

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No: 2024-CP-23-01663

Appellate Case No. 2025-001252

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SC Court of Appeals

In the Matter of the Estate of William Rhett Taber, Jr.

William Rhett Taber, III, Respondent,

v.

Thomas Neel Taber as Personal Representative of the Estate of William Rhett Taber, Jr.,
Thomas Nee Taber, individually, Anne C. Taber, Robert Fishburne Taber, Paul Kershaw
Taber, Andrew Patton Taber, Michael Tyndall, Appellants.

RECORD ON APPEAL – VOLUME II

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December 22, 2025

1 A. It was literally amongst all the kids.

2 Q. Amongst all the kids?

3 A. Yes.

4 Q. Rhett and everybody?

5 A. Rhett and everyone.

6 MR. MCGOUGH: Okay. All right. No further questions.

7 THE COURT: Sorry. Thank you. All right. So you may
8 take your seat. Thank you, sir. Copies?

9 MR. MCGOUGH: I think those were mine. I don't
10 remember. Yes.

11 THE COURT: All right. Mr. Lee, do we need to take a
12 break for a few minutes or?

13 MR. LEE: We take a break.

14 THE COURT: Yeah, sounds good. That sounds good.

15 MR. LEE: A five-minute break.

16 THE COURT: Five-minute break. Say 10 minutes.

17 (Off the record.)

18 MR. LEE: All right. Your Honor, we call Ann Taber.

19 THE COURT: Oh, okay. Ms. Taber. Ms. Taber.

20 ANN TABER,
21 being duly sworn, testified as follows;

22 THE COURT: Thank you. You can have a seat. Before we
23 begin, counselors, do you all have plenty of water in your
24 --I didn't think you have somebody to refill water during
25 this break period. Do we have sufficient water?

1 MR. MCGOUGH: We're good. I think one of your deputies
2 helped us out somewhere in the middle here, right before we
3 got (inaudible).

4 THE COURT: Well, these guys are the best, so. That's
5 right. That's for sure. You All right? Did you -- thank
6 you, ma'am. Appreciate it.

7 MR. MCGOUGH: No, he did it in -- he got water.

8 THE COURT: Oh, okay.

9 MR. MCGOUGH: Take that over.

10 THE COURT: Oh, all right. All right. Good. All
11 right. Well, let's go ahead and begin this story.

12 DIRECT EXAMINATION

13 BY MR. LEE:

14 Q. Ms. Taber, thank you for being here. We'll try to
15 be quick and we don't take too much time. Can you just state
16 your name for the record please?

17 A. Ann Clayburn (ph) Taber.

18 Q. Okay. And where do you live?

19 A. I live in Wrightsville Beach, North Carolina.

20 Q. Okay. And we all know this, but how are you
21 related to Pop?

22 A. I am his seventh daughter.

23 Q. Were you the youngest?

24 A. Uh-huh.

25 Q. Yeah. Okay. And Rhett was the oldest, isn't that

1 right?

2 A. That is correct.

3 Q. Okay. What is your occupation?

4 A. Human Resources Manager.

5 Q. Okay. And where do you work at?

6 A. I work for Novant Health.

7 Q. Novon?

8 A. Novant.

9 Q. Novant. Okay. And how long have you lived at

10 Wrightsville Beach?

11 A. I moved back to Wrightsville Beach in or to

12 Wilmington in middle of September, 2019.

13 Q. Okay. And you continue to live there to this day,

14 correct?

15 A. I do.

16 Q. Okay.

17 A. Yes.

18 Q. And you pay the estate rent?

19 A. I do. And -- and just to correct, I moved -- I

20 didn't move originally to 907. I moved to a different home.

21 Q. Okay.

22 A. And then roughly month and a half, two months

23 later I moved to 907.

24 Q. Okay. And -- and you pay rent at 907?

25 A. I do.

1 Q. Okay. Who do you pay that?

2 A. I pay the estate.

3 Q. You pay the estate. And how do you -- you write a
4 check, do you cash?

5 A. I write a check. Typically, and sometimes there
6 will be, you know I pay expenses and sometimes I'll deduct
7 those expenses. And one of the monthly expenses is kind of a
8 managing fee. We utilize Airbnb to utilize for their weekly
9 rentals for the -- the main part of the house. Where I live
10 is what we've always referred to as the garage or so it's a
11 small apartment out in front of the home.

12 Q. Sure. So in essence, I guess the estates pay you
13 that management fee to manage the property?

14 A. Correct. They pay me. I manage one of the
15 apartments. My brother Paul manages the other two
16 apartments.

17 Q. Okay. And sometimes you admitted that you
18 discount your rent for that?

19 A. Correct.

20 Q. Okay. Do you have an accounting that could be
21 given to this court to show your rental payments and the
22 amount deducted and things of that nature?

23 A. Today? No. I ---

24 Q. Could you provide one at a later date?

25 A. Absolutely.

1 Q. Okay. If this court ordered you to?

2 A. Yes, sir.

3 Q. Okay. All right. Has Tom requested ever that you
4 pay a higher rent?

5 A. No. I --

6 MR. MCGOUGH: Objection, relevance.

7 MR. LEE: Your Honor, I think this goes to the basis of
8 creditors' claims to whether or not we are in essence piling
9 money out of the estate to whether there is no money to paid
10 a creditor claim in the event that the court being that
11 valid. I certainly think it's relevant, whether not alleging
12 fiduciary duty, I'm just alleging whether or not there's cash
13 being misappropriated that could be used to pay a claim in
14 this matter.

15 THE COURT: Mr. McGough?

16 MR. MCGOUGH: I'm unaware of any portion of the
17 creditor's claim that deals with rent at Lavinia.

18 THE COURT: Well, but I think --

19 MR. MCGOUGH: Excuse me, rent at Wrightsville Beach.

20 THE COURT: I think Mr. Lee's contention though is this
21 goes to whether or not there's assets in the, the estate to
22 pay liquid assets in the estate to pay any claim in the
23 method court were to order the payment of the claim and, and
24 whether or not those assets were being trickled out
25 unnecessarily or -- or in a fashion to avoid the creditor's

1 claim.

2 MR. MCGOUGH: Okay. I will ---

3 THE COURT: Cast in that light ---

4 MR. MCGOUGH: I will withdraw.

5 THE COURT: All right. I -- I think I'm going -- yeah.

6 Overruled. Yeah, that's good for --

7 MR. LEE: Thank you, Your Honor.

8 BY MR. LEE:

9 Q. Have either you or Tom inquired or the real estate
10 professional about what fair market rent would be for the --
11 the -- the place where you live?

12 A. I have not. I -- I will tell you, when I
13 initially moved in there, I was paying I want to say 1200 a
14 month. then later I felt like maybe I should pay. I went
15 ahead and went to my brother Thomas and said, "I'm going to
16 start paying 1400 a month."

17 Q. Okay. Is that what you're paying now?

18 A. Yes, sir.

19 Q. Okay. All right. And it's changing subject, but
20 why -- why do you -- well, in your opinion, this would be
21 just your opinion. Why do you believe Rhett's inheritance
22 was reduced?

23 A. You know, I don't -- I don't -- I can't really
24 speak of that to some degree, but, you know, in my opinion I
25 think partially it was related to, there may be a thought

1 from my father that he had more than compensated him for any
2 money owed. In addition to that whether it be right or
3 wrong, my father knew that my brother Rhett made a
4 substantial amount more than the rest of our family. my
5 father specifically would try to, essentially when he was
6 dividing property up, divide so Rhett was not joined with any
7 other member of my family just because he tends to not get
8 along with other members of our -- of the siblings. Rhett's
9 a very loving, wonderful person's, been very generous, quite
10 frankly, to all of us. But certainly was very generous to my
11 father both of my parents.

12 But that I -- you know, ultimately was, I think in my
13 parents' view you asked for my opinions and my opinion is, is
14 that they felt like Rhett was part of his generosity was he
15 was giving them a gift of generosity that this, you know, he
16 was getting a gift, not a loan. And then later, I guess said
17 it came evident that he wanted to be repaid for some of those
18 things. And through, you know, everything that went forth
19 you know, in the end of my father felt like he was more --
20 Rhett was more than paid for, for anything that my father or
21 mother owed him.

22 Q. So just to kind of summarize, am I correct it
23 again, I think that your opinion is, and I'm talking about
24 your opinion, that Pop thought Rhett had received an
25 overpayment on that property exchange and reduced as an

1 inheritance?

2 A. As well as he already had significantly more than
3 the rest of my siblings and I, and that he did not need as
4 much. He was financially well off, very successful himself.
5 His wife is very successful. they again gave frequently,
6 they, you know, he felt like my father did not necessarily
7 was not trying to exclude him, for instance, 907, but he has
8 a house almost across the street and felt like there was no
9 reason for him to have part of the beach house. That was one
10 of the things that, you know, specifically talking about the
11 beach house, that was one of the things my father felt like
12 he -- there would be no need for him to have that.

13 Q. Okay. If this overpayment turns out didn't exist,
14 do you think your father would want Rhett to receive a fair
15 inheritance?

16 MR. MCGOUGH: Objection speculation.

17 BY MR. LEE:

18 Q. Yeah. I -- I agree. Yes. Do -- if -- if the
19 overpayment doesn't exist, would you agree me -- agree with
20 me that it's possible Pop made a mistake?

21 A. Well, I -- I agree that it's possible that
22 everyone makes a mistake. Yes.

23 Q. Yeah. Well, in that specific -- specific
24 circumstance, do you think Pop could have made a mistake?

25 A. I -- I -- I really can't answer that honestly. I

1 -- I really can't. I'm not trying to be evasive. I'm not
2 ---

3 Q. Understood.

4 A. I'm -- I didn't -- I was not one that really
5 looked at numbers. I, you know, my dad would bring up the
6 will, I brought up the will to my father on numerous
7 occasions. From ---

8 Q. And what were those conversations?

9 A. -- from that -- from those standpoints, those were
10 typically at the behest of my brother Rhett. And a lot of
11 cases it would be that when we had gone to Raleigh, I would
12 typically in the later years drive my father to Raleigh being
13 a long distance to whether go visit them, go to one of the
14 kids' graduation ceremonies, go to doctor's appointments. I
15 was involved in a lot of those travels with my father and my
16 brother Rhett, whether it be during those visits or phone
17 conversations, you need to talk to Pop and have him read you
18 as well.

19 Q. And ---

20 A. And I -- my conversations with my father were,
21 "It's your property. I support whatever you want to do.
22 That's your property. You do with whatever you want to do."

23 Q. You heard Jackie Patterson testify that somebody
24 dropped Pop off in her office. Was that you?

25 A. No, Pop drove himself to Jackie Patterson's

1 office.

2 Q. Okay. So he drove there?

3 A. Yes, he did.

4 Q. Did Jackie's office ---

5 A. Well, I -- I say that to my knowledge, he told me
6 he dropped -- he drove himself.

7 Q. Understood. And do you agree, did Jackie
8 Patterson's office calls Pop to you?

9 A. They did.

10 Q. Okay. And tell me about those conversations.

11 A. They had started calling and I think -- this is,
12 to the best of my recollection, Rhett had gained, had a
13 friend who was doing some work, or I guess he was a friend at
14 one some point who was doing some work for him in traveler's
15 rest at some of this property that we're discussing. That
16 person, I -- there had to be some conversation or
17 surrounding, you know, who was in the Good Estate planner.
18 And this person, I don't recall his name, made a comment that
19 Jackie Patterson had done a lot of work for them. So Jackie
20 Patterson's office started, you know, calling or they would
21 call Pop, they called his, because he had his own cell phone
22 that he answered and made phone calls from. They called the
23 home phone and then they also called me.

24 So they started calling and I don't, I don't recall the
25 dates at all. but they started calling. They -- she called

1 and I said -- you know, she explained that you know who she
2 was and she was trying to get Pop in for a meeting and, you
3 know, would I assist? And I said, absolutely I'll assist.
4 But my father, at that time, my father was still driving you
5 know, pretty much anywhere, everywhere he wanted to go,
6 unless it was a long distance. So, you know, and I let him
7 her know that I would let my Pop make him aware that she had
8 called and if he wants to make an appointment, he will make
9 an appointment. That I was not making an appointment for
10 him. But if, again, anything that I could assist my father
11 with, I certainly would. And my dad was fully aware of that.

12 Q. Did -- at that time, did Pop get a new phone?

13 A. He did get a new phone. I don't recall exactly
14 when that was, but he did, he wanted the -- the option to --
15 I think that was before. He got a new phone. And again, I
16 don't recall the dates, but he really liked the idea of not
17 having to carry a camera. And he wanted to get a smartphone
18 where he could take pictures.

19 Q. He had a hard time using that phone?

20 A. He did. In fact, he did have a hard time using
21 that phone. And we went and traded it in for a phone that he
22 could use better.

23 Q. Okay.

24 A. So he had that phone for probably two, three
25 weeks. We went back to AT&T too. So I took him there a

1 couple of times because I was having a difficult time
2 explaining him how to use his phone where he, I mean, I could
3 figure it out, but I was having a hard time explaining it to
4 my father.

5 Q. Okay.

6 A. So I took him back to AT&T so a sales
7 representative there could try to help him, and as it turned
8 out, we ended up switching phones. That made it a little bit
9 easier for him to be able to use. Again. I don't recall any
10 of those dates. I don't --

11 Q. Did you ever have a conversation with Pop about
12 this alleged overpayment?

13 A. No. I say that he -- he did discuss it with me
14 again back home. It's not, that's, you know, during some of
15 those conversations back and forth from Raleigh, or I
16 shouldn't say back and forth, it was typically when we were
17 returning back from Raleigh to Greenville. You know, and I
18 would just, it was not specifically an overpayment, but he
19 would, you know, we -- when I talked to him and said, "If you
20 want to redo your will, you know, whatever you do, I fully
21 support. You know, it's -- it's all your business. It's
22 your money." You know, so he did mention that he felt like
23 he didn't owe Rhett any additional money. We didn't really
24 get into a whole lot about overpayment, anything of that
25 nature. He -- as others have testified today, it drove my

1 dad nuts. I think that was one of his biggest things in the
2 later years of his life, that trying to come up with a will
3 that would make everyone happy. It -- it tore him up.

4 Q. Did do you agree that your brother loaned your
5 parents money?

6 A. Absolutely.

7 Q. Has he loaned you money?

8 A. Who? Rhett?

9 Q. Yeah.

10 A. He did loan me money. yeah, absolutely. He
11 loaned -- I own a house in Wilmington. And part of that --
12 I'm trying to think of when it was, but part of it was, is my
13 parents had gone through and essentially helped me, I don't
14 even know what you call it, but it was a court sale of a
15 piece of property. And my parents started putting in bids
16 for that. But for me, I was there, that house is in
17 Wilmington at the time I lived in Raleigh. and so they were
18 putting in bids for me. Then when it came down to it, they
19 needed to they didn't have enough money to put down for the
20 down payment.

21 I think there was a 20% fee that was required to put
22 down at the -- that when for closing. So they went to Rhett
23 and asked if he and his wife, if they, not to my knowledge,
24 my parents went to Rhett. My mom was living at the time and
25 asked for a short period of time, could -- would they loan me

1 money? And as soon as my -- I had recently, I guess with --
2 in a recent, let's say one year or so, had been moved from
3 just below Atlanta, Georgia, to the Raleigh area. And when
4 my home in Atlanta sold, or McDonald, Georgia, I repaid Rhett
5 and Julie, his wife.

6 MR. LEE: Okay. I'm going to show you these. This is
7 Plaintiff's Exhibit 1, Your Honor.

8 BY MR. LEE:

9 Q. Have you ever seen those documents?

10 A. I have seen it, yes.

11 Q. Okay. If those documents contain inaccurate
12 information or incorrect information, do you believe that
13 they could result in a mistake being made in regards to your
14 father's estate plan?

15 A. Yeah, this certainly is possible.

16 Q. Okay. And just show you. Do you recognize this
17 document? This document?

18 A. I -- this is the first time I've ever seen it.

19 Q. Okay. And I'm not going to -- I'm just going to
20 ask you general questions about those. If I -- If I state
21 that those are promissory notes, detailing debts owe to Rhett
22 by your father, if the court determined that those debts were
23 never repaid and that your father agreed to pay them, do you
24 think rent should be paid back?

25 A. Well, I -- I'm going to say no.

1 Q. Okay. Why?

2 A. Well, this was 10 years ago. Actually, no, this
3 was 12 years ago at this point. And if my father, who in
4 2015 fully felt like he had overpaid my brother, owed him no
5 more money, these are both dated 20 one's, 2011, one's 2012
6 and 2015. My father felt like he had more than compensated
7 my brother for everything that he owed him. So even if the
8 court to this point shows that there was a mistake and he was
9 not paid everything that he's claiming today, then I don't --
10 I mean, it -- it seems a little excessive to me.

11 Q. So I -- so -- so if there's a mistake, if this is
12 too bad for Rhett, is that right?

13 A. I'm not saying that, but I'm not saying there has
14 to be, you know, the way you're phrasing the question is if
15 there's a mistake. You know, I think you have to put some
16 little bit more facts in there. Yes. If there's a general
17 mistake, I think we should go back and look at it. But it
18 can't be for, okay, now we owe Rhett -- the state owes Rhett
19 a million dollars because, you know, he gave my dad a stick
20 of gum 20 years ago.

21 Q. Well, I -- I'm just asking if -- if -- if the
22 alleged overpays 280,000 and that's what was reduced from
23 Rhett's inheritance.

24 A. That's not pertaining to this.

25 Q. Well, I'm asking this to know, do you think Rhett

1 should be, if that's a mistake, do you think Rhett should be
2 compensated for that 280,000?

3 A. Partially. I think that's something we should go
4 back and look at. And we have, but that's not pertaining to
5 this.

6 Q. I know. I'm just asking and ---

7 A. Well, you asked me this, so I -- I wanted to be
8 clear there.

9 Q. Yeah. I mean, so those are separate notes. and
10 your position on that is even if they weren't satisfied,
11 Rhett still is not entitled to have those paid?

12 A. According to my father, they were more than
13 satisfied. So I'm going to go with my father and say that
14 these were already paid for.

15 Q. But according to the spreadsheet and appraisals,
16 if it's shown that Rhett still owed money based on --

17 A. Not pertaining to these.

18 Q. -- based on facts

19 A. Not pertaining to these.

20 Q. Right. The overpayment. You -- you -- would, you
21 do agree that he should be paid that?

22 A. I -- I agree that, you know, if there's something
23 in the estate that we need to go back and look at, we should,
24 but not pertaining to these.

25 Q. Understand.

1 A. And -- and I just want to make that.

2 Q. Yeah.

3 A. I mean, I love my brother. I don't want any -- my
4 father loved Rhett there's nothing, you know, he wants to --
5 my dad wants to do the right thing for everyone. This would
6 kill my father what's going in today.

7 Q. So you agree if he wants to do the right thing, I
8 make mistakes every day. So if I made a mistake, I want my
9 son to not suffer from that mistake. Wouldn't you agree? Or
10 is that how your father was?

11 A. If my father made a mistake, he would want to try
12 to correct anything to anyone, whether it be rent or the guy
13 walking down the street.

14 MR. LEE: Okay. Thank you.

15 THE COURT: Okay. Mr. McGough?

16 CROSS-EXAMINATION

17 BY MR. MCGOUGH:

18 Q. Who owns the Lumina Avenue property at County
19 Beach? Do you know?

20 A. Father. The estate.

21 Q. The estate owns all of it?

22 A. My mom had 50%, so part of that was set up in her
23 name is part of a trust. So to my knowledge that trust has
24 not been settled. so that's 50%, then the other 50% is still
25 in my father's estate.

1 Q. Okay. And who's the trustee of the trust?

2 A. My brother, Tom.

3 Q. The trustee of your mom's trust is -- is Tom?

4 A. Oh, my mom's estate was Rhett and my brother Pat.

5 Q. Okay. When's the last time that Rhett contacted
6 you to pay more rent down at Lumina?

7 A. Rhett's Never contacted me about rent Lumina.

8 Q. Okay. So Rhett as co-trustee of the trust never
9 asked you about it?

10 A. No.

11 Q. Okay. Is it fair to say your father used several
12 different factors to determine how he did his estate planning
13 documents?

14 A. Absolutely.

15 Q. Okay. And one of them maybe was the spreadsheet
16 and there may be, and there's other information documents out
17 there. There were lots of things that went into his
18 decisions on his estate planning. All right. Jackie
19 Patterson testified that her staff got the impression that
20 you were doing some bad things to impede your father's wishes
21 within the last month or two of his lifetime. You testified
22 a moment ago that Pop drove himself to Jackie Patterson's
23 office. That was for the initial meeting with Jackie
24 Patterson?

25 A. Yes, sir. That was the initial meeting. To my

1 knowledge, that was the only meeting they had. But again,
2 Pop did tell me what he did. But the one time I did drive my
3 dad to Jackie Patterson's house was to pick up that letter.

4 Q. The letter that is in evidence --

5 A. The letter of intent.

6 Q. -- from Jackie Patterson?

7 A. Yes. My father, we were going to eat lunch and
8 meeting. May have been my brother Pat my nephew Mike and
9 Pat's children at Henry's Smokehouse, which happens to be
10 right around the corner from Jackie Patterson's office. So I
11 didn't get out of the car. My dad ran into her office,
12 picked up an envelope, we went to have lunch. That letter
13 stayed in my father's car. My father, while we were at
14 Henry's Smokehouse had a very small TMI. so we, you know,
15 went back to our house which again is from there, maybe two
16 miles, three miles. With -- at that incident where he had
17 that TMI, he -- it was a very quick recovery -- recovery.

18 So, you know, he rested for a little while. He seemed
19 to be okay. and then that letter stayed in his car for a
20 little while. Then I, maybe a day I went back and got it and
21 gave it to him because it was sealed. I did not open it. He
22 opened it and gave me -- and showed me the letter and I told
23 him I did not think that the information in that letter or in
24 that letter of intent was fair. Nothing to do with my
25 brother, but I felt like my father was being too generous to

1 me in that letter.

2 Q. Okay. So let me just make sure we're crystal
3 clear. While according to Jackie Patterson, your impending
4 your father's wishes, you drove him to Jackie Patterson's
5 house or office to pick up some documents. Right? Y'all go
6 to lunch, come back later. You give it to him, it's still
7 sealed. You don't know what's in there. All right.

8 A. Correct.

9 Q. He opens it -- it is the letter which we now have
10 a copy of in evidence. Talking about some -- maybe some
11 changes to his estate plan. All right. And you objected to
12 that because you were going to get too much under the new
13 plan?

14 A. That is correct.

15 Okay. After Jack Howard's will back in 2015, in between
16 2015 and the time your dad went to see Jackie Patterson.
17 Four years stretch. Are you aware of whether your father
18 talked to or met with any other estate planning attorney
19 during that four years stretch?

20 A. I am. He -- and I cannot recall her name or the
21 -- the office, but my father called someone who had done a
22 will prior to the one Jack Howard did. And she was no longer
23 with that firm, I think, or she had moved I think to Clemson
24 was living there. But she came to the home, my father's
25 house, and the three of us sat in the living room and she

1 essentially, you know, he at that point gave her a copy of
2 that will.

3 Q. Of -- when you say ---

4 A. Jack Howard's ---

5 Q. Okay.

6 A. --- will. And, you know, you meant communicated
7 that there were some things that he would like to change in
8 that will, that he was very conflicted about how to do it.
9 At that point. She recommended that he find a different
10 estate planner that she was no longer doing that type of work
11 and she was also living further away. But she, you know,
12 communicating to him that, you know, going forward, she would
13 never show anyone that will any of the sibling or any of my
14 -- myself or the siblings that, because he would not make --
15 you know, there's no way that he was going to make everyone
16 happy.

17 Q. Do you know who made the appointment with Jackie
18 Patterson?

19 A. I do not. I -- my understanding was, is that that
20 Rhett may have made it, but I -- I don't know that for a fact
21 Pop. I did not know that he went to see Jackie Patterson
22 until after he was already back

23 Q. And then right before his passing. And a few days
24 before, maybe the week of, you know, he passed away. Was it
25 a Saturday?

1 A. My father passed away on it's a Tuesday, July
2 16th.

3 Q. Okay.

4 A. He actually passed away just after midnight, I
5 think his death certificate says around 1:00. But that was
6 hospice. It took him a little bit of time to get there.

7 Q. Okay. So in the -- in the sort of, in that week
8 leading up to his passing did anybody within the family
9 contact estate planning attorneys to have things updated?

10 A. Not to my knowledge. I did receive a call from
11 Jackie Patterson Ums office that Monday prior to my father's
12 passing asking if she felt like my father was up to having
13 her there to come and sign a will or that letter or you know,
14 letter of intent. and just prior to that phone call, I think
15 my brother Rhett may have asked in present of me and my,
16 maybe my brother Tom, I don't recall. But again, at that
17 point, my father was deeply in the hospice and -- and asked
18 if he wanted her to come and he emphatically shook his head,
19 no. So I communicated that to the person I was speaking to
20 on the phone and she said, that's what I thought.

21 Q. Okay. And when he made these statements, you were
22 present, Tom was present and your father was in the present?

23 A. Yes.

24 Q. Okay.

25 A. In addition to Jackie Patterson and this other

1 lady, there was another gentleman that my father went to see
2 somewhere on Main Street in Greenville. I do not know his
3 name. I know, I don't recall that at all. I do recall my
4 dad getting a bill you know, from this particular attorney.
5 And my dad was pretty emphatic that he was not going to pay
6 that bill felt like it was because he went there. He wasn't
7 really happy with that particular person. and I think that
8 particular person may have called Rhett to pay the bill. So,
9 and again, it was my understanding that Rhett made that
10 appointment for my father for the place on Main Street.

11 MR. MCGOUGH: Okay. No further questions.

12 MR. LEE: Just two questions then.

13 THE COURT: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. LEE:

16 Q. Do you have any reason to believe that your father
17 wanted rep to receive the rest of, I'm going to call it the
18 farm?

19 A. Yeah, absolutely.

20 Q. Okay. Why do you think that didn't happen?

21 A. Well, I think my father was, again, very
22 conflicted. I think that he wanted Rhett to have the rest of
23 the farm because Rhett owns a lot of land around that piece
24 of property. It wasn't that my father, he -- my father felt
25 like he owes Rhett anything. But he felt like because Rhett

1 owns all the surrounding property that he warned him to have
2 that property.

3 Q. Is that the 25.93 acres?

4 A. I believe so. I don't recall. I don't ---

5 Q. So -- so the change in Jackie Patterson's wheel
6 gave Rhett the rest of the farm?

7 A. It did.

8 Q. Okay. So that was the change he was trying to
9 make, allegedly.

10 A. One of them, yes.

11 Q. Okay. I'm going to ask you something I, and
12 please don't take offense to this. I'm going to show you, I
13 do not know if I'll admit this or not, but. Did you -- let
14 me just ask you -- you recognize these documents?

15 MR. MCGOUGH: We object this document.

16 THE COURT: On what grounds?

17 MR. MCGOUGH: We were provided a copy of this this
18 afternoon. We had an agreement with opposing counsel to swap
19 exhibits and trial materials last week. And this just was
20 provided to me about an hour ago.

21 MR. LEE: I'm not introducing you as evidence, I'm just
22 asking you to refresh you're for recollection.

23 THE COURT: Are you using it to refresh her recollection
24 or are you using it for demonstration purposes?

25 THE WITNESS: I don't mind answering the question, but

1 it's ---

2 MR. MCGOUGH: How do we know that it's refreshing her
3 recollection?

4 THE COURT: Well, she hasn't forgotten anything yet, so
5 it's probably not recollection of a -- of anything. So I'm
6 assuming it's demonstration purposes and if it is it would
7 not be admissible.

8 MR. LEE: Well in -- in my -- I think I can ask her if
9 she recognizes that document.

10 THE COURT: You can attempt to lay a foundation for it.

11 MR. LEE: Correct.

12 THE COURT: But that doesn't cure the -- that doesn't
13 cure the problem of failing to disclose it at the proper
14 time.

15 MR. LEE: Okay.

16 THE COURT: So is this something that you came into --
17 well, address why you -- why didn't you give it to ---

18 MR. LEE: The original document -- that original
19 document came into possession this morning.

20 THE COURT: All right. Well --

21 MR. LEE: I had a copy. I was unaware if we had an
22 original because it was received by my client and whether he
23 could -- and he -- and I'll be honest with you on, I can -- I
24 can certainly introduce it in his testimony and lay the
25 foundation. It just ---

1 THE COURT: Well, it's not a foundational issue. It's a
2 timelines issue.

3 MR. LEE: Yeah.

4 THE COURT: Because there's a certain amount of time for
5 discovery and not that you would attempt to do this, but you
6 just can't sandbag the other side of it.

7 MR. LEE: No. I can ask general questions in regards to
8 whether certain actions were taken without the exhibit.

9 THE COURT: That'd be fine.

10 MR. LEE: Yeah.

11 BY MR. LEE:

12 Q. All right. Did you ever send a letter to your
13 brother alleging that he was not the biological summon of
14 Pop?

15 A. Absolutely not.

16 Q. Did you ever send a letter to your brother
17 alleging that he was a fraud?

18 A. Absolutely not.

19 Q. Did you ever send a letter stating, "Your
20 (inaudible) will expose your mother's past and bring shame to
21 you and your mother's name?"

22 A. Absolutely not.

23 Q. Did you ever represent, and I don't want to use
24 the term again, that he was not biologically your sibling?

25 A. Absolutely not.

1 MR. LEE: Okay. No further questions.

2 MR. MCGOUGH: We have no further questions for this
3 witness.

4 THE COURT: All right. You may step down.

5 MR. LEE: Your Honor, I called Robert F. Taber.

6 THE COURT: Mr. McGough, looks like he's going to call
7 all your witnesses for you.

8 MR. MCGOUGH: They're his witnesses.

9 THE COURT: Oh, these are ---

10 MR. MCGOUGH: He subpoenaed them.

11 THE COURT: Oh, I see. I see. All right -- all right.
12 So approach.

13 ROBERT FISHBURN TABER,
14 having been duly sworn, testified as follows;

15 THE COURT: Take a seat.

16 THE WITNESS: Thank you, sir.

17 MR. LEE: It is hot.

18 THE WITNESS: Yes sir, it is.

19 DIRECT EXAMINATION

20 BY MR. LEE:

21 Q. And do you go by Bob?

22 A. Bob, Robert is my official name.

23 Q. Okay. So your full name is Robert Taber?

24 A. Robert Fishburn Taber.

25 Q. Where do you live, Bob?

1 A. I live in Pine Knoll Shores, North Carolina.

2 Q. Okay. And what is your occupation?

3 A. I work for North Carolina State Parks. I'm a
4 geologist.

5 Q. And where did you go to college?

6 A. Where did I go to college? I went to UCW, got a
7 bachelor's degree also went to UC State.

8 Q. Okay. And obviously Pop was your father, correct?

9 A. He was my loving father. Yes, sir.

10 Q. And I'm going to streamline this thing so we can
11 try to get some of these witnesses done. Do you agree that
12 Rhett financially assisted your parents during the lifetime?

13 A. Absolutely. Absolutely. There's no question ever
14 that Rhett never loaned my parents, our parents a lot of
15 money. That's -- that's nobody's -- nobody's disputing that.

16 Q. Okay. If it was shown that some of those loans
17 weren't repaid, do you think they should be repaid?

18 A. Absolutely. I think they should be repaid.
19 However, they have been repaid. I feel like they have been
20 repaid. not me personally, because I never really got
21 involved in the will, you know, that was Pop's business and I
22 never really felt to put my nose into it. You know, Pop was
23 sound minded. He -- he did what he felt like he should do
24 and he knew exactly what he was doing. There was property on
25 Allen's lane that was gifted to Rhett. 0.72 acres was gifted

1 Rhett to help pay some of money back. Later 0.42 acres was
2 gifted to Rhett and Julie on Allen's lane to help. And, you
3 know, this -- this money was gifted to Rhett and Julie, his
4 wife, to help pay some of the funding back. this -- this
5 property was worth, you know, several hundred thousand
6 dollars at the time it was gifted to Rhett.

7 Q. What -- what do you, what do you have to show us
8 that basis about?

9 A. I'm sorry?

10 Q. Well, how do you -- how do you determine that
11 value on that property?

12 A. Quite simply actually I was in a financial
13 hardship a while back and I had an adjoining piece of
14 property to -- to this area and I put it up on the market and
15 sold it. And that's how ---

16 Q. What year was that at?

17 A. What -- when did I sell the property?

18 Q. Yes, sir -- yes, sir.

19 A. The property was sold in -- I think it was like
20 '04.

21 Q. Okay. So you heard Tom testify that his opinion
22 was that the debt was satisfied by a lot at Flat Rock and the
23 28.48 acres. Is that -- is that your opinion as well? There
24 was no more debt after those transfers?

25 A. You know, I never was really involved in the Flat

1 Rock property. I don't really know -- I knew my father was
2 involved and I knew he was sound minded. He knew what he was
3 doing. If he -- if my father thought there was no more debt,
4 then that's pretty much with me.

5 Q. Okay. Did your father think that he had overpaid
6 Rhett or do you believe that he had overpaid Rhett in that
7 transfer?

8 A. Which transfer are you referring to?

9 Q. The -- the \$340,000 of debt? that everyone seems
10 to agree that Rhett was owed. Do you think Rhett received
11 more land than \$340,000?

12 A. I do.

13 Q. And what do you based it out?

14 A. Pretty much the fact the -- pretty much the
15 Allen's Lane property was probably worth 200,000 in itself.

16 Q. And when was that transferred?

17 A. When was it gifted to? When did my parents gift
18 it to Rhett?

19 Q. Were you involved in that transaction?

20 A. No, sir, I was not involved at all. It all
21 happened when my mom was in the hospital. it was all under
22 duress.

23 Q. Okay. Are you aware that your mom left the
24 provision and her will that left her \$100,000?

25 A. Could you repeat that question?

1 Q. Did you know that your mom's will had a provision
2 and that they gave Rhett 100,000 bucks?

3 A. I never really -- to be honest, no, I don't. I --
4 I never, I never really meddled in the will in my mom's will.
5 I felt like it wasn't any of my business.

6 Q. So I -- and I understand I'm kind of the same way.
7 Would it be your testimony that you're not really sure how,
8 but Rhett wasn't owed any more money?

9 A. That is apparently what my father felt. that's
10 what I felt as well. I felt like, you know, Rhett had lent
11 us, lent my parents a lot of money. even though my, our
12 parents were cash poor I think that's pretty much been
13 established. however, they had a lot of assets, I feel like
14 assets that our parents gave Rhett fully repaid him. Yes.

15 Q. Do you think they fully repaid him or do you think
16 they actually gave him more than he was owed?

17 A. You know, I -- you know, that's a good question.
18 I don't know. I would say probably more than he was owed.

19 Q. Okay. What if ---

20 A. But that's just my opinion.

21 Q. I understand. But what if -- what if
22 professionals, fact seekers, came in here and testified that
23 there really wasn't an overpayment?

24 A. Well, I think you know, we just looked at a -- for
25 the Rhett property, something that was -- was dismissed

1 seemed like someone would put their license on -- on a -- on
2 a -- on an estimate of a piece of property wouldn't that have
3 anything? Wouldn't that be proof? if an estimator said,
4 "Okay, if I'm going to put my name, if I'm going to put my
5 stamp on this piece of property, that it is worth this."
6 Wouldn't that be justified?

7 Q. I'll answer. Yes, I agree 100 percent. I think
8 appraiser testifies that that property was worth X. That's
9 what it's worth. Well, my question to you is this, if -- if
10 that value is less than or equal to the debt owed to Rhett,
11 was there an overpayment

12 A. If it was less than or equal?

13 Q. Yes.

14 A. And an overpayment?

15 Q. So in order to simplify it, if the property that
16 that rent got real property was equal to or less than the
17 debt that Rhett was owed, did he get more than he should have
18 got?

19 A. In my opinion, again, this is my opinion, he got
20 far more than he should have got from the Allen's lane track
21 alone was probably half of that. You know, we're not -- I'm
22 not even talking about the Key Rock property,

23 Q. But you've testified you don't really know the ins
24 and outs of those transactions, is that correct?

25 A. That is correct. I don't really know the ins and

1 outs of them.

2 Q. And -- and Tom didn't testify anything about
3 Allen's lane, he just talked about Flat Rock, correct?

4 A. That's correct. They're -- yeah, that's correct.

5 Q. Would you want -- well, let me ask you this. Do
6 you know where your father's discharge papers are?

7 A. No, sir. I've never laid eyes on them. If I did
8 we would happily to give them over to Rhett. We have ---

9 Q. You understand why they'd be important to it?

10 A. Absolutely.

11 Q. Okay.

12 A. Absolutely. And I wish I knew more information.
13 I wish I knew where they were. If I did, they'd be in his
14 possession.

15 Q. I'm not going to rehash the nasty things that were
16 said, but do you, you heard me, did you ever send a letter to
17 Rhett alleging that he wasn't Mr. Taber's son?

18 A. Absolutely. No.

19 Q. Did you ever send him one saying that he was a
20 fraud?

21 A. Absolutely not.

22 Q. Did you ever threaten him in any way in any
23 written correspondence?

24 A. Absolutely not.

25 Q. Lastly. Last question. Do you want your fathers,

1 and I think we can all attest to that. I think all of you
2 loved father, he seemed like a great man, everybody I talked
3 to, but wouldn't you want his true intent to be honored?

4 A. Absolutely. Of course I would. that's why I feel
5 like he's rolling his grave right now because that's really
6 all he wanted was, that's really all he wanted, was just to
7 have us get together, you know? Okay. And he -- he -- he
8 would not approve of what's going on right now. So I don't
9 know if I answered your question or not.

10 MR. LEE: You did. Thank you. No further questions,
11 Your Honor.

12 THE COURT: Mr. McGough?

13 CROSS-EXAMINATION

14 BY MR. MCGOUGH:

15 Q. So Mr. Lee just asked you if there were debts that
16 were not repaid to your brother Rhett whether they should be
17 repaid now. All right. In order for those debts to be
18 repaid, if we -- if we somehow determine that -- that there
19 is an -- an -- a debt on the -- on the creditor's claim or --
20 or otherwise, and that Rhett's owed money, you know, not with
21 respect to a mistake in the will, but this debt piece that
22 we're talking about. Do you think Rhett should have to prove
23 that he's got a valid debt before he gets repaid?

24 A. Absolutely.

25 Q. Do you think he should have to prove how much that

1 debt was before he gets repaid?

2 A. I think he should, yes. I do.

3 Q. And if he says he was owed \$340,000, which is the
4 number that we keep hearing, which was on this spreadsheet,
5 and he can't prove that he was owed that \$340,000, should he
6 be repaid that \$340,000?

7 A. If he's owed any money, you shouldn't be repaid,
8 but I feel like, and again, I'm just -- hearsay. I don't --
9 I think he's already been repaid that.

10 Q. All right. And if we get to the end of this
11 rainbow and the court determines that there was a mistake.
12 All right? And be -- and -- and -- and because of the
13 mistake, Rhett was somehow shortchanged in the will, and --
14 and this mistake seems to be inextricably tied to the amount
15 of the debt, but Rhett can't prove how much that debt was.
16 Do you think the -- the court should take that into
17 consideration in determining what remedy to provide Rhett
18 with respect to any mistake? If there is one?

19 A. You know, I've -- I've heard the -- the term
20 mistake quite a bit today and frankly I don't really
21 understand what the mistake is. What is the mistake? What
22 do we talk -- what is the mistake?

23 Q. Well, your brother's contention is that there was
24 a mistake and some values of properties, part of which he was
25 were -- were transferred to him, okay? And that because of

1 this mistake, your father reduced what he was getting in the
2 will and therefore he should be owed something that's --
3 that's the contention from your brother Rhett. My question
4 to you is, if that's true, if there's a mistake and the court
5 finds a mistake and Rhett can't provide one shred of evidence
6 that \$340,000 is the correct number and that that's what he
7 was owed, should the court take that into consideration in
8 determining a remedy with respect to any mistake?

9 A. I would say yes if the court finds that there was
10 a mistake, but personally I don't think there was a mistake.
11 I'm going to say it again. My father was sound minded. I
12 don't think he -- I don't think anybody will object to that
13 right up to the -- right up to his last few days of living.
14 He was sound minded. I'm hoping that the court will not find
15 a mistake, but if there was then yes I would. I know my
16 father would want there to be the mistake taken care of
17 rectified.

18 Q. And you would want all relevant facts in front of
19 the court to correct that mistake?

20 A. Yes, sir.

21 MR. MCGOUGH: Okay. No further questions.

22 MR. LEE: No further questions, Your Honor.

23 THE COURT: All right. You may take a seat, sir. Now,
24 it's 4:00. Can we get more witnesses in?

25 MR. LEE: I think we can get these last two in. I'm

1 sorry, who left?

2 MR. MCGOUGH: He's got one, Paul.

3 MR. LEE: See I can't keep dragging either. I'm going
4 do Paul tomorrow and ---

5 MR. MCGOUGH: Pat.

6 MR. LEE: Pat tomorrow. We'll be calling them and that
7 should be the end of the day.

8 THE COURT: Okay. That sounds fine.

9 MR. MCGOUGH: That works.

10 THE COURT: Sir if you'll approach. That'll be fine.

11 THE CLERK: (Inaudible) raise your right.

12 PAUL KERSHAW TABER,

13 having been duly sworn, testified as follows;

14 THE COURT: All right, have a seat there.

15 MR. LEE: Speak into the microphone a little more.

16 THE WITNESS: Okay.

17 DIRECT EXAMINATION

18 BY MR. LEE:

19 Q. And state your name for the record.

20 A. My name is Paul Kershaw Taber.

21 Q. Mr. Taber, I'm not going rehash too much. I'm
22 going to try to get this out here at the time of matter. Can
23 you just state where you -- where do you live now?

24 A. I live in Wilmington, North Carolina.

25 Q. Okay. What's your occupation? What's your

1 occupation?

2 A. I'm an electrical contractor. Self-employed.

3 Q. And, yeah, I believe you -- you went to Clemson
4 University, is that correct?

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

6 Q. All right. And Rhett is your brother?

7 A. That's correct.

8 Q. Pop was your father?

9 A. That is correct.

10 Q. Okay. I don't think anybody has. But do you
11 disagree that Rhett helped your parents financially
12 throughout their lifetime?

13 A. There's no doubt about it.

14 Q. Okay.

15 A. He has.

16 Q. And do you have an opinion as to why Rhett was
17 left a disproportionate share in your father's estate? Why
18 -- why did he get a reduced inheritance?

19 MR. MCGOUGH: Objection, Your Honor.

20 THE COURT: Speculation right there. I'm going to
21 sustain the objection.

22 BY MR. LEE:

23 Q. All right. Why did you ever have a conversation
24 with Pop about ---

25 MR. MCGOUGH: Objection. Dead Man's statute on how he's

1 directly asking for.

2 MR. LEE: He can tell me if he had a conversation. He
3 can't tell me what he -- what conversation?

4 THE COURT: Well, that -- that is cutting hairs, that --
5 that's parsing hairs. That is true though.

6 MR. MCGOUGH: We heard that as long as again, the next
7 step's not taken.

8 THE COURT: Right.

9 BY MR. LEE:

10 Q. Right. So did you ever have a conversation with
11 Pop about Rhett allegedly receiving an overpayment in regards
12 to these real estate transfers?

13 A. I'm sure never had a direct conversation about an
14 overpayment, but I had conversations with him.

15 Q. Okay. And in your opinion -- well, let me ask you
16 this, has Rhett assisted you financially?

17 A. No, sir. Not that I can remember.

18 Q. Okay. And are you aware -- I don't want to
19 interrupt you.

20 A. If he had had us, he would've demanded to be
21 paying back right away, which I'm -- I'm sure I did.

22 Q. Okay.

23 A. But I don't recall him ever giving me anything.

24 Q. Do you know where your father's discharge papers
25 are?

1 A. I don't have any clue.

2 Q. Okay.

3 A. Somethings Pops never talked to me about and I
4 don't think it was very important to him myself -- I've never
5 heard about.

6 Q. Okay. Do you -- you've heard your siblings
7 testify if it's determined by this court that Rhett is owed
8 money that was never paid by Pop, do you believe you should
9 be paid that now out of the estate?

10 A. I feel like if he is truly owed money, which -- I
11 truly do not think he's owed any money. I think he's been --
12 Pop has been way more than generous with him and paying him
13 back. All the bill was that he's asked him to come up with
14 and Pop has paid him unquestionably as far as I know.

15 Q. Well, Jack Howard testified that Pop agreed that
16 he owed \$340,000 to Rhett. You heard that? Do you disagree
17 that Pop owed Rhett that \$340,000?

18 A. I'm not sure if that's when I heard from Mr.
19 Howard. That's what Rhett said that he owed and Pop paid
20 him. unquestionably, but talked the amount that that came up
21 with. Yes, sir.

22 Q. Mr. Howell testified they had a meeting of mines
23 and that that was a transfer. The debt was canceled or the
24 property was transferred. So did you hear that?

25 A. The property was transferred. Yes, sir.

1 Q. Okay. And was the debt forgiven in conjunction
2 with that property transferred?

3 A. Yes, sir.

4 Q. Okay. So do you agree that Pop believed that he
5 owed that debt? I mean, why would he have transferred the
6 property if he didn't think he owed the debt?

7 A. All -- all Pop wanted to do was to try to bring
8 peace amongst all his siblings and go -- through all the kids
9 and Pop was not going to, you know, I guess Rhett insists
10 that he owed -- he insists that Pop owes him money. You
11 know, Pop's just going to try to make every -- everyone
12 happy. That's just the way he was.

13 Q. So if Rhett can tell this court, and he will, why
14 he was owed that amount most plus more and provide records, I
15 mean, would you disagree with that, that he was owed that
16 money?

17 A. Would I disagree that he was owed what he claimed
18 ---

19 Q. The 340,000 bucks?

20 A. I'm not aware of just how much Rhett has given
21 Pop. I know it's been a lot. But I do feel like that's what
22 the bill, that Rhett came up with himself and Pop away --
23 from what I understand, he just paid him unquestionably. I
24 don't care if that's what I believe, then --

25 Q. So he agreed ---

1 A. -- that's what he owed.

2 Q. So he agreed, "I owe you that amount, I'm going to
3 transfer this property" Is that right?

4 A. That's the way I understand it, yes.

5 MR. LEE: Okay. No further questions, Your Honor.

6 THE COURT: Mr. McGough?

7 CROSS-EXAMINATION

8 BY MR. MCGOUGH:

9 Q. So Mr. Lee, again is discussing this \$340,000
10 debt.

11 A. Yes.

12 Q. Represented that reps going to come before us and
13 give us some proof of that debt. Do you think if Rhett fails
14 to provide proof of that \$340,000 in debt, that -- that's
15 something that this court ought to take into consideration
16 when it's deciding? What, if anything, Rhett is owed at the
17 end of this trial?

18 A. Well, I think that Rhett had, after that initial
19 meeting with Mr. Howard, which was present for that one
20 particular meeting. Rhett came up with a -- a number, a
21 figure of what he was owed and Pop more than satisfied what
22 equals owed and ---

23 Q. Your testimony is that that 340,000 number that
24 came from Rhett?

25 A. Yes, sir.

1 Q. Okay. And if Rhett can't prove that number,
2 that's something that the court ought to take into
3 consideration in deciding how much Rhett is owed, if
4 anything. Is that correct?

5 A. Yes, sir.

6 MR. MCGOUGH: Okay. No more -- no more questions.

7 THE COURT: Re-cross -- re-direct?

8 REDIRECT EXAMINATION

9 BY MR. LEE:

10 Q. One follow up question, just for my knowledge, did
11 you ever send a Rhett -- Rhett a letter about him not being
12 the child of Pop's?

13 A. No, sir.

14 MR. LEE: We do that. No questions.

15 THE COURT: Thank you very much. You may have a seat.

16 MR. LEE: I think that's it for the day, Your Honor.

17 THE COURT: All right. Counsel's approach.

18 (Off the record.)

19 THE COURT: Go back on the record. Sorry for the white
20 noise. It's just, it helps if the judge and the attorneys
21 can actually have a conversation that it's just between them.
22 Sometimes that helps sort out things. All right. Thank you
23 for the -- the decorum in the courtroom today. In -- in
24 cases that have family dynamics that aren't always the best
25 in the world. We always have to worry about outbursts or

1 head shaking or people muttering under their breath. And --
2 and you all have just been just great in that respect where
3 deputies or I haven't had to come down to anybody about
4 anything. It's been a pleasant experience just about, except
5 for, I know it hasn't been for y'all. we're not going to
6 have any further witnesses today. We will adjourn here
7 tomorrow morning at 7:00. And -- sorry, 9:00 if so
8 (inaudible) take kids to school.

9 MR. LEE: What you're going have for breakfast.

10 THE COURT: Right. Well, anyway well, Ms. Luta (ph)
11 Swan's first day back in the office was today after two
12 months being out on rehab and we had crispy creams for her
13 today. So but anyway thank you all again and we'll see you
14 at 9:00 tomorrow morning.

15 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, In the Court of Common Pleas - Probate Hearing of Greenville County, South Carolina, on the 12th Day of February, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 20, 2024

Natasha Barrientos

Transcriber

1

2 CONTINUATION OF PROCEEDINGS - FEBRUARY 13, 2024

3 THE COURT: Continuing on in the Estate of William
4 Rhett Taber, Jr. 2019-ES-23-01851. And I understand the
5 parties were attempting to negotiate this case to see if they
6 could find a resolution. Attorneys have anything to report?

7 MR. LEE: At this point, Your Honor, there's no
8 resolution. We just move forward with testimony.

9 THE COURT: All right?

10 MR. LEE: Correct.

11 THE COURT: All right. Thanks. All right. On Zoom we
12 have Ms. Julie Taber, ma'am, can you hear us?

13 MS. TABER: Yes, I can.

14 THE COURT: Thank you -- thank you. And on your screen,
15 can you see the camera view that has the four quadrants that
16 showed the different camera angles of the courtroom?

17 MS. TABER: Yes.

18 THE COURT: All right. Just want to make sure you can
19 see what's going on in the room.

20 MS. TABER: Yes, I can. Thank you.

21 THE COURT: All right. Thank you. All right. Mr. Lee.

22 MR. LEE: Your Honor, we call Dr. Julie Taber to the
23 stand via Zoom.

24 THE COURT: All right. Dr. Taber, will you raise your
25 right hand?

1 DR. JULIE TABER,
2 being dully sworn testified as follows:

3 THE COURT: Thank you. All right. Mr. Lee will have
4 some questions for you.

5 DIRECT EXAMINATION

6 BY MR. LEE:

7 Q. Dr. Taber, I apologize for being late. I know
8 you're busy, so I'm going to move a, a quicker pace to make
9 sure you're able to get to your clinicals, but I -- I do
10 apologize for the delay. Can you just state your full name
11 for the record, please?

12 A. Julia Krieger Taber.

13 Q. Okay. And where do you live, Dr. Taber?

14 A. In Raleigh, North Carolina.

15 Q. And what is your occupation?

16 A. I'm a physician of breast radiologist to be
17 specific.

18 Q. Okay. And how long have you done that Dr. Taber?

19 A. I've been in practice here in Raleigh for almost 31
20 years.

21 Q. Okay. And where did you go to school?

22 A. I went to Duke Medical School and did my training
23 there after that, before I came to Raleigh.

24 Q. Okay. And is Rhett Taber your husband?

25 A. He is, yes.

1 Q. And do you all have children?

2 A. We do.

3 Q. Okay. And their names are?

4 A. Their names are Krieger, who's 27-year-old daughter
5 and Will, who's 24-year-old son.

6 Q. Awesome -- awesome. How long did you know Mr. and
7 Mrs. Taber?

8 A. Well, I met Rhett in the December, I think of '93.
9 And I met the Taber's, I think for the first time, the
10 following Thanksgiving. So I met them in '94. And then --

11 Q. And did you have a good relationship with Mr. and
12 Ms. Taber?

13 A. I think so, yes -- yes.

14 Q. And can you please tell the court about Rhett's
15 relationship with his parents?

16 A. Well, I think he had a close relationship in that
17 he -- he liked going and visiting with them, you know,
18 wherever they happened to be at the beach or in Greenville,
19 he liked spending time with them. We spent most of our
20 vacations in terms of Thanksgiving and Christmas either with
21 him or with my family, but when it was usually Thanksgiving
22 with his family because it was so much closer. And I think
23 that he felt a sense of responsibility as the oldest son and
24 oldest child that he took very seriously. And so I think he
25 had a good relationship with his parents and felt very

1 responsible for things that they needed.

2 Q. Okay. Did -- was it your opinion that Mr. and Ms.
3 Taber relied on Rhett financially?

4 A. Well, not -- not right at the beginning, but then
5 as I got to know Rhett a little bit more and about kind of
6 how things had progressed as he got out of college and joined
7 the Air Force and helped his dad with some, buying some
8 different properties, helping them with different house
9 projects and then also helping put some of his siblings
10 through school. So yes, I think they did. I didn't realize
11 that at first, but then as I got to know them all better, I
12 realized that he had.

13 Q. Okay. Would it surprise you yesterday, a gentleman
14 named Christopher Sean, I believe you've met him before or
15 talked to him testified that Rhett had transferred hundreds
16 of thousands of dollars to Mr. Taber's account to cover
17 overdrafts. Would that surprise you?

18 A. No, it would not.

19 Q. Okay. Were you a part of those conversations? I
20 mean husband and wife, and I'm not trying to get into your
21 conversation, I know how my wife might respond, but how --
22 how were you involved in that conversation?

23 A. Well, I probably responded the same way your wife
24 responded. I -- it was -- there were some difficult
25 conversations because I thought that we were giving his

1 parents and his dad after his mom passed away too much money.
2 I mean, it was our money and I was afraid that we were never
3 going to be able to get that back. It's not like we were
4 maintaining money. You know, we had lots of responsibilities
5 as well, and our conversations usually started out as I said,
6 you know, I don't think we need to do this. I think your dad
7 needs to find a different way to -- to pay for these things.

8 And -- and I said, "Well, I feel like, you know,
9 we've got the money. I -- I don't want Pop (ph) to suffer
10 through this. I don't want him to not be able to have this
11 or be able to do this or be able to pay his bills." And at
12 some point it became clear that it -- this was a, you know,
13 if I drew the line -- the line, it -- it was either kind of,
14 we did this with my objections or we did divorce,
15 unfortunately. And it wasn't in so many words, but I knew
16 how important it was to Rhett and -- and I think that it was
17 a difficult -- we had lots of difficult conversations about
18 it, so.

19 Q. Am I correct in stating and testimonies are
20 provided, was it always understood by you and Rhett and Pop
21 that these funds, these monies would eventually be paid back
22 to you and Rhett?

23 A. Well, I think at the beginning maybe not so much.
24 But then as time progressed, I mean, Pop always said, "Well,
25 I'll give, you know, I'm leaving --"

1 MR. MCGOUGH: Objection, hearsay.

2 THE WITNESS: I'm sorry?

3 MR. MCGOUGH:: She says, Pop said.

4 THE COURT: Yeah. Mr. Lee --

5 BY MR. LEE:

6 Q. I -- I'm asking -- let me rephrase the question.

7 Was it your -- was it your opinion and Rhett's opinion that

8 Pop was going to repay you for the loans that you all gave

9 him?

10 A. Yes, in some way.

11 Q. Okay.

12 A. Yeah.

13 Q. And don't say anything that Pop told you, but was

14 it your opinion that Pop understood that he was to pay that

15 money back?

16 A. I think so, yes.

17 Q. Okay. And can you describe Pop's relationship with

18 his other children?

19 A. Well, I think he had a close relationship with all

20 of his children. I think he loved them all equally. He --

21 he enjoyed being with the family. He really loved having

22 everybody together. You know, in different -- there were

23 different -- you know, they all had a different relationship

24 with -- with Pop each one of them. But I think that he

25 enjoyed being with all of them.

1 Q. Okay. And just to clarify, just to make sure I
2 understand, so it was always understood by Rhett that the
3 money that he was loaning his father, that he would be
4 repaid, correct?

5 A. Yes. I mean, I don't think each \$5 that he gave
6 his dad or every time he went out to dinner and Rhett paid
7 that he wanted to be paid for that. But for the -- the money
8 that he was transferring isn't to his account to pay his
9 bills. Yes.

10 Q. Okay. And the other things that Rhett may testify
11 that he paid on Pop's behalf that were extremely large?

12 A. Yes. Credit card. Yes.

13 Q. Did you ever know that Rhett had Pop sign some
14 promissory notes that would secure the debt that he owed
15 Rhett?

16 A. Yes.

17 MR. LEE: Okay. I'm going to show -- can I show this to
18 her, Your Honor?

19 THE COURT: Just one second. Unfortunately I can't
20 write notes as quickly as you all can talk. The arm will
21 show the document on the screens here in the courtroom.

22 MR. LEE: Okay.

23 THE COURT: The only view of that that Dr. Taber would
24 have would be through the quadrant.

25 MR. LEE: I can -- I can get around it and later.

1 THE COURT: So she can see it, but it would be a very
2 small picture for her.

3 BY MR. LEE:

4 Q. Dr. Taber, I'm not going to show it to you, but --
5 and Rhett can testify about it later. But did Rhett have
6 promissory notes drafted for Mr. Taber to sign to secure some
7 -- some of the debt that he was owed?

8 A. Yes.

9 Q. Okay. In your experience in -- in knowing him
10 personally and -- and as a physician, as Pop aged, was he
11 easily kind of confused and I mean, was he someone like a
12 typical older person who might need things to help explain to
13 him?

14 A. At certain times. I mean, there were times when he
15 -- we had talked, we talked about different things,
16 particularly in terms of money that -- that Rhett had paid
17 for and Pop had completely forgotten that that had taken
18 place. There were some -- there was some money that red had
19 given him to pay his credit card bill and Pop didn't remember
20 that a year or two afterwards. And you know, he had got a
21 lot of phone calls on his phone from people selling things
22 like trips or gold coins and he, oftentimes, would buy those
23 things.

24 And, you know, while when you talk to him, he wasn't
25 confused necessarily about the day or the time remembering

1 things like money paid and money owed and things that he was
2 buying. Yes. He was a little confused. Not all the time,
3 but sometimes.

4 Q. Okay. Do you think Rhett would ever try to take
5 advantage of his father?

6 A. I do not.

7 Q. Okay. Do you think, and -- and I believe the
8 property was actually transferred to you and Rhett the 28.48
9 acres that Pop transferred to you and Rhett to satisfy that
10 debt.

11 A. Right.

12 Q. Did you understand that you were -- or that you and
13 Rhett were essentially releasing that debt in satisfaction of
14 that land transfer?

15 A. So the -- we were releasing the part of the money
16 that it was transferring for.

17 Q. Correct.

18 A. So ---

19 Q. So the -- the debt that Rhett and Pop agreed on in
20 regards to that property Pop got that forgiven and Rhett and
21 you got the property. Is that accurate?

22 A. I think so, yeah.

23 Q. Okay. All right. Do you think that land
24 transaction, do you have any reason to believe that was an
25 unfair transaction?

1 A. No.

2 Q. Okay. As Mr. Taber's daughter-in-law and his
3 friend, do you think that without making a mistake, there is
4 any reason that Pop would've reduced Rhett's inheritance for
5 any reason?

6 A. I can't -- I -- I can't believe he would, no.

7 Q. Okay -- okay. I'm going to go back to a sensitive
8 question, Dr. Taber, because I'll just be honest with you.
9 The testimony is a little surprising when you hear about the
10 amounts of money that Rhett loans to Mr. Taber. But are you
11 testifying for this court that it was always understood that
12 those monies would be repaid in some form to you and Mr. --
13 and Taber Rhett.

14 A. That's what I believed. Yes.

15 MR. LEE: All right. No further questions, Your Honor.

16 THE COURT: Mr. McGough?

17 CROSS-EXAMINATION

18 BY MR. MCGOUGH:

19 Q. You testified a moment ago that when the 2015 land
20 transfer happened that part of the debt was satisfied by the
21 property and part was not satisfied, correct?

22 A. Correct.

23 Q. What part of the debt was not satisfied by the land
24 transfer?

25 A. Well, the extra monies that we had paid Pop to do

1 things, I didn't -- I let Rhett handle that part because I
2 didn't want to get into arguing with Pop about different
3 monies that he owed us. And we had the documentation and he
4 and Rhett had talked about the -- the -- the land and Pop
5 said, "This is the -- this is the amount that I'm going to
6 give you." And I let Rhett handle that. So I didn't know
7 the exact amount, but I thought that was part of it. I
8 didn't think it was the entire thing.

9 Q. Okay. But you don't -- you don't have knowledge of
10 what items made up pieces of the debt that were forgiven or
11 were not forgiven?

12 A. I don't -- I mean, I could go back and I'm sure we
13 talked about it then, but no, not really.

14 MR. MCGOUGH: Okay. No further questions.

15 THE COURT: All right. Thank you.

16 MR. LEE: No questions, Your Honor.

17 THE COURT: All right. Ma'am, you have -- are free to
18 leave or stay as you desire.

19 MS. TABER: All right. Thank you.

20 MR. LEE: All right. Thank you Dr. Taber.

21 THE COURT: All right. Mr. Lee?

22 MR. LEE: Your Honor, can we approach for a minute?

23 (Off the record.)

24 THE COURT: Sure. All right. We're back on the record.

25 Mr. Lee who's your next witness?

1 MR. LEE: Your Honor, I call -- if I say this correctly.
2 Andrew Taber.

3 THE CLERK: Place your left hand on the Bible, raise
4 your right hand and face the judge.

5 ANDREW PAT TABER,
6 being dully sworn, testified as follows:

7 THE COURT: Thank you. Have a seat right there. Make
8 sure you're speak into the microphone. It's important that
9 the court reporter can hear you.

10 DIRECT EXAMINATION

11 BY MR. LEE:

12 Q. Mr. Taber, thank you for coming back. And I'm
13 going to call you. It's Pat, right? And I know this is hard
14 and I -- I don't like it anymore than you do. If you need a
15 break, you let me know. Okay? Can -- can you tell us your
16 full name for the record, please?

17 A. Andrew Pat Taber.

18 Q. Okay. And -- and Pat, where do you -- where do you
19 live?

20 A. I live here in Greenville.

21 Q. Okay. And what -- what's your occupation, Pat?

22 A. Real estate. Real estate.

23 Q. And how are you related to Rhett?

24 A. My older brother.

25 Q. Pat, do you agree that Rhett helped your parents

1 financially during their lifetime?

2 A. Yes.

3 Q. So you agree that he gave them homes?

4 A. Yes.

5 Q. Did you -- did your parents -- well let me ask you
6 this. Why do you think your father left Rhett a reduced
7 inheritance?

8 MR. MCGOUGH: Objection. Calls for speculation.

9 THE WITNESS: I don't know if I would.

10 MR. MCGOUGH: Pat, hold on.

11 MR. LEE: Just a second, Mr. Taber.

12 MR. MCGOUGH: Calls for speculation.

13 BY MR. LEE:

14 Q. Well, let -- let me rephrase it then. Let me
15 rephrase it. Do you -- do you believe -- do you understand
16 that Rhett's inheritance was reduced?

17 A. I don't know. I don't -- I'm not -- I can't say if
18 it was reduced.

19 Q. Okay, I understand. Did you ever talk to your
20 father about whether Rhett had received an overpayment in
21 that real estate transaction that we've all been talking
22 about?

23 MR. MCGOUGH: Dead man statute.

24 THE COURT: All right. Well, wait a minute. Wait a
25 minute. He hasn't started to say anything that his father

1 was -- said. He -- the question was, "Did you have a
2 conversation about it?" I think that question is ---

3 MR. MCGOUGH: Withdraw. You're right. Okay.

4 BY MR. LEE:

5 Q. Did you ever -- I don't want to know what he said,
6 but did you ever talk -- did you ever have a conversation
7 where Pop said, "You know, I think I overpaid Rhett in that
8 real estate transaction?"

9 A. After the fact.

10 THE COURT: Okay. Now that objection is -- is --
11 sounded way -- you should phrase it the way you originally
12 asked.

13 BY MR. LEE:

14 Q. Always trying to work the edges. Did -- did you
15 ever have a conversation with Pop about an alleged overpay?

16 A. Not until after the fact. I mean, after it -- he I
17 think Pop real -- I -- I mean Rhett had given a lot over the
18 years for Pop. Pop realized that.

19 Q. So you said it was after the fact. Do you mean
20 that you had that conversation with him after the
21 transaction?

22 A. Yes.

23 MR. LEE: Pat, I'm going to show you something Rhett,
24 well, this petition's -- it's Petitioner's Exhibit 1.

25 (Petitioner's Exhibit 1 was marked for identification.)

1 MR. LEE: I'm going to show you those. It's nice to see
2 everyone has copies of their own.

3 UNIDENTIFIED SPEAKER: We're working -- we're working.

4 MR. MCGOUGH: I hope I do now

5 BY MR. LEE:

6 Q. All right. Have you ever seen those documents?

7 A. Well, I've seen -- I mean over the -- over the time
8 there's been so many documents and spreadsheets and numbers
9 and I've -- I've seen this.

10 Q. Okay. I'm not going to ask you about specifics,
11 Pat, but I -- here's a general question. If there are
12 mistakes in those documents and your father used those
13 documents to make any decision based on his -- through his
14 estate planning and that -- excuse me, and that resulted in
15 Rhett receiving a -- a lower inheritance, do you think that
16 should be fixed?

17 A. I think if there was a mistake, it -- it should be
18 fixed.

19 Q. I'm not asking you what your father said, but do
20 you believe that your father wanted Rhett to receive the rest
21 of the farm?

22 A. I -- I believe he wanted to keep the farm intact.

23 Q. Okay.

24 A. And Rhett had -- has the rest of the farm and I
25 think he wanted to keep it intact.

1 Q. So saying that, do you think that he wanted Rhett
2 to have the rest of the farm when he passed away?

3 A. Well, I think he wanted to have it the rest of the
4 farm, but he also didn't know how to do that, to be fair with
5 other siblings as far as like ownership in the beach house.
6 I think like in -- like exchange for -- part ownership and
7 the beach house that, you know, he would inherit the rest of
8 the farm.

9 Q. Well, do you understand under the will that Jack
10 Howard did, Rhett doesn't get any of the beach house that
11 your father owned, correct?

12 A. Correct.

13 Q. So, but Rhett also doesn't get the farm correct?
14 Under Jack Howard, he doesn't get the farm, is that correct?

15 A. Correct.

16 Q. So saying what you just said, do you think your
17 father would've -- given that he's not getting any of the
18 beach house from your father, do you think he would've wanted
19 him to get the farm?

20 A. I think so.

21 Q. Pat, I'm going to -- I'm going to show you
22 something and -- and you may not recognize it, so. Pat, do
23 you recognize either one of those documents?

24 A. I don't recognize them, but yeah, it is a promisory
25 note for --

1 Q. I'm -- I'm not even going to ask you questions.
2 You don't -- you don't recognize that I'm -- I'm not going to
3 ask you questions. All right. Pat, just to finish up. Do
4 you agree that Rhett loaned your father substantial sums of
5 money over the his lifetime?

6 A. He -- I do.

7 Q. Okay. And do you agree that what you phrase it,
8 that in your opinion you -- that Pop probably wanted Rhett to
9 get the farm?

10 A. I do.

11 MR. LEE: No further questions, Your Honor.

12 THE COURT: Mr. McGough, any cross?

13 CROSS-EXAMINATION

14 BY MR. MCGOUGH:

15 Q. Is it your understanding that Rhett was repaid when
16 Pop transferred the 28 acres up at the farm to Rhett in 2015?

17 A. Yes.

18 Q. And at -- and at that time, as far as you were
19 aware, there were no existing debts between Rhett and your
20 father?

21 A. Well, Rhett had -- had given Pop, over the years,
22 many, you know, trips and, you know, I -- I know Rhett loved
23 Pop and Pop loved Rhett and Pat wanted to -- to be fair and
24 make it right. And I think in Pop's mind he had paid Rhett
25 you know, he was trying to find out, well, what -- realizing

1 that he's given him so much or come to a -- what -- or how do
2 I make this right? How do I, you know, pay -- pay you back.
3 And I think in his mind he was paid back.

4 Q. Did your father transfer any real estate to you
5 during your lifetime?

6 A. Yes.

7 Q. What did he transfer to you?

8 A. Well, my parents realized that this would -- would
9 happen. So probably over 20 years ago they started dividing
10 property. I think we all got -- I -- I -- I got a -- a
11 rental house and other siblings got rental properties. I
12 think one son, Robert got like a dock at the beach, which I
13 think was later sold to pay for other debt. But he did -- he
14 did transfer property to all of us. I think Rhett got some
15 property next door to 109 Lanier. I mean, I -- I think we
16 all got something -- some property distributed long before
17 this ever came about. They -- they -- they knew there would
18 be some squabbling, so they -- at that time, they wanted to
19 just to buy the property and not have a squabbling in court.

20 Q. And did you pay for the property that you received
21 from your parents? Did you pay them anything for it?

22 A. I -- I did not. They -- it was -- it was -- all
23 these -- all these were -- were real estate projects that --
24 like -- like rental houses that -- that Pop bought and they
25 had -- and we all put in like time as far as fixing them up,

1 renting them. But when he exchanged it, we never -- he would
2 continue to receive the rent. We -- and -- and so we never
3 got any of the rent from these rental properties. It -- it
4 -- it was just transferred in -- in name. But I guess the
5 income continued to go to Pop.

6 Q. But you didn't -- when he transferred the deed to
7 you of a -- of a property, you didn't pay him anything
8 anymore?

9 A. No.

10 Q. Now, you aware whether any of the other siblings
11 paid anything for any of these properties?

12 A. As far as I know, they were all just gifts to where
13 they tried to avoid siblings squabbles. So they went ahead
14 and divided up the properties and just -- and gifted them.

15 Q. Okay. So to the -- to the best of your knowledge,
16 there was a history of your parents distributing properties
17 during lifetime, you know, to different siblings?

18 A. Yeah.

19 Q. And those properties would've had different values.
20 They weren't worth all the same amount of money?

21 A. They did. They all had different values.

22 Q. Okay. Mr. Lee asked you a few minutes ago about
23 the beach house and focused in on a part of the beach house
24 that was owned by your father, and that's in the estate,
25 which is a one half interest and there's another half

1 interest that's in the trust that was established under your
2 mother's will back in early two thousands after she passed
3 away. Even though he didn't, maybe didn't own the half that
4 was in the trust, do you think -- do you think your father
5 wanted Rhett out of ownership of the beach house?

6 A. I think that he thought there would be sibling
7 strife if I -- I -- I think he thought that would help
8 eliminate family fights if he -- the -- the farm and was out
9 at the beach house.

10 MR. MCGOUGH: Okay. No further questions, Your Honor.

11 MR. LEE: Just one question, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. LEE:

14 Q. Pat, do you have any knowledge -- do you have any
15 knowledge of any of -- you or any of your other siblings
16 loaning your parents money in the way that Rhett did?

17 A. Not in the amount, but I think Pop realized being a
18 Christian man in the old tale about the, you know, the guys
19 putting in a dollar, 50 cents or 5 cents. Well, and at least
20 the Lord said, "Well, I put in 5 cents gave more because out
21 -- out of the abundance the others gave." But monetary, no,
22 nobody -- I mean Rhett's -- I -- I mean that -- that --that's
23 the problem. Nobody knows how much, I mean, I don't know how
24 much Rhett had given, and I know he is given a lot over the
25 years. And I know Rhett would -- would've done anything for

1 Pop if -- and so when -- when -- when Pop asked, he gave, and
2 I just ---

3 Q. I don't want to interrupt you.

4 A. But I -- I don't know how much, and so Pop tried
5 to, you know -- you know, in Pop's mind, he paid him back.

6 Q. Okay. If -- if the fact show, I'm not saying, if
7 the fact show that Rhett wasn't paid back the loan that Pop
8 had agreed to pay back, do you think that loan should be paid
9 back?

10 A. No. I -- I -- I think Pop would like to -- if Pop
11 felt like he owed, I think he would like it to be paid.

12 MR. LEE: No question, Your Honor. Thank you.

13 THE COURT: Mr. McGough?

14 MR. MCGOUGH: Only one question.

15 RECROSS EXAMINATION

16 BY MR. MCGOUGH:

17 Q. So Mr. Lee just asked you about if Pop felt like
18 there was still debt that he had agreed to repay, should it
19 be repaid, do you think your dad would want to be repaid? Do
20 you think that Rhett should have to prove that your father
21 agreed to repay it?

22 A. I -- I think so because there's -- I mean, there's
23 so many -- I mean, everybody's contributed, whether -- I mean
24 with the time like working on these rental properties put in
25 your -- your labor for doing their -- the repairs and the

1 maintenance, and that's -- it is hard to put a monetary value
2 on that versus, "Well, I just gave X amount of dollars."
3 Some people have more money than others, but we all have only
4 a certain amount of time here. But yeah, I think it should
5 be showed. I mean, if he -- and I think Pop tried to -- I --
6 I mean, Pop wanted his debts, he wanted to have it paid off
7 and he, I -- I think, in his mind, he -- he was.

8 MR. MCGOUGH: No further questions.

9 THE COURT: All right. Mr. Taber, you may resume your
10 seat in the -- over there. Thank you, sir.

11 MR. LEE: One more witness, Your Honor, before a quick
12 break.

13 THE COURT: Okay. That'd be fine.

14 MR. LEE: Your Honor, we call Guy Palmer.

15 THE COURT: Mr. Palmer, please approach.

16 THE CLERK: Place your left hand on Bible, raise your
17 right hand face the judge.

18 MR. PLAMER: I will.

19 GREGORY RAY PALMER, JR.,
20 being dully sworn testified as follows:

21 THE COURT: Thank you. Have a seat.

22 DIRECT EXAMINATION

23 BY MR. LEE:

24 Q. Mr. Palmer, can you please state your full name for
25 the record?

1 A. Yes, sir. I can. My name is Gregory Ray Palmer
2 Jr. But I go by a Guy. It's a nickname that my mother gave
3 me. She always called me her little Guy. And so here I'm 81
4 and a half years old and I'm still a Guy. I'm just not
5 little.

6 Q. Well, nobody ever called me little, but. How --
7 where do you live, Guy?

8 A. I live here in Greenville.

9 Q. Okay. And how long have you lived here in
10 Greenville?

11 A. Well, I had a Greer address for a while, but it was
12 -- I lived one mile then from where I live now, I've been
13 here since 1976. I grew up in Anderson, South Carolina.

14 Q. Are you retired?

15 A. Yes, sir.

16 Q. Yeah. How old are you?

17 A. Eighty-two and a half years old.

18 Q. And where did you go to college?

19 A. I went to the Subtle.

20 Q. Okay.

21 A. Graduated from the Subtle.

22 Q. What year did you graduate?

23 A. I was class of '64. Now, let me answer your
24 question. 1965 I was real thirsty from Alex. That's my
25 story and I'm sticking to it.

1 Q. Did you know, we call him Pop?

2 A. Yeah, I did too.

3 Q. And did -- did you know Pop?

4 A. Yes sir, I did.

5 Q. How'd you know him?

6 A. I knew Pop through -- I was the first Colonel and
7 the Confederate Colonel's Club here in Greenville to honor a
8 great Christian man, Robert Edward Lee. It wasn't a love him
9 or leave thing, it was just to honor this great Christian
10 man. And we had a little celebration every year on as close
11 to 19 January as we could. That was Lee's birthday. And Pop
12 became one of my colonels and then subsequently Rhett and
13 they became Colonels and I got to know Pop that way. And
14 Mrs. Taber also, she came to our -- to some of the meetings
15 and I just, what a charming lady. She was just -- I don't
16 know that you know this, she was a real daughter. She was --
17 she was quite a great lady. I enjoyed talking to her and so
18 did my wife.

19 Q. How would you describe Pop in general?

20 A. Pop was about as good a man as one could ever meet.
21 I felt that way. It didn't take me long over the years, got
22 to know him and I -- I would call him and go pick him up.
23 We'd go to lunch and he wanted to pay for it. I said, "No,
24 Pop, no, I asked you to lunch." He said, "Well, I'm paying
25 for it." I said, "Well, I'll agree to that. Only if the

1 next time we go, I pay for it." So we alternated that pretty
2 much back and forth. And I -- he loved apple pie and my wife
3 would make him an apple pie and take it over to him and I'd
4 go pick him up.

5 And sometime they would go with us and -- and to
6 have lunch. And I'm trying to think. Mr. Batson went with
7 us one time and it was just charming. I would -- you won't
8 know what I'm talking about when I say this, and Your Honor,
9 I'm not sure you'll know, but Pop loved music. He loved
10 music. And I do too. I -- my wife doesn't like this, but I
11 -- because Pop was going love for me. I had a CD of
12 (inaudible) and Nelson Eddie, which I loved. And you don't
13 know who that is, but I they were popular in the --

14 THE COURT: The court does.

15 THE WITNESS: Good. You're showing your age, Your
16 Honor.

17 THE COURT: A little bit, yes.

18 THE WITNESS: But you got a long way to go to catch up
19 with me. But I put that in and Pop loved it. And I remember
20 when Pop was on his death bed, going to see him, Judy and I,
21 my wife and I went seeing my wife, Judy, I can't remember the
22 lady's name, but she was with the Greenville Symphony and she
23 brought her cello over and sat there and played for Pop. And
24 it was -- that's the kind of the man he was. He just --
25 people were just gravitated. He was as fine a man as you

1 would ever meet.

2 BY MR. LEE:

3 Q. I think everybody here agrees with that.

4 A. Indeed, he was.

5 Q. Did you know Pop's children? I know you mentioned.

6 A. Oh, yes. I -- I -- I didn't know him as well as I
7 knew Rhett. But I got to know what were the years and Bob
8 Holly of them.

9 Q. And what was Pop's relationship with his children?

10 A. As best I could tell, I think Pop loved all his
11 children pretty much equally. And I -- I think as any daddy,
12 well any loving, caring Christian man would certainly love
13 his children. And I believe with all my heart, Pop did.

14 Q. Okay. You mentioned, you know, Rhett personally,
15 but what -- what's opinion of Rhett?

16 A. I'm sorry?

17 Q. What's your opinion of Rhett?

18 A. He's definitely his father's son. Rhett too is one
19 of the finest men I've ever known. I don't say that because
20 she's sitting here in front of me. I say that because I
21 believe that I've known Rhett for -- got to know him very
22 well through the Confederate Colonel's Club and then others.
23 And he's coming to town and -- and as a matter of fact, Ray
24 is staying at my house while he is down here this time. He
25 is like family too. Man, my -- both of my parents are

1 deceased also. And I'm just -- I just feel very close to
2 Rhett. He's a (inaudible) graduate also.

3 Q. What was -- describe Rhett's relationship with Pop?

4 A. Oh my goodness.

5 Q. Did Rhett help him?

6 A. I -- as, you know, that's a difficult question for
7 me to answer. I don't know all of that involved, but I know
8 -- what I do know is what I had heard. Rhett took Pop on
9 many trips and I -- I know that, I know he helped his father
10 a lot financially. I was shocked when I found out how -- how
11 much. But Rhett loved Pop and he loved his mother. He was
12 -- he -- he just was close to both of them. And I believe --
13 I believe all of them loved their mom and their -- and their
14 pop. I believe that. But Pop -- Rhett was probably as fine
15 a son as man could hope to have.

16 Q. Would it surprise you knowing Rhett, that someone
17 here yesterday, and I know you weren't here to testify, that
18 he had given his father hundreds of thousands of dollars as
19 loans. Would that surprise you?

20 A. Well, no, because I -- it -- heard about this
21 before. Of course, I didn't -- anything I say would be be
22 hearsay. I'd heard that I wasn't privy to that. I wasn't
23 involved in the financial affairs of, you know, the Taber
24 family. But I know he had taken -- I mean, I was shocked
25 when I heard all. I wish I could do that. I wish I could

1 have done that for my folks. Unfortunately, I couldn't. I
2 didn't live in a long cabin, but you know, I -- I couldn't do
3 what Rhett had done and -- and he never regretted one, not
4 one day did he ever regret anything he did for Pop or his
5 mother.

6 Q. Do you believe personally that Pop would knowingly
7 without relying on some false information, would he
8 disinherit Rhett, would he reduce Rhett's inheritance?

9 A. I would probably state my life on that.

10 MR. MCGOUGH: Objection. Speculation on that one as
11 well.

12 THE COURT: I'm going to sustain the objection.

13 THE WITNESS: It -- well, I would probably state my life
14 on that. No.

15 MR. LEE: Well, all right. You're good.

16 THE COURT: Let -- let's strike that from the record.

17 BY MR. LEE:

18 Q. All right. During -- were you -- did Pop seem to
19 rely on people in your opinion for -- for things and towards
20 the end of his life, was he relying on people for things?

21 A. That's an extremely difficult question for me to
22 answer. I -- I -- I can't answer that truthfully one way or
23 the other, other than to say that is -- he is progressed,
24 like -- like everybody who grows old and I -- I'm getting
25 there pretty quickly. He did become a little confused

1 towards the end of his life and so forth. I should tell you,
2 my wife is also -- my wife is a registered nurse. She is a
3 nurse practitioner. She is a certified registered nurse
4 anesthetist. She is also a certified hypnotist, which she
5 not for entertainment, for medical. When she would do OB,
6 she could talk to women who up to and calm them down.

7 So she's -- she's a very intelligent and a smart
8 woman. I'm telling you, she sharp as a cookie. And she
9 would go and we'd go to see Pop and she could tell, you know,
10 they were -- in his later years, he was getting, like most
11 people do as they age, a little confused a little, but he was
12 still Pop. But you couldn't help but love him. I want to
13 tell you this, I want to say this while I'm -- I am 82 and a
14 half years old. I had my annual physical about two months
15 ago, and my physician told me that my weight was 214. My
16 temperature was 98.6. My blood pressure was 126 over 77. My
17 O2 sat., my oxygen saturation was 98 percent. And my PSA was
18 5.8.

19 And he told me this was his words to me. My
20 primary care physician, Dr. Steve (inaudible), he said, "Guy,
21 you had better staff than most teenagers. I see." Three
22 days later I saw my ophthalmologist. She said I was 20/20 in
23 my right eye, 20/20 in my left eye. My field of vision was
24 perfect and my IOP was -- my intraocular pressure was 12 and
25 13. She said, "God, it doesn't get any better now." So in

1 -- in view of the fact that I've 82 and a half years old, I
2 don't think I've reached that point yet. I know it's coming
3 and it comes to all of us with age, but I don't think I'm
4 there yet. I think I -- all my faculties are still in touch
5 and I'm capable of thinking straight. I wanted to say that
6 because of my age.

7 Q. Yeah. Do you believe Pop would ever intentionally
8 hurt Rhett?

9 A. Not a chance. I don't think he would've hurt any
10 of his children. Certainly not. He wouldn't hurt Brad.

11 Q. Would it surprise you to know that people would --
12 testified that Pop wanted to be a fair person? Was he a fair
13 person to you?

14 A. As far as I know, Pop loved all his children. And
15 of course he wanted to be fair.

16 Q. Was he a trusting person? Did he trust his
17 children?

18 A. I believe he did. I -- you know, that's a
19 difficult question for me to answer. I can't put myself in
20 Pop's physical being to answer that, but as far as I know,
21 yes, I think he loved his -- all his children.

22 MR. LEE: No further question.

23 THE COURT: Mr. McGough?

24 CROSS-EXAMINATION

25 BY MR. MCGOUGH:

1 Q. You testified a moment ago that Pop was
2 charismatic.

3 A. I don't remember using that term.

4 Q. Well, he was a, as I understand, pretty active guy
5 out on the town. Did you -- you went out to lunch with him.
6 Did you do anything else with him other than lunch?

7 A. Well, as I said before, he was one of my colonels
8 in the -- at my -- not my colonel, he was colonel in our club
9 in the Confederate Golf Club. And I would say he would come
10 to that and Mrs. Taber came too when she was still alive --
11 living. And yeah, he came to that. And I know he had -- he
12 had a friend of his Dr. Howard who they became friends after
13 the years. Trish, he was known and I know they went to some
14 things. He loved to go to the symphony. And most of the
15 time my -- my connection with Pop, my time with him was we'd
16 go to lunch, I'd go by and pick him up and -- and he didn't
17 drive that I recall ever seeing Pop drive, but I -- I would
18 go pick him up, we'd go to lunch.

19 Q. All right. And -- and the orchestra involvement,
20 were you also at these orchestra events? Did you share his
21 music?

22 A. I loved music, but no sir, I never went to the
23 symphony with Pop. I -- I know he loved -- loved music.

24 Q. Okay. So he going to -- how often were we going to
25 lunch? Weekly?

1 A. Oh, not weekly, but probably -- I don't know, once
2 every a month or maybe sometimes twice every six weeks. I
3 mean, it wasn't a weekly affair, but I would call him and
4 talk to him and in between, sometimes I love Pop. You
5 couldn't help but love that man.

6 Q. And when -- when was this that we're talking about
7 lunch? In terms of ---

8 A. You mean the time of day or?

9 Q. No.

10 A. The years?

11 Q. Yeah. Are we talking about couple years ago? Are
12 we talking about a couple years? You know.

13 A. Well, Pop's been gone for several years now, four
14 years I think. And it was before he died. The last time we
15 went together was very, maybe two weeks before he died, maybe
16 three weeks. I -- I can't answer that specifically. But for
17 several years prior to that, we would go to lunch and I mean
18 years. So I can't give you exact dates, you know, and --

19 Q. Sure. And you all swapped off paying. He paid,
20 you paid?

21 A. Oh, he wanted to pay all the time. I said, "No,
22 sir, Pop won't do that." Said, "You do that to me." I said,
23 "I've got the bill." "And you do that to me? I won't come
24 get you anymore. We're going to do this the right way."
25 I'll -- so I would pay and then he'd pay and I'd pay.

1 Q. Okay. And he was presumably putting these on a
2 credit card or something when you all went out to eat?

3 A. I think he did, yes.

4 Q. Yeah. Okay.

5 A. He did.

6 MR. MCGOUGH: No further questions.

7 MR. LEE: No further questions, Your Honor.

8 THE COURT: All right. Sir, I have a -- a couple of
9 questions.

10 THE WITNESS: Yes, sir.

11 THE COURT: What did you do professionally before you
12 retired?

13 THE WITNESS: Wow. I -- I was in medical sales. I
14 started off selling pharmaceuticals for American Hospital
15 Supply, was hired away by Marline Crout (ph). And then I
16 sold cardiac pacemakers and ambulatory hold to monitoring.
17 And my last -- and then I sold delivery systems for
18 medications. When I was selling cardiac pacemakers.

19 I went in on every single one we did and run the
20 analyzer for. It was critical to have a -- a good interface
21 between that distal tip and the -- and the cardiac, the
22 tissue and the cardiac floor of one was trying to excite.
23 That's -- that was critical. And -- and so I did that and
24 then I got the best job I ever had. I retired. I was 65
25 when I retired.

1 THE COURT: All right. I have never heard of and know
2 nothing of the Confederate Colonel's Club.

3 THE WITNESS: Yes, sir.

4 THE COURT: Please explain what that is.

5 THE WITNESS: Okay. It was a club started by a man by
6 the name of Mr. Jim Perrin. As I said, this day and time, a
7 lot of people have -- you just mentioned the word
8 confederate, and everybody has a -- has a real serious
9 problem. Think it's love it or leave it. It was wrong and
10 everything. I think Robert E. Lee, anybody studies his,
11 knows what a great Christian man he was. The union wanted
12 him to headed up the army for the union.

13 And he -- his comment was, "I cannot draw a sword
14 against my fellow Virginians against my neighbors." And the
15 greatest quote I ever heard from Robert Lee was, "Duty then
16 is a sublime word in the English language. Do your duty in
17 all things. You cannot do more. You should never wish to do
18 less." I love that.

19 And so the club would -- we would get together on the
20 19th of -- as close to the 19th of January, which was Lee's
21 birthday, and just have a celebration to honor this great
22 Christian man. It wasn't a -- it wasn't a love of a leave.
23 It -- it wasn't -- it wasn't any of that. It was just --
24 well, they went -- Rhett went, you all -- so you all went,
25 you know. It was just a great event of celebration. It was

1 -- and it was a fun thing I had. We had heavy hor d'oeuvres
2 and some -- I had an open bar and we had -- usually we would
3 introduce our guests and I had our toastmasters would be -- I
4 had the president of Furman University, Dr. John John, who
5 was also a past grand chaplain for the Grand Lodge of Ancient
6 Free Masons of South Carolina.

7 Had Danny Verden, Senator Verden was one of my
8 toastmasters. I had the national champion, the National
9 President for Sons Confederate Veterans as a toastmaster.
10 And it was a toast. It wasn't a class or lecture. We -- I
11 would introduce, I had -- I had some judges there and some
12 honors and some law attorneys there. And I had physicians
13 that came. It was just a great event to honor this great
14 man. And we would -- we'd do that. We would introduce them,
15 we'd have a -- and I always told my toastmasters, "This is
16 not a class, this is not a lecture.

17 As much as I would like that it is a toast." So five
18 minutes. I told Senator Verden, I said, "I've never sat it
19 senator down before, but five minutes is plenty. Seven, I'm
20 going to start getting edgy." And I said, "You go over seven
21 minutes, I'm going to stay up and start clapping." And so he
22 -- he kept it that way as it was -- it was just a fun event.
23 It was really great to honor Lee and his legacy.

24 THE COURT: All right. Well, thank you, sir.
25 Appreciate the information about this.

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. If there's no further questions,
3 you're excused.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Not for the record. We'll go off the
6 record.

7 (Off the record.)

8 THE COURT: All right. Good deal. All right. After
9 that short break, can I -- yeah, I need a cup of coffee.
10 Yep. And I missed a call. All right. Then we are going to
11 be dismissed for -- let -- let's take 15 minutes or so. I
12 need to make a phone call. Okay.

13 THE BAILIFF: All rise.

14 (Off the record.)

15 THE COURT: All right. Thank you for your forbearance
16 and letting me take a little extra long break. I had to make
17 a phone call, so I appreciate that. Ms. Lee, who's next?

18 MR. LEE: Your Honor, we call William Rhett Taber, III.

19 THE COURT: Mr. Taber, if you'll approach

20 THE CLERK: Left on the Bible, raise your right hand and
21 face the judge.

22 WILLIAM RHETT TABER, III,
23 being dully sworn testified as follows:

24 THE COURT: Thank you. Have seat.

25 DIRECT EXAMINATION

1 BY MR. LEE:

2 Q. Rhett, can you please state your -- your full name
3 for the record?

4 A. William Rhett Taber, III.

5 Q. And Rhett, where -- where do you live?

6 A. I live in Raleigh, North Carolina.

7 Q. Okay. And I you're retired now, I believe?

8 A. Correct.

9 Q. What was your occupation prior to retirement?

10 A. I was an airline pilot.

11 Q. And who did you fly for?

12 A. American Airlines.

13 Q. And how long did you work for American?

14 A. Thirty-six years.

15 Q. Okay. Prior to working for American, were you
16 enlisted in the military?

17 A. I was an officer in the Air Force.

18 Q. Okay. How long were you enlisted?

19 A. I stayed in the reserves for a good while. I had
20 13 years of military service.

21 Q. Okay. Thank you for your service. What rank did
22 you achieve?

23 A. Captain.

24 Q. Okay. Were you honorably discharged?

25 A. Yes.

1 Q. Okay. Are you married?

2 A. I am.

3 Q. And I'm living (inaudible) what's her name?

4 A. Julie Taber.

5 Q. Okay. What does she do for a living?

6 A. She is a radiologist.

7 Q. And how long have you been married?

8 A. She would tell you forever. But my daughter's 27.

9 I guess I'd make it 28 and a half years.

10 Q. Great. Who were your parents Rhett?

11 A. My father was William Rhett Taber Jr., My mother
12 was Ann Fishburne Taber.

13 Q. Okay. Where'd you grow up?

14 A. My father was in the construction business, so we
15 moved around quite a bit, but I would say mostly between
16 Greenville, South Carolina and Wrightsville Beach, North
17 Carolina.

18 Q. Okay. Kind of getting into things a little bit,
19 when did your mom pass away?

20 A. January 30, 2003.

21 Q. And who served as the personal representative of
22 her estate?

23 A. I did.

24 Q. Did you close that estate?

25 A. I did.

1 Q. Okay. Were there any issues or complaints from
2 your siblings or any beneficiaries of your mom's estate on
3 the way that you handled that estate?

4 A. There were no problems and there were certainly no
5 complaints.

6 Q. Okay. Or any -- any allegations that you breached
7 a fiduciary duty?

8 A. If I can back up, I said there were no problems.
9 There were things that had not been done that I needed to go
10 back and get done, but I -- in no way was accused or nobody
11 insinuated that I had not done anything correctly.

12 Q. Well, tell -- tell me about, was there a tax issue
13 that had to be resolved?

14 A. Yes. It's somewhat embarrassing to say, but my --
15 my father got it in his head that he did not need to file a
16 tax return. And that's a story in itself, but Mom and Pop
17 didn't file tax returns for a gracious long time. And when
18 mom passed, because the tax laws were what they were at the
19 time, this estate planning attorney Charles Stewart,
20 suggested that things be divided if I understand correctly.
21 So that to keep the wealth lower to avoid paying tax, I think
22 is the best way to describe it. So anyway, mom's -- the
23 beach house was divided into two. Mom had half and Pop had
24 half. And when mom passed, her half went into a trust.
25 Well, for this trust to be alive, required tax returns and I

1 had to go back and generate, I think it was seven years, tax
2 returns to keep the trust alive so that the estate can close.

3 Q. And who -- who did that?

4 A. I did.

5 Q. And who paid the expense to have those tax returns
6 done?

7 A. I did.

8 Q. Okay. Pop pay for it?

9 A. He did not.

10 Q. Was it understood by Pop that you eventually would
11 want to be repaid for that?

12 A. It was.

13 Q. We'll talk about other things later, but that was
14 kind of one thing that stuck out in the beginning of your
15 mom's state. Correct?

16 A. Correct.

17 Q. Okay. So when did your father pass away?

18 A. July 16, 2019.

19 Q. Okay. And was your father in the military?

20 A. He was.

21 Q. Okay. Is your father's military service one of the
22 reasons you chose to serve?

23 A. Indeed, it was.

24 Q. Tell me about, and this is an open-ended question,
25 but tell me about your childhood. I mean, what was it like?

1 A. You've heard the term or you've heard some say. We
2 grew up poor. I wouldn't say we were poor, but we -- we
3 never had a lot of surplus money. You might call it poor.
4 Mom and Pop always drove used cars. we never went to what
5 you might call fancy restaurants. there was a 10-year spread
6 between the seven children. Money was always tight. Mom and
7 Pop kind of lived frugally, not time that they did live
8 frugally. Pop worked for Daniel Construction Company and we
9 moved around quite a bit growing up. He'd moved from one job
10 back to Greenville to another job, back to Greenville.

11 Q. Was it a happy childhood?

12 A. I wouldn't say we were all happy. I -- I cannot
13 sit here and tell you I was a perfect child by any stretch of
14 the imagination. I was not, no.

15 Q. Were do you agree that your parents financially
16 struggled during their adolescence and up until their young
17 adulthood?

18 A. Absolutely.

19 Q. Okay.

20 A. And after.

21 Q. And despite struggling financially, they were able,
22 as we all know, to obtain and purchase or inherit large
23 pieces of real property. Is that correct?

24 A. It is.

25 Q. Okay. Had some of these properties been in your

1 family for years?

2 A. My mother's property in particular had been in her
3 family since before the American Revolution.

4 Q. Okay. Was it your mother's and father's intent to
5 try to keep these properties from going to third parties?
6 They wanted them to stay in the family?

7 A. That is correct, especially my mom. I mean, she
8 cared about her family and she cared about her inheritance,
9 that piece of dirt more than she cared about anything.

10 Q. You said, I should know this, you said there's a
11 10-year spread between the children. Explain -- so you're
12 the oldest, correct?

13 A. Yes.

14 Q. Who's the youngest?

15 A. My sister, Ann.

16 Q. So there's a 10-year gap between yours birth, is
17 that what you mean by that?

18 A. Correct. Yes.

19 Q. Were you relied on, given that age gap to help take
20 care of and not necessarily raise, but care for your
21 siblings?

22 A. Yes.

23 Q. Okay. Did you ever have any regret in doing so or
24 any hard feelings?

25 A. You know, regret's not -- not the right word. I --

1 I didn't have hard feelings. Just it was expected without
2 making demands or asking.

3 Q. Yeah. Did you want to help him?

4 A. I did, yes.

5 Q. When did you enlist in the military?

6 A. 1981.

7 Q. And that was after graduating from the Subtle?

8 A. Correct.

9 THE COURT: Mr. Lee, I'm going to correct you and take a
10 point of privilege as a judge. He was not enlisted. He was
11 an officer in the United States Air Force.

12 MR. LEE: Okay.

13 THE COURT: So he had signed a contract with the Air
14 Force to serve for a certain number of years, but not
15 enlisted.

16 THE WITNESS: Not your first rodeo. Thank you, sir.

17 THE COURT: Yes, sir. Not at all.

18 BY MR. LEE:

19 Q. Not a military man and people with military
20 experience. Is that when -- when you became an officer, is
21 that when you started to financially assist your parents?

22 A. It is.

23 Q. Tell us about that.

24 A. I was commissioned as a second lieutenant for the
25 first time in my life. I had a little bit of money and mom

1 and Pop still had six kids in college and they struggled.

2 And so as a young lieutenant, I was stitched in Charleston, I
3 banked at the Charleston Naval Shipyard Federal Credit Union.
4 And back in the days when computers were just being invented,
5 if you will, I would go to the Charleston Naval Credit Union,
6 Charleston Naval Shipyard, federal Credit Union, and have my
7 paycheck a bank there. And then I'd have them deposit a
8 large share of my paycheck into my parents' checking account.

9 Q. Why'd you do that?

10 A. Because my parents needed the money.

11 Q. Because of the number of children and the
12 responsibilities. Is that ---

13 A. Because having six kids in college and none of them
14 were producing an income and they had bills of their own.

15 Q. And did your parents ever ask you for financial
16 assistance? I mean, I -- I know that you gave them loans,
17 but how -- how did you end up giving those loans? Was this
18 something that you discussed and -- and was well understood
19 between you and Pop, that these were loans that needed to be
20 repaid.

21 A. And Mom. They would sometimes ask without asking,
22 you know, make it known that they were -- they needed money.
23 And often I didn't wait to be asked. I was honored to be
24 able to help my mother and father. I love my mother and
25 father, I love my siblings. And I felt it was a duty to help

1 if I could. But it was always understood that in some
2 fashion I would be repaid. After Mom died, and tell me if
3 I'm saying too much, but after Mom died and even before Mom
4 died, but especially after Mom died, Pop, would, that quite
5 often.

6 Q. Is that why your mother's will had a specific
7 request in it leaving you \$100,000 in cash?

8 A. It is.

9 MR. MCGOUGH: Objection, speculation.

10 THE WITNESS: May I speak to that?

11 THE COURT: No. I don't know that he knows why she
12 included \$100,000 in her will. We have no testimony from
13 anybody else about anything in her will.

14 MR. LEE: I believe he can testify.

15 MR. MCGOUGH: He can testify that it's there ---

16 THE COURT: Mr. McGough, stand.

17 MR. MCGOUGH: Excuse me. That it's there.

18 MR. LEE: And that the -- I -- I believe he can testify
19 to the basis ---

20 THE WITNESS: That's the reason that money was ---

21 THE COURT: Mr. Taber, you can't speak. Let me see.
22 You want me to the provision? Never mind. I see it. It's
23 my copy. All right. I'm going to sustain your objection. I
24 -- I -- I don't believe he can speculate as to why the -- the
25 request was made. He can testify that there was a request

1 and if he was -- he can -- he can testify whether or not
2 there was a request being not his mother's reasoning behind
3 it, unless he has some independent knowledge of it.

4 MR. LEE: I think he can testify to if he -- if he was,
5 I think he can testify to his belief as to why he was left
6 though.

7 THE WITNESS: Yes, sir. I can. I'm sorry.

8 THE COURT: His belief though would be speculation.
9 That's the whole point of the -- the objection. So I -- I
10 don't think so. So I'm going to sustain Mr. McGough's
11 objection.

12 BY MR. LEE:

13 Q. Still going to ask you, Rhett, to look at that
14 will. Do you recognize that document?

15 A. Yes, sir.

16 Q. And what is that document?

17 A. It was in -- a will of my mother's.

18 Q. Okay. Is that the will that you probated as part
19 of her estate?

20 A. It is.

21 MR. LEE: Okay. Your Honor, I'd like to move this into
22 this Petition's Exhibit --

23 THE COURT: I think we're at five.

24 THE REPORTER: We're at five.

25 MR. MCGOUGH: I think we're at five.

1 THE REPORTER: We're at five.

2 MR. MCGOUGH: And I do have copies too.

3 MR. LEE: Well, wait a minute. Is it five or four?

4 THE REPORTER: It is five.

5 MR. MCGOUGH: We already have Jackie's, I think it's
6 five.

7 THE COURT: I'm going to take that and hand that back to
8 Mr. Lee, please.

9 BY MR. LEE:

10 Q. Rhett, is that will ---

11 THE COURT: Oh, wait a minute, Mr. Lee.

12 MR. MCGOUGH: No objection.

13 THE COURT: No objection? Then it is so admitted as
14 Petition's Exhibit 5. Now, you may proceed. Mr. Lee.

15 (Petitioner's Exhibit 5 was marked for identification.)

16 BY MR. LEE:

17 Q. Rhett, does that will contain a specific device to
18 you in the amount of \$100,000?

19 A. Yes, sir. It does.

20 Q. Rhett, do you recognize that?

21 A. Yes, sir.

22 Q. What was that document?

23 A. It was my father's will growing up at the same time
24 as my mother's.

25 MR. LEE: Okay. All right. I move that in as Plaintiff

1 6.

2 (Petitioner's Exhibit 6 was marked for identification.)

3 THE COURT: Any objection Mr. McGough?

4 MR. MCGOUGH: No objection.

5 THE COURT: It is so moved as -- submitted evidence as
6 petitioner's Exhibit 6.

7 MR. LEE: I -- I'll get the official copy.

8 BY MR. LEE:

9 Q. Rhett, does your father's will contain the same
10 specific request leaving you \$100,000 distribution?

11 A. It does.

12 Q. Okay. Does those -- do any -- do either of those
13 wills provide for \$100,000 distribution to any of your other
14 siblings?

15 A. No.

16 Q. Okay. Were your parents appreciative of the money
17 that you had loaned them over the years?

18 A. Yes.

19 Q. You think they recognized that you had loaned them
20 money over the years?

21 A. Absolutely.

22 Q. You believe they acknowledged that they wanted to
23 ensure that you eventually were repaid for these loans?

24 A. Yes, sir. I do.

25 Q. Okay. I don't mean this to be disrespectful

1 towards your parents because I would they have been able, in
2 your opinion, to support their family without your support?

3 A. Not without selling something or doing something
4 altering their lifestyle.

5 Q. And you've already testified that your, your
6 parents were vehemently opposed to selling those real
7 properties that have been in their family for years, correct?

8 A. Correct.

9 Q. Okay. Did you receive that \$100,000 distribution
10 from your mother's estate?

11 A. I did not.

12 Q. Why not?

13 A. Well, because there was no money in the estate.

14 Q. At what point in time, and I'm not looking for a
15 specific date, but did you realize that the amount of money
16 that you're loaning your parents may be becoming an issue of
17 concern?

18 A. Well, it is been an issue of concern for a gracious
19 long time, even before I married, but certainly after I
20 married and I was loaning Pop not just my money, but my
21 wife's money, she had a whole lot to say about it. And, you
22 know, I felt the duty to -- my parents that pretty much
23 overrode or did I continued to loan the money against her
24 objections. But it just never stopped. And even long after
25 the siblings were out of school and should have been

1 contributing the need for money just increased.

2 Q. Did your -- well, last thought. Who was
3 Christopher Sean?

4 A. He was a very fine gentleman. I came to know, he
5 was a -- they called him a premier banker at Bank of America.

6 Q. And you heard him testify earlier that you had
7 transferred hundreds of thousands of dollars to Pop's
8 account. Would you disagree with that?

9 A. I would not disagree with that at all.

10 Q. Were those loans?

11 A. They were.

12 Q. Pop understand they were Loans?

13 A. He did.

14 MR. MCGOUGH: Objection, speculation, Your Honor.

15 THE COURT: How does he know what Pop understood?

16 MR. LEE: Yeah, I believe that's the exact question. He
17 might understand it from having had conversations with him
18 about it. And that would not be speculation.

19 MR. MCGOUGH: That'd be dead man statute four years ago.

20 MR. LEE: No ---

21 THE COURT: The understanding wouldn't be, the specific
22 phrase would be, or the specific wording would be subject to
23 the dead man statute. I agree. But not did he know whether
24 or not his father knew that there was an obligation? Which I
25 think is the question that was asked.

1 MR. THOMPSON: So I -- I again, we'll -- we'll just -- I
2 guess reiterate that again. He's getting into his father's
3 mental state, what he knew, didn't know, understand, not
4 understand. We just don't think, again, anyone can be in his
5 brain and understand exactly those thoughts of the decedent.

6 THE COURT: Mr. Lee, I'll hear from you.

7 MR. LEE: As your -- as you say, Your Honor, I think he
8 can testify not the contents of the conversation, but as to
9 whether a conversation occurred. That's not a dead statute,
10 that's not hearsay, that's not speculation.

11 MR. THOMPSON: If he wants ---

12 THE COURT: The phrasing of the question, I think makes
13 a difference.

14 MR. MCGOUGH: We agree with Mr. Lee if he wants to ask
15 him whether a conversation occurred, which is what he just
16 asked. That's a perfectly fine question.

17 THE COURT: I concur with that. Rephrase your question.

18 BY MR. LEE:

19 Q. Rhett, did a conversation occur about the loans
20 that your father received from you?

21 A. There were many conversations.

22 Q. Did a conversation occur about Pop repaying those
23 loans?

24 A. There were many conversations.

25 Q. Would Chris call you, Christopher Sean, call you

1 periodically to tell you that Pop had overdrawn his account?

2 A. He called many times. more often Pop would call
3 and I would transfer the money into Pop's account before he
4 had written a bad check. But in the incidences when -- and
5 there were many when Pop just went crazy and would write a
6 bad check, Chris would call. Yes, sir. He called many
7 times.

8 Q. And what would you do at that point?

9 A. I would ask Chris to transfer money from my wife
10 and I's checking account into my father's.

11 Q. Okay. So Pop was aware that you were having to pay
12 money to keep him afloat financially?

13 A. Oh -- oh, absolutely.

14 Q. And he agreed to pay you back that money?

15 A. He did.

16 Q. Did you eventually transfer a set amount to Pop's
17 account every time he asked you for money?

18 A. Yes. When I moved to Raleigh, I -- and got -- and
19 married, we started banking the Bank of America. Online
20 banking was not a thing people could do at that time. You
21 had to make a phone call and like Chris said, it would -- it
22 would required a paper transaction. As technology progressed
23 we were able to transfer money directly from our home out of
24 our checking account into Pop's checking account. And one
25 week it would be \$2,700. The next week it would be \$400.

1 The next week it would be \$3,000 the next week, \$1,800.

2 There was no rhyme or reason to it. Pop needed
3 money and I did it, but it got to be so out of control. I
4 mean, so -- so bizarre. All this money going to Pop that I
5 said Pop, "I need to come up with some avenue to keep track
6 of all this." So we agreed that I would make it multiples of
7 \$5,000 and that we would get this promissory note created and
8 that's what we did. And from that point on, it was for the
9 most part, not always, but for the most part it was multiples
10 of 5,000 bucks.

11 Q. Okay. Why -- were these promissory notes partially
12 necessary despite the fact that Pop was going to repay the
13 notes in your mind, was this partially dissatisfied Dr.
14 Taber?

15 A. Absolutely.

16 Q. Were these promissory notes necessary because the
17 amounts being loaned were such large amounts?

18 A. They were.

19 Q. Rhett, do you recognize these two documents?

20 A. I do.

21 Q. (Inaudible).

22 A. I'm sorry, notes.

23 Q. And who -- who had those notes prepared?

24 A. I had them prepared. The first one was -- was
25 prepared with Pop sitting in the attorney's office, Alex

1 Atchison and prepared.

2 Q. And you had the second one prepared as well,
3 correct?

4 A. Correct.

5 Q. And Alex Atchison is an attorney?

6 A. Correct. In Raleigh, North Carolina.

7 Q. Okay. And did Pop sign these?

8 A. He did.

9 MR. LEE: Okay. Your Honor, I'd move these to be
10 introduced as Petitioner's Exhibit 7.

11 THE COURT: Yeah, it'd be seven.

12 MR. LEE: Seven.

13 THE COURT: Is it seven and eight or just seven?

14 MR. LEE: Seven and eight.

15 THE COURT: Seven and eight. Any objection Mr. McGough?

16 MR. MCGOUGH: No, we yet to have an objection. Do you
17 have the second one? So you showed me the ---

18 MR. LEE: Which one do you have?

19 MR. MCGOUGH: The one you showed me that was arguably
20 original.

21 MR. LEE: Yeah, not original.

22 MR. MCGOUGH: You did not have the original.

23 MR. LEE: Okay. I don't have it, so. Yeah, Your Honor,
24 just for court's clarification, the 2011 note that Mr. Taber
25 has, and let's give that as the original note, signed by Mr.

1 Taber. The 2012 note is a copy.

2 THE COURT: Okay.

3 MR. LEE: So it switch this one. Read that one too.

4 THE COURT: Let's have the -- hearing no objection,
5 let's mark those as petition's Exhibit 7 and 8.

6 (Petitioner's Exhibit 7 and 8 were marked for
7 identification.)

8 THE COURT: And admitted into evidence.

9 MR. MCGOUGH: Which is which? Which one's seven? Which
10 one's eight?

11 MR. LEE: Let's just do it -- do 11 as seven and 12 as
12 eight.

13 THE COURT: Seven and eight.

14 THE REPORTER: Thank you.

15 BY MR. LEE:

16 Q. Rhett, did these promissory notes cover all the
17 amounts that you had loaned your parents?

18 A. Not even close. No, sir.

19 Q. And were these notes and amounts that Pop agreed to
20 pay back?

21 A. Yes.

22 Q. Okay. Did Pop sign these promissory notes?

23 A. He did.

24 Q. Did Pop agreed -- did he owed you these amounts?

25 A. He did.

1 Q. Was there ever any dispute about whether Pop owed
2 you the amounts detailed in the promissory?

3 A. None.

4 Q. Okay. I have to -- I have to ask you this, Rhett,
5 because I -- I think maybe for everybody's understanding, I
6 don't think anybody's ever argued that you were bad son.

7 A. Thank you.

8 Q. But why? Why did you feel the need to loan such
9 large amounts to your parents?

10 A. Because they had no money and they needed money.
11 And I thought the duty to my parents.

12 Q. Why not just say, "Pop, Mom, you all want to sell
13 some properties, you going have to deal with them?"

14 A. I suggested that. And Pop had properties he
15 certainly could have sold and sitting here. Now, I wish he
16 had sold some of them his lots on Allen Lane, for example.
17 Any -- or any of the Pop's stuff, it was his stuff to do with
18 as he saw fit. But the farm he wanted to hang onto and my
19 grandmother's property, my mother's property, that was like
20 the holy land. And then mom just traded it. That was never
21 -- that would never have been sold.

22 Q. Why -- why have you asked your siblings do? Why
23 would this ---

24 A. I did.

25 Q. And what were their responses?

1 A. They didn't.

2 Q. Okay.

3 A. And what -- and ---

4 Q. Do you -- do you think your siblings, and I'm not
5 trying to be unkind and I -- do you think your siblings were
6 the cause of some of the reasons that your father needed
7 financial assistance?

8 A. I don't mean to embarrass anybody here. But, yes,
9 sir, I do.

10 Q. Were they living in some of his properties rent
11 free?

12 A. Yes, sir. They were.

13 Q. Were they utilizing his money in ways that were
14 only benefiting them?

15 A. Yes, sir. They were.

16 Q. So were they actually receiving rent that was due
17 to Pop?

18 A. Well, I would say they didn't pay rent that Pop
19 could have and should have had.

20 Q. So if Pop would've had that rental income, do you
21 think he would've relied on you as much financially?

22 A. Certainly not as much. Or if they -- he never
23 rented his house in Greenville, for example. But if they
24 paid rent contributed something financially the many years
25 they were in his house, I probably still would've contributed

1 to Pop. If Pop needed it, I would've been happy to help Pop,
2 but it wouldn't have been as much.

3 Q. Are all -- all of your siblings, they're all
4 college educated. Correct?

5 A. That was Mom and Pop's lifetime goal was to have
6 seven college graduate children. So they are, Yes, sir.

7 Q. Okay. Let's talk about this transfer. Did Pop at
8 some point suggest transferring a piece of real property to
9 you -- to you to satisfy some of the debt that did?

10 A. Yes.

11 Q. Was he going to pay off all of his debt with this
12 land transfer or just some of it?

13 A. I would say some of it.

14 Q. Okay. I believe they left it laying up there. The
15 Petitioner's Exhibit 1, Your Honor. And Verne, look at that
16 spreadsheet. Do you recognize that?

17 A. I do.

18 THE COURT: Just one second, Mr. Lee. All right. Did
19 you say Exhibit 1?

20 MR. LEE: Yes, sir.

21 THE COURT: All right. You may proceed.

22 BY MR. LEE:

23 Q. All right. Look under that first page down in the
24 middle -- middle of the bottom I believe it says there's a
25 debt that's owed Rhett. How much is that?

1 A. I see right in the middle. Pop's debt to Rhett.
2 Is that what you're referring to?

3 Q. Yes.

4 A. It's \$340,000.

5 Q. Okay. And is this amount something that you and
6 Pop agreed upon?

7 A. It is.

8 Q. Okay. Was Pop wanting to pay that \$340,000 off?

9 A. He did.

10 Q. Okay. Did this \$340,000 debt include the
11 promissory notes that we've just submitted to this court?

12 A. It did.

13 Q. So you agree -- well, do you agree with me that the
14 transfer of the 28.48 acres -- now, we've talked about
15 numerous times, did that satisfy the \$340,000 worth of debt
16 detailed on that spreadsheet?

17 A. For the -- for the most part, yes sir, it did.

18 MR. LEE: Okay. And let's talk about that purchase, I
19 believe, Your Honor, this Petitioner's Exhibit --

20 THE REPORTER: Three.

21 MR. LEE: Three.

22 (Petitioner's Exhibit 3 was marked for identification.)

23 BY MR. LEE:

24 Q. Rhett, do you recognize that document?

25 A. Yes, sir.

1 Q. What is it?

2 A. It's a deed to allotted Flat Rock. Am I looking at
3 that right? I beg your pardon, Mr. Lee. The deed to the
4 28.48 acres.

5 Q. Okay. Is that the deed that Pop conveyed to you
6 and Dr. Taber in satisfaction of that \$340,000 debt?

7 A. Yes.

8 Q. So, correct me if I'm wrong, you get the property,
9 you and Dr. Taber, but that \$340,000 debt that you discussed
10 with Pop, it's gone. He no longer owes it to you.

11 A. Correct.

12 Q. All right. What does that deed -- up at the top
13 where it says the dollar amounts? What does that read? What
14 it says for consideration. Where it says, I think it's 200
15 and --

16 A. It says, "Known all men by these presidents of I,
17 William R. Taber Jr., in consideration of \$222,788.75 and
18 satisfaction of indebtedness from grantor to grantees."

19 Q. Okay. So that satisfaction of indebtedness is
20 talking about this \$340,000, wouldn't you agree?

21 A. Yes.

22 Q. Okay. how was that transfer and satisfaction of
23 debt negotiated between you and Pop?

24 A. He asked me for a dollar figure. I came up with it
25 and he drew the lines and came up with what he felt was fair

1 and I didn't question it.

2 Q. Okay. And when you say you came up with \$340,000,
3 did you just go back and add some of the things together,
4 like the promissory notes or items that you have paid for Pop
5 and come to that conclusion?

6 A. Some. Yes.

7 Q. It wasn't all of them. Was it?

8 A. Sir, I gave money -- Mom and Pop money going back
9 to the early 80s.

10 Q. Did Pop agree that he owed you that money?

11 A. He did.

12 Q. And that this transfer of the 28.4 acres satisfied
13 that \$340,000 debt?

14 A. It did.

15 Q. That was your intent, correct?

16 A. Yes, sir. And my father's.

17 Q. And Pop's intent, correct?

18 A. Yes.

19 Q. You heard Jack Howard testify that that was the
20 intent. Do you agree with Jack Howard on that?

21 A. I do.

22 Q. Am I correct that you -- well, you already answered
23 that one -- strike that.

24 Do you think you received, I use the term overpayment
25 because that's what everybody seems to like to say. Do you

1 -- do you think you got an overpayment in that transaction?

2 A. Most certainly do not.

3 Q. Okay. Did you recently have that property
4 appraised?

5 A. Yes, sir.

6 Q. What -- and this is important, what date did the
7 appraiser use on which, if he found this value?

8 A. It was used -- he used the date that the property
9 was effectively sold.

10 Q. And you and I learned something from the appraiser
11 That -- and in order to determine what a property is worth,
12 you have to determine it on the exact date that it was
13 transferred Correct.

14 A. To be a true and accurate appraisal.

15 Q. Okay. Who did that appraisal? Was it Alan Gravy?

16 A. That's exactly who it was.

17 Q. Okay. And what did that property appraise for?

18 A. \$300,000.

19 Q. So as of the date of the transfer of that property
20 from Pop to you, that property was worth \$300,000?

21 A. Yes, sir.

22 Q. According to Alan Gravy, correct?

23 A. Correct.

24 Q. So if the property appraised for 300,000 and you
25 satisfied \$340,000 worth of debt in exchange for the

1 property, did you get an overpayment?

2 A. Not by the arithmetic that I used.

3 Q. Okay. Did you get an underpayment?

4 A. Well, I would -- I would say I certainly didn't
5 come out on top of the deal. Yes. I -- I effectively
6 surrendered a \$340,000 note for a 300,000 piece of property.

7 Q. All right. And we learned some new things in Tom's
8 testimony. Tom assert in his testimony that it wasn't just
9 the 28.48 acres that satisfied that \$340,000 debt, that it
10 was also a lot in Flat Rock.

11 A. Yes, sir.

12 Q. All right. For this next few questions, let's
13 assume that's true. I understand you disagree, but let's
14 assume that to be true. Okay. Do you know what lot he's
15 referencing?

16 A. I think so.

17 Q. Did your father transfer a lot to you?

18 A. He did.

19 Q. And what was that lot transferred to you in -- in
20 exchange for? What -- what did he try ---

21 A. Money.

22 Q. Money in. Okay. You recognize that?

23 A. Yes, sir.

24 Q. What is that?

25 A. Anderson County property record card.

1 Q. And is that property record card in relation to the
2 Flat Rock Lot that Tom asserted was part of that satisfaction
3 of three \$40,000 debt?

4 A. Yes, sir.

5 MR. LEE: Okay. Your Honor, we move that as
6 Petitioner's

7 9.

8 THE COURT: Mr. McGough or Mr. Thompson?

9 MR. MCGOUGH: No objection.

10 THE COURT: All right. Let it be marked as Petitioner's
11 Exhibit 9 and admitted into evidence.

12 (Petitioner's Exhibit 9 was marked for identification.)

13 THE COURT: Give us just a second to mark it up. Mr.
14 Lee, if you would try to stay around your microphone
15 sometimes if you go too far off to the wall. We can't hear
16 you well.

17 BY MR. LEE:

18 Q. Okay. All right. Rhett, look on that property
19 card. The last sale was to you in 15, what was the land sale
20 price?

21 A. \$43,000.

22 Q. And who came up with that sale price? Did you have
23 anything to do with it?

24 A. The first time I saw this was when you showed it to
25 me.

1 Q. Okay. So if you didn't do it, would you assume
2 that Pop did it?

3 A. I would.

4 Q. Okay. Rhett, let's just, for our argument's sake,
5 say that Tom's correct that indeed the 28.48 acres appraised
6 by Alan Gravy and this lot in Flat Rock were transferred to
7 you to satisfy \$340,000 worth of debt. Assume that. Okay?

8 A. Okay.

9 Q. What's 300,000 plus 43,300?

10 A. 343,000.

11 Q. So maybe you got a 3 ---

12 A. Maybe I was overpaid 3000.

13 Q. \$3,000. How much overpayment has Tom alleged that
14 you were given?

15 A. Well ---

16 Q. Was it 280,000?

17 A. That sounds right. Yes, sir.

18 Q. So even if Tom's right, even if -- and -- and you
19 -- I know you specifically disagree with it, but even if
20 Tom's right that both of these lots went to satisfy that
21 \$340,000 debt, do you really receive -- did you receive an
22 overpayment?

23 A. I don't know anybody can make such a claim. No,
24 sir, I did not.

25 Q. Okay, well look at that spreadsheet again. Pick up

1 that spreadsheet, Petitioner's 1.

2 A. This one?

3 Q. Yes. Did you see that document prior to your
4 father passing away?

5 A. I'm not sure that I did. I may have, but I ---

6 Q. Okay. Let's walk -- let's walk through the
7 spreadsheet. At the very top it says Pop Properties. Tom
8 testified these were properties that were owned by Pop. Does
9 anything in there stick out to you as being accurate?

10 A. Yes, sir. There is.

11 Q. And what is that?

12 A. About a little more than halfway down. That first
13 paragraph. He's got Pop Barn Belvue School Road, 12.7 acres.

14 Q. Okay. Do you own property on Belvue School Road?

15 A. I do.

16 Q. And how much acreage is there?

17 A. Well, I own that 12.7 acres. I bought it outright.
18 My father never owned it. Ever.

19 Q. Okay. I'm going to going to show you this. Do you
20 recognize this document?

21 A. That would've been what we call the Lockerbie
22 profits. Just so you know.

23 Q. You recognize that, Rhett?

24 A. I'm going to have to read it. Oh, Jean Barnes.
25 Yes.

1 Q. And what is that?

2 A. That's the sale of -- well, Jean Barnes was Roy
3 Lockerbie's daughter. It's the sale of the Lockerbie
4 property.

5 Q. Did you purchase that property?

6 A. I did. My wife and I. Yes.

7 Q. From Ms. Barnes?

8 A. Yes.

9 Q. Was Pop ever an owner on that property?

10 A. Not in any way.

11 Q. So why would it be listed on a spreadsheet as
12 property owned by Pop?

13 A. Well, I can only surmise that that was a mistake.

14 THE COURT: Excuse me. Mr. Lee, please point me to
15 that. Piece of property that we're referencing. I'm not
16 sure that I -- I caught that.

17 MR. LEE: On the spreadsheet.

18 THE COURT: Yes, sir.

19 MR. LEE: On --

20 MR. THOMPSON: Page one.

21 MR. LEE: Page one. May I approach, Your Honor?

22 THE COURT: There's nothing that says Lockerbie
23 property.

24 MR. LEE: No, it's -- it's this 12.7 acres.

25 THE COURT: Oh -- oh, we're still talking about that.

1 Okay. What do we have here?

2 UNIDENTIFIED SPEAKER: 815.

3 THE COURT: I got a little behind in my note taking and
4 you move faster than I was able to write, so.

5 MR. LEE: Well, and -- did -- I move that into
6 Petitioner's Exhibit 10.

7 THE COURT: Any objection, Mr. McGough?

8 MR. MCGOUGH: No. Which one are we talking about?

9 MR. LEE: The deed.

10 MR. MCGOUGH: No -- no.

11 THE COURT: All right. Then it's marked as Petitioner's
12 Exhibit 10. And admitted in the record.

13 (Petitioner's Exhibit 10 was marked for identification.)

14 THE WITNESS: I say if I had seen it.

15 THE COURT: The court's clarification, the 12.7 acres
16 and the Lockerbie could be property are the same thing?

17 MR. LEE: Yes, Your Honor.

18 THE COURT: Thank you.

19 BY MR. LEE:

20 Q. Rhett, just for the court's information, is it your
21 assertion that Pop does not own and never owned the 12.7
22 acres of property listed on that spreadsheet?

23 A. That is correct.

24 Q. And your assertion is that you've always been the
25 owner of that property?

1 A. I don't think anybody would argue with that.

2 Q. Okay. And do you believe the deed that was just
3 submitted between you and Jean Barnes proves that?

4 A. Absolutely.

5 Q. Okay. Was there an issue with the acreage because
6 the deed actually references a small, did you give a life
7 estate of a portion of that property to someone and that it
8 ultimately was conveyed to you?

9 A. Yes.

10 Q. Tell us about it. So just explain that to the
11 court.

12 A. Roy Lockerbie's widow lived in the house that was
13 up there. she was a very nice old lady and I didn't want
14 give her any, she was happy there and I didn't mind her being
15 there at all. I gave her a right to life in the house.

16 Q. So when she passed away though, that property came
17 to you ---

18 A. Yes.

19 Q. --- to complete the whole 12.7 acres?

20 A. Yes.

21 Q. Okay. And so would you agree with me that that
22 spreadsheet mistakenly less, this property's being on my Pop?

23 A. It absolutely does mistakenly represent that.

24 Q. Do you think that that kind of mistake could have
25 caused Pop not to fully understand his estate?

1 A. I do

2 Q. Under Pop's debt, if you look on the spreadsheet
3 near where the 340,000 DOU, it says, "80,000 to an Equity
4 Line." Who paid that?

5 A. I'm trying to find that.

6 Q. Right underneath 340,000.

7 A. I would assume, Pop did.

8 Q. Okay.

9 A. With our help.

10 Q. Yeah. Do you believe you provided assistance in
11 paying that as well?

12 A. I absolutely do.

13 Q. Again, let's go back. Is it your testimony here
14 today that in order to satisfy the \$340,000 debt that you and
15 Pop agreed on, that Jack Howard testified that you agreed on
16 that Pop transferred you the 28.48 acres of real property?

17 A. Yes, sir.

18 Q. Okay. And do you agree with my math that even if
19 Thomas is correct, that you also got a Flat Rock lot worth
20 \$43,000, that you still didn't get an overpayment because
21 once you add the appraisal from Alan Gravy and the Flat Rock
22 right price, that still doesn't exceed the debt owed to you.
23 Correct?

24 A. That is correct.

25 Q. Certainly didn't get a \$280,000 overpayment,

1 correct?

2 A. That is correct.

3 Q. Okay. Do you think Pop relied on that spreadsheet
4 in making his estate plan?

5 MR. MCGOUGH: Objection, speculation.

6 BY MR. LEE:

7 Q. Well, let me rephrase. You heard testimony that
8 the -- as far as the real properties go, the spreadsheet
9 exactly matches the will, correct?

10 A. Yes, sir, it does.

11 Q. Do you think that's a coincidence?

12 A. It is. No coincidence.

13 Q. Okay. We're going to get to something to minute,
14 but I want to ask you, Rhett. Did you ever -- well, how did
15 it feel when you found out that your father had less reduced
16 your inheritance?

17 A. I'm trying to think of the best way of describing
18 it. I love my dad. I know my father loved me. I don't -- I
19 don't question that I would've done anything for my father.
20 I don't think anybody in this room would question that. And
21 I think my father would've done anything he could have for
22 me, but something was wrong and I -- nobody's going to
23 convince me that my father, if he had been in the right mind,
24 would willingly, knowingly, effectively write me out of his
25 will. That just makes no sense.

1 Q. Well, Tom testified that it was because he thought
2 that he had overpaid you.

3 A. Well, the reason it popped up that -- the reason he
4 might have been led to believe that was because somebody puts
5 these fancy charts in front of him and they start telling him
6 that over and over and over. My father's the one who drew
7 the initial lines for the 28 acres. My father thought that
8 was fair when he made the deal. And I -- I did not question
9 my father. I mean, I -- I didn't go get a survey, I didn't
10 get an appraisal at that time. I trusted my father and my
11 father drew the deal. And then after the deal was made, he
12 was led to believe that I had, in some way, taken advantage
13 of him, which I would lay down in front of a moving train
14 before I cheated or took advantage of my father.

15 Q. You heard Jackie Patterson testify that one of the
16 big changes that your father wanted to make was to leave you
17 and everybody calls it something that the rest of the farm,
18 the 25.93 acres.

19 A. Yes, sir.

20 Q. Do you believe that's because your father realized
21 he made a mistake?

22 A. It is partly and the other part of it is I'm the
23 one who made an effort to keep the farm together. Nobody
24 else stepped up to the plate to do anything together. I did.

25 Q. But it's also because maybe he realized that there

1 was no overpaying.

2 A. Well, he told me that you realized there was no ---

3 MR. MCGOUGH: Objection (inaudible).

4 THE COURT: Hold on Mr. Taber.

5 MR. MCGOUGH: And also dead man statute.

6 THE COURT: And -- and I'll sustain you on both
7 objections.

8 MR. MCGOUGH: And to the extent that that was in the
9 record, we do ask it to be struck.

10 THE COURT: Madam Court Reporter, strike the last
11 comment that Mr. Taber made, assuming that you captured it
12 already.

13 MR. MCGOUGH: Thank you, Your Honor.

14 THE COURT: Mr. Lee, you may proceed.

15 BY MR. LEE:

16 Q. All right. Do you think the basic math that we've
17 talked about shows unequivocally and Alan Gravy testified
18 about the values, but do you think that math shows that if
19 there was an assumption that you received an overpayment,
20 that that was an incorrect assumption?

21 A. I certainly do show that.

22 Q. All right. Let's talk now about your creditor's.
23 Do you recognize that document read?

24 A. I do.

25 Q. What is that document?

1 A. Statement of creditor's claim.

2 Q. Okay. And did you file, did you sign that
3 document?

4 A. I do.

5 Q. And did you instruct Ginger (ph) Phillips in my
6 office to file that statement of creditor's claim?

7 A. Yes sir, I do.

8 MR. LEE: Okay. Your Honor, I move to this Petitioner's
9 Exhibit 11.

10 MR. MCGOUGH: Objection. There are a number of
11 documents here, two of which were filed as a creditor's claim
12 in this court, and the rest of which I believe has been
13 tacked on thereafter. I have no objection to the admission
14 of the creditor's claim that was filed in the court, but
15 there's a lot of other stuff here on the backside of this
16 claim that was not filed in the court.

17 THE COURT: So you don't object to the filing of the
18 claim that we already have. You object to anything
19 substantiating the claim? Is that what I'm hearing?

20 MR. MCGOUGH: Oh no. He's moving all of this in as
21 though it were one document.

22 MR. LEE: I can walk him in one at a time.

23 MR. MCGOUGH: And I'm okay with him walking them in one
24 at a time. I just want to point out, we have a file
25 creditor's claim that's two pages long and a lot of other

1 stuff that he'll need to lay foundation for and get into.

2 And that's okay.

3 THE COURT: So each thing individually can come in ---

4 MR. MCGOUGH: Maybe.

5 THE COURT -- if he lays a foundation for it?

6 MR. MCGOUGH: Correct. And if we don't have any other
7 objections.

8 THE COURT: All right.

9 MR. THOMPSON: We'd just like the opportunity.

10 BY MR. LEE:

11 Q. I -- I'll be honest with you, while we -- Rhett
12 review the entire packet and I'll ask you some general
13 questions about the entire packet. I think I can lay a
14 foundation of that part.

15 THE COURT: Okay. Court wants efficiency and expedition
16 in a two-day trial. However, I do want to make sure that
17 McGough has opportunity to lodge objections to particular
18 pieces of evidence. It's proper. And --

19 MR. MCGOUGH: Maybe we can speed this up a little bit.
20 I have no objection to the admission of the creditors claim.
21 I have no objection to most of the other documents that are
22 in here. The one that I do have an objection to is a record
23 from Premier Relationship Center that appears to maybe be a
24 fax to Mr. Taber with some numbers on it.

25 THE COURT: You'll have to direct me to that because I

1 don't --

2 MR. LEE: I think it's the third page, about page three
3 or four. I think it's the third page.

4 THE COURT: Is this a, "To Rhett Taber. From Darlene
5 Smith." And it's a two-page document or?

6 MR. MCGOUGH: So I think it's only -- I think it's only
7 the one page if you agree or you just -- it's one -- it's a
8 one page document.

9 THE COURT: Okay. I've got it -- I've got it. All the
10 rest of the package may go?

11 MR. MCGOUGH: Yes.

12 THE COURT: Okay. What is your objection to this?

13 MR. MCGOUGH: It is hearsay. It's a statement from
14 somebody, maybe this Darlene -- Darlene Smith that was made
15 out of court and Darlene's not here. And we have nobody from
16 Premier Relationship Center here to verify anything that's in
17 this document.

18 THE COURT: Mr. Lee, I'll hear from you.

19 MR. LEE: This is a -- well, first and foremost, this
20 was provided in time. Secondly this was a business record
21 provided to Mr. Taber. He is in the recipient of that kept
22 the ordinary course of business. He can certainly testify to
23 its contents. I certainly don't think that's hearsay.

24 THE COURT: Step closer to your mic.

25 MR. LEE: Oh, sorry,

1 THE COURT: I just couldn't hear -- I couldn't hear.

2 MR. LEE: I certainly -- I don't think the hearsay
3 exception would apply given those arguments.

4 THE COURT: You -- you mean the hearsay exception would
5 apply?

6 MR. LEE: Would yeah, correct.

7 THE COURT: You mean that the ---

8 MR. LEE: I believe ---

9 THE COURT: Business records hearsay exception apply.

10 MR. LEE: Yes. Yeah.

11 THE COURT: What do you say to that, Mr. McGough?

12 MR. MCGOUGH: I don't have a records custodian here to
13 verify anything about this for that exception to why.

14 THE COURT: I -- I'll concur with you on that. Okay.

15 MR. LEE: Rhett, lets remove this one.

16 THE COURT: So if there's no objection to the rest of
17 the package, let it be marked as Petitioner's Exhibit 11. Is
18 that right? Or 12?

19 THE REPORTER: Eleven.

20 THE COURT: Eleven. And be admitted into the record.
21 And John, give me a minute to look at something.

22 (Petitioner's Exhibit 11 was marked for identification.)

23 THE REPORTER: Thank you.

24 THE COURT: Mr. Lee?

25 MR. LEE: Yes.

1 THE COURT: Moving -- going back to the objections on
2 this one piece of -- this one piece of paper, are you
3 offering it for the matter asserted?

4 MR. LEE: No, I'm offering ---

5 THE COURT: Are you offering it to justify -- to -- to
6 verify that these debts are owed?

7 MR. LEE: I'm offering it as a manner in which -- well,
8 I -- I'm going to -- I -- I was submitting now as a manner in
9 which to recollective memory as far as transfers that he may
10 have made.

11 THE COURT: Certainly, can be used to refresh his
12 memory. It can't be entered into evidence for that purpose,
13 but certainly to refresh his memory. All right. I -- I'm
14 going to -- I'm going to sustain the objection and -- and
15 this is not going to come in as part of Petitioner's Exhibit
16 11. You know, if it were not being offered for the truth of
17 the matter asserted, it would not be hearsay at all. And it
18 would come in. But if it's being offered for the truth of
19 the matter asserted, then it is hearsay and there is no
20 relevant exception because Mr. Taber can't lay a proper
21 foundation for the records exception, so. All right. Let's
22 move on.

23 BY MR. LEE:

24 Q. All right. Let's pick up that packet now. And
25 Rhett, I'm -- does this creditor's claim represent a portion

1 of the unpaid debt that your father owed you it has been?

2 A. It does.

3 Q. Okay. And I know you can't detail every dollar
4 that you loaned your father, but please tell the court about
5 things that you paid on his behalf. And -- and let me help
6 you tell me about what 105 Lavinia Avenue. Why does he owe
7 you money in regards to 105 Lavinia Avenue?

8 A. 105 Lavinia is a property that I now own. Many
9 years ago, Pop asked me to buy a property on Converse Street,
10 and I bought it and fixed it and rented it. Everything was
11 going great. And then my mother comes up with this idea to
12 get my sister, who's now deceased out of Columbia. And with
13 respect to my sister, had a drug and alcohol problem, and my
14 parents were trying to do what they could to help her, wanted
15 to get her in new surroundings. So Mom comes up with this
16 idea, Mom and Pop owned 105 at that time, and you heard my
17 brother say they were -- they were giving properties,
18 properties away.

19 Not -- not so much to -- to prevent squabble. I
20 don't think that was the -- the reason they did it as much as
21 to prevent inheritance tax down the road because the tax laws
22 were different. Anyway, they were giving properties away.
23 So Mom comes up with this idea. "Rhett, how about if we make
24 a deal?" And the deal was they would give me half of 105
25 Lavinia, and I would in turn, give my sister this house I had

1 bought on Converse Street. She would make payments for X
2 number of months. And at the end of those payments, instead
3 of my parents giving my sister a property. They would give
4 me the other half of 105.

5 Q. And did that transpire as you ultimately owned 105
6 Lavinia?

7 A. It did.

8 Q. And was that property rented?

9 A. It was rented.

10 Q. And who received the rent during your father's
11 lifetime?

12 A. My parents. My parents, then later my father.

13 Q. And was that a -- in essence, a loan to your
14 father?

15 A. It was.

16 Q. And did he understand and agree that that had to be
17 paid back?

18 A. In some fashion. Yes.

19 Q. Okay. You've got \$400,000, is that an approximate
20 amount? I mean, how much was the rent per month?

21 A. It changed, it -- it -- you know, Pop was ever --
22 ever the nice guy and he would make handshake deals. And I
23 think the tenants that are in there now, that the last ones
24 my tenant -- my father found, I think he came up with, "Well,
25 why don't we just say \$20,000 a year and then divide that by

1 12." And that came up to some odd number, whatever that is.

2 Q. And Pop received that money?

3 A. Pop received it. And then ---

4 Q. How many years did that happen?

5 A. Many, many years.

6 Q. Give me -- give me a number if you can.

7 Approximately.

8 A. 20, 15, 20.

9 Q. Turn to the third page. Looks like this.

10 A. Is that the one you just -- above?

11 Q. Is that a list of transfers and deposits that you
12 made in the Pop's account?

13 A. Yes. A partial list.

14 Q. And I'm going to estimate based on the, there's
15 about \$78,000 worth of transfers. Is that a correct number?

16 A. That sounds correct.

17 Q. And what was the purpose of you making this
18 document?

19 A. This was attached to the promissory note.

20 Q. Okay. So this was part of the promissory notes
21 that we've already admitted into evidence showing that you're
22 at -- at least one of the notes totaled 190 -- \$190,000,
23 correct?

24 A. Yes.

25 Q. What did -- what kind of -- tell me about, there

1 was an issue up at grandma's property and some -- some dirt
2 had to be purchased. Don't -- don't go into too many
3 details, but why -- why did that happen and who paid for it?

4 A. There was a -- a fear that the state of North
5 Carolina, they raised the highway, they altered the flow of
6 rainwater. There was a fear the state was going to declare
7 part of it, a wetland. So before that happened, we bought a
8 bunch of dirt and dumped to raise the elevation to prevent it
9 from being declared a wetland.

10 Q. Is this something Pop wanted done?

11 A. Yes.

12 Q. Who paid for it?

13 A. Pop paid 25, if I'm not mistaken. My brother Pat
14 paid 25. I think I got that right. Tell me if I'm not. And
15 I paid 60.

16 Q. Okay. And this was to protect that property ---

17 A. Correct.

18 Q. --- that was owned by your mother and your father?

19 A. No, it was owned by my mother.

20 Q. That's fine. Thank you. All right. Let's talk
21 about -- I -- I'm going just be generic. There's invoices in
22 here to -- to show these fees, but why were you paying legal
23 fees on behalf of your dad?

24 A. Because for one, there were many legal fees.

25 Q. What were they in? What were they in regards to

1 though? I mean, why are you paying?

2 A. Because Pop had no money.

3 Q. Okay. But what was -- what kind of legal disputes
4 was he getting into?

5 A. I think the first one you're probably referring to
6 my mom died and Pop kind of went insane for a while. And
7 shortly after Mom died, just three point something acres,
8 physically beside my mother's homestead, came up for sale.
9 And that property had once belonged to my mother's family
10 realized mom's father died when she was two. My mother and
11 my aunt and my grandmother were raised, grew up -- up there
12 in the heart of the depression. They didn't have two nickels
13 to rub together.

14 So my grandmother sold off bits and pieces of the
15 farm to feed her two children. And this three point, some
16 odd acres had been one of those bits and pieces that had been
17 sold. Mom did that. Mom was dead now, but Pop, when he saw
18 that was for sale, he was going to buy it. One out of
19 respect for Mom, but two Pop realized that, you know, the
20 property for better or worse is now zoned commercial.

21 And with the 3.2 acres added to the rest, that
22 would make a -- a nice piece of commercial property that we
23 would never sell. I guess Pop had this idea that we could
24 put something nice up there and everybody would've a -- a
25 nice income. Anyway, they made the deal to buy the 3.2

1 acres, acres. Pop found, Pop had no money to buy it. He was
2 going to sell a piece of the farm, what we call to Hilltop.
3 He had a buyer for it. And ironically enough, the buyer was
4 the daughter of somebody who lived at Wrightsville Beach.

5 But he had a buyer lined up. There was a deal
6 there. He was going to sell it and use the money from the
7 farm to buy that 3.2 acres beside grandma's. So I regret
8 doing it now, but in an attempt to keep the farm together, I
9 come up with the idea, "Well, Pop, instead of you selling the
10 farm, how about if Julie and I buy the 3.2 acres and we'll do
11 a light kind exchange that way the farm stays in the family."
12 I thought that was an honorable move and I think my father
13 appreciated it. And so we did that. But we tried to do it.
14 The guy who was selling the 3.2 acres tried to back out and
15 that was a problem.

16 Q. And those did an upset Pop?

17 A. Get upset, pop. And you know, had we not
18 intervened, Pop would've sold the farm. He would've paid tax
19 a lot of tax on the sale of the farm and he would not have
20 ended up with the 3.2 acres.

21 Q. Did Pop want you to litigate that and fix it?

22 A. Yes.

23 Q. Did you do that?

24 A. Yes.

25 Q. Did you pay for it?

1 A. I did.

2 Q. Okay. Are these some of the invoices included in
3 this packet?

4 A. I haven't looked at all of that packet, but yes,
5 sir. They -- they certainly should be.

6 Q. All right. Are you asking the court to review
7 this, your testimony and this -- this creditor's claim to
8 determine whether or not any of these debts are continued to
9 be outstanding and in addition to fixing the mistake made in
10 the will also satisfy any debts that may be owed to you?

11 A. Yes, sir. I am.

12 Q. Are part of those debts, these cash account
13 transfers from your account to -- to Pop's account?

14 A. Yes.

15 Q. Okay. Let's talk about Tom. So you filed a
16 creditors claim. Have you got an accounting from the PR via
17 estate at any point showing estate's activity?

18 MR. MCGOUGH: Objection, relevance.

19 MR. LEE: Your Honor, I think it's relevant if we file a
20 creditors claim that we give an account.

21 THE COURT: Yeah. No I think that's fairly textbook,
22 Mr. McGough, if anybody files a claim against the estate,
23 they're entitled to an account.

24 BY MR. LEE:

25 Q. Have you received an accounting?

1 A. No, sir.

2 Q. Okay. Do you believe you're entitled to an
3 accounting?

4 A. I absolutely believe I'm entitled to an accounting.

5 Q. Are you concerned, and I'm not saying you're making
6 these allegations here in the estate, are you concerned that
7 there's some dealings that are trying to pill for money out
8 of the estate to ensure that your creditors claim is not
9 paid?

10 A. I think that that's a very real concern and I
11 would, in my mind a prudent man, would produce such
12 accountings just to prevent any concern from ever arising.

13 MR. THOMPSON: Objection, relevance on that one. I feel
14 like we're getting into a breach of fiduciary duty issue.
15 And it's kind of just similar objection to McGough.

16 MR. LEE: It's not really breach fiduciary if he's got a
17 creditor's claim, if he believes there's an issue that is
18 something's being done to prevent that claim from being able
19 to be paid. I think that's relevant.

20 MR. THOMPSON: There -- there has -- the creditor's
21 claim has not been, you know, it's still up in the air and
22 before the court there has been no ruling to pay. There has
23 been no failure to pay. So at this point in time, it's
24 getting into something that has not happened, may not happen
25 pending the actions here and tends to get towards more of a

1 breach of fiduciary duty type of a claim. That's just not in
2 front of the court here today. And I think -- and that's
3 what Mr. McGough was -- we're trying to just prevent going
4 down this line.

5 THE COURT: All right. Let's take a couple steps back.
6 A probate file is a public record that anyone in the public
7 can have access to. They can just walk right in here to the
8 office and get access to it. Someone that files a claim
9 against an estate is entitled to see an account. So that
10 they know whether or not they should file a claim or if they
11 file a claim whether or not there are enough funds in the --
12 in the estate to pay for the claim.

13 We require interim counties every six months so that
14 creditors can be assured that there's money still in the
15 estate to satisfy their creditor's claim. The man's filed a
16 creditor's claim, the estate has disallowed it and now we're
17 here on the creditor's claim to find out whether or not it's
18 a valid claim or not. I don't think that changes with the
19 fact that it's a public document he needs entitled to see and
20 I think that the accounting is certainly something he can ask
21 questions about your -- what is your further point?

22 MR. THOMPSON: My objection to this is getting into --
23 well we think that there's money being pilfered out. That's
24 the line of questioning we're trying to avoid. Again, him
25 asking questions about was there in county we didn't get it.

1 I agreed with you. We have no issue with him kind of asking
2 that specific question. As soon as we start getting in the
3 lines of things that like that money's being pilfered out, we
4 just believe that that's inappropriate because it's not the
5 court here today.

6 THE COURT: Let's look back at the petition. I think I
7 noticed something this morning relevant to this topic that I
8 had missed yesterday. In Mr. Taber petition, in his prayer
9 for request or his prayer for relief -- there is not a stated
10 cause of action in the petition for alleging that there has
11 been any malfeasance or negligence on behalf of the personal
12 representative.

13 However, in the peripheral relief, he does pray that
14 there be an order appointing the petitioner as the personal
15 representative for an order that the decedent died without a
16 will in estate. And for an order appointing petitioner
17 personal representative or administrator of decedent's
18 estate, I'm assuming that would be in the -- that that would
19 be contingent upon the prior finding. We wouldn't have
20 gotten there without it.

21 MR. LEE: Your Honor, I think that Mr. Taber can
22 certainly testify that he's filed a claim that he hasn't
23 received any accounting. And why that would've -- you -- I
24 don't think that goes down the road with police reducing your
25 duty. He hasn't received any accounting, so certainly he can

1 testify to his own opinion as to why that has raised a
2 concern. We're in front of the court now, not only on the --
3 that -- but on the creditors claim.

4 MR. THOMPSON: That's fine. Just get to the core of the
5 issue here. From -- from my perspective, we're just trying
6 to avoid any kind of, I call bashing of the personal
7 representative for matters that have not been resolved. That
8 that's what we're trying to get down. Again, if he just
9 wants to ask questions about creditor's claims. That's fine.

10 THE COURT: I haven't heard any bashing yet. If we got
11 down to ---

12 MR. THOMPSON: Just trying to ---

13 THE COURT: --- character assassination or something
14 like that, obviously I think that'd be a different story. We
15 haven't -- we haven't gotten there.

16 MR. THOMPSON: If -- if that's, Your Honor's
17 understanding, that's fine. That's just -- that's -- that's
18 our concern and we just would like to avoid that. Yes.

19 THE COURT: With your concern noted and instruction to
20 the petitioners counsel not to get there. We'll allow it for
21 now.

22 BY MR. LEE:

23 Q. All right. Let's back up. Did you file this
24 creditors claim?

25 A. Yes.

1 Q. Have you received an interim county every six
2 months like Judge Groover as you -- said that you should?

3 A. No, sir. I have not.

4 Q. Okay. Does that concern you?

5 A. It does.

6 Q. Why does it concern?

7 A. I think that would concern anybody.

8 Q. Getting close to being done, Rhett. Let me ask you
9 some questions. Do you hate your siblings?

10 A. I beg your pardon?

11 Q. Do you hate your siblings?

12 A. No, I don't hate them.

13 Q. You love them?

14 A. I love them. Disappointed. I might say, I love
15 them.

16 Q. Why did you bring this action?

17 A. I -- because they're my heart of hearts. I -- I
18 don't believe that my father would -- would effectively write
19 me out of his will or if he'd been thinking with the right
20 head, I'll say, I don't think he would want me left unpaid.

21 Q. You think he made a mistake based on things he was
22 told?

23 A. I think my father was an extraordinarily honorable
24 and fine man being anything less than 100 percent scrupulous
25 and honest is not in my father's DNA. So yeah, if my father

1 owed -- owed a debt, he would certainly wanted to pay.

2 Q. Okay. Do you think your -- your inheritance was
3 reduced because of this overpayment issue?

4 A. I do.

5 Q. Did you receive an anonymous -- an anonymous letter
6 in the mail?

7 A. I did.

8 Q. Okay. And what did that anonymous letter say?

9 A. I don't have it in front of me, I don't think. If
10 -- if you have it, I'll read it.

11 Q. Did it allege that you were not Mr. Taber's son?

12 A. Yes, sir. It was anonymous. It was postmarked
13 from Charlotte. It said that I was not my father's son, that
14 I was a fraud that I was going to effectively expose my
15 mother as being a tramp. You know, that's -- that's not that
16 tramp word was not in the letter, but that was the gist of
17 the letter. If you -- if I had the letter in front of me,
18 I'd read it verbatim.

19 Q. Is that hurtful?

20 A. It was very hurtful.

21 Q. All right. Let's go back to -- we're almost
22 finished. Let's go back to this overpayment, Rhett. What
23 did the property, the 28.48 acres, what did that property
24 satisfy in regards to debt? For what do get satisfied?

25 A. It was for a \$340 debt, \$340,000 debt.

1 Q. What did that property appraise for as of the date
2 of that transfer?

3 A. \$300,000.

4 Q. All right. And how much debt did you agree to
5 satisfying that transaction?

6 A. \$340,000. And then I guess the Flat Rock lot came
7 with it. Is that ---

8 Q. And how much did Pop agree to satisfy?

9 A. Well ---

10 Q. How much debt was he -- did he think was getting
11 satisfied?

12 A. \$340,000.

13 Q. Was there an overpayment then?

14 A. Absolutely not.

15 Q. Tom testified that your father reduced your
16 inheritance because he believed an overpayment had occurred.
17 Do you believe your father would want that made mistake to be
18 corrected?

19 THE COURT: I'm going -- I'm going sustain his
20 objection. I think you ---

21 BY MR. LEE:

22 Q. Well, I'll ask you this, Rhett. You seem to be
23 very similar to your father. Would you want -- if you had
24 done the same thing, you made a mistake in your estate plan
25 and taken out one of your children and it turned out you made

1 a mistake, would you want that to be correct?

2 A. Yes.

3 Q. You heard your siblings testify that they all
4 thought that Pop would want you to get what you were owed.
5 Do you agree?

6 A. Yes.

7 Q. Okay.

8 A. And I thank him for being honest about that. Yes.

9 MR. LEE: No further questions, Your Honor.

10 THE COURT: Mr. McGough, let's chat. Well, counsel's
11 approach. All right folks. Thank you for your patience with
12 the white noise. I know it's annoying for everyone, but it's
13 important that attorneys and judges able to have
14 conversations about procedure and timelines and things like
15 that. So we're going to break for lunch. We'll be back here
16 at 1:15. It is my expectation that we will go throughout the
17 afternoon and we will certainly be done by 4:30 today. If we
18 are not completed with this entire trial by 4:30, we will
19 resume in the morning at 9:00. All right. Enjoy your lunch.

20 (Off the record.)

21 THE BAILIFF: All rise.

22 THE COURT: Counsel approach. You all -- rest of you
23 all take a seat. Sorry.

24 (Off the record.)

25 THE COURT: All right. Let's move on. All right. We

1 are back on. I trust everyone had a good lunch and is ready
2 to go for the afternoon. I think where we left off. Mr.
3 McGough is ready to cross-examine the witness, correct?

4 MR. MCGOUGH: Yes, Your Honor.

5 THE COURT: All right. Mr. Taber, if you'll come back
6 to the witness then you are still under oath.

7 MR. W. TABER: Yes, sir.

8 THE COURT: So if you'll take a seat and McGough will
9 ask you some questions.

10 CROSS-EXAMINATION

11 BY MR. MCGOUGH:

12 Q. All right. I think you would agree with me that
13 we've heard quite a bit about mistakes over the last day and
14 a half.

15 A. Yes, sir.

16 Q. Yeah. I want to correct the mistake that I believe
17 was made on your direct with respect to the spreadsheet. Do
18 you still have that in front of you?

19 A. What? This one?

20 Q. Yes, sir. And if you would go to the first page of
21 the spreadsheet where it's got all the properties listed

22 A. Okay.

23 Q. That -- that your dad owned or -- or as we heard in
24 testimony just prior to the break maybe allegedly didn't own,
25 there are two properties on that spreadsheet that are marked

1 Barn Belvue School Road, correct?

2 A. Correct.

3 Q. Okay. And what are the acreages of those two
4 properties?

5 A. If we're looking at the same thing? One is 12.7
6 acres, the other is 41.71.

7 Q. Correct. And you -- you testified before the break
8 that you in fact own that 12.7 acres. It should not be on
9 this spreadsheet, correct?

10 A. If it's the property I'm thinking of, yes, sir.
11 That's correct.

12 Q. Okay. And that -- and -- and if that's true, this
13 will be a -- a mistake?

14 A. Correct.

15 Q. Okay. What -- how -- how many acres did your
16 father transfer to you as part of this debt arrangement that
17 we've been discussing?

18 A. I think it was 20, 20.3, something like that.
19 Whatever -- whatever it was.

20 Q. Would you dispute it if I said that was 28.48
21 acres?

22 A. You said 48?

23 Q. 28.4 acres?

24 A. That sounds right. 28. Yes, sir. 28 point
25 whatever.

1 Q. And do you know what's left in the estate at

2 A. I have no idea.

3 Q. Okay. Prior to the break, during your direct Mr.
4 Lee and other witnesses have talked about a 25.93 acre parcel
5 that remains in the estate.

6 A. I know that that's the figure that's been thrown
7 out. I don't know if that's correct or not.

8 Q. Correct. But you would agree that several of your
9 siblings believe there's 25.93 acres in the estate?

10 A. They probably believe what you tell them. Yes.

11 Q. Okay. okay. Do you know what 25.93 and 28.48
12 added together equal? And I'm happy to provide you paper and
13 pen if you need it.

14 A. I'll trust you.

15 Q. Okay. Would you dispute me if I said that was
16 54.41 acres?

17 A. Okay.

18 Q. Okay. And if we reduce 54.41 acres by 41.71 acres
19 that's listed on that spreadsheet, what do you think we come
20 up with in terms of acres?

21 A. I'll trust you. I don't have a calculator.

22 Q. It has 12.7 acres, which is what it says there on
23 that spreadsheet. And so if in fact your father transferred
24 you 28.48 acres and if in fact there's 25.93 acres that still
25 remain in the estate, I think you would have to agree with me

1 that that spreadsheet is correct with respect to the
2 acreages. I'm not asking you about values.

3 A. Maybe it is, maybe it's not. I don't know.

4 Q. You don't agree with that?

5 A. I'm not sure that I do. Maybe it is, maybe it's
6 not.

7 Q. Okay.

8 A. I -- I will say it's mighty coincidental that the
9 12.7 is pretty much the same number that I bought that
10 adjoins the farm.

11 Q. I -- I would say that might be a coincidence. You
12 have -- your counsel has put into evidence a deed for 11.2
13 acres and we don't have another deed in the record for any
14 other acreage up there at the farm which you have purchased
15 or not purchased.

16 A. If I may, it's 11 ---

17 Q. I haven't asked the question. We have a deed. Do
18 you have still have this deed in front of you? That one?

19 A. No, this?

20 Q. I believe that's it. Yes. Read in the second
21 paragraph from the bottom. How many acres was transferred to
22 you and your wife from Jean L. Barnes?

23 A. On this piece of paper it says 11.2.

24 Q. 11.2 acres.

25 A. But that's not all it.

1 Q. Okay. But do we have any evidence in the record of
2 any other acreage that's been transferred to you up there in
3 (inaudible)?

4 A. There should be, yes. The -- the acre ---

5 Q. But is there?

6 A. Well, somewhere ---

7 THE COURT: Give him an opportunity to answer his --
8 your questions.

9 THE WITNESS: Some -- somewhere in this mount of
10 paperwork, there's evidence of where Mrs. Lockerbie
11 (inaudible) the wife to wife that's not included in this 11.2

12 BY MR. MCGOUGH:

13 Q. And that is your testimony.

14 A. Right.

15 Q. But has a deed been put into evidence for that
16 property?

17 A. I cannot answer that, but I don't think anybody
18 over here -- sitting over here would deny that that's exactly
19 what happened.

20 Q. Okay. All right. Let's talk about the creditor's
21 claim that you filed. Do you still have a copy of the
22 two-page creditor's claim that is in evidence? And I'm
23 mainly going to be looking at the second page because that's
24 where you list out. Though it would be probably the first
25 two pages of that packet.

1 A. Okay.

2 Q. There's a list that I -- I don't know whether you
3 typed it or -- or Ginger Phillips or Adam or whoever typed
4 it, of items that you're claiming in the creditors claim. Do
5 you have that -- are you (inaudible) to that?

6 A. Yes.

7 Q. Okay. I'm going to ask you some questions about --
8 about that list. You testified before the break that the
9 promissory note or notes, and we'll get into that in just a
10 second, were satisfied when you received the property in the
11 \$340,000 debt for land swap?

12 A. Yes.

13 Q. Do you recall testifying?

14 A. Yes.

15 Q. So you're not claiming in front of this court any
16 amount that's represented by that note?

17 A. I think what you said is correct.

18 Q. Okay. All right. And there were -- there was an
19 original note and a copy of a different note that were
20 submitted into evidence. Is that the same note or are those
21 two different notes?

22 A. Well, the two different notes written at different
23 times if that answers your question. But they -- they refer
24 to a lot of the same debt, is that what you're asking?

25 Q. It is -- yes. So the debt on both of those notes

1 is in fact one debt?

2 A. I would say that's correct.

3 Q. Okay. All right. And just to confirm that note
4 has been satisfied and you are not due a dime on either of
5 those notes?

6 A. Understand that the debt continued to increase.

7 Q. Okay. But on those notes, you have been paid on
8 those notes. You are not making a claim in front of this
9 court that you are due any money on those notes?

10 A. I'd say that's correct.

11 Q. Okay. All right. What's the total amount that
12 you've claimed on your credit respondent? And this would be
13 on page one, a third way there.

14 A. \$583,390.

15 Q. Okay. And the first item on the attachment is
16 \$400,000 in rent with respect to 105 Lavinia Avenue,
17 Greenville, South Carolina. And that is rent that you
18 testified earlier that was paid to your father that you have
19 not received?

20 A. Correct.

21 Q. Okay. How do you know that that debt was paid to
22 your -- that that rent was paid to your father?

23 A. Well, it was either paid to my father or my mother.
24 It certainly was not paid to me.

25 Q. Could it have not been paid?

1 A. I don't think so.

2 Q. Is that possible?

3 A. I suppose that's possible, but I don't think so.

4 Q. You go ahead.

5 A. My parents lived physically beside that house. I
6 don't think anybody was going to be living there and not
7 paying rent.

8 Q. But you have no personal knowledge that anyone has
9 collected that rent?

10 A. You mean do I have canceled checks from the
11 tenants?

12 Q. Yes.

13 A. I did not.

14 Q. Any -- any personal knowledge that that rent has
15 been paid?

16 A. Is there anyone denying that that rent was paid?

17 Q. I think that the -- the respondent is denying that
18 that rent was paid because he disallowed your credit claim.

19 A. Well --

20 Q. Do you have personal knowledge that the rent was
21 paid or not?

22 A. I do not have personal knowledge that the rent was
23 paid. I do not have canceled checks from the tenants. You
24 know, back up the tenants when they made the deal with my
25 father, at least the ones that are there now, I -- I think

1 the figure was -- it was a -- it was an even number. It was
2 like \$20,000 a year and then divided that by 12 and it came
3 -- came up with an odd number. Well, after they made the
4 deal with my father then they decided they wanted to submit a
5 10.99. My father didn't pay any taxes, but the 10.99 came.
6 I paid the tax, I paid the insurance, I paid tax on money. I
7 never received, I never saw this dollar amount come in, but I
8 certainly believed it went into that household. Does that
9 answer your question?

10 Q. And who -- who received a 10.99?

11 A. I received the 10.99.

12 Q. So the tenant sent you a 10.99?

13 A. No, sir. They sent it to my father and I guess
14 ultimately it came to me, I don't know whether they sent it
15 to me directly, but realized my father didn't pay taxes. My
16 father never submitted a tax return.

17 Q. So let me clarify your testimony is rent's being
18 paid, your father and the tenant sends your father a 10.99?

19 A. And I guess he sent that to me. Yes. Either he
20 sent it to me or they sent it to me. I got it.

21 Q. You do have it?

22 A. Well, I don't have it on my personal.

23 Q. Okay. But you have not produced it as evidence of
24 anything here in court?

25 A. Nobody's asked me to.

1 Q. Okay, but you -- you don't have it?

2 A. As we sit here and speak. No, sir, I do not.

3 Q. Okay. All right. And you testified a few moments
4 ago about an amount of rent that you knew there was a certain
5 amount of rent being paid. Is that correct?

6 A. Yes.

7 Q. Is that is that a guess? How do you know how much
8 rent was paid?

9 A. Well, because now we get the rent after popped out,
10 I -- I called him and told him to send the rent to us and
11 it's some odd, I -- I just raised it a hundred bucks I think.
12 But it -- prior to that it was -- it was \$1,766. It was some
13 odd number, you know.

14 Q. Okay. So since your father's death, you know what
15 the rent is?

16 A. Yes.

17 Q. But prior to his death, you don't know whether the
18 rent was being paid or not?

19 A. I cannot sit here and tell you that I know my
20 father received money from him. I can -- I can tell you I
21 don't -- I don't believe that anybody would tolerate somebody
22 being there and not paying the rent. And I -- and I know I
23 did not receive the rent.

24 Q. Okay. When did you receive the property?

25 A. It was many years ago. I don't remember the year.

1 It was about the same time that -- well, it was after my
2 brothers received their properties because Mom had come up
3 with this deal to help my sister.

4 Q. Okay. Would it shock you if I told you that you
5 received that property somewhere in between 1997 and 1999?

6 A. It wouldn't shock me.

7 Q. Okay. And do you remember how you received that
8 property? Was it in multiple chunks or did they just need
9 the whole thing to you?

10 A. Well, I think I got half of it initially and later
11 on I got the other half.

12 Q. Okay. And so would you disagree that by January 1,
13 2001 you owned a hundred percent of -- is it 105 Lavinia?

14 A. Yes.

15 Q. Okay. You don't disagree with that.

16 A. That sounds like I trust your number.

17 Q. In between 2000 and your father's death in 2019.
18 Did you ever contact the tenants and tell them that they need
19 to pay the rent to you because you owned?

20 A. No, sir, I did not.

21 Q. Okay. But you ---

22 A. But they knew I had it.

23 Q. Hmm?

24 A. But they knew I had it.

25 Q. Okay. But you never asked them to pay the rent?

1 A. I did not.

2 Q. Right. You just testified that this was after your
3 siblings received some property from your parents?

4 A. If my recollection is correct, I don't remember
5 what year it was.

6 Q. All right. So at some point in the process, your
7 parents gifted some property, if I can use that word to
8 several of you?

9 A. Yes.

10 Q. That's your understanding?

11 A. Yes.

12 Q. Okay. And did your father ever write to you
13 promising to repay the rent?

14 A. I think somebody asked me that question before. My
15 father never wrote to me, ever.

16 Q. Okay. So you ---

17 A. When I was in school, he never, I never received
18 anything from my father.

19 Q. Okay. So there's ---

20 A. That I recollect anyway.

21 Q. So there's no writing out there where he agreed to
22 pay to repay you this rent?

23 A. Not that I recollect. I'm capable of making
24 mistakes, sir, but I -- I don't recall that.

25 Q. All right. And your father would've known at some

1 point in this process how to have a promissory note drafting.
2 Did you agree with that?

3 A. I -- certainly, he would know how to do it, but as
4 you have seen, my father did not frequent -- frequent the
5 office of lawyers often -- often enough. He would not have
6 done it. My father tended to go to life with a handshake.

7 Q. Okay. But -- but he -- he had dealt with lawyers,
8 would you agree with me? Dealt with lawyers.

9 A. In his lifetime, certainly.

10 Q. Okay. And so not frequently is your testimony, but
11 he did some estate planning documents with Charles Stewart?

12 A. Yes.

13 Q. Okay. He did some estate planning documents with
14 David Merline?

15 A. I don't know that he did. I wish he had.

16 Q. If I told you there was a first counsel in evidence
17 that David Merline signature is on that your dad signed,
18 would you then agree with me that he likely did some estate
19 planning documents with David?

20 A. If I can -- may I elaborate -- elaborate on that?

21 Q. Sure. Yeah, absolutely.

22 A. I had -- in -- in trying to protect my
23 grandmother's property I went to an attorney, Alex Atchison,
24 and he produces LLC and that was a very lengthy process and
25 Pat and I were the co-trustees on my grandmother's property.

1 Pop's signature was not required on anything. Pat and I
2 would've done. Pop had a right to life to my grandmother's
3 property, but he never owned anything of that. I love my
4 dad. We certainly would not go against my father's wishes.

5 At some point, I think Pop took this to Merline in
6 Merlin's office, probably had a will drawn up and I think --
7 I think he might have done that at -- at my request. I also
8 asked him to talk to Alex Atchison about having a will and --
9 and with respect the lawyers produce a document written by a
10 lawyer for a lawyer and Pop didn't want any part of that. He
11 wanted something that was two pages and simple, which is a
12 mistake in today's world. But it wouldn't surprise me that
13 Pop did that. And I -- I bet you a month's pay, he didn't
14 sign it either.

15 Q. Okay. So in addition to David Merline, then Alex
16 Atchison also drafted a will or some estate planning
17 document?

18 A. Yes. Free.

19 Q. Okay -- okay. On your creditor's claim, the next
20 item is dirt from grandmother's property?

21 A. Yes.

22 Q. Which I believe you identified earlier is in
23 Naples, North Carolina?

24 A. That is correct.

25 Q. And that's -- is that up in the mountains?

1 A. Yes, sir. It's outside of Hendersonville. They
2 call it the Fletcher Fire District.

3 Q. Okay. And that's in a trust set up by your mother
4 in her estate plan, correct?

5 A. Correct.

6 Q. Okay. And it's not owned by your father.

7 A. This piece of property was not owned by -- by my
8 father. The property right beside it was.

9 Q. The 3.79 ---

10 A. Correct.

11 Q. --- acres. We -- we will get to that piece of
12 property in a second. Okay. And this work related to the
13 dirt and grandmother's property, when did it happen?

14 A. I don't remember the year.

15 Q. It was before 2012?

16 A. I don't want give you wrong answer. I don't
17 remember the year.

18 Q. Would you be surprised if you had told me during a
19 deposition that it was prior to 2012?

20 A. No, sir. I may have said that. So you now tell
21 me. I don't remember. Might -- likely have been before
22 2012. I don't -- I just don't remember.

23 Q. Okay. Third on your list is legal fees from the
24 cemetery. Where -- where is the cemetery?

25 A. The cemetery is very close to my mother's

1 homestead. Back in the day, it was part of my mother's
2 homestead. you heard me say that over the years, bits and
3 pieces of my mother's farm, which was originally a thousand
4 acre land grant from the King of England way back when, but
5 bits and pieces of have been sold and now -- or this time,
6 but still today, somebody other than my mother owned the
7 property surrounding the cemetery. When my mother was a
8 young girl, she would walk from her house, which has since
9 burned. She'd walk up to the -- to the cemetery. Does that
10 answer your question?

11 Q. Yeah. It -- it's up in Naples, North Carolina?

12 A. Very close to my mother's homestead. Very close.

13 Q. Okay. And I think your testimony earlier was that
14 this \$25,000 in legal fees was not part of the note. Is that
15 accurate?

16 A. It might be. Yeah. I don't remember what I said
17 earlier.

18 Q. Okay.

19 A. It sounds right.

20 Q. Did your father ever promise to repay you these
21 fees in writing?

22 A. Absolutely in writing. I don't know that he
23 promised to repay anything in writing.

24 Q. Okay.

25 A. But certainly I was told I would be repaid.

1 Q. Okay. Now we come to the 3.79 acres.

2 A. Okay.

3 Q. I think you agree with me that that's also in
4 Naples, North Carolina.

5 A. Yes, sir.

6 Q. Yeah. You testified about a property dispute where
7 you were going to purchase this 3.79 acres and you were going
8 to swap it for some acreage at the farm in (inaudible). Is
9 that accurate to your earlier testimony?

10 A. That's -- that's the gist of it. Yes, sir.

11 Q. Okay. So you apparently had an agreement with your
12 father that you're going to buy this property, you're going
13 to swap it for that property. Right. would it be reasonable
14 for you to incur the legal fees to acquire the property that
15 you had agreed to swap with your father?

16 A. No, sir. It would not be reasonable.

17 Q. You don't think that would be reasonable?

18 A. I do not think that would be reasonable.

19 Q. Hmm?

20 A. I do not think that would be reasonable.

21 Q. Why not?

22 A. Well, the guy backed out before my wife and I were
23 part of the picture. He didn't back out of a contract with
24 us. He backed out of a contract with my father.

25 Q. Do you have a copy of that contract?

1 A. No, sir, I do not.

2 Q. Do we have any proof other than your testimony that
3 your father had a deal with these sellers?

4 A. I think he might. My brother Pat was sitting right
5 beside him. He could tell you.

6 Q. Pat had his opportunity was on the stand and I
7 don't recall him saying anything about this transaction.

8 A. I don't recall you asking him about this
9 transaction.

10 Q. I'm asking you.

11 A. The contract was broken between, I think his name
12 was (inaudible) court and my father, I got involved to
13 enforce that contract. The contract was not between myself
14 and DOD in court until after we had agreed to buy it. He
15 didn't break the contract with Julie and I, he broke the
16 contract with my father.

17 Q. But you have no proof of that.

18 A. Sir, I've never seen a -- a baby pigeon, but I got
19 a hunch that exists. I do not have proof of it.

20 Q. Okay. Whose idea was the -- the land swap with the
21 3.79 acres in North Carolina for the acreage at the farm?

22 A. Regrettably, it was mine.

23 Q. Okay. All right. Fifth on your list, our
24 accounting fees related to the trust or accounting fees,
25 trust -- what trust are you referring to?

1 A. That would be my mother's trust. When she passed.
2 Recall I had to get a CPA and go regenerate previous year's
3 tax returns.

4 Q. Okay. And shouldn't the trust be responsible for
5 paying any fees and expenses related to the trust?

6 A. Had there been any money in the trust that might be
7 feasible.

8 Q. And why was there no money in the trust?

9 A. Because there was no money in the trust.

10 Q. What was in the trust?

11 A. Half of my mother's -- my mother's half of the
12 beach house.

13 Q. Anything else in the trust?

14 A. I guess my grandmother's property, but it was a
15 different trust. You know, I don't understand all the
16 legalese, but Sure. Trust me, sir. There was no money in
17 the trust.

18 Q. Okay. Could the trust have borrowed against some
19 of the land to come up with the money necessary to pay its
20 own expenses?

21 A. I suppose they could have.

22 Q. Okay.

23 A. But that -- that debt would still have to be paid
24 back by somebody at some point.

25 Q. You don't believe that the expenses of the trust

1 should be paid by the assets and income of the trust? Is
2 that your testimony?

3 A. No, sir. That's not exactly right. If there was
4 assets and an income from the trust to pay it, that would be
5 most wonderful. But there was not.

6 Q. And you just testified that there was half of a
7 beach house?

8 A. Yes, sir.

9 Q. And a lot of land up in North Carolina that were in
10 the trust, correct?

11 A. Some land in North Carolina. Yes.

12 Q. Okay. What do you think the value of the land in
13 North Carolina was?

14 A. I have no idea.

15 Q. You Have no clue?

16 A. Have you said ---

17 Q. Have you received an offer to sell that land?

18 A. Over the years, we've received many offers.

19 Q. Have you received one in the last two years from a
20 gas station company?

21 A. I think my brother, Thomas, did.

22 Q. Have you seen it?

23 A. No, but I -- I trust he got it and I trust it was
24 for a bunch of money.

25 Q. Okay. All right. And with respect to this, these

1 accounting fees trust, you don't have anything in writing
2 from your dad agreeing to pay that either?

3 A. I don't remember getting anything from my father in
4 writing.

5 Q. Okay. All right. "Credit card debt payoff,
6 \$50,000." This -- is this related to some credit card bills
7 you paid on behalf of your father?

8 A. Yes, sir.

9 Q. And the total amount was \$50,000?

10 A. It was just under 50.

11 Q. Okay. So that's a ---

12 A. This might have been 43, 44.

13 Q. An approximation. Okay. And that was in 2015?

14 A. I wouldn't swear to the date, but it was -- it was
15 right at Christmas time. Not long before Father left us. My
16 father left us.

17 Q. Your testimony is that this payoff was from 2019 --
18 2018? Excuse me.

19 A. I don't think I attached it year too.

20 Q. Excuse me?

21 A. I don't remember what I figured off. I don't
22 remember paying it.

23 Q. Do you recall taking a deposition? They assume
24 from my office,

25 A. Yes.

1 Q. I mean, you were in North Carolina. Did I ask you
2 about this credit card debt in that deposition?

3 A. You may well have.

4 Q. Okay. Do you recall testifying in that deposition
5 that this credit card debt had been satisfied by the transfer
6 of Lot 8 in Flat Rock, North Carolina?

7 A. That sounds correct, yes.

8 Q. Okay. So then you would agree with me here also
9 that this \$50,000 had been satisfied, which you testified to
10 deposition.

11 A. I -- I -- I would not have -- I would not disagree
12 with that. Yes.

13 Q. You would not be surprised if this court doesn't
14 grant you this 50,000?

15 A. I would go along with that. Yes, sir.

16 Q. All right. And then finally, this chimney repair,
17 \$11,390. When was that chimney repair?

18 A. It was a gracious, long time ago. I don't remember
19 the year I produced a receipt at one point. I don't think
20 it's in here.

21 Q. Was your -- was your mother still alive when that
22 chimney repair happened?

23 A. Yes.

24 Q. Okay. And she passed away when?

25 A. January 30, 2003.

1 Q. Okay. So that would've been predated 2003 then?

2 A. Yes.

3 Q. Okay. And -- and again, on the chimney repair, we
4 have no writing from your father agreeing to pay that back to
5 you?

6 A. Yes, sir.

7 Q. Okay. All right. And then we've talked about a
8 mistake a lot and whether there was a mistake or whether
9 there was a mistake and you have filed a claim for mistake,
10 could he have changed his will after 2015 when this alleged
11 mistake occurred?

12 A. I think he could have changed his will up until the
13 day you left us. When you tell me exactly what you're trying
14 to ask.

15 Q. I think you have answered exactly what I just
16 asked. And he's had access to lawyers to be able to update
17 his will, correct?

18 A. Yes and no. Yes, sir. He's had access to lawyers
19 and I'll tell you, I'll continue with your question.

20 Q. Sure. And you've been here for the last day and a
21 half and we've heard that he's had access to Charlie Stewart,
22 David Merline, Jack Mitchell, Jack Howard ---

23 A. That's not ---

24 Q. --- Alex Atchison.

25 A. I think Charlie Stewart had left us by that time.

1 I may be mistaken. Charlie -- Charlie Stewart, I don't think
2 he was around when Pop -- we did as well.

3 Q. Okay. But you would agree with me that over the
4 years your father saw a lot of different attorneys?

5 A. Yes, sir. I would agree with you that there is no
6 shortage of lawyers in this world.

7 Q. Okay.

8 A. And I -- it would sure be -- I don't know exactly
9 where you're going. I guess he had the, he had the chance to
10 get it fixed, if that's what you're asking?

11 Q. Okay.

12 A. He told me he was going to get it fixed. He -- he
13 had gone to see Jackie Patterson and I think poor Pop just
14 got too old too quick, but he told me he was going to get it
15 fixed, and.

16 Q. And you urged him to get it fixed?

17 A. Yes, sir, I did.

18 Q. Okay. All right. On the back on the spreadsheet,
19 we've had lots of discussions about this \$340,000 debt
20 number, and I think we've heard multiple people testifying
21 that that was an -- an agreed upon number, but we don't have
22 -- have any documents backing up that number. Is that
23 accurate?

24 A. You have the fact that my father agreed to it and
25 when this was produced, I would -- I think it's fair to say

1 that my brother Tom agreed to it. And you heard Jack Howard
2 say that my father agreed to this number. I don't know if
3 you'd call that a document. It's not a printed document, but
4 nobody's disagreed with this number.

5 Q. But you don't have any proof of any of these
6 transfers, your father, you haven't submitted.

7 A. That's not exactly right. It might have been the
8 -- the letter -- the letter that you did not allow, that you
9 had taken out earlier looked very similar to that.

10 Q. Yeah. That there are very good reasons why that's
11 not been allowed as evidence.

12 A. That was from pre -- whatever the verbiage --
13 verbiage was, or remember Christopher Sean was the premier
14 banker that was from his secretary faxing me a list of
15 numbers that they had transferred to Pop.

16 Q. Did you have an opportunity to call her here to
17 testify about that fax?

18 A. You know the answer to that. No, sir, I did not.

19 Q. You did not have an opportunity to call her here
20 and testify by that facts?

21 A. Sir, I'm not a lawyer. I -- you know, I guess if
22 we had thought that would be needed, maybe we could have.

23 Q. Did your attorney have the ability to call her here
24 and testify about that facts?

25 A. I would say better than that. He had her boss,

1 Christopher Sean on the phone testifying to the fact.

2 Q. And did he testify about anything on that facts?

3 A. He testified about things on that facts and -- and
4 many other things.

5 Q. But he didn't testify about that fact?

6 A. He didn't have this document in front of him, if
7 that's what you're asking.

8 Q. He didn't see the facts when he was testifying?

9 A. I would say it's probably accurate.

10 Q. Okay. All right. We went through some of your
11 parents' estate plan documents during your direct, do you
12 still have those? I believe Adam handed you --

13 A. (Inaudible) Up here.

14 Q. Will Charlie Stewart. One, there was one for your
15 mother and one for your father that dated back to 2002. They
16 were Petitioner's Exhibits 5 and 6. Yeah. And I'm going to
17 look at your dad's. Okay. I'm going to look at your dad's.
18 You testified that, paragraph 3A on there provides you a
19 specific distribution of \$100,000, correct?

20 A. Yes, sir.

21 Q. Okay. Are there two other specific distributions
22 in that?

23 A. Yes, sir. There are.

24 Q. And who -- how much are they and who are they to?

25 A. Well, let me clarify first that this was the second

1 will. The first will only had my name, the second will
2 mentions -- mentions my brother Pat and my sister Ann.

3 Q. The -- when you refer to the first will, what
4 document?

5 A. The first will that Charlie Stewart had produced,
6 which somehow has gotten misplaced, but this is the second
7 will that my mother and my father had.

8 Q. Okay. But -- but we don't have the first will, we
9 haven't seen it, correct?

10 A. It might be in this mountain of paperwork
11 somewhere.

12 Q. But it hasn't been provided to the court.

13 A. Okay.

14 Q. Would you agree with me? This is the one we have
15 in front of us?

16 A. Yes, sir. This is what we have in front of us.

17 Q. All right. So there are two other specific
18 requests in there. Who are they to and how much are they
19 for?

20 A. My brother Pat and my sister Ann.

21 Q. For 50,020 \$5,000 respectively?

22 A. That is correct.

23 Q. Okay. And are you aware that your father executed
24 a codicil in 2011 that made some changes to this will?

25 A. Well, you're going to have to help me out.

1 Q. Respondent's 2. Do you have a copy of it? I've
2 got markings on mine. They want to have respondent's 2 here.
3 And that document you've just been handed does it purport to
4 be a first codicil?

5 A. It does.

6 Q. Okay. And does it appear to have been signed by
7 your father?

8 A. That'd be his signature.

9 Q. Okay. And in that codicil, it appears to make a
10 change to paragraph three that we were just looking at in
11 Charlie Stewart's will. Can you tell me what change you see
12 to paragraph three from Charlie Stewart's will?

13 A. I actually see two changes? One, the \$100,000 to
14 me is removed and I would assume that's because the \$100,000
15 is reflected in the promissory note. And two, the \$50,000
16 that was going to Pat, for whatever reason is lowered to
17 25,000.

18 Q. Okay. And so your testimony about the a hundred
19 thousand was that that was from your mother's -- initially
20 from your mother's estate plan, and you agreed to push that
21 obligation forward. It landed in the promissory note,
22 correct?

23 A. Yes.

24 Q. And then the promissory note was satisfied when we
25 did the debt deal?

1 A. Yes.

2 Q. Okay. That's it for that. All right. Adam also
3 provided you with a property card from the Henderson County
4 tax assessor.

5 A. That we're looking at?

6 Q. Yes. And he was looking at a value right in the
7 middle of that.

8 THE COURT: Exhibit number. Please.

9 MR. MCGOUGH: Certainly, I don't recall.

10 THE COURT: We've only had ---

11 MR. MCGOUGH: One second, Your Honor. Petitioner's 9.

12 THE COURT: Oh, there we go. Sorry. There's a lot of
13 paper here.

14 BY MR. MCGOUGH:

15 Q. No problem. All right. You saw this a few minutes
16 ago, and I believe you testified that you -- you didn't
17 generate that \$43,000 number that's showing up right in the
18 middle of that page for the land sale price. Is that
19 accurate?

20 A. That's -- yes, sir. I didn't.

21 Q. Okay. And I believe you testified on direct that
22 your father must have come up with that number.

23 A. I don't know where the number came from.

24 Q. Okay. So you don't know where -- who generated the
25 \$43,000?

1 A. I have no idea how this document is created.

2 Q. Okay.

3 A. I -- I -- I don't know.

4 Q. And so -- so that number could be accurate or that
5 number could be completely inaccurate because we don't know
6 where it came from. Correct?

7 A. One would assume that if it was grossly inaccurate,
8 the tax office would've something to say about it. I mean,
9 aren't property value supposed to be within X percentage of
10 their fair market value?

11 Q. I don't know.

12 A. You don't know?

13 Q. I'm not here to answer questions. I'm here to ask.

14 A. Right.

15 Q. Go to the right side.

16 A. Go ahead.

17 Q. Go ahead.

18 A. Go ahead. Continue.

19 Q. Okay. Go to the right-hand side of that page. It
20 says total appraised land value, kind of in the upper
21 right-hand corner. What's that number?

22 A. It says \$73,100.

23 Q. Okay. Okay. That's all for that exhibit. All
24 right. And finally, where -- where do your siblings live?

25 A. Well, they live all over. My brother Pat lives

1 here in Greenville. My brother Tom lives in Greer, my
2 sister Ann lives in my father's beach house at Wrightsville
3 Beach, North Carolina. Paul lives either in the basement of
4 that beach house or some other house in Wilmington somewhere.
5 And Bob lives at Pine Knoll Shores, North Carolina.

6 Q. And where is that?

7 A. It's near Atlantic Beach.

8 Q. Down at the coast?

9 A. Correct.

10 Q. Okay. So you would agree with me that none of them
11 live near Charlotte, North Carolina.

12 A. I do agree with that.

13 Q. And so if this anonymous letter that we've heard
14 about from several siblings was sent to you -- you would
15 agree with me that somebody would've had to go well out of
16 their way to drive up to Charlotte and get it postmarked in
17 Charlotte to be sent to you.

18 A. If I may, you have not just heard about that
19 letter. You've seen it with your own eyes and you should
20 have seen the postmark on the envelope. It came from
21 Charlotte, North Carolina. I don't know how it got to
22 Charlotte. I don't know if somebody was driving through
23 Charlotte. I don't know if somebody's wife drove through
24 Charlotte. I don't know how it got to Charlotte, but I know
25 it came from Charlotte.

1 MR. MCGOUGH: Okay. No further question, Your Honor.

2 THE COURT: Re-cross?

3 MR. LEE: Just to review few simple questions, Your
4 Honor.

5 REDIRECT EXAMINATION

6 BY MR. LEE:

7 Q. Rhett, Verne made the point that there's nothing in
8 this front of this court that defendant would shows a survey
9 or anything that says that your Pop, or I'm sorry, that Pop
10 didn't own that 12.7 acres. Do you see anything in front of
11 this court that says he owns definitively 54.4 acres?

12 A. No, sir, I don't.

13 Q. Okay. But that's what Verne alleges, correct?

14 A. As I understand it, that is correct.

15 Q. You see a survey anywhere in this court that tells
16 us that's right?

17 A. I've haven't seen a survey anywhere.

18 Q. Do surveyors make mistakes?

19 A. Certainly, do.

20 Q. Okay. Did your father try to get the will fixed?

21 A. He did.

22 Q. Okay. You heard your siblings testify, especially
23 Tom, that the overpayment was the reason your inheritance was
24 reduced, correct?

25 A. That is correct.

1 Q. Do you believe you received an overpayment?

2 A. I did not receive an overpayment.

3 Q. Okay. We talked about the information from Premier
4 relationship. You heard Christopher Sean testify, did you
5 not?

6 A. I do.

7 Q. Did he testify that you had transferred hundreds of
8 thousands of dollars?

9 A. That's exactly what he testified.

10 Q. Okay. How did your father -- well, did your father
11 agree, we heard Jack Howard say he did, but did you -- do you
12 believe your father agreed that he owed you \$340,000?

13 A. He did.

14 Q. Okay. So if someone agrees with a -- with -- with
15 an assertion of that magnitude, someone told me I owe him
16 \$340,000, I'd probably have some questions. Did you and him
17 talk about it?

18 A. Well, Pop and I talked -- talked about a lot, but
19 he told me -- well, we came up with a number ---

20 MR. MCGOUGH: Objection. Just not getting into what he
21 told me.

22 BY MR. LEE:

23 Q. Yeah. Did you talk about it?

24 A. I talked about it, yes.

25 THE COURT: Yeah.

1 MR. MCGOUGH: I was okay with the question, just did --

2 THE COURT: Right. Mr. Taber, just don't -- don't say
3 anything that your dad did say about it.

4 THE WITNESS: So you want me to say we talked, but don't
5 -- don't it ---

6 THE COURT: It's fine. You talked but because your
7 father's not here because of his demise, he -- he can't
8 testify in this court through you. So -- so you can't say
9 what he said as it relates to these financial transactions.

10 THE WITNESS: May I mention something? I'm sorry. Go
11 ahead.

12 BY MR. LEE:

13 Q. Let me ask you a question. Did you and -- you and
14 your father come to an agreement about \$340,000?

15 A. We did.

16 Q. Did he transfer the 28.48 acres to you to satisfy
17 that debt?

18 A. He did.

19 Q. Now, Verne says ---

20 THE COURT: Mr. Lee, let's -- let's use last names.

21 MR. LEE: Ain't he called me Adam?

22 THE COURT: Well, I guess he did.

23 MR. MCGOUGH: I will try to correct myself. Refer to
24 him only as Mr. (Inaudible).

25 THE COURT: If it doesn't offend the two of you. I

1 don't care. But I'm just -- I'm just -- go on.

2 MR. LEE: I always ran in trouble at home when I hear
3 Adam. All right. Mr. McGough.

4 MR. MCGOUGH: (Inaudible) favor.

5 BY MR. LEE:

6 Q. I am saying Mr. McGough had you look at this sheet.
7 Please pick it up.

8 A. Okay.

9 Q. He had you look at the rest, says total appraised
10 land value. What's that? What's that amount?

11 A. \$73,100.

12 Q. All right. And we'll get to Mr. McCrady soon, but
13 what did the 28.48 acres appraised for?

14 A. \$300,000.

15 Q. All right. Now, your assertion is that the only
16 deal you and your father had was it was a 28.48 acres for the
17 340,000, correct?

18 A. Correct.

19 Q. But let's, for argument's, sake, say that it was
20 this Henderson County property and the 28 1 48 acres, what's
21 73,100 plus 300,003.

22 A. 373,100.

23 Q. All right. Your brother Tom, testified that you --
24 you received and Pop received and reduced your inheritance
25 based on the fact that you got a \$280,000 overpay. What's

1 373,000 minus 340? I'll represent? It's 33,000 bucks. Is
2 that 280,000?

3 A. No, sir, it does not.

4 Q. So even if we take everything they say to be true,
5 am I correct in stating that the overpayment is nowhere near
6 what Pop thought it was?

7 A. I think we've done a pretty good job of
8 establishing that, but you are correct.

9 MR. LEE: All right. No further questions.

10 THE COURT: May -- may I throw something down? I'm
11 sorry. Go ahead.

12 MR. LEE: Answer any questions, Mr. McGough has.

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

14 THE COURT: All right. Sir, you may take a seat.

15 MR. W. TABER: Do you want to take all this paperwork
16 with me?

17 THE COURT: No, sir. You leave it there.

18 UNIDENTIFIED SPEAKER: Let's -- since we got -- let's
19 try to get (inaudible). Okay.

20 MR. LEE: Your Honor, if you give me a five-minute
21 break, I did not anticipate finishing that quickly. I'm
22 going to try to get the next Zoom person on before Alan and
23 Dan did.

24 THE COURT: That's fine.

25 MR. LEE: Beg me five minutes. Sorry, I'm trying to fix

1 the cameras. All right. He is logging on now. Okay. I may
2 have to get Ms. Lee to come and help us do this, so.

3 (Off The record.)

4 THE COURT: All right. Is everybody in the courtroom?

5 MR. LEE: I believe so.

6 MR. PARSONS: Can you hear me?

7 THE COURT: Yes, sir. Just one second. We're about to
8 get started. All right. We've taken a short break for
9 technological purposes and Dr. Parsons is now on our Zoom
10 attending by Zoom. Dr. Parsons, can you turn your camera on
11 please? There we go.

12 MR. PARSONS: That do it?

13 THE COURT: That's perfect. Thank you, sir. All right,
14 Mr. Lee are you calling Dr. Parsons?

15 MR. LEE: I'm calling Dr. James Parsons.

16 THE COURT: All right. Dr. Parsons, will you raise
17 your right hand?

18 DR. JAMES S. PARSONS,
19 being dully sworn testified as follows:

20 THE COURT: Thank you. Now, please answer any questions
21 that Mr. Lee might have for you.

22 DIRECT EXAMINATION

23 BY MR. LEE:

24 Q. Dr. Parsons. First of all, thank you for being
25 here. I know you're a busy man and I'm going to keep this

1 relatively short. Can you just state your name for the
2 court?

3 A. James S. Parsons.

4 Q. And what is your occupation?

5 A. I'm a physician specializing in internal medicine
6 and geriatric medicine.

7 Q. Okay. And where did you go to college?

8 A. I went to NC State University

9 Q. And -- and I'm just going to skip to it, Dr.
10 Parsons, did you know William Taber Jr.?

11 A. Yes, I did. Anyway.

12 Q. And -- and how did you know him?

13 A. Through his son, Rhett. I met him and he became a
14 patient of mine for about 30 years.

15 Q. Okay. So you knew Pop for about 30 years, is that
16 accurate?

17 A. Yes, I think from 1994 up until when he died in
18 2019.

19 Q. Okay. How would you describe Pop?

20 A. I would say he was he was a very active individual.

21

22 He was very friendly very outgoing. He was very much of a
23 people pleaser. He was very family oriented.

24 Q. Okay. Now --

25 A. Saying that he did morph a little bit after the

1 death of his wife. He became a little bit more social and
2 outgoing and got involved in more community activities in
3 Greenville than he had done earlier in his life.

4 Q. Okay. And am I correct that your medical practices
5 in Raleigh?

6 A. Yes, sir.

7 Q. And Pop lived in Greenville. How did -- how did
8 Pop get to his appointments with you?

9 A. I'd say the vast majority of the time his son,
10 Rhett, would pick him up in Greenville and drive him to
11 Raleigh.

12 Q. How far is Raleigh from Greenville?

13 A. Well, I don't, about four and a half to five hours
14 by car.

15 Q. So is it understood that Rhett would drive five
16 hours from Raleigh to get his father and then drive five
17 hours back to Raleigh to deliver him to your office?

18 A. Well, I -- there were many times that Rhett would
19 call me early in the morning and said his father was sick and
20 would drive down to Greenville, pick him up, drive him back,
21 and get to my office at 4:00 in the afternoon. Now, there
22 were other times that his father might have already been in
23 Raleigh or was seeing other doctors in Raleigh or was up in
24 Wilmington. So, I mean, over those 30 years, I mean, he came
25 to this office about, I don't know, 50 or 60 times. I mean,

1 it was a lot of visits here. So I can't remember everyone,
2 but I can say at very frequently when Will was sick that
3 Rhett would go retrieve him and drive him to Raleigh.

4 Q. Okay. What was your opinion of Rhett as a person?

5 A. Well, I mean, he's a very good friend of mine.
6 He's very serious. He's very hardheaded and he's a very
7 principled individual as you'd expect for a young man who
8 chose to go to the Citadel and choose go into the Air Force
9 and flying the Gulf War and a distinguished career for
10 American Airlines. He's a very principled man who is very
11 opinionate opinionated about what's right and wrong and why.

12 Q. Okay. Do you believe Pop loved Rhett?

13 A. Absolutely.

14 Q. Do you believe that Pop would ever do anything to
15 intentionally hurt Rhett?

16 A. I don't -- I mean, he was a very generous and kind
17 man. I don't -- he would never do anything for anybody that
18 would hurt their feelings intentionally. And as I said, he
19 was very family oriented and I don't think he would ever do
20 anything to hurt any of his children.

21 Q. Now, given Pop's health and age, in your
22 professional opinion, would he be someone that would be
23 easily confused?

24 A. I think ---

25 MR. MCGOUGH: Objection.

1 THE WITNESS: --- during those latter years of his life
2 he had ---

3 THE COURT: Dr. Parsons, there's been an objection
4 raised. So I'll ask you to stop for a minute and let's deal
5 with this objection. So, hold on.

6 MR. MCGOUGH: He -- he has not been admitted as an
7 expert to get into his professional opinion of the mental of
8 -- again, the mental state, the health of somebody.

9 THE COURT: All right. I sustain that objection. Would
10 you like to ---

11 MR. LEE: I'll rephrase it.

12 THE COURT: No -- no, I -- do you want to qualify him as
13 an expert?

14 MR. LEE: I can, that'd be fine. Dr. Parsons.

15 THE COURT: Are you going to qualify him as an expert or
16 not? Just going to rephrase?

17 MR. LEE: I'm sure. Rephrase. I'm just going to, yeah.

18 THE COURT: Yeah.

19 BY MR. LEE:

20 Q. I -- I -- I don't need to necessarily -- given --
21 given Pop's health and age, Dr. Parsons, in your opinion,
22 would he be someone that would be easily confused?

23 A. Well, I mean, are you asking me in my professional
24 opinion?

25 Q. I'm asking you in your -- your common man without

1 your doctor (inaudible).

2 THE COURT: All right. Then it's -- then -- then that's
3 going to be ---

4 THE WITNESS: Well ---

5 THE COURT: --- not expert. Just a second. Dr.
6 Parson.

7 THE WITNESS: I think you better qualify ---

8 THE COURT: Dr. Parsons -- Dr. Parsons. Hold on a
9 minute. All right. I -- I think either qualify him or don't
10 qualify him. Frankly, I've heard almost enough to qualify
11 him. He's a geriatric doctor in internal medicine who's
12 treated him for decades and visited within 50 or 60 times. I
13 would imagine he could qualify it. I don't -- it seems to me
14 that he's almost qualified him already ---

15 MR. LEE: Your Honor ---

16 THE COURT: --- to testify as an expert witness?

17 MR. MCGOUGH: Our -- our -- our issue on that front
18 would just be -- we would be undoing prejudice again. We --
19 we exchanged a witness list and he had been separated as
20 here's who experts are, here's who experts are not at this
21 stage of the game to kind of switch it up. We just feel as
22 though we'd be unduly prejudice at this time from that
23 perspective, given the agreement and the way that things
24 progressed.

25 MR. LEE: I disagree, Your Honor. They were provided

1 notice of the witness that they wanted to depose him in any
2 way they could as I could ---

3 THE COURT: Was he listed as the physician of ---

4 MR. MCGOUGH: Correct. He was listed as Jim Parson's,
5 MD in the fact witness list section underneath that there was
6 a list that said experts and it had two individuals named
7 there. Neither of which are.

8 THE COURT: Approach.

9 (Off the record.)

10 THE COURT: All right. We're back on the record. I'm
11 going to sustain the objection to qualifying Dr. Parsons as
12 an expert. I don't doubt for a moment that the man would
13 qualify, but because he wasn't disclosed as an expert during
14 discovery I think it'd be improper to now qualify him. All
15 right. But you may ask him next questions.

16 BY MR. LEE:

17 Q. Dr. Parsons, given your experience in the 50 to 60
18 visits with Mr. Taber and, and knowing him for as long as you
19 did and knowing his health and his age, do you think he would
20 be the type of person, in your personal opinion, not your
21 professional opinion of whether or not he would be a person
22 that could be easily confused?

23 A. Yes.

24 Q. Would he, in your opinion, have to rely on other
25 people to explain complicated things to him?

1 A. Yes.

2 Q. Knowing him the way you did, do you think that he
3 was a very trusting person?

4 A. Yes.

5 Q. Do you think if one of his children told him a
6 fact, whether it was true or not, that he would take that
7 fact and take it as true?

8 A. Well, that's a pretty broad question because I
9 (inaudible).

10 Q. Well, let me -- let me rephrase it.

11 A. I think he was a very -- I think he was a very
12 trusting person, so I think, and he was very family oriented,
13 so I think he would trust his family members to be honest
14 with.

15 MR. LEE: Okay. No further questions, Your Honor.

16 THE COURT: MR. McGough?

17 CROSS-EXAMINATION

18 BY MR. MCGOUGH:

19 Q. Dr. Parsons, a few minutes ago you testified that
20 Rhett drove -- came down to Greenville and picked up Pop and
21 brought him up there to Raleigh to these appointments.
22 Correct?

23 A. I said to many of them, not all of them.

24 Q. Sure. How do you know that Rhett was the one who
25 drove him up to Greenville?

1 A. Well, because Rhett would be the one who would call
2 me early in the morning, say that he was driving down there
3 and he's the one that would come with him to my office in the
4 afternoon.

5 Q. Okay. So Rhett called you in the morning and Rhett
6 showed up at the appointment in the afternoon?

7 A. Yes.

8 Q. But you didn't see him driving anybody anywhere?

9 A. No, I was in my office all the time.

10 Q. Sure. Are you aware whether any of Rhett's
11 siblings ever brought him up to medical appointments in
12 Raleigh?

13 A. I remember his sister Ann was with him in several
14 appointments. I remember her being present. I don't
15 remember any other family members, but I mean, we're talking
16 over many years at many visits.

17 Q. Okay. And -- and just to confirm your earlier
18 testimony, you testified that Pop was a pretty active
19 individual and he was pretty outgoing and involved in the
20 community, particularly after the passing of his wife,
21 correct?

22 A. Yes.

23 MR. MCGOUGH: Okay. No further questions, Your Honor.

24 MR. LEE: And no further questions, Your Honor.

25 THE COURT: Dr. Parsons, the court, thanks you for your

1 time and you are hereby released and you can sign off from
2 the Zoom now.

3 MR. PARSONS: Thank you.

4 THE COURT: Are there any other witnesses to appear by
5 Zoom?

6 MR. LEE: No, Your Honor.

7 THE COURT: Mr. McGough? All right. Good. All right.

8 MR. LEE: Your Honor, can we take just a three minute
9 break?

10 THE COURT: You can.

11 MR. LEE: For me to confirm some schedules with people.
12 All right. Thank you.

13 THE COURT: We'll take a three-minute break.

14 MR. MCGOUGH: While we're doing that. May have one
15 outside.

16 THE COURT: Yes, sir. That'd be fine.

17 (Off the record.)

18 THE COURT: All right. It appears everyone's back in
19 the courtroom and we can proceed. Mr. Lee?

20 MR. LEE: Your Honor, we call Alan McCrady to the stand.

21 THE COURT: Mr. McCrady, please approach.

22 ALAN D. MCCRADY,
23 being dully sworn testified as follows:

24 THE COURT: Thank you. Take a seat.

25 MR. MCCRADY: Thank you.

1 THE COURT: Please ignore all the papers all over that
2 desk.

3 MR. MCCRADY: You want me to move them?

4 THE COURT: Doesn't matter.

5 DIRECT EXAMINATION

6 BY MR. LEE:

7 Q. Let me -- Alan I think a lot of people probably
8 know, but can you state your name for the record?

9 A. It's Alan D. McCrady.

10 Q. And I'm going to kind of speed things up a little
11 bit just to kind of help the court schedule. Where'd you go
12 to school?

13 A. Went to Presbyterian College.

14 Q. And what'd your major in?

15 A. Business Administration.

16 Q. Okay. What is your occupation?

17 A. I'm a real estate appraiser.

18 Q. And where do you currently work?

19 A. I own a business called Stone and Associates.

20 Q. And what is your title there?

21 A. I'm an owner.

22 Q. Okay. And how long have you been an appraiser?

23 A. Twenty-five years.

24 Q. Okay. And what are some of the duties that you
25 have as an appraiser? What do you do?

1 A. I -- I still actively appraise. We appraised
2 primarily commercial real estate and land. I obviously do
3 inspection of properties and analysis of properties. Also do
4 you know, management of my business, business administration.

5 Q. Would I be accurate that you often constantly
6 appraising raw land?

7 A. Yes.

8 Q. Yeah. How -- how many times as an estimate would
9 you say you've done that?

10 A. Raw land over my career? Thousands.

11 Q. And what -- are you a member of any professional
12 associations? Do appraisers have professional associations?

13 A. I'm a MAI, which is designation for the Appraisal
14 Institute

15 Q. And I -- am I correct that, that's the highest
16 level that you can reach, is an appraiser? Is that accurate?

17 A. Yes, sir.

18 Q. Okay. And what specific training do you have in
19 the field of Rules Estate Appraisers?

20 A. Well, through the -- through my career to achieve
21 the MAI designation there's an extensive amount of coursework
22 testing comprehensive exams, so we obviously that to get to
23 that point. And also you know, continuous education every
24 year.

25 Q. Is it -- and I'm not -- I really don't know. Is it

1 similar to a lawyer? Is there a -- is there a license? Do
2 you have an appraiser's license?

3 A. I do. We have with the state of South Carolina,
4 have what you call certified general, which is the highest
5 license you can have. I've got that for South Carolina,
6 North Carolina, Georgia.

7 Q. And how long have you had her? South Carolina?

8 A. Twenty plus years.

9 Q. Did you prepare an appraisal report for RT Taber?

10 A. Yes, sir.

11 Q. Okay. And I've already provided Mr. McGough. Do
12 you recognize that document?

13 THE COURT: Mr. Lee, are you qualifying him as an
14 expert?

15 MR. LEE: Your Honor, I'm sorry. Your Honor, I would
16 offer Alan D. McCrady as an -- an expert in the field of
17 real estate appraisals.

18 THE COURT: Mr. McGough?

19 MR. MCGOUGH: No objection.

20 THE COURT: Thank you. He's recognized by this court as
21 an expert in the field.

22 BY MR. LEE:

23 Q. Mr. McCrady, do you recognize that report?

24 A. Yes, sir.

25 Q. All right. Can you explain just for the court's

1 general knowledge, the materials and the information that you
2 would've reviewed to prepare them?

3 A. Yes, sir. So this is what we call a restricted
4 appraisal report. We go through the same evaluation process
5 for any appraisal, but this particular appraisal was a
6 effectively a vacant track of land. So we start our process
7 identifying the property, what the property is to be
8 appraised, identifying the problem, the -- the establishing
9 whatever our scope of work would be to -- to value that
10 property. And then we begin to gather information tax maps
11 and flood maps and various subject property information.
12 then we establish what our evaluation process is going to be
13 in this case. For a -- a land track, it would typically be
14 the sales comparison approach. So we'd start that process of
15 researching comparable data.

16 Q. Was there a certain date on which you were asked to
17 find the value of that particular real property?

18 A. Yes, sir. This was a retrospective evaluation, so
19 it was July 15, 2015.

20 Q. And can you explain to the court, is it -- is that
21 the true the value of a piece of property that was
22 transferred or sold the -- the -- the appraisal of value on
23 that particular date?

24 A. Yes. I mean, we stopped. What we were asked to do
25 was establish a fair market value as of that retrospective

1 date.

2 Q. Okay. And after you completed the report, did you
3 arrive at a conclusion in regards to the value on that date?

4 A. Yes, sir, we did.

5 Q. And what was that value?

6 A. It was \$300,000.

7 Q. Okay. And when you came to that conclusion -- let
8 me ask you ---

9 THE COURT: Mr. Lee, are we introducing this piece of
10 evidence?

11 MR. LEE: Yes, I -- I -- I thought I already did.

12 THE COURT: Not yet.

13 MR. LEE: Yeah, I'd offer that.

14 THE COURT: Mr. McGough, any ---

15 MR. MCGOUGH: No -- no objection.

16 MR. THOMPSON: No objection.

17 THE COURT: All right. It is hereby marked as
18 petitioner's Exhibit 12 and is accepted into the record.

19 (Petitioner's Exhibit 12 was marked for identification.)

20 BY MR. LEE:

21 Q. Okay. So the conclusion of that appraisal report
22 was that the property was worth \$300,000 on that date,
23 correct?

24 A. That's correct.

25 Q. If the property was sold that date for \$340,000,

1 would that be a fair market drug transfer?

2 A. I mean, it would certainly be slightly above what
3 we established, but if it sold for that, you could set a fair
4 market transaction. So it

5 Q. Would be accurate In saying that it certainly
6 wasn't an overpayment. If -- if it was -- if -- if the -- if
7 the payment price was more than the value, then whoever owned
8 that property did not receive an overpayment. Correct? Let
9 me clarify, if someone transferred that piece of property
10 that you valued at 300,000 bucks, if they transferred that
11 property in consideration for 340,000 bucks, did the person
12 who purchased the property receive a windfall? Did they get
13 more property than they gave the seller?

14 A. Not more property, no, sir. Yeah.

15 Q. All right. And in your opinion, if -- would you
16 consider a situation where someone potentially overpays for a
17 piece of property, would you consider that you -- again, you
18 testified that would still be a fair market value transfer.
19 Correct?

20 A. It -- you know, obviously transactions in the
21 marketplace is what we utilize to establish fair market
22 value. So it certainly could be, I mean, we typically
23 valuations is some level of range we establish a -- a
24 pinpoint value.

25 Q. Okay. If the owner of that property sold that

1 property on that date for \$340,000, was he inadequately
2 compensated for the property?

3 A. No, sir.

4 Q. If Mr. Taber, who was the owner of that property at
5 that time was told that he had been taken advantage in that
6 transaction, would that be appropriate?

7 A. No, sir.

8 Q. If Mr. Taber believed that that property was worth
9 \$280,000 more than what you say it's worth, so \$580,000, do
10 you think that would be a mistake?

11 A. Yes, sir. In my professional opinion.

12 MR. LEE: All right. Thank you Your Honor. No further
13 questions.

14 THE COURT: Mr. McGough?

15 CROSS-EXAMINATION

16 BY MR. MCGOUGH:

17 Q. Mr. McCrady, you testified that you go out into the
18 marketplace and you gather comps, comparable properties from
19 transactions that have been completed?

20 A. Yes, sir.

21 Q. And use those to determine the value of a property
22 when you're appraising it?

23 A. Yes, sir.

24 Q. Okay. And you said the date of this valuation was
25 July 15, 2015?

1 A. That's correct, yes, sir.

2 Q. Okay. Would you agree with me that land is unique
3 and has a number of different factors that affect its value?

4 A. Certainly.

5 Q. And there's no way for you to have known the
6 condition of this land in 2015, correct?

7 A. That's correct. We make as noted in the report
8 what we call an extraordinary assumption and assume that the
9 -- the land of the property is in similar condition as to as
10 we're bagging it as to our inspection.

11 Q. Man, you -- just in general, when you're making an
12 appraisal, you make a number of assumptions,

13 A. Correct.

14 Q. Okay. About a lot of different things not just the
15 quality of this property back in 2015?

16 A. Sure.

17 Q. Okay. Did you visit the property?

18 A. Yes, sir.

19 Q. Okay. And the appraisal report you've got is
20 purely for vacant land. Correct?

21 A. That's correct.

22 Q. Did you see any structures on the property?

23 A. We -- I flew a drone. I know that there may have
24 been a home or a structure, some kind of residential
25 structure on it towards the northern part. It was our -- our

1 understanding that there was not duty value of that
2 structure, so we just valued it as vacant.

3 Q. Okay. So no portion of this appraised value
4 contains any value for any structure that is on land now, or
5 that was there in 2015, correct?

6 A. No, sir.

7 Q. Okay. So would you agree with me that if there was
8 a structure on that land back in 2015 that that would impact
9 this valuation?

10 A. It may. May or may not.

11 Q. May or may not?

12 A. Certainly.

13 Q. Okay. All right. And when you go and do an
14 appraisal and you arrive at a number, you've testified that
15 you go out and you get comps, you are selecting those comps,
16 correct?

17 A. Yes, sir.

18 Q. You're reviewing all transactions in some
19 geographic area surrounding that property, correct?

20 A. We do.

21 Q. And then you're picking the comparables that you
22 feel are closest in alignment with the property you're
23 appraising?

24 A. Yes, sir.

25 Q. Would you agree that from time to time you might

1 make a mistake in selecting comps?

2 A. Certainly

3 Q. You might leave a comp out that should be in, or
4 you might include one that's not quite as close?

5 A. Yes, sir.

6 Q. All right. And when you pull these comps into an
7 appraisal, do you make adjustments for size and topography
8 and other aspects of the land?

9 A. Yes, sir.

10 Q. And so when you're making these adjustments, are
11 you also making some assumptions about how much those
12 different factors factor between the comps and the subject
13 property?

14 A. Yes, sir.

15 Q. Okay. And you arrived at a concluded value of
16 \$300,000.

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

18 Q. How much is that per acre? Do you --

19 A. I believe it was 10,500 per acre. Yes, sir.

20 Q. And before you arrive at that final value do you
21 come up with a -- a reasonable range with -- within which it
22 probably ought to land before you arrive at a final value?

23 A. Depending on the scope of the assignment, I mean,
24 we certainly have clients that will actually request a range.
25 95% of our assignments we will establish a precise value.

1 Q. And you will do that without first establishing any
2 comp range?

3 A. Typically. I mean, we -- there's a -- there's a --
4 an understood range within our data set, whatever property
5 type that would be, you see a natural range.

6 Q. Okay. And so would you agree with me that based on
7 all these assumptions, assumptions about which comps were
8 right and what was or wasn't on the property back in 2015 and
9 topography and all these different factors the possibility
10 exists that this appraisal does not reflect the actual fair
11 market value of the property?

12 A. No, I mean, it is my opinion that it reflects the
13 fair market value. Certainly if there are things that
14 assumptions that we have made that are not accurate, then
15 yes, it certainly could be different. Yep.

16 Q. And would you agree with me that regardless of
17 what's on this appraisal, a a potential purchaser may buy
18 that property or a potential seller may sell that property
19 for a number that has nothing to do with what's on your
20 appraisal?

21 A. Absolutely.

22 Q. For a variety of reasons?

23 A. Certainly.

24 MR. MCGOUGH: Okay. I -- I have no further questions.
25 Thank you.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. LEE:

4 Q. Alan, what's the better way to appraise a property
5 for someone with no real estate experience to guess? Because
6 they think they know where the property is or maybe hire
7 somebody like you?

8 A. My opinion is they should hire somebody.

9 Q. So the -- the -- the general consensus, if you --
10 would you agree with me to find properties value is to have
11 it appraised. Correct?

12 A. Yes.

13 Q. And have it appraised by someone like yourself
14 who's respected and trained and highly regarded, correct?

15 A. Yes, sir.

16 Q. Okay. Mr. McGough was talking about some
17 assumptions if the court has no reason, no evidence, nothing
18 before it to show that your assumptions are wrong. Do you
19 agree that that 300,000 is the exact number?

20 A. Yes, sir.

21 MR. LEE: Okay. No further questions, Your Honor.

22 THE COURT: Any re-cross?

23 MR. MCGOUGH: No further question.

24 THE COURT: All right. I've got a couple. Mr. McCrady,
25 when you did this appraisal why did you not include a value

1 for the structure? It was -- assuming there's a structure on
2 that property, why did you not include a value for that
3 structure?

4 THE WITNESS: It -- it was our understanding that this
5 was effectively vacant land and the structure did not have --
6 value at the time. So we -- it was our understanding that
7 the scope of work for this was a vacant track of land.

8 THE COURT: Did you ever see either yourself or by way
9 of your drone that structure?

10 THE WITNESS: You -- through the trees and it was either
11 through the drone or the GIS, you can see the remnants of a
12 structure or what appears to be the rooftop. that's the
13 extent of what we saw.

14 THE COURT: You say remnants, what do you mean by that?

15 THE WITNESS: Well, you could see limited, like all you
16 could see from the GIS appears to be the rooftop of some's
17 structure, some type of structure.

18 THE COURT: Could you determine the condition of the
19 structure from what you could see?

20 THE WITNESS: No, sir. No, sir.

21 THE COURT: Okay.

22 THE WITNESS: We -- you know, the -- the highest best
23 use of this track and within our scope was that you
24 potentially could have some the level of residential use
25 potential larger track residential development. so again,

1 out of our understanding of the assignment, that it was a
2 vacant track that's the way we proceeded.

3 THE COURT: Given what you did see about the structure
4 sure. Could your appraisal be off by \$280,000?

5 THE WITNESS: No, sir.

6 THE COURT: Okay.

7 THE WITNESS: Not -- not from my professional opinion.
8 What you could see from the aerials appears to be all grown
9 around as though it's, we -- we value a lot of tracks of land
10 that have ancillary buildings and structures, old residences
11 that the typical buyer come in really would not place any
12 contributory value to. And that was my understanding of what
13 this was.

14 THE COURT: All right. Because I've asked questions,
15 would you like to redirect or re-cross?

16 MR. LEE: No questions, Your Honor.

17 RE-CROSS EXAMINATION

18 BY MR. MCGOUGH:

19 Q. I only have one question. You said in response to
20 His Honor's questions that your understanding of the
21 engagement, who provided you with that understanding of the
22 engagement that this structure was to be ignored?

23 A. I don't know that it was specifically said, but
24 when Mr. Lee engaged us, it was an understanding that it was
25 a -- a land appraisal.

1 MR. MCGOUGH: Okay. No further questions.

2 THE COURT: Okay. Thank you, sir. You may take your
3 seat.

4 MR. LEE: Or if we are not calling him again, he's
5 released for the day.

6 MR. MCGOUGH: He can be released, Your Honor.

7 THE COURT: All right. You're released from your
8 obligation.

9 MR. MCCRADY: Thank you, sir.

10 THE COURT: Mr. Lee?

11 MR. LEE: Your Honor, we call Dan Collins to the stand.

12 THE COURT: Mr. Collins, if you'll approach. He doesn't
13 even this morning. Mr. Collins, it's good to see you, sir.

14 MR. COLLINS: Good to see you, sir.

15 THE COURT: Welcome to the courtroom.

16 MR. COLLINS: Thank you. I love your courtroom.

17 THE COURT: Thank you.

18 MR. COLLINS: Beautiful.

19 THE COURT: Thank you. All right. And for the benefit
20 of the audience, he much like Jackie Patterson or Jack Howard
21 is an attorney and he does not need to be sworn in. That's
22 why we're not giving him the oath. Okay.

23 ATTORNEY DAN COLLINS,
24 being dully sworn testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LEE:

2 Q. Mr. Collins, I appreciate you being here. I know
3 everyone does. I think everybody knows you, but would you
4 mind introducing yourself?

5 A. I'm Dan Collins and live here in Greenville,
6 practice here for quite a few years.

7 Q. What's your occupation?

8 A. Lawyer.

9 Q. And how long have you practiced?

10 A. I'm in my 49th year.

11 Q. Wow. Where -- where did you go to undergraduate
12 school?

13 A. South Carolina.

14 Q. And Law school?

15 A. South Carolina.

16 Q. Okay. And are you licensed in South Carolina only
17 or?

18 A. No, we're licensed in -- or I'm licensed in South
19 Carolina and North Carolina.

20 Q. Okay. And what is the name of your practice?

21 A. Collins and Collins.

22 Q. How long have you been in solo practice or -- and I
23 believe you worked with your daughter now, but how long ---

24 A. She, I do, and -- but I opened my own office in
25 1984.

1 Q. Okay. And what are the practice areas in which you
2 specialize

3 A. At -- at this juncture almost exclusively estate
4 planning. and we sort of concentrate on higher net worth
5 clients and when you doing it this long, you outlive some
6 clients. And so about half my practice now is what we call
7 postmortem or state administration, but almost always for
8 states that we prepared over the years.

9 Q. Are you a certified specialist in estate planning?

10 A. Yes.

11 Q. Okay. And can you tell me what that is? I mean, I
12 know general, but just for the everyone's benefit here, what
13 is the certified State Planning Specialist?

14 A. Well, I've been a certified specialist, I think for
15 about 25 years. I was chairman of the specialization
16 committee back early on. but they give you a pretty good
17 test of various questions having to do with taxes and probate
18 or whatnot. And if you succeed that then the state certifies
19 that you've demonstrated a particular expertise in that area
20 and you can present that as a part of your credential and
21 hopefully to instill more confidence in your clients that you
22 have some idea of what you're about.

23 Q. Okay. And how long have you been a certified state
24 planning specialist?

25 A. I think about 25 years, if I'm not mistaken.

1 Q. Okay. And besides your bar license, which is
2 obvious, do you have any other licenses?

3 A. No. North and South Carolina, and I'm not aware of
4 any other license. I don't have any kind of an insurance
5 license. I don't have a hunting license. I don't hunt. So
6 I think those two.

7 UNIDENTIFIED SPEAKER: You and me both.

8 MR. LEE: All right. Your Honor, I tend to Dan Collins
9 as an expert of the field of probate law, probate estate law.

10 THE COURT: Mr. McGough?

11 MR. MCGOUGH: No objection.

12 THE COURT: All right. He is hereby recognized as an
13 expert in this field.

14 BY MR. LEE:

15 Q. All right. Mr. Collins, I'm going to show you the
16 statute. Would you have any knowledge about that statute?

17 A. I do.

18 Q. Okay. And what is that statute?

19 A. Well, the statute was added to the South Carolina
20 Probate Code in 2013. When we did a revision of the probate
21 code. And this particular revision resulted in two changes
22 to the statute as it was prior to the amendment. the first
23 change in the notes discussed this the paragraph that's now
24 denominated a was a single paragraph by itself, so they added
25 an A and then the most significant addition was South

1 Carolina adopting the provision, which is in paragraph B
2 which allows in South Carolina the reformation of the terms
3 of a will.

4 MR. LEE: Okay. Your Honor, not that I need to, but
5 I'll move this statute in if you want me to. I don't think
6 that's necessary.

7 THE COURT: I don't think it's necessary.

8 BY MR. LEE:

9 Q. All right. What was the effect of that change in
10 the statute?

11 A. The effect of the change in the statute was to
12 allow in South Carolina for there to be corrections, if you
13 will to a will after the testator had died. You know, prior
14 to that time you really were looking at a modification of a
15 will and -- and courts were loathed to modify a document
16 because it went to changing the intent of the test payer. So
17 this adds in, its by its terms called reforming the terms of
18 a will. And so the difference here is that they can make
19 adjustments even in the language of a will after the
20 execution that go to affirm the intent of the test taker. So
21 that's the purpose of it. And so a reformation allows a
22 court to do that. A judge has the statutory authority to
23 make certain changes in the will necessary. The -- the
24 statute itself sounds inequity.

25 So it's actually an equitable remedy that this

1 statute gives the judges in the state to go in and to make
2 changes that are consistent with the intent of the test.
3 Taber provided that that intent is established by clear and
4 convincing evidence what they did. And civil proceedings is
5 all of, you know preponderance of the evidence is the proof
6 standard. But here it's a much higher standard of proof.
7 It's clearly convincing. It doesn't mean beyond a reasonable
8 doubt, but it's a much higher standard for a court then to
9 determine that reformation is an appropriate. Can I get -- I
10 need water. That's great. Thank you very much.

11 Q. No problem. I would take a sip and I'll continue.

12 A. So with the higher standard of proof clear
13 convincing evidence, then the court has the statutory
14 authority to act equitably. and what they're trying to do is
15 to infer the intent. And for that to happen, it's really
16 called a -- there are two kinds of mistakes. You have a
17 mistake in expression and a mistake in the inducement, and
18 that's kind of a hard term to understand, but generally it
19 means that there was some mistake having to do with the
20 testator's formulation and creation of the will.

21 And in this case, as I understand it, and I've read
22 pleadings or whatnot, it was a mistake of fact not of law.
23 And so as I understand the decision will issue here is the
24 value of the property. And so it's alleged apparently that
25 there was a mistake in the value of the property, and it was

1 that mistake in the value of the property that led to his
2 subsequent actions. giving rise to this litigation

3 Q. Is -- is the purpose behind the statute of it. And
4 I'm not trying to dumb it down, but is it to try to ensure,
5 as we all do, as probate lawyers to ensure that the
6 testator's intent is falling through?

7 A. Yeah. As a matter of fact, the restatement of
8 property third and its section on wills states that when --
9 as here there's a mistake in the inducement that the purpose
10 is one, to determine the intent of the testator. And the
11 restatement itself has the language, and two, prevent in
12 unjust enrichment. And so it, it sounds inequity and it's an
13 equitable proceeding. And so they give the probate court the
14 judge, the power inequity to rectify wrongs, and you do it by
15 reformation. Adding to language that was omitted or deleting
16 language that shouldn't have been included if the testator
17 had known. And it's established by clear convincing evidence
18 that there was a mistake of fact.

19 Q. So I'm going to ask a general question. And it's a
20 little long, but. So in the event that a testator makes a
21 mistake, in fact in preparing his last will of testimony,
22 does this statute give this court the ability to reform the
23 terms of the will to max the testator's true intent?

24 A. Yeah. If -- if -- if it is established for the
25 same evidence standard we discussed that that mistake in fact

1 okay. Caused the test payer to omit or to include, okay?
2 Some dispositive provision, some language that had he known
3 the truth he would not have, then the court has the equitable
4 authority to make that correction.

5 Q. So if I disinherit my son Anderson, and hopefully
6 he wouldn't, the guy would do that to him. But if I
7 disinherited him based on the fact that I believe I've
8 already given him too much, or I've -- he's cheated me, and
9 it's proven that in essence he never cheated me or never
10 received something that I thought he had received, that's a
11 mistake of fact. Is that correct?

12 A. That would be a mistake of fact. Now, it would
13 have to be established.

14 Q. Correct.

15 A. Okay.

16 Q. Yes. And so if you establish, like you say, if --
17 if -- if a testator thought that a piece of property was
18 worth one thing and it was proven to be another and it was
19 proven, that's a mistake of fact?

20 A. He -- to the extent that it influenced the
21 testator's action.

22 Q. Okay. So if there was direct testimony from one of
23 the beneficiaries that he made that decision based on that
24 mistake, based on that fact, would you not agree with me?
25 That's clear and convincing evidence?

1 A. Well, I -- I guess that's asking for it is
2 presented presumably a sworn testimony for the -- is for the
3 trier of fact, ultimately to decide that but that would
4 certainly be probative and admissible. And whether or not
5 determined would go to the trier fact, it's -- you're right.
6 It would've caused him that mistake of fact caused him in
7 this case, as I understand it, to exclude specific devise
8 that he did not include because of thinking that this
9 particular devise had already been adequately compensated.

10 Q. Did -- did the legislature intend for this statute
11 to be utilized to correct these kinds of mistakes of fact?

12 A. Yeah, and if you read the restatement, it says that
13 it was done this way because historically, historically
14 courts just wouldn't exercise the equitable power. And so
15 this came about in the uniform probate code in South
16 Carolina, adopted, like I said in 2013. And -- and -- and
17 courts are still reluctant because there, there's just a
18 historical resistance on the part of the judiciary across the
19 country to affect wills, you know, to change somebody's
20 intent or to try to impute their intent, you know, when you
21 have to go back and supply the intent like in an expression
22 where they fail to include somebody, well, you know it's
23 harder to do that in courts or loath to to make a change on
24 that basis. Yeah.

25 Q. Okay. And if the court, if -- if -- does this

1 statute give us, I guess, is its main goal to ensure that
2 despite decedent passing, if a mistake of fact is somehow
3 determined to have existed, this is the avenue by which the
4 courts have kind of opened those roads that subsequently, as
5 you say, used to be kind of closed?

6 A. Yeah. And -- and mistakes of inducement whatever
7 correction, if any, the court should decide to make relate
8 back to the date of execution, they're not contemporaneous
9 going forward. So they relate back to the date of execution
10 because they're reforming it to say that had the testator not
11 made this mistake a fact, then this particular provision as
12 if this case would've been included. and so it goes all the
13 way back to that point.

14 Q. Okay. And just to -- just to summarize and we're
15 -- we're about done. If -- if a testator assumed or was told
16 or believed that a property was worth much more than it
17 actually was, and based a reduction in someone's inheritance
18 on that fact, is that a mistake of fact?

19 A. That would be a mistake of fact.

20 MR. LEE: No further questions, Your Honor.

21 THE COURT: Mr. MCGOUGH?

22 MR. MCGOUGH: I want to zoom out a little bit.

23 CROSS-EXAMINATION

24 BY MR. MCGOUGH:

25 Q. You drafted a lot of wills during your career.

1 A. Few. Yeah.

2 Q. In your process of preparing estate plan documents
3 for a client, how do you get information from them?

4 A. Typically, in -- in our particular case through an
5 interview process, sometimes people will give us something in
6 advance of what they want, because typically, in our
7 procedure, just to drill down to our procedure is we'll know
8 what assets they have. Because whenever we meet with them
9 the first time, we'll give them an Excel spreadsheet with all
10 of the assets, none of us. And then they'll give us
11 additional assets, if any, so we know all of the assets. And
12 so then it is just a matter of, you know, what do you want to
13 do? And there are times, many times when there will be lots
14 of specific devices and requests and you look at those and
15 who's getting what and why and if they aren't living.

16 And so our typical procedure is to prepare a draft
17 of the document. We never send out written drafts too much
18 trouble. People won't read them just a headache. So we come
19 back and hand it to them and sit down with them. And in our
20 case, we put it on the screen. And so we just go down those
21 requests or whatever specific devices there might be, and we
22 go through those and we, we will put the caps back number and
23 all that on it. And generally, in higher net worth clients
24 we need to know the value of that. And the reason for that
25 is if you have a taxable estate and you're leaving different

1 pieces of property to different people and you don't
2 apportion the estate taxes, right?

3 You're going to have a headache. Another headache,
4 it probably would be my headache. So, you know, we're very
5 careful to match those up. And in -- in our particular
6 instance, it's valued, you know, if it's you know, if it is
7 not a big estate at all, you know, they got a trunk, the dog
8 and something else, and no big deal. But we still want to
9 know it's going to the right person. And -- and at that
10 point, value may not be, you know, it maybe just, it is what
11 it is, there will be no tax and they want them to have it.
12 So valuation doesn't really become a big issue, typically.

13 Q. Okay. Do you send clients a checklist in advance
14 of this first meeting?

15 A. Yeah, we -- we have a questionnaire that we send
16 out and we really won't meet with a client if they don't send
17 it back. Now, there's a selfish business reason for that.
18 but frankly we get to look at all of the assets and so I
19 just, I don't want to walk in a room and have no clue what
20 somebody has or what it's worth.

21 Q. And when they fill out your checklist they're using
22 whatever information is available to them to them ---

23 A. To them. Exactly.

24 Q. Okay. So when you get a checklist from a client
25 and there are values on that checklist for whatever assets

1 they have. Those are values that the client has come up
2 with?

3 A. Right.

4 Q. Correct? Okay. And when clients indicate they own
5 real properties or business interests or anything that might
6 be a little more complicated than a dog and a truck, right?
7 How often do you encourage clients to go out and get
8 appraisals to ensure that the values they've got on that
9 checklist match an appraisal?

10 A. Good question. And -- and that can be a hard sell
11 because valuations are expensive and time consuming and a
12 business disruptive. So unless we are making gifts and we do
13 a lot of that, so if we're going to make a gift of an
14 interest in a corporation and it is a large gift, then we
15 just won't do it unless they get a valuation and you find a
16 qualified appraiser to do that. If it's a piece of rental of
17 real estate you want to know the value. And -- and there
18 could be occasions where if it's an over client and the
19 property value is at \$3 million and it's been in the family
20 for a hundred years and the basis is \$10, you know, we might
21 say, "Wait a minute, let's die with it." You know, let the
22 basis go up.

23 So there are different factors that come in with
24 respect to a particular plan as to whether or not we would
25 really encourage and sometimes insist that people have a

1 evaluation. But in the typical estate plan that we're doing
2 okay and they have a nice home and may a place at Kiwi and
3 whatever. We -- you know, we'll take a windshield appraisal
4 or whatever for that because typically it is going all to the
5 spouse and then to the children equally. Now when people are
6 trying to balance things out, you know, they're leaving
7 Johnny the business and Susie the beach house, then we may
8 want them to get those things appraised so that we know that
9 they're close.

10 Q. And you say when they want things to balance out,
11 you mean that they want their kids to inherit. Roughly?

12 A. Yeah. Most people want to treat everybody equally.
13 We all know that's not possible, but where's that? And
14 children who have lawyers that's been lawyers now and they
15 come in and they say, "Well, you had no clue what this was
16 worth." "Well, you know, yeah, we do." We're going to draft
17 a document that purports to leave things in equal shares or
18 leave them roughly equally. And then sometimes we'll include
19 language that is not equal or whatever. You know, I want ask
20 only what you asked me. I (inaudible).

21 Q. That's (inaudible). But you've had I would guess
22 many clients over the years that did not want to leave things
23 equally to their children for whatever reason. And that --
24 and those reasons might be many different reasons. Correct?

25 A. We -- we've had them just want to disinherit the

1 children and we do that, just settle the case where we did,
2 we were right. Thank goodness. so some people do that, they
3 can do that. You can disinherit children, not spouses. but
4 if you go to do that, you got to make sure as to intent.
5 And, you know, typically we'll get a position statement on
6 the day we sign the document and that sort of thing. But
7 yes, you're quite right. There are folks who choose to leave
8 less or none to one or the other, but I think you have to be
9 meticulous in documenting that.

10 Q. Sure. And you have clients from time to time that
11 want children to have specific assets for very specific
12 reasons.

13 A. No question -- no question.

14 Q. A business interest where a child might work in the
15 business or ---

16 A. Yes.

17 Q. --- a particular piece of real estate where a child
18 might have some attachment to ---

19 A. No question.

20 Q. --- that real estate. Okay. And in those types of
21 cases do you always require them to go get an appraisal to
22 determine what the value of that real estate or that business
23 interest is?

24 A. No. Only -- only in the event, if you're -- if
25 you're talking about a lot of money and maybe there's some

1 contention we picked up among the children and there could be
2 a disparity and we just dropped this over here, this over
3 here. If we know it is clear that's what they want we would
4 probably add some self-serving language in there that the
5 imbalance is purposeful, you know? But, but normally, I -- I
6 can't think of a situation where we would really want an
7 appraisal unless the real issue or the value itself. Now, if
8 the valuation is in the air or whatever, then of course we
9 would want that value for sure.

10 Q. Have you ever had a will invalidated by a court?

11 A. You mean that you know of?

12 Q. Yeah. That you drafted.

13 A. Oh Lord. No.

14 Q. No. Okay. Have you had one reformed by a court?

15 A. I'm going back over 40 years. To my best
16 knowledge, I don't think so.

17 Q. Okay. So you don't -- you don't have -- you don't
18 recall any of your wills that have ever been reformed or
19 invalidated that you drafted?

20 A. That's right.

21 Q. Okay. That's pretty good.

22 A. Yeah. We can't put a dollar amount on a billboard
23 because we're not going to do billboards anyway. But -- but
24 we do tell clients we've never had one overturned.

25 Q. Okay. So -- so I think you would agree with me

1 then that just because a testator does not know the exact
2 value of a property pursuant to an appraisal, if obtaining an
3 exact value is even possible that that lack of knowledge
4 doesn't necessarily mean there was a mistake?

5 A. What (inaudible) lack of knowledge?

6 Q. So you've got a testator and doesn't know the exact
7 value of property. Because as you just testified, most of
8 the time you don't go get appraisals for, you know, you don't
9 just -- every client comes in, you tell them go get
10 appraisal. Okay. And so frequently as an estate planning
11 lawyer, you've got a client sitting in front of you that does
12 not have -- may not know the exact value of the property.
13 All right. You're not telling them to go get an appraisal.
14 You would agree with me that just because if they went and
15 got an appraisal that said something different than what they
16 put on your checklist, that that's a mistake?

17 A. That might be an oversight. I -- it -- it and
18 living it limiting your question to those facts. Okay. I
19 don't -- I wouldn't call that a mistake or an over, it might
20 be more of an oversight. Okay? But there's nothing coming
21 behind that, you know, who's going to question that or
22 whatnot. I -- I don't want to just dive directly into this
23 case. because the upshot was a new instrument that was not
24 signed, where they added back, as I understand it, the
25 promised devise. So that kind of changes the facts.

1 Q. Were you -- sorry.

2 A. No, I'm fine. Huh?

3 Q. Were you shown a new will that was drafted after
4 the will at issue in this case that provided any specific
5 distributions that you just testified?

6 A. What I was shown was the letter from Jackie
7 Patterson in which she enumerated the specific devises. And
8 finally kind of, I -- I think wrapped everything up in a
9 residue. The residue, the will doesn't say that specifically
10 but what was included in Jackie's letter was the devise or
11 the property contiguous to properties presently owned that
12 had been acquired earlier. and so that's the alleged
13 omission, if you will. So I was aware of that, yes.

14 Q. Okay. From -- from a -- from -- from a letter or
15 retainer agreement, engagement letter from ---

16 A. Exactly -- exactly. Yeah. I don't remember ever
17 seeing a draft of a -- of the will that Jackie did. I don't
18 know if she actually did a draft for them or if it stopped
19 right there.

20 Q. Do you recall whether Pop Taber had signed that
21 retainer? That engagement letter from Jackie Patterson?

22 A. I don't remember. Just -- I can't recall the top
23 of my head. It was a copy of whether he had signed that or
24 not. I don't know -- I can't swear to that.

25 Q. Okay. Would it shock you if I told you that it

1 wasn't signed?

2 A. Just in the -- in the flow of things if it were not
3 signed. Okay. Because we send engagement letters out and we
4 don't act until we get it back signed. Okay? And there was
5 a relatively short period of time, if I remember the facts,
6 until Mr. Taber passed. Okay? So it -- it would not be a
7 bombshell to me in looking at this if he had not signed that
8 because I think she had offered even to go up to his house
9 and immediately necessary. So, so that would not be a
10 bombshell shocker to me, you know, if she had had -- if it --
11 had it for three or four years, it might be more probative.

12 Q. Do you have clients that come in and meet with you
13 that ultimately don't sign your union?

14 A. Yeah, not very often. and we have a letter we send
15 out that we're closing our file and all of that. We do not
16 do retainers haven't in 40 years. So if they send the -- an
17 engagement letter back to us signed, we don't have any money.
18 We don't want any money until we finish. Okay. So if they
19 sent that back in and signed it and they don't show up, we
20 won't have done anything else and haven't signed the engage
21 letter. I don't have any money, so I'm not worried about
22 that. Now, if they had sent us money, then we would either
23 be sending it back to them or following up on that in some
24 more affirmative way to make sure.

25 Q. Okay. But -- but if they don't sign your letter

1 you don't go draft documents?

2 A. Pretty much. Right. We, in our engagement letter,
3 we say the -- the -- the trigger for us to prepare documents
4 is your engagement letter that -- that you're happy going
5 forward

6 Q. And -- and -- and you really can't tell anything
7 from, in most engagements. From a client not signing and
8 returning that engagement letter unless they contact you
9 again and tell you why they didn't sign.

10 A. Yeah, I think that would be right If we don't have
11 any -- sometimes -- now, sometimes we send an engagement
12 letter out and just don't get anything back and, you know,
13 that's just like what some lawyers call free consultation. I
14 can't own that. But we don't charge for initial meetings and
15 so if -- if we don't hear from them, we just don't have any
16 liability to them. That's -- that's the key.

17 Q. Okay. Is it possible that a testator could have
18 made a mistake of fact of valuation error on some asset and
19 still not have their intent changed in the will that was
20 drafted and ultimately signed by them?

21 A. Ask me that again. I -- I -- I don't want to be
22 slow, but I don't want to be precise in my answer.

23 Q. Is it possible that a testator could have a -- you
24 could have a situation with a mistake of fact, testator
25 thinks this property's worth that, and later we come to find

1 out, "Oh no, it wasn't it was worth something wildly larger,
2 smaller than what the testator thought." Is it possible that
3 a testator could have that mistake of fact, but still not
4 have their intent in the -- in the will that ultimately gets
5 drafted and signed, changed?

6 A. And still not have their intent take that -- I -- I
7 would say living into those facts, it might be possible. You
8 know, the intent was they just kept the property without
9 respect of value. Okay? And there's no pushback one way or
10 the other on that. So I would say such a thing would be
11 possible if that were really his intent, because the whole
12 thing here is to make sure that the intent is correct and --
13 and not clouded by a mistake of fact. But where they just
14 want the per person to have the property makes no difference.
15 It's worth more or less, I'm not looking to compensate, I'm
16 not looking anything else, then I think that would stand.
17 Yeah.

18 Q. So the -- the mistake and the impact of that
19 mistake or the testator's intent are -- those are really two
20 separate issues and one does not necessarily lead to the
21 other.

22 A. Yeah -- Yeah. In other words, if you have a
23 mistake of law or fact here, a mistake of fact. And so it's
24 either the expression here, that's not an issue. So it was
25 in the inducement, which goes to the formulation of the

1 instrument itself, which is historically accepted as an
2 expression of the testator's intent, you know, based on all
3 the knowledge and facts. I mean, that's just sort of a kind
4 of a visceral, inherent part sound mind and disposing body
5 and all those other things that they have a sufficient
6 awareness of their estate to pass it out. So yeah. That --
7 that underscores the intent that people are presumed to have
8 when they execute a testamentary document.

9 Q. Do you believe a, that an important fact in whether
10 the testator believed they made a mistake that needed to be
11 rectified, is the time between that mistake and the ability
12 of the testator to correct that mistake after the mistake
13 occurred before they die?

14 A. Well, I think it goes more to what is the occasion
15 that caused the possible mistake of fact to the attention of
16 the judiciary. Somebody ain't happy. Okay? And so I think
17 our statute gives a pretty broad standing for who can bring
18 that? Okay. and so when someone brings to the attention of
19 the judiciary, here's the dispositive document valid on its
20 face. Okay? And you would infer from reading the document
21 itself, now this is exactly what they wanted. And so someone
22 raises and says, "Hold it, wait a minute."

23 We think that in -- in this case, there's an
24 omission, but we think that the omission was occasioned by
25 the fact based on Jackie's letter. And I don't know what

1 else. I haven't heard all of it, that a devise was not
2 included, and his intent was not to fulfill that devise,
3 perhaps other than, than just a portion of a revisionary
4 gift. And so the fact that someone raises the question is
5 what makes it (inaudible) I don't think it's just the
6 existence of the -- of the anomaly. It's just that somebody
7 has raised it and the court has to look at it.

8 Q. But does the testator's knowledge of the mistake
9 and the time and ability to correct that mistake are those
10 factors that should be considered when we're looking at a
11 mistake of fact?

12 A. I -- I -- I don't -- I don't know that I -- the --
13 the statute for the time you can, can raise it. I don't know
14 the answer to that question, not a litigator. but the fact
15 that there is this mistake of fact, which -- you know, that's
16 the allegation, you know, it has to be established by clear
17 and convincing evidence. Now, the period of time in which
18 that has to be raised, you know, I would think it -- you
19 know, I don't think you could raise it 10 years later. I
20 don't know what the statute is as a statute of repose at some
21 point in time. Okay? So I -- I don't -- I don't know that
22 I'm confident.

23 Q. I think I'm asking -- I think I'm asking a
24 different question.

25 A. Okay.

1 Q. The question you're answering is when can somebody
2 bring a complaint?

3 A. Yeah.

4 Q. About this mistake.

5 A. Right. Okay.

6 Q. The question that I'm asking you is if the testator
7 made a mistake, and they knew they made a mistake. Okay?
8 After the will was done. All right. And they knew about
9 this mis-valuation issue. And they had years to correct that
10 mistake, and they had the ability to correct that mistake.
11 And they never corrected that mistake.

12 A. But you get into a whole ---

13 Q. Aren't those important facts?

14 A. Yeah, I think it would be. And -- and you get into
15 something called the law of mistakes, which is interesting.
16 There's a whole body of law out there called the law of
17 mistakes. I just stumbled onto this while I was prepared for
18 this. So I think at some point in time, the old thing of
19 silence, gifts, consent might find its way into some sort of
20 statement of law that I think they would be deemed to have
21 consented to it to ratify by, if somebody raises the
22 question, you couldn't have the requisite clear and
23 compelling evidence that the mistake of fact defeated their
24 intention if he was wrong about it, if he's happy with it and
25 hasn't corrected. So I think it would be in the terms more

1 or less of a of an approval or a ratification, not, you know,
2 reformation, but just to ratify that mistake. Silence gives
3 consent.

4 MR. MCGOUGH: Thank you. No more questions.

5 THE WITNESS: Okay.

6 THE COURT: I -- I -- I actually have a couple questions
7 and then we'll go back to -- Dan in the context of contracts
8 and assurance policies and other instruments, there has been
9 this reformation of mistakes that required mutual mistake.
10 and where there wasn't mutual mistake and there had to be
11 mistake by one party and some type of fraud or deceive or
12 misleading by the other party. Now, obviously in a context
13 of a testamentary document, those instruments are done by one
14 party and one party only. That's why we don't have husband
15 and wife wills.

16 THE WITNESS: Yeah.

17 THE COURT: So there can't be mutual mistake. Would you
18 agree?

19 THE WITNESS: Yeah.

20 THE COURT: Under this newer statute from that was
21 passed in -- what was this? 13?

22 THE WITNESS: Thirteen.

23 THE COURT: Part of the --the revisions to the probate
24 code that were made, then is there any element or requirement
25 for any misleading or deceit or anything else that gave

1 genesis to the mistake of fact understanding?

2 THE WITNESS: Yeah, there -- there's -- there's language
3 in the restatement and then a couple of law of the articles
4 called it's a mistake in the inducement. So you have
5 something called fraud in the inducement. Okay? And so you
6 can have fraud in the inducement of the law of contracts. I
7 just lied to you. Okay? And that could be set aside.
8 There's no mutuality there.

9 THE COURT: Okay. I know I've alleged that in my prior
10 life.

11 THE WITNESS: Yeah. Okay. So but, you know, whereas
12 here there's such a thing as fraud in the inducement and the
13 restatement takes into account, it says, and to prevent
14 unjust enrichments. And the restatement goes to forest to
15 say, and I wouldn't about to suggest their statement is
16 applicable here, that's for the court to decide, but it says
17 someone unjustly enriched, you know, is an unjust taker. So
18 they're very thing -- so they're talking about somebody who's
19 misled into what they include in their donative document. So
20 -- but there's no -- there's no mutuality in it. Here, if
21 there were any mutuality is, as I understand the allegations
22 you have a testator who is taken to a lawyer to do a will,
23 and you have persons who would benefit. All right?

24 And so they're involved in -- as in finding, you
25 know, helping to decide who gets what and where, and, you

1 know, accompany that with the representation that there was a
2 mistake in the prior transaction, you know, about the value.
3 so there's mutuality in the sense that we are here because
4 there were actions on two parties, two parts, you know, one
5 the testator and the other group who is alleged to have had
6 some involvement in securing the new will, which contained
7 what is alleged to be a mistake of fact arising from the fact
8 that there was a misunderstanding on the value of the
9 property. Okay?

10 THE COURT: So the misunderstanding doesn't have to be
11 caused by deceit, it just has to be a misunderstanding?

12 THE WITNESS: It just has to be a mistake of fact. He
13 just -- you know, he just didn't, apparently somebody can
14 good faith believe this is what it is, and then somebody
15 says, "No is worth a whole lot less than that and acting on
16 that." Okay? He takes a further action. And so that's the
17 mistake in the inducement, which in this case is applicable
18 to the will that Jack Howard did.

19 THE COURT: All right.

20 THE WITNESS: That's the -- that's the will where we're
21 being asked to reform.

22 THE COURT: Right. All right. Mr. Lee, do you have any
23 redirect?

24 MR. LEE: Just a few questions.

25 THE COURT: Sure.

1 REDIRECT EXAMINATION

2 BY MR. LEE:

3 Q. Okay. I'm try to be brief here. Excuse me while I
4 read. If someone was being -- basing their estate planning
5 decisions on an alleged property value, so if I came in the
6 office and I said, "Dan, I want to -- I want to leave
7 Anderson a million dollar property." Would you tell me,
8 "Well, let's go get that appraised to make sure it's a
9 million dollars?" My guess -- if I'm basing an estate
10 planning decision on what I believe to be the value of a
11 piece of real property, are you going to make the
12 determination on what that value is? Or are you going to
13 say, "Hey, go talk to Alan McCrady?"

14 A. Well, I think what I would do is if it were -- if
15 the property at issue were to be given a debt or later, but I
16 want it to be a million dollars and that's all. Okay? This,
17 typically, to answer your question, typically, if there's any
18 larger estate plans, but one resolves that by using what is
19 called a formula gift, you know, I give you property having a
20 value not to exceed this amount. Now, you need an appraisal
21 to do that. Okay?

22 Q. Okay. And let me ask you this though. So if I say
23 -- if I came in and I said, "I'm going -- I'm going to make
24 an active decision to produce someone's inheritance. Because
25 I believe this property is worth X amount." That's an

1 important decision, wouldn't you agree?

2 A. Uh-huh.

3 Q. Especially if it's a large amount of money,
4 correct?

5 A. Uh-huh.

6 Q. Would you encourage them at that point to go get an
7 approval?

8 A. Now -- now, what action are they going to take at
9 this? I'm going to reduce someone's inheritance and -- and
10 -- and the reduction is going to occur by transferring to
11 them property that is worth less in value.

12 Q. Correct. So wouldn't you tell them to go get an
13 appraisal?

14 A. Yeah. But -- but worth less to whom? What -- what
15 difference?

16 Q. Well, and I -- I'm not really saying this wouldn't
17 it be worth less than then. If I'm going to have an estate
18 plan that includes a distribution that reduces someone's
19 inheritance? And the reason I'm reducing their inheritance
20 is because I think a piece of property that I've already
21 given them is worth X amount, any amount.

22 A. Got you.

23 Q. Don't you think it would be prudent to have that
24 property appraised to ensure that that's correct?

25 A. I think you could have it appraised. Yes. And you

1 would know what the value is then. But the -- the solution
2 to that is in the instrument itself, the person whose gift is
3 reduced is just, "I'm making this gift and I understand it
4 may be worth less and it's my intent, and I would put it in
5 the document and eliminate the mistake of fact. I reflect
6 his fact." Now, if he's still wrong, you could raise the
7 same issue. You can't draft around everything. But, yes in
8 that instance, yeah.

9 Q. But the easy fix is to go get an appraisal.

10 A. Yeah. No question.

11 Q. Okay. If the testator's intent is shown that a
12 certain piece of property, and I'm talking about his intent
13 is shown through testimony or documents, whatever. If it's
14 shown that the testator intended for someone to receive a
15 piece of property, can that be the way under the statute,
16 that the court could reform the will by giving them that
17 piece of property?

18 A. Oh, yeah. If you read the restatement of property,
19
20 third, the equitable remedies that the court can exercise, go
21 all the way to constructive trust. Suppose the property's
22 already been conveyed, and this is an example that's in the
23 -- I mean, in the -- the restatement so they could impose a
24 constructive trust and order that the property be
25 re-conveyed. You know, that's the equitable power of the

1 court. Either do it or lock you out.

2 Q. And you testified -- and I -- I know you said you
3 had never had any wheels overturned it.

4 A. DCD said, if it's true, it ain't right.

5 Q. Well, I -- I'm going to ask you a question and
6 we'll keep this between the lawyers and the judges. Are all
7 lawyers the same?

8 A. Not -- no -- no, probably not.

9 Q. Or have -- have you ever heard of anyone having
10 their will overturned in or -- or revised or reformed?

11 A. You know never having been in that many, nothing
12 jumps to my mind either experience or the case law where
13 somebody's just had a will just thrown out completely.

14 Q. But are they often in -- in these cases, I mean,
15 are there case law, is there a case law in South Carolina
16 where wills have been overturn?

17 A. Then -- oh, sure. Yeah -- yeah. No question.

18 Q. So while you may not have had that happen to you,
19 and I would certainly agree that you shouldn't, there are
20 other lawyers who may not be as diligent as you, and that has
21 happened to them, correct?

22 A. Yeah.

23 Q. Okay. If -- you said unjust taker, and -- and I
24 want to ask you a question about that, would -- would someone
25 who caused a mistake of fact, so if I misled a testator, told

1 them something that was incorrect, that led them to make a
2 mistake of fact that directly affected their estate plan,
3 that benefited me. Would that classify me as an unjust
4 taker?

5 A. Well, the restatement would, you're unjustly
6 enriched because you've benefited as a result of a mistake of
7 fact that you were the instigator or instrumental. And
8 that's based on the example out of the mistake.

9 Q. And Mr. McGough was asking you about when someone
10 learns about a mistake, and -- you know, if there's no
11 evidence before the court of anything about when someone
12 learned about a mistake, how would you ever determine when
13 that mistake was became?

14 A. It -- it -- I mean, it may just be, you know, what
15 I call the dark and night theory. It just, nobody ever finds
16 it out to them.

17 Q. And it just pops out and all of a sudden?

18 A. Most of the world operates that way.

19 MR. LEE: All right. No further questions, Your Honor.

20 THE COURT: Mr. McGough?

21 MR. MCGOUGH: I've have no further questions, Your
22 Honor.

23 THE COURT: One final question for me.

24 THE WITNESS: Sure.

25 THE COURT: But following on the unjust enrichment, if

1 one person is effectively disinherited or at least have their
2 share reduced by virtue of a mistake on behalf of the
3 testator, that may or may not be related to something he was
4 told by another child. And so all the other children of the
5 decedent would be receiving a larger share than they might
6 have received, had the one child not been disinherited or at
7 least had their share reduced. Would all of those receiving
8 be unjustly enriched or just the one who did the misleading?

9 THE WITNESS: I -- I think the (inaudible) word here is
10 unjust. I think in that point, and in your example, somebody
11 could have just made a mistake, it comes up, you know about
12 it. And so someone has conveyed a piece of property that
13 would've passed to all of them. And so in that sense, they
14 lose it. the mistake which the testator recognized and
15 corrected. Okay? They are not unjustly enriched, you might
16 say unfairly enriched, but I don't think it connotes any kind
17 of (inaudible) or any sort of evil intent on the part of the
18 others who might have to discord something. It's just the
19 way it came about.

20 THE COURT: So you don't really have to have unjust
21 enrichment in order to be -- to have this statute available
22 for ---

23 THE WITNESS: I don't think so. It -- it -- it could
24 be, and it could be, the way they're discussing is just
25 unjustly enriched. It's not something to which I was

1 entitled. So receiving something for which I would have no
2 entitlement, which would be the case if the will were
3 reformed. Okay? And so I dis scores that or don't receive
4 it. if I had gotten it pursuant to a mistake, you know, I
5 think you could say, and maybe that's the restatement says
6 they put it right pretty softly, you know, is that it could
7 be unjustly enriched. It's something I'm not deserving.
8 Okay? But I don't think it -- it needs necessary
9 culpability. Okay.

10 THE COURT: Okay. Thank you. I appreciate that.
11 Before you get up, I need to make sure. Do -- do either of
12 you have any more questions?

13 MR. MCGOUGH: No questions, Your Honor.

14 MR. LEE: Since I'd asked a question, I want to extend
15 an opportunity.

16 THE COURT: Okay.

17 MR. LEE: Dan, thank you so much.

18 MR. COLLINS: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. LEE: Your Honor, petitioner has no other witnesses
21 at this time and rests his case.

22 THE COURT: All right. Thank you, Mr. Lee. Mr.
23 McGough, it's 3:36. Maybe -- do you want to go ahead and
24 call your first witness or?

25 MR. MCGOUGH: Respondent make a motion for a directed

1 verdict at this time? We have got three different claims
2 before the court. One of those claims is undue influence.
3 That law has been reasonably fleshed out in South Carolina.
4 And the circumstances must point unmistakably and
5 convincingly to the fact that the mind of the testator was
6 subject to that of some other person. so that the will
7 itself is of the latter and not of the form. All right?
8 Undue influence must amount to force and coercion. And I
9 would submit to you that we have not had any testimony
10 provided to this court that anybody was forcing Pop Taber to
11 go in and sign a will. We've gotten no evidence of threats.
12 We've gotten no evidence of force.

13 You've heard that from several witnesses that he's
14 driving himself places several of the children testified to,
15 that he's spending his own money. Mr. Palmer provided us
16 with that. we even have opportunity to fix any undue
17 influence if we believe there was because he apparently took
18 50 or 60 some odd trips from Greenville to Raleigh with the
19 petitioner during which they could have taken him up to a
20 lawyer in North Carolina and fixed the undue influence.
21 Finally, the law says that undue influence is cured by the
22 testator later having the ability to fix the -- the will that
23 was procured by undue influence and not doing it. we have
24 case law in this state that says that, and I think the record
25 is clear that he had the ability to do that.

1 And Jackie Patterson testified that he had the ability
2 to do that. He could have done that right there in Jackie
3 Patterson's office. He -- she testified that he had capacity
4 and he could have fixed that will at any point in time in
5 between 2015 and 2019 when he died, when he wanted to. And
6 even the petitioner said that when he was on state, he could
7 have fixed that will. And for that reason, on the undue
8 influence claim, we would move for a direct verdict on the
9 creditor's claim.

10 We have heard voluminous testimony about debt and what
11 debt was owed and what debt wasn't owed and what was repaid.
12 We have almost every witness with knowledge thought this debt
13 was repaid in 2015. We've got the petitioner stating that
14 numerous items on his own creditor's claim have been repaid.
15 The promissory note was repaid. The items that are on this
16 creditor's claim, we don't have any evidence in the record of
17 how much rent was collected. \$400,000 he's claiming he needs
18 to do on this creditor claim.

19 And we have no written evidence about how much rent was
20 collected, who got it, where it went. All we have is the
21 petitioner saying, "Oh, there's \$400,000 in rent. We've got
22 legal fees, we've got accounting fees for the trust. We've
23 got --" We just don't have any evidentiary basis for this
24 debt Above and beyond that section, 15-3-530 provides a three
25 year statute of limitations for an action upon a contract ---

1 THE COURT: Quote the statute again, please.

2 MR. MCGOUGH: There's a three year statute of
3 limitations for, and this is the beginning of the quote, "An
4 action upon a --" Oh, you want the number? It's 15-3-530.

5 THE COURT: Thank you. I'll have to trust you. Well,
6 it's not in the book.

7 MR. MCGOUGH: It provides a three year statute of
8 limitations for an action upon a contract obligation or
9 liability express, or implied accepting those provided for in
10 section 1515-3-520. And that section talks about bonds and
11 written contracts secured by mortgages and sealed
12 instruments. Those are accepted from this three year statute
13 of limitations. Based on the date that this creditor's claim
14 was filed April 14, 2023 years prior to that would've been
15 April 14, 2017. And we have no written evidence after April
16 14, 2017 of any debt. I -- we can give him three years prior
17 to any debt.

18 We have no written evidence of this debt that has been
19 submitted, you know, \$583,000 that he says that he's owed.
20 And we don't have any evidence. And he's even agreed that he
21 doesn't even, he's not even owed some of it. and so we would
22 move that he has not provided evidence sufficient to defeat
23 this statute and so that we are entitled to a directed
24 verdict on the creditor's claim. And finally, on the mistake
25 of fact other than petitioner, I do not recall a witness

1 making any claim that it mattered to Pop how much the dollar
2 value of any of these properties were worth that he was
3 giving away in his will.

4 I don't recall a -- a witness providing that ever. And
5 in this statute that Mr. Collins provided to us, we have to
6 have clear and convincing evidence the burden is on the
7 petitioner to provide evidence that goes to both the
8 testator's intent and that the terms of the will were
9 affected by a mistake of fact. If this testator wanted to
10 give properties to different ones of his kids and he didn't
11 care that they were worth this or that or come later to an
12 appraisal, then -- then why should we undo his will and try
13 to decipher for ourselves what -- what else it was that he
14 wanted in 2015 when he's sitting in front of a lawyer,
15 meeting a lawyer outside the presence of all of his children
16 several times, which was the testimony of petitioner's
17 witness, Jack Howard. And even if you find that there was a
18 mistake in -- in fact we don't have any testimony about how
19 his intent was in 2015 relative to that mistake of fact.

20 Finally, as Mr. Collins assisted us with, there was a
21 four year time period from 2015 when this will was drafted
22 and signed until 2019. And we've had testimony from numerous
23 witnesses that if Pop Taber wanted to go -- go find a lawyer
24 to draft a will, he could have found one. We've had, I -- I
25 believe at least seven lawyers mentioned that he dealt with

1 on an estate plan basis and he could have called any of them
2 maybe accepting Charlie Stewart if he wasn't living at that
3 point and he could have re-done this will. And so by not
4 redoing the will, he ratified his will for four years.

5 And as a last point, if a testator's mistake on the
6 exact value of the property of a will, the value of which he
7 provides to his estate planning attorney All right? Causes a
8 -- causes a will to be deficient, then what will in the state
9 of South Carolina is not deficient. Because as we heard from
10 Mr. Collins, we don't go get appraisals all the time. So we
11 have testator's running all over the state of South Carolina
12 that don't know exactly what their properties are worth and
13 want specific kids to have specific properties and what will
14 is safe. I'm not sure there is one, unless we go get
15 appraisals on every property when we're doing wills and
16 that's just not happening. According to Mr. Collins. I rest
17 mine.

18 THE COURT: Thank you, sir.

19 MR. LEE: All right. Your Honor, let's talk about
20 mistake first. Mr. McGough's mistaken in his reflection on
21 the testimony his own client says that, "I told Pop there was
22 no repayment. Pop knew there was a overpayment." He
23 testified the reduction in the inheritance received by Rhett
24 was the result of that overpayment. Clearly, John Howard
25 testified that that was the reason Rhett's inheritance was

1 reduced, was the value of the property. Alan McCrady already
2 set up there and told this court that the value of the
3 property is not \$280,000 more than what Pop fought. So to
4 say that there wasn't a mistake that led to Rhett's reduction
5 in inheritance is -- that's clearly and clearly something
6 that as Mr. Collins testified, this court can fix.

7 Now, as far as knowledge, there's no evidence whatsoever
8 that Pop knew about this mistake up until the time that he
9 went and saw Jackie Patterson. Nobody's testifying Pop knew
10 about it four years ago. So we can say that all day long. I
11 didn't hear anything that said that. All I heard was that
12 when Pop figured it out, he went to Jackie Patterson to fix
13 it. And then we have evidence from Jackie Patterson showing
14 that he was prevented from following through on that estate
15 plan by one of his daughters.

16 So the argument about mistake, Your Honor, I don't -- I
17 don't think there's a clearer picture of if Pop made a
18 decision that directly affected someone inheritance under his
19 estate plan that was based on a mistake that was fostered and
20 created and encouraged by other heirs who are now, as Mr.
21 Collins says, unjust takers. That's clearly mistake of fact
22 that I believe that statute speaks to. All right?

23 As far as undue influence goes, Your Honor, clearly if
24 someone is providing the documents, taking them to the
25 appointments, meeting with them, providing the information,

1 providing guidance on how to do that and doing so in what
2 appears to be a -- at the bare bones, inaccurate way. And
3 there's other testimony to show that when he tries to fix
4 those things that those very same parties prevent him from
5 doing, I think that at least causes pause for the court to
6 consider the under influence claim.

7 As far as the creditors claim goes, Your Honor, I think
8 upon review of the documents attached to this creditors
9 claim, which I know Your Honor, you haven't been able to
10 review I wouldn't expect you to have done that. I think it
11 would be presumptuous to dismiss the predator's claim without
12 having to look at the backup -- backup documentation and
13 reviewing the testimony provided by Mr. Taber. But at utmost
14 to me, I think all three allegations are before the court
15 properly. I don't see any evidence to show that they are not
16 justiciable. Above and beyond the mistake seems to be almost
17 clear cut in my opinion.

18 MR. MCGOUGH: I have one or two clarifications, Your
19 Honor, if I may.

20 THE COURT: Mr. McGough, you may.

21 MR. MCGOUGH: The documents that he just referenced that
22 were attached to the creditor's claims are not in evidence.
23 They were moved in evidence. I don't --

24 THE COURT: Yeah.

25 MR. MCGOUGH: That big packet of documents.

1 THE COURT: That was introduced into evidence, yes sir.

2 MR. MCGOUGH: We've had no testimony about any of those
3 -- do any of those debts any of those documents?

4 MR. LEE: My client testified to those documents. Yeah.

5 THE COURT: You -- you -- you, in fact, went through the
6 entire ream of paper that is in there and pulled one page out
7 and excluded.

8 MR. MCGOUGH: Right. But then, Your Honor, thereafter
9 when I came back here, excluded all of that stuff.

10 THE COURT: No. Mr. McGough, I don't -- I don't believe
11 that's correct. No, it's my understanding that is that
12 entire packet has been marked and was moved into evidence as
13 Exhibit Number 11 right here. There was one -- one page was
14 taken out of it. You went through all of it and said -- I --
15 I think I can.

16 MR. MCGOUGH: Okay. I would -- I will with -- I'll
17 withdraw.

18 THE COURT: All right.

19 MR. THOMPSON: Can I make one -- I apologize. Just to
20 finish up one point on that, so there was argument over here
21 regarding the state of fact that there was no evidence that
22 he was aware of any mistake. Our client actually took the
23 stand today or -- I'm sorry.

24 THE COURT: Yesterday.

25 MR. THOMPSON: Long couple days. and testified that he

1 had an appraisal done and he told his father about it and he
2 knew about that shortly thereafter. The appraisal was done
3 in late 2015, I believe was the, around the time that we got
4 that. So just to -- to the -- his point of sort of this
5 ratification argument on the directive verdict, he was aware
6 of a lower value than that 15,000 as of 2015. And that's the
7 creditor's claim. Those documents, we will just, again, we
8 understand you hadn't been through them. just we'll submit
9 to the court that the dates on those are certainly well
10 before that statute of limitations mark that Mr. McGough
11 testified to.

12 THE COURT: All right.

13 MR. LEE: One thing, Your Honor?

14 THE COURT: Yes.

15 MR. LEE: As Mr. Collins testified in regards to his
16 knowledge, that's not a --that's not even referenced in the
17 statute. I mean, the fact that he knew about the mistake, we
18 don't know what Tom Taber told him. We know what Pop told
19 Jackie. We don't know what Tom told him. And I'm not even
20 sure I remember that testimony of the same form. I'm not, I
21 want the court view the record, but nothing that Mr. Collins
22 said -- said, "Well if he's known about it for four years and
23 he didn't change it." He didn't say that. He said that if
24 you have the light bulb moment and you have the mistake and
25 you go to recruitment, that's how the mistake affects. But