in Trust to your Descendants.

We believe that the GRAT technique described by Robert Slane in his materials which involves the sale of the GRAT remainder interest to the defective generation-skipping tax trust ("GSTT Trust") will satisfy your initial objective of passing the stock of Coastal Lumber Company to your children in the most tax efficient manner. This technique minimizes gift taxes and avoids the concerns expressed by Collins Denny concerning a direct sale of the stock to the defective GSTT Trust. The steps required to satisfy these objectives are discussed below. As a result of the recent drop in interest rates, this technique is particularly efficient for tax planning purposes at this point.

1. **Reorganization of Coastal Lumber Company, Issuance of Non-Voting Stock, and Transfer of Non-Voting Stock to the PBB Grantor Retained Annuity Trust.**

(a) The Company will immediately take appropriate corporate action through the Directors and Shareholders to authorize the issuance and to issue a non-voting common stock dividend of 100 shares of non-voting stock for each share of voting stock outstanding.

(b) Upon your receipt of your non-voting shares you will transfer those shares to the PBB Grantor Retained Annuity Trust (the "GRAT").

(c) Using the valuations on which the recent reorganization was effected (with the applicable discounts to reflect the non-voting nature of the stock) will require that the GRAT provide to you annually for a ten (10) year period approximately thirteen percent (13%) of the fair market value of the stock at the time it was transferred to the GRAT. These numbers will change as the final valuations are determined and to reflect the changes in the applicable federal rate for federal income tax purposes. The GRAT remainder interests will initially go to your children.

(d) The satisfaction of the annuity amount in cash (with cash flow distributed from the Company as a dividend on the non-voting common stock) and/or distributions in kind of the stock back to you will be effected in the same manner as the GRAT you created several weeks ago which provided for a fifty-five percent (55%) payout over a two-year period, except that this payment as noted above will be thirteen percent (13%) over a ten (10) year period.

(e) Based on the current projections that you reviewed with Robert, the GRAT should be able to satisfy substantially all of the annuity payments over time without the requirement of making any distributions in kind. To the extent that there is a shortfall in any one year, it is possible that in lieu of making a distribution in kind, the GRAT will borrow the stock from a third party, which can be a related entity and/or your mother's GST trust to maximize the tax benefits from the use of the GRAT. If distributions are in fact required to be made in kind of the S Corporation stock, then the tax benefits of this technique are somewhat diluted.

(f) Under current law, the GRAT will constitute a permissible S Corporation shareholder because for income tax purposes you will be treated as the owner of the property (i.e., the Coastal Lumber Company non-voting stock) that has been transferred to the GRAT. It will be a wholly (or "defective") grantor trust for Federal income tax purposes.

2. **Creation and Funding of GSTT Trusts.**

(a) You will separately transfer to a generation-skipping transfer tax trust (the "GSTT Trust") that will last for the permissible period allowed by the rule against perpetuities (generally 90 to 120 years) to be held successively for the benefit of your children, grandchildren, and even more remote descendants. You decided at our last meeting not to use a trust situs such as Delaware or Alaska which would allow the GSTT Trust to be perpetual.

(b) You will transfer to the GSTT Trust approximately $400,000 in value of cash.

(c) Similarly, Mrs. Barringer will create and transfer to a virtually identical GSST Trust $350,000 in cash.

(d) The Trustees of the GSTT Trusts, based on our prior conversations, could be, during your lifetime, Buzz Younts, one or more of your children, other third parties or some combination of these individuals. Upon the death of the last to die of you and Mrs. Barringer, the GSTT Trusts will divide into separate trusts for each of your children then living, with the descendants of a deceased child having a separate trust share created for such descendants. At that time, you should consider naming Buzz or other third party, and the child who is the then primary beneficiary of the Trust as the Trustees of each child's Trust. The Trustee issue is one that you indicated you needed to address in more detail with respect to the GSTT Trusts, your mother's Trust, and all other estate planning documents.

3. **Purchase of Remainder Interest in GRAT by GSTT Trusts.**

(a) The Trustees of each of the GSTT Trusts created by you and Mrs. Barringer will purchase from your children their a proportionate shares of the remainder interest of the GRAT that you had previously created and funded with the Coastal Lumber Company non-voting stock.

(b) The purchase price will be the price as finally determined in the Federal tax proceeding, that is, it will initially be the price as determined by the taxable gift deemed being made to the children as remainder beneficiaries of the GRAT, with the purchase price to be adjusted accordingly should there be a later determination that the remainder interest is of a greater value. For this reason, you and Mrs. Barringer may want to transfer some additional cash to the GSTT Trusts or provide for contingent notes in the event of a valuation adjustment by the Service on the non-voting stock, and we can discuss this issue at our next meeting.

(c) The GSTT Trusts will pay for the GRAT remainder interests purchased from your children by the transfer of the cash which you and Mrs. Barringer transferred to the GSTT Trusts and will receive in return all rights to the property, if any, left in the GRAT upon the termination of the GRAT.

4. **Operation of GRAT and Termination**.

(a) If you survive the term of the GRAT and assuming the cash flow projections are met over the ten (10) year period of the GRAT, at the end of the term of the GRAT, all of the Coastal Lumber Company non-voting stock will be transferred proportionately to the GSTT Trusts.

(b) At that point, if you and Mrs. Barringer are still living, the income received by the GSTT Trusts will be distributed to your children or more remote descendants, but as long as the Trusts continue to be defective grantor trusts such income will be taxed to you and Mrs. Barringer although you will have no entitlements to the income or principal of the Trusts.

(c) For Federal tax purposes, the payment by you and Mrs. Barringer of the tax on the income received by the GSTT Trusts from the S Corporation stock that the Trusts will then hold will not be deemed a gift.

(d) If at any time, however, you and Mrs. Barringer do not want to be further taxable on the income of the GSTT Trusts, or if the trust law should develop so that you and Mrs. Barringer are no longer for any reason treated as grantors of the Trusts, then the Trusts will be taxable on all the income they receive subject to such tax being passed through to the beneficiaries of the Trusts as a result of distributions to those beneficiaries.

(e) If the GSTT Trusts are no longer defective, they will still continue to be qualified Subchapter S shareholders, assuming the Trust makes the appropriate electing small business trust elections (the "ESBT elections").

(f) If the ESBT elections are made, the GSTT Trusts will be taxable on all of the income generated by the Coastal Lumber Company stock (whether or not it is distributed in the form of a dividend to the trust) at the Trusts' maximum income tax bracket (39.6%). Alternatively, if upon the termination of the defective trust status the Trustees take appropriate action under the terms of the Trusts to create separate trusts for each of your children or grandchildren that provides for all of the income to be paid currently to the child or grandchild who is the oldest then living beneficiary of the Trust, then the trusts will qualify as qualified S corporation shareholders without having to make the ESBT elections. Under this arrangement, all of the income of the S corporation

that is distributed to the trusts would in turn be required to be distributed to the child or grandchild who is the primary beneficiary of the trust for his or her lifetime.

(g) If you were not to survive the termination date of the GRAT, that is, if you were to die before the end of the ten (10) year term of the GRAT, the GRAT annuity payments would be made to your estate for the remainder period and, more importantly, virtually all of the value of the assets held in the GRAT would be includable in your estate for Federal estate tax purposes.

(h) It is for the reason set forth in the preceding paragraph (g) that under this approach there will be a purchase of an inexpensive as possible term life insurance on your life to in effect cover any estate tax exposure were you to die within this ten (10) year period. This insurance would be held by a separate irrevocable insurance trust the corpus of which would not be includable in your estate, but would provide liquidity to your estate.

(i) The irrevocable life insurance trust holding term insurance would not be a GSTT trust, thus no part of the GSTT transferor exemption would be allocated to the trust and the trust would simply provide that after your death (or possibly your and Mrs. Barringer's deaths) the property would be distributed outright to your children. The trust property at that point will consist of the life insurance proceeds or other assets in your and Mrs. Barringer estates which are, in fact, purchased by the life insurance proceeds in order to give your estates the appropriate liquidity with which to pay estate taxes.

B. Distributions From your Mother's GSTT Trust (the "Barringer Trust").

We believe that the Barringer Trust can make substantial distributions to effect your objective of passing the assets in the Barringer Trust to or for the benefit of your children while limiting the negative tax impact of your income interest and "5 or 5" power.

1. Change of Trustees and Distribution.

You and the other current trustees of the Barringer Trust will resign as Trustees and Jason Eckford will be designated as the successor Trustee. You indicated that additional Trustee restructuring should be considered, including the possible designation of Buzz Younts as a co-Trustee or successor Trustee to Jason Eckford.

2. Creation of Partnership.

(a) A limited partnership or LLC will be created by the Trustee out of all of the real property owned by the Barringer Trust possibly with one or more children as

initial minority limited partners of the partnership at the time it is created. The general partner (if the limited partnership approach is used) would be the Trustee either directly or, more likely, an LLC owned by the Trust.

(b) The partnership will be funded with the real estate held by the Trust, principally the Widen tract.

3. **Discretionary Distributions of Trust Principal and/or Exercise of "5 or 5" Power in lieu of Discretionary Distributions.**

(a) As a result of requests for discretionary distributions of trust principal in accordance with the ascertainable standards by you and your children (or possibly in your case as a result of your exercise of your "5 or 5" power), the Trustee would distribute to you all of the general partnership interest in the partnership created by the Trustee and distribute to your children all of the limited partnership interest of the partnership created by the Trustee.

(b) The Trustee, again upon request for discretionary distributions in accordance with the ascertainable standards set forth in the Trust (or possibly again in your case with your exercise of your "5 or 5" power), will distribute all of the voting Coastal Lumber Company stock which it holds after reorganization and distribution of non-voting stock described above to you and will distribute all of the non-voting stock which it holds to your children.

(c) Your children will take the assets that they receive and will hold the non-voting Coastal Lumber Company stock in kind and are of course permissible S Corporation shareholders. Your children will hold the limited partnerships interests which you will control through your general partner interest in the partnership and will also contain customary and appropriate restrictions on the transfer of partnership interests to keep such partnership interests within your family line.

(d) Since the Trustee is independently making decisions to make corpus distributions to you and to your children, there will be no gift tax liability although the impact of the distributions will both limit the income distribution flowing through to you by decreasing the asset base held in the Trust generating such income and will also reduce at your death the inclusion of any property in your estate as a result of your ownership at death of the "5 or 5" power.

(e) In due course, the Trustee of the Trust may decide to make additional discretionary distributions to your children if they so request in accordance with the ascertainable standards, which will further reduce the negative tax impact of your ownership of the income interest and "5 on 5" power.

(f) With respect to any distributions of principal made to your children or to you from the Trust, the Trustee will necessarily require that the beneficiaries on behalf of themselves and their heirs, and successors and assigns indemnify and hold the Trustee harmless for having made the principal distributions.

(g) Jason Eckford, as Trustee, and any successor trustee appointed as provided pursuant to the provisions of the Trust, would continue to hold the marketable securities, mutual funds, hedge funds, and other similar assets and manage the same in the customary manner.

C. Creation of Partnership and Sale to GSTT Trusts of Sea Pines Units and Additional Assets.

You indicated your desire to transfer certain other assets out of your estate in a tax efficient manner, including specifically your Sea Pines units. Through the creation of a new limited partnership (which would be a separate partnership from the one created in connection with the Barringer Trust but which would probably have the same LLC owned by you as the General Partner), and the subsequent sale by you of substantially all of your limited partnership interests in this new partnership to the GSTT Trusts, this objective can be realized. Specifically, the steps would be as follows:

1. You will create a separate limited partnership to which you will assign your assets in the Sea Pines units you have purchased over time.

2. Under the terms of the limited partnership agreement, an LLC owned by you, Mrs. Barringer and/or your children will be the 1% general partner and you will own all of the 99% limited partnership interest.

3. You will then sell those limited partnership interests to the GSTT Trusts which you and Mrs. Barringer earlier created as discussed above.

4. The terms of the sale will provide for the Trusts to issue 9-year notes to you with interest only payable over a 15 to 20 year period and with principal payable as a balloon payment at the end of the 15 to 20 year period.

5. The interest rate on the 15 to 20 year note if the transactions were closed in November is 5.1%. This is the interest that would be charged on the note.

D. Distribution of Interest in your Home.

You indicated a desire to transfer your interests in your home over time to your children through a QPRT. Pending the running of the statute of limitations or successful audit by the Internal Revenue Service with respect to the gift tax returns filed in connection with the transactions outlined above, you will then establish QPRT's for the real property you own. Alternatively, you will create QPRT's currently on a long-term basis because of the favorable interest rate environment recognizing that the gift tax value of the taxable gift under the term of the QPRT is relatively nominal. If the latter alternative is selected, we will need to discuss several planning possibilities that will lessen even further the gift tax impact of establishing the QPRTs.

E. Revision of Wills and Trusts.

You and Mrs. Barringer will separately have prepared pour-over wills and revocable trusts which contain generation skipping transfer tax provisions to the extent that any generation skipping transfer tax transferor exemptions are available at the time of your deaths (which generation skipping trusts, if applicable, will have terms and provisions virtually identical to the GSTT Trusts discussed above so that the same can be merged after your and Mrs. Barringer's deaths).

F. Purchase of Insurance.

You should separately implement a last-to-die life insurance policy payable upon the death of the last to die of you and Mrs. Barringer. To minimize any gift tax impact, this life insurance policy should be split-dollared with the Company. Based on your current ages, a $5,000,000 life insurance policy split-dollared with the Company would require by you only a gift initially of $7,131.00 to the Trust to allow the trustee to pay to the Company that amount which it is required to pay with the Company paying the bulk of the premium. The premium will be returned to the Company at your death, or possibly at an earlier date upon the rollout of the policy.

G. Other Planning Techniques Considerations.

1. We also discussed the possible use of a charitable remainder trust for purposes of both providing for remainder interest to the charitable organizations that you support as well as providing increased cash flow to you while avoiding capital gains tax on the sale of assets transferred to the charitable remainder trust. There was no general conclusion at this time that such a technique was one that you wanted to implement.

2. As noted above, we discussed in detail a new set of Trustees reflecting the age and health condition of the existing Trustees. In the interim, as noted above, Jason

Eckford was mentioned as the primary independent trustee at this point in time with respect your mother's GST Trust and also under your estate planning documents with Buzz Younts also becoming the independent Trustee under your estate planning documents and the GSTT Trusts.

3. As a possible addition to or in lieu of the independent Trustees forenamed, you indicated that you will give further consideration to the naming of a corporate fiduciary, i.e., BB&T, if you are no longer director, or NationsBank. The corporate Trustee approach would seem to both feasible and appropriate so long as the trust instrument and other relevant documentation gives to the appropriate persons (i.e., Buzz Younts, Jason Eckford, and/or your family members) the authority to remove any then-acting corporate Trustee and appoint a successor thereto and the power to direct the corporate Trustee as to the sale and investment and re-investment of closely-held business interests. I have enclosed an article that I presented some years ago that discusses this and other similar issues that you may find of interest.

4. We discussed briefly your current deferred compensation arrangements with respect to (a) changing the named beneficiary or (b) restructuring those arrangements to convert the same to a split-dollar insurance arrangement which would effectively preclude the value of the deferred compensation from being included in your estate while allowing the purchase of insurance that would be payable to an irrevocable trust at the time of your death and not be includable in your estate.

H. <u>Document Preparation</u>

We will prepare the appropriate documentation to implement all of the above techniques after our next meeting on October 30, 1998. If, in the interim, there are issues or concerns that you or Robert have, then we would be glad to address them at this point.

Sincerely yours,

MOORE & VAN ALLEN, PLLC

Neill G. McBryde

NGMjrp
Enclosure
pc: Mr. Robert J. Slane

421260

11/5/98 – cont. w/ Nam

1/

Barringer

family – 2 kids w/ 2 kids each, one w/ no kids

Buzz's name – preferred fiduciary, maybe NB

1) Coastal Stock → GRAT or sale directly to IDGT
2) 5-or-5 planning
3) income flow reduced for GST

S.C. resident
BB&T's board, etc.

Widow tract – West Virginia
funding issues while still in Mom's trust
then interests in LLC/LP distrib., w/ trust as GP?

Spouses getting insurance physicals
Cover tax if die

Lend appraised value (cap. accts.) → Appraisals – use book value on recent reorg.
We'll use same for low-1 recap – coordinate w/ Collins Denny

should not need another appraisal

"Reporting trust" – move from Va. to S.C.
check w/ Collins re: procedure to get it done
but we do the work

Real est. → FLP/LLC = 5% GP
↓ benef. & ↘ Paul

Do we do it before or after? maybe first
8-10 mil of securities, etc GST trust

Add'l Consid.

W.V. - House - buy in LLC, gift to kids

Loan to LLC - forgive over time

review further

Widen tract FHLB loan - need to work thru keeping it intact -

- legal descrip.

Tax Calc - 2-yr. GRAT used part of credit

assume spousal int. not qual., even

Recap

10-yr GRAT - Merrill

Term Insurance - Merrill

2nd-to-die ins.

Paul → IDGT - S.C. - max. R.A.P. (override 90 yr. wait-&-see ?)

IDGT Contrib - all from Paul lifetime

any issue on split gifts? it was Russell issue re QTIP

IDGT - each kid - LPOA to his & her desc

flips to other family lines if no kids

2036(b) non-voting stock / voting trust — both verifying effective date

Probably problem

18 yrs. ago, he gave ~~non-voting~~ common to kids (kept prefs)

then recap, & no more preferred

Maybe anti-byzantine rule not applicable

To Do → Any amendment to Agreement needed?

Life Ins. Premium est. → to see

Separate ILITs – GST identical for Term
identical ultimately w/ IDGT

2nd-to-die ILIT – check w/ Robert re: defaults
s/b

Buzz & Victor & BB&T = Trees of IDGT initially
except GRAT = Victor, alt. Buzz
ILITs = Victor, alt. Buzz, then all 3 @ deaths

Sep. trusts for each child after deaths
child & BB&T
(Buzz drops out)
Buzz & Victor pors to rem.

Mem's GST Trust
Coastal stock → distrib. @ same time as P'ship int. (Acs. Sep. Cert.)

will fax to Paul for discussion w/ Danny

Consider going directly to grandchildren – each child to decide that (instead of kids)

Add'l Consid.
Also, kids could create GRATs for their kids
(if need income for period of time)

& checklist

LIST DOCS.

we need

receipts & releases from trustees, all distrib, etc.

AC – add'l planning for remaining assets

4/

$1 mil.

Hemtl = 1st, but if remarriage

— 401(K) → CRUT as alt. desig. benef. → private fnd.

Same issue as LRA

Look @ copy of 401(K) plan

Also disc. donor adv. vs. priv. fnd.

Checklist - (in lieu of narrative)

— Sea Pines - yield 6%. (publicly traded)
separate p'ship
sell to same IDGT -
faces on ESBT issues
~~split~~ Paul on board?
New rules - B.T. Atkinson -
any problem?

use GRAT names for p'ships

— A.C. - 750,000 to 1,000,000 existing last-to-die in LLIT ← maybe? split-$
sell to Widen trust p'ship? ← pay premiums from income
Ask Robert - who owns? Split-$? di
Also new equity split-$, too?

— Co-T'ee w/ Paul = Hopson Gardner - he'll resign & appt. Buzz.
Paul resigns & too before distrib/p'ship
Buzz will make decision to form p'ship

5/

Can BB&T serve as Tee in S. Car.?
if not, maybe NC Trust w/ removal

check on S.C. LLC's w/ Wells - if OK, use ban

Wills / Trusts

Checklist today -
including to do's (short)

Can Robert arrange TC tomorrow?
late morning TC or early afternoon

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E-MAIL neillmcbryde@mvalaw.com

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CHARLOTTE, NORTH CAROLINA 28202-4003
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RALEIGH, NC
DURHAM, NC
CHARLESTON, SC

November 6, 1998

VIA FACSIMILE (843) 671-2433
PERSONAL AND CONFIDENTIAL

Mr. Paul B. Barringer, II
14 Calibogue Cay
Hilton Head, South Carolina 29928

Re: Tax Planning

Dear Paul:

Attached please find a draft of our list of proposed documents to implement the planning we have discussed. If you have a chance tomorrow morning, after reviewing the list, please call me to discuss the list so that we can put the final package of draft documents together and mail them to you on Monday.

I had the chance to speak with Collins Denny regarding the recapitalization of the Corporation and the changes of situs of the Trust under your mother's will to South Carolina. He confirmed that there should not be a problem transferring the Trust, and is following up with the local probate court regarding the status of accountings, etc. He initially expressed concern about being able to obtain signatures on the corporate recapitalization documents on a timely basis, but agreed that it could be done in time for us to complete the recapitalization and complete the remaining planning by the end of November. We are also coordinating with our Charleston, South Carolina, office regarding the transfer of the trust administration to South Carolina.

We are sending a copy of this letter and the attached checklist to Robert Slane via e-mail for his simultaneous review.

In order for us to get the package of draft documents in the mail on Monday, please confirm the names we have proposed for the various entities, and that you would like to use your home address as the principal office and registered office of the South Carolina entities. Other information we will need to put the documents in final form is listed on page 3 of the checklist. If you are unable to reach me Saturday morning at (704) 331-1094 or my associate, David Vines at (704) 331-2461, please leave either one of us a voicemail message confirming that the proposed names and your address are acceptable.

We anticipate that we should be able to get the documents in final form and executed with an effective date on the final transfers of November 27, or November 30 if we run into any glitches. We look forward to hearing from you.

Very truly yours,

MOORE & VAN ALLEN, PLLC

Neill G. McBryde

NGM:jrp
Attachment
cc Robert Slane (w/atch.
David R. Vines (w/o atch.)

424582

PAUL and MERRILL BARRINGER - Proposed Documents

November - 1998

Recap - Coastal Lumber Company	1.	Articles of Amendment
	2.	Directors' resolutions (all directors)
	3.	Shareholders' resolutions (all shareholders)
	4.	New Stock Certificates for class B dividend
	5.	Amendment to Stock Purchase Agreement ?
	6.	Amendment to Barringer Family Voting Agreement ?
Trust u/w G.H. Barringer - "GHB Group, LLC" - Widen Tract	7.	Operating Agreement for new LLC (South Carolina - Trust as sole member of LLC)
	8.	Articles of Organization for LLC
	9.	Form SS-4 for LLC
	10.	Form 8821 for LLC
	11.	Funding documents - cash contribution
Trust u/w G.H. Barringer - "GHB Limited Partnership" - Widen Tract	12.	Partnership Agreement for new LP (Georgia - LLC is 0.5% G.P., Trust is 99.5% L.P.)
	13.	Certificate of Limited Partnership for LP
	14.	Form SS-4 for LP
	15.	Form 8821 for LP
	16.	Deed of property from GST Trust to LP
	17.	Other funding documents, if any (cash contribution from LLC)
	18.	FHLB documentation and assumption of loan
Trust u/w G.H. Barringer - Change of Situs to S.C.	19.	Petition and/or other documents re: removal to South Carolina (Trustees sign)
	20.	Documents for Resignation of Trustee and Appointment of Successor
Trust u/w G.H. Barringer - Exercise of 5 or 5 Power	21.	Paul's notice to Trustee of exercise of 5 or 5 power
	22.	Assignments of LLC interests (withdrawal of LLC which is GP of Widen Tract LP)
	23.	Assignment Separate from Certificate (Paul's 5 or 5 withdrawal of CLC voting stock)
Trust u/w G.H. Barringer - Principal Distributions to Children and/or Grandchildren	24.	Assignments of LP interests (distribution of LP interests in Widen Tract LP)
	25.	Assignments Separate from Certificate (distribution of CLC non-voting stock)
	26.	Indemnifications, Receipts and Releases from Beneficiaries
"PBB Group, LLC" - Sea Pines	27.	Operating Agreement for new LLC (South Carolina - Paul & Merrill are members)
	28.	Articles of Organization for LLC
	29.	Form SS-4 for LLC
	30.	Form 8821 for LLC
	31.	Funding documents - cash contributions

"PBB Limited Partnership" - Sea Pines	32.	Partnership Agreement for new LP (Georgia - LLC is 0.5% GP, Paul is 99.5% LP
	33.	Certificate of Limited Partnership for LP
	34.	Form SS-4 for LP
	35.	Form 8821 for LP
	36.	Funding documents (Assignment Separate from Certificate)
	37.	Other funding documents, if any (SEC filings)
The MUB Grantor Retained Annuity Trust	38.	Assignments Separate from Certificate (Paul gifts CLC non-voting shares to Merrill)
	39.	Trust Agreement - The MUB Grantor Retained Annuity Trust (10-year GRAT)
	40.	Form W-9
	41.	Assignments Separate from Certificate (CLC non-voting shares)
The Paul B. Barringer, II Family Trust	42.	Trust Agreement - Intentionally Defective Grantor Trust (IDGT)
	43.	Form W-9
	44.	"Crummey" Negation Letter
	45.	Contribution of cash by Paul
	46.	Purchase Agreement (purchase of remainder interests in GRAT)
	47.	Promissory Note (purchase of remainder interests in GRAT)
	48.	Purchase Agreement (purchase of LP interest in Sea Pines LP)
	49.	Promissory Note (purchase of LP interest in Sea Pines LP)
	50.	Documents to create Security Interest ?
Life Insurance Trusts	51.	The Merrill U. Barringer Irrevocable Life Insurance Trust - Merrill's separate trust term insurance
	52.	The Paul B. Barringer and Merrill U. Barringer Irrevocable Life Insurance Trust - joint trust for second-to-die insurance
	53.	Corporate Resolutions re: Split-Dollar Agreement(s)
	54.	Split-Dollar Agreement(s)
	55.	Collateral Assignment Agreement(s)
401(k) Planning with CRUT as beneficiary	56.	New Beneficiary Designation form
	57.	Charitable Remainder Unitrust (designated successor beneficiary of 401(k))
The Paul B. Barringer, II Family Foundation	58.	Articles of Incorporation (South Carolina)
	59.	Organizational Minutes
	60.	Bylaws
	61.	Form 1023 (application for exemption)
	62.	Form SS-4
	63.	Form 8821
New Wills/Trusts	64.	Wills for both spouses
	65.	Revocable Trusts for both spouses

Information Needed

a. CLC corporate documents (Articles of Incorp., Amendments, Bylaws, Stock Certificates, etc. - coordinate with Collins Denny)
b. Widen Tract legal description (current deeds)
c. FHLB loan information
d. Estimated life insurance premium costs and other information on policies
e. Addresses/phone #'s to use for registered and principal offices of various entities
f. 401(k) plan documents and current beneficiary designation form
g. Addresses/phone #'s for all Trustees

Issues to Review

A. IDGT purchases GRAT remainder and PBB Limited Partnership interests directly
B. Exercise of 5 or 5 power vs. discretionary distribution
C. Distributions to children or to grandchildren (or GRATs by children for non-voting CLC stock received from trust)
D. Trust principal distributions before or after removal of GST trust to South Carolina
E. LLC for purchase of West Va. house with loan from Paul to LLC
F. Exact structure of life insurance ownership
G. Gift-splitting re: contributions to IDGT by Paul and contributions to GRAT by Merrill
H. Voting Trust Agreement review - applies only to voting stock
I. Donor Advised Fund vs. Private Foundation
J. Procedure for resignation of Trustee and appointment of successor Trustee and removal of GST Trust to South Carolina
K. Transfer of existing second-to-die life insurance policy to new trust
L. Planning for remaining assets in Trust u/w G.H. Barringer

Distributions Include:

A. With respect to recapitalization:
   1. Paul Barringer
   2. Robert Slane
   3. Collins Denny

B. With respect to Trust u/w G.H. Barringer Trustee resignations and appointment of successor Trustee:
   1. Current Trustees - Paul Barringer & Hobson Goddin
   2. Successor Trustee - Buzz Yount
   3. Paul Barringer
   4. Robert Slane
   5. Collins Denny

C. With respect to distribution of principal and exercise of 5 or 5 power:
   1. Current Trustees - Paul Barringer & Hobson Goddin
   2. Paul Barringer
   3. Robert Slane
   4. Accountant

D. With respect to removal of Trust u/w G.H. Barringer to S.C.:
   1. Successor Trustee - Buzz Yount
   2. Paul Barringer
   3. Robert Slane
   4. Collins Denny

E. With respect to creation of GRAT/IDGT/P'ships/LLCs/other estate planning:
   1. Paul & Merrill Barringer
   2. Robert Slane
   3. Accountant

424404

MOORE & VAN ALLEN, PLLC

ATTORNEYS AT LAW
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PHONE (704) 331-1000 FAX (704) 331-1159

FAXED 68

FACSIMILE COVER SHEET

Number of Cover Sheets: 1

	To	Company	Telephone	Fax Number
1	Paul B. Barringer, II		~~803~~-671-4272	~~803~~-671-2433

843 843

FROM: Neill G. McBryde, Esq.

DATE: November 6, 1998

TIME:

Pages including cover sheet: 7
User Number: 2485
Client/Matter: 023531-1

IF FAX IS ILLEGIBLE OR INCOMPLETE, PLEASE CALL Jackie (704) 331-1175

REMARKS:

Please see attached.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

800 735-2727

** TX CONFIRMATION REPORT ** AS OF NOV 06 '98 20:05 PAGE. 1

MVA PLLC

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	11/06	20:01	8436712433	EC--S	03' 15"	007	OK

11/20/98

TC w/ Norm, Robert Slane & Paul Beringer

1/2

Dec. rates have stayed the same, so no rush for November

Victor out of pocket a lot – may be tough to get him into meeting

Friday 4th – meeting @ 12:00 or 1:00 for the afternoon
Maybe Victor, too
(Robert will have insurance #'s before then)

Norm will needs to be here to execute

Trust movement – going fast
great relationship w/ S.C. probate ct.
working w/ Downie
Get done in December

Jerry Kaufmann – Charlotte co.
potential T'ee (youthful) MBA, etc.
S.C. resident
former employee, now on board
Paul hasn't talked w/ him, yet
Full name?

Should we get a name to contact @ Sea Pines re: SEC filings?

→ Wills & Revocable Trusts – have not been sent out yet
he'll get them Tuesday
fax letter & flowcharts Monday
Get signed Friday

2/2

w/ Sea Pines, throw in some real estate
More like real business purpose
& extra cash flow
28 acres sold – $1.1 mil. cash now

other parcels = some fractional interest already

✓ Ft. Jackson Blvd.
entrance to King's Grant
- Leesburg Rd. 13½ acres – ⅓ int.
- ✓ Woodhill Circle
- ✓ Afton Mtn. – close to Skyline – development potential

1.4 mil gross value

X Island beach horse – about to be sold
X or Brandon Acres
X no horses

Barringer, LLC – owns Wintergreen property
① He needs note back
650,000 loan to buy the horse
② Annual rental back to use it
He'll pay tax, maint. etc. for use
Lease agreement

2.2 gross, down to 1.2 or 1.4 after discounts

TC

Barrigar – 800-735-2727
Robert Stone – 407-339-5782
11/20/98

(1) add real estate →
(2)

Insurance → exams good, blood work good → preferred rates, Transamerica

Jerry Kaufman – lives in Rock Hill →
runs subsidy of Canal Corp →
used to work for Paul Bowyer →
may put him on one of these trusts →
put on advisory bd. →

went to Darden School

Wills + trusts – set to him on Tues / for letters Monday

all real estate → to Bo – 28 acres sold for 1.1 → keeping Rd → etc → all to Bo

Call to Lifetime Trust

→ Keeping ⇒ 13.5 / 2nd mtg = ok
→ Gaston Blvd / entrance way to King's Grant – ok
→ Woodwells Circle – ok
→ Afton Mtn (House) + develop. property – O.K
→ Brandon – No / wee sell
→ St Thomas Island / Spec. home – 1298 / wee sell

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RALEIGH, NC
DURHAM, NC
CHARLESTON, SC

December 2, 1998

PERSONAL AND CONFIDENTIAL

Mr. and Mrs. Paul B. Barringer, II
14 Calibogue Cay
Hilton Head, South Carolina 29928

Re: Estate Planning

Dear Merrill and Paul:

Pursuant to our recent conferences with you and Robert Slane, we have prepared and enclosed the following draft documents for your review:

1. Last Will and Testament of Paul B. Barringer, II;

2. Last Will and Testament of Merrill U. Barringer;

3. The Paul B. Barringer, II Revocable Trust; and

4. The Merrill U. Barringer Revocable Trust.

While these documents generally incorporate the planning provisions that we discussed, we thought that it would be helpful to review these documents briefly. We have also enclosed diagrams illustrating the disposition of your estates.

Wills

Your wills are virtually identical. Your tangible personal property will be distributed to your spouse, if he or she survives you, and if not, your Executor will distribute such property to your children who survive you. Your wills also provide that you may leave a writing that, although not binding upon your Executor, expresses your wishes regarding the disposition of your tangible personal property.

Your wills also provide that your Executor is authorized to expend such amounts as are necessary to provide for your proper burials, the erection of suitable memorials, and the perpetual

care of your gravesites, regardless of the limitations placed on such expenditures imposed by any law.

The residue of your estate will be distributed to the Trustee of your respective revocable trusts. Under both of your wills, your surviving spouse is named as Executor. If your spouse fails or ceases to act as Executor, then your son, Victor, and then Buzz Yount, and then BB&T, in the order named, are designated as successor Executors. Under both of your wills, we have given your spouse, if he or she is then living, and if not, then a majority of the beneficiaries of your estate, the power to remove an Executor and to appoint a successor a successor Executor.

The remaining provisions in your wills are standard provisions which we routinely include in the wills of South Carolina residents. These provisions effectively authorize the Executor to hold, manage and distribute your estate in a manner that will be beneficial to your beneficiaries, but without the requirement of court approvals or proceedings.

Revocable Trusts

Your respective revocable trusts contain the terms of the trusts during your respective lifetimes and the dispositive provisions governing your residuary estates which may either pass under your wills or be payable directly to or owned by your trusts at the time of your death. We have drafted the revocable trusts to provide that each of you would serve as initial Trustee of your own trust during your lifetime to facilitate the funding of your respective revocable trust during your lifetime if and to the extent it becomes desirable to do so for probate, privacy or asset management purposes.

In the event that your respective trusts are funded during your lifetime with more than the nominal $10.00 to be contributed upon creation, under Item III, we have provided that the Trustee would be directed to hold and manage the trust property and pay it over to you as you direct, with the additional provision that in the event that the grantor of the trust should become incapacitated, the Trustee is directed to make distributions to or for the benefit of both of you for your support. In addition, the Trustee is specifically authorized to make gifts of trust principal to your attorney-in-fact to institute or continue a gift program to facilitate immediate pre-mortem tax planning.

Upon your death, as discussed below, we have provided for maximum use of your respective generation-skipping transfer tax transferor exemption of $1,000,000 each after both of your deaths. The effect will be to keep as much as possible intact in trust for your children in a manner where they can use and enjoy their trust fully, but the amount in trust will not be included in their estates, will not generally be subject to the claims of their creditors, and will not be part of their respective estates for purposes of equitable distribution in the event of divorce or separation.

Upon the death of the grantor (i.e., each of you with respect to your trust), if your spouse survives you, the trust funds a credit shelter trust (the "Family Trust") which will contain assets having a value equal to your remaining applicable exclusion amount after taking into consideration all lifetime taxable gifts (currently $625,000). You should note that under the Taxpayer Relief Act of 1997, the applicable exclusion amount is scheduled to increase to $1,000,000 in different phases from 1998 through 2006. If there is no surviving spouse, then this trust will be funded with approximately $1,000,000 of assets.

Under the terms of the Family Trust, the Trustee is authorized to distribute income and principal to the surviving spouse as the Trustee determines best in its discretion for the support, health, and maintenance of the surviving spouse. The Trustee is also authorized to distribute income and principal to your descendants to provide for their support, health, maintenance and education. The surviving spouse is the primary beneficiary of the Family Trust during his or her lifetime. Upon the death of the surviving spouse, he or she will have the power to appoint any property remaining in the trust to or among your descendants. Any property remaining in the trust as to which the surviving spouse does not exercise effectively his or her power of appointment will be held in separate trusts for each of your children or the descendants of any deceased child. The property passing to the Family Trust at the first spouse's death will not be taxable in his or her estate and the property remaining in such trust at the second spouse's death will not be taxable in his or her estate.

The Family Trust creates separate trusts for each of your children after both of your deaths (i.e., "Children's GST Exempt Trusts") that will continue during their lifetimes, with income and principal being available to them in the discretion of the Trustee for their support, health, maintenance and education. Each child or other descendant ("primary beneficiary") will have the power to appoint the property in his separate trust to or among such persons as he pleases, but no child will have the power to appoint the property to himself, his creditors, his estate or to the creditors of his estate. Any property not effectively appointed by a primary beneficiary will continue to be held in trust for that primary beneficiary's descendants (i.e., your grandchildren) after his or her death. If a primary beneficiary does not have any descendants at his or her death, then any property not effectively appointed by primary beneficiary will be added equally to the trust created for your other descendants. As we have discussed, it is intended that the Family Trust will be exempt from the generation-skipping transfer ("GST") tax and as such, the property remaining in a primary beneficiary's trust at a primary beneficiary's death will not be included in his or her estate. Moreover, through this arrangement the property in the trust for a primary beneficiary should not be subject to the claims of a primary beneficiary's creditors under most circumstances and should not be part of the primary beneficiary's marital property subject to equitable distribution in the event of separation or divorce.

Under your respective revocable trusts, a portion of the balance of your trust estate not held in the Family Trust will be held in separate marital deduction trusts under Item IV ("Trust A" and "Trust B") for the benefit of your spouse, if he or she survives you. In each instance,

Trust A will hold the remainder of your respective $1,000,000 GST transferor exemption amount after allocation of any portion of the GST transferor exemption amount to the Family Trust or to other gifts during your lifetimes. Trust B will consist of the balance of the property. All of the income of Trusts A and B will be payable to the surviving spouse at least quarter-annually, with the principal to be available to the surviving spouse in the Trustee's discretion for his or her support, health and maintenance. Upon the surviving spouse's death, he or she will have the power to appoint any property remaining in Trust A to your descendants. Again, your current wills do not grant your surviving spouse a power of appointment. Any property remaining in Trust A as to which the surviving spouse does not exercise effectively his or her power of appointment will be added to the Children's GST Exempt Trusts to be held, managed and distributed pursuant to the terms of such trusts as discussed above. Any property remaining in Trust B as to which the surviving spouse does not exercise effectively his or her power of appointment will be added to the Children's GST Non-Exempt Trusts to be held, managed and distributed pursuant to the terms of such trusts.

The Item VI trust will hold all non-GST exempt property in your estate if your spouse predeceases you. Under the terms of the Children's GST Nonexempt Trusts, the property will be held in separate trusts for each of your children or the descendants of any deceased child. The income and principal of each child's or descendant's trust will be available to such child or descendant in the Trustee's discretion for his or her support, health, maintenance and education. Each child or descendant will receive one-third (1/3) of the principal in his or her trust at age 25, one-half (1/2) of the principal of his or her trust at age 30, and the balance at age 35.

In the event that you are not survived by any descendants, your property will be distributed equally among your intestate heirs under South Carolina law.

As noted above, we have provided that each of you would serve as initial Trustee of your respective trusts during your lifetimes. Under both of your trusts, if you fail or cease to act as Trustee, then your son, Victor, and then Buzz Yount, and then BB&T, in the order named, are designated as successor Trustees. Under both of your trusts, after the death of the survivor of you, each child of yours for whom a separate trust is created shall serve as co-Trustee with BB&T of his or her trust. In addition, we have given each Trustee the power to appoint a co-Trustee.

As alluded to above, in Item XV we have included standard incapacity provisions which provide that (a) the surviving spouse, if he or she is then living, and, if not, then your children then living, and (b) two licensed medical physicians, one of whom is the grantor's then acting medical physician, will make the determination, as necessary, that the grantor is incapacitated for the purposes of this trust. Please let us know if you wish to change this provision regarding the determination of incapacity, which would effectively come into play only if the trusts were funded prior to your deaths.

The remaining provisions of your respective Revocable Trusts are standard provisions normally incorporated in the trusts of South Carolina residents.

Additional Estate Planning Consideration

After you execute your estate planning documents, both of you should execute new beneficiary designation forms for any qualified plans and IRAs. Your spouse should remain the primary beneficiary of such plans and accounts, with your respective revocable trusts as the secondary beneficiary. The designation for your revocable trusts should be as follows:

Paul B. Barringer, II, as Trustee of The Paul B. Barringer, II Revocable Trust dated _____, 1998 (i.e., the date Paul executes his trust), or any successor Trustee;

Merrill U. Barringer, as Trustee of The Merrill U. Barringer Revocable Trust dated _____, 1998, (i.e., the date Merrill executes her trust) or any successor Trustee.

We look forward to hearing from you after you have had the opportunity to review this letter and the enclosed documents. Please let us know if you have any questions or if any changes need to be made to put the documents in satisfactory form for execution.

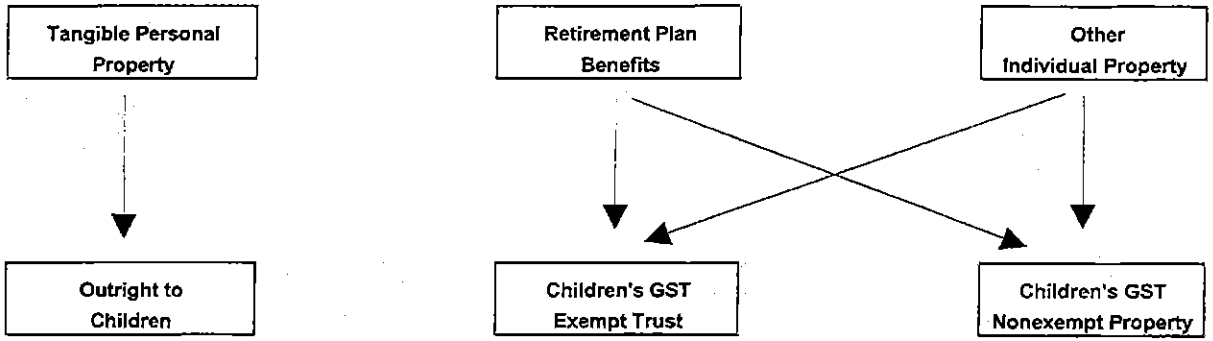
Sincerely yours,

MOORE & VAN ALLEN, PLLC

Neill G. McBryde

NGM:jrp
Enclosures
pc David R. Vines, Esq. (w/o encls.)
doc428341
cl023531-1

DISPOSITION OF ESTATE OF PAUL B. BARRINGER, II, IF HIS WIFE, MERRILL U. BARRINGER, PREDECEASES HIM



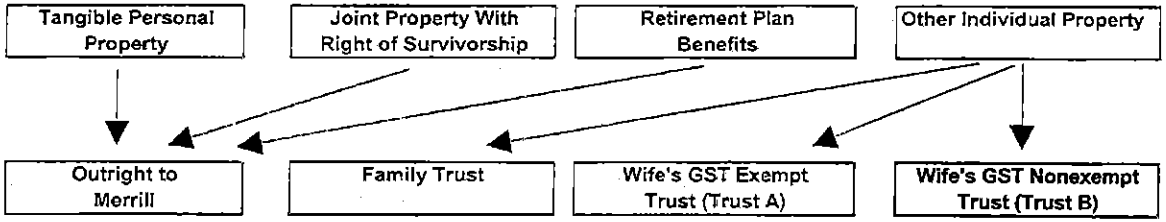
This trust receives up to $1,000,000 representing your remaining $1,000,000 generation-skipping tax exemption after any allocations of trust exemption to lifetime gifts. The property in this trust is divided into equal shares for your children with the descendants of a deceased child receiving such deceased child's share. A share for a child or other descendant ("primary beneficiary") is held in a separate trust for the primary beneficiary's benefit. The income and principal are payable to the primary beneficiary in the Trustee's discretion. The primary beneficiary has no unilateral right to withdraw any principal. At the primary beneficiary's death, unless the primary beneficiary provides otherwise by will, the property is divided into equal shares for the primary beneficiary's children with each share to be held in a separate trust for his or her benefit (each such child will be deemed the "primary beneficiary" of his or her trust) . The income and principal are payable to the primary beneficiary in the Trustee's discretion under the same terms as applicable to the original primary beneficiary.

The balance of your estate after providing for the Children's GST Exempt Trusts will be placed in trust for your children. A share for a child is held in a separate trust for the child's benefit. The income and principal are payable to the child in the Trustee's discretion. One-third of the principal will be distributed to your children at ages 25, one-half at age 30, and the balance at age 35.

CONFIDENTIAL BOA 004403

McBryde Documents

IF HIS WIFE, MERRILL U. BARRINGER, SURVIVES HIM



This trust may receive property up to the amount sheltered by the federal unified tax credit, currently $625,000.

All of the income and principal of this trust are payable to Merrill and your descendants in the Trustee's discretion for their support, health and maintenance.

At Merrill's death, unless she provides otherwise in her will, the trust property goes to the GST Exempt trusts for your children.

This trust receives between $375,000 and $1,000,000 representing the balance of your $1,000,000 generation-skipping tax exemption after providing for the $625,000 going to the Family Trust.

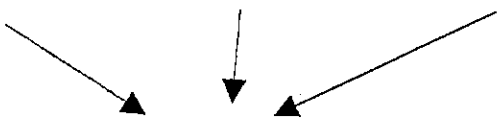
The income is payable to Merrill. Principal is payable to Merrill in the Trustee's discretion for her support, health and maintenance.

At Merrill's death, unless she provides otherwise in her will, the trust property goes to the GST Exempt trusts for your children.

This trust receives the balance of your estate after the property going to the Family Trust and to the Wife's GST Exempt Trust. The income is payable to Merrill. Principal is payable to Merrill in the Trustee's discretion for her support, health and maintenance.

At Merrill's death, unless she provides otherwise in her will, the trust property goes to the Children's GST Nonexempt Trust.

Merrill's executor may also choose to allocate her $1,000,000 GST exemption which would go to the Children's GST Exempt Trusts.



Children's GST Exempt Trusts

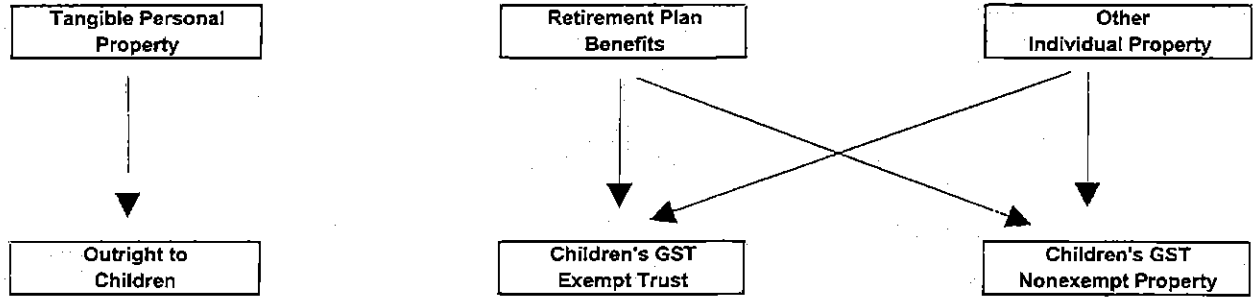
The property in the Family Trust and Wife's GST Exempt Trust is divided into equal shares for your children with the descendants of a deceased child receiving such deceased child's share. A share for a child or other descendant ("primary beneficiary") is held in a separate trust for the primary beneficiary's benefit. The income and principal are payable to the primary beneficiary in the Trustee's discretion. The primary beneficiary has no unilateral right to withdraw any principal. At the primary beneficiary's death, unless the primary beneficiary provides otherwise by will, the property is divided into equal shares for the primary beneficiary's children with each share to be held in a separate trust for his or her benefit (each such child will be deemed the "primary beneficiary" of his or her trust). The income and principal are payable to the primary beneficiary in the Trustee's discretion under the same terms as applicable to the original primary beneficiary.

Children's GST Nonexempt Trusts

The balance of your estate after providing for the Children's GST Exempt Trusts will be placed in trust for your children. A share for a child is held in a separate trust for the child's benefit. The income and principal are payable to the child in the Trustee's discretion. One-third of the principal will be distributed to your children at ages 25, one-half at age 30, and the balance at age 35.

RQA 004404
CONFIDENTIAL
McBryde Documents
Page 78 of 206

DISPOSITION OF ESTATE OF MERRILL U. BARRINGER, IF HER HUSBAND, PAUL B. BARRINGER, II, PREDECEASES HER

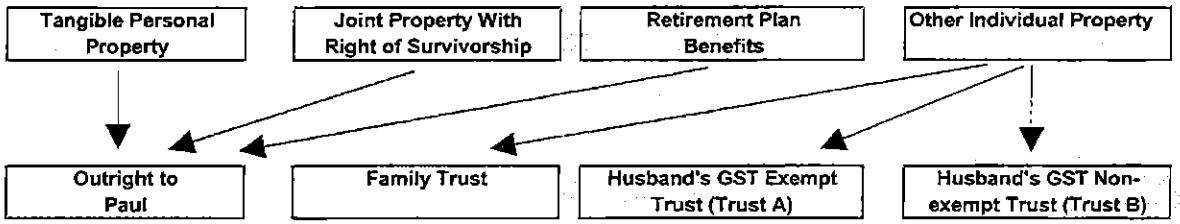


This trust receives up to $1,000,000 representing your remaining $1,000,000 generation-skipping tax exemption after any allocations of trust exemption to lifetime gifts. The property is divided into equal shares for your children with the descendants of a deceased child receiving such deceased child's share. A share for a child or other descendant ("primary beneficiary") is held in a separate trust for the primary beneficiary's benefit. The income and principal are payable to the primary beneficiary in the Trustee's discretion. The primary beneficiary has no unilateral right to withdraw any principal. At the primary beneficiary's death, unless the primary beneficiary provides otherwise by will, the property is divided into equal shares for the primary beneficiary's children with each share to be held in a separate trust for his or her benefit (each such child will be deemed the "primary beneficiary" of his or her trust) . The income and principal are payable to the primary beneficiary in the Trustee's discretion under the same terms as applicable to the original primary beneficiary.

The balance of your estate after providing for the Children's GST Exempt Trusts will be placed in trust for your children. A share for a child is held in a separate trust for the child's benefit. The income and principal are payable to the child in the Trustee's discretion. One-third of the principal will be distributed to your children at ages 25, one-half at age 30, and the balance at age 35.

CONFIDENTIAL

DISPOSITION OF ESTATE OF MERRILL U. BARRINGER, IF HER HUSBAND, PAUL B. BARRINGER, II, SURVIVES HER



This trust may receive property up to the amount sheltered by the federal unified tax credit, currently $525,000.

All of the income and principal of this trust are payable to Paul and your descendants in the Trustee's discretion for their support, health and maintenance. Paul is named the primary beneficiary of this trust.

At Paul's death, unless he provides otherwise in his will, the trust property goes to the GST Exempt trusts for your children.

This trust receives between $375,000 and $1,000,000 representing the balance of your $1,000,000 generation-skipping tax exemption after providing for the $625,000 going to the Family Trust.

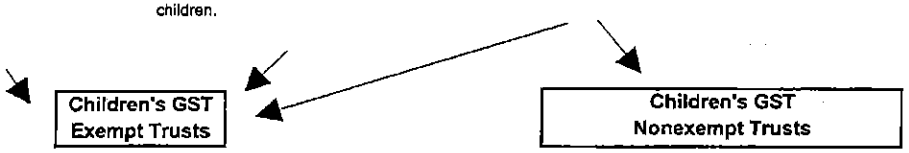
The income is payable to Paul at least quarter-annually. Principal is payable to Paul in the Trustee's discretion for his support, health and maintenance.

At Paul's death, unless he provides otherwise in his will, the trust property goes to the GST Exempt trusts for your children.

This trust receives the balance of your estate after the property going to the Family Trust and to the Husband's GST Exempt Trust. The income is payable to Paul at least quarter-annually. Principal is payable to Paul in the Trustee's discretion for his support, health and maintenance.

At Paul's death, unless he provides otherwise in his will, the trust property goes to the Children's GST Nonexempt Trust.

Paul's executor may also choose to allocate his $1,000,000 GST exemption which would go to the Children's GST Exempt Trusts.



The property in the Family Trust and Husband's GST Exempt Trust is divided into equal shares for your children with the descendants of a deceased child receiving such deceased child's share. A share for a child or other descendant ("primary beneficiary") is held in a separate trust for the primary beneficiary's benefit. The income and principal are payable to the primary beneficiary in the Trustee's discretion. The primary beneficiary has no unilateral right to withdraw any principal. At the primary beneficiary's death, unless the primary beneficiary provides otherwise by will, the property is divided into equal shares for the primary beneficiary's children with each share to be held in a separate trust for his or her benefit (each such child will be deemed the "primary beneficiary" of his or her trust) . The income and principal are payable to the primary beneficiary in the Trustee's discretion under the same terms as applicable to the original primary beneficiary.

The balance of your estate after providing for the Children's GST Exempt Trusts will be placed in trust for your children. A share for a child is held in a separate trust for the child's benefit. The income and principal are payable to the child in the Trustee's discretion. One-third of the principal will be distributed to your children at ages 25, one-half at age 30, and the balance at age 35.

CONFIDENTIAL RQA 004406

Moore&VanAllen

December 27, 2000

Neill G. McBryde
Attorney at Law

T 704 331 1094
F 704 378 2094
neillmcbryde@mvalaw.com

Moore & Van Allen PLLC

Suite 2100
201 South College Street
Charlotte, NC 28244-0004

PERSONAL AND CONFIDENTIAL

VIA UPS

Mr. and Mrs. Paul B. Barringer, II
14 South Calibogue Cay
Hilton Head, South Carolina 29928

Re: Tax Planning

Dear Merrill and Paul:

As you requested, we have enclosed herewith photocopies of the following estate planning documents which you executed in 1998 for your records:

1. Last Will and Testament of Paul B. Barringer, II;

2. Last Will and Testament of Merrill U. Barringer;

3. The Paul B. Barringer, II Revocable Trust; and

4. The Merrill U. Barringer Revocable Trust.

We have retained the original documents in our fireproof safe for safekeeping pending further instructions from you.

Please let us know if you have any questions regarding the foregoing.

I hope you have a happy New Year!

Sincerely yours,

MOORE & VAN ALLEN, PLLC

Neill (DRV)

Neill G. McBryde

NGM:dcm
Enclosures
cc: Robert C. Slane, CLU (w/ encl.)
David R. Vines, Esq. (w/o encl.)

599244

Package ID



7X10751819329

UPS Services: Next Day Air

Mr. and Mrs. Paul B. Barringer, II

14 South Calibogue Cay

Hilton Head, SC 29928

United States

David R., Vines

Trust and Estates

023531.1

704-331-2461

Charlotte, NC

Ship Another Package

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THE PAUL B. BARRINGER, II REVOCABLE TRUST

For the purposes hereinafter stated, I have transferred and delivered and do hereby transfer, assign and convey to the Trustee hereunder named, as Trustees (hereinafter the "Trustee"), the property shown on the schedule attached hereto and made a part hereof, upon the uses and trusts hereinafter set out.

ITEM I

I reserve the right to alter, amend, modify or revoke this trust in whole or in part at any time and from time to time by an instrument in writing signed by me and delivered to the Trustee, except that no such change shall increase the duties or liabilities or decrease the compensation of the Trustee without its consent. Following the receipt by the Trustee of any such written instrument revoking this trust, in whole or in part, the Trustee shall have a reasonable time in which to deliver to me the trust property subject to such revocation, and to the extent that the trust holds investments in any common trust fund, the Trustee shall have such time as may be reasonably required to convert such investments to cash after the next monthly or quarterly date on which units in such common trust fund may be redeemed. This reserved right to alter, amend, modify or revoke the trust is a personal power and cannot be exercised by my attorney-in-fact or any conservator, guardian or other personal representative appointed by a court as a result of any protective proceeding for my person or estate.

IN WITNESS WHEREOF, I, PAUL B. BARRINGER, II, as Grantor and Trustee of the foregoing Trust Agreement, have hereunto set my hand, this 4th day of December, 1998.

PAUL B. BARRINGER, II, as Grantor and Trustee

Witness

Witness

NORTH
STATE OF ~~SOUTH~~ CAROLINA

COUNTY OF ~~BEAUFORT~~ MECKLENBURG

Personally appeared before me Neill G. McBryde, who, being duly sworn, says that (s)he saw the within named PAUL B. BARRINGER, II sign, seal, and as his act and deed, deliver the foregoing Revocable Trust, and that (s)he, with Robert C. Slane, witnessed the execution and delivery thereof.

Witness

Sworn to before me this 4th
day of December, 1998.

(L.S.)
Notary Public for ~~South~~ North Carolina

My Commission Expires:
June 16, 2003

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E C B E F S

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el 35 1-1

ELECTRONICALLY FILED - 2021 Aug 06 5:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

Exhibit 4

John Jolley
Handwritten Notes

(To be submitted to the Judge *in camera*)

ELECTRONICALLY FILED - 2021 Aug 06 5:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

Exhibit 4

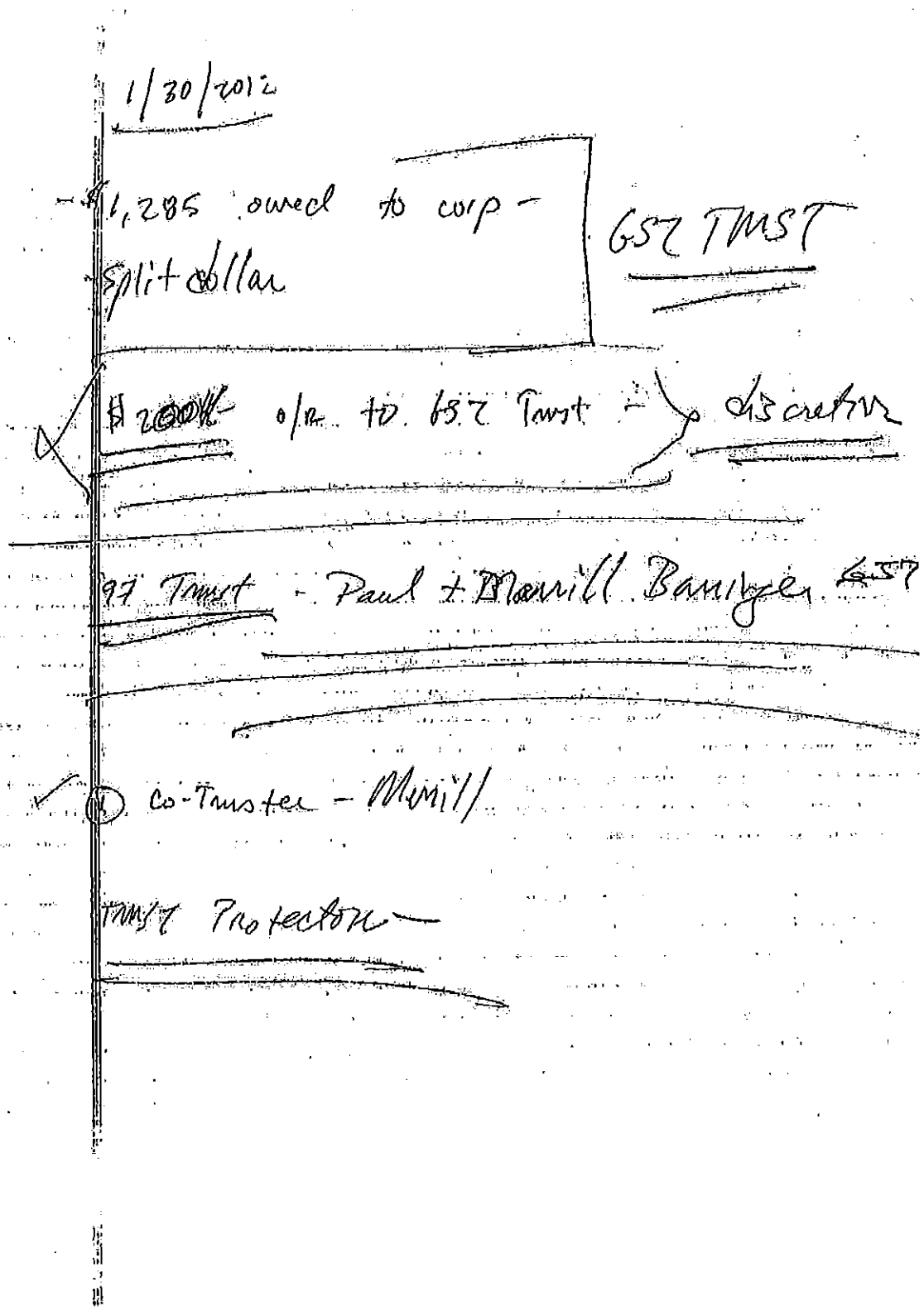
John Jolley
Handwritten Notes

(To be submitted to the Judge *in camera*)

Exhibit 4

John Jolley
Handwritten Notes

(To be submitted to the Judge *in camera*)


1/30/2012
-$1,285 owed to corp -
split dollar
GST TRUST
$200K o/n to GST Trust
93 Trust - Paul + Merrill Barringer GST
Co-Trustee - Merrill
Trust Protector

2/23/2012 - BARRINGER —

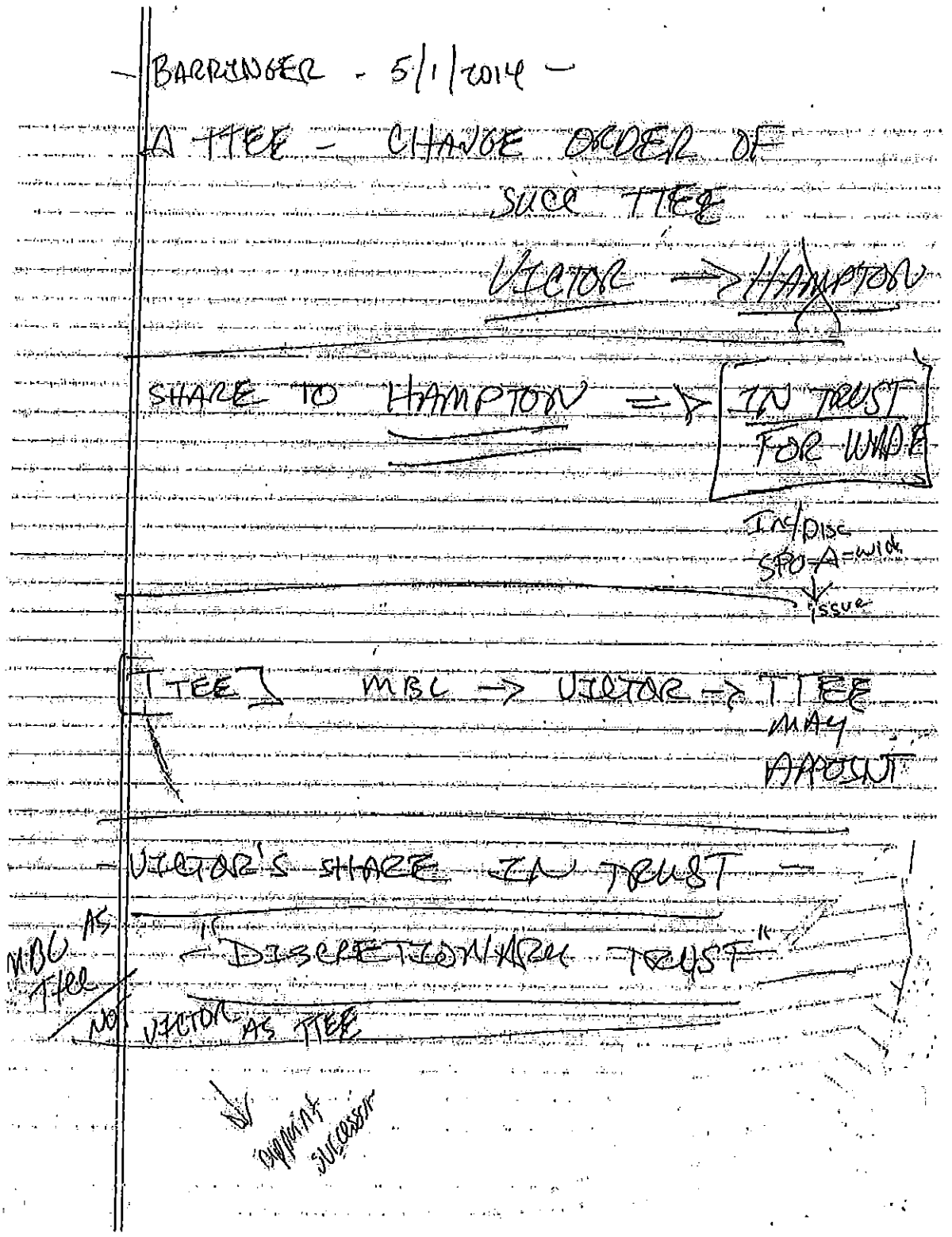
X1 - TRUST AGREEMENT >

X2 - CHARITY - DAF / UVA

X3

BARRINGER

1. TRUSTEE REPLACEMENT
2. TRANSFER ASSETS
3. REGION BANK STOCK TO RTA


BARRINGER - 5/1/2014
A TTEE - CHANGE ORDER OF
SUCC TTEE
VICTOR → HAMPTON
SHARE TO HAMPTON → IN TRUST FOR WIFE
INC/DISC
SPO-A=wid.
ISSUE
TTEE → MBL → VICTOR → TTEE
MAY
AMEND
VICTOR'S SHARE IN TRUST
DISCRETIONARY TRUST
MBC AS TTEE
NOT VICTOR AS TTEE
SURVIVING SPOUSE

2/3/2015 - BARRINGER -

A CHANGE DOCUMENTS → NO HAMPTON

→ Something for WADE - grandson -

4/9/2014

∝ Merrill Lynch -

∝ Victor

∝ RANDY -> IRREV TRUST

- The -

- beneficiary -

Paul + Merrill Barringer

81 Shoreline Drive

HHI, SC 29928

671 4272

Back week after Heritage -

ELECTRONICALLY FILED - 2021 Aug 06 5:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

Exhibit 5

John Jolley
Deposition Excerpts

(To be submitted to the Judge *in camera*)

ELECTRONICALLY FILED - 2021 Aug 06 5:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

Exhibit 5

John Jolley
Deposition Excerpts

(To be submitted to the Judge *in camera*)

Exhibit 5

John Jolley
Deposition Excerpts

(To be submitted to the Judge *in camera*)

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF: ESTATE OF
PAUL BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,
Plaintiff,
vs. CASE NO. 2016-CP-07-1919
MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal Representative of the Estate of PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as Putative Trustee of PAUL BRANDON BARRINGER, II Revocable Trust Dated December 4, 1998, and MERRILL B LIGHT, as Trustee of the MERRILL BARRINGER LIGHT Revocable Trust,
Defendants.
(Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE

DATE: March 16, 2021

TIME: 10:08 a.m.

LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

MR. TWOMBLEY: Object to the form of the question.

MS. KIRK: Object to the form of the question.

THE WITNESS: I think the Barringers had -- I think they were united in want -- in their estate planning. Yes.

BY MR. TRAXLER:

Q. Yeah. And they both, at that point in time, treated their children equally in these instruments, weren't they?

MR. TWOMBLEY: Object to the form --

MS. KIRK: Object to the form.

MR. TWOMBLEY: -- of the question.

THE WITNESS: My recollection of the documents executed in two thousand -- in February of 2012 is that they were treating their children the same under these documents.

BY MR. TRAXLER:

Q. All right. Give me some sense of how much Ms. Barringer participated in the conversation with you about what her estate plan would look like.

A. Ms. --

Q. There's one extreme where she sat there and said nothing. There's another extreme where she

was the only one talking on behalf of the clients. I'm trying to get some sense of how active she was in those discussions.

MR. TWOMBLEY: Okay. I'm going to object to that question and instruct him not to answer. I think that's going beyond your need to probe him about whether or not this make-believe agreement existed or not, and I'm not going to let you get into that. We'll file a motion if we need to.

MR. TRAXLER: I'm sorry. I didn't get that last part, Mr. Twombley.

MR. TWOMBLEY: I'm instructing him not to answer. I believe that you're going beyond what you need to to probe these claims that you've made about a contract or a promise, and I'm instructing him not to answer.

MR. TRAXLER: Is that instruction based on an assertion of a privilege?

MR. TWOMBLEY: Yes. The attorney -- the attorney-client privilege between Ms. Barringer and her attorney related to legal work he was doing for her.

BY MR. TRAXLER:

Q. Mr. Jolley, did Ms. Barringer ever express

any disagreement with the estate planning that her -- that her husband was doing?

A. Not to me.

Q. Did she ever express any disagreement about having hers as a mirror image of his plan?

A. She never -- I never heard Ms. Barringer express anything like that.

Q. How much -- what did she discuss with you in terms of their estate plan?

MR. TWOMBLEY: Object to the -- I'm going to object and I'm going to instruct you not to answer unless there was any discussion about a contract or agreement or promise that they wouldn't change. If you know anything about that, by all means, tell us.

MR. TRAXLER: Are you instructing him not to answer?

MR. TWOMBLEY: Yes. Other than if he knows anything --

MR. TRAXLER: On the basis of privilege?

MR. TWOMBLEY: I'm sorry?

MR. TRAXLER: Is this on the basis of privilege?

MR. TWOMBLEY: Yes.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF: ESTATE OF
PAUL BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,
Plaintiff,
vs. CASE NO. 2016-CP-07-1919
MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal Representative of the Estate of PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as Putative Trustee of PAUL BRANDON BARRINGER, II Revocable Trust Dated December 4, 1998, and MERRILL B LIGHT, as Trustee of the MERRILL BARRINGER LIGHT Revocable Trust,
Defendants.
(Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE
(Continued)
DATE: April 21, 2021
TIME: 9:23 a.m.
LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC
TAKEN BY: Counsel for the Defendant
REPORTED BY: KIMBERLY T. POWER, CR

conference, that time all the way up to execution, what does that total time look like that you spent or anyone at your law firm spent with him on the estate plan and explaining documents?

A. Mr. Traxler, I don't recall how much time we spent.

Q. And I realize it could be a guesstimate, but can you give my your best guesstimate?

MS. KIRK: Object to the form.

MS. PAYLOR: Object to the form.

THE WITNESS: I suspect that we spent between five and 15 hours, is what I would estimate.

BY MR. TRAXLER:

Q. All right. Did you send him any executive summaries or some summaries or synopsis of what his estate plan was other than forwarding to him diagrams from Robert Slane?

MS. KIRK: Object to the form.

THE WITNESS: I don't recall sending Mr. Barringer executive summaries.

BY MR. TRAXLER:

Q. All right. How about any other explanation of the documents?

MS. KIRK: Object to the form.

THE WITNESS: I don't recall any

other documents explaining the documents.
BY MR. TRAXLER:
Q. Am I correct in understanding that all you recall is, and I don't mean to trivialize this, would be conversations with him?
A. My -- what I do recall is -- is meeting with the Barringers, discussing their estate plan, preparing diagrams. I think Mr. Slane prepared a diagram and I prepared a diagram that was really intended to be a most -- a summary review of what the proposed planning -- proposed update would be, and then I recall meeting with the Barringers after they had the drafts to review them and then ultimately reviewing and helping them execute the documents.
Q. Bear with me one minute while I find my cheat sheet here. If you would look at tab nine of the exhibit notebook, Mr. Jolley.
MS. PAYLOR: Can you give us the page?
MR. TRAXLER: Let's start with 319. That's in the top right-hand corner, J. Jolley Depo 319.
BY MR. TRAXLER:
Q. Are these your handwritten notes?
A. These certainly appear to be my

BY MR. TRAXLER:

Q. Okay. Go back, Mr. Jolley, to your page No. 5 under tab one. This is the e-mail between Robert Slane and Merrill Light. You with me?

A. I'm turning there. You said page 5?

Q. Yes, sir.

A. I see page -- page 5 is in front of me.

Q. All right. The Merrill Light that you put as co-trustee is the same Merrill Light that these e-mails were written to and from, correct?

MR. TWOMBLEY: Object to the form of the question. Misstates his testimony.

MS. KIRK: Ariail Kirk. Same objection.

BY MR. TRAXLER:

Q. Okay. You can answer, Mr. Jolley.

A. Mr. Traxler, I think there's only one Merrill Light, and I do think she is the little Merrill or Merrill referred to.

Q. Okay. Now, when you executed -- or prior to the time or at the time of the execution of the will and the trust agreements in February 2012, did you discuss the powers of appointment in the trust with Mr. Barringer?

A. Prior to the execution of the revocable

trust in 2012, the powers of appointment contained in the trust are, in fact, something that I discussed with both of the Barringers.

Q. Where -- where were you when you discussed it?

A. We certainly discussed it at the time that we, what, prepared the drafts and when we reviewed the drafts together and certainly ultimately as we reviewed and signed the documents.

Q. And how did you describe to them the power of appointment and the trust?

A. Mr. Traxler, I -- I -- I don't recall the details of how I described the power of appointment. The dispositive provisions of the trust I described and discussed with the Barringers. I generally describe these powers of appointments as being a power to redirect, that is, the person who is the donee of the power or the -- the donee of the power having the authority to redirect who takes under the terms of the document.

Q. At the time you did the execution of the revocable trust in February 2012, did you explain to Mr. Barringer that Merrill Light would have the right to act independently of him in disposing of assets subject, of course, to her fiduciary duties?

A. Yes, Mr. Traxler.

Q. Okay. And nobody -- you never discussed this or anybody discuss it with Hampton, correct?

MS. KIRK: Object to the form.

THE WITNESS: It is correct that I didn't discuss this gift with Ms. Luzak.

BY MR. TRAXLER:

Q. Was the assignment of shares and the stock power form executed on September 11, 2012 as shown?

A. That's certainly my recollection.

Q. All right. And after -- was Merrill Light there when it was signed?

A. I am not sure who was present when Mr. Barringer signed this document -- these documents.

Q. And were you still doing legal work for Merrill Light at the time?

A. At the time, I represented Ms. Light in her estate planning.

Q. Got it. And also Randy Light?

A. I'm not sure if I represented Randy Light with respect to estate planning at that time.

Q. All right. After the stock power and the assignment of shares were executed by Mr. Barringer and the assignment of shares by Merrill Light as

trustee, what did you do with them?

A. What did I do with these two documents, that is, the stock power and the assignment of shares?

Q. Yes.

A. I believe they were in the file that I maintained for CFRC.

Q. Did you consider them to have been delivered to Merrill Light by doing that?

MR. TWOMBLEY: Object to the form of the question. It calls for a legal conclusion.

MS. KIRK: Same objection.

THE WITNESS: I believe that the -- Ms. Light signing as assignee certainly constituted delivery.

BY MR. TRAXLER:

Q. Okay. And after these documents were signed by Mr. Barringer and Ms. Light on September 11, 2012, who owned that stock?

MR. TWOMBLEY: Object to the form. Calls for a legal conclusion.

MS. KIRK: Same objection.

THE WITNESS: I believe that Mr. Barringer signed all the documents necessary to effectuate the transfer.

BY MR. TRAXLER:

Q. So was Merrill Light the owner of that stock after the documents were executed on September 11?

A. At the time, I believe --

Q. Go ahead.

A. At the time, I believe that we had to -- that the document -- the corporate records would have to be reflected. But, yes, the transfer had occurred to Ms. Light.

Q. All right. This was done the fiscal year of CFRC is September 30, is it not?

A. I don't remember that, Mr. Traxler.

Q. Was the date or the timing of this transfer in any way related to the end of the fiscal year of CFRC?

A. I don't believe so.

Q. All right. So when did, in your opinion, did Merrill Light become the owner of this stock?

MR. TWOMBLEY: Object to the form of the question. Calls for a legal conclusion.

MS. KIRK: Same objection.

MS. PAYLOR: Object to the form.

THE WITNESS: I think Mr. Barringer completed his part of the transaction when he signed

this -- these documents.
BY MR. TRAXLER:
Q. All right. And if a shareholder's meeting had been held the next day, who would have had the right the next day to vote those shares?
MS. PAYLOR: Object to the form.
MS. KIRK: Object to the form of the question.
THE WITNESS: I think the stock record book would -- would be determinative for that.
BY MR. TRAXLER:
Q. All right. Do you consider a transfer of stock to be effective upon assignment and delivery or upon recording on the corporate books or at some other time?
MR. TWOMBLEY: Object to the form of the question.
MS. PAYLOR: Object to form.
MS. KIRK: Same objection.
THE WITNESS: I -- your question is do I believe that the transfer was effective as of the recording of the books or the signing of the transfer documents? Is that what the question is?
BY MR. TRAXLER:
Q. Or if you are of the opinion it was some

other date, whatever date you think.

A. I believe Mr. Barringer certainly completed his -- his part of the transfer when he signed those documents, and I think it has to be perfected by being recorded on the record -- in the stock record.

Q. Well, that didn't occur until 2013, correct?

MS. KIRK: Object to form.

THE WITNESS: I think the record was updated to reflect 12/31, but the share certificates reflected the January '13 as you indicate.

BY MR. TRAXLER:

Q. Well, Mr. Barringer also represented to the IRS that it happened on December 31, 2012, didn't he?

MS. KIRK: Object to the form.

MS. PAYLOR: Object to the form.

THE WITNESS: In the -- I'm sorry.

BY MR. TRAXLER:

Q. (Inaudible) tax returns.

A. I would expect that Mr. Barringer did, in fact, on his gift tax return that the transfer was reflected as of 12/31/2012.

Q. Okay. Again, your -- is it your -- I want

to make sure I'm right about this. When do you think that Merrill Light became the owner of those shares of voting stock?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

MS. PAYLOR: Object to the form.

THE WITNESS: I believe that Merrill Light became the owner once those shares were registered in the stock record.

BY MR. TRAXLER:

Q. Okay. Up until that point in time, is it your opinion that Mr. Paul Barringer was the owner of those shares?

MS. KIRK: Object to the form.

MS. PAYLOR: Object to the form.

THE WITNESS: I think Mr. Barringer had given up his -- didn't have the ability to take the shares back at the signing -- signed those transfer documents.

BY MR. TRAXLER:

Q. My question was: Do you think that he was the owner of those shares until they were recorded on the corporate books?

MS. KIRK: Object to the form.

THE WITNESS: I think with respect to

the company, he was treated as the owner until it was registered on the books.

BY MR. TRAXLER:

Q. Okay. But you do -- you do corporate work some, don't you?

A. I do corporate work --

MS. KIRK: Object to the form.

THE WITNESS: I do corporate work some.

BY MR. TRAXLER:

Q. I'm not asking you what the corporation thought. I am asking you, in your opinion, did the stock transfer to Merrill Light upon the execution of these documents or upon reporting on the corporate records?

MS. KIRK: Object to the form.

MS. PAYLOR: Object to the form.

THE WITNESS: I really viewed this as a completed gift with respect to Mr. Barringer at the time he signed the transfer documents subject to recording on the books.

BY MR. TRAXLER:

Q. All right. And if Merrill Light had paid him money for the stock on September 11th and had taken the assignment on September 11th, would your

answer still be the same?

MS. KIRK: Object to the form.

MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Same objection. And I would also note there's already been a whole entire lawsuit about this issue. Not only a deposition, but an entire lawsuit.

BY MR. TRAXLER:

Q. Okay. What's the answer, Mr. Jolley?

A. So Mr. -- you're going to have to repeat the question, Mr. Traxler.

Q. Sure. If Merrill Light had paid money to Paul Barringer on September 11, 2012 for that stock as opposed to it being a gift, would that change your answer as to her becoming the owner of the stock upon recording on the corporate records?

MR. TWOMBLEY: Object to the form of the question.

MS. KIRK: Same objection.

MS. PAYLOR: Object to form.

THE WITNESS: I think --

MR. TWOMBLEY: Hypothetical.

THE WITNESS: I think to the extent that Ms. Barringer had purchased the shares --

MR. TWOMBLEY: Ms. Light.

THE WITNESS: Sorry. I do -- I think to the extent that Ms. Light had purchased the shares versus having the shares gifted to her, then I think that the transfer would still have been made at the time of the exchange subject to the company's books being updated to reflect the transfer.

MR. TRAXLER:

Q. Okay. Well, Ms. Kirk has said that you are leaving in about ten minutes, so there's something I really just kind of wanted to ask you out of sequence and then we'll come back. How about go back to tab one, page 109.

A. I see J. Jolley Dep 109.

Q. Yes, sir. You want to read those e-mails and I have a couple of questions for you.

A. I'm sorry. You want me to read this -- the -- the e-mail?

Q. Yes. The two e-mails that are on there, if you would read them to yourself. Then I'll ask you questions about them.

A. Okay.

MR. MOLSTER: So, Tom, we previously asserted privilege objections to these e-mails. We understand that Judge Noland didn't agree with us, but we would have a standing objection to questions

record real quick?

BY MR. TRAXLER:

Q. Mr. Jolley, let's go back and pick up where we were. And I'm talking about the September 11 transfer of voting stock of Paul Barringer's revocable trust to Merrill Light's revocable trust. Did you not state in your affidavit given in the -- this litigation that the stock transfer occurred on September 11 as opposed --

A. Mr. Traxler, you broke up again.

Q. Okay. I'm sorry. Let me get you to go to tab six, page 286.

A. I'm sorry. I'm on page 286.

Q. Okay. Read -- this is your affidavit that you signed on July 16, 2018, correct?

A. It is my affidavit, and I did sign it on July 16, 2018.

Q. Okay. Did you not state in paragraph 11 that the stock transfer occurred to Merrill Light on September 11, 2012?

A. No. 11 does in fact say that the September 20, 2012 e-mail did not relate to the September 11, 2012 transfer of the stock from Paul Barringer to Merrill Light which had occurred on September 11, 2012.

Q. The expected transfer was September 11, 2012, not when it was recorded on the corporate books, correct?

A. That is correct.

MS. KIRK: Object to the form.

BY MR. TRAXLER:

Q. What was your involvement with respect to gift tax return? Did you advise Mr. Barringer he needed to do one?

MS. PAYLOR: Object to the form.

MS. KIRK: Object to the form. And, Tom -- Tom, are you close to wrapping up or are we going to be breaking -- or ending it anyway?

MR. TRAXLER: I've got -- I've got several more hours, Ariail.

MS. KIRK: Okay.

BY MR. TRAXLER:

Q. So y'all didn't need to advise Mr. Barringer that he needed to file a gift tax return?

A. I don't recall whether I specifically advised Mr. Barringer whether he had to file a gift tax return. Those...

MS. KIRK: All right. Mr. Traxler, I think we're going to go ahead and stop the

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II
HAMPTON B. LUZAK,
Plaintiff,

vs. C/A NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE PAUL B. BARRINGER, II REVOCABLE TRUST, DATED DECEMBER 4, 1998, AND MERRILL B. LIGHT AS TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE TRUST,
Defendants.

IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II
HAMPTON B. LUZAK,
Plaintiff,

vs. C/A NOS. 2019-CP-07-01253
AND 2019-CP-07-01294

MERRILL U. BARRINGER,
Defendant.

CONFIDENTIAL

VIDEO
DEPOSITION OF: JOHN M. JOLLEY - Volume III

DATE: July 19, 2021

TIME: 9:07 A.M.

LOCATION: Jolley Law Group
810 Bellwood Road
Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Wanda K. Cecil
Certified Court Reporter

THE WITNESS: Yeah. I am waiting for a prompt from you.

MR. TRAXLER: I'm sorry.

THE WITNESS: I'm sorry. We dis -- did we discuss -- I'm still having trouble with your question.

BY MR. TRAXLER:

Q. All right. At the trust, July 20, 2012 --

A. Uh-huh.

Q. -- did Merrill Barringer, was she given the power of appointment over Paul Barringer's voting shares that were in the revocable trust?

MR. TWOMBLEY: Are you talking about the one that gave them away, Tom?

THE WITNESS: I'm sorry. I -- I do believe that, in this document, Mr. Barringer continued to give Mrs. Barringer the power of attorney to redirect where the shares would go. And if Mr. Barringer was the surviving spouse, this would operate to have those shares passed to Merrill Light.

BY MR. TRAXLER:

Q. Okay. Did you explain to Mr. Barringer at the time he executed this document or just before

that he was giving that power of appointment to Ms. Barringer to dispose of the voting stock that way if she was to survive him?

MS. KIRK: Object to the form.

MS. PAYLOR: You need to speak up, Tom. I'm not hearing.

THE WITNESS: At the time of this amendment, we discussed the change being this provision regarding the voting shares passing to Merrill Light. And the power of appointment existed in the earlier documents and I -- and we -- and we talked about that with the earlier documents. I don't independently recall if we specifically talked about that with relate -- in regard -- in regard to this document.

BY MR. TRAXLER:

Q. Okay. Do you recall the transfer of his voting stock, Mr. Barringer's voting stock into his revocable trust on or around May 7, 2012?

A. I recall. Yes, I do.

Q. Okay. At that time, you assisted in that transfer; is that correct?

A. I did.

Q. And did you explain to Mr. Barringer at that time that effectively voting control of the

Tab 4, Bates Number 279 and the stock power; is that correct?

A. Your quest -- I'm sorry. Can you ask --

Q. Sure.

A. -- that question again? I'm at 279.

Q. Yes, sir. Mr. Barringer executed the assignment of shares at that tab, along with the stock power at Page 281; is that correct?

A. Yes, sir.

Q. To effectuate transfer of the voting shares, except for one, from his revocable trust to the Merrill Light Revocable Trust; correct?

A. Yes, sir.

Q. All right. When that was executed, were you there?

A. No, sir.

Q. Why?

A. I don't re -- I don't recall why I was not there. I'm not sure. I don't recall.

Q. Do you know if it was executed in your office?

A. I -- I don't know that the assignment of shares was executed in my office; but the stock power was witnessed by one of our employees, so --

Q. Sharon Potts?

A. Sharon Potts. So I certainly believe the stock power was executed there and I believe -- I suspect, although I can't be sure, that the assignment of shares was executed at the same time.

Q. Okay. After Mr. Barringer executed the assignment of shares, who retained it?

A. The assignment of shares was given to me.

Q. All right. And did you ever give possession of it back to Mr. Barringer?

A. No.

Q. And the stock power that Mr. Barringer signed, when he signed it, who got it?

A. Same answer.

Q. Okay. So you had it?

A. Uh-huh.

Q. So Mr. Barringer did not hold either one of these documents; is that correct?

MS. KIRK: Object to the form.

THE WITNESS: Once Mr. Barringer gave the -- once I received the documents, Mr. Barringer didn't get them back.

MR. TRAXLER: All right.

THE WITNESS: If that's the question.

BY MR. TRAXLER:

Q. And you had Merrill Light sign the assignment as assignee, is that correct, for her trust?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: I mean, yes. Mrs. Barringer -- Mrs. Light signed as trustee of her trust as the assignee.

BY MR. TRAXLER:

Q. And after she signed as assignee, you retained or your office retained both documents; is that correct?

A. Yeah. That -- as I said, once I -- when the documents came to me, no one ever -- I mean, I had them from then forward.

Q. Okay. And what was the purpose of having the assignee sign the assignment?

A. Just to evidence her acceptance of the transfer.

Q. All right. And I don't want to re-plow what we talked about before; but in your opinion, did she become the owner -- beneficial owner of those shares of stock at that time?

A. I --

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: I believe that she became the beneficial owner of the shares at that time.

BY MR. TRAXLER:

Q. Was she entitled to the distri -- distribution on those shares subsequent to September 11, 2012?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: I'm not sure, Mr. Traxler. I -- I think that there's a question about when it's recorded in the record books of the company.

BY MR. TRAXLER:

Q. Okay. I didn't re -- I didn't phrase that too well. This is a corporation; right?

A. Yes, sir.

Q. Okay. And I had LLC in mind, so I used the term distribution. So make sure I'm in sync with you, after --

MS. PAYLOR: Tom, you got to speak up.

BY MR. TRAXLER:

Q. After --

MS. PAYLOR: Tom, you got --

MR. TRAXLER: Okay.

Q. After the assignment of September 11,

2012, was Merrill Light's Revocable Trust entitled to any dividends paid out on the basis of those shares after that date?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: I believe so.

BY MR. TRAXLER:

Q. Okay. And tell us again why there was a delay in recording these shares on the stock ledger and corporate records at CFRC?

MS. KIRK: Object to the form.

THE WITNESS: I think there was a -- we -- I think we were waiting to get the share certificate from Mr. Barringer, but some of it was because I don't perceive the recording of the shares in the book as being an important step in the -- a critical step in the transfer.

BY MR. TRAXLER:

Q. After the assignment on September 11, 2012, who was entitled to vote those shares?

A. I believe that upon recording in -- well, certainly once they're recorded in the book, the -- Mrs. Light became -- was the person who could vote those shares.

Q. Okay. But prior to being recorded on

the corporate books, who had the right to vote those shares after September 11th?

MR. TWOMBLEY: Object to the form. Calls for a legal conclusion.

MS. KIRK: Same objection.

THE WITNESS: I'm not --

MS. PAYLOR: I'll object.

THE WITNESS: I'm not sure.

BY MR. TRAXLER:

Q. Well, you were corporate attorney during that time period, weren't you?

A. I was.

Q. Were you ever -- I don't want to know the advice, but were you ever asked for advice about that?

A. I'm sorry. Was I ever asked for advice about whether or not when the -- when the voting shares, those shares could be voted by Mrs. Light?

Q. Yes.

A. I was not asked for advice about that.

Q. Okay. Do you know who voted -- do you know when the -- these shares were recorded on the corporate records in the name of Merrill Light's Revocable Trust?

MS. KIRK: Object to the form.

THE WITNESS: I think that the -- I mean, the answer is yes.

BY MR. TRAXLER:

Q. When?

A. I believe they -- the stock certificates reflect 12/31/2012, but the record book is updated on and those share certificates were signed in January of 2013.

Q. Okay. When were they, those shares, for lack of a better expression, registered on the corporate records as belonging to Merrill Light's Revocable Trust?

A. I don't recall. I mean, it was certainly by the time the share certificates were issued and signed.

Q. Let me get you to go to Tab 1, Page 17 -- Bates Number 179, Mr. Jolley.

A. (Complying.)

Q. This is an e-mail from Stephanie Chapman at CFRC to you; is that correct?

A. Yes, sir.

Q. Okay. Would you take a quick second and read that, please?

A. (Complying.)

MS. BALLARD: Tom, what page number was

that?

MR. TRAXLER: 179.

MS. BALLARD: Thank you.

THE WITNESS: Yeah. I've -- I'm sorry. I've read it.

BY MR. TRAXLER:

Q. All right. When she talks about I have updated our shareholder listing to reflect the recent gifting of shares by Paul Barringer, did you understand that to mean the shares that he transferred in September of 2012 to Merrill Light's trust?

A. I do believe that that's what this refers to.

Q. Okay. And does that tell you that the corporate records were updated to reflect that in April of 2013?

MS. KIRK: Object to the form.

MR. TWOMBLEY: Same objection.

THE WITNESS: No.

BY MR. TRAXLER:

Q. All right. Let's look at the preceding document.

A. Uh-huh.

Q. Bates Number 178, an e-mail from Travis

Bryant to John Jolley, dated April 15, 2013. Take a second and read that, Mr. Jolley.

A. Yes, sir.

Q. And that's where Travis says, who would receive the -- who should receive the distribution for Paul's 28,000 shares. It's really 38,000 and some change, wasn't it?

A. I don't recall the --

Q. Okay.

A. -- precise number of shares, but I think that's right.

Q. All right. And Travis Bryant is asking you, who is to receive the distributions or dividends on those shares; correct?

A. That is correct.

Q. And doesn't he say, we did not record a transfer on our side of this? And I held Paul's check for his tax distribution to ensure that it went to the right place. And then we go back to the e-mail you just read from Stephanie Chapman. The next day she says, I have updated our shareholder listing.

So the transfer was not registered on the corporate books until April of 2013; is that right?

A. I don't --

MR. TWOMBLEY: Object --

MS. KIRK: Object to the form.

MR. TWOMBLEY: -- to the form of the question.

THE WITNESS: I do not think that's right.

BY MR. TRAXLER:

Q. Why?

A. Because the -- as Mr. Bryant notes in his e-mail, it says, we did not record a transfer on our side for this. And at the time of this transaction, I -- I had all of the corporate books in my possession at my office at Hilton Head. So it was -- I certainly believe that prior to April, we had updated the corporate records to reflect the transfer; but there was a disjoint between the time of the -- updating the corporate records to reflect that and that communication between Travis Bryant and his office with respect to distributions and the shareholders.

Q. Did you also maintain the stock ledger in your office for CFRC during that time period?

A. I'm sorry. That is in fact what I was referring to, yes.

Q. Okay. So if you had the stock ledger, how would the CFO or anybody at CFRC know who -- to whom to make a distribution?

MS. KIRK: Object to the form.

THE WITNESS: I believe that that had been communicated to Mr. Bryant prior to the April -- to these April e-mails.

BY MR. TRAXLER:

Q. So -- but the corporation pays out dividends based on shareholders of record date, do they not?

A. I believe that's correct.

Q. And the record date means the shareholders shown on the corporate ledger, stock ledger as of the date dividends are determined; correct?

A. That --

MS. KIRK: Object to the form.

THE WITNESS: That sounds correct.

BY MR. TRAXLER:

Q. Okay. And so at the date the dividends were declared, apparently the transfer to Merrill Light was not on the stock ledger as of record date; correct?

MS. KIRK: Object to the form.

MR. TWOMBLEY: Same objection.
BY MR. TRAXLER:
Q. That question make sense? It's kind of convoluted.
A. I -- I lost it. I think I know what you said, but I'd rather you explain.
Q. Want to try again?
A. Yes, please.
Q. Yeah. Absolutely. Sure. So when the corporation, CFRC, was to make dividends based on shares, it would look to the shareholders on the stock ledger as of the record date; correct?
MS. KIRK: Object to the form.
THE WITNESS: That is correct.
BY MR. TRAXLER:
Q. And record date means shareholders of record as of that date, that's whose name goes on the dividend checks; correct?
A. That is correct.
Q. How, if you had the stock ledger, was CFRC after September 11, 2012 to know to whom to make those dividends payable?
MS. KIRK: Object to the form.
THE WITNESS: I think I had -- I think that Mr. Bryant knew in December certainly that the

books reflected a transfer as of 12/31.
BY MR. TRAXLER:
Q. All right. But Travis is saying on Page 178, the April 15 e-mail, we did not record a transfer on our side for this. I held Paul's check for his tax distribution to ensure that it went to the right place. So he didn't know who to send it to, did he?
A. Accord -- no, not according to this e-mail.
Q. And who did he make that tax distribution check -- who did he send it to ultimately? Do you know?
A. I do not know.
Q. Do you know if Merrill Light ended up with it?
A. I do not know.
Q. Do you know if Merrill Light got dividends based on the voting shares of Paul Barringer after September 11 and before April of 2013?
A. I do not know.
Q. There are several distributions, weren't there?
A. I --

MS. KIRK: Object to the form.
THE WITNESS: I believe so.
BY MR. TRAXLER:
Q. All right. And you don't -- you don't know who they went to?
A. I mean, no, I don't specifically know who they went to.
Q. All right. If they went to Paul Barringer, he would not have been entitled to them after September 11, would he?
MS. KIRK: Object to the form.
BY MR. TRAXLER:
Q. Except for his one share?
A. I -- I think that's correct.
Q. All right. Do you know if they went to him?
MS. KIRK: Object to the form.
THE WITNESS: I know that some distributions went to him during that time period.
BY MR. TRAXLER:
Q. Do you know if -- but Merrill Light's Revocable Trust would have been entitled to those dividends; correct?
A. As of the record date, yes, sir.
Q. Yeah. As of the record date of each

dividend; correct?

MS. KIRK: Object to the form.

THE WITNESS: I. . .

BY MR. TRAXLER:

Q. So let me give you a hypothetical. Not a hypothetical. But after September 11, 2012, before the corporate records were updated to show Merrill Light's Revocable Trust as the owner, title owner, if there was a check for a dividend made payable to a shareholder of record date and Paul Barringer's Revocable Trust was still that record shareholder, that check would be made out and given to him; correct?

MS. KIRK: Object to the form.

THE WITNESS: I think that's correct.

BY MR. TRAXLER:

Q. Do you know of any adjustment made between Paul Barringer's Revocable Trust and Merrill Light's Revocable Trust to reflect her beneficial ownership of those dividends?

MS. KIRK: Object to form.

THE WITNESS: I am unaware of any adjustments that you described.

BY MR. TRAXLER:

Q. All right. And for any meetings after

September 11 of shareholders of CFRC, but before the transfer to Merrill Light was shown on the stock ledger, who was -- who actually voted those shares? Do you know?

A. I don't know.

Q. Well, you were assistant secretary at that point. Wasn't that your job?

MS. KIRK: Object to the form.

THE WITNESS: Yes, Mr. Traxler. My recollection from 2012 to 2021 is a little fuzzy.

BY MR. TRAXLER:

Q. Well, at any of the shareholder meetings, did Paul Barringer ever vote more than his one share after September 11?

MS. KIRK: Object to the form.

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I mean, we can look at the records; but I don't independent -- I don't remember to what extent, you know. I think typic -- I'm not sure. I don't remember specific votes from shareholder meetings.

BY MR. TRAXLER:

Q. Did Mr. Barringer ask you to hold on to the stock assignment and stock power?

A. He did not.
Q. Did anybody ask you to hold on to it before recording it?
A. No, sir.
Q. And why wasn't the gift tax return done until three years later?
MS. KIRK: Object to the form.
MR. TWOMBLEY: Same objection.
THE WITNESS: I think that was a mistake.
BY MR. TRAXLER:
Q. By whom?
A. I think that was a mistake in communication. We -- we believed, I believed that the gift tax return had been prepared and filed by Mr. Barringer's CPA.
Q. Did you have any communications -- you talking about Bobby Davis?
A. I think Bobby Davis was the CPA at the time.
Q. Did you have any discussions with Bobby Davis about the gift tax return prior to it being filed three years later?
A. I -- I did not have any communications with Bobby Davis that I recall about that.

Q. Did you render legal advice to Mr. Barringer about doing a tax return at the time of the assignment of shares in September in 2012?

MR. TWOMBLEY: Answer yes or no.

THE WITNESS: You're going to have to repeat that. I'm sorry.

BY MR. TRAXLER:

Q. Mr. Barringer does the assignment on September 11.

A. Uh-huh.

Q. Did you at or around that time have any conversations with Mr. Barringer about needing to do a gift tax return?

A. I certainly told Mr. Bar --

MR. TWOMBLEY: Just answer yes or no.

THE WITNESS: Yes.

BY MR. TRAXLER:

Q. Okay. Was it your responsibility to see that a gift tax return had been done?

MS. KIRK: Object to the form.

THE WITNESS: No.

BY MR. TRAXLER:

Q. Had you been responsible prior for tax returns -- gift tax returns for Mr. Barringer?

A. I don't believe so.

Q. Let me get you to go to Tab 1, Page 10, if you would please, Mr. Jolley.

A. (Complying.)

MS. PAYLOR: What's the page number, please?

MR. TRAXLER: Ten.

Q. Give you a minute, Mr. Jolley, to familiarize yourself with that e-mail -- e-mail thread.

MR. TWOMBLEY: That's the one on Page 10?

MR. TRAXLER: Yeah.

THE WITNESS: I -- I see this.

BY MR. TRAXLER:

Q. Now, this is September -- I mean, this is 2011.

A. Yeah.

Q. This is not in the time frame of --

A. Uh-huh.

Q. -- the gifting of shares?

A. Yes, sir.

Q. I guess my first question is, do you recall what gifts Paul and/or Merrill Barringer had done in 2011 to trigger a gift tax return?

A. I don't recall.

Q. And do you recall ballpark-ish what the annual exclusion was back then?
A. I would guess it was around $12,000.
Q. All right. So any gifts over 12,000 or split gifts over 24,000, thereabouts, would trigger a gift tax return, would it not?
MS. KIRK: Object to the form.
THE WITNESS: Yes.
BY MR. TRAXLER:
Q. Okay. But you don't recall what gifts they did to trigger a gift tax return?
A. No, sir.
Q. Okay. But in this one, you assumed the responsibility for contacting Bobby Davis about the gift tax return?
MS. KIRK: Object to the form.
BY MR. TRAXLER:
Q. Is that correct?
A. I did.
Q. And do I understand that it was different with the gifting of the shares to Merrill Barringer in 2012?
MS. KIRK: Objection to form.
BY MR. TRAXLER:
Q. Excuse me. Merrill Light. Excuse me.

A. Yes.
Q. So the lateness of the gift tax return in 2012 was not your fault; is that correct?
MS. KIRK: Object to form.
MR. TWOMBLEY: Object to the form.
THE WITNESS: I don't believe so.
BY MR. TRAXLER:
Q. Okay. Whose fault was it?
MS. KIRK: Object to the form.
BY MR. TRAXLER:
Q. Who dropped the ball?
A. I'm not sure.
Q. Did you ever have any discussions with Mr. Barringer about that?
MR. TWOMBLEY: Yes or no.
THE WITNESS: About what?
BY MR. TRAXLER:
Q. Getting the gift tax return done, whether it was right at the time of the transfer or three years later.
MR. TWOMBLEY: Yes or no.
THE WITNESS: No.
BY MR. TRAXLER:
Q. Okay. Did you have any conversations with Travis Bryant about it?

A. I don't recall.
Q. Did you have any conversations with Bobby Davis about it?
A. I -- I don't recall.
Q. Okay. And I can refer you to the memo to the file of Bobby Davis about conversations with you. Would that refresh your recollection?
A. I mean, I can read the memo --
Q. Sure.
A. -- but I don't remember.
Q. All right. Let's go to the very last document under page -- under Tab 1. It's Page Number 249. Take a minute to familiarize yourself with that.
A. (Complying.) Okay.
Q. All right. You -- does this refresh your recollection about conversations with Mr. Davis?
A. I -- I mean, I read it and I don't object to what Mr. Davis has said; but I don't remember that conversation.
Q. All right. Mr. Barringer had reported to Mr. Davis in 2012 that he made no reportable tax gift -- gifts that year. Were you aware of that?
MR. TWOMBLEY: Object to the form of the

question.

MS. KIRK: Same objection.

THE WITNESS: I was not aware of that.

BY MR. TRAXLER:

Q. Okay. Did -- and you participated in coming up with the valuation with Mr. Davis to use on the gift tax return for the stock?

MS. KIRK: Object to the form.

THE WITNESS: I mean, I don't remember how the -- how the valuation -- I -- I see that Mr. Davis said that we discussed that, but that's all that -- I mean, that's all I remember. I don't -- this is all that I know about that.

BY MR. TRAXLER:

Q. Do you have any recollection of which or what appraisal or valuation you used in order to come up with a value of the stock that was gifted?

MS. KIRK: Object to the form of the question.

THE WITNESS: No.

BY MR. TRAXLER:

Q. At the time, were you of the opinion that voting stock had the same value -- fair market value as non-voting stock in CFRC?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: Was I of the effect -- was I of the -- I'm sorry. Ask that -- can you repeat --

MR. TRAXLER: Sure.

THE WITNESS: -- the question?

BY MR. TRAXLER:

Q. Sure. As of 2012 when the stock was gifted, did you think that the value of the voting stock per share was the same value of non-voting stock per share?

MR. TWOMBLEY: I would object and instruct you not to answer. I think what he thought in his mind as he was advising clients is not -- you can't go into it. It's privileged. I instruct him not to answer unless you want to try to reword.

MR. TRAXLER: No. But, you know, you got in here -- Mr. Davis has in here, we both agreed that the March 31, 2012 valuation of $4.62 per share should be used -- should be the value used on the 2012 gift tax return. I have the right to go into those conversations that lead to this memo and that valuation. But are you telling him not to answer?

MR. TWOMBLEY: Well, I think he said several times he didn't remember any of this.

Didn't even remember the conversation.

MR. TRAXLER: All right. But I'm asking him if he was of the opinion that voting stock per share had the same value as non-voting. Are you instructing not to answer that question?

MR. TWOMBLEY: Yes. And I think --

MR. TRAXLER: On what basis?

MR. TWOMBLEY: Of the attorney/client privilege, work product privilege. I don't -- and most importantly because it does not fall within Judge Mullins' order and does not relate to the preparation, execution or amendment of an estate planning document.

And just for the record, you know, I'm having to make these calls, you know, kind of, you know, in the -- in the heat of the deposition. I'm happy to reflect on them and talk with my co-counsel, you know, at the break, see if we can revisit any of these; but -- and I'm happy to hear anything, you know, you want to tell me to, you know, try to get me to change my mind.

BY MR. TRAXLER:

Q. Do you recall if the valuation that you and Mr. Davis agreed to was based on the valuation of non-voting stock or voting stock?

MR. TWOMBLEY: Object to the form. Assumes facts not in evidence.

MS. KIRK: Same objection.

THE WITNESS: No.

BY MR. TRAXLER:

Q. Do you recall what the basis was for coming up with a value of $4.62 per share?

A. No.

Q. Why would he -- why were you offering an opinion on the value of the stock?

MR. TWOMBLEY: Object to the form of the question.

MS. KIRK: Object to the form.

MR. TWOMBLEY: I'm going to instruct you not to answer and I also object as to the form of the question. Assumes facts not in evidence.

MS. KIRK: Same objection.

MR. TRAXLER: Well, it says, we both agreed on the valuation. Are you not going to allow him to testify as to the basis for that?

MR. TWOMBLEY: I think he's said numerous times he doesn't even remember the conversation. Said he doesn't remember anything about it.

MR. TRAXLER: All right. But my

question is why would he as a lawyer be offering an opinion on the value of stock? Are you tell --

MS. KIRK: Which assumes he offered an opinion on it.

MR. TRAXLER: It says, we both agreed.

MS. KIRK: That is --

MR. TRAXLER: Okay.

MS. KIRK: Those are two different things in my world.

MR. TRAXLER: Okay. That's fine. We can deal with that one later; but the question right now is, are you instructing this witness not to answer that question?

MR. TWOMBLEY: What's the question again?

MR. TRAXLER: My question is, why was he offering an opinion on the value of the stock?

MR. SCHRONCE: And Tom, this is John Schronce. I apologize. I'm just -- I'm having trouble hearing you --

MR. TRAXLER: Okay.

MR. SCHRONCE: -- on this question.

MS. PAYLOR: I agree. I didn't hear it either.

MR. TRAXLER: Well, the question to Mr.

Jolley was, why was he as a lawyer offering an opinion on the value of the stock?

MR. TWOMBLEY: I am instructing him not to answer. I do not think that falls within the preparation, execution of an estate planning document. I also think, for the record, that a lot of these questions have to deal with matters that have already been litigated, fully explored in a separate lawsuit by Hampton Luzak and they're not appropriate to go into this -- into during, you know, this deposition.

And so I just wanted to put that on the record. I wanted to do it earlier, but I just did it now not to interrupt the flow. But, yes, I instruct him not to answer on the ground that that has nothing to do with the preparation, execution or amendment of an estate planning document, which is the order that's been in place for four or five years. I forget how many.

MS. KIRK: And I objected to the form of the question because it assumes things that are not in evidence.

BY MR. TRAXLER:

Q. All right. Mr. Jolley, let me get you to go to Tab 1, Page 163.

A. (Complying.)

MS. PAYLOR: What was the number, please?

MR. TRAXLER: 163.

MS. PAYLOR: Thank you.

MR. TRAXLER: Uh-huh.

Q. When you've had a chance to look at that and familiarized yourself with it, Mr. Jolley, just let me know, please.

A. (Complying.) Okay.

Q. All right. In the middle, it says -- you write, not really. Let's discuss. I think that -- is it pronounced Congur or Conger?

A. I think it's Conger, but --

Q. Okay. Fine. I think the Conger transfers weren't technically correct. What were the Conger transfers that you were referring to there?

A. I think this is reporting to transfers that occurred before I was involved, but I do think there -- some Conger family member transferred some shares.

Q. And you believe that the transfer would occur at the delivery to the corp?

A. I -- I think that once the transfer

documents were delivered to the corporation that the equitable ownership of the shares occurred.

Q. But Mr. Bar -- but you write, it was Paul's understanding the transfer would occur upon delivery; right?

MS. KIRK: Object to the form.

MR. TRAXLER: And it's not that important, but -- I'll -- I'll remove that question.

Q. Tell me what Conger transfers you're talking about here.

A. I don't recall which Con -- I mean, as I said, I think they were transfers of Mr. Conger's -- some of Mr. Conger's shares, but I don't recall the details of that at all.

Q. Do you know if they were transfers between Congers or whether it was between CFRC and Congers?

A. I don't have any recollection of that.

Q. Okay. That's fair. Now, when the transfer was done to Merrill Light's Revocable Trust in September of 2012, around that time period or any time thereafter -- this is a yes or no question -- did you have any discussions with anyone where the topic was whether to disclose it to Hampton or not?

A. I don't recall.

Q. All right. As you -- this is a yes or no question. As you sit here today, do you have any information as to why it was not disclosed to Hampton at or about the time of the transfer?

A. No.

Q. Do you know if it was disclosed to Hampton -- Hampton at or about the time of the transfer? Yes or no.

A. No.

Q. Do you know -- if I asked you this, I apologize. Do you know when it was first disclosed to her by anybody?

A. No.

Q. But there were no conversations that you recall where that was a topic of discussion, whether it be with your clients or other people, Travis Bryant, CFRC, anybody else; is that correct?

A. I don't recall any conversations like you described.

Q. And you certainly would not have had occasion to tell Hampton; is that correct?

A. I did not communicate with Ms. Luzak.

Q. Okay. Let me go to 17 -- Tab, 1 Page 175.

A. (Complying.)

Q. This is a letter from you, I believe, transferring the stock certificate representing the transferred stock to Merrill Light's trust; is that correct?

MS. KIRK: Object to the form.

MR. TRAXLER: What's wrong with the form?

MS. KIRK: Huh?

MR. TRAXLER: What's wrong with the form?

MS. KIRK: I think misstates what it is when you used your word transfer.

BY MR. TRAXLER:

Q. Okay. Fair -- fair enough. What is Page 175?

A. Looks like a cover letter in which I sent the stock certificate, Number 16, to Ms. Light.

Q. And is that stock certificate, Number 16, the stock certificate that reflects the transfer of stock from Paul Barringer's Revocable Trust to Merrill Light's Revocable Trust in September of 2012?

A. I think this reflects the -- those shares that you mentioned being and the certificate represents those shares in Mrs. Light's rev trust.

Q. All right. I think I understood that answer. But these are the same shares transferred in September; correct?

A. Yes, sir.

Q. Okay. Why was it not until March 1, 2013 that those -- that certificate was sent to Ms. Light?

A. Because the stock certificates weren't issued and signed. We sent them -- once they were returned, they were sent to Mrs. Light.

Q. Okay. But Mr. Barringer had signed them in September of 2013, hadn't he?

MR. TWOMBLEY: Object to the form.

THE WITNESS: Mr. Barringer had signed those transfer documents in September of 2012. Yes, sir.

BY MR. TRAXLER:

Q. Okay. But when did he sign the documents to -- the shares themselves or did he?

MS. KIRK: Object to the form, I think.

THE WITNESS: I'm not sure to answer -- I understand that question, Mr. Traxler.

BY MR. TRAXLER:

Q. The stock certificates that had been issued in the name of Paul Barringer's Revocable

Trust. Did he or his -- did he sign those stock certificates over as part of the assignment to Merrill Light's trust?

A. I -- I don't recall.

Q. Would that have been necessary to effectuate the transfer on the corporate records?

A. I do not believe so.

Q. So why do we see e-mails from Travis Bryant to you hollering for the signed stock certificates from Paul Barringer in January of 2013?

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: My recollection was that Mr. -- Mr. Bryant was looking for the certificates that reflected the transfer of Mr. Barringer to Mrs. Light's trust.

BY MR. TRAXLER:

Q. I'm sorry. Say that again. You lost me.

A. No. I said, I think Mr. Bryant was asking about the certificate that reflected -- I guess really certificates that reflected the transfer of these shares from Mr. Barringer to Mrs. Light's Revocable Trust.

Q. Was he looking for the stock

certificates themselves or the assignment of shares and the stock power documents?

A. I think he was --

MR. TWOMBLEY: Object to the form.

THE WITNESS: I think he was looking for the stock certificates. The stock certificates from the company issuing the shares to Merrill Barringer Light's rev trust.

BY MR. TRAXLER:

Q. Okay. Do you recall Mr. Bryant kind of getting after you a little bit in January of 2013 to get the signed stock certificates by Paul Barringer to him?

MS. KIRK: Object to the form.

THE WITNESS: I remember Mr. Bryant getting after me a little bit, but my recollection is that it was for the certificates issued to Mrs. Light.

BY MR. TRAXLER:

Q. Okay. Were you also having conversations with Randy Light in January 2013 about getting the transfer effected?

A. Yes.

Q. Why was he involved? I know he's her husband, but what was his role?

A. I --
MR. TWOMBLEY: I'll -- well --
MS. PAYLOR: Object to the form.
THE WITNESS: I think. . .
MR. TWOMBLEY: I just think you should describe in as few words as possible what his role was so that then we can take each question one by one.
THE WITNESS: Well, Mr. Light was, of course, Mrs. Light's husband.
MR. TRAXLER: Right.
THE WITNESS: And, at the time, he was also a director of the company.
MR. TRAXLER: All right.
THE WITNESS: At least that's my recollection.
BY MR. TRAXLER:
Q. All right. Looking at Tab 1, Page 147.
A. (Complying.)
MS. KIRK: 147?
MR. TRAXLER: Yeah. 147.
Q. Not very long, Mr. Jolley. Just tell me when you've read it.
A. (Complying.) I have read it.
Q. Okay. And this is from Randy Light to

you, January 21, 2013; correct?

A. That's what is appears to be, yes, sir.

Q. And he says, just following up to confirm that you have PBB -- that's Paul Barringer; right?

A. Uh-huh.

Q. -- squared away regarding his stock certificates or signing the lost waiver; correct?

A. That is what this says, yes, sir.

Q. All right. Go back to the e-mail or the page just before that on Page 146. And part way down -- well, down at the bottom, it starts with an e-mail from Randy Light, I believe using Merrill Light's AOL address, to you and to Becki Bostick; correct?

A. That is what that looks like.

Q. And he's asking you when the shares were recorded; correct?

A. Yes.

Q. Those are the voting shares that he transferred -- Mr. Barringer transferred in September 2012; correct?

A. I think that's what he's referring to, yes.

Q. And then you said right above that, on

January 7, the transfer paperwork was sent to the Havana address. I need to get with Travis regarding this one. Is this simply a follow up or is there something else? And he responds above that, it's a follow up to the question Merrill had. This all pertains to the transfer of stock in September; correct?

A. Yes, sir.

Q. All right. If the tran -- assignment, transfer of the stock powers were sufficient in and themselves to effectuate the transfer, why was it necessary to have Paul Barringer's signature on anything else, including the stock certificates?

MS. KIRK: Object to the form.

MR. TWOMBLEY: Object to the form.

MS. PAYLOR: Object to the form.

THE WITNESS: I think -- the transfer documents, I believe, were sufficient. However, we certainly preferred and looked for the original certificate.

MR. HOGAN: Eighteen.

BY MR. TRAXLER:

Q. Let me get you to go to Tab 18, if I could, Mr. Jolley.

MS. PAYLOR: What page?

MR. TRAXLER: 663.
MS. PAYLOR: Thank you.
THE WITNESS: (Complying.) 663. Yes.
BY MR. TRAXLER:
Q. All right. Tell me what 663 is.
A. 663 is a cover letter in which I sent stock certificates to Mr. Bryant for signatures.
Q. Now, look at the following pages, 664, 665, 666, 667. Were they enclosed with that letter?
A. I believe so.
Q. And was 669, the assignment of shares, 670 and 671, 672, also part of that enclosure to the letter? And --
A. I don't think 671 and 672 were a part of that enclosure, because those reflect Mr. Bryant and Mr. Evans' signatures.
Q. So on January 24 of 2013, were you sending the enclosed stock certificates for Mr. Barringer to sign?
MS. PAYLOR: Object to the form.
THE WITNESS: No.
BY MR. TRAXLER:
Q. Mr. Barringer had not signed the stock certificate for assignment, had he? Look at 667.
A. 667. That -- 667. 667. Oh, these are

different. Sorry. 667. No, he didn't sign the stock power on the back of the certificate.

Q. Do you know if Mr. Barringer ever signed the assignment shown on 667 for the transfer of the shares to Merrill Light's trust?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I don't know if Mr. Bar -- I don't --

MS. KIRK: Same objection. You can answer. I'm sorry.

THE WITNESS: I don't know if Mr. Barringer ever signed the stock power on the back of the certificate as reflected in 667.

BY MR. TRAXLER:

Q. All right. Did you ever -- if I asked you this question, I apologize. Do you ever recall yourself getting a stock certificate signed by Paul Bryant?

A. I'm sorry?

Q. Did you ever get a -- I'm sorry. Screwed that one all up. Let's start over again. I think the heat's getting to me.

Do you ever recall having Mr. Barringer sign the stock certificate over to Merrill Light's

trust?

A. I don't recall that.

Q. All right. So if you e-mailed Mr. -- if you e-mailed -- I take that back.

So tell me why it takes from September 11 to January 24 to handle this.

A. As I think I already testified, this was -- this was not something I perceived to be critical to the transfer and I neglected to -- to complete the transfer. Was a period when we were -- we were hoping to have the original stock certificate, but. . .

Q. Why were the stock certificates into Merrill Light's trust dated December 31, 2012?

A. That's the date that I discussed with -- well, that's the date that we chose to put in the record book and on the stock certificate.

Q. Why? Why that date?

A. I think that it was because Mr. Barringer and Mr. Bryant didn't want to change the record -- the reporting or the treatment of the shares. They wanted to make that effective as of 12/31.

Q. Why?

A. Because I think Mr. Bryant perceived

that it would be simpler and less trouble for the company to not have to re -- to change the effect during that fourth quarter of 2012. And I don't believe Mr. Barringer perceived this to be a big deal.

Q. But CFRC is on a fiscal year of September 30th, is it not?

A. Yes, sir, I believe so.

Q. So it would not have affected the fiscal years for CFRC, would it?

MS. KIRK: Object to the form.

THE WITNESS: I don't think -- I don't know the answer to that. I don't know what that was. I did have a conversation -- well, I don't think it would have affected the fiscal year end of 2012 for CFRC.

BY MR. TRAXLER:

Q. Okay. But the tax return reflects a gift date of December 31, 2012. The stock certificates are dated December 31, 2012. Tell me all the reasons why you understand that date was used for the gift tax return and also for the stock certificates into Merrill Light's trust.

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: With respect to the gift tax implications, we, sir, I believe and believed that the transfer occurred in 2012. I'm -- at the time we discussed it, Mr. Bryant and myself discussed it, we thought it would be simplest to reflect the 12/31 date for the transfer on the books.

BY MR. TRAXLER:

Q. But -- but why? I mean, what difference does it make? Made a difference in K-1s, didn't it?

A. Yeah, I -- that was what I understood from my communi -- my conversations with Mr. Bryant.

Q. All right. So was the idea that December 31, 2012 was used as the effective date of transfer in order to simplify the handling of K-1s for Mr. Barringer and Merrill Light?

MS. KIRK: Object to the form.

THE WITNESS: I don't know specifically, but certainly the paperwork with re -- with respect to the company and with respect Mr. Barringer and Mrs. Light.

BY MR. TRAXLER:

Q. And so the K-1s for that year, we would expect to reflect all the distributions to Paul Barringer in his name, even between September 11 and

12/31/2012; correct?

A. I think --

MR. TWOMBLEY: Object to the form.

MS. KIRK: Same objection.

THE WITNESS: Yeah, I think that is correct.

BY MR. TRAXLER:

Q. Okay. Even though he transferred on September 11; right?

A. Yes, sir.

MR. TRAXLER: Okay. Let's take a break. We've been going a little while.

MS. KIRK: Sure.

MR. TWOMBLEY: Sure.

MR. TRAXLER: Let's take a 30-second break.

THE VIDEOGRAPHER: This is end of Media Unit 2 of the video deposition of John M. Jolley. We're going off the record at 10:55:37.

(A recess transpired.)

THE VIDEOGRAPHER: This is the beginning of Media Unit Number 2 -- 3. This is a continuation of the video deposition of John M. Jolley. We're going on the record at 11:13:27.

BY MR. TRAXLER:

Q. All right, Mr. Jolley. When did you -- if you had possession of the stock register or ledger, when did you or somebody at your office make the change after the transfer of the voting stock from Mr. Barringer's trust to Ms. Light's trust?

A. I'm -- I think that would have been in December or in January. December of 2012 or January of 2013. I'm not -- I don't know for certain.

Q. Was there any reason to wait on a signed stock certificate with the assignment on the back of the certificate signed by Mr. Barringer to make that entry?

A. I do not believe there -- no.

Q. Do you know -- do you recall when the transfer was noted on the stock ledger?

A. I -- I don't.

Q. Do you know anything about it being changed?

A. No.

Q. If it was --

MR. TWOMBLEY: Object to the form.

BY MR. TRAXLER:

Q. -- corrected, amended, changed, whatever to December 31, 2012, would you have any information about that?

A. No.
Q. Okay. Were the auditors of -- did CFRC have auditors, outside auditors?
A. I believe so.
Q. Were they told of the stock transfer?
A. I don't know.
Q. Whose responsibility would it have been to report the stock transfer, if at all necessary, to the outside auditors?
A. I would expect that the what -- the management of CFRC would have reported that to the outside auditors.
Q. And as of September 2012 to the end of the year, who would that have been in particular?
A. Who would -- who would the management be?
Q. Yes, sir. Who had the responsibility for reporting the transfer with regard to the outside auditors?
MR. TWOMBLEY: Object to the form.
MS. KIRK: Object to the form.
MR. TWOMBLEY: Legal conclusion.
THE WITNESS: Yeah. I'm not sure. Mr. Bryant is who I communicated with.
BY MR. TRAXLER:

Q. Okay. And was it reported to the outside auditors what the decision was with regard to using the December 31, 2012 as the transfer date on the gift tax return and on the corporate records?

MR. TWOMBLEY: Same objection.

MS. KIRK: Same.

THE WITNESS: I don't know.

BY MR. TRAXLER:

Q. Do you think that was a material issue as far as outside auditors would be concerned?

MR. TWOMBLEY: Object to the form of the question. I would also -- if you're asking for his mental impressions about what he thought was important and was not important, I'll instruct him not to answer.

BY MR. TRAXLER:

Q. You -- you get auditor's inquiries all the time, don't you, for your clients?

A. My firm certainly gets auditors and inquiries.

Q. Yeah. Do you ever respond to them or help formulate the responses?

A. I don't think that I -- no, I don't. No.

Q. Did you receive such an inquiry from the

outside auditors for CFRC for 2012?

MS. KIRK: Object to the form.

THE WITNESS: I don't remember.

BY MR. TRAXLER:

Q. And I presume you wouldn't remember whether you prepared any of the responses or edited any of them; is that correct?

A. That is correct. I don't recall any of that.

Q. All right. I'm not going to re-plow the e-mail that we have talked about, but I need to get our attention back to it for a time frame.

A. Okay.

Q. I need you to look at 10 -- Tab 1, Page 109.

Alice, can y'all hear me better now?

MS. PAYLOR: Yes, thank you. Much better.

MR. SCHRONCE: Thank you.

MR. TRAXLER: I wish I say I could say I had something it do with that, but. . .

MS. PAYLOR: No. This is -- this is fine. This is perfect.

MR. TRAXLER: If I had my way, I'd cut you off completely; but it won't let me do that.