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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Common Pleas Case No. 2022-CP-23-01064
Appellate Case No. 2026-000267

John R. Mensch and Shauna M. Waddell
Individually and as Personal Representative
Of the Estate of Florence Petrak Mensch and
John R. Mensch *Respondents,*

v.

Sterling Raymond Mensch, III, Individually
As Personal Representative of the Estate
of Florence Petrak Mensch and in the
former Capacity as Agent under a Power
of Attorney for Florence Petrak Mensch *Appellant.*

RECORD ON APPEAL
VOLUME II

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INDEX

VOLUME I

Orders

Summary Judgment Order, July 29, 2021 1

Appellant's Revised Proposed Order, December 21, 2021 10

Damages Order, January 26, 2022..........20

Order denying Motion to Alter or Amend, February 17, 2022..........34

Order by Circuit Court, April 28, 2022..........35

Order, May 17, 2022..........38

The Order of the South Carolina Supreme from the previous appeal in this case, reversing in part, and remanding in part, dated July 2, 2025..........46

The Remittitur from the South Carolina Supreme from the previous appeal in this case, dated July 18, 2025..........49

Final Formal Order from the Circuit Court in this matter, dated January 5, 2026 57

Pleadings

Summons and Petition, May 15, 2019..........68

Answer, June 24, 2019..........91

First Amended Petition, May 12, 2020..........97

Amended Answer, June 22, 2020 137

Motion of Attorney's Fees and Attorney Fees Affidavit, August 5, 2021 149

Memorandum in opposition of Attorney's Fees, August 17, 2021..........159

Amended Motion of Attorney's Fees and Attorney Fees Affidavit, September 15, 2021 165

Motion to Alter or Amend, February 2, 2022..........179

Notice of Appeal, February 23, 2022..........183

Motion to Dismiss, February 25, 2022 201

Statement / Designation of Issues on Appeal, April 4, 2022 203

Common Pleas Designation of Issues on Appeal, May 4, 2022 207

Notice of Appeal to Court of Appeals, May 27, 2022 210

Notice of Appeal to Common Pleas, February 23, 2023 240

Transcripts

Probate Transcript of August 17, 2021 243

Colloquy Between Court and Counsels 246

John Markel – Examination by Mr. McLeod 266

VOLUME II

Probate Transcript of August 18, 2021 414

Colloquy Between Court and Counsels 417

John Markel – Examination by Mr. Puriefoy 423
John Markel – Examination by Mr. McLeod 477

Shauna Waddell – Examination by Mr. McLeod 508
Shauna Waddell – Examination by Mr. Thomason 563
Shauna Waddell – Examination by the Court 582

Probate Transcript of September 16, 2021 595

Colloquy Between Court and Counsels 598

Mark Chastain – Examination by Mr. Thomason 603
Mark Chastain – Examination by Mr. McLeod 695

VOLUME III

Probate Transcript of September 17, 2021 790

Colloquy Between Court and Counsels 793

Mark Chastain – Examination by Mr. McLeod 796
Mark Chastain – Examination by the Court 859
Mark Chastain – Examination by Mr. McLeod 860
Mark Chastain – Examination by Mr. Thomason....................863
Mark Chastain – Examination by Mr. McLeod 881
Mark Chastain – Examination by the Court 894
Mark Chastain – Examination by Mr. McLeod 900
Mark Chastain – Examination by the Court 901

Summation/Closing Argument by Mr. McLeod 910
Summation/Closing Argument by Mr. Puriefoy....................937
Summation/Closing Argument by Ms. Thomason 970

Transcript of April 27, 2022 995

Transcript of Final Hearing in the Circuit Court in this matter, dated October 16, 2025..........1027

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE) CASE NO. 2018ES2302854

IN THE MATTER OF:

ESTATE OF FLORENCE PETRAK MENSCH

SHAUNA M. WADDELL, individually and as Personal Representative of the Estate of Florence Petrak Mensch, and JOHN R. MENSCH,

PETITIONERS,

STERLING RAYMOND MENSCH, III, individually, as former Personal Representative of the Estate of Florence Petrak Mensch and in his former capacity as Agent under Power of Attorney for Florence Petrak Mensch,

RESPONDENT.

Probate hearing taken in the aforementioned matter was heard before the Honorable Debora A. Faulkner taken before Rachel H. Wood, Court Reporter and Notary Public, at Probate Court, Greenville County Square, 301 University Ridge, Greenville, South Carolina, on the 18th day of August, 2021, commencing at the hour of 9:04 a.m.

REPORTED BY: Rachel H. Wood, Court Reporter
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Erin Callahan, Brandi Larobardiere, Phyllis
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INDEX

Colloquy between The Court and Counsel.................. 4
TESTIMONY OF JOHN MARKEL
EXAMINATION BY MR. PURIEFOY............................. 10
EXAMINATION BY MR. MCLEOD............................... 64
TESTIMONY OF SHAUNA WADDELL
EXAMINATION BY MR. MCLEOD............................... 95
EXAMINATION BY MS. THOMASON.............................150
EXAMINATION BY THE COURT...............................169
Certificate of Reporter................................181

EXHIBITS:

Petitioner's Exhibit Number 21.........................108
Petitioner's Exhibit Number 22.........................109
Petitioner's Exhibit Number 23.........................114
Petitioner's Exhibit Number 24.........................115
Petitioner's Exhibit Number 25.........................119
Petitioner's Exhibit Number 26.........................136
Petitioner's Exhibit Number 27.........................139
Respondent's Exhibit Number 1.......................... 37

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

THE COURT: 9:04:51.7
Are you-all ready to go? Did you survive the tornadoes and the fire?
MR. MCLEOD:
That's what I was going to mention, Your Honor. I know I concluded with Mr. Markel yesterday, but I realized when I went home that he got stopped during that tornado and didn't get to go through his whole spill on GE.
THE COURT:
Uh-huh.
MR. MCLEOD:
So I wanted to give him a chance to finish that up and then I'll be done if that's okay with The Court.
THE COURT:
I don't have a problem with that. Mr. Puriefoy?
MR. PURIEFOY:
I guess I'm confused about what exactly is being requested, Your Honor. I think there was quite a bit of testimony about the GE stock and I had thought we had made it all the way through that and concluded on another issue actually, so we had moved past GE and concluded on another issue.
MR. MCLEOD:
Yeah.

MR. PURIEFOY:
I don't necessarily have an issue with it.
THE COURT:
Right.
MR. PURIEFOY:
But there's some concern he's supposed to be sworn between last night and this morning and hopefully no conversations took place that gave rise to this newly found desire just --
THE COURT:
Right. Right.
MR. PURIEFOY:
-- to continue to testify.
THE COURT:
Well, assuming that is the case. How long do you think you have?
MR. MCLEOD:
I would say 15 -- I mean 15 minutes at the most.
THE COURT:
Okay.
MR. MCLEOD:
Probably less.
THE COURT:
Well, since we had kind of an unusual weather event and it kind of discombobulated things I will go ahead and

allow you to do it. Mr. Markel, if you can step forward, please, sir. And you are already sworn so just have a seat in the witness stand.

MR. PURIEFOY:

And, Your Honor, if I may ask will The Court just inquire as to whether any conversations took place between counsel and Mr. Markel?

MR. MCLEOD:

I was going to say that. Do you want me to wait?

THE COURT:

How are you this morning, Mr. Markel?

THE WITNESS:

Just fine. How you are today?

THE COURT:

I'm fine. Thank you, sir. Please have a seat. Mr. Markel, since you're already sworn and I just want to make sure. Have you discussed your testimony with anyone between yesterday and today?

THE WITNESS:

I -- I actually was the one who noticed that I hadn't finished my testimony and I called Tyler about 8:30 last night and told him that I hadn't finished and that was the extent of the discussion. He said he would ask you this morning if I could finish, so.

MR. MCLEOD:

Yeah, he reminded me last night and he did call me and we didn't discuss anything substantive. He just said that he had not finished it and the tornado warning went off and he was in the middle of it and I didn't realize that. I didn't know he wasn't done at the time and I was like, "Well, I guess you didn't get to the second part because I kind of –- we were in the middle of where I was going through a couple of things. I know Devon objected right before and then the tornado warning went off. So we were kind of right in the middle of it. But if you want we can do it on redirect, too. I'm fine with that if that's what you'd rather do.

MR. PURIEFOY:

So, Your Honor, my primary concern is the fact that the phone call occurred itself. Mr. Markel was –- or Mr. Markel was still under oath and, of course, This Court knows that discussions with your attorney regardless of the nature if it relates in any way to your testimony is impermissible. And so to call Mr. McLeod and indicate that he had not concluded his testimony on that particular issue I believe is problematic. I don't want to be difficult. I don't know the extent to which Mr. Markel intends on doubling back into the GE issue. There was fairly extensive testimony that was given on that yesterday and I would certainly ask for a standing objection relating to anything that either directly or indirectly contradicts any testimony that he's previously given as it relates to that. And I think that's the problem we may run into and I don't want the record to have conflicting testimony on these issues when technically it's under the same line of questioning and that's my concern.

THE COURT:

Mr. McLeod, you said that you think you could handle this on a redirect?

MR. MCLEOD:

I believe so, Your Honor. He's essentially going to go through his Expert Report. He just didn't get to the second half of it.

THE COURT:

Is he just going to read what's in his report about GE; is that it, because the Report and the GE stuff is in; correct?

MR. MCLEOD:

It is.

THE COURT:

So if he's just going to read it it's in.

MR. MCLEOD:

He's going to provide some explanation I would assume.

Can we ask John? I mean he's essentially -- I mean it's his material. He's going to present it.

THE COURT:

Primarily his testimony has been quite a bit of him just taking his Report and reading it. When you point him to a section he reads it.

MR. MCLEOD:

Yeah.

THE COURT:

If the Report is in and this is just going to be him reading it I don't really need him to do that.

MR. MCLEOD:

I can address it on redirect if you want. I'm fine with that.

THE COURT:

Well, you can't unless it's not brought out on cross.

MR. PURIEFOY:

So long as it's within the scope of my cross-examination then I don't have a problem with that.

THE COURT:

Okay. Well, let's just handle it that way.

MR. MCLEOD:

Okay.

THE COURT:

Okay. All right. Mr. Puriefoy.

EXAMINATION BY MR. PURIEFOY: 9:10:07.5

Q. Mr. Markel, my name is Devon Puriefoy. I'm here today on behalf of the Respondent, Sterling Mensch. I know you and I have had an opportunity to meet at least on one occasion, but thank you for being here. I know you were on the stand yesterday for a fairly extended amount of time, so I'm going to try to keep this as short and concise as I possibly can. You were retained by the Petitioners in this case to provide an Expert Report relating to, an objective Expert Report, related to damages that you found related to Ms. Mensch's Estate; is that correct?

A. No, that's not correct. I was engaged to determine the losses. It's up to the Judge to determine damages.

Q. Okay. And so let me rephrase my question. You were retained by the Petitioners to determine the losses to Ms. Mensch's Estate as a result of certain conduct that was alleged by the Petitioners by Mr. Mensch; is that correct?

A. That's correct.

Q. Okay. And would you agree with me that in creating your loss categories there are essentially two buckets that we're dealing with. The first bucket being transfers that were made from Ms. Mensch's account into Mr. Mensch's account. Would that be a fair representation of what went on?

A. That's a fair representation.

Q. And then the second bucket would be the consequences that resulted from those transfers; would that be fair?

MR. MCLEOD:

Your Honor, I'm going to object.

A. No, that's not accurate.

THE COURT:

Hold just a second.

MR. MCLEOD:

I'm going to object to the extent that he's going to get into any offset, because I don't think that any offset or claim against the Estate was raised in the Pleadings.

THE COURT:

Okay. Well, I don't know if that's where he's going yet, so hold that objection until that becomes more evident to me. I think your question was to the witness was he was to determine the loss to the Estate and something about consequences. I forgot.

MR. PURIEFOY:

Yes, Your Honor. So I believe my original question was the review of the losses can essentially be broken down into two buckets and I believe the testimony was the first bucket would certainly be considered the transfers from Ms. Mensch's account into Mr. Mensch's account.

EXAMINATION RESUMED BY MR. PURIEFOY:

Q. Could we agree to that?

A. Yes.

Q. Okay. And then second bucket of losses would be the losses that resulted from either those transfers or Mr. Mensch's failure to act in some way; would that be fair?

A. (Witness pausing.) I wouldn't totally agree with that. My line 1 had to do with what we agreed upon. My lines 2 through 5 and line 7 had to do with things that didn't necessarily have anything to do with the transfers. They did relate to certain things that Sterling Mensch did do or did not do.

Q. Okay. And what you're referring to is your Appendix D that was produced as Exhibit 1 to Petitioners; is that correct?

A. Yes.

Q. Okay. All right. And you also had an opportunity in preparation for the hearing both yesterday and today to review an Expert Report that was created by Mr. Chastain; is that correct?

A. That's correct.

Q. Okay. And you were in the courtroom yesterday I believe when we stipulated to what's -- I'm just going to call it Damage Bucket 1, which was the $820,382.13, which constituted the transfers from Ms. Mensch's account to Mr. Mensch's account. Do you recall that?

A. Right.

Q. Okay. And so would you agree with me that the first task that you engaged -- that you were engaged for, was determining as it relates to the transfers from Ms. Mensch's account to Mr. Mensch's account, what of those transfers constituted a benefit to Ms. Mensch's Estate and what constituted a direct benefit to Mr. Mensch. Would that be a fair representation?

MR. MCLEOD:

Your Honor, objection. I think he's getting into offsets as to the amount going into the account and they're trying to offset that against the damages undergone when the amount went out of his account into her account the damages were established. He owes the Estate for those amounts that are gone. He is attempting to -- to make an argument that those should be offset by amounts that he expended for Ms. Mensch's benefit or amounts that he will argue that -- that Mr. -- that Ms. Mensch's Estate -- or that -- yeah, Ms. Mensch's Estate owes Sterling. It's a basically a claim against the Estate and it's a claim for offset.

MR. PURIEFOY:

Your Honor first off I would disagree. The case that Mr. McLeod is referencing is an unreported case set on the very front page said this serves no precedential value and shall not be relied upon. That is the offset case the Mr. McLeod submitted as part of his Motion in Limine. But perhaps more importantly we're not seeking offset. Inherently offset is when we are claiming some sort of a damage owed back to us to be offset against a damage that is claimed to be owed to the moving party. That is certainly not what we're doing. In fact, what we're doing is exactly what The Court has ordered on three separate occasions, which is delineate for The Court of the transfers that were made which were made for the benefit of Ms. Mensch, because if they were for the benefit of Ms. Mensch Mr. Mensch has certainly not violated his fiduciary duty as related to those particular transfers. It's everything else that is left over that we admit there will be some damage amount in this case. The question is how much of the transfers were wrongful and how much were permitted. That's not an offset. It's simply required under the statute that Mr. McLeod has plead which is there has been a demonstration of a breach, but the Damages Hearing serves to demonstrate what the extent of those damages are. Not that we are claiming that we are entitled to some damage figure from the Estate or any of the Petitioners. It's simply what constitutes a wrongful transfer and if it was not wrongful it does not fall within the category of liability that's been established as it relates to the fiduciary.

THE COURT:

The decisions about what –- first of all, what the damages are to the Estate or what the losses are to the Estate are ultimately going to be the decision of The Court. Whether or not anybody –- whether or not your client gets the benefit of an offset is up to The Court. The question that you're asking the witness is I believe what you're trying to show is that some of the transfers he made he actually used that money in his –- he argues for the benefit of Ms. Mensch. And at the end of this case you're going to want him to be given a credit or something to show that those transfers were legitimate under the Power of Attorney or as the PR of the Estate and he should be given consideration for those amounts. And that is something I have to determine. Clearly you can ask about that, but I'm not saying if you're asking about that that he's getting any of that. And I'm not saying that he's entitled to an offset. We haven't gotten into the argument about the case law, but if Mr. McLeod is –- I think that at the end of this case you argue before –- at your closing he's not entitled to an offset. He didn't plead it. It's just like if that's what we were going to argue but right now I think what we're trying to do is cross-examine this witness to see if he has determined his findings as a loss to the Estate of Ms. Mensch, which is my job and he's the expert, and what is the loss to her. He's already testified that he believes that her Estate lost an enormous amount of rent, which you objected to and because it wasn't plead and it wasn't a specific amount and nothing over 13 years was ever done about that I made a ruling on it. But in his mind the rent is an enormous part of the damages that the Estate has lost. So my ruling is, Mr. McLeod, I'm going to let him ask these questions. I'm going to note your objection on offset. I'm not saying he's entitled to an offset, but he's on cross-examination and I think what his job is now is to push –- or not push, but to examine the witness as to how he came up with his figures, how he arrived at whatever losses he's tallied up on his exhibit and that's pretty much it. If he goes into, "Did you find that some of the transfers were mortgage payments?" He's already said he did. It doesn't mean he's going to get credit payments. I mean in my mind I'm very concerned about how he managed this whole transaction. I don't know why he didn't make mortgage payments out of Ms. Mensch's account. Why did he have to transfer it to his account and then make it? That makes no sense to me. If you're Power of Attorney you pay it out of her account. Why did he convert it to his own single-owner account? Under banking law it becomes his account. If he would have died during this time all that money would have gone into his Estate. So that –– this –– the way this was handled and all of that is what Mr. Puriefoy is trying to figure out from this witness on how he arrived at all these figures and at his totals on his exhibits, so I'm going to overrule your objection.

MR. MCLEOD:

Can you note my standing objection so I don't have to object every time?

THE COURT:

Yes, I will note your standing objection.

MR. MCLEOD:

All right. Thank you, Your Honor.

THE COURT:

Thank you. All right. You may proceed.

MR. PURIEFOY:

Thank you, Your Honor.
EXAMINATION RESUMED BY MR. PURIEFOY:
Q. All right. Mr. Markel, I'll reask my last question. Maybe I can frame it a little bit better.
A. Okay.
Q. Were you tasked, was one of your task at least to determine based on the transfers from Ms. Mensch's account to Mr. Mensch's account what of those transfers were in fact for Ms. Mensch's benefit?
A. That was not part of my task.
Q. Were you tasked with determining the losses associated with those transfers or if there was a loss associated with the transfer itself were you tasked with determining what that loss was?
A. My -- my program for my work was not that specific. I was -- I made a lot of these decisions myself. I was engaged to examine these bank statements and come to my own conclusions --
Q. Okay.
A. -- about them.
Q. And based on your examination of those bank statements did you come to a conclusion as it related to the loss to Ms. Mensch's Estate related to the transfers that were made by Mr. Mensch from her account into his?
A. Referring back to Row 1 of my Report I included that in

my losses. All -- all 239 of those transfers from Florence's account to Sterling's account I considered to be losses.

Q. Okay. And I'm going to have you refer back to what's already been entered in evidence as Petitioner's Exhibit 3.

MR. PURIEFOY:

Your Honor, does the witness have access to the exhibits that were previously presented yesterday?

THE COURT:

Yes. Which exhibit would you like?

MR. PURIEFOY:

Exhibit 3, Your Honor, which was that large notebook.

THE COURT:

Yes. I'm right behind you. Okay. There you go. Thank you.

EXAMINATION RESUMED BY MR. PURIEFOY:

Q. All right. Mr. Markel, you've just been handed what was marked yesterday as Petitioner's Exhibit 3. Do you recognize that exhibit?

A. I remember, yes.

Q. Okay. And that was the exhibit that had the key at the front where Mr. Mensch indicated items that he believed were used for Ms. Mensch's benefit; is that correct?

A. There was a key. Yes.

Q. And that key, it was a purple one and a yellow key; is that correct?
A. That's correct.
Q. And one of them, and forgive me I don't have the key in front of me, but one of them indicated monies that were expended for Ms. Mensch's care?
A. That was the purple highlights.
Q. And then the yellow was expenditures made for Ms. Mensch's home I believe?
A. Yes.
Q. Okay. All right. And I'm not going to have you go line by line through that at all, but the transfers that were contained in that exhibit was that also included in the $820,000 figure that's been stipulated to?
A. No, because everything on Row Number 1, all 239 line items, were solely transfers from Florence's account to Sterling's account. There were no -- that's all they are. Just transfers from one account to the other in one direction.
Q. Sure. And the purpose I believe of Exhibit 3 was Mr. Mensch indicating what he contended were benefits to Ms. Mensch; is that fair?
A. That's probably a fair assessment. Yes.
Q. Okay. And you did not give any credit to that and I

believe your testimony yesterday was that there was no evidence to support that position; is that correct?

A. No, that's not true. I did on –- I'd have to point out the specific line item, I did allow for some expenditures between 3 and $4,000 for Ms. Mensch's care where there was obvious -- very obviously were spent for her care. My problem with the other expenditures were that there was no substantiation of what was purchased or what it was for. And they were expenditures to retailers that sell all kinds of merchandise, which could have been for her benefit or clearly not. And I didn't want to speculate about that.

Q. And I certainly understand, Mr. Markel. I guess the more important question is do you understand Exhibit 3 to have been produced in this case in an effort by Mr. Mensch to demonstrate what he believed to be purchases for Ms. Mensch's benefit whether you agree with them or not?

A. Yes, that's a fair characterization.

Q. Okay. And in addition to those documents that were produced as part of Petitioner's Exhibit 3 you also had an opportunity to review Mr. Chastain's Report as well?

A. That's correct.

Q. And in that Report he also –-

MR. MCLEOD:
Objection. I object to the Report because that goes into the offset extensively and that's basically what it is is trying to seek an offset so I note my objection to the Report.
THE COURT:
That's a standing objection, Mr. McLeod.
MR. MCLEOD:
Thank you, Your Honor.
EXAMINATION RESUMED BY MR. PURIEFOY:
Q. And, Mr. Markel, the question I believe was you had an opportunity to review the Report that was produced by Mr. Chastain in this case?
A. Yes, I did.
Q. And in that Report he too noted what he believed to be transfers for the benefit of Ms. Mensch; is that correct?
A. No, not transfers for Ms. Mensch. He –– as I recall he laid out a number of expenditures made out of Sterling's account that Sterling alleges were for Ms. Mensch's real estate or for her personal care.
Q. Okay. You had an opportunity to review that Report and see what he indicated was for mortgage payments and her personal care; correct?
A. Yes, among other things.

Q. Okay. And you had an opportunity to review both Petitioner's Exhibit 3 as well as Mr. Chastain's Report before the creation of your 2nd Amended Expert Report dated August 16th of this year; correct?
A. Yes, I did.
Q. Okay. All right. I'm going to have you look at what was marked yesterday as Petitioner's Exhibit 2.
MR. PURIEFOY:
Your Honor, that was the GE account.
THE COURT:
Okay. Mr. Markel, I'm going to slide it to you.
EXAMINATION RESUMED BY MR. PURIEFOY:
Q. Mr. Markel, do you recall being questioned about Petitioner's Exhibit 2 yesterday?
A. Can you restate that?
Q. Do you recall Mr. McLeod questioning you about Petitioner's Exhibit 2 yesterday during your direct examination?
A. Yes.
Q. Okay. And so if we look at the first page of Petitioner's Exhibit 2 this is a GE Mutual Fund Statement; is that correct?
A. That's correct.
Q. And if you look at the top right-hand corner it says for the period of January 1st, 2015 through December

31st, 2015?

A. That's correct.

Q. Okay. And if we look at the second page of Petitioner's Exhibit 2 this is a State Street Global Advisors Investment Statement?

A. Yes.

Q. And that runs for the period of January 1st, 2016 to December 30th, 2016?

A. That's correct.

Q. And then the third page appears to be a UBS Retirement Account Statement?

A. Yes.

Q. And this is dated November 2016 through December 2016?

A. That's correct.

Q. And so if we go back to the first page of Petitioner's Exhibit 2 at the top under Portfolio it appears that a portion of this, this GE account consisted of General Electric stock; is that correct?

A. That's correct.

Q. And then if you go down a little bit further it also indicates that part of this GE account was also three Elfun Mutual Funds I believe or Trust Funds?

A. They were Elfun Trusts. That's the name of the mutual fund shares; yes.

Q. Okay. And do you recall that there were three separate

accounts related to those Elfun Trusts?
A. Well, now on the first page of this Exhibit 2 it does not indicate that. I think on the second page the next year was State Street. It does indicate that.
Q. Well, my question to you, and we're going to get to page 2 here in just a moment, but as you sit here today do you recall based on your review of the documents in this case whether GE held three Elfun Trusts accounts at some period of time?
A. That appears to be correct, yes.
Q. Okay. And so if we look on page 2 of Petitioner's 2 this is the State Street Global Advisors Statement?
A. Yes.
Q. And are you aware that at some point the GE account was rolled over into one or multiple different accounts I believe in 2016?
A. During 2016 the GE stock was transferred to the UBS account.
Q. Well, you would agree that the GE account held Elfun Trusts Mutual Fund; correct?
A. (Witness reviewing exhibit.)
Q. If you look on the first page of Petitioner's 2.
A. The organization called GE Mutual Funds held that.
Q. Correct.
A. Were the custodian for those funds, yes.

Q. And you're referring to the Elfun Trust Funds?
A. Elfun. It's a little confusing. The name of the mutual fund is Elfun Trust Mutual Fund. It's not really a trust in a legal sense.
Q. Sure. So for ease of reference I'll just call it the Elfun Mutual Fund; is that okay?
A. Yes.
Q. Okay. So on the first page of Petitioner's Exhibit 2 you do notice that in the GE account there was an Elfun Mutual Fund?
A. Yes.
Q. Okay. And then on page 2 of Petitioner's 2, which is this State Street Global Advisors, do you see that at the bottom of that page there are also three Elfun Mutual Funds?
A. Right. It looks like also sometime during 2076 (sic) that the Elfun Mutual Funds were transferred to State Street Global Advisors.
Q. Correct.
A. Just like the GE stock was transferred to UBS for them to act as custodian.
Q. And is today the first time that you realized that there appears to be a transfer from the GE account to State Street Global Advisors related to that Elfun Mutual Fund or had you previously noted that?

A. I noted that it is pretty obvious.
Q. Okay.
A. They're two different organizations.
Q. And so is it your understanding that that Elfun Mutual Fund was transferred from the GE account to State Street Global Advisors?
A. That's –- yes. And that's what this statement says.
Q. I agree with you. And so if we can go over to page three of Petitioner's 2. This is the UBS Retirement Account; correct?
A. Yes.
Q. And being held in this UBS Retirement Account do you see that GE stock is being held in this account?
A. Yes.
Q. So you would agree with me that from the General Electric Fund the Elfun Mutual Fund was transferred to State Street Global Advisors; correct?
A. Yes.
Q. And the stock, the GE stock, was transferred to UBS; is that correct?
A. Right. And sometime during the year the number of shares decreased. They must have been sold.
Q. Sure.
A. During the year 2016. Because they decreased from 33,448 shares to 28,472 shares.

Q. Sure. And thank you for that. How far back did your review go of the General Electric Mutual Fund? What year did you begin your review of that fund?
A. I don't remember.
Q. Okay. Well, would you agree with me that between the State Street Global Advisors account and the UBS account those two accounts were holding the same types of assets that were being held in the GE Mutual Fund?
A. Yes.
Q. Okay. And I think you testified yesterday that you do not know the origins of the creation of that GE Mutual Fund or how that fund came to be?
A. No, I don't have any personal knowledge of that.
Q. All right. And I believe yesterday, Mr. Markel, you testified that you were familiar with the concept of diversification. Is that a fair representation?
A. That's correct.
Q. Okay. And part of your loss calculation was your determination that Mr. Mensch failed to diversify these funds; is that correct?
A. That's correct.
Q. And that total amount was $400,000 I believe that you noted in your appendix to your Report?
A. That's correct.
Q. Okay. And so I believe you also testified that in

order to demonstrate -- let me rephrase the question. I believe you testified yesterday that it was your belief that Mr. Mensch breached his fiduciary duty by failing to diversify that fund; is that fair?
A. Yes.
Q. Okay.
A. That's what I believe.
Q. All right. Well, let me ask. Mr. Markel, what independent research did you do to determine the manner in which the UBS account specifically was managed?
A. I don't understand the question.
Q. Did you engage in any independent investigation to determine what type of account this UBS account was?
A. No, I did not.
Q. Did you engage in any investigation to determine whether this was a self-directed account; meaning at the direction of Mr. Mensch?
A. No, that wasn't -- that really wasn't even relevant to me. The fact was that it was undiversified and it should have been fixed. And it's really irrelevant -- what's really irrelevant to me in my work what sort of fund it was. It was just very clearly obviously undiversified and so in my opinion Sterling Mensch had a fiduciary obligation to diversify that account however he might accomplish it.

Q. Okay. And we're going to get back to that in just a moment. So let me ask this question. Do you have any personal knowledge as to whether counsel for Petitioners engaged in any independent investigation to determine what type of account this was? Do you have any personal knowledge?
A. No, I don't.
Q. Do you have any personal knowledge as to whether the Petitioners themselves engaged in any independent investigation to determine what type of account this UBS account was?
A. I'm not aware of anything like that.
Q. And I believe you testified just a moment ago that it was your opinion that Mr. Mensch violated his fiduciary duty by failing to diversify; is that correct?
A. That's correct.
Q. Doesn't that necessarily assume that Mr. Mensch had the authority to diversify it?
A. No, I don't believe so. I believe -- I believe that he should have taken -- at the one end of the scale that he should taken all available steps to accomplish the diversification whatever it took. And at first blush he might not have that authority, but I assume, I made the assumption in coming to that conclusion that he could have obtained through a ruling by the Probate

Court or whatever find a way to diversify that account because it was egregiously undiversified.
Q. And let me ask this: if it was determined that Mr. Mensch didn't have the authority to diversify that account is it still your position that he breached his fiduciary duty?
A. If he jumped over all the hurdles in his way to diversify that retirement account and he through diligent effort failed to –- there was just no legal recourse for him doing that then, yes, I suppose that would absolve him.
Q. Okay.
A. But short of that, no.
Q. Okay. And you've testified a number of times now that it is your opinion that he did in fact breach his fiduciary duty; correct?
A. Yes, that's my opinion.
Q. And what lengths did you go to determine for purposes of creating your Report what lengths Mr. Mensch went to attempt to diversify?
A. I did not. That wasn't part of my analysis.
Q. And so again your analysis assumes that Mr. Mensch had the authority to act, or if he didn't have the authority to act, did everything possible to attempt to diversity; is that fair?

A. I'll add one other thing. I've read some of the Responses to Interrogatories --
Q. Mr. Markel, I'm not --
A. Let me finish, please.
THE COURT:
Mr. Markel, please answer his question and then you can explain it.
THE WITNESS:
This is part of my answer. I can't make a complete answer without adding this part.
A. I read the Interrogatories and Mr. Mensch his explanation of why he couldn't diversify this account and he made many attempts to do so in my opinion sounded totally lame.
Q. And what independent investigation did you conduct to determine that it was totally lame?
A. I did not. Just from -- from my 40 years of professional experience it just didn't make any sense to me.
Q. Okay. And, again, it is contained in your Expert Report there was $400,000 attributed to that failure to diversify?
A. That's the figure I came up with, yes.
Q. All right. All right. If we can go to Appendix E of your Report, Mr. Markel.

MR. PURIEFOY:
And I believe was that entered, Your Honor, as Petitioner's Exhibit 1.
THE COURT:
Right. And do you have that, Mr. Markel?
THE WITNESS:
I have it in my notebook, yes.
THE COURT:
I've got one copy here of it. Let me see.
THE WITNESS:
Well, I have it here.
THE COURT:
Okay.
EXAMINATION RESUMED BY MR. PURIEFOY:
A Can you tell me again what we're referring to?
Q. Oh, sure. If we can go Appendix E.
A. Okay.
Q. And I believe at the top of Appendix E of your Report it indicates that these were the unexplained outgoing cash transfers for the benefit of Sterling Mensch, do you see that?
A. Yes.
Q. Okay. The accounts that are referenced in Appendix E appear to be accounts ending 7059 and 2007, or 2-0-0-7; is that correct?

A. That's correct. Those were the two Bank of America accounts in the name of Florence Mensch.
Q. Okay. And what types of accounts were account 7059 and 2007?
A. 7059 was a checking account. Account 2007 was a savings account.
Q. And did you as part of your Report, did you do an analysis on the interest that that money would have gained or would have accrued had those transfers not taken place?
A. No, I did not.
Q. Okay. As part of your Report did you do an analysis of interest on any account that was owned by Ms. Mensch?
A. No, I did not.
Q. Okay. And if we could go to Appendix F of your Report in Petitioner's Exhibit 1. Are you there?
A. Yes.
Q. You beat me there, so. Okay. And so forgive me for this line of questioning. I am no tax expert but hopefully you can follow me. I will make it as clear as I possibly can. Appendix F to your Report, Mr. Markel, is titled "Avoidable Income Tax On Retirement Plan Distribution in Excess of Required Minimum Distribution." Do you see that?
A. Yes.

Q. Okay. And so the amount of $163,420 that was included in your Appendix D to your Report; is that correct?
A. That's correct.
Q. And that was included in the losses that you stated in your Report were suffered by Ms. Mensch's Estate?
A. That's correct.
Q. All right. And I would assume that the reason why these losses were attributed to Mr. Mensch's conduct is because he was responsible for making those withdrawals?
A. Yes.
Q. Okay. So let me ask you a couple of questions about this. First, I want to make sure that I understand how you arrived at these figures that are under the second tab, which is titled "Avoidable Income Tax on Actual Retirement Plan Distribution in Excess of Required Minimum Distribution," do you see that tab?
A. I'm not following you.
Q. I'm calling it a tab. It's --
MR. PURIEFOY:
And if I may approach, Your Honor, for just a moment to point him in the right direction.
THE COURT:
Yes, you may.
Q. I'm referring to this column.

A. Okay. The second column.
Q. Yes, the second column. And to make sure that I have a firm understanding as to how these figures were arrived at I want to make sure I understand the formula. In arriving at these particular numbers for 2011, '12, '15, '16 and '18 is it fair to say that you took for that particular year the transfers from Ms. Mensch's account to Mr. Mensch's account, the Respondent's account, subtracted out the annual required distribution and multiplied it by the tax rate?
A. Yes.
Q. Okay. I just wanted to make sure I had a clear understanding as to how these numbers were arrived at. And you allocated of the losses to Ms. Mensch's account $163,420 to Mr. Mensch's conduct?
A. Yes, his failure to –- to keep the distributions at the required minimum distribution level.
MR. PURIEFOY:
And, Your Honor, I'm going to show opposing counsel what's already been in evidence but it's going to be marked as Respondent's Exhibit 1.
THE COURT:
Okay. Thank you.
Q. All right. Mr. Markel, if you could look through what I'm going to mark as Respondent's Exhibit 1. I'll

represent to you that these are bank statements that you would have reviewed as part of your investigation, but I'll give you a moment to look at that.

MR. MCLEOD:

Your Honor, could I just state something. Not an objection, but can we just make clear that we're referring to Sterling Mensch every time we say Mr. Mensch because there's also John Mensch? I just want to make that clear throughout the record.

THE COURT:

Okay. All right. And this exhibit, is this -- you've agreed to enter this as Respondent's Number 1.

MR. PURIEFOY:

The content of the exhibit was stipulated to.

THE COURT:

Okay.

MR. PURIEFOY:

Yes, Your Honor.

(Introduction of previously marked document Bank Account Statements as Respondent's Exhibit Number 1.)

EXAMINATION RESUMED BY MR. PURIEFOY:

Q. And, Mr. Markel, the documents that I've given you that are marked as Respondent's Exhibit 1 these are bank accounts and I believe you had an opportunity to review

these in advance of today's hearing?
A. I haven't seen this exhibit, but, yes, I'm quite familiar with the bank statements.
Q. Okay. So what I want to have you do if we can look at the second page of Respondent's Exhibit 1. Actually, excuse me, the third page of Respondent's Exhibit 1. Do you see under Deposits and Other Additions a wire that was made in the amount of $90,593.80?
A. What page is this on?
Q. This is page 3.
A. Yes, I see that.
Q. Okay. And what date was that wire made on?
A. December 29, 2014.
Q. Okay. And if you flip to page 4 of Respondent's Exhibit 1 --
A. Yes.
Q. -- under the column marked Checks.
A. Yes.
Q. Do you note that there are six checks that were made out totaling $60,000 in December of 2014?
A. Yes.
Q. Okay. There was a check for 10,000 on December 30th, two on December 26, and two on December 31st?
A. Yes.
Q. Okay. And the total of those checks was $60,000?

A. Yes.
Q. And if you go to page 9 of Respondent's Exhibit 1. I believe it should say page 9 on the bottom right-hand corner. I think you've gone too far.
A. No, I don't see a page 9.
Q. It skips to page 9. On the bottom right-hand corner you were previously looking at page 4 and then from 4 to goes to 5 and from 5 it goes to 9.
A. Okay.
Q. Okay.
A. I see that.
Q. All right. So on what's labeled page 9 of 10 on Respondent's Exhibit 1 do you note the six checks that we had just made mention to a moment ago?
A. Yes, these appear to be by the check numbers the same, the same as the listing on page 4 of 10.
Q. And let's just go through these checks. There's one check made out to Shea Mensch. Do you see that?
A. Yes.
Q. There's another check that's made out to Shauna Waddell?
A. Yes.
Q. And the check amount made out to Ms. Waddell is $10,000?
A. Yes.

Q. There's a check made out to Steve Waddell in the amount of $10,000?
A. Yes.
Q. There's a check made out to John Mensch in the amount of $10,000?
A. That's correct.
Q. There's a check made out to Holly Mensch in the amount of $10,000?
A. That's correct.
Q. And there's a check made out to Sterling Mensch in the amount of $10,000?
A. That's correct.
Q. And what's noted in the memo line of each one of those checks?
A. Gifts.
Q. Okay. So do you understand that these were gifts that were written by Mr. Mensch to two of the Petitioners at least in this case?
A. Well, they're just from Florence Mensch to -- they're written on Florence's account.
Q. Correct. So let me rephrase the question. Do you agree that there were checks written out of Ms. Mensch's account that went to the Petitioners and their respective spouses?
A. Yes.

Q. Okay. And if we go back to page -- what's marked, it's going to say 3 of 10, and it actually is page 3 in Respondent's Exhibit 1. Under Deposits and Other Additions.
A. Yes.
Q. The total transfer was $90,593. Do you see that?
A. Yes.
Q. And where did those funds come from?
A. From GE Mutual Funds.
Q. Okay. So of the $90,000 that was transferred $60,000 of that went to the Respondent and the Petitioners as gifts; correct?
A. That's correct. But how did -- how did Sterling manage to --
Q. Well, unfortunately --
A. -- get these shares out of the GE Mutual Fund Account?
Q. Unfortunately, Mr. Markel, I have the opportunity to question you and my question was does it appear to you that of the 90,000, $60,000 of that were paid to the Respondent and the Petitioners as gifts?
A. Well, it went in -- it went into the account. And once it -- once these $90,593.80 went into Ms. Mensch's account, and it actually went in the same day as some of these checks, it lost its identify. It became commingle with the other dollars in her account.

Q. My question is, Mr. Markel, of the $90,593.80 that went into Ms. Mensch's account would you agree that $60,000 came out as gifts that were paid to the Respondent and to the Petitioners?
A. Yes, I can agree to that.
Q. Okay. So if we go to page, I believe it is 9 and that page says December 2015.
A. Can you restate that question, please?
Q. Sure. So I believe you're looking at the bottom right-hand corner. Does it say page 9 of 10?
A. Yes.
Q. Okay. And so if you go two pages pass that you should see a cover page that says December 2015?
A. That's on the third page past.
Q. It's the third page. I apologize.
A. Yes, I see that.
Q. Okay. And then on the -- if you flip two pages and at the bottom of the right-hand corner it will say page 3 of 10 and it will be under Deposits and Other Additions.
A. Yes.
Q. Okay. And do you see a wire on December 9th of 2015 in the amount of $99,681.52?
A. Yes.
Q. Okay. And where did that wire come from?

A. It came from the GE Mutual Fund Account.
Q. Okay. And if you go to the next page, which is marked 4 of 10 at the bottom, do you see five checks that were written, two in the amount of $14,000 and three in the amount of $10,000?
A. I see that.
Q. Okay. And that totaled $58,000?
A. Yes.
Q. Okay. And just for purposes of clarity on the record there was two $14,000 transfers on December 15th? Or excuse me checks. There were two $14,000 checks that were written on December 14th of 2015, do you see that?
A. Yes.
Q. There was a $10,000 check that was written on December 21st of '15?
A. Well, cleared the bank on that day.
Q. Right. And then there were two checks that cleared the bank on December 23rd of '15; is that correct?
A. Yes.
Q. Okay. And, again, that was for a total $58,000?
A. That's correct.
Q. All right. And if you would go -- if you would flip two pages pass that to page 7 of 10.
A. Yes.
Q. And do you note that there are five checks that were

written?
A. I see that.
Q. Okay. And one of those checks was written to Shauna Waddell?
A. That's correct.
Q. And one was written to Stephen Waddell?
A. That's correct.
Q. And one was written to John Mensch?
A. That's correct.
Q. One was written to Holly Mensch?
A. That's correct.
Q. And there was one written to Shea Mensch?
A. That's correct.
Q. And in the memo lines can you tell me what they say?
A. It says 2015.
Q. Do you know if these were gifts that were written out of Ms. Mensch's account to the Respondent and the Petitioner? Petitioners, excuse me, and their spouses?
A. I don't -- I don't know that as a fact. However, they were written at the end of the year. They are close to the amount of the annual exclusion allowed by the IRS so I think it's a fair assumption to say that they are gifts.
Q. Okay. And if you flip two pages -- excuse me, three pages. Yeah, three pages in Respondent's Exhibit 1 do

you see where it says Deposits and Other Additions?
A. Yes.
Q. Okay. And this would have been for the year 2016?
A. Yes.
Q. Okay. And on December 22nd, 2016 do you see a wire in the amount of $99,522.25?
A. Yes.
Q. Okay. And where did that come from?
A. US Bank NA.
Q. Okay. And do you see under checks that there were five checks written?
A. Yes.
Q. Totaling $70,000?
A. Yes.
Q. And just for the purpose of clarity again on the record one of those checks cleared on December 30th of 2016. Do you see that?
A. Yes.
Q. Two checks cleared on December 27th of 2016?
A. That's correct.
Q. And two checks cleared on December 28th of 2016?
A. That's correct.
Q. And, again, those checks totaled $70,000?
A. Yes.
Q. Okay. And if you'd go to the next page.

A. Yes, I'm there.
Q. Okay. And do you see the five checks that were made or the five checks that were written?
A. Yes.
Q. Okay. And do you see that one of the checks was made out to Shea Mensch?
A. Yes.
Q. Do you see a check was made out to Shauna Waddell?
A. Yes.
Q. Do you see a check was made out to Steve Waddell?
A. Yes.
Q. Do you see a check was made out to John Mensch?
A. Yes.
Q. And do you see a check was made out to Holly Mensch?
A. Yes.
Q. And in the memo line of each one of those checks what does it say?
A. Gift.
Q. Okay. So we've gone through in Respondent's Exhibit 1 three years between 2014 and '16 where checks were written out of Ms. Mensch's account to Respondent and Petitioners, would you agree with that?
A. Yes.
Q. Okay. Was that figure included anywhere in your $280,000 stipulated figure? Or excuse me $820,000

stipulated figure?
A. No, they were not because they weren't transfers from -- from Florence's account to Sterling's account. That's all that's in the 820,000.
Q. Correct. And so if we go back to Appendix F of your Report, which was Petitioner's Exhibit 1. Do you have that?
A. Yes.
Q. Okay. So Appendix F. I believe you indicated that the formula that you used to come up with this total $163,000 figure was to take the transfers from the IRA and subtract them from -- for that particular year. You took the total transfers for that year, subtracted the required minimum distribution and multiplied it by the tax rate; correct?
A. By the difference, yes.
Q. Right. And so what I would submit to you is did you -- in your Report did you do a calculation for the total amount of the gifts that were transferred from Ms. Mensch's account to the Respondent and the Petitioners?
A. No, I did not analyze that.
Q. Okay. And I would submit to you, and if you would like to do the math you certainly can, but I would submit that that total is $228,000 in gifts between 2014 and 2016.

A. Okay. But that really irrelevant to my scope and focus of my analysis because if this had been handled properly the required minimum distributions would be limited to that figure and the gifts made should have been less.
Q. Well, then let me ask you this question, Mr. Markel. You were retained to review these records in an objective manner; correct?
A. Yes.
Q. And so does it not lead to the question of subjectivity if you believe that you were analyzing these documents based on what you thought should have been done?
A. I'm not sure how to answer that. Can you restate it?
Q. Well, my question is very simple. Under Appendix F of your Report you note in 2011 that there was an avoidable income tax associated with distributions in excess of the required minimum distribution in the amount of $330. Do you see that?
A. Yes.
Q. Okay. My question is as you sit here today are you aware that the total amount of transfers that came from the IRA totaled $228,000? Was that number in your Report?
A. No. And, again, it wasn't really relevant. It wasn't relevant because the amount of the gifts if this had

been managed properly should have been adjusted down to the required minimum distribution amount and all this amounts to is one more error by Sterling Mensch that I didn't pick up on.

Q. Okay. Well, let me ask this: the $228,000 in gifts would that have been captured anywhere on Appendix F?

A. No.

Q. Okay. So in creating your Appendix F you did not take into consideration the transfers out of the GE account that totaled $228,000 or these gifts that totaled $228,000?

A. No, I did not consider that.

Q. Okay. Is there any reason why you didn't consider that?

A. It wasn't relevant. As I've stated already a couple of times.

Q. Well, can you explain to The Court in September 8 of 2011 the avoidable income tax on actual retirement distributions in excess of the required minimum distribution what number did you use as the distribution amount to determine that there was an avoidable tax of $330?

A. I'd have to look at my work papers.

Q. And if you have your Report, and I believe you do, if you could refer to that.

A. It's not in my Report. It's not -- my Report is not at that level of detail.
Q. Well, I believe for purposes of this hearing it's important that we get to that level of detail.
A. Okay. Well, I have to look that up.
Q. Is that something that you have at your disposal?
A. No, it will take me a few minutes to find it.
MR. PURIEFOY:
Your Honor, could we take a brief intermission?
THE COURT:
Yes, we will be in recess for 15 minutes. We will start back at 10:25.
Off the Record 10:07:04.4
On the Record 10:25:03.6
THE COURT:
Thank you. Please be seated. Okay. We'll go back on the record and we'll continue with cross-examination of Mr. Markel.
EXAMINATION RESUMED BY MR. PURIEFOY:
Q. Mr. Markel, before we took a break I think I was asking if you could get the documentation to help you assist me on how you came up with the numbers in column 2 related to Appendix F. And have you had an opportunity to retrieve those figures?
A. Yes.

Q. Okay. So let's just start with the years that I was specifically referring and questioned you about as related to the gifts. So there was gifts that were made in 2015. Do you recall that?
A. Yes.
Q. Okay. And I believe in 2015 there was a total gift amount in the amount of $58,000 pursuant to Respondent's Exhibit 1?
A. Yes.
Q. Okay. So if you could for the year 2015 you noted avoidable income tax on actual retirement plan distributions in excess of required minimum distribution in the amount of $26,002; is that correct?
A. That's right.
Q. Okay. And you attributed 100 percent of those avoidable income taxes to Mr. Mensch?
A. Yeah, they were included in my losses, yes.
Q. But you contributed 100 percent of those losses to Mr. Mensch; is that correct?
A. I don't -- I'm not following what you're --
Q. To the extent that there was an avoidable income tax for 2015 who would have been responsible for that loss to the Estate, to the value of the Estate?
A. Sterling Mensch.
Q. Okay. And you did not know that anyone else was

responsible for that avoidable income tax for the year 2015; correct?
A. Right. He was the person in charge.
Q. Okay. So could you tell me how you came up with $26,002 for the avoidable income tax amount in 2015?
A. Okay. For 2015 there was -- after I went through the computation there was $78,099 in distributions in excess of the required minimum distribution and I multiplied that figure times the state and federal blended tax rate of .3304 which yields $26,002 which is the figure I have in column 2 for year 2015.
Q. Okay. And in 2015 can you tell me what the RMD was?
A. No, I don't have that here.
Q. So you don't have that information to present to The Court?
A. I didn't bring it with me. I have it back in my office, but I don't --
Q. But for purposes of this line of questioning you don't have with you the information to tell me what the requirement minimum distribution was for the year 2015?
A. No.
Q. Okay. And do you have any information with you that tells me what the $78,099 consisted of that you claim was in excess to the RMD?
A. Okay. In 2016 I went through the computation.

Q. 2015, Mr. Markel.
A. Okay. Could you restate the question? I'm sorry I got confused.
Q. Sure. No problem. In 2015 I believe that you've indicated that there was $78,099 in excess of the requirement minimum distribution for 2015; is that correct?
A. No, that's for 2016.
Q. Okay. Let's start with 2015. Can you tell me what number --
A. We already did 2015. That was the $26,002.
Q. Mr. Markel, but I'm still referring to that.
A. Okay.
Q. So just to make sure I understand in 2015 is it your testimony that the excess over the required minimum distribution is $78,099?
A. 78,699.
Q. 699. Okay. And you don't have for purposes of this examination what the RMD was for 2015?
A. No, I have it, but not here.
Q. Is that contained anywhere in your Report?
A. No.
Q. Okay. And so in 2015 can you tell me what transfers constituted the $68,699 over -- $68,699 --
MS. THOMASON:

$78,699.

Q. -- or I'm sorry, $78,699 over the 2015 RMD?

A. I'm sorry. Can you restate the question?

Q. Absolutely. Absolutely. Do you know what transactions you considered to be a part of the $78,699 that was in excess to the RMD?

A. I mean there would have been distributions out of the retirement account, but I don't have that information here, so.

Q. Well, let me ask you --

A. So the excess -- all I've got there is what the excess was, which was $78,699.

Q. And so if we go back to your 2015 in Respondent's Exhibit 1, and I can just hand it to you so you don't have to flip through it if it would help. This is 2015 and do you note a transfer from the General Electric account for year 2015?

A. Right. I mean there was a transfer on December 9th, 2015 of $99,681.52.

Q. Okay. And as we sit here today do you know whether or not that $99,000 was included in your calculation under Appendix F?

A. It should have been, but I didn't -- for that particular computation I went by the individual tax returns for that year where it listed distributions

from IRAs. That's what I used. I didn't trace those amounts to -- back to the bank statements.
Q. And did you note the -- that notation in those tax returns in your Report?
A. Say that again.
Q. Did you note the transfers notations that would have been included on the tax returns in your Report?
A. No, I just stated them. No, I did not.
Q. Okay. So let's go to 2016. Can you tell me what number you used to come up with the $78,670 that you claim in avoidable income tax for 2016?
A. Okay. In 2016 there was $238,105 in distributions in excess of the IRA required minimum distribution and I multiplied the $238,000 number times the blended tax and federal tax rate of .3304 to yield $78,670, which is the fourth item down in column 2 of Appendix F.
Q. Okay. And in 2016 on December 22nd, which is referenced in Respondent's Exhibit 1, there was a transfer from GE in the amount of $99,522.25?
A. Yes.
Q. Okay. And there were total gifts that were given that year of $70,000 to Respondent and Petitioners?
A. I don't remember the amount that was --
Q. I can show it to you if it would help.
A. That sounds right. Right. That's right.

Q. Okay.
A. Thank you.
Q. You're very welcome. And, again, in 2016 of this $70,000 your Report does not contain a calculation of whether any of this 70,000 would have been included in your calculation for Appendix F?
A. It should have been included if the tax return was done properly, but I don't know -- I don't know that for sure because I didn't -- I didn't take the time to tie in the tax return number. I just assumed that the CPA who prepared it knew what he was doing.
Q. Sure. And in anywhere in your Report do you reference those findings of the CPA?
A. I referenced that I relied on the tax returns of Florence Mensch for the years 2011 through 2018.
Q. But your Report doesn't contain the actual numbers that were contained on the tax return went into the creation of Appendix F?
A. My work papers do, but it's only a summary in my Report.
Q. But for purposes of this examination you do not have the documents to support your findings --
A. No, I do not.
Q. -- in Appendix F? Okay. All right. Mr. Markel, if you could refer to what was previously entered as

Petitioner's Exhibit 19. And I believe this was the Row 5 Supplement that you created that we entered into evidence.

MR. PURIEFOY:

I think this is the correct number, Your Honor.

THE COURT:

Yes.

EXAMINATION RESUMED BY MR. PURIEFOY?

A. Okay.

Q. All right. Mr. Markel, Exhibit 19 the front page it says Row 5 Supplement. Do you see that?

A. Yes.

Q. Okay. And would this have been a supplement to Appendix –- Row 5 would that have been Appendix D or K? Do you recall?

A. This line item would have appeared in D, K, and N.

Q. Okay. All right. And if we flip to the second page of Petitioner's Exhibit 19 and at the bottom of the page it states total avoidable penalties and interest associated with 2018 taxes?

A. No, I'm sorry I don't –-

Q. On the bottom of –- it would be –-

A. On the left-hand side?

Q. The bottom left?

A. $40,314.

Q. Right. And before that number reads total avoidable penalties and interest associated with 2018 taxes?
A. Right. There's a total of $31,836 in penalties and $8,478 in interest.
Q. Okay. And is this associated with the $92,845.98 of income taxes?
A. Well, it's -- that $92,845.98 includes taxes, penalties and interest.
Q. And so the principal amount is $91,367.34?
A. (Witness pausing.)
Q. Based on this exhibit?
A. That includes -- that includes taxes, penalties and interest prior to posting the interest and failure to pay penalties listed on this particular bill from the IRS.
Q. Right. And those penalties and interest are what make up this 40,314?
A. Yes.
Q. Okay. And so if you look at page, I believe it's page 5 of Petitioner's Exhibit 19.
A. Okay.
Q. And if you go towards the bottom directly above where it says IRS Help, do you see that?
A. Yes.
Q. And it gives a breakdown of how these penalties and

interest -- interest charges are accruing. Do you see that?
A. Yes.
Q. Okay. And the total interest as of March 15th of 2021 was $6,369.81?
A. Yes.
Q. And I believe that Mr. McLeod asked you yesterday that that number continues to grow every day?
A. Yes.
Q. Okay. Do you recall when Mr. Mensch was removed as the Personal Representative of Ms. Mensch's Estate?
A. It was either late 2019 or early 2020.
Q. Would December of 2019 sound about correct?
A. Yes.
Q. Okay. And so if you look right above IRS Help under the periods that range from 4/15 of 2019 to 12/31 of 2019 would you agree that during those periods Mr. Mensch would have been serving as the Personal Representative?
A. Yes.
Q. Okay. And in December of 2019 do you know who took over as the Personal Representative?
A. Shauna Waddell.
Q. And so from 2019 to the date of the creation of this document do you have an opinion as to who would be

responsible for that interest?
A. No, I think that's kind of up in the air because it's my understanding that Shauna didn't find out that the 2018, whether or not the 2018 taxes had been filed until sometime after she was appointed. So, you know, to be, you know, absolutely fair to both, you know, you'd have to probably come to an agreement over the date when she found out that taxes hadn't been paid.
Q. Well, if you go back to the second page of Petitioner's Exhibit 19 this notice was sent to what address?
A. That's Shauna's address because at that time she was the Personal Representative.
Q. Do you have any independent knowledge --
A. But -- but --
Q. -- as to this --
A. Let me finish.
Q. Sure.
A. I attributed this to Sterling Mensch because it all flowed from his failure to file a return, not just file it late or not pay the tax, but just didn't even the file it at all for 2018. So at some point that responsibility has to go back to him and that's what I assume.
Q. But you would agree with me that in December of 2019 Mr. Mensch was removed as the Personal Representative;

correct?
A. That's correct.
Q. And he no longer had any authority to act on behalf of Ms. Mensch's Estate?
A. That's correct.
Q. And the only person that had the authority to act on behalf of Ms. Mensch's Estate was the Petitioner, Ms. Waddell?
A. Right. But she didn't have the information to act properly because Sterling Mensch apparently didn't supply that information until somewhat later.
Q. Do you have any personal knowledge as to when Ms. Waddell would have first become aware about the existence of this liability?
A. Probably sometime --
MR. PURIEFOY:
I'm going to object, Your Honor, for that speculation.
THE COURT:
Right.
MR. PURIEFOY:
And ask to strike that response.
THE COURT:
If you have personal knowledge of when she became aware then you can say that. If you don't know --
EXAMINATION RESUMED BY MR. PURIEFOY:

A. I do not, but you could look at the tax return for 2018 and look at when -- when that was filed and that would give you an approximate date.
Q. And so --
A. But I don't have that with me.
Q. No problem. And so Ms. Waddell took as PR in 2019. Do you know when -- I believe yesterday there was some testimony that an appeal was filed to the penalties and interest associated with this income tax; is that correct?
A. That's correct.
Q. Okay. Do you recall based on your review of the documents when that appeal was filed?
A. I don't know what date that was file.
Q. Okay. Do you know if it was filed this year?
A. No, I don't.
Q. Okay. But this appeal is still pending; correct?
A. That's correct.
Q. Okay. And you allocated $40,314 of losses to Ms. Mensch's account -- to Ms. Mensch's Estate as a result of the penalties and interest; correct?
A. Yes.
Q. Okay. And you testified yesterday that it is possible that these penalties and interest could be removed; is that correct?

A. That's certainly what they're trying to do, yes.
Q. Okay. And so if those penalties and interest are in fact forgiven would you still attribute $40,314 in losses to Ms. Mensch's Estate?
A. No, I'd have to change my opinion and reduce that to zero.
Q. And so that damage figure because that appeal is still pending is a speculative number that is subject to change; correct?
A. I wouldn't use the word speculative. I'd use the word contingent. I think there's a difference.
Q. But it cannot be said with any degree of professional certainty that $40,314 is what will be required to be paid at the conclusion of that appeal?
A. Okay. I'm accountant and it certainly meets all the rules for an accrued liability. I mean there's -- it's probably more likely than not that the appeal will be denied. So to state it at zero would be to misstate it. Maybe to state it at 40,000 is overstating it, but to state it as zero would be understating it, so here we are.
Q. All right.
MR. PURIEFOY:
Your Honor, may we have a five minute break. I think I may be about done with this witness. I just want to

confer with my co-counsel.

THE COURT:

Is that okay, Mr. McLeod?

MR. MCLEOD:

No objection, Your Honor.

THE COURT:

Okay. We will take a five minute recess.

MR. PURIEFOY:

Thank you, Your Honor.

Off the record: 10:46:42.0

On the record: 10:52:18.3

THE COURT:

All right. We'll go back on the record.

MR. PURIEFOY:

Mr. Markel, I don't have any further questions for you. I appreciate it. Thank you.

THE COURT:

Okay. Any redirect, Mr. McLeod?

MR. MCLEOD:

Yes, Your Honor.

EXAMINATION BY MR. MCLEOD:

Q. All right. Mr. Markel, I'm going to have you refer to Respondent's Exhibit 1. Do you have that in front of you?

THE COURT:

That's your Report.

MR. MCLEOD:

Well, it's actually Respondent's Exhibit 1.

THE COURT:

Oh, Respondent's 1. Okay.

MR. MCLEOD:

So it would be the Bank of America Statements and the list on the front.

THE WITNESS:

This is the one that I just looked at a little while ago. Yes.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Okay. And Mr. Puriefoy he referenced a number of items, I believe it's on page 4 of 10. Can you turn to that for me?

A. Yes.

Q. And there's a number of checks that were written and they're shown on page 9.

A. Yes.

Q. Do you know who Shea Mensch is?

A. My understanding is that it's Sterling Mensch's daughter.

Q. Okay. And on page 9 is there also a check written to Sterling Mensch for the same amounts written to the other parties?

A. Yes.
Q. And was this made -- these checks that were written were they all made out Florence Mensch's account ending in 7059?
A. Yes, they were.
Q. So they were not made out of Sterling Mensch's account?
A. No.
Q. And let's go to -- well, let's go to the next page. Those are for the dates December 8, 2015 through January 5, 2016?
A. (Witness reviewing exhibit.)
Q. Are you there? Just let me know when you're there.
A. What does it say on the page?
Q. It's a Bank of America statement and it's for December 8, 2015 to January 5th, 2016.
A. Yes.
Q. Okay. And that's page 1. Can you turn to page 4 and under Checks there's some more checks written? Can you read those checks for me? Just the amounts and the dates.
A. Okay. Let me make sure I'm in the right place. The first one cleared the bank on December 14, 2015, check number 5341 in the amount of $14,000. Am I in the right place?
Q. You're in the right place.

A. Then another check cleared on December 14, 2015, number 5342 also in the amount of $14,000. Another cleared the bank on December 23, 2015. That's check number 5343 in the amount of $10,000. Another check cleared on December 23, 2015. That's check number 5344 in the amount of $10,000 and on December 21, 2015 check number 5345 in the amount of $10,000 cleared.
Q. Okay. And we're still in Florence Mensch's account; correct?
A. Yes, 7059.
Q. 7059; correct?
A. Correct.
Q. Okay. So these checks were written out of Florence Mensch's account; correct?
A. That's correct.
Q. Okay. Let's go to December 7th, 2016 to January 5th, 2017. It's just the next statement in this Exhibit 1, Respondent's Exhibit 1.
A. December 7, 2016 to January 5, 2017?
Q. Yes, sir. And turn to the third page. Do you see the checks highlighted in yellow there under Checks?
A. Yes.
Q. Can you read those amounts to me?
A. Okay. On December 30, 2016 check number 5295 cleared the bank in the amount of $14,000. On December 27,

2016 check number 5296 cleared the bank in the amount of $14,000. On December 27, 2016 check number 5297 cleared the bank in the amount of $14,000. On December 28, 2016 check number 5298 cleared the bank in the amount of $14,000. And on December 28, 2016 check number 5299 also cleared the bank in the amount of $14,000.
Q. Okay. And, again, are these coming out Florence Mensch's account ending in 7059?
A. Yes.
Q. And on the next page there are certain -- it lays out the checks you just went over. Can you turn to that page?
A. Yes.
Q. And can you read who those checks were to?
A. Check 5295 was to Shea Mensch. Check number 5296 was to Shauna Waddell. Check number 5297 was to Steve Waddell. Check number 5298 was to John Mensch and check number 5299 was to Holly Mensch.
Q. And what are the dates on those checks?
A. They're all dated December 21, 2016.
Q. Okay. And we've gone over this, but you've reviewed Ms. Mensch's account statements; is that correct?
A. Yes.
Q. Other than these checks did you find any other checks

written to Steve Waddell, Holly Mensch, John Mensch, or Shauna Waddell?

A. I really don't remember.

Q. You would need to reference the --

A. Yes.

Q. -- the statements?

MR. MCLEOD:

Can we stipulate that these are the only checks or do you-all want me to go through the statements?

MR. PURIEFOY:

Well, I can't stipulate that those are the only checks, Your Honor. I can't stipulate to that.

THE COURT:

Okay.

MR. PURIEFOY:

I can't.

THE COURT:

Okay.

MR. MCLEOD:

All right. Well, we can go through her statements and let him look over it. I'm just thinking of a matter of time. Can we go off the record just for a minute and discuss it?

THE COURT:

Do you -- did you say you're going to have her testify or are you going to have him go through the --

MR. MCLEOD:

If he goes through every statement to -- we may able to -- I'm just trying to think how to avoid him sitting there for an hour.

THE COURT:

Right. Yeah.

THE WITNESS:

It's probably going to take longer than that.

THE COURT:

Do you have copies of the checks? Is that what you're going to do?

MR. MCLEOD:

Yeah, we have the -- and we've stipulated to those being in evidence.

THE COURT:

Is there not some way since you stipulated that somehow you could add up the figures and then provide it to opposing counsel and see if they agree and then do it that way?

MR. PURIEFOY:

Your Honor, we don't -- we don't -- I guess I'm a bit confused as to where this line of questioning is going. We presented those checks for a very specific reason as it related to the damage calculations.

THE COURT:
Right.
MR. PURIEFOY:
Unless there is some mention of these checks in Mr. Markel's Report I'm just not exactly sure where this line questioning, where it goes.
THE COURT:
Okay.
MR. PURIEFOY:
If we're not claiming -- if we're not claiming that these checks need to be considered against the backdrop of -- or if we're not claiming any additional checks need to be considered against the backdrop of Mr. Markel's Report whether they exist or don't exist I don't think is any material consequence. It would benefit us. It would benefit us if they existed quite frankly.
THE COURT:
Yeah. Right. So, Mr. McLeod, from what Mr. Puriefoy is saying the checks that he's highlighted today go to his argument about the total damages in that the Petitioners and their spouses received funds from Ms. Mensch's account. If your objective is to show that this is the only time that it ever happened, what he just said is this is the only time they're suggesting

and they're not suggesting any other times. And if you go through that account and you find other checks that would benefit him, but he's not asking for that. He's just saying on these occasions these checks were written which actually were gifts from Ms. Mensch's account to the Petitioners and their husbands as well as to Mr. Mensch and his daughter and so on so forth. So I don't really think it's necessary --

MR. MCLEOD:

Yeah, I'm satisfied with that, Your Honor. I think that pretty much --

THE COURT:

Do you agree, Mr. Puriefoy?

MR. PURIEFOY:

Yes, Your Honor.

THE COURT:

Okay. All right. Let's go on then.

MR. MCLEOD:

All right.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. All right. We'll go back to the first page and then I'll have you turn to that first statement dated December 6, 2014 to January 6, 2015.

A. Yes.

Q. And go to the second page, that first highlighted item,

12/29/14 under Deposits and Other Additions.
A. Yes.
Q. On page 3. Can you tell us what that line is 12/29/14?
A. It's apparently a withdrawal from the GE Mutual Fund account.
Q. Okay. And that's the GE stock that we've been discussing?

MR. PURIEFOY:

Objection, Your Honor, because I believe that calls for speculation and that's included in that GE account were both stock and Elfun Mutual Fund and so I believe the question needs to be more open-ended as to whether or not Mr. Markel knows whether that came from the stock or the Elfun Fund.

THE COURT:

And could you just get him to be more specific because the testimony previously was that GE Mutual Fund did contain the Elfun Fund as well as the GE Retirement Fund, but I can't remember --

MR. PURIEFOY:

That was the GE stock, Your Honor.

THE COURT:

Yes, GE stock.

MR. MCLEOD:

You have to look at the dates as well. We're in 2014

through 2015. Let's see.
THE COURT:
On your Exhibit 2.
MR. MCLEOD:
That's what I was going to ask for, Your Honor.
THE COURT:
Yeah. It shows that there's GE stock and that there were two Elfun Trust Funds. Well, let me see. Elfun Trust Funds with two different account numbers.
MR. MCLEOD:
Yeah, can I hand him Exhibit 2?
THE COURT:
I'll do that.
MR. MCLEOD:
All right.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. All right. On Exhibit 2 can you read the account number. It's right there under Portfolio.
A. Account number in the upper left-hand corner 2000352597.
Q. (Counsel reviewing documents.) Can you tell me the amount on 12/29/14, the amount that was transferred into Florence Mensch's account?
A. This is on the Bank of America statement?
Q. Correct. On that page 3.

A. $90,593.80.
Q. All right. I'm just going to hand you up a GE Mutual Fund Statement from December 23, 2014 and I'm just going to hand you that for reference. Can you find the same number on that and can you describe that document for me as well?
A. Okay. Mr. McLeod has handed me GE Mutual Fund Account Statement for account number 2000352597, Florence Mensch IRA Rollover Power of Attorney and on December 23, 2014 there's a transaction described as a normal distribution in the amount of $90,593.80 that apparently was cash that was obtained by liquidating General Electric shares in the amount of 3,499.614 shares at $25 -- $25.89 per share.
Q. Okay. And so it appears that some shares were sold from that GE account; is that correct?
A. Yes.
Q. And were they transferred to Florence Mensch's account ending in 32 -- ending 7059?
MR. PURIEFOY:
Objection, Your Honor. Objection because although the shares themselves were sold what the report does not indicate is whether those shares after being sold were transferred or if it came from the Elfun Fund. I believe that's still speculation. I think he's gotten

from this witness what he intended which was the statement demonstrating the exact same amount being transferred from the GE Mutual Fund into Florence Mensch's account. It does not say where those funds exactly came from nor do I think that's relevant for purposes of this testimony.

THE COURT:

Mr. McLeod, if he has personal knowledge of exactly where those funds were sent or transmitted. If he has personal knowledge or if it's stated on that document he can testify to it, but other than that he can't. He's just guessing at that point.

MR. MCLEOD:

Yeah, and that's all I'm asking him to do is read the document and tell me if it was sold from that account.

THE COURT:

Okay. If it's on the document --

MR. MCLEOD:

Yeah.

THE COURT:

-- he can read it from the document or if he has personal knowledge.

MR. MCLEOD:

The funds were transferred. Yeah.

THE COURT:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. All right. Mr. Markel, read -- I don't have that in front of me, but the entire where this 90,593 reading the heading and everything in that section.

A. Okay. It's in a section there's columns trade date, transaction description, total shares owned, share price, shares this transaction, and the dollar amount. And below that it shows the beginning balance of 43,237.571 shares.

Q. Okay. And, again, the amount was?

A. And it doesn't extend that to an amount.

Q. Okay.

A. And below that there's on December 23, 2014 there's a service charge that's charged in the amount of $10 and that is paid by liquidating .386 of one share. Then the next line down shows a trade date of December 23, 2014 and the transaction description is normal distribution and the total shares owned were 39,737 -- no, total shares owned were 39,737.571 shares at a share price of $25.89. And then the next column it says shares being liquidated in the amount of 3,499.614 shares and the liquidated dollar amount was $90,593.80. And then the last line in the spreadsheet shows an ending balance of 39,737.571 shares after the subtraction of the .386 of the share for the $10 service charge and after the subtraction of 3,499.614 shares for the liquidated amount, and we multiply those remaining 39,737.571 shares by that day's share price of $25.89 to yield over in the far right-hand dollar amount column of $1,028,678.55.

Q. Okay. And then can you read where it says that 90,593.80 was transferred to the 7059 account?

A. Okay. Then on the Bank of America statement with a clearing date of December 29, 2014 there was a wire transfer from GE Mutual Funds in the exact same amount $90,593.80.

Q. Okay. And on Petitioner's -- Respondent's Exhibit 1 can you turn to the January 6? That would be -- yeah, the January 6, 2015 statement.

A. Yes.

Q. Actually, I'm sorry turn to the December 8, 2015 to January 5, 2016 statement, a few pages over on page -- it says page 1 of 10 Bank of America.

A. For Bank of America statement account number -- this is a combined statement. Account 7059 and 2007.

Q. That's it.

A. For December 8, 2015 to January 5, 2016.

Q. Yeah. And can you turn to page 3 for me?

A. Okay.

Q. All right. That highlighted item 12/9/15 can you read that?
A. Okay. This transaction cleared the Bank of America on December 9, 2015. It's a wire transfer from GE Mutual Funds in the amount of $99,681.52.
Q. And can you compare that page to the previous highlighted item that we just looked at and are those the same statements with the same --
A. With the previous.
Q. -- accounts? This would be page 3 of 10.
A. Compare page 1 of 10 to page 3 of 10?
Q. Correct. Well, page 3 of 10 that you were just on to page 3 of 10 of the December 6, 2014 to January 6, 2015 statement.
A. I'm sorry I'm confused.
Q. Yeah. Is that the same -- is it GE Mutual Funds, is that -- are they the same on the one you just read on page 3 of 10 and the one on this -- there's no Bates numbers that would make it easier. Let's see. On the December 8, 2015 to January 5, 2016, that page 3. Is that the same account?
A. I'm sorry I can't follow where you're trying to agree --
Q. Yeah.
A. -- the two amounts.

Q. All right. Turn to page -- first go to the front and turn to page 3 where it's highlighted 90,593.80.
A. Yes, on December 29, 2014.
Q. Correct.
A. Yes.
Q. And then keep your finger on that.
A. Okay.
Q. And turn it to the December 8, 2015 to January 5, 2016, the second page after that.
A. Okay. Where there's a deposit on December 9, 2015 in the amount of $99,681.52?
Q. Yes.
A. And that's also labeled as a wire transfer from GE Mutual Funds. I mean there are a lot of other serial numbers in there, but it looks like they both came from GE Mutual Funds.
Q. And then --
A. One a year later than the other.
Q. And the 12/9/15 one can you state that amount one more time?
A. $99,681.52.
Q. And those two did you -- are those listed in your Report? Can you refer to your Report to the exhibit where you list the excess required minimum distributions?

A. No, it's not listed. It doesn't -- my Report doesn't contain that level of detail.
Q. Okay. But the amounts that you calculated do they take into account the excess of these transfers?
A. I mean I -- as I testified before to Mr. Puriefoy I based my analysis of this on the tax returns, not on the bank statements, so I can't -- I can't say that that's what it was because I don't -- I'd have to go back and trace them in.
Q. Okay. So based on the tax returns, assuming those were prepared correctly, would this include those amounts?
MR. PURIEFOY:
Objection, Your Honor, that's speculation and I don't believe that Mr. Markel has testified that he was able to ascertain through a review of the tax returns whether or not those tax returns contained this information. I think this is just a way circumventing his personal knowledge as to whether or not these items were actually contained in his figure.
THE COURT:
Yeah, Mr. McLeod, I think he's testified that he used figures from the tax returns rather than from these statements and barring that I don't believe without these tax returns as a part of his Report that he could actually answer your question.

MR. MCLEOD:
Yeah, that's fine, Your Honor. I'll move on from that.
THE COURT:
Okay.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. So one more question after this and I'll move on. So the two items we just read, one on 12/29/14 for 90,593.80 and the one on 12/9/2015 those amounts were transferred from the GE Mutual Funds account to Florence Mensch's Bank of America account ending in 7059; correct?
A. Yes.
Q. All right. And then can you turn to your Report? Let's see. To your Appendix E of your Report?
A. Okay.
Q. All right. And then referencing this Respondent's Exhibit 1 the checks that we went over that were payable to Shea Mensch, Shauna Waddell, Steve Waddell, John Mensch and Holly Mensch and the one to Sterling Mensch on December 29th, 2013, were any of those included in your Appendix E?
A. No, the only ones that could possibly be, and I'd just have to trace them in, would be checks written to Sterling Mensch.
Q. And excluding the Sterling Mensch one. The John

Mensch, Shauna Waddell, Shea Mensch, Steve Waddell, and Holly Mensch were any of those included in your Appendix E?
A. No.
Q. Okay. And can you review the statement and tell me whether the $10,000 on December 29th, 2014 written to Sterling Mensch was included in Appendix E?
A. December 29, 2014.
Q. 2014.
A. No, it's not showing up.
Q. Okay. So on page 27 of your Report your total of 820,382.13 does not include any of the gifts we went over in this Respondent's Exhibit 1; is that correct?
A. That's correct.
Q. Okay. And why is that?
A. Well, I made a -- number one, we just went through this exercise, but I also made a conscious effort to exclude gifts from this total because that would -- would not have been an unexplained transfer.
Q. Would any check written to -- the only thing included in this Appendix E is amounts that came from Florence Mensch's 7059 Bank of America account or went from Florence Mensch's Bank of America account 7059 to Sterling Mensch's Bank of America account ending 3259; is that correct?

A. Yeah, plus the transfers that came from Florence's 2007 --
Q. Correct.
A. -- savings account. There are some of those in here.
Q. Okay. But these are amounts that went from Florence Mensch's two accounts 2007 and 7059 to Sterling Mensch's account 3259; correct?
A. Yes.
Q. (Counsel reviewing documents.) On your Report on Appendix N.
A. Yes.
Q. Can you read line 3 for me? Just the part under description.
A. "Avoidable penalties and interest that were assessed as a result of late payments by Sterling Mensch, III of Ms. Mensch's income tax liabilities for the years 2012 through 2016."
Q. So for those years did Sterling Mensch --
MR. PURIEFOY:
Objection, Your Honor. I think that goes beyond the scope of my cross-examination. I made specific reference to Row 5, which were avoidable penalties and interest assessed for income taxes for 2018. The row that Mr. McLeod is referencing, 3 I believe, relates to income taxes for 2012 through 2016, which he would have

had an opportunity to direct Mr. Markel on during his direct examination. It certainly goes beyond the scope of what I referred to in Appendix N which was Row 5.

THE COURT:

Mr. McLeod, doesn't that go beyond the scope of what cross-examination was for this witness?

MR. MCLEOD:

Well, he was making an argument that some portion of the 2018 penalties and interest should be attributed to Shauna Waddell. I'm trying to show that Sterling Mensch filed late returns for four straight years or five straight years.

THE COURT:

I think that's already in the record. That's already in the record.

MR. MCLEOD:

That's fine, Your Honor. I'll move on from that. Your Honor, I may be done, but can I have five minutes and then I may come back to make sure.

THE COURT:

All right. We will recess for five minutes.

Off the Record: 11:36:47.0

On the Record: 11:42:32.6

THE COURT:

All right. We'll go back on the record.

EXAMINATION RESUMED BY MR. MCLEOD:
Q. All right. John, I'm going to ask you to look at Exhibit 2 again. Do you have Exhibit 2?
A. Okay.
Q. Okay. Can you turn to the second page? It's Exhibit 13, page 006.
A. Yes.
Q. Do you see that? Can you identify that document real quick?
A. It's an account statement from State Street Global Advisors for Florence Mensch's account for the period January 1, 2016 to December 30, 2016.
Q. Okay. And can you read under Investor's Statement? Just everything under that stopping at that little block. You can stop at Dealer Branch.
A. Okay. "Investor's Statement for the period of January 1, 2016 to December 30, 2016 page 1 of 4. Investor Services: Telephone number 800-242-0134." Is that what you –- is this what you mean?
Q. Yes, sir. Down to Dealer Branch.
A. Okay. "Internet: www.ssga.com/GEAM. Investment Rep: NA. Investment Rep Number: NA." And then the next line is "Broker/dealer:" And it says, "No dealer assigned. Care of U.S. Bancorp Fund Services, LLC., 1615 Each Michigan Street, Milwaukee, Wisconsin 53202-

5210." And then "Dealer/Branch: 9999/9999."
Q. Okay. Can you go to I think it's page 4 identified by Bates number Exhibit 13 page 011 and can you please identify that document?
A. Yes. This is an account statement from State Street Global Advisors, Florence Mensch's account. Investor Statement for the period of January 1, 2017 to December 29, 2017.
Q. And can you read under Asset Allocation the paragraph to the left?
A. Okay. It says, "Asset Allocation," and then below that it says, "We believe that asset allocation is an important factor contributing to your total investment return. To learn more about this strategy please contact our Service Center at 800-242-0134."
Q. Okay. All right. Can you turn just to –- it's in your Report and Petitioner's –- yeah, Petitioner's Exhibit 1 to your Appendix O on page 41 of your Report?
A. Yes.
Q. Okay. And Mr. Puriefoy was asking you about your 400,000 number. Can you explain how you arrived at that $400,000 number?
A. Okay. We can refer here to my Report to paragraphs 11 through 15 in Appendix O. I took the portfolio as it existed at December 21, 2015. It consisted of

5,125.831 shares of Elfun Trust Mutual Fund and 33,447.778 shares of the General Electric Company. The market value of the holdings on that day were for the Elfun Trust Mutual Fund $279,819.11 and for the General Electric stock $1,041,898.28. And in the far right-hand column the percentage of total holdings Elfun Trust Mutual Fund made up 21 percent of the total holdings in dollar value and the General Electric Company stock made up 79 percent of the portfolio in dollar value. Then in order to simulate diversification of the account I made the assumption that the General Electric stock had been --

MR. PURIEFOY:

Your Honor, I think at this point --

A. -- at the date of this in its entirety --

THE COURT:

Excuse me, Mr. Markel, I need to you stop while I hear the objection.

MR. PURIEFOY:

Objection. I think at this point I believe the first part of his testimony was okay and within the scope of my cross-examination. I believe he's getting back into the very issues that he testified to during his direct examination which is the valuation method, which was not referenced in my cross-examination. That was limited exclusively to whether or not he believed the assets were if in fact diversified and I believe the first part of his testimony answered that question. I think now he's going to go back into his methodology for calculating damages based on some hypothetical scenario which was addressed during direct.

THE COURT:

Let's see. You crossed him about the failure to diversify and questioned the ability of whether Mr. Mensch, the Respondent, had the ability to diversify. And Mr. Markel testified that he felt that Mr. Mensch should have taken all reasonable steps to try to change the way the account was set up and thereby questioning really was it -- was it the responsibility of the Respondent and was it his fault that the portfolio was not diversified calling into question whether he should be assigned this $400,000. And he's addressed the issue of diversification and, Mr. McLeod, you're asking how he arrived at the $400,000?

MR. MCLEOD:

That's correct, Your Honor. And we've established liability. We're trying to determine the damages at this point and he asked him about the 400,000.

THE COURT:

So, Mr. Puriefoy, you sort of put the 400,000 kind of in play.

MR. PURIEFOY:

Well, I think, Your Honor, the question I asked Mr. Markel was was the 400,000 the result of the failure to diversify. That was the very question that was asked and I believe his response was yes. I never questioned while cross-examining him on his valuation methodology. I never went into how he arrived at the 400,000. The focal point of my line of questioning was simple did the failure to diversify lead to the 400,000 and was the failure to diversify the direct result of some action that Mr. Mensch could have taken and failed to take. I think they're getting back into the methodology of the 400,000 goes down to scope. It's certainly relevant and was relevant for purposes of his direct and I think he went through a fairly exhaustive line of –- line of testimony that detailed how he arrived at that figure, but I don't believe my questioning asked how he arrived there. Quite frankly, Your Honor, I don't necessarily care but for purposes of judicial economy I just figure that this is not something that needs to be rehashed.

THE COURT:

I think, Mr. McLeod, what we've got is we've got his –- his Report in the record. His methodology for arriving at this 400,000 hasn't been questioned by the Respondent. You know I mean they aren't questioning how he came up with the figure. His Report is in the record. They aren't questioning his methodology. Their question from the cross-examination is whether or not these losses should be attributable to Mr. Mensch because they are alleging or seem to be that his hands were tied somehow and wasn't able to diversify. I think that's their defense to this. They aren't questioning his methodology. And given everything if he had had the ability to diversify and didn't I think they would agree they're not contesting his methodology of coming up with 400,000. Their defense is he wasn't able to diversify for some reason. That his hands were tied and it came up yesterday somehow in some of the testimony that UBS would not allow him to change the portfolio under his authority as attorney-in-fact under the POA. So as far as his methodology they aren't questioning it. They are not questioning how he came up with 400,000. Their theory is despite that his hands were tied and he couldn't change it because UBS wouldn't let him. Is that what you're saying, Mr. Puriefoy?

MR. PURIEFOY:

That is correct, Your Honor.

MR. MCLEOD:

Is that an argument against liability? I mean we're at a Damages Hearing. He's been found in breach of fiduciary duty.

THE COURT:

It's already been found that his liquidation of that account was a violation of his fiduciary duty. Now, we're talking about another element of damages which is the portfolio loss. And your client –- I mean your witness is saying it was 400,000. He's saying, "Yeah, I liquidated it, but I shouldn't have to pay 400,000 because I couldn't diversify because UBS wouldn't let me."

MR. MCLEOD:

Okay.

THE COURT:

And you're taking issue with that and you can question him about that or of course, you know, develop that with another witness. But if your point in having him testify about his methodology I don't think it's necessary because A, we have this in evidence and B, they're aren't questioning his methodology at arriving at this figure. It's fine with them the 400,000. They aren't questioning how he came up with it. They're questioning that his client shouldn't be assigned that loss because they're saying it was out of his control. His ability to diversify was out of his control and your client testified that he had read his response to the Interrogatory and he thought it was "lame" and all that. We went through that yesterday.

MR. MCLEOD:

Okay.

THE COURT:

So that issue is still at play whether or not he was -- he could diversify or he couldn't. That's what's going to have to be developed either through his testimony or somebody from UBS or something. But the 400,000 figure all things being equal they aren't taking any issue with that. We've got this in evidence. Okay. To save time I think you can just move on to the next question.

MR. MCLEOD:

Well, that's all I have, Your Honor.

THE COURT:

All right. Anything on recross?

MR. PURIEFOY:

Nothing, Your Honor.

THE COURT:

Thank you, Mr. Markel. Any objection to him being excused?

MR. MCLEOD:

No objection.

MR. PURIEFOY:

No objection, Your Honor.

THE COURT:

All right. Mr. Markel, thank you. You may be excused.

THE WITNESS:

Okay. I have these exhibits.

THE COURT:

I need the exhibits back.

THE WITNESS:

Okay.

THE COURT:

Thank you, sir. And the notebook is down there somewhere.

THE WITNESS:

Yes.

THE COURT:

Okay. I'll step around behind you and get that from you. Thank you.

THE WITNESS:

Thank you.

THE COURT:

All right. Counsel, is this a good time for us to break for lunch?

MR. MCLEOD:

Yes, Your Honor.

MR. PURIEFOY:

Yeah, it is, Your Honor, and I have to be in Anderson for a hearing at 2:00.

THE COURT:

Yes, you do.

MR. PURIEFOY:

And so I just don't want to start on a witness and me not being able to finish.

THE COURT:

So let's go ahead and take a lunch break and we'll come back at 1:00. All right. We'll be in recess.

Off the Record: 11:58:30.0

On the Record: 13:09

THE COURT:

All right. We'll go back on the record.

MR. MCLEOD:

Thank you, Your Honor. I call Shauna Waddell.

THE COURT:

Ms. Waddell, please come forward and face me.

SHAUNA MENSCH WADDELL, being duly sworn to tell the truth, the whole truth, and nothing but the truth of his own knowledge concerning the matter herein, testified as follows:

***** ***** ***** *****

(Audio Difficulty until 13:11:54)
Non-verbatim Questions and Answers from Notes:
Q. (Counsel reviewing documents.) Can you state your name for the record?
A. Shauna Mensch Waddell.
Q. What is your date of birth:
A. August 5, 1968.
Q. What is your address?
A. 402 Planters Walk Drive, Easley, South Carolina
THE COURT:
Can you-all hear her? You need to speak up.
THE WITNESS:
I'm sorry.
Q. How are you related to Florence Mensch?
A. I am her daughter.
Q. What is your occupation?
A. I am a financial advisor.
Q. Do you have any siblings?
A. Two brothers.
Q. What are their names?
A. Sterling Raymond Mensch, III and John Robert Mensch.
Q. How old are your brothers?
A. Sterling will be 62 years old in November. John is 56 years old.
Q. When were you appointed as Personal Representative for

your mother?

A. Appointed Personal Representative December 2019. Mom in memory care. Has advanced stages of Alzheimer's. John lives in Oregon and was calling about making plans to come in for funeral arrangements and funeral. John wanted to know if he needed to plan to stay after funeral to help take care of mom's estate. Sterling stated John did not need to stay for the estate because Sterling would handle everything.

(Audio Starts 13:11:54. Verbatim testimony.)

A. He would handle her Estate planning and Wills and he was going to do that at the beginning of the next week. And then nothing happened for quite a while. We didn't hear from him and just as a follow-up I called him a few months later and he said was waiting for taxes to be done. So we waited a little bit longer and I followed back up with him and he said that the taxes were done. He would -- and he had dropped off the paperwork at David Merline's office. And I called David Merline's office and David Merline's office had never received any paperwork. And so I told him, I said, "Well, David Merline's office doesn't have any of your paperwork." And he said, "I gave it to the secretary. She must have lost it." And so that kind of raised a flag with me that, you know, he wouldn't talk to us about anything. We didn't really know what was going on. He wouldn't communicate with us at all, so we kind of thought that that was a red flag. But prior to my mother's death when the GE stock was declining I talked to him one day and I said, "If mom has anything left in GE stock you need to move it now, because it's going down." And he said that he had to –- they wouldn't let him move it without a doctor's note. And so he scheduled an appointment with her doctor to get a doctor's note to send to GE so that he could move the GE stock. Well, when it came time for the day of the appointment he said, "She soiled herself so we missed the appointment." And so he never follow-up with that or did anything more and was not able to do anything with the stock. However, she was already under the diagnosis and care of a geriatric specialist who was treating her for Alzheimer's as well as –- and that was Dr. Arya and as well as Dr. Bansaly, that was the general doctor. She was confined to a memory care facility so just in that fact she's not capable of taking care of her, you know, her business or her personal needs of any kind. The memory care facility also had a doctor that visited once a month to look at patients and take care of any needs that they might have. So, you know, I felt like that that was not a good excuse to not follow through to do whatever he needed to do to sell that stock or move the stock.

Q. Okay. And I set you up with a kind of tough question related to time frame. Give us a little bit of a time frame on when you told him to sell the GE stock.

A. I didn't document that conversation as far as writing down the date, but it was somewhere in the spring of 2017.

Q. Okay.

A. Somewhere in that time frame.

Q. Okay.

A. I never thought we would end up –- I never thought we would end anywhere close to being in a legal situation that I needed to document my conversation.

THE COURT:

Ms. Waddell, I'm sorry to interrupt. Can you move that microphone just a little bit closer to you?

THE WITNESS:

Sure.

THE COURT:

Maybe and turn it. There you go. You don't have to keep it right in your face, but just a little closer.

THE WITNESS:

Is that better? Is that better?

MS. THOMASON:

Yes, thank you.
MR. MCLEOD:
That seems a little better.
THE COURT:
Okay. Go ahead.
EXAMINATION RESUMED BY MR. MCLEOD:
Q.   All right. And you can continue. You were telling me about the time frame.
A.   Uh-huh. It had to have been like around the spring of 2017. I didn't make a note of the –- you know, the date of that conversation but I do vividly remember the conversation. It was held at Oakleaf Village while we were there one day at the same time.
Q.   The Oakleaf Village was that the –-
A.   The memory care facility.
Q.   That your mom was residing in?
A.   Correct.
Q.   And you mentioned she was under the care of two doctors at that time?
A.   Uh-huh.
THE COURT:
You need to answer yes or no, please?
THE WITNESS:
Oh, yes.
EXAMINATION RESUMED BY MR. MCLEOD:

Q. Yes, sorry about that.
A. Her geriatric specialist was Dr. Arya and then Dr. Bansaly was in the same office complex as Dr. Arya, but she took care of just general physical ailments.
THE COURT:
And if you can, can you spell those names for the court reporter?
THE WITNESS:
Yeah, Dr. Arya is A-r-y-a and Dr. Bansaly is B-a-n-s-a-l-y I believe.
THE COURT:
Thank you.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. Okay. And have you -- have you ever spoken to her doctors?
A. Well, when I -- as far as her mental capacity and her abilities?
Q. That would be one thing, yeah.
A. Yes, just taking her for doctor's visits. I guess one of the -- one of the -- whenever we would take her to the geriatric specialist she would go through a battery of questions. You know what year is this? How many children do you have? You know can you draw a picture of a clock? Just basic questions that they go through, that doctors go through with these Alzheimer's

patients. And, of course, she never got any of the answers correct. And then they asked her how many children do you have she looked at me for the answer and, of course, I couldn't answer for her. But then -- I mean it was obvious that she couldn't take care of herself. When she lived at Rolling Green Village she was in independent living and then my brother called me one day and said that Rolling Green Village had said that we had to move her immediately to memory care.
Q. Do you know about when that was?
A. Probably 2014 maybe. 2013, 2014.
Q. Okay.
A. It's whenever we moved her to memory care at Rolling Green.
Q. Okay. And when did your mom start showing some signs of dementia and Alzheimer's?
A. And so the doctors have -- what the doctors have said is that it's a hard illness to diagnose and it's something that's kind of diagnosed over time. And at first, you know, there is some general. We noticed personality changes a little bit and just memory. You know having a hard time remembering things and a little bit of frustration with not being able to remember things and over the course time, you know, there's so many forms of dementia. And over the course of time

you can look back in hindsight and say, "Oh, yes, I saw signs of this." And I was talking to Sterling one day and I said, "You know I can -- I remember back to, you know, end of 2008 and 2009 and I can see definite signs of dementia. The beginnings of dementia and everything and Alzheimer's in my mom." And he said, "Oh, yes, way before that." And that was a conversation he and I had one day also while we were at Oakleaf Village in the hall.

Q. Can you tell me the rough time period that that occurred?

A. That was probably around -- it wasn't long before she died. 2018 sometime.

Q. Okay.

A. In the spring. It wasn't but a few weeks before she died I -- I think.

Q. That was a conversation with Sterling; correct?

A. Correct.

Q. Okay. And what time period were you-all referring to when those signs first started developing? He was saying long before -- or way before that?

A. I just said, you know, in hindsight I can look back to around 2008 and 2009 and see signs of -- of all this starting back then. And he said, "Oh, yes, way before that." And I don't know what he meant by that. I

didn't really question and it wasn't important.
Q. Were you close with your mother?
A. I was very close with my mother my whole life and we lived not far from them for a long time. And I guess our routine once they moved back to Greenville and I had started a family our routine was to –- my husband, and the children and I would go out dinner on Saturday nights and then we always went to my parents' house to visit them on Saturday night after we ate. And then my mom and I used to go to the Holiday Fair together and I mean we'd go shopping together. We just went over there all the time and we were with them a lot. When I first got married they were living in New York, but planning to move back to Greenville. And so they were down here looking for a house and my dad had a brain hemorrhage and it was a very critical life-threatening event and so my parents moved in with us for a month and stayed with us while he was recovering from that hospital stay. So, yeah, my mother and I were close my whole life. She was my best friend. And, yeah, they moved in and we helped to care for him and help her with, you know, the move and I mean I always called my mother every day on my home from work. And after my dad passed away I would call her in the mornings on the way to work and in the afternoon on the way home from

work because she was living by herself at that point.
Q. And what time was that, what time period?
A. He died '90 -- in February, February 11th of '95 I think it was. February 11th, '95.
Q. Okay.
A. And so --
MS. THOMASON:
Your Honor, there's not a question. We have pauses for the witness to continue and as we sit here I know and appreciate the history. It's not that. It's just from a timing standpoint we're here on damages and we're going back and I just hear long pauses without a question and then continue.
THE COURT:
Right. I know, Mr. McLeod, you're probably trying to set the background for this, but the issues of course relate to damages, so just kind of move it along.
MR. MCLEOD:
Yes, Your Honor.
THE COURT:
Thank you.
MR. MCLEOD:
That's fine.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. Well, let me take you back to we were talking about the

GE stock and you telling Sterling that he should sell Florence Mensch's GE stock. What led you to that conclusion?

A. Because I knew that the GE stock value was declining rapidly.

Q. And how did you know that?

A. I mean it was in the news and -- and I looked at my statements and -- and I just knew what was happening with GE stock. It wasn't a secret. It was in the news.

Q. Okay. And did you know that your mother owned some GE stock?

A. I didn't know what the state of her finances were at that time because he had Power of Attorney and didn't share any information with us regarding any of her finances. And so I knew that they had had a good bit of money in GE stock, so I told him if she still has money in GE stock you need to move it.

Q. Okay. And did your mother -- well, let me start over. So when you told Sterling that he should sell the stock tell me again what he said right after that.

A. He said that he had to have a doctor's statement for GE before he could do anything with the GE stock. And he said that he had scheduled an appointment with the doctor and that when he went to pick her up and they were leaving she soiled herself and so they missed the appointment because of that. And then –- I mean I never heard back from him. I guess he never did anything about it. He just let it go at that point evidently.

Q. And in the spring of 2017 she had two doctors that were looking after her; is that correct?

A. I mean she had already been diagnosed. Yes.

Q. Okay.

A. And the facility had a doctor that could have come in and given a statement or provided, you know, the information for the form, whatever form he needed.

Q. Okay. As you said you spoke with the doctors when you needed to; correct?

A. Uh-huh.

THE COURT:

I need you to say yes or no.

THE WITNESS:

Oh, yes, I'm sorry.

THE COURT:

That's okay.

MR. MCLEOD:

(Counsel reviewing documents.) All right. Shauna, I'm going to hand you what's been admitted into evidence. It's marked Exhibit 21. This will be Petitioner's

Exhibit 21 and I would ask that that be submitted into evidence.

THE COURT:

Okay. That's been stipulated to previously; correct?

MS. THOMASON:

Yes, Your Honor.

THE COURT:

Okay. Thank you. It's admitted into evidence without objection.

(Introduction of previously marked document, Rollover IRA General Electric Statements as Petitioner's Exhibit Number 21.)

EXAMINATION RESUMED BY MR. MCLEOD:

Q. And, Shauna, can you tell me what this document is?

A. It's the -- the account name is Florence Mensch Rollover IRA. Account type is IRA Rollover. The account number is 1C61480GE.

Q. Okay. And there is an amount on there that says $250,000 and can you tell me which page it is? I don't have a copy of it so you'll have to tell me.

A. Page 1 of 5. I'm sorry page 1 of 6. There is a net deposit and withdrawal amount of $259,000.

Q. And which account was that withdrawn to?

A. Well, it would have come out of this. It's on this account 1C61480GE.

Q. Okay. And I'll hand you Exhibit 22, which has also been stipulated and admissible into evidence and ask that be submitted into evidence. The Exhibit 22.

MS. THOMASON:

What is that one?

MR. MCLEOD:

That's the Bank of America 7059.

THE COURT:

Do you agree?

MS. THOMASON:

Yes.

THE COURT:

Okay. Exhibit 22 is entered without objection.

(Introduction of previously marked document, Bank of America Account 7059 Statements as Petitioner's Exhibit Number 22.)

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Can you describe that statement for me?

A. Okay. This is Bank of America Account number 000733497059, which is the checking account. I'm -- ye.

Q. Okay.

A. This is the checking account for Florence Mensch. And there is a wire transfer deposit of $259,000 on April 23rd, 2018.

Q. Okay. And how long before your mom's death was April 23rd?
A. April 23rd was three days before she died. We were -- Sterling and I were both staying with her around the clock at memory care for the most part. I would go home and take a shower in the morning and come right back and then he left to go eat or shower. I think he spent one night at home that week.
Q. Okay.
A. And she was under the care of hospice at that time. We were basically sitting with her around the clock.
Q. So was she at the facility at that time or was she --
A. She was at Oakleaf Village at the memory care facility in her room.
Q. Okay. And you and Sterling were both with her pretty much around the clock?
A. Uh-huh. Yes.
Q. Okay. So during that time Sterling made that -- do you think Sterling made that transfer from her account?
A. He was the only one that had Power of Attorney and could make that transfer. So at some point three days before she died he made a $259,000 transfer.
Q. Did he tell you at that time that he was making that transfer?
A. No.

Q. So you-all were together pretty much 24/7 during that item and he did not mention; correct?

A. No, he did not mention it. And that's correct we were there pretty much 24/7 except for going home to shower and come right back.

Q. Okay. And after reviewing that document is the transfer from her UBS Retirement account to her Bank of America account ending in 32 –- or ending in 7059?

A. The deposit –- the transfer was made to the account ending in 7059 at Bank of America and it was –- it was transferred out account number 1C64180GE, which is the Rollover IRA under Florence Mensch's name.

Q. Okay. And who was the beneficiary on the UBS Retirement Account?

A. On the UBS Retirement Account there are three beneficiaries. Myself and both of my brothers.

Q. Just to clarify where does that account go now, the UBS Retirement Account?

A. Where does it go now?

Q. Does it go to the Estate of Florence Mensch, the Probate Estate?

A. That one can be moved into the Estate of Florence Mensch. That's correct.

Q. Okay. And so you probably –- this is a legal difference, but –-

THE COURT:
Phyllis, will you go outside and tell them to quiet down, please. Thank you. Sorry.
Q. But essentially that account will pass through the Probate Estate; is that correct?
A. Correct.
Q. Okay. And who are the beneficiaries of the Probate Estate according to Florence Mensch's Will?
A. Myself and my two brothers, Sterling Mensch, III and John Mensch.
Q. Okay. Is it equal --
A. Yes.
Q. -- distributions?
A. Yes.
Q. In the original Will --
A. And I'm sorry I think I said this has to go through beneficiaries. This -- this account can go directly to the Estate.
Q. Okay. Which account were you referring that goes to the --
A. The Elfun Trust Funds have to go to beneficiaries.
Q. Okay. And who are the beneficiaries on the Elfun Trust Fund?
A. They would be myself and my two brothers, Sterling Mensch, III and John Mensch.

Q. In equal one-third shares?
A. Correct.
Q. Okay. And prior to that transfer does that statement tell you how much was in the account?
A. Yes, it says the value at year end for 2017 was $496,000 –- $496,816.40.
Q. Okay. And you're referring to Exhibit 21; is that correct?
A. Yes.
Q. Okay.
A. And then it also shows the value of the account on March the 4th –- I'm sorry on March the 29th of 409,652.44 and then on April the 30th 154,069.08.
Q. And can you read that one more time for me?
A. Yes. The value of the account as of March the 29th, 2018 was 409,652.44.
Q. Okay.
A. And then on April the 30th the value of the account was 154,069.08.
Q. Okay.

MR. MCLEOD:

All right, Your Honor, I'm going to admit Exhibit 23, which as been stipulated as admissible into evidence and I'll submit this as Exhibit 23.

THE COURT:

Okay. Admitted without objection.

(Introduction of previously marked document,
USB Account 1AU3133E4 as
Petitioner's Exhibit Number 23.)

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Can you tell me what Exhibit 23 is?

A. Exhibit 23 is the UBS account. It's an IRA rollover account in the name of the Estate of Ms. Florence Mensch. And it's got my name on it I guess as Personal Representative. It's an IRA Rollover Account 1AU3133E4.

Q. Okay. And can you tell me the balance on -- well, first of all, is that the same UBS account as Exhibit 21?

A. I believe it is, yes.

Q. Okay. Can you tell me the amount on that statement?

A. The balance as of July 30th, 2021 was $153,800 -- $153,864.24.

Q. Okay. And is this account a taxable account? Do you know if it's a retirement account?

A. It's an IRA rollover account so it would be taxable.

Q. Okay. I'm going to hand you -- I'm going to hand you what's been marked as Exhibit 24 and stipulated as admissible into evidence and ask that the Court Reporter admit this as Exhibit 24 into evidence.

THE COURT:
All right. This is Exhibit 24 without objection.
(Introduction of previously marked document, State Street Global Advisors Account as Petitioner's Exhibit Number 24.)
EXAMINATION RESUMED BY MR. MCLEOD:
Q. Can you identify this account for me?
A. Yes, this is a statement from State Street Global Advisors and it –- it has three account numbers listed on it in the name of Florence Mensch and they are Elfun Mutual Fund accounts.
Q. Okay. And what is the date of the statement?
A. The date of the statement is for the period of April 1st, 2021 through June 30th, 2021.
Q. Okay. And this is the account that you said this one has beneficiaries on it; is that correct?
A. That's correct.
Q. And that's identified under Florence Mensch there's a transfer on death; is that correct?
A. One of them shows transfer on death. The other doesn't have that listed.
Q. Okay. On Exhibit 24 at the top it says Florence Mensch and then it says –-
A. Yes.
Q. –- transfer on death?

A. Correct.
Q. Okay.
A. Correct.
Q. And then next to that it says POA; is that correct?
A. Correct.
Q. And what is the amount of that statement?
A. The total for the three accounts as of 6/30/2021 was 189,035.26. And that's for the three separate accounts in total.
Q. And did you obtain this statement from State Street Global Advisors?
A. Yes, it was mailed to my house.
Q. Was this latest statement?
A. Yes.
Q. Okay. And did State Street Advisors tell you what needed to be done for these funds to be distributed?
A. Well, right now it's -- they have to be distributed to each of the beneficiaries. So a third to myself, a third Sterling, and a third to John.
Q. Okay.
A. Now, we'll have to -- we would have to have some court documents to make any changes to that distribution.
Q. Did that mention that you could -- that Sterling could disclaim his interest or The Court could order --
A. Yes.

Q. Okay. And I'll finish. The Court could order him to disclaim his interest?

A. Yes.

Q. Okay.

THE COURT:

Let me stop you there for a second, Mr. McLeod.

MR. MCLEOD:

Okay.

THE COURT:

If these accounts were all POD doesn't make them non-Probate accounts?

MR. MCLEOD:

The only –- well, the only non-Probate would be the State Street Global Advisors.

THE COURT:

Right.

MR. MCLEOD:

Yeah, the UBS is a –- it basically did not have a beneficiary on it.

THE COURT:

Right.

MR. MCLEOD:

It goes to the Estate.

THE COURT:

But I mean if these State Street were –- have beneficiaries does that usually mean that it's an account that's not distributed pursuant to the decedent's Will or Estate because it sits outside of my purview?

MR. MCLEOD:

I'm not sure I would say that. I think one –– one avenue would be a constructive trust, which is what we've pled. I think you could order a constructive trust over the funds in this account. It gives you a broad authority,

THE COURT:

I want to make sure I understood how this entered into it given the way the account is –– the ownership of the account. So your theory is that this property although normally would be considered non-Probate you're saying that you're arguing that this has now become Estate property or under the jurisdiction of The Court based on the circumstances surrounding the management of the account; is that your argument?

MR. MCLEOD:

That's correct, Your Honor. And I also think you would have the authority to impose a constructive trust over it.

THE COURT:

All right. I just wanted to see where you were going with that.

MR. MCLEOD:

Yeah.

THE COURT:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. (Counsel reviewing documents.) All right. I'm going to hand you what's been stipulated. It's been premarked Exhibit 25 and stipulated as admissible into evidence. So we would ask that this be admitted into evidence as 25.

THE COURT:

Petitioner's Number 25 entered without objection.

(Introduction of previously marked document, Settlement Statement for Sale of Property as Petitioner's Exhibit Number 25.)

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Shauna, can you describe this document for me, please?

A. This is the Settlement Statement from the sale of the property at 512 New Tarleton Way, Greer, South Carolina.

Q. And were you involved in this sale?

A. Yes, I was.

Q. What was your involvement?

A. As Personal Representative of the Estate I made arrangements to have repairs made to the house to put it in saleable condition and to sell the house and attend the closing.

Q. Okay. And can you read the Settlement Statement starting with sale price of property and just kind of walk us through out?

A. Okay. The sale price of the property $420,000. The deposit from the buyer was $15,000 deposit. The loan amount that the buyer had was $336,000. The assessments and county taxes that were debited from the buyer to the seller was $52.89. The county taxes debited to buyer and credited to the seller $516.99. The payoff to the mortgage company, South State Bank, was $218,000 –- $218,579.91. And that consisted of principal of 217,822.98 and interest of 756.93. The recording fees charged to the seller was $19.50. The county deed taxes debited to the seller $462. The state deed taxes $1,092 a debit to the seller. Commission $12,600 debit to the seller for the listing agent. A debit of $12,600 to the seller for the selling agent's commission. The title charges, there were three title charges, $40, $345, $75. And those were debited to the seller and payable to Holliday Ingram, LLC, which was the closing attorney. Miscellaneous charges debited to the seller 2020 property taxes in the amount of 6,969.76. HOA certification fee $300. Home warranty to the buyers for $645. Then there were some charges to the buyer the title was $35. A title for the overnight package fee was debited to the buyer at $25. The title for the lender's title policy to Commonwealth Land Insurance Title Company was $825.60. There was title examination search fee debited to the buyer payable to Holliday Ingram for $225. Title insurance commitment fee debited to the buyer payable to Holiday Ingram for $225. Title settlement at closing fee to Holiday Ingram debited to the buyer for $445. The title, the owner's title policy, to Commonwealth Title Land Insurance $476.80. Homeowner's insurance premium to Safeco Insurance was a debit to the buyer of $1,287. The total credits to the seller was $420,569.88. The amount due to the seller was $166,841.71. But then there was also $3,500 that was held for additional repairs that needed to be made to the house.

Q. Okay. And so what was the total amount that the Estate received? You don't have to give an exact number. I'm not putting you on the spot.

A. 163,000 -- $163.000 roughly.

Q. So roughly $163,000?

A. Roughly.

Q. And then attached to that there's a hold back agreement. Do you see that?
A. Yes.
Q. Okay. Can you briefly just go over what that says? You can read if you want starting from the parties.
A. Okay. "The parties above hereby acknowledge and agree that the condition of the above referenced property is unsatisfactory to buyer as of the date of closing due to a toilet and hydraulic gate needing repair."
Q. Okay. And just read that first sentence of the -- below that.
MS. THOMASON:
Your Honor, we can stipulate to the contents.
THE COURT:
Yeah.
MR. MCLEOD:
Yeah, I'm getting there.
THE COURT:
You don't need her to read through --
MR. MCLEOD:
Yeah.
THE COURT:
-- every little exhibit.
MR. MCLEOD:
Okay.

THE COURT:

That just -- I mean I can read a closing statement.

THE COURT:

All right. Yeah. So just in the interest of time

EXAMINATION RESUMED BY MR. MCLEOD:

Q. What was the amount of the repairs?

A. $3,000 was held for the gate repair. $500 was held for the toilet repair. Those repairs were made. The buyer paid for the toilet repair and then the Holliday Ingram paid for the gate repair out of these funds.

Q. Were there any other repairs other than these required?

A. Yes. Prior to selling the house we spent a little over $10,000 to get the house ready to sell.

Q. What repairs did that include?

A. We had to -- we had to replace some electrical, outdoor electrical outlet coverings. We had to do that. We had to replace the carpet in the master bedroom because it was filthy. We had to have the front steps repaired because they were damaged in -- the steps were rotten and damaged in the back, the risers were knocked in. We had to have the exterior of the house, we had to have some of the -- it was a two-story house, kind of a Charleston style house, and we had to have the railings and pickets were damaged and had to be -- some of those had to be repaired and replaced. And the flooring on the porches had to be repaired and replaced because they were rotten.

MS. THOMASON:

Your Honor, I don't think there's a claim for any damage to the house. I don't think it's been pled or included in the special damage, so I don't think it's part of the damages calculation.

MR. MCLEOD:

Your Honor, we pled actual and consequential damage. That seems like that would be included in actual and consequential.

MS. THOMASON:

From the taking of the money. You know the transfer of the money the damage. These are special damages that she's speaking to.

THE COURT:

Right. So your Pleadings don't say –- your Pleadings are couched in the terms of the fact that there were Estate monies that would have been available to the Estate distribution but for the bad acts of the Respondent. And you go through about all the accounts and the transactions. So are you now saying that in addition to those you want to count the $10,000 that the Estate had to pay to get the house ready to sell?

MR. MCLEOD:

Well, Your Honor, in their expert's Report or their affidavit they're getting in --

THE COURT:

That I haven't seen.

MR. MCLEOD:

You haven't seen that yet. But they're going to get into all kinds of things that they have to reduce damages and they haven't Plead any of those things either. I just want to keep it in mind.

THE COURT:

We haven't gotten there yet.

MR. MCLEOD:

I'm okay, but I'd like to keep it in mind if we're going to say this about everything I say. I mean --

THE COURT:

I know to try a case.

MR. MCLEOD:

I know how. I'm sorry.

THE COURT:

Don't worry about.

MR. MCLEOD:

I know. I trust you.

THE COURT:

But if we're going to go -- if we're going to do this and you're going to talk about these is this something that you decided is going to be in your calculation of damages to the Estate given the fact that the house had to be repaired and that those repairs I suppose your argument would be because Mr. Mensch lived in the house?

MR. MCLEOD:

And, Your Honor, I will just allude to your argument. Yesterday at the end of this you're going to come up with what you think the damages are and what you think it takes to put the Estate back in the position --

THE COURT:

Right.

MR. MCLEOD:

-- that it would have been in had all these things not occurred.

THE COURT:

Right.

MR. MCLEOD:

So I think you're going to factor these things in and come up with your number.

THE COURT:

Exactly.

MR. MCLEOD:

I'm just trying to present so you have the facts to do that.

THE COURT:
Well, I'm going to let him ask about the damage to Estate property and you can remedy that or rehabilitate that as you see fit through your witness or on cross.
MS. THOMASON:
Okay.
THE COURT:
Okay. All right.
MR. MCLEOD:
All right.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. And we're going to wrap that up. I mean you were -- I think you had -- I'll let you finish your --
A. Well, we had to repair some tile in the bathroom that damaged in the master bathroom shower. We had to have some of that repaired. I'm trying to remember everything we had to have repaired. There was a lot of trash underneath the house that had to be removed. Old pool floats, end tables, and buckets, and rags, and just debris, general debris.
Q. Okay. And at the time of your mom's death was Sterling Mensch living at that property 512 New Tarleton?
A. Yes, he was.
Q. Okay. Do you know how long he had lived at that property?

A. He was the only one that ever occupied that house. I mean he and his daughter were the ones that lived in that house from the time it was built. So I think 2007-ish.

Q. Okay.

A. Sometime in 2007 until he moved out in September of 2020.

Q. Okay. When you met with the Probate Court did you ever meet with the Probate Court and Sterling Mensch?

A. Yes.

Q. Okay. And can you just tell me about that meeting?

A. Well, he had not started the probate process and I told him one day that, you know, you're supposed to start probate within 30 days of the deceased's passing and he said he didn't know that. So we scheduled -- we had planned to meet several times and I know he cancelled. One time he didn't show and he cancelled and I finally got him there and we went to -- we went to Probate. And he listed -- he had to fill out an inventory form and he listed the house on the Probate form as part of my mother's property. And then when we left the Probate office that day we were standing out in the front having a conversation and I thought that the house that he was living was his house and he had listed it as my mother's house. And he said to me, "I

have a dirty little secret." Well, from looking at the address that he wrote down as being my mother's property I knew that he did have a dirty little secret and that was a big red flag to me. And, of course, I called John and talked to him about it and said, "I'm kind of concerned that there are some improprieties here."
Q. So it was your understanding that that was Sterling's house; correct?
A. Yes. Until, you know, he listed it as my mother's house.
Q. And he listed that on the inventory for her Probate Estate; correct?
A. He did.
Q. Okay. What did you say when he said he had a dirty little secret, what was your response?
A. Well, I had seen him write the -- I had seen him fill out the Probate Inventory Sheet so I -- I knew at that point in time that obviously he has a dirty little secret and I said, "Yes, I know."
Q. Okay.
A. And that's all I said. We didn't have any further conversation about it.
Q. Okay.
A. Well, we did actually. He said, "You can have the

house and you can have what's left in the Estate. You and John can have that."
Q. Okay.
A. And I didn't respond to any of that. I just -- I just left because I knew that there was something going on that -- that John and I needed to look into, or discuss, or -- I was just kind of in shock at that point in time.
Q. Okay. And after that what led to you being appointed as Personal Representative of the Estate?
A. Well, John --
Q. Can you describe those events when you were appointed Personal Representative of the Estate?
A. Well, I guess, you know, based on the first couple of hearings that we had with Judge Jennings and the evidence that we were able to come up with he determined that some things had not been handled properly and he removed Sterling as the Personal Representative and appointed me as Personal Representative.
Q. Okay. And I think you basically mentioned before had you sought information from Sterling about the Estate?
A. Yes, several times before -- a day or two before the funeral, the day of the funeral, several calls over the course of the summer, you know after the funeral. John

had –- well, I guess I can't say that. But John and I had talked and John told me that he had called to see if any paperwork had been turned into Merline's office. But, yeah, we –- he wouldn't share any information. I did try to get him to meet with me a few times to go over stuff and finally he –- he would cancel on me or whatever. So finally I just said, "Just give me a date that you can commit to," and I went to his house. And he basically showed me what he had filled out at Probate Court and wouldn't show me anything else, so I just left. I said, "We're just not getting anywhere here," so I left and I think that's what –-

Q. Did you check with Merline's office to see if the Probate had been started or was in the process?

A. Yes, I did.

Q. And what did you find out with you checked with them?

A. I talked to David Merline and he told me that they had not received any information from Sterling.

Q. And had Sterling indicated differently to you?

A. Yes, he told us at the funeral he was going to take everything to David Merline's office at the beginning of the following week and we trusted that he was taking care of that. And then after a few months we started questioning why we hadn't heard anything and contacted him and he said that he was waiting for taxes to be completed. So we gave him so more time and went back to him and he said, "Well, the taxes have been completed and I took the information to Merline's office and left it with the secretary." And I said, "Well, she doesn't have it." And he said, "How do you know that?" And I said, "Because I called his office to see if he had received anything and he had not." And he said, "Well, I gave it to the secretary. She must have lost it."

Q. And had the taxes been completed when you took over as PR?

A. When I took over as PR the only taxes that had been complete were for 2016 and those were filed mid-year of 2018. So they were about –- almost a year and a half late being filed.

Q. Okay. And when did you take over as PR?

A. December of 2019.

Q. And at that point which taxes hadn't been filed?

A. 2017 and 2018.

Q. After you were appointed how soon did you begin trying to obtain information regarding the Estate of Florence Mensch?

A. Immediately. We had –- we had to first find out where stuff was. Where accounts were, what accounts were, how to get information regarding the accounts. We had

a real difficult time getting the checking account statements or the bank account statements from Bank of America. And then with COVID amping up it made it even more difficult, so we –- it took several months before we really even got a good handle on what was out there and what had been done and not done. And then I just had recalled at some point in time that the accountant that did her taxes, and I thought it was Ballentine, but it turned it –- a long story short Allen Hodges at Stokes, CPA was the accountant that did her taxes for years and I was able to locate him. And then he was able to give me information regarding the taxes that he had prepared and the fact that he had tried to get in touch with Sterling to give him information for the 2017 and 2018 taxes and was not getting any response. And I have a copy of a letter that he sent to Sterling's house regarding the 2018 taxes, but those taxes were never filed and that's when I found that out.
Q. And so you hired Al Hodges to do the 2017 and 2018 returned; is that correct?
A. That's correct.
Q. Okay.
A. And we didn't have all the information we needed so we went back to some of the old taxes and that was –- that

gave us information on where to look for accounts and what –- you know, what funds to look at and where to go looking for information because they were documented on her prior taxes.
Q. Okay. Have you met with the IRS regarding the 2017 and 2018 tax returns?
A. Yes, I actually took most the day off of work to go meet with the Federal IRS and the South Carolina Department of Revenue and the Federal IRS would not forgive any of the penalties. Right now they've only assessed penalties and interest on the 2018 returns. They have not assessed penalties and interest on the 2017 returns. They are very far behind and so they told me they would not forgive any of the interest and penalties on the 2018 taxes because he had already used that one time forgiveness for taxes on a prior year that he had filed taxes late.
Q. And who is "he"?
A. Sterling.
Q. Okay.
A. So because of that they denied any forgiveness for the 2018 taxes and penalties, but they did say that they would mail me some forms that I could fill out to file an appeal. And they told me not to do anything until those forms came in and so I received those forms a

couple of weeks ago. I've been out of the town the last couple of weeks because I had two sick grandbabies in Charleston that I had to go take care of for a couple of weeks. So those forms are now in and I'll be filing the appeal for 2018 taxes.

Q. Okay.

A. I also went to the 2016 -- I mean I also went to the South Carolina Department of Revenue and I also have now gotten some forms to file an appeal for those penalties and interest.

Q. Okay. And have you talked with an accountant about the likelihood that the penalties or interest will be forgiven?

MS. THOMASON:

Objection, Your Honor. We're getting a lot of hearsay.

THE COURT:

Yeah.

MR. MCLEOD:

I withdraw that question, Your Honor.

THE COURT:

Okay. Thank you, Mr. McLeod.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. All right, Shauna, I'm going to hand you what's stipulated and admissible into evidence and premarked as Exhibit 6 and ask The Court to admit this as Exhibit

6 -- Exhibit 26 into evidence.

THE COURT:

Okay. All right. Petitioner's 26 admitted without objection.

(Introduction of previously marked document, SunTrust Account Estate 6779 as Petitioner's Exhibit Number 26.)

Q. All right. And, Shauna, can you quickly identify this statement for me?

A. Yes, this is a SunTrust checking account statement for the Estate of Florence P. Mensch that I set up when I became Personal Representative.

Q. Okay. Can you identify the account number on that for me, the last four at the top?

A. Yes, the last four digits of the account number are 6779.

Q. Okay. And is this the Estate account that you set up?

A. Yes, it is.

Q. Okay. And can you tell me the date of the statement period?

A. The date of the statement is 7/31/21.

Q. Okay. And can you tell me --

A. And it goes from 7/1/2021 to 7/31/2021.

Q. Okay. Did you recently request these statements from SunTrust?

A. Yes, but I also get a copy of -- I requested a whole set because that was what I was asked to do to provide for the hearing. And then I also receive the statements.
Q. This is the latest statement?
A. It is.
Q. Okay.
A. Yes, it is.
Q. Can you tell me the amount in the account beginning balance and ending balance?
A. The beginning balance is 143,985.25. The ending balance on this statement is 134,985.25.
Q. And there's a check there for $9,000; is that correct?
A. That's correct.
Q. What was that for?
A. That was for John Markel services.
Q. Is that all you paid John Markel?
A. No.
Q. How much have you paid John Markel?
A. I don't know off the top of my head. I would have to look at the statements.
Q. Okay. Would roughly 25,000 be correct?
A. I think it's probably more than that.
Q. Okay.
A. I have a summary of my statement I can look at.

Q. Okay. That's okay. I mean is it roughly between 25 and 28,000?
A. It's probably close to 30,000, 25 or 30,000. Somewhere in there.
Q. Yeah, just an estimate for now. Okay. Do you know how much the Federal 2018 taxes are currently?
A. I can't quote that off the top of my head. I mean we have the –- we have the documents.
Q. Yeah. I'm going to hand you a statement to see if it refreshes your recollection. (Counsels conferring) I'm going to show you this document just to refresh your recollection on certain things. So the current amount in the SunTrust account has that –- on this Exhibit 26 has that gone down? Is it less now?
A. You mean less than the 134,000?
Q. 985.25?
A. Correct. It's down to $119,091.30.
Q. Okay. And what was that drop caused by?
A. We paid attorney's fees of $15,893.95.
Q. Okay. And we went over the current balance of the UBS IRA Account. Can you tell me that amount?
A. $153,864.24.
Q. Okay. And then there's a non-Probate asset, the State Street account, what is that amount?
A. The total for those three accounts on the State Street

statement is $18,935.26.

Q. Okay. And on liabilities the federal 2018 taxes the latest calculation from the IRS what is that?

A. $95,408.34.

Q. And the state taxes for 2018?

A. $27,675.10.

Q. And the 2017 federal taxes?

A. $1,672.

Q. And the 2016 federal taxes?

A. $1,771.73.

Q. Okay. All right, Shauna, I'm going to show you what's been stipulated as admissible into evidence and identified as Exhibit 27 and I'll ask The Court to admit this into evidence as Exhibit 27.

THE COURT:

Number 27 without objection.

(Introduction of previously marked document, GE Pension Overpayment Form as Petitioner's Exhibit Number 27.)

Q. All right. Can you tell me what this statement is?

A. This statement is the GE Pension Overpayment Form. Once we were going –- once we got access to the checking at Bank of America, my mother's checking account statement, we found that deposits were –- after she died deposits from the GE Pension Plan were still being deposited into her checking account. So when I discovered that I got home from work one day and looked at the statement and discovered that. And so the next morning I called GE to let them know that she was deceased, but they had been -- they had been paying -- paying the pension because nobody had stopped them from paying the pension.

Q. Did they not know that she was deceased?

A. GE did not know. Sterling never informed them that she had passed away and they continued to make deposits into her checking account. So when I found that out I called GE and told them that she had passed away and they asked me when and I gave them the date of the death and sent them the forms. And they sent me this overpayment form and a statement saying that we owed $30,157.81 for pension payments that were made after her death. They also said that, and this form includes that, that there was a GE life insurance policy in the amount of $10,000 that was left to the three beneficiaries, myself, Sterling and John. And so they asked -- they said, you know, we can go ahead and turn over our portions of that insurance benefit to reduce the amount of overpayment that would need to be made to back to GE. So John and I went ahead and signed over our share of the death benefit. And then sent that off to GE. And then I guess it looks like on May 28th, 2020 Sterling agreed to sign over his share of the death benefit for that life insurance policy, but he never mailed that to GE because I called to follow up on it probably about a month or so ago and so I sent this copy to them where he had signed turning over his share. So the amount –- the overpayment was $30,157.81. Because all three of us have turned over our portions of the life insurance benefit the amount now owed back to GE is $20,157.81.

Q. Okay. And so as another liability you'll have to repay this –- the Estate will have to repay the GE Pension repayment; is that correct?

A. That's correct. John and I already, you know, provided them a portion of the payment for the monies that were taken.

Q. Okay. And if they hadn't been taken you would have shared a $10,000 life insurance policy; is that correct?

A. That's correct.

Q. And it would have been one-third between yourself, John and Sterling; is that correct?

A. That's correct. And if it had been handled properly whenever she passed away then this would have never been an issue for the Estate to handle.

Q. Okay. And on the UBS Retirement Account we mentioned that's a taxable account; correct?
A. Correct. It's an IRA so as funds are distributed it generates tax liability.
Q. Correct. And it was payable to the Estate; correct?
A. That account will have to been transferred into an Estate account and then it can be distributed.
Q. Okay. And upon being transferred into the Estate account will that create a tax?
A. I think it will because I –- and I don't know for sure. It will either become taxed at that point or if it's able to be rolled into an IRA whenever that IRA is, you know, liquidated then it –- it's still taxable at some point in time. I don't know at what it will be taxed. I'm assuming it will be taxed whenever we take it out of that rollover IRA and put it into the Estate, but that I don't know yet. I haven't –- I don't know that yet. I haven't work with GE other than to know what the next step is.
Q. Okay.
A. But it is a taxable –- it will be a taxable event at some point to the Estate.
Q. Okay. And so after taxes and –- well, after taxes are taken out of that and the liabilities are paid have you calculated what you think the estimated balance after

taxes and liabilities will be?
A. Yes. The estimated balance after taxes and liabilities are $69,812.34. And that's an estimate.
Q. And that is assuming a 49 percent rate on the UBS IRA?
A. That's right.
Q. So we'll make that clear. You don't know for sure that that's the rate, but based on what you do know?
A. That's correct. That's an estimate.
Q. Okay. Based on what you've been told Estates are taxed at the highest rate; is that correct?
A. That's right.
Q. Okay.
A. That's right.
Q. All right. I think that's all I have. And, again, the State Street account that has a payable or transfer on death; is that correct?
A. That's correct.
Q. Okay. All right. Let's see.
MR. MCLEOD:
Your Honor, I think I'm close. Can we go off the record for five and just make sure? Is that okay with you?
THE COURT:
We will take five. We will be in recess for the next five minutes.

Off the Record: 14:24:22.5
On the Record: 14:30:25.0
THE COURT:
Okay. Let's go back on the record. Mr. McLeod?
MR. MCLEOD:
Just a few follow-ups, Your Honor
EXAMINATION RESUMED BY MR. MCLEOD:
Q. Let's see. All right. Shauna, I'm going to hand you what's already been admitted into evidence as Exhibit 3.
MR. MCLEOD:
Your Honor, can I get your Exhibit 3 to refer to?
THE COURT:
Yes.
Q. All right. Ms. Waddell, have you seen this notebook before and the contents of it? You can review it for a few minutes.
A. Yeah, it looks familiar. Yeah.
Q. What is it?
A. Well, it's got the bank statements.
Q. And whose bank statements are those?
A. Let's see. It looks like Sterling Mensch's bank statements.
Q. Okay. And are there -- can you describe what's on the bank statements? Just in general.

A. I mean it shows the bank balances and the withdrawals, transfers, checks.
Q. Okay. Is it highlighted?
A. It is.
Q. And do you know what the highlights are for?
A. I believe he's highlighted some things that were for the benefit of my mother.
Q. Okay. And are there certain things highlighted in yellow?
A. Yes. I think those are the ones that he highlighted that pertain to the house maybe and then the ones in purple looks like he's got notes that they were for his mother, our mother.
Q. Okay. So the things in yellow were allegedly for 512 New Tarleton Way?
A. That's right.
Q. And then the things in purple were allegedly for the benefit of Florence Mensch; is that correct?
A. Yes.
Q. And how extensively have you reviewed this?
A. I have spent hundreds of hours looking over bank statements, and investment statements, and taxes, and I mean hours and hours and hours over the last --
Q. This statement in particular, this notebook?
A. This? I haven't looked at this particular notebook.

Q. All right.
A. I've looked at the bank statements.
Q. Okay. You've just looked at Sterling Mensch's bank statements?
A. Yes, a lot.
Q. Okay.
A. Yes.
Q. And for this account 3259 --
A. Yes.
Q. -- is that correct?
A. Yes, that's correct.
Q. Okay. And the things outlined in yellow, which we said were for the house can you -- how about turn to just December 17, 2014. Can you find that one? It's towards the middle. More towards the beginning.
A. December 17th through January 15th? December 17th to January 14?
Q. Correct. Yeah.
A. Through January 15?
Q. Yeah.
A. Uh-huh.
Q. And do you see on that page where there are three highlighted items to Classic Ace Hardware starting on 1/5/15?
A. Yes.

Q. And then there's -- can you try the two below that are highlighted?
A. Classic Ace Hardware for both of them. The amounts for all three of those highlighted items are $44.33, $64.71, and $93.84.
Q. Okay. And have you ever seen any receipts to back any of this up?
A. No.
Q. And were you aware that this was produced from a Judge's Order?
A. Yes.
Q. Did the Judge order him to produce receipts?
A. Yes.
Q. Okay.
A. On more than one occasion.
Q. Is it difficult to tell whether that Classic Ace Hardware was for Florence's benefit?
A. You can't tell from this what -- what benefit it was for or who used it or what it was for.
Q. Okay. Because just on that same page are there a number of transactions?
A. There's a lot of transactions.
Q. Yeah. Do the three that are highlighted mean anything different to you than the others?
A. No. The only difference is that I can tell is the

amount and who the –- who the pay to was for.

Q. Okay. And, Shauna, this is my last question, but what affect has this had on you? The events since your mom's death?

A. If you had told me three years ago that we would be sitting here today and that we have gone through everything that we've gone through for the last three years I would have never believed you. This to me is something you see on TV. This is not something you live. I'm almost embarrassed to use my maiden name anymore because I don't want anybody to know that I've even related to Sterling after the things that we have discovered. It's been a distraction to my career. It's been a distraction to my family. It's –- it's been a nightmare. I never thought that I would find the behavior that I have found and the things done the way things have been done from somebody in my family. I never thought –- I just never thought I would ever see any of this. And the more we looked the more we found and the more shocked we were. To be –- I think one of the most insulting things I think there's been so much disrespect shown to my family through all these misdeeds. It has caused me a huge amount of stress. A huge amount of stress. And disappointment, shame in that this has gone on in my family. Sleepless nights.

You know you start looking and you think surely this is not -- surely I'm seeing something that I'm misreading. And then you dig some more and you find more. Honesty and integrity and doing the right thing for people, for my family, for my parents. I mean that's just what you do. You don't deviate from that. I've got three new grandbabies this year that I feel like this has been distraction to that, too. It's taken time away from -- from my family. And I want to enjoy these years of my life and the simple pleasures that we have to watch these children grow and to spend time with them and to spend time with my family in a happy, peaceful setting that I've always known. And this has been a huge distraction. I -- I can't tell you the disappointment and the stress this has caused me. I never, ever thought I would ever sit in any courtroom of any kind with a dispute against anybody much less my family. That's just -- I mean I work hard. I've worked hard all my life. I do the right things. I don't lie. I don't cheat. I don't steal. I mean I just -- I just never would have thought I would have been here and I don't -- I don't know what I'm allowed to say and what I'm not allowed to say. I'm not an attorney and I've not been in a courtroom situation, but I can just tell you -- I can just tell you that this is has caused a

lot of heartbreak. A lot of disappointment.
Q. All right. Thank you, Shauna. I appreciate it.
MR. MCLEOD:
No further questions, Your Honor.
THE COURT:
Okay. Ms. Thomason.
MS. THOMASON:
Okay. I'm going to try to -- I'm glad for a minute to take that off (referring to mask).
EXAMINATION BY MS. THOMASON:
Q. Thank you, Ms. Waddell. I'm not going to be very long. I don't have much, but. So I think you testified that you didn't -- that you knew that Sterling was the only person to live in the house, he and his daughter from 2007 forward; is that correct?
A. As far as I knew.
Q. And you were actually Power of Attorney from 2007 to 2010 for your mother?
A. I was -- she may have me listed on some papers but I never had received copies of those papers and I was never acting Power of Attorney because from 2007 to that time period she was living on her own in her own home and managing her own affairs. So I guess that would be similar to my having my Powers of Attorney listed for my children, but they're not using any

Powers of Attorney because there's no need for it. I'm not incapacitated.
Q. But you -- I'm sorry. But Sterling was not Power of Attorney during that time?
A. I don't know. I didn't have those documents.
Q. I think in your Pleadings though you've stated that he became Power of Attorney in 2010?
A. I think that's what we found out.
Q. Okay. Now, you mentioned your mom was living on her own. She had her own residence?
A. Uh-huh. Yes, she did.
Q. Okay. And so she lived in her residence and Sterling and his daughter lived in the Tarelton Way residence; is that right?
A. That's correct.
Q. When did she -- when did she go into assisted living?
A. She never went into assisted living. She went into memory care.
Q. Okay. So like an unassisted living on her own, but in a memory care facility?
A. She went into memory care. Well, she lived at her residence and then she moved into independent living at a retirement center.
Q. Okay.
A. But she was still living independently. She had her

car and she was living independently. And then she moved into memory care after -- after that.

Q. Was that somewhere around 2012?

A. She went into memory care -- I don't have the dates.

Q. Well, she sold her house in 2012 she lived at?

A. She sold her -- she moved into an apartment in independent living and then she sold her house. And then she was independently living at a retirement facility for probably a year or -- I don't have the dates and I don't want to -- I don't want to specify the dates because I might quote it wrong, but.

Q. I'm just trying to layout the timeline.

A. Probably 2013, '14. I don't know.

Q. Okay. Now --

A. We could -- I have the records.

Q. From when she went in?

A. I have those records if you want me to get them and give you the time.

MS. THOMASON:

Tyler, have those been sent to me?

MR. MCLEOD:

I don't know. If you want to pull them.

Q. I think right now we can just go with kind of a timeline. I just want to lay it out for the record the progression of her dementia --

A. Sure.
Q. -- and moving into and being completely in a more full-service facility.
A. Sure.
Q. And so that would be the Rolling Green facility that step up in the care she needed; is that right?
A. When she moved out of her house into independent living that was at Rolling Green Estates. And then she -- or Rolling Green Village and then when she first moved into memory care it was at Rolling Green Village.
Q. Okay. All right. Now, earlier you testified that when you started to notice that GE stock was falling that, you know, you advised Sterling to sell?
A. Uh-huh.
Q. And in the years before that your mom had always held everything 100 percent GE; is that right?
A. I think she had Elfun Funds.
Q. Managed by GE Mutual Funds; is that right?
A. Well, it -- it's not the same as the GE stock.
Q. So I understand it was a mutual fund and the GE stock was a stock fund, but it was -- it came under the same statement with the same custodian?
A. I don't think -- no, it didn't. I don't think so.
Q. I thought we looked up and there were many statements where the GE -- where the GE Mutual Funds -- I mean it

had a custodian on the statements, but both of those types of funds were listed on a single statement; isn't that correct.

MR. MCLEOD:

Your Honor, can we refer to the statements if we're going to do it?

MS. THOMASON:

Sure.

THE COURT:

Let me see. I think Exhibit 2 has got –- here's the State Street.

MS. THOMASON:

These are the earlier one. I'm going to go from here.

THE COURT:

Don't forget to give it back to me. Okay?

MS. THOMASON:

I know because I get all that stuff in there.

EXAMINATION RESUMED BY MS. THOMASON:

Q. Let me show you what's been marked as Exhibit 2 and it's already been admitted into evidence. And that is a statement that shows the portfolio breakdown and it has GE Mutual Funds at the top. What is the name of the custodian listed at the top?

A. Florence Mensch TOD POA.

Q. I think just above that it has custodian.

A. At the top it says Florence Mensch TOD POA.
Q. Here?
A. Oh, you're talking down. Under –– under account number 2000352597 it says US Bank NA Cust Florence Mensch IRA Rollover POA.
Q. And that has both the stock in the portfolio and then references the Elfun Funds as well; isn't that right?
A. (Witness reviewing exhibit.)
Q. I promise you I'm not trying to trick you.
A. Well, I'm just not going to answer until I know for sure. Okay. I see that. I see Elfun Fund. I see Elfun Trust Funds.
Q. Okay. And that GE stock your dad worked for GE for 40 years I think ––
A. I think 42, but, yes, I think –- yes, he did.
Q. And so that GE stock was originally managed by GE Mutual Funds through a custodian; isn't that correct?
A. I think he managed his own accounts.
Q. When it was with GE? Have you done any independent –– are you aware of what kind of account that was? Was it stock –- stock options?
A. I don't know how he handled his accounts, but I know he watched them and he would take money out of his accounts when he needed to and not take money out of his accounts when he didn't need to.

Q. But that had always been GE stock is my point. It had always been from the time he worked and built up his investment portfolio in a rollover to your mother; right?
A. I knew he had GE stock.
Q. In fact, he had only GE stock in a rollover to your mother at his death?
A. I think he also had mutual funds.
Q. Would that be the Elfun Funds?
A. Yes.
Q. Okay. Now, the reason that that was moved over to UBS isn't it a fact that GE stopped managing their own?
A. I think that's correct.
Q. And so that wasn't a decision any one person made, GE did that with all of theirs? They got out of that business; isn't that right?
A. I don't know. I don't know what the decision was to letting them manage. I know my 401k has been moved around to different managing entities, but.
Q. Exactly. Without you making an affirmative decision to move it? Whoever is custodian, whoever is handling it makes that decision?
A. Right. But I have -- I have the authority to go in and move money in and out of it and change my elections and liquidate if I need to or not liquidate if I don't need

to.
Q. Okay.
A. I still manage my -- I still manage my funds.
Q. Now, when this -- there was not really a concern about diversification or the fact that mom had held everything in GE stock, the majority of her portfolio on GE stock, for all these years until 2017 when the value tanked; is that -- is that correct?
A. I mean GE had been strong for a long time and then the value did start to decline rapidly.
Q. And so in 2017 it really was over a few months that half the value was lost; isn't that right?
A. I think we did notice that there was a decline from what, 2016 to 2017 and beyond.
Q. Not significant however. I mean it was in 2017 that it really over a course of a few months declined; isn't that correct? That's what got your attention?
A. Yeah, that and what I was reading and hearing in the news.
Q. Okay. So it wasn't that he didn't -- that Sterling didn't diversify over a long period of time, it was all of a sudden GE value was reducing fast, very quickly and that became a concern at that time?
A. I think we noticed in the statements in monitoring her statements after the fact when I started getting the

statements we could see the declines from statement to statement to statement over a longer period of time than just a few months.
Q. But hadn't it already been the GE stock was already liquidated by the time you took over?
A. By the time I took over it was -- it was I guess moved into this GE Stock IRA.
Q. You mean when you took over as Personal Rep it was --
A. That was in 2019.
Q. Okay. So you were getting statements after that or you went back and got prior statements?
A. I didn't start getting the statements until after I was appointed and had to find out where all this stuff was and then I started getting statements. And, yes, we did require previous statements.
Q. So when you say that you noticed it declining you're referring to the previous years?
A. When I -- when I knew that the GE stock was declining I contacted or I talked to Sterling and told him, "GE stock is going down. If mom has anything left in GE stock you need to move it now."
Q. Okay. Okay. And my only point being it wasn't on a long decline, it happened very quickly?
A. Well, I don't think it happened immediately.
Q. Okay. Now, the State Street Elfun, that mutual fund

eventually ended up in Global State Street Mutual Funds. It's actually already been admitted into evidence, but in those mutual funds as we can see from the statement that we just showed and others that have been admitted it was about 277,000. It went up a little bit and down a little bit, but it stayed around there; is that right?
A. Can you repeat that, please?
Q. Sure. On this statement how much does it show is in Elfun Funds?
A. (Witness reviewing exhibit.)
Q. Does it show 279,000?
A. (Witness reviewing exhibit.) Okay. This first page that I'm looking at is for the period of January 1, 2015 to December 31st, 2015. It's page 2. If I turn the page I see a statement for the period of January 1st, 2016 to December 30th, 2016. And the beginning value –- the beginning value was $279,819.11 and then there were withdrawals of $208,727 with an ending value on 12/30/2016 of 88,347.69.
Q. So when you're looking at that first page and it has –- what's the date range? You said that's for the year 2015; correct?
A. 2015. Uh-huh.
Q. So that 279,000 on December 31st, 2015 we know -- we

know that there was a sizeable wire and then in December of 2015 I think the testimony has been, and we've got evidence admitted in the record, that $84,000 in gifts were given from this account?

A. I think the gifts were given from my mother's checking account.

Q. I think the record earlier showed that they came out of the –- out of the –- it was GE still at that time in 2015?

A. The mutual funds I think I mean you'd have to go back to John's testimony this morning, but I think he –- he showed or testified that there was money moved out of her mutual funds and transferred in the same amount into her checking account and then checks for gifts were written out of her checking account.

Q. Sure. That was my point. He testified they were moved out of her mutual funds –-

A. Okay.

Q. –- into here. And so we know part of that reduction is $60,000 of gifts in '14, 84,000 in '15 and 84,000 in '16 that were gifts. My only point here is you testified that this account is a beneficiary pay upon death account and it goes directly to the three of you.

A. Correct. And that's the mutual funds, not the stock. I understood you –-

Q. So if there was 279,000 in there in 2015 and 220,000 come out to the three of you, like it would after, the difference is, you know, maybe 50,000 or 60,000 not taking into account taxes; is that right?
A. I mean I don't know. I'm not doing the math.
Q. The three of you have already received 220 of what that account would have paid out to you. I think the checks show it. I mean we've got the checks in?
A. (Witness pausing.)
Q. Do you want to just let the checks stand for themselves?
A. I mean I'm not --
Q. It's okay. Okay.
A. I'm not going to say something that I don't have something to back up and have in front of me and definitively say that -- I'm not going to say you're correct if I don't know that you're correct.
Q. Now, you also said that these funds were going to be taxed at any point when they were taken out; isn't that right?
A. I was talking about the IRA account.
Q. Right. Both of these would be taxed upon withdrawal?
A. I think the mutual funds and I don't know yet, because I have not done this yet, but I think if you have stocks and bonds and mutual funds I think you can

transfer them. I think you can transfer them into another account and that then becomes the basis for the taxes and you wouldn't pay taxes on it until you liquidated your new account that you transferred these to.
Q. So just so we can clarify on the record though the mutual funds are the IRAs?
A. I think -- I kind of feel like you're combining the GE Stock IRA and the mutual fund accounts into one conversation.
Q. They're both IRAs; correct?
A. (Witness reviewing exhibit.) I mean the GE Stock IRA is the only one that's listed as an IRA by its -- by its description on the report.
Q. Okay. So anytime, and I understand you're saying you're not sure about rolling over, but at the point that this was realized in cash, liquid asset coming out of these accounts, it would be taxed?
A. If -- if -- as long as my mother owned these accounts and money was taken out of these accounts it becomes a -- capital gains are taxed.
Q. And they're taxed after she passed away; correct?
A. As long as -- to my knowledge as long as they're liquidated under her name out of her account they are taxed. I think, and I don't know for sure because I'm

not a CPA and I'm not an attorney, but I think when you have stocks and bonds and mutual funds I think if I were to say to GE, "I'm going to take my share of the mutual funds and I want you to roll those into an account under my name," I don't think there is a tax liability there. I think that then becomes the basis and then if I were to then liquidate my portion, my new account, I think at that point in time the difference between the starting point of when I moved that money to what the new value would be become would be the capital gain tax that we would pay. I'm not 100 percent sure about, because again I'm not a CPA. I'm not a tax specialist and I'm not an attorney.

Q. No, no, no. It was just earlier I think testimony was it would be 49 percent once it comes to the Estate.

A. We were referring to the GE Stock IRA only.

Q. Okay. So what would -- would the tax be on the Elfun Fund IRA?

A. Well, I -- I -- again, I don't know for sure, but I think if I were to say, "Okay. Here's my portion of this account," and I roll it into another Elfun account under my name to my knowledge I think you can do that without paying the tax on it. I think it becomes the basis. And, again, I'm not a tax professional. I'm not an attorney and I'm not a CPA. But I think that

that's the way it works.

Q. Did you calculate taxes though when you came up with your 65,000 net number? Was that based on paying taxes or was that based on what you --

A. I estimated paying 49 percent out of the $153,000, the GE Stock IRA. That was just an estimate. I don't know what that number is going to be.

Q. Okay. But you've already received 84,000. John has received 84,000 and then --

A. Now, as those funds were being liquidated there was tax liability generated for my mother's accounts.

Q. Right.

A. Because they were not -- those -- and those just were just taken out of her -- those were taken out of her GE account and put into her checking account.

Q. Right. And it generated taxes?

A. Yes. And likewise if I -- if -- and, again, I'm not an accountant. I'm not an attorney and I'm not a tax professional, but my understanding is if I take the mutual funds and roll them over into an Elfun account under my name I don't think there's taxes at that point in time. I think that the tax -- I think that once I liquidate out of my account I think that generates the tax liability and only from the basis which I moved the money into that to the time I move it out. I'm not

sure. Again, I am not -- and that's why I did not estimate any taxes on that money, because I don't know.
Q. And I'm not really trying to be difficult. I just want to make sure I understood you because I think you said you estimated 49 percent on that money?
A. And I estimated that.
Q. Okay.
A. Because I know that there is a higher rate for Estate taxes than there is for just general personal income taxes.
Q. Who paid the taxes on the gifts for each of these years '14, '15 and '16?
A. Whenever that -- that money was liquidated from my mother's account and put into her checking it became a tax liability to -- to her.
Q. So the taxes were paid out of her account for that?
A. Correct.
Q. Okay.
A. But now the taxes haven't been paid for 2017 and '18.
Q. Yeah, we're talking 2014, '15 and '16.
A. Yes. Late, but they were paid.
Q. Okay. Now, are you aware that the house, the Tarleton Way house that Sterling put the down payment down, he paid all of the payments, paid all the insurance, and the all the property taxes, all the improvements and so

there was no expense borne by your mother's Estate?
A. That's not a true statement. There were checks written for mortgage out of my mother's account, the checking account. I don't know -- I don't know the property, the land according to the records show that she purchased the land.
Q. It has her name on it?
A. It does.
Q. Okay. She never had any discussions with you, you've not seen any notes, handwritten notes regarding intention that that would be Sterling's home?
A. No.
Q. Okay. Let's see.
A. I didn't know she was involved in the purchase of it to begin with.
Q. You said that on the GE Pension overpayment, the $31,000 --
A. Correct.
Q. -- that you and John Mensch had already -- you had paid part of that. Are you referring to the $10,000 life insurance policy just for clarification?
A. We forfeited our share of that life insurance policy as a goodwill gesture to GE Pension and told them that we were going to, you know, try to get the funds available to be able to, you know -- to try to get that paid

back.

Q. The life insurance policy that was the three of you?

A. Correct.

Q. There was just one $10,000?

A. That's correct. That's correct.

Q. Okay. One last question. In speaking about 2017 when you mentioned to Sterling that he needed to sell the stock if there was anything left. You said that your mother was already under the care of two physicians that could have -- Dr. Arya and doctor?

A. Bansaly.

Q. Bansaly. But isn't it true that Dr. Arya had already moved to Texas by that time and Dr. Bansaly left her practice as well.

A. She was patient of both of those doctors. I don't know at what point. I don't know what date that they left, but they diagnosed her and they were -- they managed her medicines, both of them.

Q. But you don't know what efforts were made to get her in to see a physician or how many months passed that Sterling made those efforts?

A. He -- he just told me that he went to take her to a doctor's appointment and she soiled herself and so he couldn't take her, but Oakleaf Village had a physician that visited once a month to attend to any needs that the residents had. But the medical records from Dr. Bansaly and Dr. Arya are certainly available.

Q. But you have no personal knowledge whether UBS would accept those or not if they sent and they declined to accept them without an updated letter, you don't have personal knowledge about that?

A. He just told me he needed to have a doctor's statement to show that she was not able to handle her affairs.

Q. Okay.

MS. THOMASON:

Give me one second, Your Honor. I might be done.

THE COURT:

Sure.

MS. THOMASON:

(Counsel reviewing documents.)

Off the Record: 15:11:18.5

On the Record: 15:11:28.3

MS. THOMASON:

I think that's it.

THE COURT:

I have a question for this witness before she steps down. Do you have any redirect?

MR. MCLEOD:

I don't think I will, Your Honor.

THE COURT:

Okay.

MR. MCLEOD:

But you go ahead and ask your question.

EXAMINATION BY THE COURT:

Q. I'm just trying to understand the different residences of your mom.

A. Uh-huh.

Q. So when your mom and dad were living together did they live in a house here in the Greenville?

A. They did. They lived at 207 West Beverly Street.

Q. Okay. 207 West Beverly.

A. Street. And that's in Greer.

Q. In Greer. And then what was the next place your mother lived?

A. Then she moved to Rolling Green Village and she lived in independent living there. She bought a two-bedroom apartment.

Q. Okay. And she sold the Silver Leaf --

A. After she moved into -- correct.

Q. And then from Rolling Green Village she moved from independent living into the memory care?

A. That's correct.

Q. And then I heard you mention Oakleaf. Did she go to another place?

A. And she was living in Rolling Green Village and she got sick and we kind of determined that she was being over-medicated, so we -- I had found a geriatric specialist and we had started -- we had moved her to Dr. Arya's care. And so we just felt like the best move was to move her out of Rolling Green Village and into Oakleaf Village. I mean Rolling Green Village and move her into Oakleaf at Thornblade. It was just another memory care facility and they were probably a little bit better equipped and better willing to handle some of the personal -- personal needs whereas --

Q. Was that the last place she lived before she passed?

A. Yes, it was.

Q. Okay.

A. It was.

Q. And the Tarleton house did it get built sometime during -- she never lived in it according to the testimony.

A. She never lived in it.

Q. So it was built?

A. In the 2007 to 2008 time frame.

Q. Was that while she was living --

A. In her home.

Q. In her home at Silver Leaf?

A. Silver Leaf. Uh-huh.

Q. And so she purchased -- she made the purchase of the land or purchased whatever -- had it built or purchased

it if it was existing around 2007 and '8, but she never lived in it?
A. Correct.
Q. Okay.
A. I think that's right.
Q. Okay.
A. And I don't know how all the -- all that transpired.
Q. Okay. I just was trying to make sure I --
A. Yes, ma'am.
Q. -- understand how, because I know there was some mention of an apartment, but that was probably the Rolling Green?
A. That's correct.
Q. Okay.
A. That was the first --
Q. The independent living?
A. Independent living, yeah.
Q. Okay.
A. You know they were broken down into several different --
Q. Right. Right.
A. -- phases of senior life there.
Q. So she was at Silver Leaf, the she went to Rolling Green Village independent living in an apartment, and then went to memory care at Rolling Green, and then

after not being happy with the treatment there she was moved to Oakleaf at Thornblade and that's where she was before she died?

A. That's right.

Q. Okay.

A. That's right.

Q. All right. Thank you.

A. Thank you for asking.

Q. Uh-huh. Okay.

THE COURT:

All right. I'll turn it back over. Mr. McLeod, anything?

MR. MCLEOD:

Nothing, Your Honor.

THE COURT:

Okay. Okay. You may step down. All right. Let's take a ten minute recess and we'll have the witness chair wiped down and we'll come back at 25 after 3:00. We'll be in recess.

Off the Record: 15:15:12.7

On the Record: 15:27:39.4

THE COURT:

Thank you. Please have a seat.

MS. THOMASON:

Your Honor, before we go on the record can we just please talk about the logistics?

THE COURT:

Sure. Please.

MS. THOMASON:

So Tyler and I were just -- Mr. McLeod and I were just talking and I don't think you have any more witnesses right now?

MR. MCLEOD:

That's true. No more witnesses. I have one thing I'm considering, but I'm probably going to close my case.

MS. THOMASON:

And we have one, maybe two witnesses, and to put -- I need about 30 minutes to get my expert here because I was just going to give him a call. I didn't know. But I'm concerned that it would be highly prejudicial to put him on the stand to answer partial answers.

THE COURT:

Uh-huh.

MS. THOMASON:

Leave and come back. I mean that being said I don't know what The Court has available to very quickly turn around and reconvene.

THE COURT:

We'll have to Kim Campos-Ivey will have to look on The Court's schedule and see when we can come back. And probably we need to estimate high instead of low so we don't run out again. I don't know if you think another whole day or we ought to put two days. I'd rather go high than low, you know, to finish because you may have reply witnesses. I don't know. You have how many, two?

MS. THOMASON:

One and probably two, but I know one and I think his testimony would probably take me an hour and an hour to get through, maybe two hours because it's an expert.

THE COURT:

Okay. And then he's going to cross. So you figure that's probably more than a half a day right there and then you've got one more.

MS. THOMASON:

Potentially.

THE COURT:

I think we ought to get a two-day block. We can do that. You know Kim can send you-all something tomorrow and I'll get her to make it a priority the next two days that we've got and then you can look at calenders and determine.

MS. THOMASON:

Maybe we can -- I know you have a witness that has to travel.

MR. MCLEOD:
He won't be here. He won't be here.

MS. THOMASON:
But you're not going to call him now?

MR. MCLEOD:
I'm not going to call him, no.

MS. THOMASON:
Okay. So that would have been a problem. Other than that we can split up. I mean Devon –– Devon's 2:00 he hasn't gotten called yet. He's in a group. He's still waiting.

THE COURT:
Oh, he is. Okay. So you've got two more witnesses. You've two witness that are what, your expert?

MS. THOMASON:
My expert and then potentially Sterling. But my expert I think it will take me an hour and a half, two hours and I'd rather not have to –– I mean I'm okay breaking for your cross, but midway through the questioning.

MR. MCLEOD:
I see.

THE COURT:
So we have an hour and a half left of today is there anything we can accomplish in that hour and a half. Have you-all ––

MR. MCLEOD:
If we're going to go that route anyway can we take a few more minutes so I can talk with my clients some. I've got one thing I'm considering. We can do ahead and maybe put on the record and then I don't know if John –- I need to talk with them for a few minutes and see if he wants to testify.
THE COURT:
Okay. Well, we've got an hour and a half of court time that either I –- you can talk about that or if you want to talk about the case so far in terms of trying to reach a settlement that's always a good use of time, you know.
MR. MCLEOD:
I wish we could.
THE COURT:
Wonders never cease.
MR. MCLEOD:
Yeah.
THE COURT:
But how about –-
MS. THOMASON:
Maybe, Your Honor, after he talks –- and I'm so sorry.
THE COURT:
That's okay. I was just going to say why don't I go

back in and just come back out in about ten or 15 minutes and after you've had a chance to talk to your clients and see where we are at that point and see if we can use the remainder of the day for something constructive.

MR. MCLEOD:

I'm sorry to cut you off. Do you think Kim can give us -- is she here? Can she give us some dates?

THE COURT:

Yep, she's here. And I can ask her to come around and see if she can -- she can probably pull up The Court calendar in here and give you some dates.

MR. MCLEOD:

All right.

THE COURT:

I'll have her do that.

MR. MCLEOD:

All right. Sounds great.

THE COURT:

Okay.

MS. THOMASON:

Thank you, Your Honor.

THE COURT:

All right.

Off the Record: 15:32:10.9

On the Record: 15:49:11.6

THE COURT:

Thank you. Please be seated. Okay. I understand you've got a couple of days scheduled. So as far as the remainder of today is there anything further for today after you've had a chance, Mr. McLeod, to talk to your folks?

MR. MCLEOD:

Your Honor, I'd just like to leave my case open and resume it on that day and if I have any other witnesses, I probably won't, but I'd like to leave it open if that's okay with The Court.

THE COURT:

Well, see that could throw me because if you leave it open you might come up with three or four more witnesses and then we are down to a day and a half and -- I mean I'm a little bit reluctant to do that since apparently you don't feel like right now in your mind you don't have anything that you think has got to come up, but I don't know. Ms. Thomason, what do you think?

MS. THOMASON:

To the extent that it's a witness that you've already disclosed.

MR. MCLEOD:

Yeah, it would be if John comes back basically.

MS. THOMASON:
Oh, as a rebuttal or reply?
MR. MCLEOD:
Yeah. Most likely a reply, but I may call him.
THE COURT:
A reply witness I've got no problem with it.
MR. MCLEOD:
Yeah.
THE COURT:
I'm just talking about more witnesses for your case-in-chief.
MR. MCLEOD:
It will not be anybody that I haven't disclosed. I can promise you that. I mean obviously.
MS. THOMASON:
I mean I have no objection if it's –- if you're stating it's John.
THE COURT:
She's being awfully nice.
MR. MCLEOD:
Thank you. I appreciate that.
THE COURT:
So because of that I will leave it open for you to consider if you need to call somebody else.
MR. MCLEOD:

All right. Thank you, Your Honor.

THE COURT:

And so I think we come back –- is it September 17th and 18th?

MS. THOMASON:

Is it 16th and 17th?

THE COURT:

It's a Thursday and a Friday.

MS. THOMASON:

Yes. Yes, Your Honor.

THE COURT:

And we start at 11:00 on Thursday?

MS. THOMASON:

Yes. We have a hearing at 9:30 but we should be here.

THE COURT:

All right. All right. That sounds good. She'll send out some notices, but we've got it on the calendar, so that was a good use of our time while everybody was in the courtroom.

MS. THOMASON:

Thank you, Your Honor.

THE COURT:

All right. Thank you-all very much and we'll resume then on that day.

HEARING RECESSED AT 15:51:33.9

CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

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

____

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF:
ESTATE OF FLORENCE PETRAK MENSCH

CASE NUMBER:
2018ES2302854

SHAUNA M. WADDELL, individually and as Personal Representative of the Estate of Florence Petrak Mensch, and JOHN R. MENSCH,
PETITIONERS,

STERLING RAYMOND MENSCH, III, individually, as former Personal Representative of the Estate of Florence Petrak Mensch and in his former capacity as Agent under Power of Attorney for Florence Petrak Mensch,
RESPONDENT.

Probate hearing taken in the aforementioned matter was heard before the Honorable Debora A. Faulkner taken before Rachel H. Wood, Court Reporter and Notary Public, at Probate Court, Greenville County Square, 301 University Ridge, Greenville, South Carolina, on the 16th day of September 2021, commencing at the hour of 11:06 a.m.

REPORTED BY: Rachel H. Wood, Court Reporter

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Erin Callahan, Brandi Larobardiere, Phyllis
Jones

INDEX

Colloquy between The Court and Counsels................ 4

TESTIMONY OF MARK CHASTAIN

Examination by Ms. Thomason............................ 9

Examination by Mr. McLeod.............................. 101

Certificate of Reporter................................ 195

EXHIBITS:

Respondent's Exhibit Number 2.......................... 32

Respondent's Exhibit Number 3.......................... 60

Respondent's Exhibit Number 4.......................... 79

Respondent's Exhibit Number 5.......................... 81

Petitioner's Exhibit Number 6.......................... 181

Petitioner's Exhibit Number 28......................... 156

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

THE COURT:

Thank you. Please be seated. All right. We're going on the record. We're here in the matter of the Florence Mensch Estate, 2018-ES-23-02854. This case was previously heard and recessed on August the 18th with the case set to resume on September 16th and 17th. We are here today to begin the conclusion of the case. Mr. McLeod is here for the Petitioners. Mr. Puriefoy and Ms. Thomason are here for the Respondent. Please silence all your devices if you have any. If they go off I'll give them to this nice man in the back to hold. Please wear your mask at all times unless you're speaking, then feel free to take it off. After each witness Phyllis Jones, with the Court Staff, will come up and wipe down the witness area. If you're not absolutely necessary you can wait outside, but it looks like we've got plenty of space of here in the courtroom so we should be okay. I'm advised that Mr. John Mensch will not be in attendance today. Is that right, Mr. McLeod?

MR. MCLEOD:

That's correct, Your Honor.

THE COURT:

And you want to go forward without his presence?

MR. MCLEOD:

Yes, Your Honor.

THE COURT:

Any objection by the present counsel that Mr. Mensch isn't present?

MS. THOMASON:

No, Your Honor.

THE COURT:

Okay. All right. Then the case then by agreement of counsel will proceed without Mr. John Mensch being present. Since we adjourned or we recessed on August 18th this is what has happened so far. The Court received an Amended Affidavit of Attorney's Fees filed on September 15th by Mr. McLeod. We had a Motion for a Protective Order filed on August 27th regarding subpoenas issued by Mr. McLeod for financial records of the Respondents from Bank of America and from T. Rowe Price. I had a telephone conference with counsel on Monday, August 13th, regarding this. I determined at that time that the case is still in its damages phase and that the relevant time to determine damages is between May 17th of 2010, which is the date the Respondent was made the decedent's Attorney-in-Fact under her Durable Power of Attorney, and December 4th, 2019, which is the date of Judge Jennings' Order removing the Respondent as PR of the Mensch Estate.

Once The Court rules on the damages however the subpoenaed information may be used by the Petitioners if necessary on the issue of payment of damages by the Respondent to the Estate. Anything about that rendition that counsels have an objection to or wants changed?

MR. MCLEOD:

No, Your Honor, but are we going to have the bifurcated --

THE COURT:

Right. We're going to keep. For right now it's all about damages.

MR. MCLEOD:

Right.

THE COURT:

And then once that's been determined then it will be -- unless you guys work it out on how that will be addressed then we can hear the final part of that.

MR. MCLEOD:

Thank you, Your Honor.

THE COURT:

Are you-all okay on this side?

MS. THOMASON:

Yes, Your Honor. So the Supplemental Proceedings is ability to pay separate and we're not going to address any of the subpoenaed information in this -- in this proceeding?

THE COURT:

Correct. This is simply on transactions made between May 17th of 2010 and December 4th of 2019.

MS. THOMASON:

Thank you, Your Honor.

THE COURT:

All right. My notes indicate that Ms. Shauna Waddell was our last witness on the Petitioner's case. Mr. McLeod, how do you wish to proceed today?

MR. MCLEOD:

Your Honor, we will conclude our case in chief and allow Respondent to start their case.

THE COURT:

All right. All right.

MS. THOMASON:

Your Honor, the Respondent calls Mr. Mark Chastain.

THE COURT:

All right.

MS. THOMASON:

Expert witness.

THE COURT:

Good morning.

MR. CHASTAIN:

Good morning.

THE COURT:

And you can take your mask off when you're testifying and you will –- if I could ask you when you sit down to give your full name and spell it please for the court reporter.

MR. CHASTAIN:

Yes, ma'am.

THE COURT:

Okay. If you will raise your right hand.

***** ***** ***** *****

MARK CHASTAIN, first being duly sworn, was examined and testified as follows:

***** ***** ***** *****

THE COURT:

Thank you. Please have a seat. And would you please state your name and spell it for the court reporter?

MR. CHASTAIN:

Mark Chastain. M-a-r-k C-h-a-s-t-a-I-n.

THE COURT:

Thank you. And before you proceed, Ms. Thomason, let me –- I forgot to do this. For the record I put all the previous exhibits over here and Petitioner's 1, 2, 3 is a huge notebook. Then we have Petitioner's 7, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27. And we have one exhibit for the Respondent.

MS. THOMASON:

Thank you, Your Honor.

THE COURT:

Thank you.

EXAMINATION BY MS. THOMASON:

Q. Mr. Chastain, for the record opposing counsel and I have stipulated that you're qualified as an expert so we won't have to go through your entire CV to qualify you. I just want to ask you a few questions. Have you testified before in This Court?

A. Yes, I have.

Q. Okay. And tell me the nature of that other case.

A. It was a case that started off civilly where we had a lady that money was taken by her caregivers from her over a number of years. We traced all that back and we gathered exhibits and listings of the damages. It went through the Civil Court proceeding and I testified in that criminal damages hearing as well.

Q. Okay. And so that's just one example, but you've testified in Probate Court in similar matters?

A. Yes, ma'am.

Q. So I'm going to –- before I ask everything you reviewed and all I'm going to kind of cut to the chase and we'll start at the end and work backwards to try to simplify this. I know The Court has heard all it needs to about this.

MS. THOMASON:

And, Tyler, this is his Expert Report.

MR. MCLEOD:

I'm going to object to the Expert Report being admitted into evidence based on it appears from the affidavit that Respondent intends to argue that the Respondent is entitled to an offset. We object to any testimony, evidence, statement, or inference by Respondent's expert witness, Mark Chastain, or Respondent Sterling Mensch, that the Respondent is entitled to an offset against damages. Plaintiff has not plead offset as an affirmative defense. Under the law of this state and essential preliminary to the allocation of an offset is that the offset claim must be pled and there must be some evidence to establish such plea. Rule 8(c) further states that including to a proceeding a party shall set forth affirmatively the defenses which constitute an avoidance or affirmative defenses. Respondent did not plead offset. Furthermore, there are no facts contained in Respondent's Answer or Amended Answer that indicate offset or a claim against the Estate. There has been no claim filed against the Estate and any claim filed would be barred by the nonclaim statute. They did not state a single fact in their Amended Answer nor their Amended -- in their Answer nor their Amended Answer that could possibly be read as alleging that the Estate somehow owed Mr. Mensch money nor that they were claiming an offset against damages. They pled several affirmative defenses, but offset was not one of them. And according to the Rules of Civil Procedure an Answer is subject to the same rules as a Complaint. The Respondent must state facts constituting his defenses to each cause of action asserted. It appears that Respondent's expert intends to testify that damages should be offset by amounts allegedly paid by Sterling Mensch for New Tarleton Way going back to January of 2006. At the same time the affidavit states that Florence Mensch never lived at 512 New Tarleton. Respondent's expert affidavit states that Sterling Mensch lived in the home and it was titled in Ms. Mensch's name due to the divorce. And I expect Respondent's counsel will argue that set-off has been allowed in certain cases when not specifically pled, but in those cases set-off was mandated by statute and did not affect any of the issues of parties at trial. That kind of set-off usually pertains to insurance companies in a wreck case when the UIM carrier is seeking offset or amounts paid by the liability carrier. So it's one thing to argue the specific amounts that were transferred from Ms. Mensch's account to Sterling's account from 2013 to 2020 were used directly for Ms. Mensch's benefit. It's completely different to allege an offset for certain expenses going back to 2006. If they can show the specific transfers which make up the stipulated amount of 820,582 were directly for the benefit of Florence Mensch that's one thing. There's no facts stated in their pleadings that any of the transactions were for Ms. Mensch's benefit. They waited to assert these facts until this trial on damages. We had no opportunity to seek discovery related to these claims for an offset. We never had the opportunity to conduct discovery on the issues raised in the affidavit of Mark Chastain, which was submitted nine days after the hearing on Summary Judgment. If they had raised those issues in their pleadings or filed a claim against the estate I certainly would have deposed Sterling Mensch and my discovery requests would have covered all these allegations. If The Court is inclined to allow some testimony related to transactions which Respondent alleges are for the benefit of Florence Mensch then I would ask that this be done under proffer or under the very limited scope of arguing that the specific transactions which compromised the total of 820,582 in transactions were directly made for the benefit of Florence Mensch. That's all I have, Your Honor.

THE COURT:

Ms. Thomason.

MS. THOMASON:

Your Honor, I'm going to first address whether or not we're claiming set-off and we're not. Mr. Chastain amended his report prior to the trial beginning in August and limited the time period from the time he was Power of Attorney forward to 2012 as to expenses paid for an asset of the Estate. We are simply looking at the beneficial payments made, whether they're for Ms. Mensch's benefit, the Estate's benefit and we're not asking for an offset. However –- and I think The Court will see that as the testimony goes it is just from this time to this time were those payments made for the house that the Estate owned, not to offset against any claim for him for something owed to him. In addition, in Supreme Court Broome v. Watts The Court has held that set-off is not an affirmative defense that must be pled in order to be pursued at trial. And then under a second case with the Supreme Court, The Court has held that –- and I can hand this up to you, Your Honor. And this case is Kirkland v. Providence Washington Insurance Company and it holds for the proposition that it is essential to remember that a counterclaim is distinguishable from set-off. That a counterclaim being statutory while set-off belongs to the inherent power of The Court in the exercise of its equitable jurisdiction. So if we were arguing set-off The Court has said it's not –- it doesn't have to pled as an affirmative defense and it is the equitable jurisdiction of The Court. But, again, as the testimony goes I think it will be clear that we're not claiming that there should be an offset against something owed to him.

THE COURT:

Okay. And those cases, what years?

MS. THOMASON:

Okay. This one is 1975 and this one is 1995. And the Broome case has already been handed up for a previous argument, but I'll be happy to give you these copies, Your Honor.

THE COURT:

I'd love to have the copies if you have another one.

MS. THOMASON:

Yes.

THE COURT:

Mr. McLeod, she says she's not claiming offset and she's going to be asking him about the character of the transactions I believe about I guess where the payments were made and that sort of thing. How would you respond to that?

MR. MCLEOD:

Well, just what I thought from Broome verse Watts is what I had in front of me and it's, you know, the very definition of UIM insurance mandates a set-off. And even though they're not pled as an affirmative defense set-off was statutorily mandated and not a matter properly before the jury. So ––

THE COURT:

I don't think that applies in this. I mean an offset in an insurance is sort I think by statute, so.

MR. MCLEOD:

Exactly. And that's the case she's handing up is Broome versus Watts ––

THE COURT:

Okay.

MR. MCLEOD:

–– which is an insurance case. And that just says it has to be statutorily mandated.

THE COURT:

But she said here on the record she's not claiming an offset.

MR. MCLEOD:

But when I read this affidavit it is an offset and there are things in here that are before 2013. So they're --

THE COURT:

Well, we're looking at 2010 to 2019.

MS. THOMASON:

There's nothing in his report. Do you have the other report?

MR. MCLEOD:

I have your -- the last one you gave to me. There's things for a -- I mean if you want me to go into it there's a pool that was paid for in 2008. There's a down payment on 512 New Tarleton. Basically his exhibit -- or his line -- it's line 5 and this says these payments are offsets against the transfers of beneficial payments from Ms. Mensch's account made by Mr. Mensch. So she says offsets. I mean it's an offset against those amounts. They're not related to --

THE COURT:

But she's saying here on the record they are not claiming an offset.

MS. THOMASON:

I don't think it is an offset because we're saying -- just because an expert using the term offset from an accounting standpoint you get an offset against this. That's different than our legal. We're saying these are the payments made for the benefit of the Estate and these were made for Mr. Mensch's benefit. These were made for Ms. Florence Mensch's benefit. And so these three is trying to determine how to make the case whole.

THE COURT:

But aren't you going to want credit against what the Estate says he owes the Estate for any payments that he claims were made for her benefit?

MS. THOMASON:

These would be payments made from that same bank account that we've been talking about for the most part. And I can let Mr. Chastain speak to it, but these are payments made, and I think Mr. McLeod's expert even testified when the funds go into that account you can't tell. But those were funds that are from that account paid for the benefit or -- an asset of the Estate. Including the tax payments and some other things we have in there.

THE COURT:

Right. Assuming the testimony we have and the other evidence you can show by the weight of the evidence that these payments were made by your client, Mr. Mensch, and you can show that Ms. Mensch somehow benefitted from these payments. These payments there is no evidence. You don't know where they went. Either for him or either for her, there's not enough evidence. And then so if Mr. McLeod is saying all the money that's gone is what we're asking for and then aren't you going to say, "Well, this money that we've shown by weight of the evidence it was made for her benefit should not be collected from Mr. Mensch"? And how is that different than an offset?

MS. THOMASON:

Because, Your Honor, when -- when the payments -- because the Power of Attorney allowed him. The moving of the funds was not the problem. The Power of Attorney allowed him to do almost anything, except settle his own legal interest and --

THE COURT:

Right.

MS. THOMASON:

-- so forth. But once it moved then the argument is some of it went on to his account and we're tracing that money. And so he's paying payments for an Estate asset that's for the benefit --

THE COURT:

I see what you're saying. So what you're saying is that those payments comported with the purpose of the Power of Attorney such that they shouldn't be counted as damages --

MS. THOMASON:

Correct.

THE COURT:

-- versus him saying, "We're owed this money," and your client saying, "Well, I took my own money and I went out and I paid for her to have 24 hour care and I spent it out of my own money, so I think I should get credit for that." Is that --

MS. THOMASON:

Right.

THE COURT:

That's how you're --

MS. THOMASON:

Right.

THE COURT:

Okay. Mr. McLeod.

MR. MCLEOD:

That's something you would have to plead, Your Honor, and I think you'd have to file a claim against the Estate really. You should have to.

THE COURT:

But she's not asking for that. She's asking only --

MR. MCLEOD:

To offset the damages.

THE COURT:

She is asking that -- it is a subtle difference. I'll give you that. And she's parsing the words. But what I'm thinking she's saying these transactions do not conflict with the fiduciary duty that he owed Ms. Mensch under the Power of Attorney because they went for X, Y, Z things. So they don't -- they shouldn't count because they are in keeping with his fiduciary duties. They're not saying I went out, forget about the Power of Attorney. "I went out and wrote a check out of my personal account and paid a lady $20,000 to sit with my mother. So I think I should get credit for that because that was done for her benefit. No, it wasn't done using her money. I used my money, but it went for her benefit. I think I should get an offset." What they're saying is transaction "A" paid for, I don't know, paid for her to have -- bought her medicine at the drugstore. Okay. Power of Attorney. Okay, that works. Put that over there. Pay for health insurance premium. Okay, that works. Pay for lunch at Hooter's. That doesn't work. Okay. So that doesn't go there. I think what she's going to use him to do is to characterize these transactions, which you can challenge under any theory of law or impeaching him. But she I think to offset what she's saying and I kind of get it, he would have to go and even -- let's say he had another personal checking account that he never put any of her money in. And he says, okay, mother has been good to me. I've got some money from so and so. I'm going to take that money and go out and buy her something nice. Get her a necklace and earrings or get her, I don't know, a scooter or whatever. And then he comes in here with an invoice and says, "Well, I bought this. I think you-all should take this into account and give me credit for it." Okay. And I get that it's subtle, but what he -- but I think what she's saying is I'm not an offset because to offset it would be saying everything I did, everything I did for Ms. Mensch -- well, let me say that again. He is saying an offset would be that he used money, not her money, his own money out here. His own money for her for whatever reason and now he wants credit for it, because it benefitted her and he did it outside his role as POA or PR. Out of the goodness of his heart he bought her a scooter and now he wants credit. What she's saying, I know I'm beating this like a dead horse.

MR. MCLEOD:
Okay.
THE COURT:
But she is saying these transactions comply with the fiduciary duty. These don't. These we don't know. Could, could not. But she's got the burden of proof to show which ones. And she's going to say at the end of the day transactions 5, 8, 20, 17, da, da, da; all of these went specifically for her benefit. So the fiduciary duty as to these was adhered to. These was not. It clearly went to him. These we don't have any evidence. He's got no receipt. He's got no way to show where this money went, so the burden is on him. So she's going to try to differentiate each of these transactions through this witness, which is different than an offset like the scooter example.
MR. MCLEOD:
And so if a transaction occurred before 2010 and before he was Power of Attorney and before any of these transactions occur how could that possibly be --
THE COURT:
She's not going to go beyond 2010.
MS. THOMASON:
We're going to limit it.
MR. MCLEOD:

So we're taking out five or at least part of five, because it's --

MS. THOMASON:

And I'll ask him --

THE COURT:

I don't think there was anything in the Pleadings prior to him being appointed. I mean I don't know what theory you would have, but maybe you would, but I don't remember anything in the Pleadings that allege that he violated his duty to her prior to him being named in her Power of Attorney.

MR. MCLEOD:

No, there's nothing.

THE COURT:

So we begin at the Power of Attorney stage, which was in May of 2010. And Judge Jennings removed him in December of 2019. So there's nine years in there that we're looking at to see what he did with her money.

MR. MCLEOD:

And there's going to be an extremely subtle -- I don't know how they're going to do this, but to show that those transactions that he transferred 75,000 from his account to her account and then that 75,000 was directly used for some of these transactions. He had other money supposedly in this account. How are we ever going to prove?

THE COURT:

That's on -- that's on them.

MR. MCLEOD:

It's impossible for us to defend. I mean the burden is on them I see that, but.

THE COURT:

Right.

MR. MCLEOD:

We've got to stick to these transactions and prove that those transactions were for --

THE COURT:

Well, that's what she's going to attempt to do.

MS. THOMASON:

And, you know, when we got involved in the case we went about it from what does it take to make the Estate whole and we could have made a claim that Mr. Sterling owned the house. Now, that would be a mess if he had claimed that he owned that house and he wants $450,000 for that house, that to be offset, yes. But we didn't -- we didn't do that because we -- you know, the Power of Attorney itself and the things, you know, like I said the testimony already is the money goes in but we do know these payments are made for her benefits. So we don't have to say, okay, he used it from his money in that account, he used it from hers. Money moved and we know these payments from that money went for her benefit. So it would very easy say this is a house payment. This is the house payment.

THE COURT:

And it will be up to me to decide --

MS. THOMASON:

Right.

THE COURT:

-- first of all, as a matter of law does he get credit for those? And if he can does she meet the burden of proof? And so I think with that said I will overrule your objection, but note it for the record.

MR. MCLEOD:

Can I note one more thing, Your Honor.

THE COURT:

Yes.

MR. MCLEOD:

In this affidavit he's got an exhibit 4. It lists mortgage payments and amortization schedule going back to June of 2008. I mean --

THE COURT:

Well, he won't be able to testify about that because I've said it goes from --

MR. MCLEOD:

At the time they admitted –– they seek to admit this into evidence I've got to object again.

THE COURT:

Right. Well, and I can –– she will probably now note that when she asks him a question and say let's stick to May of 2010 forward. If not I'm going to sustain your objection, if you say, "Your Honor, that's prior to the time he was named Power of Attorney," and I'll sustain it.

MR. MCLEOD:

And the transactions if you look at the range it starts in 2013. So how could anything prior to 2013 be from those transactions?

THE COURT:

Well, the fiduciary duty attached at the moment she appointed him her Attorney-in-Fact which was the term used back in 2010 instead of agent. And so that is when he –– all these duties attached. Right? So that's the fiduciary duties and all the things –– all of the Power of Attorney Act violations, all of those things kick in when she named him, and he obviously accepted the role as her Attorney-in-Fact.

MS. THOMASON:

And we would note, Your Honor, the reason those start at 2013 is because the bank would not provide records beyond that. And so it's not –- we would have no record from the bank on what these were so we excluded the years we did not have bank records.

MR. MCLEOD:

Your Honor, that's key to the argument. We can't go back and prove each of more money in 2011, 2012.

THE COURT:

But you can prove that money was taken out of her account by him; correct?

MR. MCLEOD:

Correct.

THE COURT:

From 2010 to 2019 there was money withdrawn or taken from her –- or deposited into his account from her account. I don't know. I can't remember all of this, but every –- you can show that he has a pattern and custom of withdrawing money from his mother's account and depositing the money in his personal account. Whether you can go back to the moment of time that he became her Attorney-in-Fact will be your –- your burden to do. And then you have the burden of persuasion. Well, you know, he took out all this money. What about this money? It's –- I can't look into the future. I don't know what he's testimony is going to be. But I'm just saying the pertinent time is 2010 to 2019. Okay.

So if he in 2008 or 2009 he deposited $150,000 from his mother's account, okay, that's before 2010, but he's got $150,000 extra in his account and he's starting to use that money. Well, those transaction are within the time frame and you have to through your –- your job is show, well, this money he's using how did it get in there? Where did it come from?

MR. MCLEOD:

And I would note one more thing, Your Honor. In his Expert Affidavit he notes payments prior to 2013 are excluded. So for the mortgage payments he's not calculating that. He's not going back, because I think it is unfair that they get to offset things that are not related to these transactions.

THE COURT:

They are not getting to offset anything. This is testimony. This is not a ruling. She has said specifically she is not asking for an offset. So I'm holding her to it.

MS. THOMASON:

And, Your Honor, I think because that is why The Court's upheld that it's within the equitable jurisdiction –- inherent equitable jurisdiction of The Court to determine and I think at the time I asked the questions I mean we will acknowledge the things that go before and that are –- we're not –- they're not part of what we're doing.

THE COURT:

Remember you're not arguing in front of a jury.

MS. THOMASON:

Right.

THE COURT:

I can separate the wheat from the chaff. So if you –- if things bleed over into a time prior you can note your objection for the record. I'm not going to –- when I sit down to figure out what my ruling is I'm not going to go back in time unless somehow something that was done now this –- as I said this money is in this account and it's 2010 and there's $500,000 in his personal checking account unless he can show that he was, you know, working as a CEO somewhere and he's got a, you know, tax return that says he makes a million bucks a year, this is what was left in his checking account. It's got to come somewhere and that's how you –- you will have to say all of this money that came out of your account from 2010 to 2019 where did it come from? You can ask anything about anything that happened between those two time frames. And if he says, "Well, I took out a 100,000 out from my mother's account in April of 2010." Then that's okay because the money was there and he was using it within the time frame.

MR. MCLEOD:

So are we looking at this solely from the Power of Attorney Statute and not the Vaughan case where you removed move money from a joint account that you haven't contributed to and you owe that money back to the estate?

THE COURT:

The Vaughan case does stand for that principle and I can look at it from that principle if –– but I can't recall right now if they were joint owners on an account or not. I can't remember.

MR. MCLEOD:

They are.

THE COURT:

But if you pled it and it's in your Pleadings, yeah, we're going to –– we'll look at it. But I haven't looked at your Pleadings to see if you pled that. If you did then you will ask the requisite questions that show he was a joint owner on an account with his mother, which he never deposited a nickel and he wasn't –– he shouldn't have been, you know, making withdrawals from that. But then they're going to say, "Well, he had a Power of Attorney that says he could do that."

You know. But that will all -- I feel like I'm pre-trying the case, so.

MR. MCLEOD:

Yeah, I just don't want to object every time and slow it down.

THE COURT:

It won't bother me. Just object all you want.

MS. THOMASON:

Or he can have a standing objection.

THE COURT:

We've got two days. You can object all the time.

MR. MCLEOD:

I know. And that's what I'll do I'll not my standing objection.

THE COURT:

You can do a standing objection. I'm not going to -- I am not going to prevent you from trying your case or making your objections for the record. That's the last thing I want to do. We're here to try to get the case done and let you try your case. So noting your objection I overrule it and, Ms. Thomason, you may proceed.

MS. THOMASON:

I have a copy of the report for Your Honor as well.

THE COURT:

Okay. Thank you. Are you offering this into evidence?

MS. THOMASON:

Yes, I am, Your Honor.

THE COURT:

And would this be Respondent's Number 2?

MS. THOMASON:

Yes, ma'am.

THE COURT:

Any objection, Mr. McLeod?

MR. MCLEOD:

I'll just note the same objection I just noted.

THE COURT:

Okay. So noted. Thank you.

(Court reporter marks document Chastain Expert Report as Respondent's Exhibit Number 2.)

EXAMINATION RESUMED BY MS. THOMASON:

Q. So, Mr. Chastain, I'm going to start and you prepared –- because it's voluminous. We have records and records and records you reviewed and you did a very extensive report. And you have condensed that report a summary, a couple of summaries that you relied on underlying documents that are in evidence. And so I'm going to ask you about one specifically and this is for demonstrative purposes only. But do you have a copy of

this in your -- this is Calculations of Estate Value and Damages to be Repaid to the Estate?
A. I believe it is on page 4 from the front.
Q. And so this is kind of the end of your report. We're going back to how you got here, but would you walk us through how you came to this calculation of what was owed?
A. Yes, ma'am. And I do think it's helpful just to begin with the end and we'll work our way back, but my assignment was to figure out what would make the Estate whole given all the documents I was provided, bank statements and all of that nature. And originally my first affidavit it went back much further than 2013 on different issues. I was told by counsel to limit it to January 20, 2013 and forward. That should be what everyone has in there. Many of the original calculations were left and just amended to be 2013 and forward in here. So, okay. And this was not in the first affidavit. I did not receive any information about the Estate valuation or where we were with the tax situation till the Thursday before the trial. We had a meeting at Mr. McLeod's office with Mr. Markel and myself and the attorneys. So we got that information. So line 1 that section represented the amounts that are in Sun Trust, the amounts that are in

the non-Probate State Street account --

THE COURT:

Where are you?

THE WITNESS:

I'm sorry. Page 4, Your Honor, from the very front.

THE COURT:

Page 4.

THE WITNESS:

Page 4, yes.

THE COURT:

All right.

THE WITNESS:

And it looks like this. Yeah, keep going. And one more.

THE COURT:

I got it. Thank you.

THE WITNESS:

Uh-huh.

EXAMINATION RESUMED BY MS. THOMASON.

A. So that lines 1 through 4 represent the bank account and then the UBS IRA account and they total $291,890 there. And then I looked at the estimated Estate expenses. A lot of this information was provided in that meeting I referred to earlier right before the trial. So right now the amount owed as we understand it for the 2018 federal taxes is $95,000. There is a balance of 1,600 for 2017. You see 2016 there's a small balance. There's some state taxes owed for 2018. So we have the total taxes at this time of approximately 126,527. That amount could change. They said they're in negotiations to maybe reduce penalties and interest on the federal taxes. So the next item is the GE Pension Repayment. There's approximately $30,100 owed back to GE that needs to be paid. So I have total estimated Estate expenses of 156,684.98. And then I created a section called Estate Value Before Damage Repayment. So I looked at what's the Estate value. The Estate value after all those expenses that I indicated is approximately $135,205. And then adding back the net damages, which I'll cover that at the end of this report, is paid 473,636. I arrived at a total Estate value, Estate value total of $608,842. I then divided it out by each of the three beneficiaries. So they would each have 202,947 due them. I took the amount of the net damages subtracted out Mr. Mensch's share and arrived at a net calculated damage amount of 270,688. And below that I just did a simple proof that for these numbers that was the total. Like I said some of the expenses and other things could change. But that is how I kind of arrive at a where are we? What

would it take to make the Estate whole?
Q. Okay. And now I want to go to the Summary of Financial Analysis so you can tell The Court. I think that's --
A. So it's back one page.

MS. THOMASON:
I should have tabbed this, Your Honor. I apologize.

THE COURT:
No problem.

Q. And so walk through. And I want you to be specific as we go through these as to those things that you know happened between 2010 and forward and then identify those things that would have been prior. But let's walk through it. So electronic -- the first category how did you come up with the amount of transfers that were made out of Ms. Mensch's account?
A. This is from the bank statements of Sterling Mensch and it's Exhibit 1. It basically has all the transactions that came out of Ms. Mensch's account and went into Sterling Mensch's account. And they were all transfers from the checking account, you know, online. They all occurred online, not by check. So they were electronic transfers. And I looked at the Bank of America statements for Ms. Mensch and Sterling Mensch and also compared them to transactions in the affidavit of Mr. Markel and also Mr. Mensch's affidavit of March 16th,

2021.

Q. And so you and Mr. Markel compared your numbers at that meeting; is that correct?

A. Yes, ma'am, we did.

Q. In terms of the total amount of the transfers?

A. Yes, ma'am.

Q. Now, can you explain? So you've got 693 on that first category. What's the second category?

A. The second category are electronic online transfers from Ms. Mensch's Bank of America savings account to Sterling Mensch's checking account. And those are all listed on Exhibit 2 and they total $75,425.23.

Q. And then the third category of transactions?

A. The third category is a group of other expenses in Exhibit 3 that were things like making payments to a Chase credit card account, cash withdrawals from an ATM, a check that might have been paid to a party that I did not see as anything for Ms. Mensch's benefit. I didn't know where it went. Those items total 49,943.74.

Q. Now, and so the total of those three categories make up the total of all monies that were transferred from Ms. Mensch?

A. Right. Those would be the three main categories that I see in all the records. There are beneficial payments to Sterling Mensch. Beneficial payments to Ms. Florence Mensch and beneficial payments to Ms. Mensch's beneficiaries, the three children.

Q. Okay.

A. So these first three would all be the payments to Sterling Mensch.

Q. Now, when you added those three up and you compared to what Mr. Markel got at that meeting how close were you?

A. We were within 22, $2,300. I mean we actually had a conversation about how unusual it was in all of our years to be that close, so. And there's a reconciliation of that in some of your documents.

Q. Okay. And then let's go to category 4.

A. Yes, ma'am. These are Exhibit 4. They represent the payments made for the mortgage on New Tarleton Way and let me make sure of that. I'm looking at Exhibit 4. Yes, it's just the mortgage payments that he made on her behalf. And one thing to note I only included these payments on the amortization schedule. There are months that he may have paid more. The records to get all that and everything I just went with the fact that, okay, the minimum mortgage payments have got to be paid. So these are based on the schedule in the note and the note should be –- is included here. And those totaled –- they totaled for the whole period of time

240,000. I took out the payments prior to 2013 of 113,600 roughly, so we ended up at beneficial payments for the 512 Tarleton Way mortgage of $127,036.30.

Q. Okay. And so now the next one, and I will state on the record he excluded property tax records, we'll be talking about from 2013 on. There are some references to construction documents and what was paid at the construction point only for the purpose in the case in chief there was a lot of testimony about Mr. Mensch's intent and a scheme and nobody knew this house was there. And so it's only for purposes of that Mr. Chastain had reviewed that's included in here. Okay. Category 5?

A. There's a little bit of context with that. There is a -- I've got some documents enclosed here in my report, but there's a big, black notebook that contains all these documents about the construction of this home, the purchase, that type of thing. So I went through all of that. I went through Mr. Mensch's affidavit. I actually never -- did not meet Mr. Mensch until a couple of months after all of this was done because I just wanted to go through like what do the numbers say. And there were --

MR. MCLEOD:

And, Your Honor, I need to note my objection to any amounts certainly before 2010, but I also object to anything before 2013 in this Exhibit 5. That's his expert –- or his expert affidavit.

THE COURT:

And I bet you want to object to his use of the term offset?

MR. MCLEOD:

I'm fine with him using that in a way.

THE COURT:

Okay. Okay.

MS. THOMASON:

Your Honor, the –- it's only the bank statements that we don't have to check. If we have another way of demonstrating the payments were made, in other words all the mortgage payments were made and satisfied through the mortgage company that's fine. These are bank statements, but if payments were made and we can demonstrate they were made on the mortgage for the house between 2010 then that's why it's included. Because we just don't have bank records going back. The bank doesn't keep it longer, that long.

THE COURT:

Right.

MR. MCLEOD:

And we also can't bank records going back to show if he took any money. So that's really kind of unfair, because if he took something from 2010 to 2012 he's getting to offset these transactions from 2013 to 2020 and we can't go back --

THE COURT:

Right.

MR. MCLEOD:

-- and see if he took money. That just comes down to fairness.

MS. THOMASON:

Again, though we're trying it in advance of even seeing what the evidence is going to be as it comes in.

THE COURT:

Right.

MS. THOMASON:

And so that really prejudices the Defendant. If he -- if we can't put up the evidence, and The Court can determine either at the time the objection is made or as it goes through in limiting or how The Court is going to view it in its -- in its determination.

THE COURT:

And so are these records just not available? They're that old?

MS. THOMASON:

Yeah. Yes, ma'am.

THE COURT:

And we know –- when was the house built?

MS. THOMASON:

2008. Oh, I'm sorry '6. 2006, Your Honor.

MR. MCLEOD:

And the lot was purchased in 2006, which is one of the things in Exhibit 5. Purchase of lot.

THE COURT:

So would you both agree that somebody made mortgage payments from 2010 to 2013. I mean the house didn't go into foreclosure, did it or did it?

MS. THOMASON:

No, we have tax returns that show interest and –-

THE COURT:

Right. So your –- your concern is not so much that the mortgage payments didn't get paid, but you can't show where he got the money to make the payments. For instance, you can't get records that show that he made deposits to his Bank of America account from Ms. Mensch's account from 2010 to 2013 and from those deposits that's the money he used to make mortgage payments?

MR. MCLEOD:

Correct.

THE COURT:

Okay. And you can't get his bank records from 2010 to 2013 and you can't get -- none of those records are available?

MR. MCLEOD:

Not available and not -- not produced by the Respondent. Neither in discovery.

THE COURT:

Okay.

MS. THOMASON:

That's been an ongoing thing through this. We've produced in excess of 4,000 documents. Three thousand as of May of 2020. We don't have them. We can't produce them. And so we've had Motion to Compel after Motion to Compel when we've said the same thing. We don't have them.

THE COURT:

What about records of Ms. Mensch's account from 2010 to 2013 and withdrawals from her account?

MR. MCLEOD:

Most of my records before we finally got most of them came from subpoenas. I tried to subpoena these from -- from Ms. Mensch's account. And when Shauna took over as PR we were able to get some of those statements, because obviously she had the authority to get them.

THE COURT:

Right.

MR. MCLEOD:

But you can't go back to 2010. Most banks only let you go back about seven years. So we couldn't get those records. But as far as Mr. Sterling's account we did subpoena those and --

THE COURT:

Right.

MR. MCLEOD:

-- the farthest we can go back is June of 2012.

THE COURT:

Okay. So are there other ways to get the information or is that the only way? I mean other than deposing him or deposing somebody from the bank and say you'd better show up and have some information?

MS. THOMASON:

Isn't that what expert testimony is about is to say, you know, these are things I reviewed and from this information for these reasons I can deduce this? I did not interrupt or continue to challenge Mr. Markel's testimony when he testified to you just shouldn't take more the RMD and you just shouldn't all these judgment calls. Let him --

THE COURT:

Well, I think if the records are not available there's no sense now in trying to figure out how do you get the records. The only thing we know is that the house didn't go into foreclosure between 2010 and 2013 because somebody was making mortgage payments. We don't know –- you know, I guess –- I don't know if this witness can confirm that he was making the mortgage payments. He has here that they were excluded. So if they were excluded in his report then I'm not going to go back.

MR. MCLEOD:

And that's why I'm not really objecting to that one. I'm objecting to Exhibit 5 because that's things before 2010 even.

THE COURT:

What do you mean Exhibit 5?

MR. MCLEOD:

Well, it's in his expert report.

MS. THOMASON:

But, Your Honor, again –-

MR. MCLEOD:

Exhibit 5.

MS. THOMASON:

–- those records can come in through this –- this witness because he saw them. But they're being offered -- just as I said you're going to be weighing credibility. You're going to be weighing --

THE COURT:

I still don't know what Exhibit 5 is.

MS. THOMASON:

Oh, sorry.

MR. MCLEOD:

In his expert affidavit.

THE COURT:

Yeah. Where is it?

MR. MCLEOD:

You've got to go to the back. It's about --

THE COURT:

Tab 5?

THE WITNESS:

Yes.

MR. MCLEOD:

Exhibit 5 is what he called it.

THE COURT:

Exhibit 5. Okay. I gotcha.

MR. MCLEOD:

Yeah. It's towards the back.

THE COURT:

Okay. Okay. Well, I'll note your objection but just because he's testifying to it, Mr. McLeod, doesn't mean I'm going along with it. You can impeach his testimony. I mean this is what he is presenting, but if he's presenting anything for which there's no proof of, I mean there's no -- it's just something somebody told him, "Yeah, I spent this for a pool," and that's all -- you know, that's what he's basing it on that doesn't hold a lot of weight for me. Did he look at an invoice. Did he go out to the pool place and talk to the manager? Do you have records about what this pool costs? Or is he just going on what they said?

MR. MCLEOD:

Yeah, I understand, Your Honor, and I trust you more than most people. More than any other judge probably. And I'm not sucking up, but I do. I know you will be able to look at this and you --

THE COURT:

Right.

MR. MCLEOD:

-- will be able to determine, but I feel like I have to note my objection to things that are before 2010.

THE COURT:

Okay. Your objection is noted for the record.

MR. MCLEOD:

All right. Thank you, Your Honor.

THE COURT:

Uh-huh.

EXAMINATION RESUMED BY MS. THOMASON:
Q. And where was I? Category 5. Tell us what that's comprised of.
A. Yes, ma'am. Well, the context here is I want to go back find out, you know, who really –- what was all the background about this house and, you know, was he really living there and making the payments and the loan was just in the mom's name. And in order for me to put this report together in my own mind I needed some clarity, some context that I would sit here and tell, Your Honor. So I pulled out the other document in the first page in section 5 is just the background of the purchase of the lot, the pool, which I've got some documentation behind here for these amounts. Some are rounded and some we don't have the exact amount there's an estimate, but all these things were built and all these things went in and there's documents about them. And then I've got the property tax records which, you know, I noted I didn't go back past 2013. So what I'd like to do is just kind of walk through some of the pages of this exhibit. So we turn to a page from that summary. This is the River Oaks document where the land was bought. It was 39,700. You will notice that it is Ms. Mensch's signature on it. So that's one thing I included. The next page,

and this where it started getting a little clearer for me, if I go to page --

THE COURT:

Where are you starting? Where are you in the report?

THE WITNESS:

Section 5 in tab 5.

THE COURT:

Okay.

THE WITNESS:

And then if you will just go to that second page after that.

A. River Oaks. So this is just the lot purchase. And it's clearly to Ms. Mensch and she signs it in the bottom and it's kind of the beginning of this journey. That's the reason I included it. It kicks off the house. If you go to the next page we then have an architect, but the architect is working. We get a proposal. A proposal for a new residence, Mr. Yogi Mensch, Greenville, South Carolina. It's $4,000. Mr. Mensch paid him for this. And the next two pages represent the floor plan. They were only important to me because as I looked at the floor plan there was no place for Ms. Mensch to live. So this house had Yogi's room. It's got a child's room. On the next page we see other things about the floor plan, but this was not

-- it didn't appear to me this was a place for mother to live.

Q. Now, just for clarification on the record, Your Honor, when Mr. Chastain references Yogi is that Sterling Mensch?

A. Yes, I apologize. Yes.

Q. Okay.

A. After the floor plan the next page is negotiation for a pool that was installed and we've got the contract documents about that. Those contract documents are between Sterling Mensch and Anchor Pools. And we see the second page of that were the terms. And then a few pages, we can flip through them. We don't need -- unless we want do we need to read all these property taxes.

Q. No, Your Honor can look through all that.

A. We can flip through all the property tax statements and --

Q. And those are property tax statements taken directly from the Register of Deeds?

A. Yes, they're from the Real Property Services. And, you know, the property taxes on this property were paid at a little higher rate because of investment property, which is what I'm getting us to next. Okay. So let me go back to 4. I apologize. I think I put these -- if you go to Exhibit 4 I just wanted to look at the note. Go to Exhibit 4 and we just flip past my tables we'll arrive at the note. And so the note is in Ms. Mensch's name and it's an adjustable rate mortgage. Really we can just keep going through there and you will see a Second Home Rider. It will look like this. That Second Home Rider has got –- it's over two pages and she signs it. You know it basically just talks about the fact that it's a vacation property for her. It's not her primary residence. She's saying it's not my primary residence. And so this is where it became kind of clear. Okay. It's really Sterling Mensch's house. And from what I've been told it fit the narrative because of some divorce situation the loan needed to be in the mother's name. The mother seemed to understand this and seemed to be agreeable and it was a second home.

MR. MCLEOD:

Objection, Your Honor. I would object to anything talking about the mother's representations or anything. It's the Deadman's Statute. I don't think they should be talking about what Ms. Mensch said or intended.

MS. THOMASON:

Nor did he. He's saying the evidence speaks for itself. She was a part of this from the get-to understanding and knowing long before that --

THE COURT:

Right.

MS. THOMASON:

-- so there was so much testimony about a scheme and he defrauded. Even going to back to their to paint him in a certain light. It's important to note that this is from an expert's point of view.

THE COURT:

And Mr. Chastain doesn't know about the Deadman's Statute so I understand that. He's got some copies of some documents with Ms. Mensch's signature on them and those comply with the Deadman's Statute because they're documents instead of conversations. So I'm not going to allow those documents to infer some -- anything other than the fact that her signature appears on the documents.

MR. MCLEOD:

I think that's fair. So would it be sustained when he starts talking about intent or --

THE COURT:

It will be sustained on any reference to anything other than the fact that her signature is on these documents.

MR. MCLEOD:

Thank you, Your Honor.

THE COURT:
Uh-huh.
EXAMINATION RESUMED BY MS. THOMASON:
Q. Mr. Chastain, now when you were looking at those you have also reviewed Mr. Markel's report and he noted damages associated with this increased interest rate to six percent. Is it your experience that that six percent is because it was a second home?
A. Are you speaking about the property --
Q. The property taxes.
A. -- taxes?
Q. I'm sorry.
A. Yes, if it's not your primary residence in Greenville it's rental property, your second home or anything that you're going to pay more in the tax rate.
Q. Okay. Now, let's go through. And so now let's talk about this property tax record. In your original report you had included property tax records that went further, but here you've limited it to 2013. Anything prior to 2013 because you needed to be able to compare them against statements.
A. Correct. And at the direction of counsel, yes, that is it.
Q. Okay. And so those -- anything related to that has been excluded; is that right?

A. That is correct.

Q. Okay.

A. Anything prior to 2013.

Q. Now, let's go to category 6. Tell me what that category is.

A. That category exist and the detail of it, Your Honor, is behind tab number 6. And these are –- is a bucket of beneficial payments for Ms. Mensch and it's divided into two categories. The column that says purple highlighted items for Ms. Mensch those would be things like prescription drug payments. Cash early on in one of her places it was indicated to me that she would get some cash to use at the facility to buy things. Things at Walmart. As you flip through those pages you'll see caregiver Christmas bonuses. Times that he bought groceries or things from the drugstore for her. So that purple column all the way along represents, you know, caregivers. It could be medical expenses. You see St. Francis Hospital. You know those are all the expenses that are related for her own personal benefit.

Q. Did you look at other facts that you saw in the bank statements like where the transaction occurred, addresses or so forth, and just exclude things that were obviously not? How did you come to what you included and what you didn't?

A. That's correct. We would look at them coming out Sterling Mensch's bank account and then go look at Ms. Mensch's account to make sure, "Hey, is that transaction only represented here?" And so that's -- that is exactly what the methodology was. And then, you know, it's obvious like Senior Care Pharmacy. There are things in here that was her prescriptions and things like that for her and that column totaled 16 -- approximately $16,700. 16,969. So that is the column and those transactions I believe are marked as such on the bank statements that you-all admitted; is that correct?

MS. THOMASON:

Your Honor, I believe they're in the blue binder. I can't remember what exhibit number that is, but all those bank statements --

THE COURT:

Yes.

MS. THOMASON:

-- where the markings are in, in evidence.

THE COURT:

I believe that --

MS. THOMASON:

As well.

THE COURT:

I don't remember the number, but it is in.
A. And I have them if we need to pull them out.
Q. I think it's Petitioner's 1.
A. But I think you-all have them. Okay. Then the next column over is a column called Yellow Highlighted.
MR. MCLEOD:
Your Honor, I would just note that's Exhibit 3 up there.
MS. THOMASON:
I'm sorry.
THE COURT:
Okay. Thank you. Exhibit 3.
MR. MCLEOD:
Yeah.
THE COURT:
Do you need it? Do you want it?
MS. THOMASON:
Do you need reference it or --
THE WITNESS:
I do not if you-all are sure that they're in there when she goes to look at this I think it should be there.
EXAMINATION RESUMED BY MS. THOMASON:
A. The next column is the yellow highlighted items. These are all expenditures that would be related to the house. The Tarleton Way house. Upkeep, maintenance,

projects, finishing out. There were some rooms that got finished out outside of the closing. There were dues for the homeowners associations and things of that nature. Pool costs of having –- owning the pool. These are all costs that go along with owning the home and the homeowners association, things of that nature. That column had a bit more activity with it. That totaled 52,987.

Q. And so those items came directly from the bank statements we were able to get?

A. Correct. Those are from bank statements.

Q. Did you include any other outside of those costs that you were able to track to the bank statements?

A. No, ma'am.

Q. Okay. Now, there's been a lot of –- well, let me go back. With regard to these categories that you testified to, those that were for Ms. Mensch's benefit and those that were for Sterling Mensch's benefit, and then those that were for the benefit of other beneficiaries or children, did you –- were there certain things that you were able to identify that were for other beneficiaries. In other words, things he paid that didn't benefit him directly, but benefitted someone else?

A. Yeah, there were annual gifts over a number of the years that were paid to all three of the children.

Q. Okay.

MS. THOMASON:

Your Honor, I think this is first page after it says Financial Report. This is the very first page of the -- this is the Summary that relies on the taxes and it tells where it was coming from.

MR. MCLEOD:

Can you show me where it is?

MS. THOMASON:

All right. I'm reaching over you here. I'm all in your personal space. I apologize. It's this here. Your Honor, do you have a copy of this?

THE COURT:

I don't know if I do. Yes.

MS. THOMASON:

I'm going to hand this one up because I've got an extra.

THE COURT:

Okay.

MS. THOMASON:

Okay. So --

THE COURT:

Are you offering this an exhibit or --

MS. THOMASON:

It is used for demonstrative purposes, Your Honor. So, yes, I think it –- it's just a summary of what's related to the expenses and taxes associated with the distribution.

THE COURT:

Okay. All right. Any objection, Mr. McLeod?

MR. MCLEOD:

No, Your Honor. I just received it. I haven't had time read through it.

THE COURT:

Okay.

MR. MCLEOD:

So for now.

THE COURT:

But it's a product of your work; is that right?

MS. THOMASON:

That's correct.

MR. MCLEOD:

Yeah, it's okay.

THE COURT:

I'm going to allow it. That will Respondent's?

COURT REPORTER:

Three.

THE COURT:

Three.

(Court Reporter marks pertinent document
Data Sourced From Florence P. Mensch
Expense Summary as
Respondent's Exhibit Number 3.)

EXAMINATION RESUMED BY MS. THOMASON:

Q. Now, tell us what this shows because there's been a lot of question about tax implications from the distributions taken from the IRA in this case. And so explain what this represents or how this summarizes it?

A. Okay. The top section I said Income from Tax Return. Those are the income numbers from all the tax returns that should be admitted in this proceeding. Under expenses you see line 9 taxes. Those items underneath where it says federal, state and total taxes came from the same documents, the income tax returns. The effective rate I calculated. And then under Florence Mensch's Expenses those came from the Florence P. Mensch Expense Summary. I believe it has been entered into evidence elsewhere.

Q. It's from Mr. Markel.

A. And then the gifts came from the bank statements. So that lower section. And so the total expenses were just a calculation on all these items and then the taxes associated with the gifts based on the effective rate and the percentage of tax paid due to the gifts I calculated those.

Q. Okay. So we're going to unpack this a little bit. So when you're talking about income this is income to Ms. Mensch from her investments and Social Security; is that correct?

A. It's from Social Security, pension, IRA distributions and a little bit other investment income. Interest and things like that.

Q. And did you get this directly from statements?

A. I got this directly from the tax returns.

Q. Okay. Now, as far as the taxes you said that you calculated the effective rate?

A. Yes, ma'am.

Q. Explain what that is.

A. The effective rate is just the total amount of tax that was paid divided by the total amount of income. So it's very simple. It's different than the marginal tax rate, which is how much am I going to pay on the next dollar or on my last dollar?

Q. Okay. Now, tell me when were you able to see gifts that went out?

A. I guess you'll see in 2014 through 2016 we have gifts to Shauna, John, and Sterling Mensch. So in 2014 they each received $20,000 for a total of 60,000. And then in 2015 they each received $28,000 for a total of

$84,000. And in 2016 they again received 28,000 each for a total 84,000. So the total amount of gifts the three of them received over this period was $228,000.
Q. Okay. And so let's talk about the impact of those gifts. Now, first that Mr. Mensch could make those gifts under the Power of Attorney that you reviewed, but in making those gifts I want to just focus on what the implication was from taxes.
A. Okay.
Q. In making those. And so 2014 when $60,000 is that $60,000 coming from -- it's an additional expense, it's a gift, but you've got $60,000 coming out of 124,964 of income?
A. I'm sorry. The 60,000 for 2014 those gifts are coming out of the line four IRA distribution.
Q. Okay.
A. Of 90,594. Because she wouldn't have enough income if he didn't do it in order to pay the gifts.
Q. Okay. So a distribution was taken then?
A. Correct. The distribution for that year was 90,594.
Q. Okay. When would the taxes be paid on that distribution?
A. The taxes on the 2014 distribution would be paid in April of 2015.
Q. Okay. And so those taxes would have to be paid. How

was she able to those taxes or how were those paid rather?

A. In 2015 you'll see there's an IRA distribution of 213,000. That covered not only of course her expenses it covered the $84,000 worth of gifts. And one thing we need to note Ms. Mensch is paying the taxes for these gifts. So in round numbers if she wants to give $100,000 and she's at a 30 percent tax rate she's got take out $130,000 to have it or she's got to take the tax money out the following year to pay it for April 15th. So in the case in 2014 the $60,000 the taxes that were due on that and the 2014 total tax bill was 39,850, the majority of that is getting paid in 2015 because they typically didn't withhold taxes on distributions and she had very little tax withheld from her pensions and so forth.

Q. Okay. And so the –- the 28,000 and 13,000 is –- is that part of the 2015 IRA distribution?

A. Can you repeat the question?

Q. Was the amount needed to pay 2014 taxes was it included in the IRA distribution amount of 213?

A. Yes, ma'am, the way that their pattern was it would be whatever was not already paid in would have been paid out of that 213.

Q. Okay. And so isn't it true it's an ongoing circle? So

then the 2013 distribution is taken when would those taxes be due?
A. The 2013 distribution the taxes would have been paid calender 2014 in April.
Q. Oh, I'm the 2015 of 213?
A. Yeah, the 213 distributions would come out 84,000 went to the children and the tax would come out and be paid in 2016 out of the 2016 distribution. So each –- in year two the distribution included the taxes owed for year one.
Q. Now, with any IRA the money goes in tax free. Is there anyway to get it out where you're not paying taxes on it of an IRA?
A. No, ma'am. When a person is alive and they take the money out when the money comes out at their personal income rate. If they have a beneficiary, one of the children is the beneficiary, the money goes to the child the child has to actually pay it out of a shorter term now. It's almost five years currently. And then if the beneficiary is entitled to an estate, which I believe this one was, the estate pays 37 percent tax on anything above $12,500. So there's only a $12,500 income exclusion and above that. So her paying the tax personally did save money over the estate rate.
Q. And have you looked at Ms. Mensch's medical expenses

and that associated with her living at assisted living as her condition progressed?

A. Well, I've looked at these expenses as to what was coming out of her account being paid to those providers, yes. For the facilities, the other medical expenses that came out of her account, none of these medical expenses include anything that we saw in the beneficial payments in my report.

Q. Okay. And so expenses directly attributed to her living -- the payment to the living facility and the medical bills totaled 62,553 in 2016?

A. That is correct.

Q. Okay. And then above you've got taxes, federal, state and total taxes 101,000; is that right?

A. You're looking at 2016?

Q. For 2016? Right.

A. The 109 for federal, 24 for state, total taxes were 133.

Q. Okay. And those taxes included taxes for year 2015?

A. That included -- right. The taxes to pay whatever was not paid in for 2015.

Q. Okay. Would Ms. Mensch's just her facility associated costs of 62,553 how would you determine -- I mean would the RMD have covered that, just the RMD?

A. So let's be really specific. So the RMD amount for

2016 is going to be listed on the statements for the retirement account. I have looked at her RMDs. I have not made a table of them. They go down dramatically when you take the money out. So for example, the first year I looked at the RMD was roughly 50, $55,000. Well, the next year it's going to drop to 40 because you've taken so much out. By the time we get to 2016 and '17 and, you know, we're probably down below 40. So, correct. Logically she's not going to be able to pay her living expenses with the RMD.
Q. So --
A. And it's not just Ms. Mensch I might add. Anyone taking money out of this size IRA has the same problem under the same circumstances.
Q. Is it your experience that an investor to those retire and have IRAs that they only take the RMD?
A. It's a matter of your personal wealth. Most people, you know, the nature of someone in their 70s is they're usually not itemizing nearly as much or they're on standard deduction, so they're actually paying a higher rate on more of their income than they have before in their life for the average person. And Ms. Mensch doesn't -- you know, she's in that category. So generally they want to take it out last if they can. But in her case, you know, she needed it. If she was

going to make the gifts there was no way to make the gifts without taking the money out of the IRA.
Q. Okay. And so I want to take us back to 2016. The IRA distribution of 208,727 of that 208 --
A. In 2016 are you talking about line 4?
Q. Yes.
A. 377. Let's see.
Q. Where are you looking? I was looking here. Oh, okay.
A. I may have handed you the wrong thing. Yeah.
Q. Okay. You speak to that because 377 of that how much made up tax -- how much was needed to pay the taxes for that year?
A. The taxes for that year would be 133,000 plus whatever was owed for the prior year.
Q. Okay.
A. So he says 133. That would be the taxes calculated for '16 that probably came out in '17.
Q. So the taxes calculated did go to the next year. And so of that total amount taxes made up --
A. 133,000. Taxes made up 32 percent of her income.
Q. And the gifts made up how much?
A. The gifts represented 20 percent of her income than basically 32 percent of the taxes she paid were attributed to the gifts.
Q. Okay. And then the other was made up of her personal

income?

A. Correct.

Q. Okay. All right. So in this case there's been discussion, you know, as to liquidating the GE stock and as if it was just being liquidated all along. Is the GE stock in the IRA?

A. Yes, it's always been in a qualified plan from my understanding.

Q. Now, when you looked at it and it was all GE did you learn anything about how that stock was acquired or going back?

A. Ms. Mensch's husband I believe worked for GE in excess of 40 years and participated in this plan. These plans are designed when they are usually managed by the company or they outsource them. So it looked like US Bank was actually managing it and then it appears that GE decided, you know, what we're done with this. We just want to get it out of the company. We don't want to be managing it. A lot of people are doing that now. And so they transferred everything to UBS and whether it was in a 401(k) or whatever it was it was rolled over into an IRA at UBS.

Q. Okay.

A. And she was the beneficiary so it was in her name.

Q. And it was solely GE stock.

A. That's all that was in it was GE stock and mutual funds associated with GE.

Q. Okay. So all the investments we're speaking of here the GE stock and the mutual fund, the Elfun Fund that's been referenced, all of that's in the IRA; is that right?

A. Yes, ma'am.

Q. Okay. So now we've seen year after year where we hear liquidation. Some of that was required or a large part was required in order to cover expenses, gifts, and then taxes associated with it; is that right?

A. Yeah, those are the main categories.

Q. Okay. Now, when they rolled it over to UBS is UBS the custodian of it or are they just really just managing it, just holding the stock?

A. I mean if you look at the statements they are not providing direct investment advice. They're saying, you know, your plan was at GE. They were taking care of it and now it's come to us and we're holding it.

Q. As it relates to the drastic reduction in GE stock value in over 2017 I think it was, when did GE rollover to UBS? Was it 2016, the end of 2016?

A. I would have to see that to say exactly. I believe that's correct. We can look at their agreement.

Q. (Counsel reviewing documents.) I'm going to refer to the GE Mutual Fund Investment Statement and these are already in evidence. And I'm going to hand you it says GE Mutual Funds at a glance. Is that where GE was still managing everything in-house or is that after it's been moved out?

A. This looks like this is a GE statement.

Q. And so --

A. In care of US Bank Corp. I'm sorry. US Bank Corp was the manager.

Q. Okay. And so no one had a say in moving it from GE to UBS; is that right?

A. That is my understanding. The company GE itself made this decision.

MR. MCLEOD:

Objection, Your Honor. I think that's just total speculation. He doesn't have any basis for that.

THE COURT:

You have to lay a foundation that he knows personally if that was the case.

MS. THOMASON:

All right.

THE COURT:

Otherwise I sustain.

EXAMINATION RESUMED BY MS. THOMASON:

Q. Now, while we're looking for that I'm going to ask you

another question about this. When you're looking at the IRA you've got stock being held and then there's separate mutual funds I think you said that were --
A. Uh-huh.
Q. -- associated still with GE stock in some way; is that right?
A. That's correct.
Q. And so but they're under one manager; is that right? Or at least on that statement?
A. On this statement they are.
Q. Okay. But it doesn't matter whether it's in stock or whether it's in mutual fund, does it? It's still going to be a distribution that's taxed no matter where it comes from; is that right?
A. Yes, any money that comes out of this account is going to have taxation.
Q. Okay. And so what is the date on that statement?
A. This one is June 30th, 2016 is when it ends.
Q. Okay. And I'm going to hand you what is a UBS June of 2016 statement. Does that look like an opening deposit on that or do you know what that is?
A. It does. The opening account value is zero and then it shows deposits transferred in $849,063.67.
Q. Okay.
MS. THOMASON:

And those are in evidence, Your Honor. They are in that folder.

THE COURT:

Okay.

EXAMINATION RESUMED BY MS. THOMASON:

Q. And so we can tell from this that on June -- that in June UBS was opened and had zero balance and then a deposit was made and we have the corresponding --

A. Correct.

Q. Okay. So now GE stock or the way it was managed it had always, you know, been just GE stock. So there's been some testimony, Mr. Markel you're familiar with his report, that in 2017 when the stock began to drop it should have been diversified. That anyone would have diversified it. Have you looked at that scope? I mean how quickly it fell?

A. I did. I looked at the statements.

Q. Okay. And from those statements could you tell is it over a matter of a few months?

A. No, it was pretty fast. We can get all the statements out, but it dropped quickly.

Q. (Counsel reviewing documents.) When you reviewed -- I'll find them on break. But when you reviewed how quickly the stock fell -- first let me back up. Diversification I mean in general, you know, normally

the theory is to diversify so that it's not one -- one investment. But with this it was different always; wasn't it?
A. Yes. And I mean it looked like they had pattern. You many people work for companies over a long period of time, participate in their stock plans. Lockheed, Delta. I mean it's widely known thing. And it looks like they held this for a very, very long time and the only option would be to sell something if you wanted to put money in something else. This isn't like an investment relationship with a broker/dealer where I can call up my broker and say move the money from GE to this other account.
Q. Okay.
A. You have to sell it. You've got to sell that and put it in cash and then do something else.
Q. Is it your experience that in those type of circumstances that the investment or the investment bank or the manager will require something more than just a Power of Attorney?
A. Well, that frequently will happen.
Q. So in this case is it fair to say that the stock dropped so quickly that it would have been very difficult to do anything fast enough?
A. Yeah, sometimes companies require quite a bit of

documentation. They want their own documentation in addition to the Power of Attorney documents.

MR. MCLEOD:

Your Honor, I think I've got to object. That's speculation.

THE COURT:

Yeah. You'd have to lay a little bit more of a foundation of how he -- how he knows that. If it's a part of his expertise or experience in a little bit more detail. I'll let you do that.

MS. THOMASON:

Okay.

THE COURT:

Okay.

EXAMINATION RESUMED BY MS. THOMASON:

Q. So, Mr. Chastain, let's talk a little bit about your experience in advising companies and then business owners and individuals with planning. Tell us a little bit about that.

A. I've spent 28 years working as a contractor CFO, consultant, helping people build their companies, their financial systems. Sell them. These kind of issues happen a lot when you actually sell a company. It's got a 401(k). The owner is not going to stay. Then they're going to roll it over much like this. The new account at UBS is titled IRA Rollover. At GE it was probably in a 401(k). We can look at the statements. So we deal with these things all the time and then people, also executives that move from one company to another, move and start their own business, they'll frequently take their 401(k). They can't keep it as a 401(k). They have to roll it over as an IRA. And so depending upon the type of plans that it is a lot of times you can just move those investments right over. You don't have to sell anything or do anything like that. In this case GE stock was the asset of the plan and because it was directly held stock underneath the only way to use those dollars and put them somewhere is to liquidate and sell the stock and then buy whatever you want your other investment to be.

Q. Okay. So this was different than just call your broker in your experience?

A. Correct.

Q. Okay. So when -- now, in this case as you've looked at the beneficiaries is it your understanding there are three beneficiaries that were tied to this -- or the Estate rather?

A. Yes, I understood there were three beneficiaries to the Estate.

Q. Okay. And so let's talk about what's in that account now, because I think we've gone through how it generates taxes and there's no way to pay the gifts that didn't generate taxes. But I'm going to point to -- I've got think where we mention her account. What the difference is in pulling something out in a lifetime versus an estate pulling out of an IRA. Can we talk about that? Now, with everything, and I'm going to take you specifically there's been testimony about the last withdrawal before Ms. Mensch passed away of 259,000 in April of 2018. Have you looked at how that was spent? How it came into the Estate?

A. Well, it came into her bank account the $259,000 and then, yes, I believe we have it came into her bank account and then funds were spent on taxes, her final expenses.

Q. And so did you look at -- I mean there were checks written from that or --

A. Correct. The taxes, final expenses, and that type of thing.

Q. Okay. Do you remember how much the taxes were that were paid from that?

A. I do not. We can look at the bank statements.

Q. Okay.

MS. THOMASON:

I'm going to hand this to you, Tyler. This is directly from the bank, Your Honor, and I'm going to hand one to Mr. Chastain.

Q. Can you look through that and tell us what those transactions reflect? First, what's the date on that?

A. On this June 7, 2018 to July 6, 2018.

Q. Okay.

THE COURT:

Are you offering this as evidence?

MS. THOMASON:

Yes, Your Honor, and actually this whole bank statement is already in. I just pulled --

THE COURT:

Oh, it's already in?

MS. THOMASON:

Yes.

THE COURT:

Okay. All right.

A. I go to the very last page and look at the copies of the checks. We've got a check number 5360 to the IRS for 69,175. And then we have check 5361 that cleared that was written for 31,994 to the South Carolina Department of Revenue. And these amounts are for -- they have her Social Security number on them so they were either for the current return being filed for 2017 is most likely what these amounts were for. We can look. I don't have 2017 in my chart, but.

Q. Okay. And so but we do know that from the 259 you can tell datewise --

A. Correct.

Q. -- that the taxes were paid after that withdrawal from her account as well?

A. Correct.

Q. Now, any funds that would have been used by Mr. Sterling Mensch from that 259 has that already been captured in your report?

A. It is. If you look at my report on the first exhibit we have transactions basically from May of 2018 completely to the end and they total approximately 147,000. I have the exact number and it's even.

Q. And those could have been from this 259 or from funds that were already in there because we know if you add those it's --

A. Yeah, the best way to think about is there was a balance before the 259 went in. The 259 went in and then that 147 was a part of whatever those monies were.

Q. But you've included them in your calculation --

A. They are in there, yes, ma'am.

Q. -- of these things that were transferred? Okay.

MS. THOMASON:

Would it be easier, Your Honor, to mark these separately than the whole bank statements for the record?

THE COURT:

I think it might be easier at least for me. That way I don't have to find them.

MS. THOMASON:

Okay. Okay. And that would be they're Respondent's 3.

COURT REPORTER:

Four.

MS. THOMASON:

Four. You-all keep me straight.

THE COURT:

Any objection, Mr. McLeod?

MR. MCLEOD:

I'm sorry, Your Honor.

MS. THOMASON:

It's just the bank statements of those.

MR. MCLEOD:

This is just bank statement. That's fine.

THE COURT:

Okay. It will be Respondent's Number 4 without objection.

(Court reporter marks pertinent document Bank Statements as Respondent's Exhibit Number 4.)

EXAMINATION RESUMED BY MS. THOMASON:
Q. Okay. And then I'm going to show you what's already in evidence, but this is the Elfun Mutual Funds and this is from January 1, 2016 and then to 12/30/2016. It's the annual that was taken. How much was in that at the beginning of the year of 2016? The mutual fund piece?
A. 1/1/16 it was 279,819.11.
Q. And what was the balance at the end of 2016?
A. The portfolio value 12/30/16 was 88,347.69.
Q. How much was withdrawn from that mutual fund in the year 2016?
A. 208,727.
Q. And this is the same amount that's reflected on the IRA distribution on your summary?
A. For 2016 we had a total of 377,010 so this would be a part of that.
Q. Okay. And so how much were the gifts taken in that year?
A. The gifts in 2016 were 84,000.
Q. And they would be a part of that as well?
A. I'm sorry?
Q. They would have come out of that as well?
A. Yes, ma'am.
Q. Okay. All right. Is there anything else that you wanted to add?

A. And they also paid the 133,000 in taxes.
Q. Okay. And so that is all part of that distribution?
A. Yes, ma'am.
Q. Okay. And I'm going to mark this as Defendant's 5.
THE COURT:
Any objection, Mr. McLeod?
MR. MCLEOD:
No objection, Your Honor.
(Court reporter marks pertinent document Elfun Fund Mutual Fund Statement 2016 as Respondent's Exhibit Number 5.)
EXAMINATION RESUMED BY MS. THOMASON:
Q. (Counsel reviewing documents.) Mr. Chastain, when you went about your assignment, and I think you said that that was to determine what it would require to make the Estate whole, did you go about that with any preconceived notion? Did you approach it just objectively to numbers?
A. Yes, ma'am. Yeah, there was no –- the numbers speak for themselves. You've got to work with them or validate them in discovery.
Q. Did you take a conservative approach? I mean did you give the benefit of the doubt against Mr. Mensch's interest, did you think it was a tie, did you go more --

A. Correct. Like I said especially with the mortgage payments I only used what was required by the note itself even though I know there were months that additional principal and things like that were paid.
Q. Now, the gifts just to be clear, the 84,000 in 2016 and the 84,000 in 2016 and the 60,000 in 2014, those are not a part of the transfers are they that went to --
A. No.
Q. -- Mr. Mensch?
A. No.
Q. They were paid directly from Ms. Mensch's account; is that correct?
A. Correct. Those were beneficial payments to the beneficiaries not to Mr. Mensch.
Q. Okay. And the taxes associated with those and any other?
A. Were all paid by Ms. Mensch.
Q. Okay. Did this Estate ever have, I think there's been some belief that at one time it had several million, all the records you've seen have you seen any evidence --
A. I have not seen that much, no, ma'am.
Q. And I can point you to -- is it fair to say it might have been just over a million a few times, but overall it was --

A. I think that would be accurate. You know we've talked about different years as starting points, but the ones that I'm most familiar are 2013 forward, that would be an accurate statement.

Q. Okay.

A. Are you talking of the retirement plan?

Q. I'm talking -- I'm talking total Estate.

A. Total Estate.

Q. Its assets.

A. Okay.

Q. So mutual funds, everything in the IRA, mutual funds in GE?

A. Yeah. No, the IRA and mutual funds I can speak to that that would be accurate.

Q. I was not including the house.

A. Right. I don't know what everything else would have been.

Q. Okay. But those accounts were her only investment accounts; is that right?

A. It made up the bulk of her Estate, yes.

Q. Okay. Give me just a minute. (Counsels conferring.) And I'm going to hand you what's already in evidence. It's Mr. Markel's Report. The Financial Report of John Markel.

A. Uh-huh.

Q. And I think you've already testified that you've looked it and you reviewed it?
A. Correct.
Q. In looking through that report can you tell me some of the primary differences? Is it simply you guys were very close on you agree what was transferred. And you don't have to speak to rents or things like that because The Court has dealt with that, but did you have different approaches to calculating or are they similar approaches?
A. Well, in terms of coming up with the beneficial payments to Mr. Mensch I think we had the same exact approach.
Q. Okay.
A. And this one is the Amended. He did have items that he had considered beneficial payments for Ms. Mensch in his report. I would need to take a minute and look through. Is this a newer version?
Q. It is the Amended Report if you want to take a minute.
A. Okay. So I don't know if they're tabulated and totaled the same way or not. (Witness reviewing report.) He used the same approach of purple and yellow in terms of at least categorizing. So everybody knows I'm looking at page 35 of his report. He talked about in his line he calls it row 3 unnecessary income tax resulting from

liquidation of the shares or basically amounts in excess of minimum IRA distributions.

THE COURT:

Which page are you on, sir?

THE WITNESS:

I'm on page 35, Your Honor.

THE COURT:

Okay.

A. (Witness reviewing report.) And if I may we were off a couple of thousand dollars on a few items, but like line 1 we basically agreed that was a similar methodology and came to a similar conclusion. Line 2 I had lumped in, and that's about the amount that we were off when we all had our meeting and when we reconciled our two reports. Line 3 I didn't address because the notion of a required minimum distribution being an issue that's not in the scope of what does the Estate need to be made whole. Distributions were made to fund things that we've just spent a bunch of time talking about. I won't go back through that unless I need to, but that included gifts and her expenses, and taxes, and so forth. So I didn't have any losses there because every dollar that came out would have taxation. So line 4 avoidable penalties and interest because of late payments. I'm aware of those related to 2018 and on the tax notices you can find the dates and it tells you how much is owed for each period. And then it's a matter of determining what was Mr. Sterling Mensch's responsibility and what was the responsibility after his Power of Attorney stopped or Personal Representative stopped. So that 13,000 I do not have that in at all. Excessive income taxes for failure to itemize deductions I did not include that at all. You know a lot of people don't realize that the tax code if you make all the payments on a note you're entitled -- you can be entitled to take all of the interest deductions and property tax deductions and, you know, Mr. Sterling Mensch used an outside third-party, a very qualified CPA firm, and I have looked at some of the data that was turned in, plus the fact he made the payments so it was deemed he was entitled to take the property taxes and take the interest expense on his return and he did. So therefore I don't see that she was harmed because he made the payments and he took it and that was lawful under the rules of the IRS and his accounting firm. Line 6 rent. You said I don't need to address that?

Q. No.

A. Okay. And then line 8 he has a credit for disbursement for property taxes Parks Sterling Bank that he shows

119,000 and I have it -- my buckets are obviously different as you-all have heard me say. I've got mortgage payments in a bucket. I've got property taxes and I've got other costs associated with the home and taking care of Ms. Mensch. So we have a different approach on that.

Q. As it relates to that though I think if I go back to -- I think for payments on the mortgage -- for the mortgage payments you had you about 127,000; didn't you in yours?

A. In total? So from 2013 to the time the house was sold 127,036; yes, ma'am.

Q. And how much did Mr. Markel have for the mortgage payments to Park Sterling Bank?

A. Let me see. (Witness reviewing documents.)

Q. I think you just read it on page 3.

THE WITNESS:

May I sit this here, Your Honor?

THE COURT:

Yes. Sure.

A. (Witness reviewing documents.)

Q. I think you read it a minute ago on that page 35.

A. Well, I read the summary and he -- do you want the total for just Park Sterling Bank because I may be too little here?

Q. No, you can tell me what he included.
A. He said that the credit of property taxes, payments to Park Sterling Bank, South State Bank was 119,548.
Q. Okay. All right. So you might approach it differently, but overall you were able to reconcile your reports and recognize the differences; is that right?
A. Yes. You know my payments for property taxes and the mortgage payments would probably be closer to 150,000. It would be the 127 plus 490 and 170 so we'd be off by about 50,000.
Q. Okay. All right.
A. I don't know what the time frame is here without -- I will be glad to look through it for you-all if I need to.
MS. THOMASON:
Well, Your Honor, if we can take a short break it might make -- I mean I'm at a point that I --
THE COURT:
Let me before -- and we will take a break. Do you-all want to take a lunch break or plow on?
MS. THOMASON:
I don't have much more, Your Honor. And so we can take break. Mr. Chastain can look through and see.
THE COURT:

Okay.

MS. THOMASON:

We need to find it and we can --

THE COURT:

Well, you-all --

MS. THOMASON:

-- go take a lunch break.

THE COURT:

Okay.

MS. THOMASON:

And I can see if I've got anything to wrap up.

THE COURT:

Okay. Well, you-all maybe think about that while we take a little break. We'll come back at let's say 1:15.

MS. THOMASON:

Okay. Thank you, Your Honor.

THE COURT:

Okay.

MR. MCLEOD:

Thank you, Your Honor.

(Off the Record 12:52 p.m. -- 1:15 p.m.)

THE COURT:

All right. Mr. Chastain, please have a seat. You've already been sworn. You're still under oath.

THE WITNESS:
Yes, Your Honor.
THE COURT:
So just have a seat. And before we get started I just want to make sure I know the last time you asked him a question his answer was 119.
MS. THOMASON:
Yes.
THE COURT:
Where was he looking? What was he looking at when he --
MS. THOMASON:
That was in Mr. Markel's report. Where would that --
THE WITNESS:
Okay. When we left I was looking at the detail. So we need to go to page 47, Schedule or Appendix M of Mr. Markel's report.
THE COURT:
Okay. My report for him only goes to 44. I have the Second Amended Expert Report.
THE WITNESS:
Yeah, and it should have 47 in the very back.
THE COURT:
My only goes to 44.
MR. MCLEOD:

I think he's going by --
THE COURT:
Oh, okay. I'm looking at his. Are you looking at yours?
MR. MCLEOD:
There's an actual exhibit of the report. It's Exhibit 1. He may be looking at an old report.
THE COURT:
I'm looking at Exhibit 1, the Second Amended Expert Report --
MS. THOMASON:
That's it.
THE COURT:
-- of John Markel.
THE WITNESS:
Yeah, this one -- that says February 12th there.
MR. MCLEOD:
No, this one is August 6th.
MS. THOMASON:
August. I'm sorry.
THE COURT:
It's got Petitioner's on here. Yes. So Respondent's is over here. Is that other report already in evidence?
MS. THOMASON:

It is, Your Honor.

THE COURT:

Is it? Okay.

MR. MCLEOD:

Is the other report in?

THE COURT:

That's what I was asking.

MR. MCLEOD:

I don't think that's in evidence.

THE COURT:

The only one I have in evidence I thought was the 2nd Amended.

MS. THOMASON:

Yeah, that's actually what –- what –- it's not February 12th. We just switched them out.

MR. MCLEOD:

Okay.

THE COURT:

Okay.

MS. THOMASON:

It's the same report. It's just updated.

THE COURT:

Okay. So then you were looking at, when you were testifying, at this one, but this one doesn't have a page 47. My ends at 44.

MS. THOMASON:
Is there something wrong with it?
THE WITNESS:
If I may for clarification this one, the summary I was reading off of on page 35 is now page 36.
THE COURT:
Right. That's what I have. I have it as 36.
THE WITNESS:
Your Honor, so everything we just talked about was on that previous one.
THE COURT:
I just didn't see anything that had 119.
THE WITNESS:
Yeah, there's no -- there's a 167 number now on line -- I'm not supposed to be -- do you-all just want me to read this so we can kind of all get on the same page?
MS. THOMASON:
Yes.
MR. MCLEOD:
Can we just go back to Petitioner's Exhibit 1? I mean that's the right one. That's the one in evidence that we submitted as our report. If we go by Exhibit 1 and not just what you -- you can hand him Exhibit 1.
THE WITNESS:
Okay.

THE COURT:
Okay. I'm going to turn it back over to Ms. Thomason and, you know, I'm just trying to find out where he was testifying from so I can make a note and I just –- and I couldn't find those figures he mentioned.
EXAMINATION RESUMED BY MS. THOMASON:
Q. And so when you were reviewing you were actually testifying from Mr. Markel's original that was submitted as a part of the Summary Judgment February 12th?
A. That's correct.
Q. And so this that you're holding now it's in evidence. I think it's Petitioner's 1 is his Amended Report. Do you see a distinction differences; is that what you're saying?
A. Yes, Ms. Thomason, I do.
Q. Okay. So go back to your summary as you were pointing out.
A. Okay. We had left off on what he calls Credits for Disbursements for Property Tax, Mortgage Payments, and Corresponding Reduction in Pre-judgement Interests. He says that's detailed on Exhibit –- on Appendix M. So that's what I'm looking for here. That amount is now 167,272.37 and so, yes, he –- we are on track. And this one goes back to the appropriate period of time.

Q. And so that means you guys were even closer on that number?
A. Yes, ma'am.
Q. Okay. So given that number how far in an estimate how far off do you think you are?
MR. MCLEOD:
Your Honor, I'm going to object to this line of questioning because it's in John Markel's report it's taking about potential credits to accrued rent consisting of mortgage payments and property taxes. I mean you've ruled that I can't assert that rent argument, so I don't think they should be able to use this to say that that's based on the same thing. They trying to compare --
MS. THOMASON:
Well, it's the same --
MR. MCLEOD:
-- apples to oranges.
MS. THOMASON:
I'm sorry. Well, it's the same amount. He just called it rent. We called it mortgage payments. There was no offsetting rent.
THE COURT:
If you're talking about line 8 on page 36 credit for disbursements made for property tax, mortgage payments

made to Park Sterling Bank and South State Bank, and corresponding reduction in pre-judgment interests in figures in row 7 preceding. Is that what you were reading from?

THE WITNESS:

Yes, Your Honor.

THE COURT:

Okay. So he didn't say anything about rent.

MR. MCLEOD:

Yeah, but he -- that was -- we're not getting the context of it because there's potential credits to accrued rent is what John Markel, his Appendix M is laying out.

MS. THOMASON:

Well, that just means that there was -- if you had allowed accrued rent these payments --

THE COURT:

Yeah.

MS. THOMASON:

-- are credit against it, but there's no accrued rent. These payments were still made.

THE COURT:

Okay. And, again, I've already ruled on that so I'm not going to start now, you know, adding up the rent and giving credit for rent and all that. So I will overrule your objection.

MR. MCLEOD:

All right.

THE COURT:

But it's noted for the record.

MR. MCLEOD:

All right.

EXAMINATION RESUMED BY MS. THOMASON:

Q. Okay. And so is there anything else you wanted to speak to?

A. Well, I just -- so that I'm clear that I'm saying the right thing what we started with we asked how much I had for property taxes and mortgage payments and it was approximately 127,000 in mortgage payments and it was approximately 49,000 property tax. So we were looking at the corresponding figure for him; correct?

Q. Yes. Yes.

A. Okay. So then this line in Exhibit M the differences with his revised report he now includes the same years I do. Before it cut off at 2016.

Q. Okay.

A. But now he's done it the exact same way and he's lumped the two together for 167,272. With a calculator I could tell you how close we are, but I, you know, can try it in my head. 130 and 50 is 180. So I'm probably

-- we're probably 10 to $12,000 off.
Q. Okay.
A. So that's about it.
Q. All right. So then would that -- is there anything else you wanted to comment on on the difference or do you think that's --
A. No.
Q. Okay.
A. The things you -- there's a line item about losses from a failure to diversify. I can't speak to that. I don't have that.
Q. Well, I want to ask you about that.
A. Okay.
Q. The reduction in the value I think Mr. Markel has it at that the stocks fell $400,000 and you've testified that was over a very short period of time. Now, the Petitioners have alleged that the failure to diversify in that very short period of time resulted in that $400,000 loss and they're claiming that as damages. Have you in reviewing everything, the statements, the UBS statements, State Street Global, which was the mutual fund and UBS is the -- I mean is the mutual funds and UBS took the stock, but that's what made up the original. Any documentation from the transfer, from UBS documents that gave Mr. Mensch authority to

manipulate the assets within that? I mean in other words do you see any proof that he had that authority?

A. No, I've seen no evidence of any trading or anything.

Q. And so --

MR. MCLEOD:

Objection, Your Honor. I think this is speculation. I haven't seen any proof that he's talking about.

MS. THOMASON:

He's saying there's no proof.

THE COURT:

He's testifying out of everything he's looked at --

MR. MCLEOD:

All right.

THE COURT:

-- that forms the basis of his report. He hasn't seen any documents that says you have authority to make trades as a part of your GE stock agreement.

MR. MCLEOD:

Okay.

THE COURT:

That's -- he's saying nothing -- he is not saying categorically. He's just saying he hasn't seen anything that says that.

MR. MCLEOD:

Okay. All right.

EXAMINATION RESUMED BY MS. THOMASON:

Q. And, in fact, in reviewing have you seen any activity other than withdrawals?

A. No, ma'am, there have been no additions.

Q. Okay.

A. There were some reinvested earnings along the way.

Q. And, again, that would have been just from their agreement? Nothing --

A. Just reinvested in the fund.

Q. Okay.

A. Yep.

Q. All right.

MS. THOMASON:

I think that's it. I think that's it for direct.

THE COURT:

All right. Mr. Chastain, we're going to take a lunch break. You're still on the witness stand, so you can't talk about --

THE WITNESS:

Yes, Your Honor.

THE COURT:

-- your testimony or anything like that, so just go and have a nice lunch and we will see you back at a quarter to 3:00. So that's an hour and 15 minutes. Okay. Thank you we will be recessed.

MS. THOMASON:
Thank you, Your Honor.
(Off the Record 1:27 p.m. -- 2:48 p.m.)
THE COURT:
We're back on the record and we just concluded the direct testimony of Mr. Chastain. And, Mr. Chastain, if you will come forward. You're still under oath. Thank you.
THE WITNESS:
Yes.
THE COURT:
Thank you. Do you need some water?
THE WITNESS:
I have some.
THE COURT:
You have some? Okay. Mr. McLeod, we're ready for your cross-examination.
MR. MCLEOD:
All right. Thank you, Your Honor.
THE COURT:
You're welcome.
EXAMINATION BY MR. MCLEOD:
Q. All right. Good afternoon, Mr. Chastain.
A. Good afternoon, sir.
Q. Good afternoon. My name is Tyler McLeod. I believe

you're aware I'm the attorney for the Petitioners Shauna Waddell and John Mensch. How often are you hired by Trulock Thomason to give your expert opinion in cases?
A.   How often?
Q.   Yeah.
A.   I would say pretty often.
Q.   How many times have you done it?
A.   We've worked together about 15 years. So are you talking about testifying in court?
Q.   Correct.
A.   In court probably three or four and many, many depositions --
Q.   Okay.
A.   -- and that type of thing.
Q.   Okay. And do you charge fees for your services?
A.   I do.
Q.   Okay. How do you charge those fees?
A.   By the hour.
Q.   Okay. And how much have you charged for your services in this case?
A.   I think I've charged about $5,000 and there may be an invoice for about that amount --
Q.   Okay.
A.   -- open.

Q. How many hours have you spent on the case if you had to estimate?
A. Thirty.
Q. Thirty?
A. Maybe. Twenty to 30.
Q. All right. And does that include providing the report you have submitted today?
A. I have staff that helps me assemble data, but I write the report.
Q. Okay. But your fees include that report; is that right?
A. Uh-huh. Yes.
Q. And I would just ask you to say "yes" or "no" for the record.
A. Yes.
Q. But I do that, too. Uh-huh and huh-uh, but I'll try to remind you. I'm trying to be mean, but I'll remind you a little bit. Okay. So do you have your affidavit that's Respondent's 1? Do you have that in front of you?
A. Are you talking about my affidavit we discussed earlier?
Q. Correct. Yours.
A. Yes, mine's not marked.
Q. Your Expert Affidavit?

A. Uh-huh.
Q. I believe it's been marked as exhibit –- Respondent's Exhibit 1. Do you have that in front of you now?
A. I do have that.
Q. Okay.
THE COURT:
This is Respondent's 1 right here.
MR. MCLEOD:
Okay.
THE COURT:
I don't know –-
MR. MCLEOD:
Oh, that's right. Did you-all mark it?
MS. THOMASON:
I think it was 2.
MR. MCLEOD:
It's 2? Okay.
THE COURT:
Okay.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. So Respondent's Exhibit 2 was your Expert Affidavit. In line 5 of your affidavit you state that categorized the analysis into six groups. What are those six groups? I believe that's on –- let's see, page 2 of your affidavit.

A. Right. It's the 6 exhibits we discussed earlier.
Q. And can you tell me what those are?
A. Sure. Exhibit 1 is electronic online transfers from Bank of America checking account 7059, Ms. Mensch's account, to Bank of America account 3259, Sterling Mensch's account. And then number 2 is electronic online transfers from Ms. Mensch's Bank of America savings account, account 2007, to Sterling Mensch's Bank of America account 3259. Group 3 was other transactions for the benefit of Sterling Mensch. Other transactions for the benefit of Sterling Mensch from Ms. Mensch's Bank of America checking and savings account. Group 4 is payments made on 512 Tarleton Way by Sterling Mensch. These are offsets to transfers and beneficial payments from Ms. Mensch's accounts made by Sterling Mensch. Payments prior to 2013 are excluded. Exhibit 5 Sterling Mensch fund used for down payment and construction of 512 New Tarleton Way. These payments are offsets and transfers against beneficial payments from Ms. Mensch's accounts made paid by Mr. Mensch. Property tax payments prior to 2013 are excluded. And 6 total expenditures by Sterling Mensch for Ms. Mensch's benefit. These are items offset against transfers and beneficial payments from Ms. Mensch's accounts made by Sterling Mensch.

Q. And I think you were reading from your chart. Can you turn to paragraph 5 of your affidavit where it starts "based on my review"?
A. Uh-huh. Sure.
Q. And you've got four categories listed there A, B, C, D; but that may be a typo where you've got it labeled 6. Maybe that's supposed to be E.
A. No, I mean --
Q. Because I only see a total of five there.
A. Okay. Well, we can --
Q. I'm just making sure I'm correct because they're called a little bit different things in paragraph 5 than they are in your Summary of Financial Analysis and Findings.
A. Uh-huh. Okay. Yes, I guess you are correct. We can look at which one is missing if you want to figure that out. I'll call them out and you check them off?
Q. That will work.
A. Okay. So item 1 is electronic online transfers from Bank of America checking 7059 to Bank of America 3259.
Q. Okay.
A. Item 2 is electronic transfers from Ms. Mensch's Bank of America savings account 2007 to Sterling Mensch's Bank of America account 3259.
Q. Okay.
A. Other transactions for the benefit of Sterling Mensch

from Ms. Mensch's Bank of America account checking and savings accounts.

Q. So that would be number 3. And what would that be on five? Would that be C?

A. Well, that's one, two and three. Yeah, I guess C would be the third one; right?

Q. So let's see. Yeah. So C would be three. And what does C say?

A. Four is payments made on 512 New Tarleton Way by Sterling Mensch.

Q. Okay.

A. And then 6 would be total expenditures for Ms. Mensch's benefit.

Q. So we skipped -- so I've got one, two, three, four and then we've got a -- so that would be five. And I think we're just missing something in paragraph 5.

A. Which one? That's why I was calling them out for you.

Q. Yeah, I think we're missing six. Let's see.

A. Yeah, the expenditures for Ms. Mensch's benefit that one might be missing.

Q. Okay. So in your paragraph 5 what does your line C say? I think that would be three, match up to line three.

A. Right.

Q. So what does C say in that?

A. C is other transactions above consisting of cash withdrawals, checks written, credit card payments for the benefit of Mr. Mensch.
Q. Okay. So we're just missing six, but that's number -- yeah, number six in your chart it's just not in your six categories there, but I understand.
A. Would you like to --
Q. No.
A. -- count them again?
Q. No, I understand now.
A. Okay.
Q. But I'm going to refer to those as different things, so I'll refer to them as what they're referred to in your chart. So let's see. So on page 3 you've got your chart there and you've gone through those categories. And what is your total number at the bottom?
A. My 473,636.37?
Q. What does that number represent?
A. It adds up all six of these figures.
Q. Okay. Is it your -- your calculation of the damages in this case?
A. It's the calculation of the total beneficial payments net to Sterling Mensch.
Q. So would that be the damages in this case?
A. I'm not --

MS. THOMASON:
Objection, Your Honor. That's the -- I mean it's not his role to say.
THE COURT:
Sustained. That's yet to be determined.
MR. MCLEOD:
Okay.
Q. And in this summary, your chart, on page 3 of your affidavit you say, you have a column there by each one of these lines and it says documents reviewed.
A. Uh-huh.
Q. Are those all the documents that you reviewed in coming up with these numbers?
A. There may be other documents that were used, but those are generally the biggest groupings of those documents, yes.
Q. What other documents did you review?
A. Let's see. For the bank statements it would be the bank statements and the affidavit of John Markel and the affidavit of Sterling Mensch. That's one. Number two is the same. Three is the same. Four would be the same. Five would be the same plus construction documents that's in a big binder you-all have here and invoices for construction, mortgage, notes and deed records, property taxes and things like that.

Q. Okay.
A. Which are enclosed. Some of which are enclosed. And then six would be the same. It's the Bank of America records and the same affidavits of Mr. Markel and Sterling Mensch.
Q. And that the affidavit of Sterling Mensch is that a part of your report?
A. It's not included as a part of my report. I believe it's included in part of the record, but I do have a copy of it here if it's needed.
Q. Okay. I'll ask you for that in a second. Why did you not include it as part of your report?
A. It was already admitted from what I understood.
Q. Okay. And did you rely on the documents stated here in these six lines, documents reviewed in producing your report?
A. Yes, sir, as I said before substantially. Is there one other document somewhere? I guess we'll find out when we get there, but I can't think of any based on the couple of hours we've spent talking about it.
Q. Okay. So in general this is a complete list of the documents that you relied on; is that correct?
A. In general, yes.
Q. Okay. And so the first three lines of those can you just summarize again what those are, the first three

lines of the chart?
A. On the chart? Do I need to read them all again?
Q. You don't need to read them. Just a summary of each one.
A. Okay. $693,582.18 represents all the total of the transactions in exhibit 1. They are electronic transfers to Mr. Sterling Mensch for his benefit.
Q. Okay.
A. Line 2 is 75,425.23 are the same, but from her savings account to Mr. Mensch's account for his benefit. And line 3 is 49,943.74 it's a mixture of other transactions from her accounts for his benefit and those are listed in that exhibit. Credit card payments, things of that nature.
Q. Okay. Do you know what those three numbers add up to?
A. I can total them up if you'd like.
Q. Do you have a calculator?
A. Right here if it's okay.
Q. All right.
A. (Witness making calculator.)
THE WITNESS:
May I put these right here?
THE COURT:
Okay. Sure.
A. 818,951.15.

Q. Say that one more time. 818?
A. $818,951.15.
Q. Okay. Has that number ever been higher in previous reports that you've done?
A. We can look at the previous report and see. I had a -- is it okay if I refer to the reconciliation Mr. Markel did?
Q. Yes.

MS. THOMASON:
Your Honor.

THE COURT:
I believe we have an objection.

MS. THOMASON:
Yeah, I just wanted -- I think we've stipulated to the number, the starting number of transactions, the 820 at our meeting.

MR. MCLEOD:
Yes, we did.

MS. THOMASON:
Okay. I just wanted to make sure.

THE COURT:
Oh, okay. All right.

MR. MCLEOD:
820 -- what's the number? 820,582?

MS. THOMASON:

I think Mark -- Mr. Chastain, has it there.

EXAMINATION BY MR. MCLEOD:

Q. What's the stipulated amount?

A. I'm not the best with my mask on, but what do I need to do?

THE COURT:

You just need to -- you can answer the question.

THE WITNESS:

Okay.

Q. What is the stipulated amount? I think you were about to get to it in the breakdown?

A. Yes, so if you want to look at the document we got in your office.

Q. Yeah, look at that to refresh your recollection.

A. And I think I testified before we were off by a couple of thousand dollars. I think is --

Q. Yeah. Yeah.

A. -- this is proving that. I believe we had stipulated to -- and I'm just going to do the math for you. 820,382.13. So we stipulated to 820,382.13. And that's a difference of $1,430.98.

Q. And in the breakdown you have in front of you what was your number before that reconciliation?

A. So would you like to just walk through the whole thing because it applies to both sides?

Q. You can just tell me what I asked. What was your number before that?
A. Okay. My number before was 823,921. I had a math error. We replaced that with a correction, so I was at 852,951 and that included gifts.
Q. Okay. So at one point it was 852,000 --
A. No, no, that's what I just said, sir.
Q. Okay.
A. 852,000.
Q. That's what it is now?
A. No, that's what it was when you asked me here.
Q. Oh, before the reconciliation it was 850; is that correct?
A. It was 850 and then I realized those gifts were legitimate at your meeting.
Q. Okay.
A. Because I did not know for sure.
Q. And what gifts are you referring to?
A. 34,000 in gifts.
Q. Were those gifts to Sterling Mensch?
A. They were gifts to all three of the kids.
Q. Okay.
A. I had them in mine and he didn't have them in his, because he said they were gifts.
Q. But what we're talking about here is things that were

transferred from her account to Sterling's account; correct?
A. Correct.
Q. Transactions from, you know, Florence Mensch's account to Sterling's account?
A. Correct. But I had those and did not know for sure that they went to the recipients as gifts, so I left them in there as if he had used them for his benefit.
Q. Okay.
A. And then I found out at the meeting with you it was confirmed with Mr. Markel that, no, that was off and he actually subtracts it. In our reconciliation at the bottom he says minus Christmas gifts included by Chastain, but not Markel 10,000. Minus Christmas gift including by Chastain, but not Markel another 10,000. Minus Christmas gift including by Chastain, but not by Markel 14,000. And then we get to 822,082 –- 382.
Q. Okay. But in Sterling's account ending in 3259 were any gifts made from that account to siblings or anybody else?
A. These were gifts that were coming out of the mom's account, but I did not know that they were really gifts to those people or not. It was an open item on my end.
Q. Okay. I see.
A. And then Mr. Markel and you confirmed at your office

that, no, they were --
Q. You cleared it up.
A. -- really gifts.
Q. You've cleared it up.
A. So we could take them off.
Q. You've cleared them up. That's what I'm getting at.
A. Okay.
Q. The gifts came out of Ms. Mensch's account --
A. Correct.
Q. -- to certain individuals, not to --
A. I believe -- we can look it up if we have to, I believe a daughter or someone like that got one, so there was an electronic transfer and I was not sure that it was a gift.
Q. Okay.
A. I believe two of them were electronic and one was a check.
Q. Was it a transfer to Shea Mensch?
A. We can -- that's the only daughter; right?
Q. That's Sterling's daughter. Correct.
A. Yeah. And so in my gift analysis that we talked about earlier everything is equal and fine and the daughter has always been included with Sterling Mensch.
Q. Okay.
A. The two of them are like a pair. And then I believe

the brother and his wife or someone are a pair. And then your client that's here today and her husband was a pair.
Q. Yeah. Yeah, I'll hand you or you might have it. It's Respondent's Exhibit 3 where you list those gifts.
A. Yep. I've got it.
Q. You've got it? Okay. You've got it.
A. Yep. So that's it right there. And at the time that I did my initial 852 --
Q. (Counsel coughing.) Yeah, sorry.
A. That's okay. Are you good?
Q. Yeah, I'm good.
A. At the time that it was 852 I had 34,000 in gifts, but I was not convinced that they were gifts so I left them on there.
Q. Okay. And so under gifts on that Respondent Exhibit 3, can you -- who are the individuals there that you allege gifts were made to?
A. Shauna -- I might not have everybody paired, but I think it was actually Sterling and Shea, John and Holly.
Q. Uh-huh.
A. But Shauna and her husband basically. John and his wife I'm assuming and then Sterling and his daughter. Those were the six people.

Q. Okay. And are your amounts there correct?
A. They are.
Q. Okay.
A. I totaled them for the year. They may have been given in a couple of transfers.
Q. Well, I'm going to hand you what's been previously admitted into evidence as exhibit –– it's actually Respondent's Exhibit 1 and I'll let you review this page 4 of that Respondent's Exhibit 1 and those certain highlighted items.
A. Right. And so do you want me to add them up?
Q. What is the year for that statement?
A. The year is 2016. Ten, 20, 30, 40, so we have 58 and then I believe there is another small gift somewhere in here. Because I also went to the –– I went to a couple of different places to verify those numbers.
Q. What are the amounts of the gifts there?
A. Well, we have $10,000 transferred to Sterling's account 3259. Then we have a check 5341 for 14. Another check 5342 for 14. Check 5343 for 10,000. Check 5343 for 10,000. Check 5345 for 10,000.
Q. So in 2015 how does –- if there's two $10,000 gifts how does that add up to 28,000?
A. The –- I think there's more than this.
Q. For 2015?

A. Oh, yeah. Yeah.
Q. Where are those?
A. We might even have a time. Let me -- do we have December 8 to January 5th? I can pull -- I think there's some other additional. I think you have some here.
Q. So there's other gifts somewhere that were made?
A. Yeah. Well, the totals you've got a husband -- a husband and wife 14 each. That's 28. And then you have these other two that are 20. And then there is a -- it's made up for in one of the other amounts. We may need to look at 20 -- at 2016. You may need to 2015. They're same type situation. And I can -- I mean I may need to get to a computer or I can sort through a bunch of items, but.
Q. Can you tell who the gifts were made to?
A. In here?
Q. No, Respondent's Exhibit 1? Like who were the 10,000 payments made to?
A. Well, you don't have -- well, maybe you do.
Q. There's checks behind there.
A. All right. We've got Shauna was 14,000. John is 10,000. Shea is 10,000. Steven is 14,000. And Holly is 10,000 in the checks.
Q. Okay.

A. So then we have an electronic transfer of 10,000.
Q. And does it say where that electronic transfer went?
A. To 3259.
Q. Are you familiar with that account?
A. Yes, that's Sterling Mensch's account.
Q. Okay. So if you had to add those up based on that what would the number be?
A. If you add it up based on this you're going to be 10, 20, 30. You're at 68,000.
Q. Okay. And your number in this Respondent's Exhibit 3 is how much?
A. For 2016 it is 84,000.
Q. And for 2015?
A. 2015 is 84,000.
Q. Okay. And in that Respondent's Exhibit 1 what account are those being paid out?
A. This one they are --
Q. Well, actually it's Respondent's Exhibit 3. Well, no, you're right. Respondent's Exhibit 1.
A. This is Florence Mensch' account.
Q. Okay. So the gifts were made out of Florence Mensch's account; correct?
A. Right. All the gifts are.
Q. Okay. So would that affect our stipulated 820,000 number at all?

A. No, we added to it after we straightened it out.
Q. Okay.
THE COURT:
May I ask a question? And I'm sorry. But I want to understand the math. You testified that the 2016 gifts on your summary they add up to 84,000?
THE WITNESS:
Yes, ma'am.
THE COURT:
And then on this Exhibit 1 I'm adding up 20, 30, 58, and that's ten more. That's 68. So there's a difference. This is 68 and this is 84?
THE WITNESS:
There are additional transactions that were gifts in that year, Your Honor.
THE COURT:
Oh, okay.
THE WITNESS:
Remember that's just one month.
THE COURT:
Uh-huh.
THE WITNESS:
There were some other transactions during the year.
THE COURT:
Okay. It wasn't just the annual gifts?

THE WITNESS:

Well, they didn't all occur right then is my recollection.

THE COURT:

Okay. All right.

THE WITNESS:

And we've had a little break in time throughout this, but, yes.

THE COURT:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. So if -- if we're able to get a break at some point can you find those other transactions?

A. I can look with what we have, yes, sir.

Q. Okay. I'll ask you to do that if we take a break.

A. Uh-huh. Sure.

Q. If you get an opportunity or --

A. Absolutely.

Q. Thank you. Let's see. And you mentioned earlier and actually hang on a second. (Counsel reviewing documents.) Exhibit 20.

MR. MCLEOD:

Your Honor, can I grab Exhibit 20 from up there?

THE COURT:

Sure. Please help yourself.

Q. (Counsel reviewing exhibit.) I'm going to hand you what's been admitted into evidence as Exhibit 20 and this is the Respondent's Responses to Petitioner's First Set of Interrogatories. And I'll go ahead and turn to Number 11. And can you read that Interrogatory question and response?
A. Sure. "Set forth an itemized statement of all monies, funds payments, gifts, reimbursed expenses, and/or any other funds paid to you on your behalf of the Principal from May 18, 2010 until present. For each payment listed, please include (I) the date of payment; (ii) the amount paid or received; (iii) the reason for the payment."
Q. Okay. And can you read the response?
A. "Objection. Respondent objects to this Interrogatory on the grounds it is overly broad and unduly burdensome. Notwithstanding the aforementioned objection, Respondent states that the requested information is in possession of Petitioner and is readily available to them. Respondent produced this information in full, on January 2, 2021, to Petitioner through an accounting in compliance with Judge Jennings' Order. Decedent was competent from 2010 till September of 2013. Decedent was in full control of her accounts and Respondent lacks knowledge for any payment

made during that period. From September 2013 to present, Respondent does not recall the reason for every monies, funds payments, gifts, reimbursed expenses, and/or the funds paid to Respondent from Principal from September 2013 until present. However, the Respondent states that some of the reason for the payment was for gifts from Decedent to Respondent and payments to Respondent because of unemployment."

Q. Okay. And in your Respondent's Exhibit 3 there when did the gifts start?

A. 2014 is when I see them starting.

Q. All right. And earlier I believe you said Ms. Mensch was making these gifts; is that right?

A. No, I said -- earlier I was talking about Ms. Mensch's distributions. In order to make those gifts she had to have distributions to make them. There wasn't any -- there wasn't enough money to make them.

Q. Okay. So who actually made the gifts?

A. Sterling Mensch from my understanding wrote the checks. The gifts were from Ms. Mensch is my understanding.

Q. Okay. So Ms. Mensch did not write those checks to make these gifts; is that right?

A. I don't think. Let's double check. I do think you're right. Correct. Sterling wrote these.

Q. Okay. And according to that paragraph you just read

Ms. Mensch was not competent as of what month?

MS. THOMASON:

Objection, Your Honor. This witness doesn't know. He's reviewed everything and we've got a time period that we're dealing with. You know from that standpoint.

THE COURT:

Correct.

MS. THOMASON:

And the liability has been determined. I know we're doing damages, but we've still got that time period.

THE COURT:

Well, I believe –– wasn't there something in the record or the document itself that talks about that, capacity? And that's in evidence so I'm going to let him read that. I'm not going to dwell on it, but you can read that.

THE WITNESS:

Okay.

THE COURT:

Go ahead.

THE WITNESS:

The date?

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Yeah, the date.

A. Right. It said that September. Wait, hold on.
Q. Just read that whole sentence for us one more time.
A. "Decedent was competent from 2010 till September 2013." Yeah, I mean obviously not a person that deals with that, but that's what the sentence says.
Q. Okay. Can you read the whole sentence for me?
A. It says, "Decedent was competent from 2010 till September 2013."
Q. And --
A. The next sentence? Okay. "Decedent was in full control of her accounts and Respondent lacks knowledge for any payment made that during that period. From September 2013 to present, Respondent does not recall the reason for every monies, funds payments, gifts, reimbursed expenses, and/or other funds paid to Respondent from Principal from September 2013 until present. However, Respondent states that some of the reason for the payment was for the gifts from Decedent to Respondent and payments to Respondent because of unemployment."
Q. Okay. And I'm going to take you back to it's your page 3, your chart that I'll keep referring to of your Expert Affidavit.
A. Uh-huh.
Q. And we talked about the numbers and how you and John

Markel, you know, came up with, you know, your amounts and how -- you know, you testified earlier that they were I think you said very close, extremely close; correct?
A. Okay. The Summary Chart in my affidavit?
Q. Yeah. And I'm just talking about in general the number of the transactions that went from Florence's account to Sterling's account and how you were discussing earlier that -- that your and John Markel's version of that was very close?
A. Right. All of beneficial payments to Sterling, yes, we stipulated to the $820,000.
Q. And you mentioned that you were actually shocked that you were able to agree on it being that close?
A. He and I both discussed that in front of you. Yeah, we -- that doesn't happen often.
Q. Okay. So that's pretty rare?
A. Very rare in what we do, yeah.
Q. Okay. But in reality aren't you just counting the transactions from one account to another? I mean isn't it from -- I mean you're counting transactions that go from Ms. Mensch's account or made for her account into Sterling's account or which were, you know, made for his benefit somehow; is that right?
A. It would be all payments from her account that would be

to his benefit, yes, we are counting those.
Q. Okay.
A. Yeah.
Q. And I guess what I'm getting at is that really a difficult thing?
A. Well, when you're having to apply a standard of is this payment really for his benefit or could it be kind for hers or not. And so the approach became all the ones that we could identify as being for her benefit, you know, that made a lot of sense within all the inspections and that type of thing is one thing. But all the other ones he transferred over, yeah, those are all his. They're all for his benefit. We've viewed a few transactions differently, but normally people would have two –- would a viewpoint that might end up with a different total. Yeah, I mean.
Q. But at the end of that you agree that 820,582 is the number we've stipulated to was that amount; correct?
A. Correct. Right after we adjusted what I didn't know about the gifts and the four or five transactions that we did not agree on and adjusted. Each of us had a math error to adjust.
Q. Okay.
A. So.
Q. Okay. And as far as counting those I mean could a

decent accountant count those transactions? I mean --
A. Well, I think a lot of people could -- could probably count those transactions up. It's a matter of are they really to come to the same, you know, total. A lot of people go through lists and, you know, all the time coming up with what's the real total here? So, you know.
Q. Okay. All right. And you've reviewed, I mean we've discussed this, the statements for Florence Mensch's account ending in 7059; correct?
A. Yes. Yeah, I'm aware of those statements.
Q. Yeah. And I think you have those listed in Exhibits 1, 2, and 3; is that correct?
A. I believe you're correct.
Q. In your Expert Affidavit?
A. Uh-huh.
Q. Okay. Did any of those transfers from Ms. Mensch's account match any of the mortgage payments listed in your Exhibit 4?
A. Any of the amounts of the mortgage -- well, remember in my Exhibit 4 I used only the mortgage payment required by the note.
Q. Okay.
A. Because I was told -- if you've got to make it whole I take a conservative approach. So there's no additional

principle payment reflected in any of my mortgage payment numbers.
Q. And do your mortgage payments actually match up with what was actually paid for the mortgage payment?
A. They probably had a smaller balance due at the closing if I took all this all the way out, because remember I started at the beginning mortgage and I did not include –- so there months that he paid $2,000. There are a lot of months he might have paid 1,800. I didn't do that. I only took it as to what the statutory requirement of the note required him to pay.
Q. But the number that was actually due for the mortgage is different than that; is that right?
A. It's the other way around, sir. The amount that was due under mortgage is what's in my report.
Q. Okay. The amount that was actually paid?
A. Right. Would be in addition to this amount.
Q. Oh, okay. So it would be more for what was actually paid than what is listed on your Exhibit 4?
A. Correct.
Q. Okay.
A. Which is how I was asked to approach this. So instead of 820 we might be at 800 or, you know, it's not a huge material difference, but it is a difference.
Q. And so when you reviewed the statements from Ms.

Mensch's account to Sterling's account did any of those transfers where he was transferring money over to Florence's account match any of those mortgage payments?
A. Let me look. Let's look. You're talking about my mortgage payments?
Q. Yeah, your schedule.
A. My schedule is like -- it starts in June of '08 so we're going to start at '13 or do you want to start in '08?
Q. I'll take June really. I mean --
A. Well, but it was an adjustable rate mortgage. So see the early payments were $2,100 a month and it adjusted in July of '12. So when we got to -- so 1,351 was the mortgage payment essentially we all would be looking for. The 1,351 and you want me to look for that exact 1,351; right?
Q. Yeah. It looks all of your is at 1,351.45.
A. You said in the transfers that he made I thought.
Q. Yeah. Yeah.
A. Okay.
Q. Are any of those transfers from Ms. Mensch's accounts --
A. Right. So that's Exhibit 1.
Q. -- to Sterling's were any of them for 1,351.45?

A. Yeah, we're going to look at that together right now. It's in Exhibit 1.
Q. All right.
A. So we scan down on page one. I don't see any.
Q. Okay.
A. Page two I don't see any.
Q. Okay.
A. On page three I don't see any. On page four I don't see any. And on the last page, nope, I don't see 1,351 anywhere.
Q. All right. (Counsel reviewing documents.) All right. So can we agree that the transfers from 32 –- or from 7059, Ms. Mensch's account, to 3259 none of those amounts appear to match the mortgage amount; is that right?
A. They don't match the mortgage amount I used in my report.
Q. Okay.
A. Are you looking –- may I ask you a question?
Q. Yes.
A. Are you looking for the number that was actually paid?
Q. Well, the numbers in your report are not what was actually paid; correct?
A. Correct. They're a little bit less.
Q. They're a little bit less.

A. Uh-huh.
Q. Okay. So do you have any document that says what was actually paid?
A. We can use our calculator and figure it out real quick using Mr. Markel's report.
Q. Okay. So does Mr. Markel's report --
A. His Amended Report?
Q. Yeah. Are you saying that that has the amounts that were actually paid?
A. Well, it will when we take off the tax payments I believe. I need to look at it again, but if that's what you're looking for that's the way to find it.
Q. What do you mean take off the tax payments?
A. I've got a bunch of these laying around up here, but I don't actually know if I'm in the right spot when I piled these. This is PL 1 and I don't think -- that's not PL 1; is it? (Witness reviewing documents.) I think I've got one. Here it is.
Q. I've got a copy of Exhibit 1.
A. I think I've got it. I think I have it.
Q. Well, let's use the actual exhibit so we make --
A. Okay.
Q. -- sure we aren't using different reports.
A. Let's confirm page 38. Yes, sir.
Q. And I believe it's Appendix M on page 38.

A. It is, 38 and 39.
Q. And what is that Appendix M, what's the title of that appendix?
A. It's says Potential Credits for Accrued Rent. So I don't think this is the right one.
Q. Well, finish that sentence.
A. Yeah, it says Potential Credits for Accrued Rent Consisting of Mortgage Payments and Property Taxes, but this -- if these are the actual payments, they might be. They show some additional overpayments. Yeah, this is -- this is probably what we've got. We just need to take that 167. If you'd like I'd subtract all the Greenville County tax payments and that should give what he actually paid. Let me do that real quick.
Q. So do you think that's not the actual payments that were made on the mortgage?
A. Yes, I do think these are for the time period we're talking about.
Q. Yeah, so why do you need to subtract the tax amounts?
A. Because I have them as two separate totals. In other words, you want to know how much he paid on the mortgage.
Q. So you're saying in your report you have them as two separate totals?
A. I do. I have a total for my payments that I used on

the note and I have a separate entry for the property tax. So I want to take his payments 167 and subtract the property tax.
Q. But we're only talking about mortgage payments right now. We're not talking about taxes.
A. Yes, sir, but you want me to tell you. On your guy's sheet he's got the property taxes in the total. I've got to take them out and then it will give me the total. Is that what I'm supposed to do?
Q. I think the property taxes were paid separately; right?
A. Can you -- if you don't mind. If you'll look at this at bottom you'll see my total. His total, Mr. Markel's, and see how it includes those taxes? So we need to subtract that out and that total --
Q. Well, I don't care about the total. I'm looking at the individual mortgage payments anyway. So the taxes don't matter. I don't care what that total amount is.
A. Okay. Well, do you want to give a minute and I'll tell you the total?
Q. I don't care what the total is.
A. Okay.
Q. I want to know what -- I want to know if any of those what you say is the actual mortgage payments match any of the transfers that were made out of Florence Mensch's account to Sterling Mensch's account.

A. Okay. Okay. We can do that. I'll tell you what. I have 38 and 39 on my copy because I'm just to have just like check them off. Okay. I'll hand you those back, sir. So I've got a copy of these two pages, but I just -- I can go to Exhibit 1. So the good news is until March of 2014 all the payments were the 1,351.45 and I've already seen that those don't exist. So I'm going to scratch those off.
Q. Okay.
A. And then 4/25 of '04 it's 2,702. I'm sorry. I'm sorry. 4/25/2014 he paid 2,702. 4/14 I do not have that so I'm going to -- I'm only going to check the ones off that match. How about that?
Q. And you're matching to?
A. Exhibit 1, the transfers.
Q. These are electronic transfers from Bank of America 7059 to 3259?
A. Yes.
Q. Okay.
A. Is that what you want me to do?
Q. Yes.
A. Okay. So that one is actually we're going to leave them on if they match, because -- so if it doesn't match then. June of '14 he paid 1,351.45. So all the 1,351.45 are -- August of '14 there were no transfers.

September of '14 there was only a $1,000 transfer. October of '14 there were no transfers. November of '14 there was a transfer of $2,000 and he paid 1,352. So all those 13's are gone. 3/4/2015 he paid 2,825. There's none of those transfers in March. April was 1,403. Nope. May was 1,503, which is lines 41 through 47 in my report. September of '14 -- I mean I'm sorry. June 1,439. Nope. July 1,503. No. August 2,003. No. September 2,003. Nope. October 1,503. No. November 10th 2,003. No. December no. February 2016 2,003. No. March no. April 2016. They don't match. May of 2016 no. June of 2016 it did not match.

MS. THOMASON:

Your Honor, I'm not trying to stop him answering the questions. We're just going to offer -- we'll willing to stipulate there's very few that match if any of the transfers.

MR. MCLEOD:

If they're will to stipulate that there aren't any then we can move on.

THE WITNESS:

If you-all are giving that --

MS. THOMASON:

I mean there might be one or two.

THE WITNESS:

For me to be truthfully I need to do this.

MR. MCLEOD:

Yeah.

THE WITNESS:

And I'm almost done.

THE COURT:

Okay. Go ahead and continue. Thank you.

A. Yeah, let me. Can I just maybe just stop talking and roll through it real quick and talk at the end?

Q. I'm going to need you to talk. We've got to have it in the record.

A. Do talk or don't talk?

Q. Please talk.

A. Okay. August of 2016, 2,003. There's not one. October of 2016, no. November of 2016, no. December of 2016, no. 1/1 of '17. It's about to get better in '17. I can go all the way through 8 of '18. Okay. None of these. I'm basically striking because I can scan down the page. 1/10 of '17 all the way to 9/10 of '18 and then from 10 of '18 to 9/20/19 all they're all 1,534, which we already said it exists, but I want to double check to be sure. (Witness reviewing exhibit.) It stops in February. So there are no payments on here that match the transfers.

Q. Okay. So now can you say that none of the actual

mortgage payments match the amounts in your -- well, look at your Exhibit 1, which is transfers from Florence Mensch's account to Sterling Mensch's account?
A. Correct. None of the transfers from Florence's account electronically to Sterling Mensch's account match a mortgage payment on Mr. Markel's Appendix M.
Q. All right. Thank you. And can we go back to your Exhibit 4. This is your breakdown of the mortgage payments.
A. Correct.
Q. Do you separate out the principle and interest on that?
A. No, I did not. No, I put it was a payment.
Q. Okay. Just the payment, but there was some interest on all the amounts; correct?
A. Well, the interest is inside the payment. Your mortgage -- you pay your mortgage payment and interest.
Q. Yeah. So part of the mortgage payment is principle and part of it is interest; correct?
A. Correct. But the total was what we were going after. What do we do to make the estate whole, not separate the principle and interest.
Q. Well, are you making the estate whole when you're making this argument or are you trying to reduce damages?
A. So I took the most conservative position so I don't

know -- let me tell you what it means to me. It means that for this same exact time period my total mortgage payments that we are saying are beneficial payments for Ms. Mensch is less than Mr. Markel's. I could figure out what Mr. Markel's total was, but we have a difference. So I'm doing the opposite of what you said. I'm actually saying he has less. There are less beneficial payments to Ms. Mensch. What you were describing would mean that there would be more.

Q. Okay. All I'm looking at is your page 3 of your affidavit.

A. Correct.

Q. Your chart. You're taking a total number of beneficial payments for Sterling Mensch; correct?

A. Uh-huh.

Q. And you're subtracting those from the mortgage payments, payments that were made on the house --

MS. THOMASON:

Objection, Your Honor. Just mischaracterization. I know they've said beneficial for Sterling. The 820 is actually as testified to Mr. Markel and Mr. Chastain. I think there has been a little bit of confusion. The 820 is just transferred. The total transfer is made and then there's the determination from those transfers what was beneficial to Sterling and I think we're getting a little --

THE COURT:

And what was beneficial to Ms. Mensch.

MS. THOMASON:

That's right.

THE COURT:

Okay. All right. With that clarification.

MR. MCLEOD:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. So you are reducing the transfers by the mortgage amounts; right? Is that correct in your exhibit?
A. I'm reducing the transfers by the beneficial payments, yes, for the mortgage and the property taxes.
Q. Okay.
A. At the note's requirement.
Q. Not based on what was actually paid; is that correct?
A. No, because that would be a lot more.
Q. But it would show that these payments, these transfers, were potentially being made to pay the mortgage; right?
A. I don't know they would show that at all. I think our only thing we're kind of bantering a little bit about, and I apologize if I'm --
Q. Yeah.
A. -- is if you want to know the actual amount that

actually came out of Mr. Mensch's bank account for these mortgage payments for the time period we're talking about I can take the total, separate the tax, and tell you the exact amount and we don't have to wonder. It will be right there. I mean it's basically six times -- take $40,000 off, you know, so we pretty much -- we're pretty close actually. So I mean I'm just doing ballpark, but it would be more because there are payments here for more than what was required.

Q. Yeah, and all I asking is that you took the transfers that were made by Sterling Mensch from his mom's account to his account and the total of that amount and you're subtracting out the mortgage amount that was paid and items that you allege are for her benefit. I mean we're coming down to --

A. Yeah, the beneficial payments for her were subtracted out and that includes the house.

Q. Okay.

A. Uh-huh.

Q. And so if you don't separate out principle and interest what benefit does Ms. Mensch get from paying interest on a house she doesn't live in?

A. Ms. Mensch never paid the interest.

Q. Who paid the interest?

A. Sterling Mensch paid the interest.

Q. From whose funds?
A. He paid them from his bank account. That's the reason we had to take this approach.
Q. But from whose funds?
A. They were all the funds that went into his bank account. Like we can't separate. You know we could color the dollars and have the red dollars in his account come from account, blue dollars come from his pay. You know we could do this, but we can't. We're all years later doing our job to say, "Okay. Here's the total amount that were beneficial payments to himself that went from her funds into his bank account." This situation. We have this house issue. Well, he paid all the mortgage payments out of this same bank account that those funds went into. So that's why we've separated them all out.
Q. Okay. And so once those funds are commingled you're basically saying it's impossible to determine is it Sterling's funds that are paying it? Is it Ms. Mensch's funds that are paying it?
A. They're all Sterling's funds.
Q. So just because he transferred it from his mom's account to his account that makes it Sterling's funds?
A. I didn't say it was rightly Sterling's funds. I said in his bank account he is paying the mortgage. He's

paying the interest. He's deducting it on his tax return done by a third-party that sees all the statements, see that the loan is in the name Florence Mensch. All that's all known to the tax preparer.

Q. Okay. So, again, it's very difficult once you move funds from somebody's account and then move into your account and then do a bunch a transactions and spend it on different things it's hard to determine is he using his funds or he is using her funds; is that right?

A. Yeah, if you're taking all the deposits that go into his account from Ms. Mensch's account that he transferred and then we take his paycheck that he put in, yeah, absolutely you cannot literally separate those dollars in the bank account, but you arrive at the effective conclusion through analysis.

Q. And, again, I'm a little confused. The process we're going through is looking at these transactions. The whole case has been about these transactions. Transfers -- transfers from Ms. Mensch's account to his account. So how are we supposed to determine what was for Ms. Mensch's benefit and what wasn't if we can't figure out what things were paid from these funds that he transferred?

A. I think The Court will make the ultimate decision in it and my job was to do the best that I could to create a

very logical, systematic way to look at how did the monies flow, where were they spent, and what were the beneficial payments that Sterling Mensch would take for his benefit from his mother's funds and what were the beneficial payments that were for her in total out of everything, which includes payments that he made that she benefitted from for the house, property taxes, all that kind stuff. Because if he didn't pay those what was going to happen? I mean it was his house so he was making the payments and all along there were never a dispute from, you know, a third-party accountant or anybody that he was –- you know, him being entitled to the deductions is –-
Q. And I'll stop you there. If it's his house. You just said it. Why does he get to reduce the amount that he transferred of his mom's funds by mortgage payments that he's making on his house?
A. Well, it got deemed when I got brought into this matter the house had been put in the Estate.
Q. We're talking about a span of years of here. We're not talking about the last couple of years in the Estate. We're talking about 2013 to 2019.
A. Right.
Q. So we can't just say when I got brought in. You're looking at years.

A. No, I was looking at all along --

MS. THOMASON:

Objection, Your Honor.

THE COURT:

Yes.

MS. THOMASON:

He's talking about whether -- and I mean, again, I think it's a mischaracterization. Mr. Chastain has testified that really when he reviewed the documents it looked like Mr. Mensch did make a legal conclusion. We have included it and stated it all along. He should say that from -- and this is what he's testified to. What from the funds that were transferred we can't tell, but we do know an Estate asset the funds were used to pay for it and I think that's what's been testified to rather than your house, his house.

THE COURT:

Right. I think what you're asking him are appropriate questions, but not so much for him. Those are the questions I think more that The Court has got to decide because the facts that the house from the testimony was placed in Ms. Mensch's name I guess as a part of a strategy he was advised because he was going through a divorce. And then so it was placed in her name and he has made mortgage payments from his account using money that was deposited in his account from his mother's account that he did as Power of Attorney. There's not been any testimony whether he was working during this time. So I don't know if there were other funds going into this account for him or not, because that hasn't been put into evidence. Did he work? Did he earn any money? Was this all the money he had? I don't know. But we know that money from Ms. Mensch's account by his authority were deposited into his account over which he used to make mortgage payments. I know in some cases mortgage payments include taxes and insurance. Apparently in this case it didn't I suppose because they've broken out the property tax at the end as if that was a separate bill. So from my understanding what he is saying is sometimes Mr. Mensch would pay $2,000 a month even though the mortgage was 1,375. Sometimes he'd pay a little bit more. He always at least paid the minimum but sometimes he would pay more. So his payments for mortgage payments if you add up all his payments would be more than if you just added up all the required payments because sometimes he'd pay a little extra if I understand your testimony. Is that what you're saying?

THE WITNESS:

Yes, Your Honor, you do.

THE COURT:
Okay. So your question to him was how are you going to tell what of these transactions was beneficial for him or for her with him living in a house in her name and she's in a facility, how is that for her benefit? That's something I think I have to decide based on his fiduciary responsibilities. I don't think Mr. Markel –- all he's been given are invoices, and documents, and bank statements. And his job is to look at numbers and add numbers and tell us if he sees anything from all of that that is out of order is the way I see his –- his role. Not to tell us this transaction was proper, this one wasn't. His role is to say, "He told me that he went to Lowe's to buy some caulking for the master bathroom in mother's house," so he gave him for credit it. He's not going to go out and see if he actually went to Lowe's and got it and see what kind of job he did on it.
MR. MCLEOD:
Okay.
THE COURT:
If he did it or if he hired somebody. He's going by what Mr. Sterling Mensch is telling him. So, you know, he's got to go by that to come up with the conclusions.
MR. MCLEOD:

And, Your Honor, that's kind of where I'm getting at. His entire report is based on affidavit of Sterling Mensch essentially; right?

MS. THOMASON:

That's not the case.

THE COURT:

No, he used bank statements. He's got bank statements. He's got the GE statements. He's got the tax returns he used. He's used documents that came from third-parties. He's not just using what Sterling Mensch has told him.

MR. MCLEOD:

But for him to determine what was for her benefit or his benefit he's got to rely on his affidavit; correct? I mean.

THE COURT:

Well, I think that comes into the exhibits where he has –- one of his exhibits says Lowe's, Walgreens, da, da, da. And he's given all that and he says, "Okay. That was money spent for Ms. Florence Mensch." Well, when you wind up your case or, you know, "Mr. Chastain, were you in Walgreens? Did you see him buy, you know, Centrum Silver vitamins or did you see him pick up a few magazines and some gum?" He wasn't with him.

MR. MCLEOD:

But I've got ask him did Sterling Mensch tell you that.

THE COURT:

But you can just say, "Mr. Chastain, on items such as that where he purchased merchandise from various stores around town did you rely on what Mr. Mensch told you to come up with those numbers and then give him credit for it?" And he's going to say probably, "Yes." And then we have to decide if that really is something I'm going to give him credit for.

MR. MCLEOD:

Okay. All right. I think I understand, Your Honor.

THE COURT:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. (Counsel reviewing documents.) In your Exhibit 4, the mortgage payments.

A. Uh-huh.

Q. Why did you stop at October 2020?

A. I stopped at October 2020 because I thought the house was sold. Do I have it wrong? Was there a November payment?

Q. I believe there would have been --

A. Okay.

Q. -- a November payment.

A. And that -- okay. I thought there was only an October

payment.
Q. Okay. Do you know if that's when Sterling vacated the property?
A. I do not know when Sterling vacated the property.
Q. Okay.
A. Do I need to add that to this?
Q. No.
A. Okay.
Q. It's your report. You made it.
A. Yeah. Okay.
Q. I can't tell you what to add to it. You were talking about the property earlier and I think you were talking about property taxes and you mentioned earlier that this 512 New Tarleton property was an investment property; is that correct?
A. No, I was referring in my initial trying to sort all of this out and really get an understanding of what, you know, this case is about, how am I going to group these numbers together, how am I going to create a way that The Court can look at this and attorneys can look at this? I don't -- you know, I don't just believe what people tell me. I've been doing this a long time. People don't usually tell you. So I'm just independently going through. When I found the note that had the Second Home Rider that's a very

significant extra step in the home buying process to where the people who have that there's generally a higher interest rate. You're paying more property taxes. I mean it just was a sign that it appeared to me there an understanding that she was –- if she was on the mortgage to live there it was a different situation. They wouldn't have that Rider and she wouldn't be signing it saying she's not going to live there as a primary residence. So that kind of dealt with the residential issue for me.

Q. So the property taxes were taxes at six percent; correct?

A. Yeah, they were taxed at a higher rate.

Q. Which is when you're –- it's not your personal residence; correct?

A. Correct.

Q. And as you testified earlier that is typically investment or rental property; is that correct?

A. Or a vacation home.

Q. Or a vacation home.

A. Yeah, it's just not your primary residence.

Q. Okay.

A. Yeah.

Q. And was Florence Mensch making any money on this property?

A. No.
MS. THOMASON:
Objection, Your Honor. That's going to the rent again. It's already been decided. We know the answer to that.
MR. MCLEOD:
I think that goes to was this beneficial to Ms. Mensch. I mean --
THE COURT:
I don't think -- I'm going to sustain that objection. Go ahead and ask him something else.
MR. MCLEOD:
Okay.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. (Counsel reviewing documents.) All right. Can you turn to page one of your affidavit?
A. Yes, sir.
Q. And can you read paragraph 3?
A. "I was asked specifically to analyze the data provided to determine net dollar amount Sterling Mensch transferred from Ms. Florence Mensch's Bank of America to his own Bank of America checking account. I was also asked to review the expenditures Mr. Mensch made on 512 New Tarleton Way, the house he lived in but that was titled to his mother, Ms. Mensch's name, due to his divorce. Lastly, I was asked to review the records and

expenses paid by Sterling Mensch for his mother's benefit. Mr. Mensch was his mother's primary caregiver."

Q. Okay. What do you mean by titled in his mother, Ms. Mensch's name, due to his divorce?

A. That my understanding was the loan was in his name and therefore the house was in his name due to his divorce.

Q. And how did you come to learn that 512 New Tarleton was titled in Sterling's name because of his divorce?

A. The --

MS. THOMASON:

Objection. Again, that's mischaracterization. It was never titled in his name. And Mr. Chastain wouldn't have known that. It was titled in her name is what the testimony said, because of his divorce.

MR. MCLEOD:

Yeah, I agree. I did misstate that, Your Honor.

THE COURT:

Right.

MR. MCLEOD:

Yeah.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. So who told you that 512 New Tarleton was titled in Ms. Mensch's name due to Sterling Mensch's divorce?

A. I believe looking there's actually some divorce I think

documents there. And I looked up everything and I think it was just in the background facts of the case, so I don't know exactly, specifically because I never spoke or met him until May of this year and did this in March. So I mean that's a pretty common thing that you hear about especially with what we do where people are going through a divorce.
Q. But you're putting it in an affidavit that that's facts in this case?
A. Yeah.
Q. It's not just a common thing. It's something that you were told or that you learned from the case?
A. Yes.
Q. Right?
A. Correct. Yeah. And it was a part of the case and it was a reason that was given. I can go dig around and see. This is the one time I don't bring my computer, but.
Q. And you said you have the affidavit of Sterling Mensch that you relied on in your report?
A. Well, he had it. The one you-all have in here that I used as part of everything I was doing.
Q. I haven't seen it today or any time.
A. You have it.
Q. Okay. Let's see if we've got the right one. (Counsel

reviewing documents.) I'll hand you what's titled Affidavit of Sterling Mensch.

MR. MCLEOD:

It hasn't been admitted into evidence. I will admit it as Exhibit 28.

MS. THOMASON:

No objection, Your Honor.

THE COURT:

Okay. Thank you.

(Court reporter marks pertinent document Affidavit of Sterling Mensch as Petitioner's Exhibit Number 28.)

Q. This says March 16th, 2021. All right. You can review it for a few minutes and let me know when you're ready.
A. Yeah. I just want to see. (Witness reviewing exhibit.) Okay.
Q. Is there anything in that affidavit about him -- about the property being titled in Ms. Mensch's name due to his divorce?
A. No, there's not.
Q. Okay. So, again, how did you come to learn that?
A. Well, remember as you know when you work with people like Mr. Markel you bring them in and you give them the background facts of the case when you're talking to them and meeting them and getting them engaged. So I

think it came up there. I think also in one of the big notebooks that had all the data I went through, if I'm recalling correctly there's a Post-it note where she wrote a note to him that had something to do with this and I could try to look for that. But the fact that he was divorced and that fact that that was a reason that her name was on it that was kind of a given right from the beginning of the case. If I need to go dig up how I first came to know that I can go -- I can work on that.

Q. Okay. So did Sterling Mensch's -- are you saying Sterling Mensch's counsel told you that that was the reason?

A. I'm not saying that they told me. I'm saying that it -- I know it all comes up in the beginning. Just like when you sat Mr. Markel down in this case you had some conversation with him and you gave him a lot of case background and facts as you saw them about the case and what you wanted him to do. So a lot of information transfers in those kind of conversations. But I do think in the black notebook that has all the detail from the construction of the house there's even something in there on a Post-it note if I'm remembering. I can go look for that.

Q. Okay. Do you know why 512 New Tarleton was titled in

Ms. Mensch's name due to Sterling's divorce?
A. I'm assuming he didn't want an asset out there in his name for fear of, you know, some kind of follow-up action, but that is purely -- that is purely speculation on my part, but that's the reason people do that or their credit stinks. You know I'm sure there's other reasons.
Q. Did he do that to avoid -- it seems to me that's being -- if that was done it was done to mislead Sterling's wife and The Court?
MS. THOMASON:
Objection, Your Honor.
THE COURT:
Sustained.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. Does that fact cause you any pause or cause you to question Sterling Mensch's candidness?
MS. THOMASON:
Objection, Your Honor.
THE COURT:
Sustained. I think we've about worn that out.
MR. MCLEOD:
Well, Your Honor, he's relying on an affidavit and I have to --
THE COURT:

I agree.

MR. MCLEOD:

-- and I have to assess whether that affidavit has any legitimacy and the person making it is there any legitimacy to what this report is based on.

THE COURT:

I understand. I think he's testified that he found it out either by somebody putting a Sticky note on something or when he was hired to do this somebody told him, either counsel that hired him, or Mr. Mensch said, hey, here's this house. It was in his mother name but he made the mortgage payment but the reason it was in his mother's name and not his and he's making mortgage payments is he's going through a divorce. And he whatever -- he could done that and it could have been completely aboveboard. He could have done that and not. That was up to the Family Court. You want to give me an Order in a divorce case where he's trying to hide assets and the Family Court made a finding of such then bring it up here and we'll enter it as part of the record. But, you know, that just the fact that he is going through divorce and the house wasn't in his name and it was connected to a divorce that's all I'm going to take right now as a part of this proceeding.

MR. MCLEOD:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. And when you were going through the statements did you see certain, and I'm talking about Florence Mensch's statements ending in 7059, did you notice any GE pension payments that were being paid to that account or transferred to that account?

A. I know that there were pension payments. I cannot tell you I had every one of them because her pension payments were not an issue as to what I was working on. I was working on, you know, money going out.

Q. But in your --

A. I'm aware that pension payments are owed.

Q. Yeah. Because in your breakdown of -- it's contained in your report where you reference the GE pension payments that need to be repaid to the Estate.

A. Right. But I got that information from you and Mr. Markel at your office the Thursday before trial when we got the tax information.

Q. Okay.

A. Therefore, I could create that whole document because that's what we didn't have. So it came from you and then you sent it to Ms. Thomason's office later.

Q. Okay. And then you put it in your report as what needed to be repaid to the Estate; correct?

A. I was able to complete that because without that information there was no way of having an Estate value to start a calculation with.
Q. Okay. So in coming up with that -- I mean do you know why that has to be repaid to the Estate?
A. Of course. It means that they deposited pension money into her account after she was dead and nobody told them to stop and it's a very common thing. It actually happens a lot more than you would realize. I see it a lot. Usually it's one or two months and then, you know, they usually impound it. But this particular case for whatever reason it wouldn't be able to be done that way.
Q. Did you look at how many months it was after her death?
A. I did not.
Q. Okay.
A. I mean how much was it a month?
Q. I don't know. I mean we would have to look at a statement.
A. Okay. I mean was it like six months? I don't know how many months.
Q. Okay.
A. But that's a routine thing and it needs to be paid back.
Q. And do you know if Sterling Mensch transferred some of

those amounts to his account?
A. I know as I testified earlier that after she died he transferred approximately $147,000 all the way until the end.
Q. Okay. So do you know how much was left in the account at the end after he made those transfers?
A. I don't. I only got the account balance from you.
Q. Okay. Do you remember roughly 15,000? Does that refresh --
A. No, I don't.
Q. You don't remember. Okay.
A. No.
THE COURT:
Mr. Chastain, would you like some water?
THE WITNESS:
You know that would be great.
THE COURT:
Okay. Phyllis, can you get him some water?
THE WITNESS:
Thank you.
THE COURT:
We used to have a little canister up here, but I don't know what happened to it.
THE WITNESS:
Thank you so much.

MS. JONES:
You are welcome.
EXAMINATION RESUMED BY MR. MCLEOD:
Q. (Counsel reviewing documents.) And in paragraph 6 of your affidavit, page 2.
A. Uh-huh.
Q. Can you read that for me?
A. Paragraph 6. "Payments made by Mr. Mensch for the purchase of the lot of the New Tarleton Way house, construction improvements costs and property taxes for the house. Ms. Mensch never lived in the New Tarleton house."
Q. Okay. And how did you learn that she never lived in the New Tarleton house?
A. Because she was living in another place and then she moved into a facility. My best interpretation it was assisted living and then she moved into my interpretation more of a nursing home. And then also I saw those payments throughout the documents. So she wouldn't be in the house and paying one of those people that she was paying.
Q. Okay. Do you know how long Sterling Mensch lived in the house?
A. I'm assuming he probably moved in in the beginning. And I don't know if it was 2007 or '8, but I can look

at the closing document if that helps. Do you need for me to do that?

Q. No, that's okay.

A. Okay.

Q. I'm just asking what you know.

A. Okay.

Q. I mean as far as you know he's lived there since it was built; correct?

A. Yeah, that was my understanding.

Q. Okay. And you kind of went over this before, but you included some floor plans as part of your exhibit?

A. I included them in here because I thought it spoke to just a couple of particular issues in this case.

Q. What do you think it speaks to?

A. Well, unfortunately in my work I normally see people build a house with mom's money for them to really live in the house and keep mom in some room somewhere. You know they do it versus in this case, you know, it appears that the intention of the house was along was mom helped provide a financing vehicle by having the mortgage in her name. Everything else in the documents I included, and exhaustive documents in that really big black notebook you've got, kind of shows him picking out everything. Everything. You know if she was going to live there she wouldn't do that.

Q. Okay. And in the floor plan you have there it's got Yogi's room, Shea's room, but there's no Ms. Mensch's room; correct?
A. I didn't find one.
Q. Okay. And in the chart on page 3 of your affidavit --
A. Which chart? I'm sorry where?
Q. The chart on page 3 of your affidavit.
A. Yeah.
Q. Let's go back to that for just a second.
A. Okay. We're going to about have it memorized here.
Q. Yeah. So you state that the payments do not include anything before 2013 and I believe that's in 4?
A. Yes, sir.
Q. And 5. So why did they not include anything before 2013?
A. Why do they not?
Q. Yes.
A. Because I was told the attorney said that -- I mean I was given a directive. Do you remember my initial report?
Q. I do.
A. Okay. And do you remember that so for my initial report the damages were much lower; right? This net number of net beneficial payments. So for the reason I think all of you-all have discussed you decided that

2013 because the bank records weren't available prior and so we started there. I was told to amend my report to that.
Q. Okay.
A. And I left it where you could see my work in the back.
Q. Okay. But do you include any other amounts that occurred or were paid before 2013?
A. The ones associated with the house.
Q. And which ones are those?
A. The purchasing. You know construction costs so that would be –- Exhibit 5.
Q. Okay.
A. In Exhibit 5 and I guess it's a little I'm kind of speaking out of both sides of my mouth on the page, but the property taxes were limited because I was specifically told that and then the construction costs were not because of the nature involving the house.
Q. Okay. So let's look at that Exhibit 5. You have purchase of lot. When was the lot purchased?
A. Right.
Q. Do you know when the lot was purchase?
A. Yes, on the next page it's got the agreement, November 6th, 2016.
Q. Okay. And what number do you have for the purchase of the lot?

A. $39,700.
Q. Okay. And next to that you note bank records are being sourced to verify this transaction?
A. Right. And I later found out that it ended up being rolled into the mortgage I believe.
Q. Okay. But were bank records ever sourced to verify that transaction?
A. Well, there was the down payment, the $1,000, but I was never able to get -- we couldn't go back that far on the statements.
Q. Well, then why did you include it in this Exhibit 5?
A. Because I put it in March. Discovery was still ongoing and then we were never able to go back.
Q. Why didn't you update it and take it out?
A. Well, he bought the lot. He had to buy the lot. He built a house on it.
Q. How do you know Florence Mensch didn't buy the lot?
A. Well, no, I think that's the whole thing about this case. At the bottom she signed it. She bought the lot.
Q. Yeah.
A. Right. But it was her name on it. It was all his money.
Q. How do you know it was his money?
A. Her on the mortgage. We don't -- I don't -- we don't

have any records of anything other than that and I do have these receipts here that we can get in the big, black book and it has all of them. I only pulled out some for these. So for example, here the pool 25,293. The agreement is with him. So I can't get –– we can't get bank records that go back that far, but if you look at the other thing that I've included. Tweeter Home Entertainment for 9,242 for the theater and then if we get into the big, black notebook you'll see more and more backing up all these items. What we were trying to do is I wanted to get the exact number, exact discrete number, and wasn't able to do that so I've gone with these estimates from the information in the –– I don't know what you-all are calling that book.

Q. Yeah, what big, black notebook are you talking about?

A. Somebody has to help me. It's a big, black binder.

Q. Is it Sterling Mensch's accounts? Is it his accounts?

A. No.

Q. Or what is contained it because we only have one folder over here?

MS. THOMASON:

Is it the one that has all the markings?

THE WITNESS:

Yes.

MS. THOMASON:

Yes, that's it.

THE WITNESS:

Yeah, that's it.

MS. THOMASON:

It's already in evidence.

MR. MCLEOD:

Okay.

Q. And that $39,700 for the purchase of lot that's not in that book; is it?

A. Well, that's where I got this. River Oaks. This is the lot purchase agreement.

MR. MCLEOD:

Your Honor, can I grab that?

THE COURT:

Sure. Please do.

A. And this may not be it. You-all have a -- it might be it. We'll see. It looks a lot neater than what I was using. No, this is -- this is all the bank statements. But there was another note -- black notebook and it had all of the house stuff in it.

Q. It had all of the house stuff in it?

A. Right. Just like what I've copied. You know parts of it I've copied out of here. It's not in that, is it?

MS. THOMASON:

That's a copy there, Tyler.

MR. MCLEOD:
Yeah, we're trying to find out why it's included in this. I think he's saying that it was in some notebook that he saw. And I see where you're getting it from.
THE WITNESS:
Sure. Yeah.
Q. And what I'm getting at is like you just said Florence Mensch signed this.
A. Uh-huh.
Q. But you're saying that Sterling Mensch must have paid it?
A. Well, it -- I was looking to get the $1,000 check, but it was too old. Obviously, he paid it within all the mortgage payments and they had to build the house on top of the land.
Q. But you've had this number included, this 39,700 in your page 3 of your Financial Analysis that comes up with your -- your 473,636.37? It's included in --
A. Correct. Because I was given that lot purchase was separate and then there was a construction contract that followed.
Q. But I don't understand --
A. So I mean the lot was purchased separately.
Q. Why is your number here being reduced by 39,700 if it's built into the mortgage somehow?

A. Well, he bought the house for 39,000 and then he negotiated to build the house. And then when they closed they ended up with a mortgage and we can go look at what that mortgage amount is, so.
Q. So how is this number not being counted twice in your numbers?
A. Yeah, let's look at the mortgage. Let me look at what I have.
Q. Okay.
A. I want to make sure.
Q. I want to know why this 39,700 is included in your numbers.
A. Okay. (Witness reviewing exhibit.) Let's see. So the initial mortgage was 330. (Witness reviewing exhibit.) Yeah, 330,243 was the initial mortgage. You may be right, because I –- it looked like there was a transaction with the 39,000, which I thought was bought separately. And I may have made an error there. Yeah, on the lot. All the other items were all separate items.
Q. Okay.
A. And she had the $1,000 down that came out of her account for it.
Q. A $1,000 down.
A. Well, that's what it says, but we can never go –- it

was 2006, so we can't get a copy of the check. So I think that's what it was because they were going to have to pay for the lot and then I think when they did the billing agreement it just went in like a construction loan and everything was put into one. And I overlooked going back to that because I do believe that is the case. I think that's even in my computer, so.

Q. But the only reason -- so try to clarify that for me. Are we saying was this amount paid by somebody?

A. Well, yes, see initially it had to be paid in a very short period of time. But then I think as they worked on getting the plans and getting things going the builder stepped in and said I'm just going to do a construction loan for everything. They did a construction loan, built the house, and then closed on the permanent financing. And so I should take that off. Yeah. Yeah, the builder stepped in and provided all the construction financing for it.

Q. You just said the 1,000 came from Florence, but then before you said that Sterling paid for this? I don't understand.

A. No, I said -- well, because he was paying for the house this initial document she put down a 1,000, but I believe he was working on getting the rest of it paid.

I can look at this and find out because there's a document in the housing notebook that shows kind of the negotiations with the builder. And then I think what happened is the builder stepped in and said I'm just going to do financing for the whole thing and then they closed on a permanent loan when they moved -- you know, closed and moved in. So I can look that up and get back to you.

Q. Okay. But you said you think that 39,000 instead should come out now?

A. Yeah, that's -- I think it's very possible because I'm recollecting we -- that I believe there was a -- initially when you read this agreement they were supposed to pay for it in a different set of circumstances. They started working with a builder. The builder provided the financing to get the house built or a construction loan was taken out and then they closed on their permanent financing. So I can get -- yeah, I can look and get that right.

Q. And as of right now your opinion is that should come out; correct?

A. Yeah, I think as of right now I need to look at it and see, but --

Q. Well, we can't just wait --

A. No, I -- I -- no, I am very sure that when I discovered

the construction that would have all been through this summer and then someone just made the error to not go in and make that change for that. But the builder I believe stepped in and provided all the financing.
Q. Okay.
A. Because initially it wasn't going to be that way if you read that agreement.
Q. Okay. So in your opinion that 39,700 --
A. Yes.
Q. -- should come out?
A. Yes. Yes.
Q. It should reduce on page 3?
A. Just reduce the whole thing by 39,700.
Q. So of your 148,321.35 you think that it should be reduced by $39,700?
A. Yes. Yes.
Q. Okay. All right.
A. Yep.
Q. The pool. Next you have the pool. That's 25,273.
A. Uh-huh.
Q. And I think you reference a pool proposal and you've got bank vendor records are being sourced also to verify that?
A. Yeah, we could never get any records from people going that far back so we -- but we have a lot of

documentation here and in the black folder with all the housing stuff.

Q. And you provide a pool proposal and can you go to that just for a second?

A. Yeah.

Q. Who is the customer on that pool proposal to your --

A. Sterling Mensch.

Q. Okay. And it says Sterling R. Is that Yogi Mensch; is that correct?

A. Yes, sir.

Q. Okay. And it's got an address there 512 New Tarleton Way; is that correct?

A. Yes, that's what it says.

Q. Okay. And it's got a principal sum there it totals the $25,293; is that correct?

A. That's what it says, yes.

Q. Okay. And on the second page what's the date that it was signed by Anchor Pools?

A. 7/5/07.

Q. Okay. So would you agree that this was done in 2007?

A. No, I don't know when it was done.

Q. Okay.

A. I don't know when it was done.

Q. Well, would you agree it's dated 2007 there?

A. Yeah, it looks like the agreement is dated that date.

Q. Okay. (Counsel reviewing documents.) So do you think that this is for the benefit of Florence Mensch and should reduce the amount?
A. It goes with the house. It's a part of the house. It was all done as a part of the house being built.
Q. Do you know if Florence ever swam in the pool?
A. I don't know that, no.
Q. Okay. Do you have any idea what this pool did for the value of the house?
A. I don't know anything about that.
Q. Okay. And if it was done in 2007, or sometime around there, maybe it was 2008. But if it was done before 2013, before all these transactions occurred, why should that reduce the amount of damages?
A. Well, the house is in the Estate and it's a beneficial payment of the house. It's a payment for the house and the Estate got the value of it.
Q. But who paid it?
A. These items below the 39,000 were paid by Mr. Mensch.
Q. How do you know?
A. My understanding from his affidavit is that and my understanding in looking at what paperwork we have it appears being negotiated separately, not a part of the mortgage at all.
Q. But is there anyway for you to actually verify that

that was paid by Sterling Mensch?
A. No, we cannot get those checks. Yeah.
Q. Okay. Well, let me ask the question. Is there anyway for you to verify that that was paid by Sterling Mensch?
A. I do not have copies of the checks for this, no.
Q. Okay. So do you know if that was paid by Sterling Mensch?
A. Just based on his affidavit and all the documentation provided.
Q. Okay.
A. And the pool being in the ground.
Q. (Counsel reviewing documents.) Okay. So it looks like in Sterling's affidavit, are you relying on number 9, paragraph 9 of his affidavit?
A. That and the documentation that shows, you know, the transaction between him and all the vendors picking things out.
Q. Okay. So what are you relying on in that affidavit to say that this pool was for Ms. Mensch's benefit?
A. The pool is a part of the house.
Q. Okay.
A. So it's --
Q. And that Sterling paid it? He paid for the pool?
A. He paid for the pool, right.

Q. Where are you relying on in that?
A. The contract with the pool company and the fact that the pool is in the ground and I think there's other documents about it in the binder.
Q. How about number 9 in the affidavit?
A. Paid every single monthly mortgage payment and property taxes on 512 New Tarleton Way from 2007 to 2020.
Q. And, again, we're looking at Exhibit 28 the affidavit of Sterling Mensch; correct?
A. Hold on.
Q. Is that correct?
A. Yeah.
Q. You're looking at the affidavit of Sterling Mensch?
A. Yes, sir, I'm looking at that. Yes, I'm sorry.
Q. Okay. Thank you.
A. Yes. Read it again?
Q. Well, I'm looking at number 9 and you can read it if you want.
A. Yeah. "I paid every single monthly mortgage payment and property taxes on 512 New Tarleton Way, Greer, South Carolina from 2007 to 2020. Furthermore, I personally put in over $100,000 of my own money improving the property, including but not limited to installing pool, theater room, fencing, counter tops, cabinets, landscaping and bonus room."

Q. Okay. And that says he paid every single monthly mortgage payment; is that correct?
A. That's what it says.
Q. I'm going to hand you what's been marked as Exhibit 6. This will be --
MR. MCLEOD:
Oh, it hasn't been. Well, we're going to need to mark it and make it an exhibit.
Q. Okay. Well, I'm going to hand you what's been marked as Exhibit 6 and this is Petitioner's Exhibit 6.
MR. MCLEOD:
And I think we still need to admit it into evidence. And this has been stipulated. This is just --
A. Okay. April 14. So it's a check to Park Sterling Bank. April 14, 2013, 5236 $1,351.68. Her account. I didn't know she had that.
Q. All right. Have you reviewed it?
A. I'm sorry?
Q. Have you reviewed this exhibit?
A. I did. It's got two checks on it.
Q. It should have three.
A. Hold on it may have. Parking Sterling Bank. Yep, so on April 14th, May 20th, and July 22nd of '13 we have three payments.
Q. And what account is this from?

A. This is from account 7059, which is Ms. Mensch's account.
Q. Okay. And at the top there it says Florence Mensch and Sterling Mensch POA.
A. POA.
Q. Do you see that?
A. Right.
Q. Okay. So when you went through the accounts did you ever notice that that changed from POA to a joint account?
A. I do think I recall seeing that there was a change. I can't recall exactly --
Q. Okay.
A. -- what and when without looking at the statements. There's a lot of statements.
Q. Okay. And so this says July 22nd, 2013 and is it made out to Park Sterling Bank?
A. It is. All three of them are.
Q. Is that the mortgage company?
A. And they're all signed by Florence actually.
Q. Yeah. Is paragraph 9 of Sterling's affidavit correct?
A. Well, he -- if she paid these three payments to that account then obviously he didn't pay every one.
Q. Okay. And the second one it's just another payment to Park Sterling Bank; correct?

A. All three of them are.
Q. All three of them are just payments to Park Sterling?
A. Yeah.
Q. Okay.
THE COURT:
Do you want to offer this into evidence, Ms. McLeod?
MR. MCLEOD:
Yes, Your Honor.
THE COURT:
Any objection?
MS. THOMASON:
No objection, Your Honor.
THE COURT:
All right. It's Petitioner's Number 6 without objection.
(Court reporter marks pertinent document Park Sterling Bank Check Copies as Petitioner's Exhibit Number 6.)
EXAMINATION RESUMED BY MR. MCLEOD:
Q. (Counsel reviewing documents.) Do you know if Sterling did pay all the property taxes on the property?
A. You said he did not or he did?
Q. Did he pay like he says every single property tax payment?
A. My understanding is that he did. I do not have --

well, for 2013 I went to the County Records. We can go look for those checks within his bank statements.

Q. Well, I can just show you Exhibit 5.

MR. MCLEOD:

Well, actually this hasn't been admitted into evidence yet, but we've stipulated. It's more accounts from Florence Mensch's account ending in 7059.

MS. THOMASON:

Your Honor, this doesn't say –- Ms. Mensch still owned her own house until 2012 or '13. Are we sure this is this house, the property taxes?

MR. MCLEOD:

I think we can look at –- we can figure that out.

MS. THOMASON:

Okay. I just wanted to make sure what we're talking about.

MR. MCLEOD:

We can look at one of his –-

THE COURT:

These say –- your copy says the property tax bill and you can match the memo account number up and probably find out.

MR. MCLEOD:

And I think this was from 2012. He's paying 2012 taxes. This memo section he has. Yeah, you're right.

So we should be able to. (Counsel reviewing documents.)

MS. THOMASON:

It looks like that on the 2019 tax bill for New Tarleton Way, Tyler, the account number for that is 1900017193577 and it looks like this one is 1200015830677.

MR. MCLEOD:

Yeah, I see that.

THE COURT:

Yeah.

MR. MCLEOD:

But I believe it matches the payment for 2012. If we look at your old memorandum if we can find it. (Counsel reviewing documents.) All right. Here you've got --

THE COURT:

Tyler, I can't match it up with anything I've got. So I can't match it to the Tarleton property.

MR. MCLEOD:

Yeah, that's all right. I've got his old affidavit and it says $6,474.33. I feel like that's too close to be some other property honestly.

MS. THOMASON:

Your Honor.

MR. MCLEOD:

Yeah, I can go. We can go look it up and I can move on.

THE COURT:

Yeah.

MS. THOMASON:

Yeah, we can.

THE COURT:

I don't want take up any more time on something like that. We can clear that up by just going online to the tax office.

THE WITNESS:

They're enclosed in my report, all the property tax stuff.

THE COURT:

I think I'm not going to enter it into evidence though until --

MR. MCLEOD:

Yeah, that's fine.

THE COURT:

I would like to see if we could finish with Mr. Chastain today, so he could have tomorrow off but we'll see how it goes.

MR. MCLEOD:

I will -- I will try. I'm willing to stay as long as you are.

THE COURT:

We'll start up again at 9:00 in the morning if we don't.

MR. MCLEOD:

All right.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. Well, we at least agree that he did not make all of the mortgage payments as he states in his affidavit; correct?

A. Yes, these three he did not make and my only saving grace is Mr. Markel has the same error, so.

Q. Okay.

A. And I have not –- yeah.

Q. And how do you know Mr. Markel has the same error?

A. It's in his payments.

Q. Yeah. And Mr. Markel's affidavit it's not doing the same thing. Is he giving credit against a rent amount? Yeah, you're comparing different things I think.

A. I think there's more humor in what I said.

Q. Yeah, I gotcha. All right. Okay. So again back to the pool. I mean –- and I actually just want to go to the next one. I think we've kind hammered that one. So the next is the home theater that's 9,242.79?

A. Yes. And that one speaks to us a little better. If

you'll look on it you'll see he financed it with -- through the home theater people. Twelve months no pay, deferred interest when installed on monthly payments. Interest does not accrue.
Q. Okay. And is there a date on that one?
A. Yes, sir, it looks like 5/7/07.
Q. So that was also in 2007; correct?
A. Correct. And I don't know when it was installed, but.
Q. And does it have a customer on there?
A. (Witness reviewing exhibit.)
Q. At the top does it have -- it doesn't say customer, but does it have --
A. It says -- let me look. Where is it? It says Yogi. I mean he just can't spell his last name correctly if I'm reading it right.
Q. Does it appear to say Yogi Mensch?
A. Yes.
Q. Okay.
A. And then there is a Scarborough Drive in Greer. I'm assuming that was a prior address.
Q. But it is your understanding this is the home theater system? Do you know what this was?
A. That's my understanding. A home theater is all I know.
Q. You don't know if it was a projector or what type of --
A. I'm the type of person I don't theater. Yeah, I don't

have any idea. I don't know anything about what the system was.
Q. Okay.
A. And like I said that black notebook. I guess I'm -- it has huge volumes more detail than this about all these transactions.
Q. I understand. Well, maybe if we don't finish today you can get the black notebook and show us what you're talking?
A. Oh, yeah. I'm assuming counselor knows where the black notebook I'm talking about is.
Q. Okay.
A. Yeah.
Q. So was that -- you've included that amount in your number; right? On page 3; correct? That's included in your number that reduces damages?
A. Right. And on page 3 where we have -- what's our total?
Q. I think it was in that line 5; 148,321.35?
A. Yes.
Q. Okay. And is it possible that that amount was paid from funds received from the transactions that this case is about?
A. I'm not aware. This is way before any of that.
Q. Yes. So could it have been paid from the transactions

where Sterling Mensch transferred it from his mom's account to his account?
A. Not during the period you-all indicated 2013 to 2019 because it happened in --
Q. Yeah.
A. -- 2007 or '8.
Q. And that's the same thing with the pool; correct?
A. All of these happened at the same time. Obviously -- obviously, all of them happened in different sequences as you're building a house.
Q. Okay. So are all of these prior to 2010?
A. I think we just -- yeah, we just talked about that. They have to be; right? Because he moved in in 2000 -- I believe we said 2008.
Q. You don't have statements -- do you have statements for fencing, counter tops, cabinets --
A. No, they're in that book.
Q. Landscaping, blinds?
A. I have just all of the where he's picking it out, getting quotes. You can see all the papers where it's being transacted toward the house.
Q. Okay. So for any of those items do you know that Sterling Mensch paid for those items?
A. I know they were -- yeah, well, I know that they were purchased for the house and that he purchased them. He

was negotiating with the people. I don't have any cancelled checks for those. And I know from pictures that they're installed in the house.

Q. Okay. So would you agree you're speculating that these were paid by Sterling Mensch?

A. No, I might be speculating. I think I have conservative amounts. I try to be lower. The amounts may not be exactly correct.

Q. So the amounts aren't even correct?

A. No, I'm saying the amounts might not be exactly correct. Like the fence. Go look at the fence paperwork and in transacting the fence might have cost more.

Q. What if it cost less?

A. Yeah, if it cost less it would be adjusted, but --

Q. Isn't the definition of speculation when you --

A. No, because I was looking --

MS. THOMASON:

Objection. Your Honor, this is an expert witness testifying.

A. I was looking at the black notebook. I mean it's this thick.

THE COURT:

Excuse me, Mr. Chastain.

THE WITNESS:

I'm sorry.

THE COURT:

Yes, ma'am.

MS. THOMASON:

I've stated he's an expert witness who can testified based on what he's saying and knows in forming opinions.

THE COURT:

Yes. That's correct. Mr. Chastain. Mr. McLeod?

MR. MCLEOD:

But, Your Honor, he is saying amounts that he doesn't know if these are the correct amounts. I mean that's relevant I think to --

THE COURT:

Right.

MR. MCLEOD:

-- his number.

THE COURT:

Well, he's being honest in saying these amounts that I have may not be exactly right and he's telling you they may not be exactly right. When you end the case and give me your summation you're going to say, "Their expert didn't even know if his numbers were exactly right." We cannot make him say something that he doesn't know is true. We are glad for that. He is honestly saying he doesn't know if these numbers are exactly right; is that correct, Mr. Chastain?

THE WITNESS:

Yes, ma'am.

MR. MCLEOD:

But they've been included in his report as reducing damages.

THE COURT:

That goes to his credibility as an expert.

MR. MCLEOD:

All right. I understand.

THE COURT:

Okay.

EXAMINATION RESUMED BY MR. MCLEOD:

Q. (Counsel reviewing documents.) Right below that on this Exhibit 5 you list out the property taxes?

A. Uh-huh.

Q. You start at 2014 and go to 2019; is that correct?

A. Yes, because in 2014 the 2013 taxes were paid.

Q. By?

A. Mr. Mensch. In other words, 2013 doesn't –- in 2013 the taxes if I put there number there it would have been for 2012.

Q. Oh, I see what you mean. Okay.

A. Okay.

Q. You're right.
A. Yeah.
Q. Are you sure that the taxes were paid by Sterling in 2019?
A. (Witness reviewing documents.) This one if he -- I guess I need to look at the -- looking through if it was actually paid. Tax and fees 6,899. (Mumbling to self.) They might have even paid out of the closing statement. We can look. I'm not -- I know it's been paid. It might have gotten paid out of the closing statement.
Q. Okay. We'll come back to that.
A. Okay. And we can look.
Q. Are your amounts here, do you take out any late payments or penalties?
A. I do not.
Q. Do you know if there were any on those?
A. On the ones that are paid late I am sure there will be, yeah. Or they were.
Q. Okay.
A. Sure. I didn't separate the penalties at all.
Q. Did you see that there were penalties on them?
A. Let me -- 2017. I know there have been. Over the period of time we're looking at I do know there have been. I can get the breakdown on that for you.

Q. (Counsel reviewing documents.) So why did you not -- do you think the penalties should be taken out?
A. Well, they're -- I have everything in here because I'm trying to capture, you know, what was spent on it period. And they weren't included in the mortgage payment. I can go and calculate what the penalties would be of the ones that were paid late.
Q. But you haven't taken that out so far; correct?
A. I haven't separated it at all, no.
Q. Your report leaves the penalties in; correct?
A. Yes.
Q. Okay. (Counsel reviewing documents.)
THE COURT:
All right. It's 5:00.
MR. MCLEOD:
All right.
THE COURT:
Mr. Chastain, it looks like you're going to be coming back with us in the morning at 9:00. You'll remain under oath. Please don't discuss your testimony with anyone. If counsel know what black book he's talking about you can bring it with you tomorrow. If not it will be remain mysterious. And we will adjourn until 9:00 in the morning. Thank you.
MR. MCLEOD:

Thank you, Your Honor.

MS. THOMASON:

Thank you, Your Honor.

THE COURT:

You can feel free to leave your things here if you'd like. We lock up the courtroom. If you want to take them that's fine, too.

HEARING RECESSED AT 5:00 P.M.

CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

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

____

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029