

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young
Case No. 2011-CP-10-400

RECEIVED

APR 24 2014

SC Court of Appeals

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually,
as Co-Trustees and beneficiaries of the Marital Trust and the Qualified
Terminable Interest Trust created by the Thomas Stevenson Will, and
Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives
on behalf of the Estate of Jacquelin K. Stevenson,

Appellants,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants,

Of Whom

Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison are

Respondents.

RECORD ON APPEAL
Volume 1, Pages 1 - 488 (Amended)

A. Camden Lewis
Keith M. Babcock
James M. Griffin
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANTS

Frederick K. Sharpless, Esquire
SHARPLESS & STAVOLA, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420
336-333-6400

M. Dawes Cooke, Jr., Esquire
BARNWELL WHALEY PATTERSON &
HELMS, LLC
885 Island Park Drive
Charleston, South Carolina 29492
843-577-7700

ATTORNEYS FOR RESPONDENT

Index

VOLUME 1

Orders

Order Granting Defendants Dixon Hughes PLLC and Lynne Kerrison's Motion for Summary Judgment, filed July 3, 2013	1
Order on Plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e), SRCP, filed August 9, 2013	23
Amended Order on Plaintiffs' Motion to Alter or Amend Pursuant To Rule 59(e), SRCP, filed August 20, 2013	27

Pleadings

Complaint, filed April 24, 2009	31
Notice of Filing Expert Affidavit as Supplement to Complaint (Freeman), filed May 11, 2009	40
Notice of Filing Expert Affidavit as Supplement to Complaint (Durant), filed May 15, 2009	52
Answer of Defendants T. Heyward Carter, Jr. and Evans, Carter, Kunes & Bennett, P.A., dated August 5, 2009	65
Answer of Defendants Lynne Kerrison and Dixon Hughes, dated September 8, 2009	77
Amended Complaint, dated May 29, 2012	88
Answer of Defendants Lynne Kerrison and Dixon Hughes to Amended Complaint, filed June 13, 2012	97

Motions and Memoranda

Defendants' Lynne Kerrison and Dixon Hughes' Motion for Summary Judgment, filed July 13, 2012, with Exhibits A-F	108
Brief in Support of Defendants Lynne L. Kerrison and Dixon Hughes' Motion for Summary Judgment, dated April 26, 2013	296

Plaintiffs' Memorandum in Opposition to Dixon Hughes Defendants' Motion for Summary Judgment, dated April 28, 2013 (With Attachments)	330
Plaintiffs' Supplemental Memorandum in Opposition to Dixon Hughes Defendants' Motion for Summary Judgment, dated April 29, 2013	439
Plaintiffs' Objections to Proposed Order of Defendants Lynn Kerrison and Dixon Hughes, or in the Alternative, Motion to Amend a Response to a Request to Admit, dated June 19, 2013	453
Response to Plaintiffs' Objections to Proposed Order Of Defendants on Summary Judgment, and to Alternative Motion to Amend a Response to Request to Admit, dated June 24, 2013	464
Plaintiffs' Reply to the Response to Plaintiffs' Objections To Proposed Order, dated June 26, 2013	467
Plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e), SRCP, filed July 22, 2013	469
Defendants' Response to Plaintiffs' Motion to Alter or Amend Judgment, dated July 25, 2013	484

VOLUME 2

Transcripts

Depositions of Kathleen Turner (2011), filed April 29, 2013 and Exhibits 3, 5,6, and 22	489
Deposition of Lynn Kerrison (2011), filed April 29, 2013	883

VOLUME 3

Deposition of Lynn Kerrison (2011), filed April 29, 2013 (continued from Volume 2 of Record)	985
Kerrison Dep. Exhibit 3	1034
Deposition of Lynn Kerrison (2009), filed May 10, 2012	1035
Deposition of Heyward Carter (9-24-2008), filed May 10, 2012	1230
Carter Dep. Exhibit 3	1454

Carter Dep. Exhibit 33	1481
Carter Dep. Exhibit 40	1482
Carter Dep. Exhibit 42	1484

VOLUME 4

Deposition of Heyward Carter (2011), filed May 11, 2012	1486
Deposition of Thomas Stevenson, dated February 13, 2013	1576
Transcript of Hearing of April 29, 2013	1818

Exhibits

Exhibits A-E to Respondents' Requests to Admit to Plaintiff Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder	1875
Certificate of Counsel	1902

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**Order Granting Defendants Dixon
Hughes PLLC and Lynne Kerrison's
Motion for Summary Judgment**

FILED
2013 JUL -3 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

This summary judgment motion heard on April 29, 2013. Plaintiffs were represented by counsel, Keith Babcock and Defendants Dixon Hughes PLLC and Lynne Kerrison, by M. Dawes Cooke and Frederick K. Sharpless.

The court has considered the oral arguments of counsel and the arguments and authorities submitted in writing by the parties. The court also reviewed the pleadings, affidavits, depositions, admissions and documents submitted by the parties and of record.

After review and consideration, the court finds there is no genuine issue of material fact and that defendants Lynne Kerrison and Dixon Hughes PLLC are entitled to summary judgment for the following reasons:

PARTIES AND PROCEDURAL HISTORY

This lawsuit was filed on April 24, 2009, by:



- (1) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder in their individual capacity;
- (2) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as trustees;
- (3) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as beneficiaries of the Marital and QTIP trusts created by the will of their father, Thomas Stevenson; and
- (4) Kathleen Turner and Jacquelin Bennett as personal representatives of the estate of their mother, Jacquelin K. Stevenson.

The defendants were Heyward Carter, Jr., Evans Carter Kunes & Bennett, PA, Douglas Capital Management, Inc., Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., PA, and Lynne L. Kerrison.¹ On December 14, 2011, plaintiffs moved to amend their complaint to include a claim for aiding and abetting a breach of fiduciary duty. The court allowed the amendment by order dated May 17, 2012, and it was filed May 31, 2012. In this lawsuit, the plaintiffs, residual beneficiaries of two trusts created by their father's will, seek to hold defendant-accountants liable for failing to tell them that their brothers, then trustees of the trusts, engaged in self-dealing transactions. Plaintiffs seek damages in excess of six million dollars.

FINDINGS OF FACT

Mr. Thomas Stevenson, Jr. died in June of 1988. Mr. Stevenson's will created two testamentary trusts: the "Jacquelin K. Stevenson Marital Trust" ("marital trust") and a "Qualified Terminable Interest Property Trust" ("QTIP trust") (together the "trusts"). Thomas Stevenson, Jr.'s widow, Jacquelin K. Stevenson, was the sole lifetime beneficiary of both trusts. The residual beneficiaries of the QTIP trust were Mr. Stevenson's children: Thomas Stevenson, III, Daniel Stevenson, II, Kathleen S. Turner,

¹ The claims against Douglas Capital Management were later dismissed.

Jacquelin S. Bennett, and Genevieve S. Felder. Neither trust instrument provided any means by which trust assets could be distributed to any of the residual beneficiaries during Jacquelin K. Stevenson's lifetime. By 1999, the only remaining living co-trustees were Thomas and Daniel Stevenson. (Amend. Compl. ¶ 15.)

On January 4, 2001, Mrs. Stevenson executed a power of attorney in favor of Kathleen Turner and Daniel Stevenson that was not durable. Mrs. Stevenson remained competent until at least February 18, 2003, when she executed a second, durable, power of attorney in favor of Kathleen Turner and Daniel Stevenson. On September 17, 2007, Mrs. Jacquelin K. Stevenson passed away.

In 1997 Lynne Kerrison, then with Pratt-Thomas Gumb & Company, PA, a public accounting firm, began preparing tax returns for Mrs. Jacquelin K. Stevenson and for the two subject trusts. (July 13, 2011 Dep. of Lynne Kerrison, 74.) At the time, tax preparation was her only engagement related to the trusts. Pat Neapolitan, an employee of Jacquelin Stevenson who was not associated with the defendants, kept the books and wrote and signed checks for the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 27, 37.) Ms. Neapolitan provided Ms. Kerrison with the information necessary to complete the tax returns. (July 13, 2011 Dep. of Lynne Kerrison, 30.) In 2001, while reviewing information received from Ms. Neapolitan, Ms. Kerrison noticed checks written to Daniel Stevenson from the trusts and contacted Ms. Neapolitan to discuss the checks. (July 13, 2011 Dep. of Lynne Kerrison, 30, 121.) Ms. Kerrison was concerned about how those distributions should be characterized for tax purposes. (July 13, 2011 Dep. of Lynne Kerrison, 116, 122.) Ms. Neapolitan expressed no concern that the checks written were improper and may have characterized the withdrawals as "gifts." (July 13, 2011 Dep. of Lynne Kerrison, 118-123.)

Despite Ms. Neapolitan's assurances, Lynne Kerrison contacted Heyward Carter, Mrs. Stevenson's attorney, (in the fall of 2001) to tell him about the transactions. (July 13, 2011 Dep. of Lynne Kerrison, 45-46, 67; July 14, 2011 Dep. of Heyward Carter, 38.)

On October 23, 2001, Daniel Stevenson, Thomas Stevenson, Heyward Carter and Lynne Kerrison met to discuss the transactions. (July 13, 2011 Dep. of Lynne Kerrison, 146; July 14, 2011 Dep. of Heyward Carter, 46.) Lynne Kerrison had no dealings at all with plaintiff Kathleen Turner about her mother's finances. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.)

On May 21, 2003, Thomas and Daniel Stevenson met with Kathleen Turner at their mother's Meeting Street home. (November 9, 2011 Dep. of Kathleen Turner, 62.) At that meeting, according to Kathleen Turner, Thomas Stevenson "mumbled" and "looked at a piece of paper." (November 9, 2011 Dep. of Kathleen Turner, 62-72.) Ms. Turner "thought something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) Tom Stevenson testified that he provided her with a written accounting of the trust assets, including the loans made to him, to Dan, and their businesses, and clearly described it. (February 13, 2013 Dep. of Thomas Stevenson, 77-87.)

In early 2006, Ms. Kerrison again spoke with Heyward Carter about Thomas and Daniel Stevenson's continued withdrawals. (July 13, 2011 Dep. of Lynne Kerrison, 123, 129.) On April 19, 2006, Kathleen Turner met with Thomas Stevenson. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) Thomas Stevenson again informed Kathleen Turner that he and Daniel Stevenson had removed money from the trusts. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 171.) On April 27, 2006, yet another meeting was held where Kathleen Turner received additional information about her brothers' actions as trustees. (November 9, 2011 Dep. of Kathleen Turner, 112-113; July 14, 2011 Dep. of Heyward Carter, 77-78.)

In their complaint and amended complaint, plaintiffs contend that Lynne Kerrison and Dixon Hughes, while providing accounting services to Mrs. Stevenson and the two subject trusts, breached a duty by failing to inform the *plaintiffs* (not Jacquelin



Stevenson) of the alleged "improper self-dealing withdrawals" made by trustees Thomas Stevenson, III and Daniel Stevenson, II. (Amend. Compl. ¶ 24.)² Plaintiffs further allege that money "improperly taken from the Trust and Estate" was used by Thomas and Daniel Stevenson to fund other companies that were also clients of Dixon Hughes, creating a conflict of interest. (Amend. Compl. ¶ 25.) From these factual allegations, plaintiffs pursue three legal theories against Lynne Kerrison and Dixon Hughes: professional negligence; breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty.

CONCLUSIONS OF LAW

Summary judgment must be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. Rule of Civil Procedure 56(c). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 788, 199 (S.C. Ct. App. 1998).

I. PLAINTIFFS BROUGHT THIS LAWSUIT OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS

S.C. Code Ann. § 15-3-530(5) provides a three-year statute of limitations for negligence, professional malpractice, and breach of fiduciary duty claims. Pursuant to S.C. Code Ann. § 15-3-535, all actions initiated under S.C. Code Ann. § 15-3-530(5) "must be commenced within three years after the person knew or by exercise of reasonable diligence should have known that he had a cause of action." Under the "discovery rule," the statute of limitations begins to run "when a person could or should have known through the exercise of reasonable diligence, that a cause of action might

² The matter against the former trustees, Thomas Stevenson, III, and Daniel Stevenson, II, was disposed of in another action. *Jacquelin S. Bennett, et al v. Thomas Stevenson, et al*, 2008-CP-10-0806. A settlement agreement was reached between the plaintiffs and Thomas Stevenson and a judgment for actual and punitive damages was entered against Daniel Stevenson.

exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or the facts giving rise thereto." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789, 1998 WL 195907 (Ct. App. 1998). See also, *Burgess v. American Cancer Society*, 300 S.C. 182, 386 S.E.2d 798 (S.C. Ct. App. 1989). "The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (S.C. 1995). "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial." *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (S.C. 1996).

Based on the undisputed evidence, the applicable three-year statute of limitations expired before plaintiffs filed suit. Plaintiffs filed their complaint on April 24, 2009. The undisputed facts show that the statute of limitations ran on plaintiffs' claims on: (1) October 2004, three years after Heyward Carter, Jacquelin Stevenson's attorney, was notified of the withdrawals; alternatively, (2) May 21, 2006, three years after Kathleen Turner initially met with her brothers; alternatively, (3) April 19, 2009, three years after Thomas Stevenson informed Kathleen Turner that he and Daniel Stevenson removed money from the trust; or alternatively, Therefore, this action was instituted after the expiration of the statute of limitations governing all claims alleged by the plaintiffs.

1. October 2004

It is undisputed that Ms. Kerrison told Heyward Carter, attorney for Jacquelin K. Stevenson, of the trustee's withdrawals by October, 23, 2001. "In general, notice to an attorney is notice to his client." *Wardlaw v. B. Troy Oil Mill*, 74 S.C. 368, 54 S.E. 658 (S.C. 1906). Furthermore, the "acts and omissions of an attorney are directly attributable to the client." *Clark v. Clark*, 271 S.C. 21, 23, 244 S.E.2d 743, 744 (S.C. 1978). "Just as a party cannot obtain relief from the consequences of his own neglect, he is without relief when the neglect is that of his attorney." *Id.* See also, *Dorman*, 331



S.C.179, 500 S.E.2d 786 (the question of whether a plaintiff received actual notice of facts giving rise to a cause of action was "irrelevant" where the plaintiff's attorney had knowledge of those facts). See also *Crystal Ice Company of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (S.C. 1979). Plaintiffs argue that the "adverse interest" exception discussed in *Crystal Ice of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 498 (1979) applies so as to avoid imputation of Mr. Carter's knowledge to Jacquelin K. Stevenson, and attempt to limit the *Dorman* holding to a situation where notice to the attorney is combined with other evidence of knowledge. The court, however, finds the following language from *Dorman* controlling:

The Dormans maintain, however, that they never received a copy of Buist's letter. Nevertheless, the question of whether they actually received the letter is irrelevant, for knowledge of the information in Buist's letter was imputed to the Dormans through their agent, attorney C.J. Manos. See *Crystal Ice Co. of Columbia, Inc., v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979) ("It is well established that a principal is affected with constructive knowledge of all material *186 facts of which his agent receives notice while acting within the scope of his authority"). *Faulkner v. Millar*, 319 S.C. 216, 460 S.E.2d 378 (1995) (notice to an attorney is notice to the client).

Dorman v. Campbell, 331 S.C. 179, 185-86, 500 S.E.2d 786, 789, 1998 WL 195907 (Ct. App. 1998). The court held that whatever knowledge the attorney acquired was imputed to the clients. In this case, if the information given Carter in October, 2001 was sufficient to place an objectively reasonable person on notice of the fact of injury, then plaintiffs claims are barred.

Plaintiffs concede that Ms. Kerrison informed Mr. Carter of the withdrawals, and of her concern, in October, 2001 (See Plaintiffs brief, p. 5). The facts as to the notice to Mr. Carter are thus undisputed. (See also, July 14, 2011 Dep. of Heyward Carter, 24, 38, 46.) Because Heyward Carter, as the attorney for Jacquelin Stevenson, had actual knowledge of Thomas and Daniel Stevenson's actions, specifically, of their self-dealing

loans or withdrawals of trust funds; the statute of limitations began to run no later than October 23, 2001. The statute of limitations therefore ran October 23, 2004, years before this lawsuit was filed. Plaintiff's claims are barred.

2. May 21, 2006

Even if not barred as of October 23, 2004, the undisputed facts show that Kathleen Turner, at that time attorney-in-fact for Jacquelin K. Stevenson, knew of sufficient facts to place an objectively reasonable person on notice no later than May 21, 2003. As Mrs. Stevenson's co-power of attorney, Kathleen Turner acted as Mrs. Stevenson's agent and fiduciary. *In re Thames*, 344 S.C. 564, 570, 544 S.E.2d 854, 856 (S.C. Ct. App. 2001); *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (S.C. 1979) ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.") According to her own testimony, Kathleen Turner met with Thomas Stevenson on May 21, 2003. (November 9, 2011 Dep. of Kathleen Turner, 62.) At that meeting, according to Kathleen Turner, Thomas Stevenson "mumbled" and "looked at a piece of paper" while Daniel Stevenson "hovered." (November 9, 2011 Dep. of Kathleen Turner, 62-72.) She admitted that she knew "something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) A paper was actually given to her, which disclosed the loans that had been made. (February 13, 2013 Dep. of Thomas Stevenson, 77-82.)

Plaintiffs argue that Ms. Turner's testimony concerning the meeting, in which she claimed not to have heard or understood what her brothers were telling her, creates an issue of fact that may only be resolved by a jury. The court need not resolve whether any failures in hearing or communication between the Stevenson family members require a trial as to the adequacy of notice to Ms. Turner, because Ms. Turner herself testified that she knew that "something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) This meeting was therefore sufficient to put Kathleen Turner

on inquiry notice; which had she pursued the issue, would have revealed her brother's alleged wrongdoing. *Burgess v. Am. Cancer Soc., S. Carolina Div., Inc.*, 300 S.C. at 185, 386 S.E.2d 7at 799. Ms. Turner's claimed subjective ignorance of existing facts and circumstances is unavailing; the law provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence," they are charged with the knowledge that they would have acquired. Therefore, even if it had not run on October 23, 2004, the statute of limitations ran no later than May 21, 2006. *Burgess v. Am. Cancer Soc., S. Carolina Div., Inc.*, 300 S.C. at 185, 386 S.E.2d at 799.

3. April 19, 2009

Yet another event occurred more than three years before this action was filed, which Plaintiffs' admitted gave them notice of their brother's alleged wrongful conduct. On April 19, 2006, Kathleen Turner met with Thomas Stevenson. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) During that meeting, Thomas Stevenson informed Kathleen Turner that he and Daniel Stevenson removed money from the trusts. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) As of April 19, 2006, Ms. Turner had actual knowledge that Thomas and Daniel Stevenson had taken money from the trusts and, necessarily, that she had not been previously informed by Lynne Kerrison of these withdrawals. As such, the statute of limitations for any claims based on the removal of money from the trusts by Thomas and Daniel Stevenson ran on April 19, 2009. As previously discussed, Ms. Turner's knowledge is imputed to Mrs. Stevenson and her successors-in-interest.

Plaintiffs seek to contradict the admissions through Ms. Turner's deposition testimony. However, plaintiffs' are bound by their admissions, and having admitted that Ms. Turner met with Tom Stevenson on April 19, 2006, and that he told her that day that he had removed money from the trusts, the issue is removed from consideration by the

trier of fact. See SCRPC 36; *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 556 S.E.2d 718 (Ct. App.2001); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 647, 579 S.E.2d 151, 155, 2003 WL 1192940 (Ct. App. 2003). If not earlier, the statute of limitations ran on plaintiffs' claims on April 19, 2009, 5 days before this action was filed.

4. Conclusion Regarding Statute of Limitations

Because he was her attorney, Mr. Carter's knowledge is imputed to Ms Stevenson. The knowledge of Kathleen Turner, as Mrs. Stevenson's attorney-in-fact, is also imputed to Mrs. Stevenson. All of plaintiffs' claims stem from alleged losses suffered by Mrs. Stevenson during her lifetime.³ Because the statute began to run during Mrs. Stevenson's lifetime, the claims of plaintiffs as Mrs. Stevenson's successors-in-interest also began to run at that time. All claims in this action were therefore barred before it was filed.

II. LYNNE KERRISON AND DIXON HUGHES DID NOT BREACH ANY DUTY OWED TO THE PLAINTIFFS

Plaintiffs' Fourth and Fifth causes of action are for professional negligence and for breach of fiduciary duty. "Whether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (S.C. 1996). See also, *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011), *reh'g denied* (Nov. 17, 2011) ("The determination of the existence of a duty is solely the responsibility of the court. Whether the law recognizes a particular duty is an issue of law to be decided by the Court.") "Ordinarily, the common law imposes no

³ None of the alleged wrongdoing occurred after Mrs. Stevenson's death. Plaintiffs' rights as beneficiaries under the estate and the subject trusts accrued only after Mrs. Stevenson's death. *Bemis*, 170 S.C. 432, 170 S.E. 475, 476 (1933) ("The right to inherit, during the life of an ancestor, does not exist."). Before Mrs. Stevenson's death, plaintiffs held only the inchoate expectation of a future interest in the marital trust, subject to Mrs. Stevenson's use of the trust assets, power of appointment and testamentary wishes. Plaintiffs held no interest in their mother's assets. All of her personal assets and both trusts could have been exhausted for her benefit.

duty on a person to act.” *Johnson v. Robert E. Lee Acad., Inc.*, 401 S.C. 500, 737 S.E.2d 512, 514 (S.C. Ct. App. 2012). “In other words, a person has no duty to protect another from harm inflicted by a third person.” *Rayfield v. S. Carolina Dept. of Corr.*, 297 S.C. 95, 100-01, 374 S.E.2d 910, 913 (S.C. Ct. App. 1988). Because neither an accountant-client relationship nor a fiduciary relationship existed between the plaintiffs and defendants with regards to the subject trusts, the Court concludes that Lynne Kerrison and Dixon Hughes had no duty to plaintiffs to disclose any malfeasance perpetrated by the trustees.

1. The Plaintiffs were not Lynne Kerrison's and Dixon Hughes' clients.

The undisputed facts show that plaintiffs were not the clients of Dixon Hughes or Lynne Kerrison for the purposes of performing accounting services for the trusts, and therefore, defendants owed no professional duty to the plaintiffs. “An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Doe v. Greenville County School District*, 375 S.C. 63, 72, 651 S.E.2d 305, 309-310 (S.C. 2007). “Without a duty, there is no actionable negligence.” *Id.* South Carolina recognizes that “a public accountant who fails to perform in accordance with the accepted professional standards may be liable in tort to his *client* for his negligence.” *Folkens v. Hunt*, 290 S.C. 194, 200, 348 S.E.2d 839, 842-43 (S.C. Ct. App. 1986) (emphasis added).⁴ South Carolina law does not mandate that accountants for trusts owe a professional duty to non-client prospective beneficiaries. *C.f. Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (S.C. 2009) (finding that an attorney had no duty to non-client prospective beneficiaries of a will which was not properly

⁴As this is not a case for negligent misrepresentation, the holding of *ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997), allowing claims by non-clients against accountants does not apply. Other courts have found that negligent misrepresentation is the only appropriate claim for persons who are not clients of an account for professional malpractice. See e.g. *White v. BDO Seidman, LLP*, 249 Ga. App. 668, 670, 549 S.E.2d 490, 492 (2001) (“Georgia law, however, provides only one cause of action to persons who are not clients of an accounting firm but who wish to sue the firm and any of its accountants for professional malpractice: an action for negligent misrepresentation.”)

executed.) Without evidence of an accountant-client relationship, plaintiffs' claims for professional negligence, as beneficiaries of the trusts, or those on behalf of the estate of Jacquelin Stevenson as a beneficiary of the trusts, must fail because accountants do not owe a duty to non-client trust beneficiaries.

Plaintiffs allege in their complaint that "Defendants Kerrison and Dixon-Hughes served as accountants for the two subject trusts and Jacquelin K. Stevenson." (Amend. Compl. ¶ 42.) Thus, the complaint outlines engagements between Lynne Kerrison and Dixon Hughes, and three separate and distinct clients: (1) trustees of the marital trust; (2) the trustees of the Q-TIP trust and (3) Mrs. Jacquelin K. Stevenson. Plaintiffs have presented no evidence that they, the residual trust beneficiaries, were the clients of Lynne Kerrison or Dixon Hughes in connection with the engagement to perform accounting services for the trusts. In fact, plaintiffs admit that they did not meet with Lynne Kerrison, discuss the trust finances with Lynne Kerrison or make any requests for trust information between 1999 and 2005. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, , 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Jaquelin S. Bennet's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.). There was simply no communication, or engagement, sufficient to support even a negligent misrepresentation claim by a non-client.

The only clients to whom Lynne Kerrison and Dixon Hughes provided accounting services related to the trusts were Thomas and Daniel Stevenson, the co-trustees of the trust.

2. There is no duty on an accountant to disclose client information to non-clients.

Because no accountant-client relationship existed between defendants Lynne Kerrison and Dixon Hughes and plaintiffs as beneficiaries of the trusts, plaintiffs' claims for professional negligence must fail. South Carolina law does not require accountants to disclose information about their clients to non-clients. *ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997). In *ML-Lee*, the Supreme Court addressed whether or not an accountant held a duty to disclose an overstatement in inventory to a non-client investor after they learned of it. *Id.* Reversing the Court of Appeals, the South Carolina Supreme Court found that because the law of the case showed that ML-Lee "as not Accountant's client" the accountant did not have a duty to disclose information about its client to a non-client. *Id.*

In *ML-Lee*, the South Carolina Supreme Court also adopted §552 of the Restatement of Torts (1977). *Id.* This limited exception allows non-clients who justifiably rely on information affirmatively communicated by an accountant to recover from an accountant who fails to exercise reasonable care or competence in obtaining or communicating information. *Id.* Though *ML-Lee* created a limited duty of care by accountants to non-clients, the Court expressly limited this duty to cases involving an affirmative negligent misrepresentation. *Id.* The Court specifically refused to create a duty to disclose information to non-clients, holding that § 552 of the Restatement of Torts "imposes no duty to *disclose* information." *Id.*, 327 S.C. at 241, 489 S.E.2d at 472 footnote 3 (emphasis in original).

Likewise, in *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 737 S.E.2d 512 (S.C. Ct. App. 2012), the Court of Appeals declined to extend the liability of an accountant to third-parties in a case not involving negligent misrepresentation. In *Johnson*, an accounting firm was hired by Robert E. Lee Academy after the school

bookkeeper discovered funds missing. *Id.* at 513. Affirming the trial court's grant of summary judgment, the Court of Appeals recognized that an "affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance" and "the common law imposes no duty on a person to act." *Id.* at 514. Because the accountant did not render a service to the plaintiff and his actions were not taken for her protection, no duty was owed to her. *Id.*

The court notes that courts of other states have disallowed actions by beneficiaries against accountants serving the trustee and have refused to hold accountants liable for failing to disclose the malfeasance of trustees to trust beneficiaries. See *Blair v. ING*, 95 Hawaii 247, 268-69, 21 P.3d 452, 473-74 (Hawaii 2001) (An accountant engaged to prepare tax returns owed no duty to trust beneficiaries); *Witzman v. Lehrman, Lehrman & Flome*, 601 N.W.2d 179, (Minn. 1999) (holding that absent evidence of aiding and abetting a breach of trust, an accountant does not owe a duty of care to the beneficiary of the trust); *Gillespie v. Seymour*, 14 Kan. App. 2d 563, 796 P.2d 1060 (Kan. App. 1990) *rev. on other grounds*, *Gillespie v. Seymour*, 250 Kan. 123, 823 P.2d 782 (Kan. 1991) (beneficiaries failed to state a claim based for the negligence against accountants because accountants owed no duty to non-client beneficiaries and had no reason to believe that any services they performed would be relied on by non-client beneficiaries, further finding that no fiduciary relationship existed between accountants and beneficiaries of a trust). See e.g., *Morin v. Trupin*, 711 F. Supp. 97 (S.D.N.Y. 1989) (accountants are not required "to blow the whistle on their clients"). These courts determined that allowing a beneficiary to sue a trustee or personal representative's attorney or accountant could subject those



professionals to impermissible conflicts of interest, as the professional would hold duties to parties with potentially divergent interests.⁵

Recognizing the conflict of interest that such a duty would create, the South Carolina Supreme Court, in *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (2009) determined "not to impose a duty on an attorney in favor of a prospective beneficiary." *Rydde*, 381 S.C. at 645, 675 S.E.2d at 432-33. In *Rydde*, the prospective beneficiaries of an unprepared will filed a malpractice suit against the decedent's attorney for failing to draft and execute a will. The beneficiaries "filed this legal malpractice action under various theories, all of which were premised on the position of a duty of Morris [the attorney] in favor of the non-client prospective beneficiary." *Rydde*, 381 S.C. at 645, 675 S.E.2d at 432-33. The Supreme Court upheld the trial court's dismissal under rule 12(b)(6) of the South Carolina Rules of Civil Procedure, finding that the beneficiary's complaint failed to state facts sufficient to constitute a cause of action. *Id.* The Court held that a plaintiff in a legal malpractice action must show an attorney-client relationship, because to hold otherwise would create an impermissible conflict of interest between the duties to the client and to the non-client beneficiaries. *Id.*

The policy concerns expressed in *Rydde* regarding conflicts of interests are applicable to accountants as well as attorneys. An accountant for a trust holds a duty to the trustee to perform services in accord with the trustee's authority as the holder of legal title to the property contained in the trust. Without legal title, the trust beneficiaries hold no right under the law to participate in the administration of the trust. The adoption of a joint duty to both the trustees and beneficiaries would create the danger of a conflict of interest. In a case where a trustee is in conflict with a beneficiary, or where one or more of the beneficiaries are conflict with each other, an accountant owing a duty to

⁵ The nature of this conflict lies in the legal obligations and interests of a trustee, as opposed to those of a beneficiary. A trustee is in a fiduciary relationship and is obligated to act in the best interest of the beneficiaries *as a whole*, while a beneficiary's only obligation is to his *own interest*.

both the trustee(s) and each beneficiary individually would be in an untenable position. It is this sort of conflict that the *Rydde* court sought to avoid. *Id.*

Implicit in plaintiffs' theory of recovery is the requirement that this court impose a duty on accountants to: (1) review all confidential information received in the preparation of tax returns for indications that client is committing harm to some third-party; (2) identify any and all third parties who the confidential information may indicate are being harmed by the actions of their clients; and (3) disclose the confidential information received from the client to the third parties, or face potential civil liability. No statute or common law in South Carolina supports this proposition. *See also ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997). Not only has such a duty never been recognized, a common-law duty requiring accountants to disclose confidential client information to non-clients would directly conflict with existing federal law.

26 U.S.C. § 7216, prohibits "any person who is engaged in the business of preparing, or providing services in connection with the preparation of" federal tax returns from disclosing any information "furnished to him for, or in connection with, the preparation any such return" and imposes criminal sanctions for a violation of this prohibition. The legislative history of the bill clearly indicates that Congress sought to keep tax preparers from disclosing or making available information received during the preparation of tax returns by providing for criminal penalties. Congress allowed only three exceptions to the general rule. H.R. CONF. REP. 92-708, Amendment no. 69 (1971) ("under the conference agreement, a criminal penalty is provided if a person engaged in the business of preparing returns and declarations (or who does so for compensation), or in providing services in connection with the preparation of returns and declarations, discloses any information furnished to him for the preparation of a return or declaration



or uses any such information other than for the preparation of such return or declaration").⁶

Any common-law duty to disclose taxpayer information to third parties would therefore be preempted by 26 U.S.C. §7216. "If a state statute, administrative rule, or common law cause of action conflicts with a federal statute, it is incontestable that the state law has no efficacy." *Jamison v. Ford Motor Company*, 373 S.C. 248, 264, 644 S.E.2d 755, 763 (S.C. Ct. App. 2007). "Such a conflict arises when either compliance with both laws is impossible or when the state law frustrates the federal purpose and creates an obstacle to the fulfillment of federal objectives." *Professional Samplers, Inc. v. South Carolina Employment Security Commission*, 334 S.C. 392, 397, 513 S.E.2d 374, 377 (S.C. Ct. App. 1999). The disclosures that plaintiffs seek to mandate are exactly the disclosures that 26 U.S.C. § 7216 prohibits.

3. Any duty to disclose was satisfied by the October 21, 2001 notice to Heyward Carter, Mrs. Stevenson's attorney

In arguing for a duty to disclose, plaintiffs offer only the affidavit of their expert witness, George Durant. In his affidavit, Mr. Durant opines: "[T]he standard of care for certified public accountants required Ms. Kerrison and Dixon Hughes, PLLC immediately to give notice of the improprieties to Ms. Turner in her capacity as co-holder of the power-of-attorney for Mrs. Stevenson, the beneficiary of the two trusts." While the specifics of the professional duty owed may be an appropriate subject for expert testimony, whether a duty is owed at all to a given person (not a client) is clearly a question of law for the court:

The determination of the existence of a duty is solely the responsibility of the court." *Miller*, 329 S.C. 310, 494 S.E.2d 813 (citing *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47

⁶ In addition to the three original exceptions to the general rule that tax information may not be disclosed (court orders, preparation of state taxes, and disclosures required by the Internal Revenue Code) in 1989 Congress allowed tax information to be disclosed for the purposes of "quality or peer reviews." 26 U.S.C. § 7216 (b) (3).

(1996)). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. *Id.* (citing *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997)). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. *Carson*. Ordinarily, the common law imposes no duty *457 on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care. *Id.* (citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991))

Hendricks v. Clemson Univ., 353 S.C. 449, 456-57, 578 S.E.2d 711, 714, 175 Ed. Law Rep. 344, 2002 WL 32060447 (2003). But even if Mr. Durant's testimony as to the existence of a duty to disclose were credited, the court is of the opinion that that duty was satisfied, as a matter of law, through the disclosure to Mr. Carter, also Mrs. Stevenson's agent.

4. No fiduciary duty was owed to Plaintiffs by Dixon Hughes, PLLC or Lynne Kerrison

As their Fifth Cause of Action, Plaintiffs asserted a claim against Ms. Kerrison and Dixon Hughes, PLLC for breach of fiduciary duty. Absent a fiduciary duty there can be no breach. Whether a fiduciary relationship exists between two people is an equitable issue for the judge to decide. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458-59, 578 S.E.2d 711, 715 (2003) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987); *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473, 2004 WL 1439151 (Ct. App. 2004)

South Carolina does not recognize a per se fiduciary relationship between accountant and client. In order to determine whether a fiduciary relationship exists, the courts must look to particulars of the relationship between the parties. *Pitts v. Jackson National Life Insurance Company*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (S.C. Ct. App. 2002). A "confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith with due regard to the interest of the one imposing the confidence." *Island*



Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (S.C. Ct. App. 1987).

Furthermore:

The term fiduciary implies that one party is in a superior position to the other and that *such* a position enables him to exercise influence over one who reposes special trust and confidence in him. As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.

Burwell v. South Carolina National Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790

(S.C. 1986) (internal citations omitted) (no fiduciary duty between bank and depositor).

The courts have thus usually "reserved imposition of fiduciary duties to legal or business settings often in which one person entrusts money to another." *Hendricks v. Clemson University*, 353 S.C. 449, 579 S.E.2d 711 (S.C. 2003) (finding no fiduciary relationship between adviser and student).

The undisputed evidence shows that no fiduciary relationship existed between any of the plaintiffs and Lynne Kerrison and Dixon Hughes. Plaintiffs did not meet with Lynne Kerrison during the relevant time frame or discuss the status of the trusts with her. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Jacquelin S. Bennet's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.) Lynne Kerrison did not meet Jacquelin Stevenson, but instead communicated with Pat Neapolitan, Heyward Carter, and the trustees regarding preparation of the tax returns for Mrs. Stevenson and the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 30, 40, 46, 110-113.) Ms. Kerrison did not sign checks for Mrs. Stevenson or the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 75.) She had no control over Mrs. Stevenson's assets or

the assets of the estate. Ms. Kerrison, as an accountant, was never in a position to bind the trust or Mrs. Stevenson in any way or to take advantage of the plaintiffs for her own benefit. Plaintiffs offered no evidence from which the court could conclude that a relationship of "trust and confidence," or indeed, any relationship at all, existed between Ms. Kerrison, Dixon Hughes, PLLC and the plaintiffs. From these facts, it is impossible to infer a fiduciary relationship.

5. Conclusion Regarding Duty of Accountant

Plaintiffs' claims for professional negligence and breach of fiduciary duty are predicated on the theory that Lynne Kerrison and Dixon Hughes held an affirmative duty to inform the plaintiffs of the alleged malfeasance of Thomas and Daniel Stevenson, or that a fiduciary relationship existed between plaintiffs and Ms. Kerrison and Dixon Hughes, PLLC. Under *ML-Lee* and *Johnson*, the duties accountants owe to non-client third parties are limited to cases of negligent misrepresentation. There is no evidence of a fiduciary relationship. Because Lynne Kerrison and Dixon Hughes owed no duty to the plaintiffs relating to the administration of the trusts, and alternatively because any duty supported by their expert's testimony was satisfied, their claims for Professional Negligence and Breach of Fiduciary Duty must fail.

III. PLAINTIFFS CANNOT SHOW THAT DEFENDANTS LYNNE KERRISON AND/OR DIXON HUGHES KNOWINGLY PARTICIPATED IN ANY BREACH OF FIDUCIARY DUTY PERPETRATED BY THOMAS AND DANIEL STEVENSON

Plaintiffs Sixth Cause of Action is for aiding and abetting a breach of fiduciary duty. "The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008). The gravamen of a claim for aiding and abetting a breach of fiduciary duty is "the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45,

50 (1996). Plaintiffs offered no evidence that defendants Lynne Kerrison and Dixon Hughes knowingly participated in the alleged breach by the trustees or were aware of any improper transfers before the time they were made. Plaintiffs sole argument in support of their contention that there was "knowing participation," was to point to deposition testimony that for some period of time the accounting firm or Ms. Kerrison had custody of the trust account checkbook (though no authority to sign the checks) and would provide the trustees with checks that they then used to make improper withdrawals (along with periodically providing checks to the plaintiffs). Beyond showing Ms. Kerrison's and the firm's admitted knowledge of the trustee's actions, plaintiffs offered no evidence of participation in the trustees' breaches of duty, or of any other affirmative act on the part of Ms. Kerrison or the firm. Plaintiffs' argument largely rested on a contention, belied by the notice given to Mr. Carter, that Ms. Kerrison and the firm aided and abetted the breaches through "inaction." (Plaintiffs brief, p. 16).

Absent some evidence of active participation in the alleged malfeasance of the trustees, plaintiffs' claim for aiding and abetting a breach of fiduciary must fail. *See e.g., Gordon v. Busbee*, 397 S.C. 119, 133-34, 723 S.E.2d 822, 830 (S.C. Ct. App. 2012)

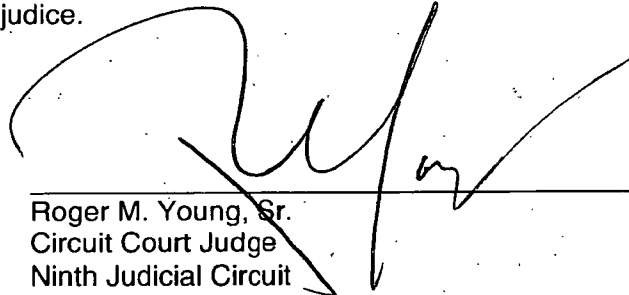
SUMMARY OF CONCLUSIONS OF LAW

Taking the facts in a light most favorable to the plaintiffs, there is no genuine issue of material fact and defendants Lynne Kerrison and Dixon Hughes are entitled to summary judgment. First, plaintiffs brought this lawsuit outside the three-year statute of limitations period. Second, South Carolina has no recognized cause of action for an accountant's failure to disclose information to a non-client, and the creation of a common law duty requiring accountants to disclose confidential information to non-clients contradicts federal law. Defendants Lynne Kerrison and Dixon Hughes therefore owed no duty of care to the beneficiaries in the performing accounting services for the

trusts. Third, plaintiffs provide no evidence that defendants Lynne Kerrison and Dixon Hughes knowingly participated in the trustees' alleged breach.

THEREFORE, it is ordered, adjudged and decreed that:

The defendants Dixon Hughes PLLC and Lynne Kerrison's motion for summary judgment is **GRANTED**, and the claims against Dixon Hughes PLLC and Lynne Kerrison are dismissed with prejudice.



Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

7/3, 2013
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

FILED
2013 AUG-9 PM 12:40
JULIE ARMSTRONG
CLERK OF COURT
BY: 

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**ORDER ON PLAINTIFFS' MOTION TO
ALTER OR AMEND PURSUANT TO
RULE 59(e), SCRP**

This matter is before the court on plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e), SCRP (the "Motion to Alter or Amend"). The court has considered the memoranda, arguments, authorities, and supporting material submitted in writing by the parties. After review and consideration, the court finds that the motion should be denied for the following reasons.

PROCEDURAL HISTORY

On July 13, 2012, defendants Dixon Hughes and Lynne Kerrison filed a motion for summary judgment in their favor an all claims asserted by the plaintiffs in this action. The court heard oral argument on the motion for summary judgment on April 29, 2013. On June 10, 2013, the court informed the parties that it had decided to grant the defendants' motion for summary judgment. On June 13, 2013, defendants submitted a proposed Order and Judgment. On June 19, 2013, plaintiffs submitted their Objections



to Proposed Order of Defendants Lynne Kerrison and Dixon Hughes, or in the Alternative, Motion to Amend a Response to a Request to Admit. On July 3, 2013, the court entered its Order Granting Defendants Dixon Hughes PLLC and Lynne Kerrison's Motion for Summary Judgment (the "Order"). In their Motion to Alter or Amend, plaintiffs state that they received written notice of the entry of the Order on July 12, 2013. On July 22, 2013, plaintiffs filed their Motion to Alter or Amend. Plaintiffs ask the court to grant their Motion to Amend a Response to a Request to Admit; amend the Order to eliminate the finding that plaintiffs' claims were barred April 19, 2009, in consequence of an admitted communication to Kathleen S. Turner on April 19, 2006; and amend the Order to eliminate the finding that defendants owed plaintiffs no duty because they were not clients.

FINDINGS OF FACT

Plaintiffs did not bring their Motion to Amend a Response to a Request to Admit until after the court heard the defendants' motion for summary judgment and informed the parties that it had decided to grant that motion for summary judgment. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so.

The Motion to Alter or Amend addresses one of the bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. The Motion to Alter or Amend raises no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations.

In their Motion to Alter or Amend, plaintiffs offer a new legal argument in support of their objection to the court's finding that defendants owed plaintiffs no legal duty because they were not clients. Plaintiffs could have raised this argument before the court heard and decided the motion for summary judgment, but did not do so.

CONCLUSIONS OF LAW

A court's decision on a motion to alter or amend a judgment under Rule 59 is committed to the court's discretion. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (S.C. Ct. App. 2012). A party cannot use a motion to alter or amend a judgment pursuant to Rule 59(e) to present an issue the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (S.C. Ct. App. 2009).

Plaintiffs' request that they be permitted to amend a response to a request to admit is untimely. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so. See *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993). In addition, were the court to grant plaintiffs' Motion to Amend a Response to a Request to Admit, this would not avail the plaintiffs. The Motion to Amend a Response to a Request to Admit bears upon only one of the several bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. In their Motion to Alter or Amend, plaintiffs raise no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. Because of the lateness of the request, and because the ultimate result would not be changed, the court concludes that the Motion to Amend a Response to a Request to Admit should be denied.

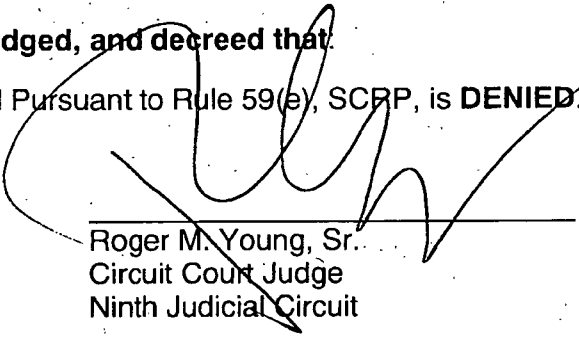
Also untimely and substantively unavailing is the legal argument that plaintiffs advance in support of their objection to the court's finding that defendants owed plaintiffs no legal duty. Plaintiffs' argument relies upon no new facts, nor was there any surprise in defendants' argument or the court's ruling. Plaintiffs raised this argument before the court heard and decided the motion for summary judgment. This argument was previously considered and rejected by the court, and is substantively unavailing. If a duty was owed to plaintiffs, it had to be owed as a result of the relation between

defendants and one or more plaintiffs, not as a result of a relation between defendants and Jacquelin Stevenson. The evidence was uncontested that there was no relationship between defendants and plaintiffs. The court specifically finds that defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson. Because defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson, the court concludes that the Motion to Alter or Amend should be denied.

THEREFORE, it is ordered, adjudged, and decreed that:

Plaintiffs Motion to Alter or Amend Pursuant to Rule 59(e), SCRP, is **DENIED**.

8/6, 2013
Charleston, SC



Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

AMENDED ORDER ON PLAINTIFFS'
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRP

FILED
2013 AUG 20 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the court on plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e), SCRP (the "Motion to Alter or Amend"). The court has considered the memoranda, arguments, authorities, and supporting material submitted in writing by the parties. After review and consideration, the court finds that the motion should be denied for the following reasons.

PROCEDURAL HISTORY

On July 13, 2012, defendants Dixon Hughes and Lynne Kerrison filed a motion for summary judgment in their favor an all claims asserted by the plaintiffs in this action. The court heard oral argument on the motion for summary judgment on April 29, 2013. On June 10, 2013, the court informed the parties that it had decided to grant the defendants' motion for summary judgment. On June 13, 2013, defendants submitted a proposed Order and Judgment. On June 19, 2013, plaintiffs submitted their Objections

B

to Proposed Order of Defendants Lynne Kerrison and Dixon Hughes, or in the Alternative, Motion to Amend a Response to a Request to Admit. On July 3, 2013, the court entered its Order Granting Defendants Dixon Hughes PLLC and Lynne Kerrison's Motion for Summary Judgment (the "Order"). In their Motion to Alter or Amend, plaintiffs state that they received written notice of the entry of the Order on July 12, 2013. On July 22, 2013, plaintiffs filed their Motion to Alter or Amend. Plaintiffs ask the court to grant their Motion to Amend a Response to a Request to Admit; amend the Order to eliminate the finding that plaintiffs' claims were barred April 19, 2009, in consequence of an admitted communication to Kathleen S. Turner on April 19, 2006; and amend the Order to eliminate the finding that defendants owed plaintiffs no duty because they were not clients.

FINDINGS OF FACT

Plaintiffs did not bring their Motion to Amend a Response to a Request to Admit until after the court heard the defendants' motion for summary judgment and informed the parties that it had decided to grant that motion for summary judgment. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so.

The Motion to Alter or Amend addresses one of the bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. The Motion to Alter or Amend raises no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations.

In their Motion to Alter or Amend, plaintiffs offer an argument in support of their objection to the court's finding that defendants owed plaintiffs no legal duty because they were not clients. Plaintiffs raised this argument when the court heard and decided the motion for summary judgment, and it was previously addressed by the court.

CONCLUSIONS OF LAW

A court's decision on a motion to alter or amend a judgment under Rule 59 is committed to the court's discretion. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (S.C. Ct. App. 2012). A party cannot use a motion to alter or amend a judgment pursuant to Rule 59(e) to present an issue the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (S.C. Ct. App. 2009).

Plaintiffs' request that they be permitted to amend a response to a request to admit is untimely. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so. See *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993). In addition, were the court to grant plaintiffs' Motion to Amend a Response to a Request to Admit, this would not avail the plaintiffs. The Motion to Amend a Response to a Request to Admit bears upon only one of the several bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. In their Motion to Alter or Amend, plaintiffs raise no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. Because of the lateness of the request, and because the ultimate result would not be changed, the court concludes that the Motion to Amend a Response to a Request to Admit should be denied.

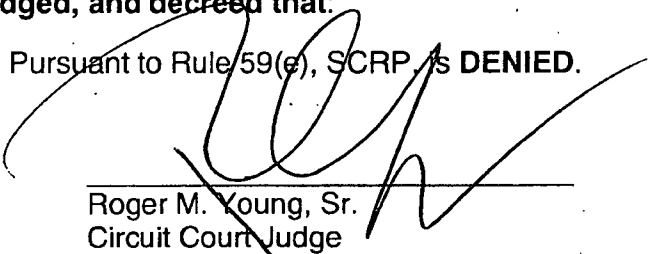
Also untimely and substantively unavailing is the legal argument that plaintiffs advance in support of their objection to the court's finding that defendants owed plaintiffs no legal duty. Plaintiffs' argument relies upon no new facts, nor was there any surprise in defendants' argument or the court's ruling. Plaintiffs raised this argument before the court heard and decided the motion for summary judgment. This argument was previously considered and rejected by the court, and is substantively unavailing. If a duty was owed to plaintiffs, it had to be owed as a result of the relation between



defendants and one or more plaintiffs, not as a result of a relation between defendants and Jacquelin Stevenson. The evidence was uncontested that there was no relationship between defendants and plaintiffs. The court specifically finds that defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson. Because defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson, the court concludes that the Motion to Alter or Amend should be denied.

THEREFORE, it is ordered, adjudged, and decreed that:

Plaintiffs Motion to Alter or Amend Pursuant to Rule 59(e), SCRP, is **DENIED**.



Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

8/20, 2013
Charleston, SC

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,)
Deceased and the Estate of Thomas C.)
Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder)
and Kathleen S. Turner, individually, as Co-)
Trustees and beneficiaries of the Marital)
Trust and the Qualified Terminable Interest)
Trust created by the Thomas Stevenson Will,)
and Jacquelin S. Bennett, and Kathleen S.)
Turner, as Co-Personal Representatives on)
behalf of the Estate of Jacquelin K.)
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter; Kunes)
& Bennett, P.A.; Douglas Capital)
Management, Inc.; Dixon-Hughes f/k/a Pratt-)
Thomas Gumb & Co., P.A.; and Lynne L.)
Kerrison.)

Defendants.)

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

COMPLAINT
(Jury Trial Demanded)

Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually,
as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust
created by the Thomas Stevenson Will ("two subject Trusts") and Jacquelin S. Bennett, and
Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K.
Stevenson, complaining of Defendants T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett,
P.A.; Douglas Capital Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.;
and Lynne L. Kerrison, would respectfully show unto the Court as follows:

PARTIES/JURISDICTION/VENUE

1. Plaintiff Jacquelin S. Bennett is a citizen and resident of Charleston County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson. She is also the Co-Personal Representative of the Estate of Jacquelin K. Stevenson and currently is the Co- Trustee of the two subject Trusts.

2. Plaintiff Kathleen S. Turner is a citizen and resident of Charleston County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson. She is also the Co-Personal Representative of the Estate of Jacquelin K. Stevenson and currently is the Co- Trustee of the two subject Trusts.

3. Plaintiff Genevieve S. Felder is a citizen and resident of Williamsburg County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson and the Co-Trustee of the two subject Trusts.

4. Upon information and belief, T. Heyward Carter, Jr. is a citizen and resident of Charleston County, South Carolina. He is the former lawyer and/or fiduciary for the two subject Trusts and Jacquelin K. Stevenson.

5. Upon information and belief, Defendant Evans, Carter; Kunes & Bennett, P.A. ("Carter Law Firm") is a professional association organized and existing under the laws of the State of South Carolina. Upon information and belief, Defendant Carter is a member of the Defendant Carter Law Firm. Defendant Carter Law Firm is responsible for all actions of Defendant Carter described herein.

6. Upon information and belief, Defendant Douglas Capital Management, Inc. ("Douglas Capital") is a corporation organized and existing under the laws of the State of

Florida. Defendant Douglas Capital provided financial advice and managed assets for the two subject Trusts.

7. Upon information and belief, Lynne L. Kerrison is a citizen and resident of Charleston County, South Carolina. Defendant Kerrison is the former accountant, financial advisor, financial planner, and fiduciary of Jacquelin K. Stevenson and the two subject Trusts.

8. Upon information and belief, Defendant Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. ("Dixon-Hughes") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Defendant Kerrison is a member of the Defendant Dixon-Hughes. Defendant Dixon-Hughes is responsible for all actions of Defendant Kerrison described herein.

9. Venue is proper in Charleston County.

10. This court has jurisdiction over the subject matter and the parties to this matter.

FACTUAL BACKGROUND

11. Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, along with Thomas C. Stevenson, III and Daniel R. Stevenson, II, are beneficiaries of the Last Will and Testament of their late father, Thomas C. Stevenson, Jr. (hereinafter "Thomas Stevenson Will") and the Last Will and Testament of Jacquelin K. Stevenson (hereinafter "Jacquelin Stevenson Will").

12. The Thomas Stevenson Will created two testamentary trusts: the "Jacquelin K. Stevenson Marital Trust" (hereinafter "Marital Trust") and a qualified terminable interest property trust (hereinafter "QTIP Trust").

13. The Marital Trust provided Jacquelin K. Stevenson a power of appointment to

name the beneficiaries of the Marital Trust in her Will.

14. The Jacquelin Stevenson Will named Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, Thomas C. Stevenson, III and Daniel R. Stevenson, II, as well as her child, from a former marriage, James King, beneficiaries of the Marital Trust upon the death of Jacquelin K. Stevenson.

15. The Thomas Stevenson Will also provided that, upon the death of Jacquelin K. Stevenson, the beneficiaries of the QTIP Trust would be his children, Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, along with Thomas C. Stevenson, III and Daniel R. Stevenson, II.

16. The Thomas Stevenson Will named Thomas C. Stevenson, III and Daniel R. Stevenson, II as co-trustees of both the Marital Trust and the QTIP Trust, along with Norman W. Stevenson, Henry Buist and James G. Boyd. As of 1999, Thomas C. Stevenson, III and Daniel R. Stevenson, II were the only remaining co-trustees.

17. Both Thomas C. Stevenson and Jacquelin K. Stevenson are deceased.

18. Plaintiffs Bennett, Felder and Turner are three of the beneficiaries of the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson.

19. In 2001 and at all time relevant herein, Plaintiff Kathleen Turner and Daniel R. Stevenson, II were powers of attorney for Ms. Jacquelin K. Stevenson. At that time, Jacquelin K. Stevenson was in an Alzheimer's unit due to a stroke suffered in or around December 2000.

20. During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson (hereinafter referred to as the "improper self-dealing withdrawals").

21. Defendants were in a fiduciary relationship with Plaintiffs.
22. Defendants had knowledge of some or all of the improper self-dealing withdrawals.
23. Plaintiffs had no knowledge of any of the improper self-dealing withdrawals.
24. Knowledge of the improper self-dealing withdrawals was significant and material to Plaintiffs.
25. Defendants had a duty to inform and failed to inform Plaintiffs, including Plaintiff Kathleen S. Turner as power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to Defendants.
26. Upon information and belief, money improperly taken from the Trusts and the Estate was used to fund other Defendant Dixon-Hughes clients and Dixon-Hughes issued the checks for the improper self-dealing withdrawals. This created a conflict of interest for Defendant Dixon-Hughes which should have resulted in either full disclosure to Plaintiffs or Defendant Dixon-Hughes resigning as accountants for all parties.
27. Plaintiffs suffered damages as a result of Defendants' above described actions.
28. Pursuant to S.C. Code Ann. §15-36-100(B), Plaintiffs have a good faith basis to believe the period of limitation will expire within ten days of the date of filing this Complaint and because of the time constraints affidavits of experts for the professional negligence causes of action could not be prepared.

FOR A FIRST CAUSE OF ACTION

(Professional Negligence as to Defendant Carter and Defendant Carter Law Firm)

29. Paragraphs 1 through 28 are herein reiterated and realleged as if set forth

verbatim.

30. Defendants Carter and the Carter Law Firm were in an attorney-client relationship with the subject Trusts and Jacquelin K. Stevenson.

31. Defendants Carter and the Carter Law Firm breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson by *among other things*: failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants.

32. Plaintiffs suffered damages which were proximately caused by the above described breaches of the standard of care by Defendants Carter and the Carter Law Firm.

FOR A SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Carter and Defendant Carter Law Firm)

33. Paragraphs 1 through 32 are herein reiterated and realleged as if set forth verbatim.

34. Defendants Carter and the Carter Law Firm were in a fiduciary relationship with Plaintiffs such that Defendants Carter and the Carter Law Firm were bound to act with due regard to the interests of Plaintiffs.

35. Defendants Carter and the Carter Law Firm were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals.

36. Defendants Carter and the Carter Law Firm breached their fiduciary duties owed to Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing

withdrawals known to these Defendants.

37. Plaintiffs suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendants Carter and the Carter Law Firm.

FOR A THIRD CAUSE OF ACTION
(Negligence as to Defendant Douglas Capital)

38. Paragraphs 1 through 37 are herein reiterated and realleged as if set forth verbatim.

39. Defendant Douglas Capital served as investment advisors for the two subject Trusts and Jacquelin K. Stevenson and owed duties of care to Plaintiffs.

40. Defendant Douglas Capital breached the standard of care owed Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to this Defendant.

41. Plaintiffs suffered damages which were proximately caused by the above described breaches of the standard of care by Defendant Douglas Capital.

FOR A FOURTH CAUSE OF ACTION
(Professional Negligence as to Defendant Kerrison and Defendant Dixon-Hughes)

42. Paragraphs 1 through 41 are herein reiterated and realleged as if set forth verbatim.

43. Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson.

44. Defendants Kerrison and Dixon-Hughes breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as attorneys by *among other things*: failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K.

Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

45. Plaintiffs suffered damages which were proximately caused by the above described breaches of the standard of care by Defendants Kerrison and Dixon-Hughes.

FOR A FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Kerrison and Defendant Dixon-Hughes)

46. Paragraphs 1 through 45 are herein reiterated and realleged as if set forth verbatim.

47. Defendants Kerrison and Dixon-Hughes were in a fiduciary relationship with Plaintiffs such that Defendants Kerrison and Dixon-Hughes were bound to act with due regard to the interests Plaintiffs.

48. Defendants Kerrison and Dixon-Hughes were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals.

49. Defendants Kerrison and Dixon-Hughes breached their fiduciary duties owed to Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

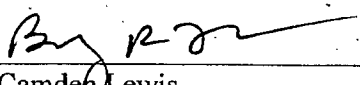
50. Plaintiffs suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendants Kerrison and Dixon-Hughes.

WHEREFORE, Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S.

Turner, pray that:

- a. Plaintiffs be awarded damages as a jury shall decide on the first, second, third, fourth, and fifth causes of action;
- b. Plaintiffs be awarded prejudgment interest pursuant to the first, second, third, fourth, and fifth causes of action;
- c. Plaintiffs be awarded attorneys' fees and costs; and
- d. Plaintiffs be awarded such further relief as the Court deems just and proper.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

April 24, 2009

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,)
Deceased and the Estate of Thomas C.)
Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder)
and Kathleen S. Turner, individually, as Co-)
Trustees and beneficiaries of the Marital)
Trust and the Qualified Terminable Interest)
Trust created by the Thomas Stevenson Will,)
and Jacquelin S. Bennett, and Kathleen S.)
Turner, as Co-Personal Representatives on)
behalf of the Estate of Jacquelin K.)
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter; Kunes)
& Bennett, P.A.; Douglas Capital)
Management, Inc.; Dixon-Hughes f/k/a Pratt-)
Thomas Gumb & Co., P.A.; and Lynne L.)
Kerrison.)

Defendants.)

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

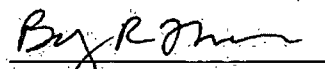
CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

**NOTICE OF FILING EXPERT
AFFIDAVIT AS SUPPLEMENT TO
COMPLAINT**

Pursuant to S.C. Code Ann. §15-36-100(C)(1), Plaintiffs hereby supplement the
Complaint in this matter with the attached expert Affidavit of John Freeman.

LEWIS & BABCOCK, L.L.P.


A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

May 8, 2009

Columbia, South Carolina

ATTORNEY FOR PLAINTIFFS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

CASE NUMBER: 2007-ES 10-1437

CASE NUMBER: 1988-ES 10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the Marital Trust
and the Qualified Terminable Interest Trust
created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S. Turner,
as Co-Personal Representatives on behalf
of the Estate of Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter, Kunes &
Bennett, P.A.; Douglas Capital Management, Inc.;
Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co.,
P.A.; and Lynne L. Kerrison.

Defendants.

Personally appeared before me John Freeman who first being duly sworn, deposes and
states as follows:

1. The undersigned, John P. Freeman, being first duly sworn, gives this affidavit to
the Court, and hereby states that the information contained herein is true and correct to the best
of my knowledge and belief:

2. Following my graduation from the University of Notre Dame Law School in 1970,
I worked at the Jones Day law firm (then known as Jones, Day, Cockley and Reavis). I left Jones
Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for

Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I have specialized in business courses and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a defense lawyer, consultant to disciplinary counsel, and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. I taught legal ethics for 35 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have served as a litigation consultant, or as a testifying expert in numerous legal malpractice cases. I have lectured on the standards applicable to legal malpractice many times, and have written about the topic. I have participated in disputes as to the behavior of lawyers in handling legal matters and in their dealings with clients many times, and have testified as an expert in such cases many times. I have served as an expert witness on questions involving lawyers' duties, the duty of competence, the duty to avoid or handle properly conflicts of interest, and the duty to give information many times. My curriculum vitae is attached as Exhibit 1, which further establishes my qualifications.

3. This affidavit is presented under S.C. Code § 15-36-100 which requires, in a complaint against a lawyer, for the plaintiff to file "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit."

4. I have reviewed the factual background underlying the Complaint as well as the complaint itself. I have reviewed Thomas Stevenson's memorandum in opposition to plaintiffs' motion for partial summary judgment in Case No. 2008-CP-10-0806. In that document the argument is made that defendant Carter's inaction in the face of knowledge of wrongdoing is imputable to injured trust beneficiaries and serves to bar them from recovery under a one-year statute of limitations. I have also read Mr. Carter's deposition in Case No. 2008-CP-10-0806 and the exhibits thereto. In so many words, the underlying claim is that (1) Thomas C. Stevenson, III and Daniel R. Stevenson, II, as co-fiduciaries, raided the assets of the Marital Trust, the QTIP Trust and the Estate of Jaquelin K. Stevenson, (2) attorney Carter (and, through him, his firm) knew of it and knew of the potential for harm to Plaintiffs, and (3) Carter never did anything to halt or limit the wrongdoing or to alert Plaintiffs to whom duties were owed of the wrongdoing.

5. As described in the Complaint in the above-captioned Probate Court matters, there is evidence that Mr. Carter and his law firm engaged in one or more negligent acts and omissions in their representation of and for the directed intended benefit of Plaintiffs including the following:

- a. Failure to act competently;
- b. Failure to protect the Plaintiffs' interests and to not prejudice their interests;
- c. Failure to protect Trust property;
- d. Failure to act diligently;
- e. Failure to act at all time in the best interest of the client;
- f. Breach of the duty not to prejudice the client's interests;
- g. Failure to convey material information and concealment of material facts.

6. I hold these opinions because there is evidence that Mr. Carter had knowledge of facts he readily understood posed risks to the beneficiaries of trusts who stood to be injured by self-dealing behavior by fiduciaries. For example, Carter admitted at his deposition that he considered that Dan and Tom Stevenson's behavior constituted "a breach of trust." Carter Dep. 186:10-14. Carter admitted that "they avoided disclosing their actions to their siblings for as long as they could." *Id.* 186:20-22. At a minimum, Carter was obligated to take aggressive action to inform innocent parties about Dan and Tom Stevenson's breaches of trust in order to protect those innocent parties from the sorts of limitations defense claims that are now being advanced against them.

7. In the face of ongoing wrongdoing and the victims' ignorance of same, lawyer Carter was content to put those innocent beneficiaries at risk by allowing Dan and Tom Stevenson's ongoing wrongs to continue. By his inaction in the face of a duty to act, Carter aided and abetted the fiduciaries' ongoing misconduct. Rather than take appropriate action, Mr. Carter simply shut his eyes to the obvious risk of harm to Plaintiffs. Carter shrugged off his duty to take reasonable, aggressive action to protect the interests of innocent beneficiaries who were direct, intended third party beneficiaries of his legal services. There were multiple failings caused by Mr. Carter averting his eyes to the reality that trust assets were being looted by faithless fiduciaries.

8. In my opinion, Mr. Carter's mishandling of the legal affairs which are the subject of the Complaint fell below the standard of care, skill, diligence and loyalty expected of lawyers in South Carolina. It appears this deficient conduct proximately caused injury to Plaintiffs and constitutes legal malpractice.

9. Further affiant sayeth not.

John Freeman
JOHN FREEMAN

SWORN TO BEFORE ME this 3d
day of May, 2009

Nancy Kathryn Freeman
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 7/7/2008

Exhibit 1

RESUME

John P. Freeman
Professor of Law Emeritus

Address and phone numbers:

2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (phone)
753-9870 (fax)

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978-2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, Summer 1978

Present:

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

Honors and Awards:

Undergraduate: Member Beta Alpha Psi (Honorary Accounting Fraternity)

Law School: Executive Editor, Notre Dame Lawyer;
Distinguished Military Graduate

Professional:

At University of South Carolina Law School: Senior
Class Annual Outstanding Faculty Award of 1975,
1976, 1977, 1984;

Winston Churchill Award, South Carolina Jury Trial
Foundation 1995; Distinguished Service Award,
South Carolina Trial Lawyers Association 2000;
Appointed Member, South Carolina Judicial Merit
Selection Commission (presently serving)

Admitted to Practice:

Ohio; South Carolina

**Teaching History
Courses Taught:**

Professional Responsibility, Legal Accounting,
Business Associations, Corporations,
Agency-Partnership, Securities Regulation,
Corporate Finance, Business Planning, Legal
Research and Writing, Business Crime, Legal
Malpractice Component of Advanced Legal
Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for South Carolina Lawyer.

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New
Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to
Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1 124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371 439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732 983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122 40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2008-04: John Belton O'Neill Inn of Court, Ethics of Advertising Firms, Jan. 20, 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office, Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTL, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S.C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath, Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar

Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter). American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service

Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare

Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing (currently serving)
Minority Student Affairs
Executive Committee
Dean Evaluation Committee
Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School School Improvement Council (1985)
Member, Irmo Middle School School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member
Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina
Lexington District Five and South Carolina State School Volunteer of the Year 1993

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

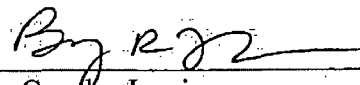
T. Heyward Carter, Jr.; Evans, Carter, Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

**NOTICE OF FILING EXPERT
AFFIDAVIT AS SUPPLEMENT TO
COMPLAINT**

Pursuant to S.C. Code Ann. §15-36-100(C)(1), Plaintiffs hereby supplement the
Complaint in this matter with the attached expert Affidavit of George W. DuRant.

LEWIS & BABCOCK, L.L.P.


A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

May 12, 2009

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

IN RE: The Estate of Jacquelin K.
Stevenson, Deceased and the Estate
Of Thomas C. Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S.
Felder and Kathleen S. Turner, indi-
Vidually, as Co-Trustees and bene-
ficiaries of the Marital Trust and the
Qualified Terminable Interest Trust
Created by the Thomas Stevenson
Will, and Jacquelin S. Bennett, and
Kathleen S. Turner, as Co-Personal
Representatives on behalf of the
Estate of Jacquelin K. Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter,
Kunes & Bennett, P.A.; Douglas
Capital Management, Inc.; Dixon-
Hughes f/k/a Pratt-Thomas Gumb &
Co., P.A.; and Lynne L. Kerrison.)

Defendants.)

AFFIDAVIT OF GEORGE W. DuRANT

The undersigned affiant, being first duly sworn, hereby deposes and states as follows:

1. My name is George W. DuRant and being first duly sworn, I give this
affidavit to the Court, hereby state that the information contained herein is
true and correct to the best of my knowledge and belief:

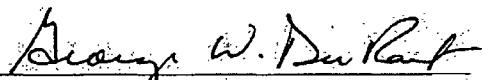
2. I am 56 years old and a resident of Richland County, South Carolina.
3. I am a Certified Public Accountant licensed to practice accounting in the State of South Carolina.
4. My *curriculum vitae* is attached to this affidavit.
5. The Plaintiffs have engaged me to review the following documents and opine as to whether the defendants Pratt-Thomas Gumb & Co., P.A. and Lynne L. Kerrison breached the standard of care expected of accountants practicing in the State of South Carolina.
 - A. The Summons and Complaint filed on April 24, 2009 by Lewis & Babcock, L.L.P. in this matter as above-captioned.
 - B. Attorney Brady R. Thomas' letter dated April 7, 2009 to me together with selected pages (98-113) of the deposition transcript of T. Heyward Carter, Jr. dated September 24, 2008 in Case No. 2008-CP-10-0806; listings of loans and accrued interest as of October 10, 2007 relating to the Q-TIP Trust and the Marital Trust as of September 13, 2006; and a print-out of "Transactions by Account for the Q-TIP and Marital Trust.
 - C. A transmittal letter dated October 12, 2001 from T. Heyward Carter, Jr. to Lynne Kerrison referencing and transmitting a copy of the Durable Power of Attorney given by Jacquelin K. Stevenson in favor of Kathleen S. Turner and Daniel R. Stevenson on January 4, 2001.

D. The affidavit and resume of John P. Freeman dated May 3, 2009 in the above captioned case.

6. Dixon-Hughes, PLLC is a public accounting firm practicing in South Carolina. Dixon-Hughes, PLLC is the successor to Pratt-Thomas, Gumb & Co., P.A., as result of its merger on November 1, 2006. Lynne L. Kerrison is a Certified Public Accountant and member of Dixon-Hughes, PLLC and/or its predecessor Pratt-Thomas, Gumb & Co., P.A.
7. Jacquelin K. Stevenson (Mrs. Stevenson) was the beneficiary of the Marital Trust and the Qualified Terminable Interest Trust (QTIP) created by the will of Thomas Stevenson.
8. On January 4, 2001, Mrs. Stevenson appointed Kathleen S. Turner and Daniel R. Stevenson acting jointly and together, as her lawful attorneys to act in, manage, and conduct all of her affairs. This appointment is evidenced by a document titled "Durable Power of Attorney" provided to Ms. Kerrison by T. Heyward Carter, Jr., on October 12, 2001.
9. Mr. Carter is an attorney and represented Mrs. Stevenson. Ms. Kerrison provided professional accounting services to the subject Marital Trust and QTIP Trust.
10. On October 23, 2001, Ms. Kerrison met with Mr. Carter and the co-trustees of the Marital and QTIP Trusts to discuss "distributions" made to the co-trustees, Daniel R. Stevenson and Thomas Stevenson (Carter 101:1-25). During that meeting, Mr. Carter informed Ms. Kerrison and the co-trustees of the impropriety of such distributions and "the fact that it was not something the

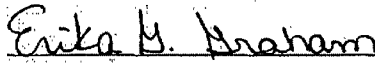
trustees were supposed to be doing, at least without the consent of beneficiaries" (Carter 102:13-16).

11. In my opinion, the standard of care for certified public accountants in South Carolina required Ms. Kerrison and Dixon-Hughes, PLLC immediately to give notice of the improprieties to Ms. Turner in her capacity as co-holder of the power-of-attorney for Mrs. Stevenson, the beneficiary of the two trusts. Based on my review of the information and facts above, Ms. Kerrison and Dixon-Hughes, PLLC were negligent in failing to give such notice.
12. Further affiant sayeth not.


George W. DuRant

Sworn and Subscribed before me

this 11 day of May, 2009.

 , L.S.

Notary Public for the State of South Carolina

My commission expires: April 7, 2019

George W. DuRant, CPA/ABV, ASA
Curriculum Vitae

CONTACT

Business address: 4408 Forest Drive, Columbia, South Carolina 29206
Telephone: Business (803) 790-0020; Fax (803) 790-0011; Home (803) 788-6476

EDUCATION

Bachelor of Science in Business Administration, Accounting, Cum Laude, University of South Carolina, 1973:

EMPLOYMENT

December 1973 - December 1977 staff accountant with Derrick, Stubbs & Stith, CPAs; Columbia, South Carolina. January 1978 - December 2007, partner DuRant, Schraibman & Lindsay, CPAs (formerly DuRant & Company and Flynt, DuRant & Company). January 2008 - December 31, 2008 member, Sellars, DuRant, Schraibman, Lindsay & Cole, LLC. January 1, 2009 - member, DuRant, Schraibman & Lindsay, LLC.

PROFESSIONAL INVOLVEMENT

CPA, Certified Public Accountant (1975); member of the American Institute of Certified Public Accountants, the South Carolina Association of Certified Public Accountants, and the Central Chapter of the South Carolina Association of Certified Public Accountants. Past president, vice president, secretary and treasurer of the Central Chapter of the South Carolina Association of Certified Public Accountants.

ABV, Accredited in Business Valuation, American Institute of Certified Public Accountants (1998). Chairman, 2002 and 2003 Business Valuation & Litigation Services Committee, South Carolina Association of Certified Public Accountants, Member 2004-2005 Business Valuation & Litigation Services Committee, South Carolina Association of Certified Public Accountants, Member 2006-2008 Forensic & Litigation Services Task Force, South Carolina Association of Certified Public Accountants, Member 2009 Business Valuation and Forensic & Litigation Services Task Forces, South Carolina Association of Certified Public Accountants

ASA, Accredited Senior Appraiser (Business Valuation) American Society of Appraisers (1998). President South Carolina Chapter of American Society of Appraisers (2001-2003). Secretary South Carolina Chapter of American Society of Appraisers (2000-2001).

CFF, Certified in Financial Forensics, American Institute of Certified Public Accountants (2009).

Past Chairman Columbia Tax Study Group

Treasurer, NAMI Mid-Carolina (2004-2008)

AUTHOR

George W. DuRant and Robert F. Anderson, Esq., *Look Before You Leap: Bankruptcy Tax Planning*, South Carolina Lawyer, Volume 4, Number 1, July/August 1992, pp. 32-35.

George W. DuRant and Frederick A. Crawford, Esq., *Appeals Court Weighs in on Stock Valuation* South Carolina Lawyer, Volume 11, Number 5, March/April 2000, pp. 14-18.

George W. DuRant and John O. McDougall, Esq., *Business Valuation in Family Court*, South Carolina Lawyer, Volume 13, Number 2, September/October 2001, pp. 15-17.

George W. DuRant and Robert E. Faulkner, *Family Limited Partnerships, Valuation Discounts, Is 30% About Right?*, The CPA Report, published by the SC Association of CPAs, October 2001, page 12.

Author of *Business Value*, a quarterly newsletter published by DuRant, Schraibman & Lindsay, CPAs focused upon business valuation issues (publication discontinued).

George W. DuRant, *Credibility*, The CPA Report, published by the SC Association of CPAs, April 2002, page 11.

George W. DuRant, *Deadlock*, The CPA Report, published by the SC Association of CPAs, August 2003, page 9.

George W. DuRant, *Goodwill at Divorce* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

George W. DuRant, *Professional Ethics for the CPA Expert Witness* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

George W. DuRant, *Calculating Lost Profits* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

Goodwill in Divorce, Family Law: Helping your Clients Through Difficult Cases, National Business Institute (NBI), December 3, 2007, Columbia, South Carolina.

Business Valuation and Forensic Accounting, National Business Institute (NBI), May 4, 2009, Columbia, South Carolina.

SPEAKING

Valuation of Business Interests in South Carolina Family Courts, CLE program delivered November 30, 1995, Columbia, South Carolina.

Discount for Lack of Marketability - Bernard Mandlebaum et al v. Commissioner T.C. Memo 1995-255, Presented to the Columbia Tax Study Group, May 21, 1996

Welfare-to-work Income Tax Credit, Representing Small Businesses - Keys for Success, South Carolina Bar's continuing legal education seminar, August 14, 1998.

FLP Valuations, Columbia Tax Study Group, December 8, 1998.

Income Tax & Divorce, Family Court Civil Mediation Training, June 28, 1999.

Facing the Daubert Challenge, American Society of Appraisers, Chapter 112, May 10,

2000.

Income Tax & Divorce, Family Court Civil Mediation Training, May 26, 2000.

Selected Income Tax Rules Applicable To Alimony, Child Support & Property Tax Settlement Payments, Family Court Mediation Training, November 16, 2000.

Valuation Discounts—Is 30% About Right? Columbia Tax Study Group, November 21, 2000.

Income Tax & Divorce, Family Court Civil Mediation Training, April 13, 2001.

IRC §2036 FLP Sins of Omission and Commission, Columbia Tax Study Group, January 21, 2003.

Understanding Business Valuation in South Carolina: Just the Basics, Lorman Education Services, July 8, 2004.

Panel, South Carolina Association of CPAs Litigation Conference, Columbia, South Carolina, September 16, 2004.

Lawyer Trust Accounts, with Desa Ballard, Esq. and S. Harrison Saunders, Esq., South Carolina Bar, Sidebar Video Presentation, November 6, 2006.

Preparing the Expert Witness: Panel Discussion, South Carolina Bar / South Carolina Association of CPAs, Litigation Conference, *The Truth About Opinions: What CPA's and Attorneys Need to Know About Expert Witnesses*, November 21, 2006.

Successful Financial Settlements for Your Divorce Clients, Forensic Accounting and Valuation in Divorce, National Business Institute, May 11, 2007.

Business Valuation Panel Discussion, with the Honorable Timothy Brown, the Honorable Mikell Scarborough, Jim Joyner, III, CPA, Jim Ewart, CPA, and Catherine Stoddard, CPA, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Professional Ethics for the CPA Expert Witness, panel discussion with Professor John Freeman, A. Camden Lewis, Esquire, Patrice Viton, CPA, and Catherine Stoddard, CPA, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Calculating Lost Profits, co-presenter with A. Camden Lewis, Esquire, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Goodwill in Divorce, Family Law: Helping your Clients Through Difficult Cases, National Business Institute (NBI), December 3, 2007, Columbia, South Carolina.

Business Valuation and Forensic Accounting, National Business Institute (NBI), May 4, 2009, Columbia, South Carolina.

TRIAL TESTIMONY

In re Rochele Banks, 1998 United States Bankruptcy Court, Columbia, South Carolina. Issue: Concealment of Assets.

In re Southern Textile Knitters. Case No. 98-07203 W. January 2000. United States Bankruptcy Court, Columbia, South Carolina. Issues: Misappropriation of assets, insolvency, preferential transfers, fraudulent transfers.

In re Paul V. Fitch and Southern Nurseries, Inc., United States Bankruptcy Court, Columbia, South Carolina Issue: insolvency and adequacy of records.

Anna Newsom v. South Carolina Department of Highways & Public Transportation. Richland County Court of Common Pleas, Case No. 92-CP-40-4850. Issue: Personal injury damage valuation.

Melvin H. Maynard v. Ben Arnold-Heritage Beverage Co. et al, Horry County Civil Action No. 95-CP-26-1217. Issue: Personal injury damage valuation.

In re Plantation Ford Tractor, Inc. United States District Court, Charleston, South Carolina. Issue: Insolvency and under capitalization of corporate debtor.

William P. Hatfield, Individually and on Behalf of the Hyman Law Firm v. Susan F. Van Epps, 99-CP-21-11, Florence County Court of Common Pleas, October 2001. Issue: Valuation of an interest in a medical professional association.

Young v. Roger Pack, Copier Masters, Inc. and Little Bucks, Inc. Civil Action No. 00-CP-40-3171. Richland County Court of Common Pleas, July 16, 2002. Issue: Valuation of 40% interest in S corporation.

Bryce N. Brown et al v. Woodside Development Limited Partnership et al. Civil Action No. 1:01-2568-22. United States District Court for the District of South Carolina, Aiken Division. August 29, 2002. Forensic Accounting. Testimony on behalf of the plaintiff, represented by Richard A. Harpootlian, Esquire. Carl Epps, Esquire for the defense.

W. James Kitchens, W. James Kitchens, Jr. and Weathers Family Investments, LLC, f/k/a Weathers Family Investment Partnership v. Matthew Iovanna and Crescent Capital, Inc. Arbitration before the Honorable Henry McKellar, Richland County, South Carolina. December 2002. Accounting for partnership allocations and distributions.

Shelley v. Shelley. Richland County Family Court. Forensic Accounting. May 2003.

Lenny Ivans v. WPSH, Inc., Don Corey, John Grue, and Golden Eagle Trading Company, S.A. County of Chesterfield in the Court of Common Pleas #01-CP-13-130 Issue: Lost Profits arising from breach of supply contract; March 26, 2003. Testimony on behalf of the plaintiff, represented by Keith M. Babcock, Esquire. Harry A. Swagart, III, Esquire on behalf of the defendant. Judge James E. Lockemy. December 2004.

Martha Ward, on behalf of herself and all others similarly situated v. Dixie National Life Insurance Company, National Foundation Life Insurance Company, United States District Court for the District of South Carolina, Columbia Division, December 8, 2008 in front of the Honorable Joseph Anderson. Accounting and audit sampling testimony on behalf of the plaintiff class, represented by Richard A. Harpootlian. Opposing counsel: J. Calhoun Watson, Sowell, Gray, Stepp & Laffitte, LLC.

William F. Tomz and Frances W. Tomz individually and as Class Representatives v. Capital Investment Funding, LLC and Arthur M. Field, Case No. 2008-CP-23-03665,

Greenville Court of Common Pleas; December 30, 2008. Insolvency and conflicts of interest considerations in appointment of a receiver for an LLC on behalf of the plaintiff class, represented by Gene Connell, Esquire.

DEPOSITION TESTIMONY

Pulliam Investment Company, Inc. v Cameo Properties, Banner Equities, Inc. et al United States District Court, Spartanburg Division, CA 7-85-683-3. Issue: residential real estate proforma; May 8, 1987. Testimony on behalf of the defendant, represented by Manton M. Grier, Esquire. Deposition taken by James C. Cothran, Jr. Esquire on behalf of the plaintiff.

East Richland Public Service Authority v. Wildewood Utilities. Issue: Valuation of 100% control interest in private water and sewer treatment plant (condemnation).

City of Columbia v. Midlands Utility, Inc., Richland County Court of Common Pleas # 87-CP-40-6364. Issue: value of 100% control interest in private water and sewer treatment plant (condemnation); November 11, 1988. Testimony on behalf of the defendant, represented by Mollie K. Dupriest, Esquire. Deposition taken by James S. Meggs, Esquire on behalf of the plaintiff.

FDIC v. Conco/Brinkcraft JV, et al. Evaluation of reorganization plan and valuation of proposed securities with regard to residential rental condominiums located in Dallas, Texas.

Lexington State Bank v. Ralph Wasson, Sr. Richland County Civil Action No. 93-CP-32-1569 Wasson Pontiac-GMC, Inc. Valuation of automobile dealership as of December 31, 1988. Testimony on behalf of the defendant, represented by Harry M. Swagart, Esquire.

Cousins v. Cousins, Newberry County Case No. 89-CP-36-322. Opinion as to fair market value of grain/farm products business and business segments located in Newberry, South Carolina.

In re Southco, Inc., U.S. Bankruptcy Court. Issue: insolvency.

Gaines W. Hammond, M.D. v. Butler, Means, Evins & Browne et al County of Spartanburg in the Court of Common Pleas #92-CP-42-574. Issue: value of minority interest in start up medical technology venture, May 12, 1992. Testimony on behalf of the plaintiff, represented by A. Camden Lewis, Esquire. Deposition taken by Ellis M. Johnson, II, Esquire on behalf of the defendants.

Pen Pals, Inc. v. James H. Farrow, Jr., Crouch Construction Company & M.A. Robitsky Construction Co., Inc., Richland County Court of Common Pleas No. 91-CP-32-3054. Issue: lost profits; July 29, 1993. Testimony on behalf of the plaintiff, represented by Edward D. Barnhill, Jr., Esquire. Deposition taken by James L. Bruner, Esquire.

Thomas Hearon v. Widewater Square Associates – 84, Richland County Court of Common Pleas #92-CP-40-2232. Issue: partnership accounting, September 15, 1993. Testimony on behalf of the plaintiff, represented by William R. Calhoun, Jr., Esquire. Deposition taken by Harry M. Swagart, Esquire and John P. Freeman, Esquire.

Carl H. Almond v. Arthur M. Swanson et al. Richland County Court of Common Pleas No. 94-CP-40-0164. Issue: Business Valuation; June 6, 1996. Testimony on behalf of the plaintiff, represented by Anne D. Zuckerman, Esquire. Deposition taken by Robert Y. Knowlton, Esquire on behalf of the defendants.

Della McElveen v. Leland J. McElveen, Richland County Family Court C.A. No.: 94-DR-40-5024. Issue: Valuation of a one-ninth interest in a medical professional association; June 13, 1996. Testimony on behalf of the defendant, represented by J. Mark Taylor, Esquire. Deposition taken by James T. McLaren, Esquire on behalf of the plaintiff.

TLC Home Health v. Medshares Management Services, Inc. United States Bankruptcy Court for the District of South Carolina, Case No. 97-11095-W. Issue: valuation of a home health company, July 27, 1999. Testimony on behalf of the plaintiff, represented by Barry L. Johnson, Esquire. Deposition taken by Julio E. Mendoza, Jr. Esquire on behalf of the defendant.

In re Southern Textile Knitters, Robert F. Anderson, Trustee v. Simchon et al United States Bankruptcy Court for the District of South Carolina, Case No. 98-07203 W. Issues: Preferential and fraudulent transfers, May 25, 1999; October 4-5, 1999. Testimony on behalf of the plaintiff, represented by H. Flynn Griffin, Esquire. Deposition taken by Richard R. Gleissner, Esquire and Michael M. Beal, Esquire on behalf of the defendants.

John L. Linnerud v. Timmothy L. Cantrell, and Royce D. Camp and R. Ray Dennis. County of Spartanburg in the Court of Common Pleas #2000-CP-42-1982. Issue: Valuation of a 20% membership interest. August 15, 2001. Testimony on behalf of the plaintiff, represented by Thomas H. Pope, III, Esquire. Deposition taken by Steven E. Farrar, Esquire and Michael S. Pitts, Esquire representing the defendants.

Michael Derrick Shelley v. Judy Butler Shelley. Richland County Court of Common Pleas #C/A No. 01-DR-40-4247. Forensic Accounting relating to husband's continuing ability to pay alimony; February 26, 2003. Testimony on behalf of wife, represented by Kathyne Ann Shelton, Esquire. Deposition taken by Yulee E. Harrelson, Esquire on behalf of the husband.

Lenny Ivans v. WPSH, Inc., Don Corey, John Grue, and Golden Eagle Trading Company, S.A. County of Chesterfield in the Court of Common Pleas #01-CP-13-130 Issue: Lost Profits arising from breach of supply contract; March 26, 2003. Testimony on behalf of the plaintiff, represented by Keith M. Babcock, Esquire. Deposition taken by Harry A. Swagart, III, Esquire on behalf of the defendant.

Anonymous Taxpayers v. South Carolina Department of Revenue, Administrative Law Judge Division, Docket No. 01-ALJ-17-0227-CC. Issue: economic impact of 1989 change in taxability of South Carolina Retirement System benefits; April 29, 2003. Testimony on behalf of petitioner, represented by A. Camden Lewis, Esquire. Deposition taken by Vance J. Bettis, Esquire on behalf of the respondent.

NSN Machining Co., Inc. v. Meritor Heavy Vehicle Systems, LLC., Arvin Meritor, Inc. United States District Court, SC Case No.: 7:02-3238. January 23, 2004. Lost Profits arising from breach of supply agreement.

Nicole Ohrin v. Scott Middleton and Agape Assisted Living, Inc. et. al. Case No. 03-CP-

32-2938: November 2004: Insolvency.

Carter v. Steedley Cynthia A. Carter and Melissa Carter Coursen, as beneficiaries of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78, Testamentary Trust U/W Dorothy A. Carter Dated 2/26/98, v. W. Mark Steedley, McLain, Moise & Associates, PC; Robert Moise; Edisto Beach Land Development, L.L.C.; The Retreat at Edisto, L.L.C.; The Southeastern Trust Company and Branch Banking and Trust Company of South Carolina, Successor in Interest by Merger to Southeastern Trust Company, as personal representatives of the Estate of Dorothy A. Carter, deceased, and as trustees of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78, and John T. Black, Jr., individually and as personal representative of the Estate of Dorothy A. Carter, deceased, and as Trustee of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78; The Atwood Agency, Inc.; James K. Kuyk; and Grant, Kuyk & Rogers, P.C., Colleton County Court of Common Pleas; Civil Action No. 02-CP-15-494; Civil Action No. 02-CP-15-471. Testimony on behalf of plaintiffs regarding accounting malpractice, valuation of interest in LLC owning resort real estate. Plaintiffs represented by L. Henry McKellar, Esq., Charles W. Whetstone, Jr., Esq., and John Eric Fulda, Esq. Deposition taken on August 17, 2005 by John C. Moylan, III, Esq.

In re: HomeGold Financial, Inc. (Case No.: 03-03865-B), HomeGold, Inc. (Case No.: 03-03864-B), Carolina Investors, Inc. (Case No.: 03-04409-B) Debtors; Ralph C. McCullough, II As Trustee for the Estate of HomeGold Financial, Inc. HomeGold, Inc. and Carolina Investors, Inc. vs. USA Digital Communications, Inc. Adv. Pro. No. 05-80065-B. Testimony on behalf of the defendant regarding ordinary course of business and new value defense in preferential and fraudulent transfer recovery action. Plaintiff represented by Richard R. Gleissner, Esq. and Michael Brown, Esq. of Finkel & Altman; defendant represented by Robert F. Anderson, Esq. October 3, 2005.

Georgetown Steel Company, LLC, Debtor; David O. Shelley as Liquidating Trustee for the Georgetown Steel Company, LLC Liquidating Trust, Plaintiff v. Stahl, Inc. Case No. 03-13156-W; Adversary No. 05-80218-W. Testimony on behalf of the defendant regarding ordinary course of business and contemporaneous exchange for new value defenses in preferential transfer recovery action. Plaintiff represented by Michael Beale, Esq. of McNair Law Firm; defendant represented by Robert F. Anderson, Esq. May 3, 2006.

QZO, Inc. d/b/a Palmetto Ambulance Service v. Cherry Bekaert & Holland, LLP, Larson Allen - Cherry Bekaert, LLP, Elizabeth Menger, and Mickey Smith Case No. 05-CP-02-40. Testimony on behalf of the plaintiff regarding accounting malpractice, breach of CPAs' duty to avoid conflicts of interest and duty to maintain confidentiality. Plaintiff represented by Blaney Coskrey. Defendant represented by Paul Childers and Steve Farrar. June 9, 2006.

Caterpillar, Inc. v. J. Garner Scott, Individually and as Trustee for the Jacqueline Marie Scott Trust, the James Garner Scott Trust, the Stephen Matthew Scott Trust, the Christine Ann Scott Trust, and Robert Young, as Trustee for the Manhattan Trust Civil Action No. 3:04-21789-17 United States District Court, District of South Carolina, Columbia Division. Testimony on behalf of the plaintiff regarding generally accepted accounting

principles, breach of contract, damages related to breach. Counsel for plaintiff: W. Francis Marion, Esq., Haynesworth, Sinkler & Boyd, P.A., Greenville, South Carolina. Counsel for defendants: Keith M. Babcock, Esq. Lewis & Babcock, LLP, Columbia, South Carolina. October 5, 2006.

Harris Teeter, Inc. v. Moore & Van Allen, PLLC. Civil Action No. 05-CP-10-2902. Testimony on behalf of the plaintiff, represented by Mary G. Lewis, Esq., Lewis & Babcock, LLP. Damage calculation based on economic difference between real estate leases, discounted rent differential. Counsel for defendant: Clayton B. McCullough, Esq., Pratt-Thomas, Epting & Walker, P.A. February 12, 2007.

Harris Teeter, Inc. v. McNair Law Firm, P.A. Civil Action No. 2006-CP-10-1169. Testimony on behalf of the plaintiff, represented by Mary G. Lewis, Esq., Lewis & Babcock, LLP. Damage calculation based on economic difference between real estate leases, discounted rent differential. Counsel for defendant: Robert Stepp, Esq., Sowell Gray Stepp & Laffitte, LLC. June 14, 2007.

Stephen Anyar, M.D. v. Greenville Hospital System, et al., Greenville County Civil Action 2003-CP-23-3706. Testimony on behalf of the plaintiff, represented by L. Henry McKellar, Esquire. Calculation of lost earnings. Counsel for defendants, Matthew P. Utecht, Esquire. February 24, 2009.

T. Alexander Beard v. Christa M. Dunn and Dixon Hughes, PLLC, Berkeley County C/A No.: 2007-CP-08-2271. Testimony on behalf of the plaintiff, pro se. Accountant's Standard of Care. May 5, 2009. Defendant's counsel Frederick K. Sharpless, Esquire, Greensboro, N.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE PROBATE COURT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Case No.: 2007-ES10-1437

Case No.: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K. Stevenson,

Plaintiffs,

vs.

T. Heyward Carter, Jr.; Evans, Carter, Kunes
& Bennett, P.A.; Douglas Capital Management,
Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb
& Co., P.A.; and Lynne L. Kerrison,

Defendants.

**ANSWER OF DEFENDANTS
T. HEYWARD CARTER, JR.
AND EVANS, CARTER, KUNES &
BENNETT, P.A.**

Defendants T. Heyward Carter, Jr. ("Carter"), and Evans, Carter, Kunes & Bennett, P.A.
(the "Law Firm") (together, "Defendants"), by and through their undersigned counsel, answer
the Complaint filed by Plaintiffs as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Complaint not hereinafter specifically admitted is denied
and strict proof thereof is demanded.

AS TO THE PARTIES/JURISDICTION/VENUE

1. Defendants admit, upon information and belief, the allegations contained in
Paragraph 1 of the Complaint.

2. Defendants admit, upon information and belief, the allegations contained in Paragraph 2 of the Complaint.

3. Defendants admit, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in the first sentence of Paragraph 4 of the Complaint. Responding to the second sentence of Paragraph 4, Defendants admit only that Carter represented Jacqueline K. Stevenson in connection with the preparation of her will and certain estate planning matters; any and all remaining allegations are denied.

5. Defendants admit the allegations contained in the first sentence of Paragraph 5 of the Complaint. Responding to the remaining allegations of Paragraph 5, Defendants admit only that Carter is a shareholder of the Law Firm; Defendants deny any implication of liability to Plaintiffs and deny any and all remaining allegations.

6. The allegations contained in Paragraph 6 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 6 and admit, upon information and belief, the allegations contained in the second sentence of Paragraph 6.

7. The allegations contained in Paragraph 7 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants admit, upon information and belief, only that Lynne L. Kerrison was an accountant for Jacquelin K. Stevenson and/or the subject trust. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.

8. The allegations contained in Paragraph 8 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is

required, Defendants admit, upon information and belief, only that Lynne L. Kerrison is a director at Dixon Hughes, PLLC. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8.

9. Paragraph 9 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit the allegations contained in Paragraph 9.

10. Paragraph 10 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that this Court has subject matter jurisdiction to the extent set forth in the South Carolina Code.

AS TO THE FACTUAL BACKGROUND

11. Responding to Paragraph 11 of the Complaint, Defendants crave reference to the documents referenced therein, which speak for themselves, and deny any and all allegations not fully consistent with the terms thereof.

12. Responding to Paragraph 12 of the Complaint, Defendants crave reference to the document referenced therein, which speaks for itself, and deny any and all allegations not fully consistent with the terms thereof.

13. Responding to Paragraph 13 of the Complaint, Defendants crave reference to the document referenced therein, which speaks for itself, and deny any and all allegations not fully consistent with the terms thereof.

14. Responding to Paragraph 14 of the Complaint, Defendants crave reference to the document referenced therein, which speaks for itself, and deny any and all allegations not fully consistent with the terms thereof.

15. Responding to Paragraph 15 of the Complaint, Defendants crave reference to the document referenced therein, which speaks for itself, and deny any and all allegations not fully consistent with the terms thereof.

16. Responding to the first sentence of Paragraph 16 of the Complaint, Defendants crave reference to the document referenced therein, which speaks for itself, and deny any and all allegations not fully consistent with the terms thereof. Defendants admit, upon information and belief, the allegations contained in the second sentence of Paragraph 16.

17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

18. Responding to Paragraph 18 of the Complaint, Defendants crave reference to the documents referenced therein, which speak for themselves, and deny any and all allegations not fully consistent with the terms thereof.

19. Responding to Paragraph 19 of the Complaint, Defendants admit only that, at certain times, Kathleen S. Turner and Daniel R. Stevenson held a durable power-of-attorney for Jacquelin K. Stevenson; any and all remaining allegations are denied.

20. Responding to Paragraph 20 of the Complaint, Defendants admit, upon information and belief, only that Thomas C. Stevenson III and Daniel R. Stevenson engaged in certain improper conduct with respect to their roles as trustees of the subject trusts; any and all remaining allegations are denied.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Paragraph 22 of the Complaint is so vague that Defendants cannot reasonably be required to provide a response. To the extent a response is required, Defendants admit only that Thomas C. Stevenson III and Daniel R. Stevenson withdrew certain monies from the subject trusts during their tenure as co-trustees; any and all remaining allegations are denied.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint, and, therefore, deny the allegations.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint; and, therefore, deny the allegations.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. The allegations contained in Paragraph 26 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations, and, therefore, deny the allegations.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations, and, therefore, deny the allegations.

AS TO THE FIRST CAUSE OF ACTION

29. Responding to Paragraph 29 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

30. Responding to the allegations contained in Paragraph 30 of the complaint, Defendants admit that Carter represented Jacqueline K. Stephenson in connection with the preparation of her will and certain estate planning matters; any and all remaining allegations are denied.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION

33. Responding to Paragraph 33 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION

38. Responding to Paragraph 38 of the complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

39. The allegations contained in Paragraph 39 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

40. The allegations contained in Paragraph 40 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

41. The allegations contained in Paragraph 41 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

AS TO THE FOURTH CAUSE OF ACTION

42. Responding to Paragraph 42 of the complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

43. The allegations contained in Paragraph 43 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants admit, upon information and belief, the allegations contained in Paragraph 43 of the Complaint.

44. The allegations contained in Paragraph 44 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

45. The allegations contained in Paragraph 45 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

AS TO THE FIFTH CAUSE OF ACTION

46. Responding to Paragraph 46 of the complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

47. The allegations contained in Paragraph 47 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

48. The allegations contained in Paragraph 48 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is

required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

49. The allegations contained in Paragraph 49 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

50. The allegations contained in Paragraph 50 of the Complaint are not directed to these Defendants and require no response by these Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

51. Defendants deny that Plaintiffs are entitled to the relief requested in the final paragraph of the Complaint beginning with "WHEREFORE," and further deny that Plaintiffs are entitled to relief, in any form, from these Defendants.

FOR A SECOND DEFENSE
(Failure to State a Claim)

52. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE
(Lack of Standing)

53. Some or all of Plaintiffs lack standing to assert the claims alleged in the Complaint against these Defendants.

FOR A FOURTH DEFENSE
(Statute of Limitations)

54. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A FIFTH DEFENSE
(Waiver and/or Estoppel)

55. Plaintiffs' claims are barred, either in whole or in part, by the doctrines of waiver and/or estoppel.

FOR A SIXTH DEFENSE
(Judicial Estoppel)

56. Plaintiffs' claims are barred, either in whole or in part, by the doctrine of judicial estoppel.

FOR A SEVENTH DEFENSE
(Negligence/Wrongful Conduct of Others)

57. Plaintiffs' claims are barred because any damages suffered by Plaintiffs, which are denied, are solely due to and caused by the negligence, recklessness, carelessness, willfulness, and/or wantonness of parties, persons or entities other than these Defendants, over whom these Defendants had no control.

FOR AN EIGHTH DEFENSE
(Intervening/Superseding Acts)

58. Any damages sustained by Plaintiffs, which are denied, are solely caused by the acts or omissions of parties or persons other than Defendants, over whom these Defendants had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiffs' alleged damages, if any, which are denied, and bar Plaintiffs' claims against these Defendants.

FOR A NINTH DEFENSE
(Comparative Negligence)

59. Defendants would allege and show that even if Defendants were negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Defendants, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein

pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Defendants, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A TENTH DEFENSE
(Failure to Mitigate)

60. Plaintiffs have a legal obligation to mitigate the damages they claim, which are denied, and to the extent that they have failed to do so, their claims are barred, in whole or in part.

FOR AN ELEVENTH DEFENSE
(Off-set)

61. Defendants are entitled to an off-set or credit in the amount of any settlement, compromise or judgment previously or subsequently reached by Plaintiffs with any other person for any of the alleged injuries or damages sought herein.

FOR A TWELFTH DEFENSE
(No Double Recovery)

62. There can be no double recovery for any alleged injury. To the extent that some or all of Plaintiffs' claimed damages have been compensated, remediated, covered, or otherwise negotiated, Plaintiffs are barred from seeking further recovery herein.

FOR A THIRTEENTH DEFENSE
(Speculative Damages)

63. The damages alleged by Plaintiffs, which are denied, are entirely speculative in nature and cannot form the basis for recovery against Defendants.

FOR A FOURTEENTH DEFENSE
(Ripeness)

64. Some or all of Plaintiffs' claims are not ripe for determination and, therefore, should be dismissed.

FOR A FIFTEENTH DEFENSE
(Lack of Privity)

65. Plaintiffs' claims fail due to the lack of privity with these Defendants.

FOR A SIXTEENTH DEFENSE
(Abatement)

66. Plaintiffs' claims are barred to the extent that they did not survive the death of Jacquelin K. Stevenson.

FOR A SEVENTEENTH DEFENSE
(Closed Estate)

67. The Estate of Thomas C. Stevenson is closed and, therefore, any claims filed in Case No. 1988-ES10-00747 are barred.

FOR AN EIGHTEENTH DEFENSE
(Unclean Hands)

68. Plaintiffs' claims may be barred in whole or in part by the doctrine of unclean hands.

FOR A NINETEENTH DEFENSE
(Incorporation of Other Defenses)

69. Defendants hereby incorporate the defenses of any other Defendants to the extent said defenses may be applicable to these Defendants.

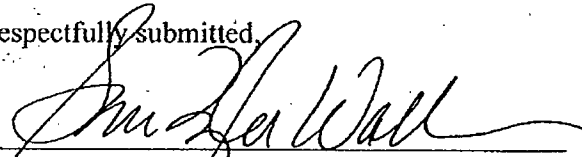
FOR A TWENTIETH DEFENSE
(Reservation of Rights)

70. Defendants hereby give notice that they reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired

during discovery or otherwise and reserve the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray that this action be dismissed with prejudice and that Plaintiffs have and recover nothing by reason of the Complaint; that the Court award Defendants their reasonable costs incurred as a result of this action; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Susan Taylor Wall

Email: susanwall@parkerpoe.com

J.W. Nelson Chandler

Email: nelsonchandler@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

Phone: 843-727-2650

Fax: 843-727-2680

ATTORNEYS FOR DEFENDANTS

T. HEYWARD CARTER, JR. AND EVANS,

CARTER KUNES & BENNETT, P.A.

August 5, 2009

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K.
Stevenson, Deceased and the Estate of
Thomas C. Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

**ANSWER OF DEFENDANTS LYNNE
KERRISON AND DIXON HUGHES**

Defendants Lynne Kerrison and Dixon-Hughes respond to the plaintiffs'
complaint as follows:

PARTIES/JURISDICTION/VENUE

1. Admitted on information and belief that plaintiff Jacquelin Bennett is a citizen and resident of Charleston County, South Carolina, is currently a residual beneficiary of the marital trust and currently a residual beneficiary of the "QTIP" trust.
Otherwise denied for lack of information sufficient to form a belief.

2. Admitted on information and belief that plaintiff Kathleen Turner is a citizen and resident of Charleston County, South Carolina, is currently a residual beneficiary of the marital trust and is currently a residual beneficiary of the "QTIP" trust. Otherwise denied for lack of information sufficient to form a belief.
3. Admitted on information and belief that plaintiff Genevieve S. Felder is a citizen and resident of Williamsburg County, South Carolina and is currently a residual beneficiary of the marital trust and currently a residual beneficiary of the "QTIP" trust. Otherwise denied for lack of information sufficient to form a belief.
4. Admitted on information and belief that Heyward Carter is a citizen and resident of Charleston County South Carolina, and admitted he is the former lawyer for Jacquelin K. Stevenson. The allegation that Mr. Carter was a "fiduciary" for the two subject trusts and Jacquelin Stevenson is a conclusion of law to which no answer is required, but, to the extent an answer is required, it is denied for lack of information sufficient to form a belief. All other allegations are denied for lack of information sufficient to form a belief.
5. Admitted on information and belief that Defendant Evans, Carter, Kunes & Bennett, P.A. is a professional association organized and existing under the laws of the State of South Carolina and that Defendant Carter is a member of the Defendant Carter Law Firm. The allegation that the "Defendant Carter Law Firm is responsible for all actions of Defendant Carter" is a conclusion of law to which no response is required but to the extent a response is required, it is denied for lack of information sufficient to form a belief.
6. Admitted on information and belief.
7. Admitted that Lynne Kerrison is a citizen and resident of Charleston County, South Carolina. Admitted that defendant Kerrison formerly provided accounting services to Jacquelin K. Stevenson and that she provided services, at the request of the trustees, related to the two subject trusts. Otherwise denied.

8. Admitted that Dixon Hughes, PLLC is an accounting firm organized and existing under the laws of the State of North Carolina doing business in the State of South Carolina. Denied that it was formerly known as or that it succeeded to the assets or liabilities of Pratt-Thomas Gumb & Co., P.A., which, on information and belief still exists. Admitted that defendant Kerrison is a member of Dixon-Hughes. The allegation that the "Defendant Dixon-Hughes is responsible for all actions of Defendant Kerrison" is denied with respect to any incidents occurring before November 1, 2006. The allegation is admitted with respect to any act in the course and scope of Ms. Kerrison's work with Dixon-Hughes, PLLC, which began November 1, 2006.
9. Admitted.
10. Admitted.

FACTUAL BACKGROUND

11. Admitted that Jacquelin S. Bennett, Genevieve S. Felder, Kathleen S. Turner, Thomas Stevenson, III and Daniel R. Stevenson, II are beneficiaries of their late father, Thomas C. Stevenson, Jr. Otherwise, denied for lack of information sufficient to form a belief.
12. Admitted.
13. Admitted.
14. Denied for lack of information sufficient to form a belief.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted that Jacquelin Bennett, Genevieve Felder, and Kathleen Turner are now three of the beneficiaries of the Marital and QTIP trusts. Otherwise, denied for lack of information sufficient to form a belief.

19. Admitted upon information and belief that Kathleen Turner and Daniel Stevenson held powers of attorney for Jacquelin Stevenson in 2001. Otherwise, denied for lack of information sufficient to form a belief.
20. Admitted that during their time as co-trustees, both Thomas C. Stevenson, III and Daniel R. Stevenson, II each received money from the marital trust and QTIP trust. The allegation that during "Thomas Stevenson and Daniel Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, QTIP Trust, and the Estate of Jacquelin K. Stevenson" is a conclusion of law to which no response is required, but to the extent a response is required, it is denied for lack of information sufficient to form a belief. Denied for lack of information sufficient to form a belief as to the estate.
21. Denied as to defendants Kerrison and Dixon-Hughes. Otherwise denied for lack of information sufficient to form a belief.
22. Denied that defendants Kerrison and Dixon-Hughes had knowledge of "improper self-dealing withdrawals." Admitted that, at some point during the relevant period, Defendant Kerrison had knowledge of monies received from the marital and QTIP trusts by Thomas Stevenson and Daniel Stevenson and informed Defendant Carter of the same. Otherwise, denied for lack of information sufficient to form a belief.
23. Denied.
24. Denied for lack of information sufficient to form a belief.
25. Denied as to defendants Kerrison and Dixon-Hughes. Otherwise, denied for lack of information sufficient to form a belief.
26. Denied that a conflict of interest existed. Otherwise, denied for lack of information sufficient to form a belief.

27. Denied that plaintiffs suffered any damages as a result of the actions or omissions of defendants Kerrison and Dixon-Hughes. Otherwise, denied for lack of information sufficient to form a belief.
28. Denied. The statute of limitations expired prior to the filing of this lawsuit.

FIRST CAUSE OF ACTION

(Professional Negligence as to Defendant Carter and Defendant Carter Law Firm)

29. The responses to paragraphs 1 through 28 are incorporated by reference.
30. Admitted as to Jacquelin K. Stevenson. Otherwise, denied for lack of information sufficient to form a belief.
31. The allegation that defendants Carter and Carter law firm breached the standard of care owed to the subject trusts and Jacquelin K. Stevenson by failing to inform the plaintiffs of "the improper self-dealing withdrawals known to these defendants" is a conclusion of law to which no response is required, but to the extent a response is required, it is denied for lack of information sufficient to form a belief.
32. Denied for lack of information sufficient to form a belief.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Carter and Defendant Carter Law Firm)

33. The responses to paragraphs 1 through 32 are incorporated by reference.
34. Admitted that defendants Carter and Carter Law Firm were in an attorney-client relationship with Jacquelin K. Stevenson and, as such, owed to Jacquelin K. Stevenson all of the duties and loyalties pursuant to the attorney-client relationship. Otherwise denied for lack of information sufficient to form a belief.
35. Admitted that defendants Carter and Carter Law Firm owed all the duties and loyalties incident to the attorney client relationship. Otherwise denied for lack of information sufficient to form a belief.

36. Denied for lack of information sufficient to form a belief.

37. Denied for lack of information sufficient to form a belief.

**THIRD CAUSE OF ACTION
(Negligence as to Defendant Douglas Capital)**

38. The responses to paragraphs 1 through 37 are incorporated by reference.

39. Admitted that Douglas Capital served as investment advisors for Jacquelin Stevenson and the two subject trusts. Otherwise, denied for lack of information sufficient to form a belief.

40. Denied for lack of information sufficient to form a belief.

41. Denied for lack of information sufficient to form a belief.

**FOURTH CAUSE OF ACTION
(Professional Negligence as to Defendant Kerrison
and Defendant Dixon-Hughes)**

42. The responses to paragraphs 1 through 41 are incorporated by reference.

43. Admitted.

44. Denied.

45. Denied.

**FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Kerrison
and Defendant Dixon-Hughes)**

46. The responses to paragraphs 1 through 45 are incorporated by reference.

47. Paragraph 47 states a conclusion of law. Defendants admit that they performed accounting services for the benefit of the subject trusts and Jacquelin K. Stevenson and had those duties towards the subject trusts and Jacquelin K. Stevenson that they undertook contractually, and that are implied by law. Otherwise denied.

48. Paragraph 48 states a conclusion of law. Defendants admit that they performed accounting services for the benefit of the subject trusts and Jacquelin K.

Stevenson and had those duties towards the subject trusts and Jacquelin K.

Stevenson that they undertook contractually, and that are implied by law.

Otherwise denied.

49. Denied.

50. Denied.

**FOR A FIRST DEFENSE
(Statute of Limitations)**

Plaintiffs' claims are barred by one or more statutes of limitations of the State of South Carolina, including but not limited to the three year statute of limitations contained in S.C. Code Ann. §15-3-530.

**FOR A SECOND DEFENSE
(Comparative Negligence)**

Even if the Defendants were negligent in one or more of the respects alleged in the Complaint, which is denied, the Plaintiffs, both individually and collectively, were negligent and their negligence was equal to or greater than any alleged but denied negligence of the Defendants. Plaintiffs' negligence included, but was not limited to, failure by the plaintiffs to inquire into management of the trusts as permitted by statute, failure by plaintiff Kathleen Turner to adequately manage Jacquelin Stevenson's affairs through her power of attorney, failure by the plaintiffs to monitor the status of the trusts and trust assets, and otherwise failing to act as reasonably prudent persons would act in the same or similar circumstances. Defendants plead Plaintiffs' comparative fault in bar of, or in reduction of, any recovery by them in this action.

FOR A THIRD DEFENSE
(Limitation of Recovery Per §15-38-15)

In the event that defendants Kerrison and Dixon-Hughes are found to have been negligent in any of the respects alleged in the Complaint, or are found otherwise liable for tortious conduct, then the conduct of others, including the Plaintiffs, Daniel Stevenson, Thomas Stevenson and persons associated therewith, and other defendants were responsible for more than 50% of the total fault; and the fault, if any, of these answering Defendants is less than 50%. Defendants plead the provisions of S.C. Code Ann. § 15-38-15 in limitation of any recovery made by Plaintiffs of these Defendants to that portion of the loss for which these Defendants are responsible and in limitation of any joint and several liability with other named, or unnamed, tortfeasors.

FOR A FOURTH DEFENSE
(Good Faith Reliance on Trustees Per § 62-7-1012)

Plaintiffs' claims against defendants Kerrison and Dixon-Hughes are barred by the protections against liability provided by S.C. Code Ann. § 62-7-1012 for persons who, in good faith, assist or deal with trustees.

FOR A FIFTH DEFENSE
(Negligent Acts or Omissions of Others)

Plaintiffs' claims against the defendants Kerrison and Dixon Hughes are barred because Plaintiff's alleged damages were proximately caused by the negligent acts or omissions of others.

FOR A SIXTH DEFENSE
(Failure to Join Indispensable Parties)

Plaintiff has failed to join indispensable parties to this action, to wit: Daniel Stevenson and Thomas Stevenson.

**FOR A SEVENTH DEFENSE
(Assumption of Risk)**

Plaintiffs assumed the risk of any damages they may or may not have suffered by their failure to exercise their rights as beneficiaries of the trusts under S.C. Code Ann. § 62-7-813.

**FOR AN EIGHTH DEFENSE
(Punitive Damages Unconstitutional)**

Plaintiff's claims for punitive damages should be dismissed as the imposition of punitive damages as the basis of the alleged acts or omissions of the defendants with respect to the plaintiffs would represent the deprivation of liberty and property without due process of law, would result in the imposition of cruel and unusual punishment and excessive fines against the defendant and deny the Defendants the equal protection of the laws, all in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the related provisions of the South Carolina Constitution. Plaintiffs' claims for punitive damages also violate the federal doctrine of separation of powers and the South Carolina Constitution because punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch. Furthermore, punitive damages violate the equal protection clause in that jurors, in determining an award of punitive damages, are permitted to consider the wealth and status of the defendant.

**FOR A NINTH DEFENSE
(Lack of Standing)**

Some or all of Plaintiffs lack standing to assert the claims alleged in the Complaint against the defendants Kerrison and Dixon Hughes.

**FOR A TENTH DEFENSE
(Waiver)**

Plaintiffs, by their own actions, have waived all claims asserted against defendants Kerrison and Dixon Hughes.

**FOR A ELEVENTH DEFENSE
(Abatement)**

To the extent plaintiffs' claims are based on fraud or deceit, they are barred by the doctrine of abatement in that they did not survive the death of Jacquelin K. Stevenson.

**FOR A TWELVETH DEFENSE
(Judicial Estoppel)**

Plaintiffs' claims rely, in part or in whole, on positions taken contrary to positions taken in other proceedings and therefore their claims against defendants Kerrison and Dixon Hughes are barred by the doctrine of judicial estoppel.

**FOR A THIRTEENTH DEFENSE
(Intervening/Superseding Acts of Others)**

Plaintiffs' claims are barred because any damages suffered by the Plaintiffs, which are denied, were proximately caused by the acts and omissions of others.

**FOR A FOURTEENTH DEFENSE
(Unclean Hands)**

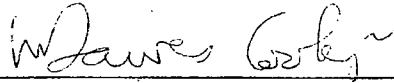
Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

WHEREFORE, having answered the plaintiffs' compliant, defendants request that the court:

1. Dismiss plaintiffs' action with prejudice;
2. Tax the costs of this action, together with attorneys fees, against the plaintiffs;

3. Grant the defendant any other such relief as may be appropriate to this court.

This the 8th day of September, 2009.



M. Dawes Cooke, Jr.
Jeremy E. Bowers
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, SC 29492
Telephone: (843) 577-7700

**Attorneys for Defendants Dixon-Hughes,
PLLC and Lynne L. Kerrison**

OF COUNSEL:

Frederick K. Sharpless
Gabrielle Amber Pittman
SHARPLESS & STAVOLA, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420
Telephone: 336/333-6400

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,)
Deceased and the Estate of Thomas C.)
Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder)
and Kathleen S. Turner, individually, as Co-)
Trustees and beneficiaries of the Marital)
Trust and the Qualified Terminable Interest)
Trust created by the Thomas Stevenson Will,)
and Jacquelin S. Bennett, and Kathleen S.)
Turner, as Co-Personal Representatives on)
behalf of the Estate of Jacquelin K.)
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter; Kunes)
& Bennett, P.A.; Dixon-Hughes f/k/a Pratt-)
Thomas Gumb & Co., P.A.; and Lynne L.)
Kerrison.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

FILED
2012 MAY 31 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

**AMENDED
COMPLAINT**

Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will ("two subject Trusts") and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson, complaining of Defendants T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, would respectfully show unto the Court as follows:

PARTIES/JURISDICTION/VENUE

1. Plaintiff Jacquelin S. Bennett is a citizen and resident of Charleston County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson. She is also the Co-Personal Representative of the Estate of Jacquelin K. Stevenson and currently is the Co-Trustee of the two subject Trusts.

2. Plaintiff Kathleen S. Turner is a citizen and resident of Charleston County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson. She is also the Co-Personal Representative of the Estate of Jacquelin K. Stevenson and currently is the Co-Trustee of the two subject Trusts.

3. Plaintiff Genevieve S. Felder is a citizen and resident of Williamsburg County, South Carolina. She is a beneficiary of the two subject Trusts and of the Estate of Jacquelin K. Stevenson and the Co-Trustee of the two subject Trusts.

4. Upon information and belief, T. Heyward Carter, Jr. is a citizen and resident of Charleston County, South Carolina. He is the former lawyer and/or fiduciary for the two subject Trusts and Jacquelin K. Stevenson.

5. Upon information and belief, Defendant Evans, Carter; Kunes & Bennett, P.A. ("Carter Law Firm") is a professional association organized and existing under the laws of the State of South Carolina. Upon information and belief, Defendant Carter is a member of the Defendant Carter Law Firm. Defendant Carter Law Firm is responsible for all actions of Defendant Carter described herein.

6. Upon information and belief, Lynne L. Kerrison is a citizen and resident of Charleston County, South Carolina. Defendant Kerrison is the former accountant, financial advisor, financial planner, and fiduciary of Jacquelin K. Stevenson and the two subject Trusts.

7. Upon information and belief, Defendant Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. ("Dixon-Hughes") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Defendant Kerrison is a member of the Defendant Dixon-Hughes. Defendant Dixon-Hughes is responsible for all actions of Defendant Kerrison described herein.

8. Venue is proper in Charleston County.

9. This court has jurisdiction over the subject matter and the parties to this matter.

FACTUAL BACKGROUND

10. Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, along with Thomas C. Stevenson, III and Daniel R. Stevenson, II, are beneficiaries of the Last Will and Testament of their late father, Thomas C. Stevenson, Jr. (hereinafter "Thomas Stevenson Will") and the Last Will and Testament of Jacquelin K. Stevenson (hereinafter "Jacquelin Stevenson Will").

11. The Thomas Stevenson Will created two testamentary trusts: the "Jacquelin K. Stevenson Marital Trust" (hereinafter "Marital Trust") and a qualified terminable interest property trust (hereinafter "QTIP Trust").

12. The Marital Trust provided Jacquelin K. Stevenson a power of appointment to name the beneficiaries of the Marital Trust in her Will.

13. The Jacquelin Stevenson Will named Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, Thomas C. Stevenson, III and Daniel R. Stevenson, II, as well as her child, from a former marriage, James King, beneficiaries of the Marital Trust upon the death of Jacquelin K. Stevenson.

14. The Thomas Stevenson Will also provided that, upon the death of Jacquelin K. Stevenson, the beneficiaries of the QTIP Trust would be his children, Plaintiff Jacquelin S. Bennett, Plaintiff Genevieve S. Felder and Plaintiff Kathleen S. Turner, along with Thomas C. Stevenson, III and Daniel R. Stevenson, II.

15. The Thomas Stevenson Will named Thomas C. Stevenson, III and Daniel R. Stevenson, II as co-trustees of both the Marital Trust and the QTIP Trust, along with Norman W. Stevenson, Henry Buist and James G. Boyd. As of 1999, Thomas C. Stevenson, III and Daniel R. Stevenson, II were the only remaining co-trustees.

16. Both Thomas C. Stevenson and Jacquelin K. Stevenson are deceased.

17. Plaintiffs Bennett, Felder and Turner are three of the beneficiaries of the Marital Trust, the Q-TIP Trust and the Estate of Jacquelin K. Stevenson.

18. In 2001 and at all time relevant herein, Plaintiff Kathleen Turner and Daniel R. Stevenson, II were powers of attorney for Ms. Jacquelin K. Stevenson. At that time, Jacquelin K. Stevenson was in an Alzheimer's unit due to a stroke suffered in or around December 2000.

19. During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson (hereinafter referred to as the "improper self-dealing withdrawals").

20. Defendants were in a fiduciary relationship with Plaintiffs.

21. Defendants had knowledge of some or all of the improper self-dealing withdrawals.

22. Plaintiffs had no knowledge of any of the improper self-dealing withdrawals.

23. Knowledge of the improper self-dealing withdrawals was significant and material to Plaintiffs.

24. Defendants had a duty to inform and failed to inform Plaintiffs, including Plaintiff Kathleen S. Turner as power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to Defendants.

25. Upon information and belief, money improperly taken from the Trusts and the Estate was used to fund other Defendant Dixon-Hughes clients and Dixon-Hughes issued the checks for the improper self-dealing withdrawals. This created a conflict of interest for Defendant Dixon-Hughes which should have resulted in either full disclosure to Plaintiffs or Defendant Dixon-Hughes resigning as accountants for all parties.

26. Plaintiffs suffered damages as a result of Defendants' above described actions.

27. Pursuant to S.C. Code Ann. § 15-36-100(B), Plaintiffs have a good faith basis to believe the period of limitation will expire within ten days of the date of filing this Complaint and because of the time constraints affidavits of experts for the professional negligence causes of action could not be prepared.

FOR A FIRST CAUSE OF ACTION

(Professional Negligence as to Defendant Carter and Defendant Carter Law Firm)

28. Paragraphs 1 through 27 are herein reiterated and realleged as if set forth verbatim.

29. Defendants Carter and the Carter Law Firm were in an attorney-client relationship with the subject Trusts and Jacquelin K. Stevenson.

30. Defendants Carter and the Carter Law Firm breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson by *among other things*: failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants.

31. Plaintiffs suffered damages which were proximately caused by the above described breaches of the standard of care by Defendants Carter and the Carter Law Firm.

FOR A SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Carter and Defendant Carter Law Firm)

32. Paragraphs 1 through 31 are herein reiterated and realleged as if set forth verbatim.

33. Defendants Carter and the Carter Law Firm were in a fiduciary relationship with Plaintiffs such that Defendants Carter and the Carter Law Firm were bound to act with due regard to the interests of Plaintiffs.

34. Defendants Carter and the Carter Law Firm were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals.

35. Defendants Carter and the Carter Law Firm breached their fiduciary duties owed to Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants.

36. Plaintiffs suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendants Carter and the Carter Law Firm.

FOR A THIRD CAUSE OF ACTION

**(Aiding and Abetting Breach of Fiduciary Duty as to Defendant
Carter and Defendant Carter and Evans)**

37. Paragraphs 1 through 36 are reiterated herein and realleged as if set forth verbatim.

38. The improper self-dealing withdrawals by Thomas C. Stevenson, III and Daniel R. Stevenson constitute clear breaches of their fiduciary duties to Jacquelin K. Stevenson, Kathleen Turner, as holder of her power of attorney, and to the beneficiaries of the aforementioned trusts.

39. Defendants Carter and Carter and Evans had actual knowledge of this breach of fiduciary duty and knowingly participated in that breach of fiduciary duty by failing to disclose to Plaintiff Kathleen Turner who held power of attorney for her mother of the improper self-dealing

withdrawals, by drafting documents used in connection with the improper self-dealing withdrawals, and by advising and counseling Thomas C. Stevenson, III, and/or Daniel R. Stevenson in connection with the improper self-dealing withdrawals.

40. Plaintiffs have suffered damages which were proximately caused by these Defendants' aiding and abetting the breaches of fiduciary duty committed by Thomas C. Stevenson, III and Daniel R. Stevenson.

FOR A FOURTH CAUSE OF ACTION

(Professional Negligence as to Defendant Kerrison and Defendant Dixon-Hughes)

41. Paragraphs 1 through 40 are herein reiterated and realleged as if set forth verbatim.

42. Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson.

43. Defendants Kerrison and Dixon-Hughes breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as attorneys by *among other things*: failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

44. Plaintiffs suffered damages which were proximately caused by the above described breaches of the standard of care by Defendants Kerrison and Dixon-Hughes.

FOR A FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Kerrison and Defendant Dixon-Hughes)

45. Paragraphs 1 through 44 are herein reiterated and realleged as if set forth verbatim.

46. Defendants Kerrison and Dixon-Hughes were in a fiduciary relationship with Plaintiffs such that Defendants Kerrison and Dixon-Hughes were bound to act with due regard to the interests Plaintiffs.

47. Defendants Kerrison and Dixon-Hughes were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals.

48. Defendants Kerrison and Dixon-Hughes breached their fiduciary duties owed to Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

49. Plaintiffs suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendants Kerrison and Dixon-Hughes.

FOR A SIXTH CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty as to Defendant
Kerrison and Defendant Dixon-Hughes)

50. Paragraphs 1 through 49 are reiterated herein and realleged as if set forth verbatim.

51. The improper self-dealing withdrawals by Thomas C. Stevenson, III and Daniel R. Stevenson constitute a clear breaches of their fiduciary duties to the Plaintiffs as beneficiaries of the aforementioned trusts.

52. Defendants Kerrison and Dixon-Hughes had actual knowledge of these breaches of fiduciary duty and knowingly participated in that breach of fiduciary duty by failing to disclose to Plaintiff Kathleen Turner who held power of attorney for her mother, or the other Plaintiffs as beneficiaries, of the improper self-dealing withdrawals. Defendants Kerrison and Dixon-Hughes also participated in these breaches of fiduciary duty by issuing checks from the subject trusts for the improper self-dealing withdrawals.

53. Plaintiffs have suffered damages which were proximately caused these Defendants' aiding and abetting the breach of fiduciary duty committed by Thomas C. Stevenson, III and Daniel R. Stevenson.

WHEREFORE, Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, pray that:

- a. Plaintiffs be awarded damages as a jury shall decide on the first, second, third, fourth, fifth and sixth causes of action;
- b. Plaintiffs be awarded prejudgment interest pursuant to the first, second, third, fourth, fifth and sixth causes of action;
- c. Plaintiffs be awarded attorneys' fees and costs; and,
- d. Plaintiffs be awarded such further relief as the Court deems just and proper.

LEWIS, BABCOCK & GRIFFIN, L.L.P.

A. Camden Lewis

Keith M. Babcock

Mary G. Lewis

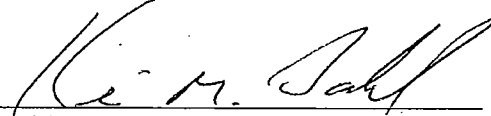
1513 Hampton Street

Post Office Box 11208

Columbia, SC 29211

Telephone: 803-771-8000

Facsimile: 803-733-3541

By: 

Keith M. Babcock

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

May 29, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

2012 JUN 13 AM 11:22

JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**ANSWER OF DEFENDANTS LYNNE
KERRISON AND DIXON HUGHES TO
AMENDED COMPLAINT**

Defendants Lynne Kerrison and Dixon-Hughes respond to the plaintiffs' amended
complaint as follows:

PARTIES/JURISDICTION/VENUE

1. Admitted on information and belief that plaintiff Jacquelin Bennett is a citizen and resident of Charleston County, South Carolina, was a residual beneficiary of the marital trust and was a residual beneficiary of the "QTIP" trust. Otherwise denied for lack of information sufficient to form a belief.
2. Admitted on information and belief that plaintiff Kathleen Turner is a citizen and resident of Charleston County, South Carolina, was a residual beneficiary of the marital trust and was a residual beneficiary of the "QTIP" trust. Otherwise denied for lack of information sufficient to form a belief.

3. Admitted on information and belief that plaintiff Genevieve S. Felder is a citizen and resident of Williamsburg County, South Carolina and was a residual beneficiary of the marital trust and was a residual beneficiary of the "QTIP" trust. Otherwise denied for lack of information sufficient to form a belief.
4. Admitted on information and belief that Heyward Carter is a citizen and resident of Charleston County South Carolina, and admitted he is the former lawyer for Jacquelin K. Stevenson. The allegation that Mr. Carter was a "fiduciary" for the two subject trusts and Jacquelin Stevenson is a conclusion of law to which no answer is required, but, to the extent an answer is required, it is denied for lack of information sufficient to form a belief. All other allegations are denied for lack of information sufficient to form a belief.
5. Admitted on information and belief that Defendant Evans, Carter, Kunes & Bennett, P.A. is a professional association organized and existing under the laws of the State of South Carolina and that Defendant Carter is a member of the Defendant Carter Law Firm. The allegation that the "Defendant Carter Law Firm is responsible for all actions of Defendant Carter" is a conclusion of law to which no response is required but to the extent a response is required, it is denied for lack of information sufficient to form a belief.
6. Admitted that Lynne Kerrison is a citizen and resident of Charleston County, South Carolina. Admitted that defendant Kerrison formerly provided accounting services to Jacquelin K. Stevenson and that she provided services, at the request of the trustees, related to the two subject trusts. Otherwise denied.
7. Admitted that Dixon Hughes, PLLC is an accounting firm organized and existing under the laws of the State of North Carolina doing business in the State of South Carolina. Denied that it was formerly known as or that it succeeded to the assets or liabilities of Pratt-Thomas Gumb & Co., P.A., which, on information and belief still exists. Admitted that defendant Kerrison is a member of Dixon-

Hughes. The allegation that the "Defendant Dixon-Hughes is responsible for all actions of Defendant Kerrison" is denied with respect to any incidents occurring before November 1, 2006. The allegation is admitted with respect to any act in the course and scope of Ms. Kerrison's work with Dixon-Hughes, PLLC, which began November 1, 2006.

8. Admitted.

9. Admitted.

FACTUAL BACKGROUND

10. Admitted that Jacquelin S. Bennett, Genevieve S. Felder, Kathleen S. Turner, Thomas Stevenson, III and Daniel R. Stevenson, II were beneficiaries of the last Will and Testament of their late father, Thomas C. Stevenson, Jr., and of the last Will and Testament of their mother, Jacquelin K. Stevenson. Otherwise, denied for lack of information sufficient to form a belief.

11. Admitted.

12. Admitted.

13. Denied for lack of information sufficient to form a belief.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted that Jacquelin Bennett, Genevieve Felder, and Kathleen Turner were three of the beneficiaries of the Marital, the QTIP trust, and the Estate of Jacquelin Stevenson. Otherwise, denied for lack of information sufficient to form a belief.

18. Admitted upon information and belief that Kathleen Turner and Daniel Stevenson held powers of attorney for Jacquelin Stevenson in 2001. Otherwise, denied for lack of information sufficient to form a belief.

19. Admitted that during their time as co-trustees, both Thomas C. Stevenson, III and Daniel R. Stevenson, II each received money from the marital trust and QTIP trust. The allegation that during "Thomas Stevenson and Daniel Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, QTIP Trust, and the Estate of Jacquelin K. Stevenson" is a conclusion of law to which no response is required, but to the extent a response is required, it is denied for lack of information sufficient to form a belief. Denied for lack of information sufficient to form a belief as to the estate.
20. Denied as to defendants Kerrison and Dixon-Hughes. Otherwise denied for lack of information sufficient to form a belief.
21. Denied that defendants Kerrison and Dixon-Hughes had knowledge of "improper self-dealing withdrawals." Admitted that, at some point during the relevant period, Defendant Kerrison had knowledge of monies received from the marital and QTIP trusts by Thomas Stevenson and Daniel Stevenson and informed Defendant Carter of the same. Otherwise, denied for lack of information sufficient to form a belief.
22. Denied.
23. Denied for lack of information sufficient to form a belief.
24. Denied as to defendants Kerrison and Dixon-Hughes. Otherwise, denied for lack of information sufficient to form a belief.
25. Denied that a conflict of interest existed. Otherwise, denied for lack of information sufficient to form a belief.
26. Denied that plaintiffs suffered any damages as a result of the actions or omissions of defendants Kerrison and Dixon-Hughes. Otherwise, denied for lack of information sufficient to form a belief.
27. Denied. The statute of limitations expired prior to the filing of this lawsuit.

FIRST CAUSE OF ACTION

(Professional Negligence as to Defendant Carter and Defendant Carter Law Firm)

28. The responses to paragraphs 1 through 27 are incorporated by reference.
29. Admitted as to Jacquelin K. Stevenson. Otherwise, denied for lack of information sufficient to form a belief.
30. The allegation that defendants Carter and Carter law firm breached the standard of care owed to the subject trusts and Jacquelin K. Stevenson by failing to inform the plaintiffs of "the improper self-dealing withdrawals known to these defendants" is a conclusion of law to which no response is required, but to the extent a response is required, it is denied for lack of information sufficient to form a belief.
31. Denied for lack of information sufficient to form a belief.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant Carter and Defendant Carter Law Firm)

32. The responses to paragraphs 1 through 31 are incorporated by reference.
33. Admitted that defendants Carter and Carter Law Firm were in an attorney-client relationship with Jacquelin K. Stevenson and, as such, owed to Jacquelin K. Stevenson all of the duties and loyalties pursuant to the attorney-client relationship. Otherwise denied for lack of information sufficient to form a belief.
34. Admitted that defendants Carter and Carter Law Firm owed all the duties and loyalties incident to the attorney client relationship. Otherwise denied for lack of information sufficient to form a belief.
35. Denied for lack of information sufficient to form a belief.
36. Denied for lack of information sufficient to form a belief.

THIRD CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty as to Defendant Carter and Defendant Carter and Evans)

- 37. The responses to paragraphs 1 through 36 are incorporated by reference.
- 38. Paragraph 38 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.
- 39. Denied for lack of information sufficient to form a belief.
- 40. Denied.

FOURTH CAUSE OF ACTION
(Professional Negligence as to Defendant Kerrison and Defendant Dixon-Hughes)

- 41. The responses to paragraphs 1 through 40 are incorporated by reference.
- 42. Admitted.
- 43. Denied.
- 44. Denied.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Kerrison and Defendant Dixon-Hughes)

- 45. The responses to paragraphs 1 through 44 are incorporated by reference.
- 46. Paragraph 46 states a conclusion of law. Defendants admit that they performed accounting services for the benefit of the subject trusts and Jacquelin K. Stevenson and had those duties towards the subject trusts and Jacquelin K. Stevenson that they undertook contractually, and that are implied by law. Otherwise denied.
- 47. Paragraph 47 states a conclusion of law. Defendants admit that they performed accounting services for the benefit of the subject trusts and Jacquelin K. Stevenson and had those duties towards the subject trusts and Jacquelin K.

Stevenson that they undertook contractually, and that are implied by law.

Otherwise denied.

48. Denied.

49. Denied.

SIXTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty as to Defendant Kerrison and Defendant Dixon Hughes)

50. The responses to paragraphs 1 through 49 are incorporated by reference.

51. Paragraph 51 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

52. Denied.

53. Denied.

FOR A FIRST DEFENSE

(Statute of Limitations)

Plaintiffs' claims are barred by one or more statutes of limitations of the State of South Carolina, including but not limited to the three year statute of limitations contained in S.C. Code Ann. §15-3-530.

FOR A SECOND DEFENSE

(Comparative Negligence)

Even if the Defendants were negligent in one or more of the respects alleged in the Complaint, which is denied, the Plaintiffs, both individually and collectively, were negligent and their negligence was equal to or greater than any alleged but denied negligence of the Defendants. Plaintiffs' negligence included, but was not limited to, failure by the plaintiffs to inquire into management of the trusts as permitted by statute, failure by plaintiff Kathleen Turner to adequately manage Jacquelin Stevenson's affairs through her power of attorney, failure by the plaintiffs to monitor the status of the trusts and trust assets, and otherwise failing to act as reasonably prudent persons would act

in the same or similar circumstances. Defendants plead Plaintiffs' comparative fault in bar of, or in reduction of, any recovery by them in this action.

FOR A THIRD DEFENSE
(Limitation of Recovery Per §15-38-15)

In the event that defendants Kerrison and Dixon-Hughes are found to have been negligent in any of the respects alleged in the Complaint, or are found otherwise liable for tortious conduct, then the conduct of others, including the Plaintiffs, Daniel Stevenson, Thomas Stevenson and persons associated therewith, and other defendants were responsible for more than 50% of the total fault, and the fault, if any, of these answering Defendants is less than 50%. Defendants plead the provisions of S.C. Code Ann. § 15-38-15 in limitation of any recovery made by Plaintiffs of these Defendants to that portion of the loss for which these Defendants are responsible and in limitation of any joint and several liability with other named, or unnamed, tortfeasors.

FOR A FOURTH DEFENSE
(Good Faith Reliance on Trustees Per § 62-7-1012)

Plaintiffs' claims against defendants Kerrison and Dixon-Hughes are barred by the protections against liability provided by S.C. Code Ann. § 62-7-1012 for persons who, in good faith, assist or deal with trustees.

FOR A FIFTH DEFENSE
(Negligent Acts or Omissions of Others)

Plaintiffs' claims against the defendants Kerrison and Dixon Hughes are barred because Plaintiffs' alleged damages were proximately caused by the negligent acts or omissions of others.

FOR A SIXTH DEFENSE
(Failure to Join Indispensable Parties)

Plaintiff has failed to join indispensable parties to this action, to wit: Daniel Stevenson and Thomas Stevenson.

**FOR A SEVENTH DEFENSE
(Assumption of Risk)**

Plaintiffs assumed the risk of any damages they may or may not have suffered by their failure to exercise their rights as beneficiaries of the trusts under S.C. Code Ann. § 62-7-813.

**FOR AN EIGHTH DEFENSE
(Punitive Damages Unconstitutional)**

Plaintiffs' claims for punitive damages should be dismissed as the imposition of punitive damages as the basis of the alleged acts or omissions of the defendants with respect to the plaintiffs would represent the deprivation of liberty and property without due process of law, would result in the imposition of cruel and unusual punishment and excessive fines against the defendant and deny the Defendants the equal protection of the laws, all in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the related provisions of the South Carolina Constitution. Plaintiffs' claims for punitive damages also violate the federal doctrine of separation of powers and the South Carolina Constitution because punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch. Furthermore, punitive damages violate the equal protection clause in that jurors, in determining an award of punitive damages, are permitted to consider the wealth and status of the defendant.

**FOR A NINTH DEFENSE
(Lack of Standing)**

Some or all of Plaintiffs lack standing to assert the claims alleged in the Complaint against the defendants Kerrison and Dixon Hughes.

**FOR A TENTH DEFENSE
(Waiver)**

Plaintiffs, by their own actions, have waived all claims asserted against defendants Kerrison and Dixon Hughes.

**FOR AN ELEVENTH DEFENSE
(Abatement)**

To the extent plaintiffs' claims are based on fraud or deceit, they are barred by the doctrine of abatement in that they did not survive the death of Jacquelin K. Stevenson.

**FOR A TWELFTH DEFENSE
(Judicial Estoppel)**

Plaintiffs' claims rely, in part or in whole, on positions taken contrary to positions taken in other proceedings and therefore their claims against defendants Kerrison and Dixon Hughes are barred by the doctrine of judicial estoppel.

**FOR A THIRTEENTH DEFENSE
(Intervening/Superseding Acts of Others)**

Plaintiffs' claims are barred because any damages suffered by the Plaintiffs, which are denied, were proximately caused by the acts and omissions of others.

**FOR A FOURTEENTH DEFENSE
(Unclean Hands)**

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

**FOR A FIFTEENTH DEFENSE
(Closed Estate)**

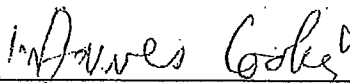
Plaintiffs' claims were asserted in connection with the Estates of Thomas Stevenson and/or Jacquelin Stevenson; which are now closed. Thus, plaintiffs' claims are barred.

WHEREFORE, having answered the plaintiffs' amended complaint, defendants request that the court:

1. Dismiss plaintiffs' action with prejudice;
2. Tax the costs of this action, together with attorneys fees, against the plaintiffs;

3. Grant the defendant any other such relief as may be appropriate to this court.

This the 13th day of June, 2012.



M. Dawes Cooke, Jr.
Attorney for Defendants Dixon-Hughes, PLLC
and Lynne L. Kerrison
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, SC 29492
Telephone: (843) 577-7700

OF COUNSEL:

Frederick K. Sharpless
Gabrielle Amber Pittman
SHARPLESS & STAVOLA, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420
Telephone: 336/333-6387

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**DEFENDANTS LYNNE KERRISON AND
DIXON HUGHES' MOTION FOR
SUMMARY JUDGMENT**

FILED
2012 JUL 13 PM 3:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU WILL PLEASE TAKE NOTICE THAT within ten (10) days or as soon thereafter as the Defendants, Lynne Kerrison and Dixon Hughes, may be heard, the Defendants will move before the presiding Judge of the Court of Common Pleas of the Ninth Judicial Circuit, at the Charleston County Court House, Charleston, South Carolina, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for summary judgment in their favor on all claims asserted by the plaintiffs in this action. In the alternative, the Defendants, Lynne Kerrison and Dixon Hughes, seek partial summary judgment on the issues of professional negligence, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, damages, and prejudgment interest. In support of this motion, the Defendants, Lynne Kerrison and Dixon Hughes, rely on the

depositions, discovery responses and other documents of record, and show that there are no issues of material fact and that they are entitled to judgment as a matter of law on all claims for the following grounds:

1. Plaintiffs instituted this action after the expiration of the statute of limitations governing all claims alleged in this Complaint.
2. The causes of action alleged by the plaintiffs did not survive the death of Jacquelin Stevenson because they are based on a theory of fraud and deceit.
3. Plaintiffs' claims against defendants Lynne Kerrison and Dixon Hughes are preempted by 26 U.S.C. § 7216.

Alternatively, the Defendants are entitled to partial summary judgment for the following reasons:

1. Plaintiffs cannot show that defendants Lynne Kerrison and/or Dixon Hughes breached any duty owed to them, and moving defendants are therefore entitled to summary judgment on plaintiffs' claims for professional negligence and breach of fiduciary duty.
2. Plaintiffs cannot show that defendants Lynne Kerrison and/or Dixon Hughes knowingly participated in any breach of fiduciary duty perpetrated by Thomas and Daniel Stevenson.
3. Individually and as beneficiaries of the trusts, plaintiffs suffered no damages.
4. Plaintiffs' damages are limited to those for actions occurring during the time frame relevant to this matter, from January 4, 2001 to April 27, 2006.

5. Plaintiffs are not entitled to pre-judgment interest, because their claims are unliquidated.

WHEREFORE, Lynne Kerrison and Dixon Hughes respectfully request that the court enter judgment in their favor on all claims asserted by the plaintiffs in this action, grant their motion for summary judgment and along with such other relief as this court deems just and proper.

This the 13th day of July, 2012.



M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Attorney for Defendants Dixon-Hughes, PLLC
and Lynne L. Kerrison
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, SC 29492
Telephone: (843) 577-7700.

OF COUNSEL:

Frederick K. Sharpless
Gabrielle Amber Pittman
SHARPLESS & STAVOLA, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420
Telephone: (336) 333-6387

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF CHARLESTON)

FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

**PLAINTIFF KATHLEEN S. TURNER'S
ANSWERS TO DEFENDANT LYNNE
L. KERRISON'S FIRST SET OF
INTERROGATORIES**

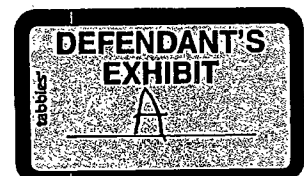
TO: M. DAWES COOKE, JR., ESQ., ATTORNEY FOR DEFENDANTS DIXON-
HUGHES, PLLC AND LYNNE L. KERRISON:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff Kathleen S.

Turner answers Defendant Lynne Kerrison's First Set of Interrogatories as follows:

GENERAL OBJECTION

Plaintiff objects to these interrogatories to the extent that they seek documents or other materials protected by the attorney-client privilege and/or work product privilege. Notwithstanding the foregoing objection and without waiving same, Plaintiff Turner answers the interrogatories as follows:



ANSWERS

1. Identify everyone who provided information used in answering these interrogatories.

ANSWER: Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner.

2. Describe, in detail, all negligent or wrongful acts that you claim the defendants did or failed to do. For each:

- a. Identify everyone with knowledge of the act or inaction;
- b. Identify all documents relating to the act or inaction;
- c. Identify all statements or communications relating to the act or inaction.

ANSWER:

Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as accountants by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

- a. Identify everyone with knowledge of the act or inaction;

See Answer to Interrogatory 3.

- b. Identify all documents relating to the act or inaction;

- a. correspondence from and leading up to C/A No. 2008-CP-10-806;
- b. pleadings from C/A No. 2008-CP-10-806;
- c. Hood Law Firm master file from C/A No. 2008-CP-10-806;

- d. depositions and exhibits from C/A No. 2008-CP-10-806;
 - e. financials for Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will;
 - f. Power of Attorneys, Wills, Codicils and Estate Planning documents concerning Mr. and Mrs. Thomas Stevenson;
 - g. schedules of illegal transactions by Dan and Tom Stevenson;
 - h. statements from law firms and professionals; and
 - i. Other documents to be produced to the Defendants in this case.
- c. Identify all statements or communications relating to the act or inaction.

See statements identified in response to Interrogatory 3.

3. Identify all individuals that have or may have knowledge of the things referred to in the Complaint.

ANSWER:

- a. **Kathleen Turner**

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

- b. **Jacqueline Bennett**

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

c. William Bennett

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

d. T. Heyward Carter

Contact through Susan Taylor Wall, Esq.

Deposition in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

e. Chris Douglas

Contact through D. Lynn Bowley, Esq.

Affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

f. Genevieve Felder

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

g. Angela Heissenbuttle

Contact information known to Defendants.

No statements from this witness.

h. Lynne Kerrison

Contact information known to Defendants.

No statements from this witness.

i. Howell Morrison
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7022

No statements from this witness.

j. Daniel R. Stevenson, II

Contact through Mark McKnight, Esq. 843-577-2837

Deposition in Civil Action No. 2008-CP-10-806, which will be
produced to Defendants.

k. Thomas C. Stevenson, III

Contact through Robert Brunson, Esq. 843-577-7483

Deposition in Civil Action No. 2008-CP-10-806, which will be
produced to Defendants.

l. Susan Studemeyer

Contact information known to Defendants.

No statements from this witness.

4. If you expect to call or will call at trial any expert witness, then provide for each:
- a. Their name, address and specialty;
 - b. The subject matter on which they are expected to testify;
 - c. The substance of the facts and opinions to which they are expected to testify;
and
 - d. A summary of the grounds for each opinion.

ANSWER:

- a. **John P. Freeman**
2329 Wilmot Avenue
Columbia, SC 29205
(803) 254-4667

Mr. Freeman is expected to testify as to the breach of the standard of care by T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. ("Carter Law Firm"). Plaintiffs incorporate by reference the May 2009 Affidavit of John P. Freeman that has been filed with the Court. Mr. Freeman is being paid on an hourly basis. In addition to the above, Mr. Freeman may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

- b. **George Durant**
4408 Forest Drive
Columbia, SC 29202
(803) 790-0020

Mr. Durant is expected to testify as to the breach of standard of care by Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. ("Dixon-Hughes"). Plaintiffs incorporate by reference the May 2009 Affidavit of George Durant that has been filed with the Court. Mr. Durant is being paid on an hourly basis. In addition to the above, Mr. Durant may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

5. Identify all communications between you and defendants Lynne Kerrison and/or Dixon Hughes.

ANSWER: Plaintiffs did not keep a log of all communications with Lynne Kerrison and Dixon Hughes. Notwithstanding the foregoing, to the extent Plaintiffs have any

documents containing communications with Lynne Kerrison and/or Dixon Hughes relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

6. Identify all communications between you and defendant Heyward Carter.

ANSWER: Plaintiffs did not keep a log of all communications with Heyward Carter. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Heyward Carter relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

7. Have you made any statements or given any written or recorded statements to anyone concerning the things at-issue in this lawsuit? If so, please identify the statements.

ANSWER: See statements identified in response to Interrogatory 3 above.

8. Identify all communications between you and Thomas Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Thomas Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Thomas Stevenson relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

9. Did you, at any time, receive or request any information regarding the administration, assets, loans, or distributions from the trusts, from any trustee between January 1999 and April 2006? If so, please describe the information, when, from whom, and under what circumstances you requested or received it.

ANSWER: From time to time, in the years between 1999 and 2006, Plaintiff Turner asked her brothers about the Trusts. On one occasion, Tom Stevenson called Plaintiff Turner and told Plaintiff Turner that the Trusts were doing well enough to make donations to charity.

Furthermore, Plaintiffs relied on Defendant Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.'s oversight and administration of the Trusts' bank accounts and Mrs. Stevenson's bank accounts.

10. Identify all communications between you and Daniel Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Daniel Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Daniel Stevenson relating in any way to the subject of the Compliant, Plaintiffs will produce such documents in response to Defendants Requests for Production.

11. Identify all damages that you claim as a result of any negligence or wrongdoing by the Defendants and for each item of damages:

- a. Detail the method by which you calculated it;
- b. Identify all documents that contain information that you used in making your calculations;
- c. List all facts supporting the calculation; and
- d. Identify people with knowledge of any facts relating to damages.

ANSWER:

- a. Detail the method by which you calculated it;

Illegal Transaction Lost Principal Damages	See Exhibit 1, Affidavit of William Bennett, which is incorporated herein by reference. In addition to actual sums lost, Plaintiffs are seeking interest ranging from 5.84% through 10%, compounded yearly.
Prejudgment Interest	This amount will be determined pursuant to S.C. Code Ann. §34-31-20(A) by the Court in a post trial hearing.
Unnecessary Professional Fees and Lost Time Incurred as a Result of Defendants actions.	This amount includes attorneys fees, accounting fees, expert fees, costs, and lost time spent in pursuing and developing claims against Dan and Tom Stevenson. This amount is continuing to accrue and is in excess of \$200,000.00. This answer will be seasonably supplemented with more detailed information as it develops.

- b. Identify all documents that contain information that you used in making your
calculations;

See documents identified in response to Interrogatory 2, categories e, g, and

h.

- c. List all facts supporting the calculation; and

See facts identified in response to Interrogatory 12.

- d. Identify people with knowledge of any facts relating to damages.

See persons identified in response to Interrogatory 3.

12. Identify each person or entity whom you hold responsible for any or all of the
damages identified in the previous question. Tell us why you hold them responsible, and tell us
the percentage of fault you assign to each.

ANSWER:

- a. T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. = 100%

Defendants Carter and the Carter Law Firm were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals. Defendants Carter and the Carter Law Firm breached their fiduciary duties owed to Plaintiffs and committed malpractice by failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants.

- b. Douglas Capital Management, Inc. = 100%

Defendant Douglas Capital served as investment advisors for the two subject Trusts and Jacquelin K. Stevenson and owed duties of care to Plaintiffs. Defendant Douglas Capital breached the standard of care owed Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to this Defendant.

- c. Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. = 100%;

Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as attorneys by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the

power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

d. Thomas C. Stevenson, III = 100%; and

e. Daniel R. Stevenson, II = 100%.

During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson and failed to report each others wrongful actions.

13. Tell us what actions you took to mitigate the damages you claim in this lawsuit.

ANSWER: Plaintiffs have pursued claims against Thomas C. Stevenson, III and Daniel R. Stevenson, II.

14. Tell us how and when you learned of the things in your complaint and the sources of your information.

ANSWER: Plaintiff Turner first learned of some of the transactions referenced in the Complaint at a meeting attended by Defendant Kerrison on April 27, 2006. The details of Defendants' conduct and the illegal transactions were then developed in subsequent investigations and in connection with discovery in Civil Action No. 2008-CP-10-806.

[signature block located on the following page]

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

November 10, 2009

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

CERTIFICATE OF SERVICE

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., hereby certify
that I have served **Plaintiff Kathleen S. Turner's Answers to Defendant Lynne L. Kerrison's
First Set of Interrogatories** upon opposing counsel, by mailing a copy of same, postage prepaid
and return address clearly indicated on said envelope, to said opposing counsel at the following
addresses:

Susan Taylor Wall, Esq.
J. Nelson Chandler, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

D. Lynn Bowley, Esq.
Catherine D. Byrd, Esq.
Taylor, Shoun, Bowley & Byrd, LLC
39 Broad Street, Suite 101
Charleston, South Carolina 29401

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402-0197

November 10, 2009

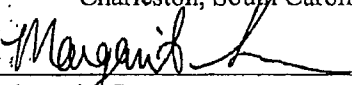

Margarita Sosa

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K.
Stevenson, deceased and the Estate of
Thomas C. Stevenson, deceased

Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives
of the Estate of Jacquelin K. Stevenson,
deceased

Petitioners,

Versus

Daniel R. Stevenson, II, Thomas C.
Stevenson III, Genevieve S. Felder,
James K. King, Kathleen S. Turner, and
Jacquelin S. Bennett, all respectively
and inclusively in their various
capacities as individuals, devisees,
cestui-que-trusts and/or co-Personal
Representatives or co-Trustees or
predecessor co-Trustees.

Respondents.)

IN THE PROBATE COURT

Case# 2007-ES10-1487 and
Case# 1988-ES10-00747

AFFIDAVIT OF WILLIAM BENNETT

PERSONALLY APPEARED before me, William Bennett, who first being duly
sworn, deposes and states as follows:

1. I am a citizen and resident of Charleston County, South Carolina.
2. I am over the age of eighteen years and I am competent to make these
statements.
3. I have personal knowledge of the matters contained herein.



1964

4. I am the husband of Petitioner Jacquelin S. Bennett, who is the co-Personal Representative of her mother's estate (Estate of Jacquelin K. Stevenson, hereinafter, "Estate").
5. My wife, Jacquelin Bennett is also a beneficiary of two testamentary trusts established in the Last Will and Testament of her father, Thomas C. Stevenson, Jr. These trusts are referred to as the QTIP Trust and the Marital Trust (hereinafter, Trusts).
6. I have a background in accounting and have personally reviewed all documents in my possession related to the improper transactions wherein Thomas C. Stevenson, III and/or Daniel R. Stevenson, II took money from the Trusts or Estate during their tenure as Co-Trustees of the Trusts.
7. From my review of the financial and other records related to these improper transactions, I have compiled a detailed summary of each transaction for which I have supporting documentation. A copy of this summary is attached to this Affidavit as Exhibit A.
8. During his tenure as a co-Trustee, Thomas Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$731,608 to the QTIP Trust, \$425,962 to the Marital Trust and \$434,970 to the Estate of Jacquelin K. Stevenson.

9. During his tenure as a co-Trustee, Daniel Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$8,024,680 to the QTIP Trust, \$2,473,982 to the Marital Trust and \$487,730 to the Estate of Jacquelin K. Stevenson.
10. In addition to the amounts that were actually taken from the Trusts and Estate, plus interest, the Trusts and Estate have also lost the profit that would have been realized had these funds been prudently invested instead of "loaned" and squandered.
11. Thomas and Daniel Stevenson used the money improperly taken to fund their lifestyles and business ventures. In particular, there is direct evidence that Thomas Stevenson used "loans" from the Trusts to fund a company called Fabtech. This is money that properly should have been used for investments in the name of the Trusts.
12. Daniel Stevenson has never repaid any of the "loans" he took from the Estate or Trusts.
13. On May 2, 2000, Thomas Stevenson made interest payments in the amount of \$4,986.30 on two of his "loans."
14. On July 24, 2007, Thomas Stevenson repaid \$300,000 to the QTIP Trust and \$407,500 to the Marital Trust. He has not made any additional payments on his "loans" from the Trusts or Estate since

July 24, 2007. He is not making "regular" or "scheduled" payments on this indebtedness.

15. Daniel Stevenson's complete lack of attempt to repay his "loans" indicates his refusal to remedy this liability.
16. Thomas Stevenson's lack of attempt to repay his "loans," except for two payments that were made in 2000 and two payments made in 2007, indicates his refusal to remedy this liability.
17. From the financial information I have reviewed, I do not believe that either Thomas Stevenson or Daniel Stevenson has the financial capability to completely reimburse the Trusts and Estates for the money they have unlawfully taken.
18. I believe that, if Daniel and Thomas Stevenson are not prevented from selling, transferring or otherwise disposing of assets, the amount that the Estate and Trusts may later recover through a judgment will be substantially decreased.

FURTHER THE AFFIANT SAYETH NOT.

William Bennett
William Bennett

SWORN TO AND SUBSCRIBED before me
this 20th day of Jan 2008.

Charles A. Grace
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 05/25/17

Recap of Stevenson Family Matters to Jan 12, 2008

DATE	DESCRIPTION	Q TIP TOM	Q TIP DAN	MARITAL TOM	MARITAL DAN	JKS TOM	JKS DAN
	Cumulative/ Dixon Hughes	\$542,500	\$2,150,635	\$407,500	\$1,727,140		
	Cumulative Interest-8.35% Comp. Y	\$175,076 *	\$745,435 **	\$125,482 *	\$832,512 **		
	Additional Interest to 1/12/2008		\$35,170		\$28,503		
11/2/99	Direct loan-Douglas Capita	\$100,000		\$100,000			
	Cumulative Interest at 10% #	\$118,528		\$118,528			
	Legal Expenses-MVA & Pearlman	\$5,870	\$5,870	\$5,271	\$5,271		
	Other expenses Pearlman	\$1,000	\$1,000	\$1,000	\$1,000		
	Accounting Expenses	\$3,830	\$3,830	\$3,718	\$3,716	\$2,849	\$2,849
	Legal Expenses McCutchen & Harvey	\$12,500	\$12,500	\$12,500	\$12,500		
	Additional to be added as Incurred						
	Trustee fees 1999-2007	\$81,365	\$70,440	\$59,465	\$83,340		
4/15/04	Ashley Hall						
	Interest to 1/12/2008 8.35%					\$50,000	
						\$12,989	
4/15/04	Christ School						
	Interest to 1/12/2008 8.35%					\$50,000	
						\$12,989	
	G. Small 4/1/01-10/12/02						
	Interest from 1/1/2002 8.35%					\$36,812	
						\$16,462	
	Loans JKS/Dixon Hughes						\$168,057
	Interest on \$20000 from 10/5/01 to 1/12/2008						\$9,435
	Interest on \$128057 from 1/24/02 to 1/12/2008						\$56,859
	Interest on \$20000 from 11/27/05 to 1/12/2008						\$1,140
	TOTALS	\$1,020,469	\$3,024,680	\$833,462	\$2,473,982	\$181,901	\$238,340



1968

0129

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

**PLAINTIFF JACQUELIN S.
BENNETT'S ANSWERS TO
DEFENDANT LYNNE L. KERRISON'S
FIRST SET OF INTERROGATORIES**

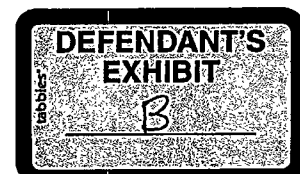
TO: M. DAWES COOKE, JR., ESQ., ATTORNEY FOR DEFENDANTS DIXON-
HUGHES, PLLC AND LYNNE L. KERRISON:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff Jacquelin S.

Bennett answers Defendant Lynne Kerrison's First Set of Interrogatories as follows:

GENERAL OBJECTION

Plaintiff objects to these interrogatories to the extent that they seek documents or other materials protected by the attorney-client privilege and/or work product privilege. Notwithstanding the foregoing objection and without waiving same, Plaintiff Turner answers the interrogatories as follows:



ANSWERS

1. Identify everyone who provided information used in answering these interrogatories.

ANSWER: Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner.

2. Describe, in detail, all negligent or wrongful acts that you claim the defendants did or failed to do. For each:

- a. Identify everyone with knowledge of the act or inaction;
- b. Identify all documents relating to the act or inaction;
- c. Identify all statements or communications relating to the act or inaction.

ANSWER:

Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as accountants by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

- a. Identify everyone with knowledge of the act or inaction;

See Answer to Interrogatory 3.

- b. Identify all documents relating to the act or inaction;

- a. correspondence from and leading up to C/A No. 2008-CP-10-806;
- b. pleadings from C/A No. 2008-CP-10-806;
- c. Hood Law Firm master file from C/A No. 2008-CP-10-806;

- d. depositions and exhibits from C/A No. 2008-CP-10-806;
- e. financials for Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will;
- f. Power of Attorneys, Wills, Codicils and Estate Planning documents concerning Mr. and Mrs. Thomas Stevenson;
- g. schedules of illegal transactions by Dan and Tom Stevenson;
- h. statements from law firms and professionals; and
- i. Other documents to be produced to the Defendants in this case.

c. Identify all statements or communications relating to the act or inaction.

See statements identified in response to Interrogatory 3.

3. Identify all individuals that have or may have knowledge of the things referred to in the Complaint.

ANSWER:

a. **Jacqueline Bennett**

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

b. **Kathleen Turner**

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

c. William Bennett

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants..

d. T. Heyward Carter

Contact through Susan Taylor Wall, Esq.

Deposition in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

e. Chris Douglas

Contact through D. Lynn Bowley, Esq.

Affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

f. Genevieve Felder

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

g. Angela Heissenbuttle

Contact information known to Defendants.

No statements from this witness.

h. Lynne Kerrison

Contact information known to Defendants.

No statements from this witness.

i. Howell Morrison

Howell Morrison

Moore & Van Allen, PLLC

Post Office Box 22828

Charleston, SC 29413-2828

(843) 579-7022

No statements from this witness.

j. Daniel R. Stevenson, II

Contact through Mark McKnight, Esq. 843-577-2837

Deposition in Civil Action No. 2008-CP-10-806, which will be

produced to Defendants.

k. Thomas C. Stevenson, III

Contact through Robert Brunson, Esq. 843-577-7483

Deposition in Civil Action No. 2008-CP-10-806, which will be

produced to Defendants.

l. Susan Studemeyer

Contact information known to Defendants.

No statements from this witness.

4. If you expect to call or will call at trial any expert witness, then provide for each:

- a. Their name, address and specialty;
- b. The subject matter on which they are expected to testify;
- c. The substance of the facts and opinions to which they are expected to testify;
and
- d. A summary of the grounds for each opinion.

ANSWER:

- a. **John P. Freeman**
2329 Wilmot Avenue
Columbia, SC 29205
(803) 254-4667

Mr. Freeman is expected to testify as to the breach of the standard of care by T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. ("Carter Law Firm"). Plaintiffs incorporate by reference the May 2009 Affidavit of John P. Freeman that has been filed with the Court. Mr. Freeman is being paid on an hourly basis. In addition to the above, Mr. Freeman may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

- b. **George Durant**
4408 Forest Drive
Columbia, SC 29202
(803) 790-0020

Mr. Durant is expected to testify as to the breach of standard of care by Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. ("Dixon-Hughes"). Plaintiffs incorporate by reference the May 2009 Affidavit of George Durant that has been filed with the Court. Mr. Durant is being paid on an hourly basis. In addition to the above, Mr. Durant may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

5. Identify all communications between you and defendants Lynne Kerrison and/or Dixon Hughes.

ANSWER: Plaintiffs did not keep a log of all communications with Lynne Kerrison and Dixon Hughes. Notwithstanding the foregoing, to the extent Plaintiffs have any

documents containing communications with Lynne Kerrison and/or Dixon Hughes relating in any way to the subject of the Compliant, Plaintiffs will produce such documents in response to Defendants Requests for Production.

6. Identify all communications between you and defendant Heyward Carter.

ANSWER: Plaintiffs did not keep a log of all communications with Heyward Carter. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Heyward Carter relating in any way to the subject of the Compliant, Plaintiffs will produce such documents in response to Defendants Requests for Production.

7. Have you made any statements or given any written or recorded statements to anyone concerning the things at issue in this lawsuit? If so, please identify the statements.

ANSWER: See statements identified in response to Interrogatory 3 above.

8. Identify all communications between you and Thomas Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Thomas Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Thomas Stevenson relating in any way to the subject of the Compliant, Plaintiffs will produce such documents in response to Defendants Requests for Production.

9. Did you, at any time, receive or request any information regarding the administration, assets, loans, or distributions from the trusts, from any trustee between January 1999 and April 2006? If so, please describe the information, when, from whom, and under what circumstances you requested or received it.

ANSWER: From time to time, usually at holiday gatherings, Tom and Dan Stevenson gave Plaintiffs optimistic impressions of the family finances. William Bennett (Plaintiff Bennett's husband) remembers asking both trustees how are the trusts doing at Thanksgiving and/or Christmas gatherings and was told that the trusts were doing great.

When Plaintiff Bennett's daughter was getting married in May 2002, Plaintiff Bennett asked to have Mrs. Stevenson buy a wedding present of silver flat ware in keeping with other wedding gifts Mrs. Stevenson had purchased for her grandchildren before she had Alzheimer's. Tom resisted the gift, stating to Plaintiff Bennett "we have to grow the trusts." At the time, Plaintiff Bennett took Tom's response as showing responsible and prudent care of the trusts.

Furthermore, Plaintiffs relied on Defendant Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.'s oversight and administration of the Trusts' bank accounts and Mrs. Stevenson's bank accounts.

10. Identify all communications between you and Daniel Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Daniel Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Daniel Stevenson relating in any way to the subject of the Compliant, Plaintiffs will produce such documents in response to Defendants Requests for Production.

11. Identify all damages that you claim as a result of any negligence or wrongdoing by the Defendants and for each item of damages:

a. Detail the method by which you calculated it;

- b. Identify all documents that contain information that you used in making your calculations;
- c. List all facts supporting the calculation; and
- d. Identify people with knowledge of any facts relating to damages.

ANSWER:

- a. Detail the method by which you calculated it;

Illegal Transaction Lost Principal Damages	See Exhibit 1, Affidavit of William Bennett, which is incorporated herein by reference. In addition to actual sums lost, Plaintiffs are seeking interest ranging from 5.84% through 10%, compounded yearly.
Prejudgment Interest	This amount will be determined pursuant to S.C. Code Ann. §34-31-20(A) by the Court in a post trial hearing.
Unnecessary Professional Fees and Lost Time Incurred as a Result of Defendants actions.	This amount includes attorneys fees, accounting fees, expert fees, costs, and lost time spent in pursuing and developing claims against Dan and Tom Stevenson. This amount is continuing to accrue and is in excess of \$200,000.00. This answer will be seasonably supplemented with more detailed information as it develops.

- b. Identify all documents that contain information that you used in making your calculations;

See documents identified in response to Interrogatory 2, categories e, g, and h.
- c. List all facts supporting the calculation; and

See facts identified in response to Interrogatory 12.
- d. Identify people with knowledge of any facts relating to damages.

See persons identified in response to Interrogatory 3.

12. Identify each person or entity whom you hold responsible for any or all of the damages identified in the previous question. Tell us why you hold them responsible, and tell us the percentage of fault you assign to each.

ANSWER:

- a. T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. = 100%

Defendants Carter and the Carter Law Firm were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals. Defendants Carter and the Carter Law Firm breached their fiduciary duties owed to Plaintiffs and committed malpractice by failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants.

- b. Douglas Capital Management, Inc. = 100%

Defendant Douglas Capital served as investment advisors for the two subject Trusts and Jacquelin K. Stevenson and owed duties of care to Plaintiffs. Defendant Douglas Capital breached the standard of care owed Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to this Defendant.

- c. Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. = 100%;

Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as attorneys by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

- d. Thomas C. Stevenson, III = 100%; and
e. Daniel R. Stevenson, II = 100%.

During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson and failed to report each others wrongful actions.

13. Tell us what actions you took to mitigate the damages you claim in this lawsuit.

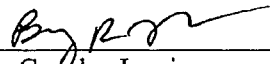
ANSWER: Plaintiffs have pursued claims against Thomas C. Stevenson, III and Daniel R. Stevenson, II.

14. Tell us how and when you learned of the things in your complaint and the sources of your information.

ANSWER: Plaintiff Bennett first learned of some of the transactions referenced in the Complaint at a meeting attended by Defendant Kerrison on April 27, 2006. The details of Defendants' conduct and the illegal transactions were then developed in subsequent

investigations and in connection with discovery in Civil Action No. 2008-CP-10-806.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

November 10, 2009

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

CERTIFICATE OF SERVICE

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., hereby certify
that I have served Plaintiff Jacquelin S. Bennett's Answers to Defendant Lynne L.
Kerrison's First Set of Interrogatories upon opposing counsel, by mailing a copy of same,
postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at
the following addresses:

Susan Taylor Wall, Esq.
J. Nelson Chandler, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

D. Lynn Bowley, Esq.
Catherine D. Byrd, Esq.
Taylor, Shoun, Bowley & Byrd, LLC
39 Broad Street, Suite 101
Charleston, South Carolina 29401

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402-0197

November 10, 2009

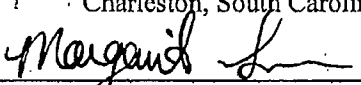

Margarita Sosa

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K.
Stevenson, deceased and the Estate of
Thomas C. Stevenson, deceased

Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives
of the Estate of Jacquelin K. Stevenson,
deceased

Petitioners,

Versus

Daniel R. Stevenson, II, Thomas C.
Stevenson III, Genevieve S. Felder,
James K. King, Kathleen S. Turner, and
Jacquelin S. Bennett, all respectively
and inclusively in their various
capacities as individuals, devisees,
cestui-que-trusts and/or co-Personal
Representatives or co-Trustees or
predecessor co-Trustees.

Respondents.

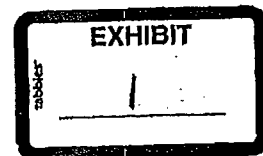
IN THE PROBATE COURT

Case# 2007-ES10-1437 and
Case# 1988-ES10-00747

AFFIDAVIT OF WILLIAM BENNETT

PERSONALLY APPEARED before me, William Bennett, who first being duly
sworn, deposes and states as follows:

1. I am a citizen and resident of Charleston County, South Carolina.
2. I am over the age of eighteen years and I am competent to make these
statements.
3. I have personal knowledge of the matters contained herein.



1964

4. I am the husband of Petitioner Jacquelin S. Bennett, who is the co-Personal Representative of her mother's estate (Estate of Jacquelin K. Stevenson, hereinafter, "Estate").
5. My wife, Jacquelin Bennett is also a beneficiary of two testamentary trusts established in the Last Will and Testament of her father, Thomas C. Stevenson, Jr. These trusts are referred to as the QTIP Trust and the Marital Trust (hereinafter, Trusts).
6. I have a background in accounting and have personally reviewed all documents in my possession related to the improper transactions wherein Thomas C. Stevenson, III and/or Daniel R. Stevenson, II took money from the Trusts or Estate during their tenure as Co-Trustees of the Trusts.
7. From my review of the financial and other records related to these improper transactions, I have compiled a detailed summary of each transaction for which I have supporting documentation. A copy of this summary is attached to this Affidavit as Exhibit A.
8. During his tenure as a co-Trustee, Thomas Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$781,808 to the QTIP Trust, \$425,962 to the Marital Trust and \$434,970 to the Estate of Jacquelin K. Stevenson.

9. During his tenure as a co-Trustee, Daniel Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$3,024,680 to the QTIP Trust, \$2,478,982 to the Marital Trust and \$487,730 to the Estate of Jacquelin K. Stevenson.
10. In addition to the amounts that were actually taken from the Trusts and Estate, plus interest, the Trusts and Estate have also lost the profit that would have been realized had these funds been prudently invested instead of "loaned" and squandered.
11. Thomas and Daniel Stevenson used the money improperly taken to fund their lifestyles and business ventures. In particular, there is direct evidence that Thomas Stevenson used "loans" from the Trusts to fund a company called Fabtech. This is money that properly should have been used for investments in the name of the Trusts.
12. Daniel Stevenson has never repaid any of the "loans" he took from the Estate or Trusts.
13. On May 2, 2000, Thomas Stevenson made interest payments in the amount of \$4,986.30 on two of his "loans."
14. On July 24, 2007, Thomas Stevenson repaid \$300,000 to the QTIP Trust and \$407,500 to the Marital Trust. He has not made any additional payments on his "loans" from the Trusts or Estate since

July 24, 2007. He is not making "regular" or "scheduled" payments on this indebtedness.

15. Daniel Stevenson's complete lack of attempt to repay his "loans" indicates his refusal to remedy this liability.
16. Thomas Stevenson's lack of attempt to repay his "loans," except for two payments that were made in 2000 and two payments made in 2007, indicates his refusal to remedy this liability.
17. From the financial information I have reviewed, I do not believe that either Thomas Stevenson or Daniel Stevenson has the financial capability to completely reimburse the Trusts and Estates for the money they have unlawfully taken.
18. I believe that, if Daniel and Thomas Stevenson are not prevented from selling, transferring or otherwise disposing of assets, the amount that the Estate and Trusts may later recover through a judgment will be substantially decreased.

FURTHER THE AFFIANT SAYETH NOT.

William Bennett
William Bennett

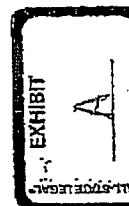
SWORN TO AND SUBSCRIBED before me
this 20 day of Jan. 2008.

Charles D. Grace
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 05/25/17

Recap of Stevenson Family Matters to Jan 12, 2008

DATE	DESCRIPTION	Q TIP TOM	Q TIP DAN	MARITAL TOM	MARITAL DAN	JKS TOM	JKS DAN
	Cumulative/ Dixon Hughes	\$542,500	\$2,150,635	\$407,500	\$1,727,140		
	Cumulative Interest-6.35% Comp. Y	\$175,076 *	\$745,435 **	\$125,482 *	\$832,512 **		
	Additional Interest to 1/12/2008		\$35,170		\$28,503		
11/2/89	Direct loan-Douglas Capital	\$100,000		\$100,000			
	Cumulative Interest at 10% #	\$118,528		\$118,528			
	Legal Expenses-MVA & Pearlman	\$5,870	\$5,870	\$5,271	\$5,271		
	Other expenses Pearlman	\$1,000	\$1,000	\$1,000	\$1,000		
	Accounting Expenses	\$3,830	\$3,830	\$3,716	\$3,716	\$2,849	\$2,849
	Legal Expenses McCutchen & Harvey	\$12,500	\$12,500	\$12,500	\$12,500		
	Additional to be added as incurred						
	Trustee fees 1999-2007	\$61,365	\$70,440	\$59,465	\$63,340		
4/15/04	Ashley Hall					\$50,000	
	Interest to 1/12/2008	6.35%				\$12,989	
4/15/04	Christ School					\$50,000	
	Interest to 1/12/2008	6.35%				\$12,989	
	G. Small 4/1/01-10/12/02					\$36,812	
	Interest from 1/1/2002	6.35%				\$16,462	
	Loans JKS/Dixon Hughes						\$168,057
	Interest on \$20000 from 10/5/01 to 1/12/2008						\$9,435
	Interest on \$128057 from 1/24/02 to 1/12/2008						\$58,859
	Interest on \$20000 from 11/27/06 to 1/12/2008						\$1,140
	TOTALS	\$1,020,469	\$3,024,680	\$833,462	\$2,473,982	\$181,901	\$238,340



1968

0149

7/24/27 Less Payments of 7/24/07	-300,000		-407,500				
10/10/07 Interest on \$242,500 Balance	\$3,291 ***						
Interest from 10/10/2007 to 1-12-2008	\$7,848						
TOTALS	\$731,608	\$3,024,680	\$425,962	\$2,473,982	\$181,901	\$238,340	

DESCRIPTION	RECAP BY TRUSTEE	
	TOM	DAN
Q TIP TRUST TOTALS	\$731,608	\$3,024,680
MARITAL TRUST TOTALS	\$425,962	\$2,473,982
JKS TOTALS -2000 TO 2007/ Dixon Hughes	\$181,901	\$238,340
JKS NOTES INCLUDING INTEREST	\$253,089	\$249,390
TOTALS BY TRUSTEE	\$1,592,540	\$5,986,392 All insurance

* Footnotes
 Interest calculated to July 24, 2007
 ** Interest calculated to Oct. 10, 2007
 *** Interest calculated 7/24/07 to 10/10/07
 No interest calculated
 \$ Interest calculated to 1/12/2008

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,)

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.)

Defendants.)

**PLAINTIFF GENEVIEVE S.
FELDER'S ANSWERS TO
DEFENDANT LYNNE L. KERRISON'S
FIRST SET OF INTERROGATORIES**

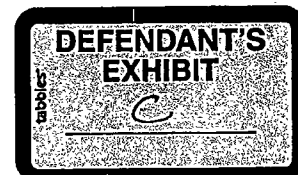
TO: M. DAWES COOKE, JR., ESQ., ATTORNEY FOR DEFENDANTS DIXON-
HUGHES, PLLC AND LYNNE L. KERRISON:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff Genevieve

S. Felder answers Defendant Lynne Kerrison's First Set of Interrogatories as follows:

GENERAL OBJECTION

Plaintiff objects to these interrogatories to the extent that they seek documents or other
materials protected by the attorney-client privilege and/or work product privilege. Notwithstanding
the foregoing objection and without waiving same, Plaintiff Turner answers the interrogatories as
follows:



ANSWERS

1. Identify everyone who provided information used in answering these interrogatories.

ANSWER: Plaintiffs Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner.

2. Describe, in detail, all negligent or wrongful acts that you claim the defendants did or failed to do. For each:

- a. Identify everyone with knowledge of the act or inaction;
- b. Identify all documents relating to the act or inaction;
- c. Identify all statements or communications relating to the act or inaction.

ANSWER:

Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as accountants by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

- a. Identify everyone with knowledge of the act or inaction;

See Answer to Interrogatory 3.

- b. Identify all documents relating to the act or inaction;

- a. correspondence from and leading up to C/A No. 2008-CP-10-806;
- b. pleadings from C/A No. 2008-CP-10-806;
- c. Hood Law Firm master file from C/A No. 2008-CP-10-806;

- d. depositions and exhibits from C/A No. 2008-CP-10-806;
- e. financials for Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will;
- f. Power of Attorneys; Wills, Codicils and Estate Planning documents concerning Mr. and Mrs. Thomas Stevenson;
- g. schedules of illegal transactions by Dan and Tom Stevenson;
- h. statements from law firms and professionals; and
- i. Other documents to be produced to the Defendants in this case.

- c. Identify all statements or communications relating to the act or inaction.

See statements identified in response to Interrogatory 3.

- 3. Identify all individuals that have or may have knowledge of the things referred to in the Complaint.

ANSWER:

- a. Genevieve Felder

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-

CP-10-806, which will be produced to Defendants.

- b. Jacqueline Bennett

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-

806, which will be produced to Defendants.

c. William Bennett

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants..

d. T. Heyward Carter

Contact through Susan Taylor Wall, Esq.

Deposition in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

e. Chris Douglas

Contact through D. Lynn Bowley, Esq.

Affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

f. Kathleen Turner

Contact through Plaintiffs' Counsel

Statement via deposition and/or affidavit in Civil Action No. 2008-CP-10-806, which will be produced to Defendants.

g. Angela Heissenbuttle

Contact information known to Defendants.

No statements from this witness.

h. Lynne Kerrison

Contact information known to Defendants.

No statements from this witness.

i. Howell Morrison

**Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7022**

No statements from this witness.

j. Daniel R. Stevenson, II

Contact through Mark McKnight, Esq. 843-577-2837

**Deposition in Civil Action No. 2008-CP-10-806, which will be
produced to Defendants.**

k. Thomas C. Stevenson, III

Contact through Robert Brunson, Esq. 843-577-7483

**Deposition in Civil Action No. 2008-CP-10-806, which will be
produced to Defendants.**

l. Susan Studemeyer

Contact information known to Defendants.

No statements from this witness.

4. If you expect to call or will call at trial any expert witness, then provide for each:

- a. Their name, address and specialty;**
- b. The subject matter on which they are expected to testify;**
- c. The substance of the facts and opinions to which they are expected to testify;
and**
- d. A summary of the grounds for each opinion.**

ANSWER:

- a. **John P. Freeman**
2329 Wilmot Avenue
Columbia, SC 29205
(803) 254-4667

Mr. Freeman is expected to testify as to the breach of the standard of care by T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. ("Carter Law Firm"). Plaintiffs incorporate by reference the May 2009 Affidavit of John P. Freeman that has been filed with the Court. Mr. Freeman is being paid on an hourly basis. In addition to the above, Mr. Freeman may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

- b. **George Durant**
4408 Forest Drive
Columbia, SC 29202
(803) 790-0020

Mr. Durant is expected to testify as to the breach of standard of care by Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. ("Dixon-Hughes"). Plaintiffs incorporate by reference the May 2009 Affidavit of George Durant that has been filed with the Court. Mr. Durant is being paid on an hourly basis. In addition to the above, Mr. Durant may testify at trial as to any further opinion expressed that may be expressed in his deposition in this case.

5. Identify all communications between you and defendants Lynne Kerrison and/or Dixon Hughes.

ANSWER: Plaintiffs did not keep a log of all communications with Lynne Kerrison

and Dixon Hughes. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Lynne Kerrison and/or Dixon Hughes relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

6. Identify all communications between you and defendant Heyward Carter.

ANSWER: Plaintiffs did not keep a log of all communications with Heyward Carter. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Heyward Carter relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

7. Have you made any statements or given any written or recorded statements to anyone concerning the things at issue in this lawsuit? If so, please identify the statements.

ANSWER: See statements identified in response to Interrogatory 3 above.

8. Identify all communications between you and Thomas Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Thomas Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Thomas Stevenson relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

9. Did you, at any time, receive or request any information regarding the administration, assets, loans, or distributions from the trusts, from any trustee between January 1999 and April 2006? If so, please describe the information, when, from whom, and under what

circumstances you requested or received it.

ANSWER: Plaintiff Felder did not receive or request any information regarding the administration, assets, loans or distributions from the Trusts, from any trustee between January 1999 and April 2006 except discussions about the insurance money that Plaintiffs were given each year to pay for Estate taxes. Plaintiff Felder was led to believe everything was alright and there was no need to worry. Plaintiff Felder did not worry about the Estate because she thought that Dan and Tom Stevenson were good businessmen and Plaintiff Felder thought they were honorable. Plaintiff Felder did not think Dan and Tom were capable of being dishonest.

Furthermore, Plaintiffs relied on Defendant Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.'s oversight and administration of the Trusts' bank accounts and Mrs. Stevenson's bank accounts.

10. Identify all communications between you and Daniel Stevenson about the trusts.

ANSWER: Plaintiffs did not keep a log of all communications with Daniel Stevenson. Notwithstanding the foregoing, to the extent Plaintiffs have any documents containing communications with Daniel Stevenson relating in any way to the subject of the Complaint, Plaintiffs will produce such documents in response to Defendants Requests for Production.

11. Identify all damages that you claim as a result of any negligence or wrongdoing by the Defendants and for each item of damages:

- a. Detail the method by which you calculated it;
- b. Identify all documents that contain information that you used in making your calculations;

- c. List all facts supporting the calculation; and
- d. Identify people with knowledge of any facts relating to damages.

ANSWER:

- a. Detail the method by which you calculated it;

Illegal Transaction Lost Principal Damages	See Exhibit 1, Affidavit of William Bennett, which is incorporated herein by reference. In addition to actual sums lost, Plaintiffs are seeking interest ranging from 5.84% through 10%, compounded yearly.
Prejudgment Interest	This amount will be determined pursuant to S.C. Code Ann. §34-31-20(A) by the Court in a post trial hearing.
Unnecessary Professional Fees and Lost Time Incurred as a Result of Defendants actions.	This amount includes attorneys fees, accounting fees, expert fees, costs, and lost time spent in pursuing and developing claims against Dan and Tom Stevenson. This amount is continuing to accrue and is in excess of \$200,000.00. This answer will be seasonably supplemented with more detailed information as it develops.

- b. Identify all documents that contain information that you used in making your calculations;

See documents identified in response to Interrogatory 2, categories e, g, and

h.

- c. List all facts supporting the calculation; and

See facts identified in response to Interrogatory 12.

- d. Identify people with knowledge of any facts relating to damages.

See persons identified in response to Interrogatory 3.

- 12. Identify each person or entity whom you hold responsible for any or all of the damages identified in the previous question. Tell us why you hold them responsible, and tell us

the percentage of fault you assign to each.

ANSWER:

- a. T. Heyward Carter, Jr. and Evans, Carter; Kunes & Bennett, P.A. =
100%

Defendants Carter and the Carter Law Firm were required to fully disclose to Plaintiffs including Jacquelin K. Stevenson via her power of attorney, Kathleen Turner, all known significant and material information including but not limited to the fact that the trustees were engaging in improper self-dealing withdrawals. Defendants Carter and the Carter Law Firm breached their fiduciary duties owed to Plaintiffs and committed malpractice by failing to inform the Plaintiffs of the improper self-dealing withdrawals known to these Defendants.

- b. Douglas Capital Management, Inc. = 100%

Defendant Douglas Capital served as investment advisors for the two subject Trusts and Jacquelin K. Stevenson and owed duties of care to Plaintiffs. Defendant Douglas Capital breached the standard of care owed Plaintiffs by *among other things*: failing to inform the Plaintiffs of the improper self-dealing withdrawals known to this Defendant.

- c. Lynne L. Kerrison and Dixon-Hughes f/k/a Pratt-Thomas Gumb &
Co., P.A. = 100%;

Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson. Defendants Kerrison and Dixon-Hughes breached the standard of care owed to the subject Trusts and Jacquelin K. Stevenson as

attorneys by failing to inform the Plaintiffs, including Plaintiff Kathleen S. Turner as the power of attorney for Jacquelin K. Stevenson, of the improper self-dealing withdrawals known to these Defendants, and failing to resign as accountants when a conflict of interest arose.

d. Thomas C. Stevenson, III = 100%; and

e. Daniel R. Stevenson, II = 100%.

During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees, both improperly took money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson and failed to report each others wrongful actions.

13. Tell us what actions you took to mitigate the damages you claim in this lawsuit.

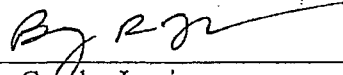
ANSWER: Plaintiffs have pursued claims against Thomas C. Stevenson, III and Daniel R. Stevenson, II.

14. Tell us how and when you learned of the things in your complaint and the sources of your information.

ANSWER: Plaintiff Felder first learned of some of the transactions referenced in the Complaint at a meeting attended by Defendant Kerrison on April 27, 2006. The details of Defendants' conduct and the illegal transactions were then developed in subsequent investigations and in connection with discovery in Civil Action No. 2008-CP-10-806.

[signature block located on the following page]

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

November 10, 2009

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter, Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE PROBATE COURT
FOR THE
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

CERTIFICATE OF SERVICE

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., hereby certify
that I have served **Plaintiff Genevieve S. Felder's Answers to Defendant Lynne L. Kerrison's
First Set of Interrogatories** upon opposing counsel, by mailing a copy of same, postage prepaid
and return address clearly indicated on said envelope, to said opposing counsel at the following
addresses:

Susan Taylor Wall, Esq.
J. Nelson Chandler, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

D. Lynn Bowley, Esq.
Catherine D. Byrd, Esq.
Taylor, Shoun, Bowley & Byrd, LLC
39 Broad Street, Suite 101
Charleston, South Carolina 29401

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402-0197

November 10, 2009

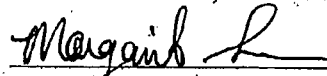

Margarita Sosa

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K.
Stevenson, deceased and the Estate of
Thomas C. Stevenson, deceased

Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives
of the Estate of Jacquelin K. Stevenson,
deceased

Petitioners,

Versus

Daniel R. Stevenson, II, Thomas C.
Stevenson III, Genevieve S. Felder,
James K. King, Kathleen S. Turner, and
Jacquelin S. Bennett, all respectively
and inclusively in their various
capacities as individuals, devisees,
cestui-que-trusts and/or co-Personal
Representatives or co-Trustees or
predecessor co-Trustees.

Respondents.

IN THE PROBATE COURT

Case# 2007-ES10-1487 and
Case# 1988-ES10-00747

AFFIDAVIT OF WILLIAM BENNETT

PERSONALLY APPEARED before me, William Bennett, who first being duly
sworn, deposes and states as follows:

1. I am a citizen and resident of Charleston County, South Carolina.
2. I am over the age of eighteen years and I am competent to make these
statements,
3. I have personal knowledge of the matters contained herein.



1964

4. I am the husband of Petitioner Jacquelin S. Bennett, who is the co-Personal Representative of her mother's estate (Estate of Jacquelin K. Stevenson, hereinafter, "Estate").
5. My wife, Jacquelin Bennett is also a beneficiary of two testamentary trusts established in the Last Will and Testament of her father, Thomas C. Stevenson, Jr. These trusts are referred to as the QTIP Trust and the Marital Trust (hereinafter, Trusts).
6. I have a background in accounting and have personally reviewed all documents in my possession related to the improper transactions wherein Thomas C. Stevenson, III and/or Daniel R. Stevenson, II took money from the Trusts or Estate during their tenure as Co-Trustees of the Trusts.
7. From my review of the financial and other records related to these improper transactions, I have compiled a detailed summary of each transaction for which I have supporting documentation. A copy of this summary is attached to this Affidavit as Exhibit A.
8. During his tenure as a co-Trustee, Thomas Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$731,608 to the QTIP Trust, \$425,962 to the Marital Trust and \$434,970 to the Estate of Jacquelin K. Stevenson.

9. During his tenure as a co-Trustee, Daniel Stevenson improperly took, unbeknownst to the beneficiaries, substantial amounts of money from the Estate and Trusts. As of January 12, 2008, he was indebted in the following amounts: \$3,024,680 to the QTIP Trust, \$2,473,982 to the Marital Trust and \$487,730 to the Estate of Jacquelin K. Stevenson.
10. In addition to the amounts that were actually taken from the Trusts and Estate, plus interest, the Trusts and Estate have also lost the profit that would have been realized had these funds been prudently invested instead of "loaned" and squandered.
11. Thomas and Daniel Stevenson used the money improperly taken to fund their lifestyles and business ventures. In particular, there is direct evidence that Thomas Stevenson used "loans" from the Trusts to fund a company called Fabtech. This is money that properly should have been used for investments in the name of the Trusts.
12. Daniel Stevenson has never repaid any of the "loans" he took from the Estate or Trusts.
13. On May 2, 2000, Thomas Stevenson made interest payments in the amount of \$4,986.80 on two of his "loans."
14. On July 24, 2007, Thomas Stevenson repaid \$300,000 to the QTIP Trust and \$407,500 to the Marital Trust. He has not made any additional payments on his "loans" from the Trusts or Estate since

July 24, 2007. He is not making "regular" or "scheduled" payments on this indebtedness.

15. Daniel Stevenson's complete lack of attempt to repay his "loans" indicates his refusal to remedy this liability.
16. Thomas Stevenson's lack of attempt to repay his "loans," except for two payments that were made in 2000 and two payments made in 2007, indicates his refusal to remedy this liability.
17. From the financial information I have reviewed, I do not believe that either Thomas Stevenson or Daniel Stevenson has the financial capability to completely reimburse the Trusts and Estates for the money they have unlawfully taken.
18. I believe that, if Daniel and Thomas Stevenson are not prevented from selling, transferring or otherwise disposing of assets, the amount that the Estate and Trusts may later recover through a judgment will be substantially decreased.

FURTHER THE AFFIANT SAYETH NOT.

William Bennett
William Bennett

SWORN TO AND SUBSCRIBED before me
this 20 day of Jan 2008.

Charles A. Grace
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 05/25/17

Recap of Stevenson Family Matters to Jan 12, 2008

DATE	DESCRIPTION	Q TIP TOM	Q TIP DAN	MARITAL TOM	MARITAL DAN	JKS TOM	JKS DAN
	Cumulative/ Dixon Hughes	\$542,500	\$2,150,635	\$407,500	\$1,727,140		
	Cumulative Interest-8.35% Comp. Y	\$175,076 *	\$745,435 **	\$125,482 *	\$832,512 **		
	Additional Interest to 1/12/2008		\$35,170		\$28,503		
11/2/89	Direct loan-Douglas Capita	\$100,000		\$100,000			
	Cumulative Interest at 10% #	\$118,528		\$118,528			
	Legal Expenses-MVA & Pearlman	\$5,870	\$5,870	\$5,271	\$5,271		
	Other expenses Pearlman	\$1,000	\$1,000	\$1,000	\$1,000		
	Accounting Expenses	\$3,830	\$3,830	\$3,718	\$3,718	\$2,849	\$2,849
	Legal Expenses McCutchen & Harvey	\$12,500	\$12,500	\$12,500	\$12,500		
	Additional to be added as Incurred						
	Trustee fees 1999-2007	\$81,365	\$70,440	\$59,465	\$83,340		
4/15/04	Ashley Hall						
	Interest to 1/12/2008 8.35%					\$50,000	\$12,989
4/15/04	Christ School						
	Interest to 1/12/2008 8.35%					\$50,000	\$12,989
	G. Small 4/1/01-10/12/02						
	Interest from 1/1/2002 8.35%					\$36,812	\$16,462
	Loans JKS/Dixon Hughes						
	Interest on \$20000 from 10/5/01 to 1/12/2008						\$168,057
	Interest on \$128057 from 1/24/02 to 1/12/2008						\$9,435
	Interest on \$20000 from 11/27/06 to 1/12/2008						\$58,858
							\$1,140
	TOTALS	\$1,020,469	\$3,024,680	\$833,462	\$2,473,982	\$181,901	\$238,340



7/24/27 Less Payments of 7/24/08 07	-300,000		-407,500				
10/10/07 Interest on \$242,500 Balance	\$3,291						
Interest from 10/10/2007 to 1-12-2008	\$7,848						
TOTALS	\$731,608	\$3,024,680	\$425,962	\$2,473,982	\$181,901	\$238,340	

RECAP BY TRUSTEE

DESCRIPTION	TOM	DAN
Q TIP TRUST TOTALS	\$731,608	\$3,024,680
MARITAL TRUST TOTALS	\$425,962	\$2,473,982
JKS TOTALS -2000 TO 2007/ Dixon Hughes	\$181,901	\$238,340
JKS NOTES INCLUDING INTEREST	\$253,068	\$249,390
TOTALS BY TRUSTEE	\$1,582,540	\$5,986,392 All insurance

Footnotes

- * Interest calculated to July 24, 2007
- *** Interest calculated to Oct. 10, 2007
- **** Interest calculated 7/24/07 to 10/10/07
- # No interest calculated
- # Interest calculated to 1/12/2008

6-9-11 63

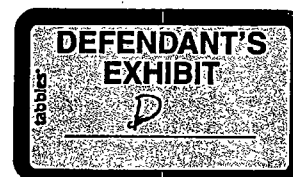
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
 In Re: The Estate of Jacquelin K. Stevenson, Deceased, and the Estate of Thomas C. Stevenson, Deceased,	)	 CIVIL ACTION NO.2011-CP-10-400
	)	
Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson, Plaintiffs,	)	PLAINTIFF KATHLEEN S. TURNER'S RESPONSES TO DEFENDANT LYNNE L. KERRISON'S FIRST REQUEST FOR ADMISSIONS
	)	
v.	)	
	)	
T. Heyward Carter, Jr.; Evans, Carter, Kunes & Bennett, P.A.; Douglas Capital Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Defendants.	)	

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff Kathleen S. Turner hereby responds to Defendant Lynne L. Kerrison's First Requests for Admissions as follows:

REQUESTS TO ADMIT

1. Between March 7, 2001 and October 11, 2005 Thomas Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$950,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.



2. Between August 30, 1999 and December 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$3,877,776.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: **Admitted.**

3. Between October 1, 2003 and April 27, 2006 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$1,642,985.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: **Denied.** It is however, admitted that Thomas Stevenson and Daniel Stevenson, as co-trustees of the Marital and Q-TIP Trusts, misappropriated a total of \$1,662,985.00 from the assets of those trusts.

4. After April 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$140,000.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: **Admitted.**

5. Between 1999 and October 1, 2003 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$2,724,791.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: **Admitted.**

6. On November 3, 1999 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: **Admitted.**

7. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

8. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

9. On June 20, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

10. On June 21, 2001 Thomas Stevenson misappropriated \$150,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

11. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

12. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

13. On May 15, 2002 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: It is admitted that Thomas Stevenson misappropriated \$25,000.00 from the assets of the Q-TIP Trust, as well as an additional \$25,000.00.

14. On May 15, 2002 Thomas Stevenson misappropriated \$50,000.00 assets he and Daniel Stevenson held in trust under the terms of from the marital trust.

RESPONSE: Admitted.

15. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

16. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

17. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

18. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

19. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

20. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

21. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

22. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

23. On September 29, 2005 Thomas Stevenson misappropriated \$42,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

24. On September 29, 2005 Thomas Stevenson misappropriated \$7,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

25. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

26. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

27. On July 25, 2007, Thomas Stevenson repaid or caused to be repaid \$300,000.00 to the QTIP trust.

RESPONSE: Admitted.

28. On July 25, 2007 Thomas Stevenson repaid or caused to be repaid \$407,500.00 to the marital trust.

RESPONSE: Admitted.

29. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 the QTIP trust.

RESPONSE: Admitted.

30. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 to the marital trust.

RESPONSE: Admitted.

31. Jacquelin Stevenson was competent in January of 2001.

RESPONSE: Admitted.

32. Jacquelin Stevenson was competent in February of 2003.

RESPONSE: Denied.

33. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacauelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

34. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

35. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

36. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account belong to Jacquelin Stevenson.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

37. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

38. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the marital trust.

RESPONSE:

Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

39. Lynne Kerrison did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacquelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

40. Lynne Kerrison did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas

Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

41. Lynne Kerrison did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

42. Lynne Kerrison was not authorized to sign checks drawn on any account belonging to Jacquelin Stevenson.

RESPONSE:

Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas

Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

43. Lynne Kerrison was not authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

44. Lynne Kerrison was not authorized to sign checks drawn on any account held by the marital trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel

Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

45. On November 29, 2009 you entered into a Settlement Agreement and Release with Thomas Stevenson. A true and accurate copy of which is attached as Exhibit A.

RESPONSE: Admitted.

46. Your signature appears on Exhibit A.

RESPONSE: Admitted.

47. Pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacqueline Stevenson's will, the QTIP trust, and the marital trust.

RESPONSE: It is admitted that pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacquelin Stevenson's Will, the Q-TIP Trust and the Marital Trust, but Plaintiff craves reference to the entire document.

48. Pursuant to the terms November 29, 2009 Settlement Agreement and Release, Thomas Stevenson made payments totaling of \$49,368.00.

RESPONSE: Admitted.

49. On September 14, 2010 you or your agent caused to be filed with the Clerk of Court for Charleston County a Confession of Judgment against Thomas Stevenson in the amount of \$2,000,000.00. A true and accurate copy of which is attached as Exhibit B.

RESPONSE: Admitted.

50. You received a judgment ("Judgment") against Daniel Stevenson in the amount of \$10,801,541.00 on December 1, 2009. A true and accurate copy of which is attached as Exhibit C.

RESPONSE: Admitted.

51. On September 10, 2010 a Petition to Setoff ("Petition") was filed on your behalf in the Charleston County Probate Court. A true and accurate copy of which is attached as Exhibit D.

RESPONSE: Denied.

52. An Order ("Order") granting the Petition for Setoff was signed by the presiding Judge on June 8, 2010. A true and accurate copy of which is attached as Exhibit E.

RESPONSE: Admitted.

53. In 1999 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

54. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both

trusts, and she was, therefore, required by law to provide me any information material to the trusts.

55. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

56. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

57. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

58. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both

trusts, and she was, therefore, required by law to provide me any information material to the trusts.

59. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

60. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

61. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

62. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

63. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

64. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

65. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

66. In 1999 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

67. In 1999 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

68. In 2000 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

69. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

70. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

71. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

72. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

73. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

74. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted.**

75. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

76. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

77. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

78. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

79. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

80. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

81. In 2000 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

82. In 2000 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

83. In 2001 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

84. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

85. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

86. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; ; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

- [illegible]

RESPONSE:

- RESPONSE:**

RESPONSE:

- RESPONSE:**

In 2001 you r

- In 2001 you r

Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

91. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

92. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

93. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

94. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

95. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

96. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

97. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

98. In 2001 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

99. In 2001 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

100. In 2002 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

101. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

102. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

103. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

104. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

105. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts; and she was, therefore, required by law to provide me any information material to the trusts.

106. In 2002 you made no written request for information from Lynne Kerrison regarding concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and was therefore required by law to provide me any information material to my mother's accounts.

107. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

108. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

109. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property of the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

110. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

111. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

112. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

113. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

114. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted;** however, as a fiduciary receiving legal counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me as the holder of my mother's Power of Attorney of any information affecting my mother's accounts, including and especially those by Thomas and Daniel Stevenson.

115. In 2002 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

116. In 2002 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

117. In 2003 you did not contact Lynne Kerrison.

RESPONSE: **Admitted.**

118. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

119. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

120. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

121. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

122. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

123. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

124. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

125. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

126. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

127. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

128. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

129. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

130. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

131. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, as a fiduciary receiving legal counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me as the holder of my mother's Power of Attorney of any information affecting my mother's accounts, including and especially those by Thomas and Daniel Stevenson. Therefore, it is admitted that I made no written request for such information.

132. In 2003 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

133. In 2003 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

134. In 2004, you did not contact Lynne Kerrison.

RESPONSE: Admitted.

135. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

136. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both

trusts, and she was, therefore, required by law to provide me any information material to the trusts.

137. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

138. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

139. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

140. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney, and she was, therefore, required by law to provide me any information material to my mother's accounts.

141. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP.

RESPONSE: Admitted.

142. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

143. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

144. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

145. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

146. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

147. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

148. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, as a fiduciary receiving legal counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me as the holder of my mother's Power of Attorney of any information affecting my mother's accounts, including and especially those by Thomas and Daniel Stevenson. Therefore, it is admitted that I made no written request for such information.

149. In 2004 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

150. In 2004 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

151. In 2005 you had no contact with Lynne Kerrison.

RESPONSE: Admitted.

152. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

153. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts..

154. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was therefore required by law to provide me any information material to my mother's accounts.

155. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

156. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

157. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I held my mother's power of attorney and was also a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to my mother's accounts.

158. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

159. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

160. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

161. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

162. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

163. In 2005 you made no written requests to Daniel Stevenson seeking information concerning

transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

164. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

165. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted; however, as a fiduciary receiving legal counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me as the holder of my mother's Power of Attorney of any information affecting my mother's accounts, including and especially those by Thomas and Daniel Stevenson.

166. In 2005 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

167. In 2005 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

168. You met with Thomas Stevenson in May of 2003 to discuss the administration of the trusts.

RESPONSE: Denied.

169. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trusts in May of 2003.

RESPONSE: Denied.

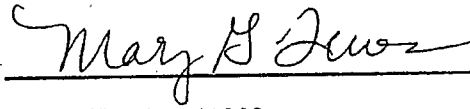
170. You met with Thomas Stevenson on April 19, 2006.

RESPONSE: Admitted.

171. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

RESPONSE: Admitted.

LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Keith M. Babcock
Mary G. Lewis



Post Office Box 11208
Columbia, South Carolina 29211
(803)771-8000

Attorneys for Plaintiffs

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C. Stevenson,
Deceased,

Jacquelin S. Bennett, Genevieve S. Felder and
Kathleen S. Turner, individually, as Co-Trustees
and beneficiaries of the Marital Trust and the
Qualified Terminable Interest Trust created by
the Thomas Stevenson Will, and Jacquelin S.
Bennett, and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes &
Bennett, P.A.; Douglas Capital Management,
Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb &
Co., P.A.; and Lynne L. Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

CERTIFICATE OF SERVICE

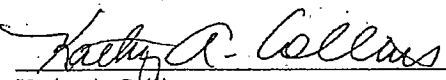
I, Kathy A. Collins, an employee of the law firm of Lewis & Babcock, L.L.P., hereby certify that I have this 9th day of June, 2011, served the foregoing **Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions** in the above-captioned action upon opposing counsel by placing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, South Carolina 29492

Susan Taylor Wall, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

Gedney M. Howe, III, Esq.
Gedney M. Howe, PA
Post Office Box 1034
Charleston, South Carolina 29402


Kathy A. Collins

Columbia, South Carolina

June 9, 2011.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.2011-CP-10-400

PLAINTIFF JACQUELIN S. BENNETT'S
RESPONSES TO DEFENDANT LYNNE L.
KERRISON'S FIRST REQUEST FOR
ADMISSIONS

T. Heyward Carter, Jr.; Evans, Carter, Kunes & Bennett, P.A.; Douglas Capital Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Defendants.

REQUESTS TO ADMIT

- RESPONSE: Admitted.



2. Between August 30, 1999 and December 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$3,877,776.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

3. Between October 1, 2003 and April 27, 2006 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$1,642,985.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Denied. It is however, admitted that Thomas Stevenson and Daniel Stevenson, as co-trustees of the Marital and Q-TIP Trusts, misappropriated a total of \$1,662,985.00 from the assets of those trusts.

4. After April 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$140,000.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

5. Between 1999 and October 1, 2003 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$2,724,791.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

6. On November 3, 1999 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

7. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

8. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

9. On June 20, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

10. On June 21, 2001 Thomas Stevenson misappropriated \$150,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

11. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

12. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

13. On May 15, 2002 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: It is admitted that Thomas Stevenson misappropriated \$25,000.00 from the assets of the Q-TIP Trust, as well as an additional \$25,000.00.

14. On May 15, 2002 Thomas Stevenson misappropriated \$50,000.00 assets he and Daniel Stevenson held in trust under the terms of from the marital trust.

RESPONSE: Admitted.

15. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

16. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

17. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

18. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

19. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

20. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

21. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

22. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

23. On September 29, 2005 Thomas Stevenson misappropriated \$42,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

24. On September 29, 2005 Thomas Stevenson misappropriated \$7,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

25. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

26. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

27. On July 25, 2007, Thomas Stevenson repaid or caused to be repaid \$300,000.00 to the QTIP trust.

RESPONSE: **Admitted.**

28. On July 25, 2007 Thomas Stevenson repaid or caused to be repaid \$407,500.00 to the marital trust.

RESPONSE: **Admitted.**

29. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 the QTIP trust.

RESPONSE: **Admitted.**

30. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 to the marital trust.

RESPONSE: **Admitted.**

31. Jacquelin Stevenson was competent in January of 2001.

RESPONSE: **Admitted.**

32. Jacquelin Stevenson was competent in February of 2003.

RESPONSE: **Denied.**

33. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacauelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

34. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

35. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

36. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account belong to Jacquelin Stevenson.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

37. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

38. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the marital trust.

RESPONSE:

Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

39. Lynne Kerrison did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacquelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

40. Lynne Kerrison did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE:

As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas

Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

41. Lynne Kerrison did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

42. Lynne Kerrison was not authorized to sign checks drawn on any account belonging to Jacquelin Stevenson.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas

Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

43. Lynne Kerrison was not authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

44. Lynne Kerrison was not authorized to sign checks drawn on any account held by the marital trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel

Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

45. On November 29, 2009 you entered into a Settlement Agreement and Release with Thomas Stevenson. A true and accurate copy of which is attached as Exhibit A.

RESPONSE: Admitted.

46. Your signature appears on Exhibit A.

RESPONSE: Admitted.

47. Pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacqueline Stevenson's will, the QTIP trust, and the marital trust.

RESPONSE: It is admitted that pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacquelin Stevenson's Will, the Q-TIP Trust and the Marital Trust, but Plaintiff craves reference to the entire document.

48. Pursuant to the terms November 29, 2009 Settlement Agreement and Release, Thomas Stevenson made payments totaling of \$49,368.00.

RESPONSE: Admitted.

49. On September 14, 2010 you or your agent caused to be filed with the Clerk of Court for Charleston County a Confession of Judgment against Thomas Stevenson in the amount of \$2,000,000.00. A true and accurate copy of which is attached as Exhibit B.

RESPONSE: Admitted.

50. You received a judgment ("Judgment") against Daniel Stevenson in the amount of \$10,801,541.00 on December 1, 2009. A true and accurate copy of which is attached as Exhibit C.

RESPONSE: Admitted.

51. On September 10, 2010 a Petition to Setoff ("Petition") was filed on your behalf in the Charleston County Probate Court. A true and accurate copy of which is attached as Exhibit D.

RESPONSE: Denied.

52. An Order ("Order") granting the Petition for Setoff was signed by the presiding Judge on June 8, 2010. A true and accurate copy of which is attached as Exhibit E.

RESPONSE: Admitted.

53. In 1999 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

54. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

55. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

56. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

57. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

58. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

59. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

60. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

61. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

62. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

63. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

64. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

65. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

66. In 1999 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

67. In 1999 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

68. In 2000 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

69. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

70. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

71. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

72. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

73. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

74. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

75. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

76. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

77. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

78. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

79. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

80. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

81. In 2000 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

82. In 2000 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

83. In 2001 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

84. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

85. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

86. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

87. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

88. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

89. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

90. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

91. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

92. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

93. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

94. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

95. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

96. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

97. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

98. In 2001 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

99. In 2001 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

100. In 2002 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

101. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

102. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

103. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

104. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

105. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

106. In 2002 you made no written request for information from Lynne Kerrison regarding concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

107. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

108. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

109. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property of the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

110. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

111. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

112. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

113. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

114. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

115. In 2002 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

116. In 2002 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

117. In 2003 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

118. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

119. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

120. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

121. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

122. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

123. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

124. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

125. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

126. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

127. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

128. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

129. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

130. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

131. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

132. In 2003 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

133. In 2003 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

134. In 2004, you did not contact Lynne Kerrison.

RESPONSE: Admitted.

135. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

136. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

137. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

138. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

139. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

140. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

141. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP.

RESPONSE: Admitted.

142. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

143. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

144. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

145. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

146. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

147. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

148. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

149. In 2004 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

150. In 2004 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

151. In 2005 you had no contact with Lynne Kerrison.

RESPONSE: Admitted.

152. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

153. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts..

154. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

155. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

156. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

157. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

158. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

159. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

160. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

161. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

162. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

163. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

164. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any
information material to the trusts.

165. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

166. In 2005 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

167. In 2005 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

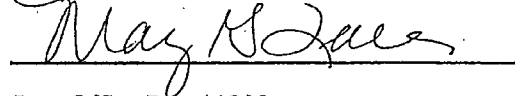
RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Mary G. Lewis



Post Office Box 11208
Columbia, South Carolina 29211
(803)771-8000

Attorneys for Plaintiffs

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C. Stevenson,
Deceased,

Jacquelin S. Bennett, Genevieve S. Felder and
Kathleen S. Turner, individually, as Co-Trustees
and beneficiaries of the Marital Trust and the
Qualified Terminable Interest Trust created by
the Thomas Stevenson Will, and Jacquelin S.
Bennett, and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes &
Bennett, P.A.; Douglas Capital Management,
Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb &
Co., P.A.; and Lynne L. Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

CERTIFICATE OF SERVICE

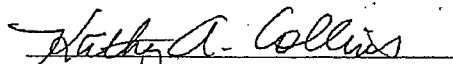
I, Kathy A. Collins, an employee of the law firm of Lewis & Babcock, L.L.P., hereby certify that I have this 9th day of June, 2011, served the foregoing Plaintiff Jacquelin S. Bennett's Responses to Defendant Lynne L. Kerrison's First Request for Admissions in the above-captioned action upon opposing counsel by placing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, South Carolina 29492

Susan Taylor Wall, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

Gedney M. Howe, III, Esq.
Gedney M. Howe, PA
Post Office Box 1034
Charleston, South Carolina 29402


Kathy A. Collins

Columbia, South Carolina

June 9, 2011.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

In Re: The Estate of Jacquelin K.
Stevenson, Deceased, and the Estate of
Thomas C. Stevenson, Deceased,

CIVIL ACTION NO.2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson, Plaintiffs,

PLAINTIFF GENEVIEVE S. FELDER'S
RESPONSES TO DEFENDANT LYNNE L.
KERRISON'S FIRST REQUEST FOR
ADMISSIONS

· V.

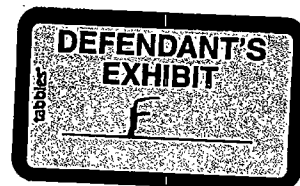
T. Heyward Carter, Jr.; Evans, Carter, Kunes & Bennett, P.A.; Douglas Capital Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Defendants.

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff Genevieve S. Felder hereby responds to Defendant Lynne L. Kerrison's First Requests for Admissions as follows:

REQUESTS TO ADMIT

1. Between March 7, 2001 and October 11, 2005 Thomas Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$950,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.



2. Between August 30, 1999 and December 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$3,877,776.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

3. Between October 1, 2003 and April 27, 2006 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$1,642,985.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Denied. It is however, admitted that Thomas Stevenson and Daniel Stevenson, as co-trustees of the Marital and Q-TIP Trusts, misappropriated a total of \$1,662,985.00 from the assets of those trusts.

4. After April 27, 2006 Daniel Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$140,000.00 from assets he and Thomas Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

5. Between 1999 and October 1, 2003 Thomas and Daniel Stevenson, as co-trustees of the marital and QTIP trusts, misappropriated a total of \$2,724,791.00 from assets they held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.

6. On November 3, 1999 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

7. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

8. On March 7, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

9. On June 20, 2001 Thomas Stevenson misappropriated \$50,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

10. On June 21, 2001 Thomas Stevenson misappropriated \$150,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

11. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

12. On November 23, 2001 Thomas Stevenson misappropriated \$75,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

13. On May 15, 2002 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: It is admitted that Thomas Stevenson misappropriated \$25,000.00 from the assets of the Q-TIP Trust, as well as an additional \$25,000.00.

14. On May 15, 2002 Thomas Stevenson misappropriated \$50,000.00 assets he and Daniel Stevenson held in trust under the terms of from the marital trust.

RESPONSE: Admitted.

15. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

16. On August 4, 2003 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

17. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

18. On March 30, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

19. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

20. On April 8, 2004 Thomas Stevenson misappropriated \$12,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

21. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

22. On September 23, 2005 Thomas Stevenson misappropriated \$100,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

23. On September 29, 2005 Thomas Stevenson misappropriated \$42,500.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

24. On September 29, 2005 Thomas Stevenson misappropriated \$7,500.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

25. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital trust.

RESPONSE: Admitted.

26. On October 11, 2005 Thomas Stevenson misappropriated \$25,000.00 from assets he and Daniel Stevenson held in trust under the terms of the QTIP trust.

RESPONSE: Admitted.

27. On July 25, 2007, Thomas Stevenson repaid or caused to be repaid \$300,000.00 to the QTIP trust.

RESPONSE: **Admitted.**

28. On July 25, 2007 Thomas Stevenson repaid or caused to be repaid \$407,500.00 to the marital trust.

RESPONSE: **Admitted.**

29. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 the QTIP trust.

RESPONSE: **Admitted.**

30. On February 8, 2008 Thomas Stevenson repaid or caused to be repaid \$100,000.00 to the marital trust.

RESPONSE: **Admitted.**

31. Jacquelin Stevenson was competent in January of 2001.

RESPONSE: **Admitted.**

32. Jacquelin Stevenson was competent in February of 2003.

RESPONSE: **Denied.**

33. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacauelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

34. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

35. Pratt-Thomas Gumb & Co., PA did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

36. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account belong to Jacquelin Stevenson.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

37. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

38. No agent or employee of Pratt-Thomas Gumb & Co., PA was ever authorized to sign checks drawn on any account held by the marital trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

39. Lynne Kerrison did not perform bookkeeping services for Jacquelin Stevenson before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for Jacquelin Stevenson's personal account prior to October, 2003. The request is, therefore, denied.

40. Lynne Kerrison did not perform bookkeeping services for the trustees of the QTIP trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas

Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Q-TIP Trust account prior to October, 2003. The request is, therefore, denied.

41. Lynne Kerrison did not perform bookkeeping services for the trustees of the marital trust before October 2003.

RESPONSE: As discovery in this case has not been completed, Plaintiffs are not yet aware of the extent of bookkeeping services performed by Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. before October, 2003 other than the deposition testimony of Lynne Kerrison which suggests that she did review ledgers for the Marital Trust account prior to October, 2003. The request is, therefore, denied.

42. Lynne Kerrison was not authorized to sign checks drawn on any account belonging to Jacquelin Stevenson.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas

Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

43. Lynne Kerrison was not authorized to sign checks drawn on any account held by the QTIP trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel Stevenson and/or Thomas Stevenson for anything either requested, with or without documentation. The request is, therefore, denied.

44. Lynne Kerrison was not authorized to sign checks drawn on any account held by the marital trust.

RESPONSE: Plaintiffs are not aware of the nature and extent of authorization that agents or employees of Lynne Kerrison or other agents or employees of Pratt-Thomas Gumb & Co., P.A. were provided other than the deposition testimony of Lynne Kerrison which described a process by which she had physical possession of the checkbooks and prepared checks drawn on the accounts of both trusts and Mrs. Stevenson's personal account, payable to Daniel

Stevenson and/or Thomas Stevenson for anything either requested,
with or without documentation. The request is, therefore, denied.

45. On November 29, 2009 you entered into a Settlement Agreement and Release with Thomas Stevenson. A true and accurate copy of which is attached as Exhibit A.

RESPONSE: Admitted.

46. Your signature appears on Exhibit A.

RESPONSE: Admitted.

47. Pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacqueline Stevenson's will, the QTIP trust, and the marital trust.

RESPONSE: It is admitted that pursuant to the November 29, 2009 Settlement Agreement and Release, Thomas Stevenson waived any rights or claims he may have held under Jacquelin Stevenson's Will, the Q-TIP Trust and the Marital Trust, but Plaintiff craves reference to the entire document.

48. Pursuant to the terms November 29, 2009 Settlement Agreement and Release, Thomas Stevenson made payments totaling of \$49,368.00.

RESPONSE: Admitted.

49. On September 14, 2010 you or your agent caused to be filed with the Clerk of Court for Charleston County a Confession of Judgment against Thomas Stevenson in the amount of \$2,000,000.00. A true and accurate copy of which is attached as Exhibit B.

RESPONSE: **Admitted.**

50. You received a judgment ("Judgment") against Daniel Stevenson in the amount of \$10,801,541.00 on December 1, 2009. A true and accurate copy of which is attached as Exhibit C.

RESPONSE: **Admitted.**

51. On September 10, 2010 a Petition to Setoff ("Petition") was filed on your behalf in the Charleston County Probate Court. A true and accurate copy of which is attached as Exhibit D.

RESPONSE: **Denied.**

52. An Order ("Order") granting the Petition for Setoff was signed by the presiding Judge on June 8, 2010. A true and accurate copy of which is attached as Exhibit E.

RESPONSE: **Admitted.**

53. In 1999 you did not contact Lynne Kerrison.

RESPONSE: **Admitted.**

54. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

55. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

56. In 1999 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

57. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

58. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

59. In 1999 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

60. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

61. In 1999 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

62. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

63. In 1999 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

64. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

65. In 1999 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

66. In 1999 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

67. In 1999 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

68. In 2000 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

69. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

70. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

71. In 2000 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

72. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

73. In 2000 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

74. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

75. In 2000 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

76. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

77. In 2000 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

78. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

79. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

80. In 2000 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

81. In 2000 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

82. In 2000 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

83. In 2001 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

84. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

85. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

86. In 2001 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

87. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

88. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

89. In 2001 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

90. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

91. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

92. In 2001 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

93. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

94. In 2001 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

95. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

96. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

97. In 2001 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

98. In 2001 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

99. In 2001 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

100. In 2002 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

101. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

102. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

103. In 2002 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

104. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

105. In 2002 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

106. In 2002 you made no written request for information from Lynne Kerrison regarding concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

107. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

108. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

109. In 2002 you made no written request for information from Douglas Capital Management concerning transactions affecting the property of the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

110. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

111. In 2002 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

112. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

113. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

114. In 2002 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

115. In 2002 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

116. In 2002 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

117. In 2003 you did not contact Lynne Kerrison.

RESPONSE: Admitted.

118. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE:

Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

119. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE:

Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

120. In 2003 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE:

Admitted.

121. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE:

Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

122. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

123. In 2003 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

124. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted.

125. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

126. In 2003 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

127. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

128. In 2003 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

129. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

130. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

131. In 2003 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

132. In 2003 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

133. In 2003 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

134. In 2004, you did not contact Lynne Kerrison.

RESPONSE: Admitted.

135. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

136. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

137. In 2004 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

138. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

139. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

140. In 2004 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

141. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP.

RESPONSE: Admitted.

142. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted.

143. In 2004 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

144. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

145. In 2004 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

146. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

147. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

148. In 2004 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

149. In 2004 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

150. In 2004 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist prior to 2005.

151. In 2005 you had no contact with Lynne Kerrison.

RESPONSE: Admitted.

152. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

153. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts..

154. In 2005 you did not request information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

155. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

156. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted;** however, Mrs. Kerrison was aware that I was a beneficiary of both trusts, and she was, therefore, required by law to provide me any information material to the trusts.

157. In 2005 you made no written request for information from Lynne Kerrison concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

158. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted.**

159. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: **Admitted.**

160. In 2005 you made no written request for information from Douglas Capital Management concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: **Admitted.**

161. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: **Admitted;** however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

162. In 2005 you made no written requests to Thomas Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Thomas Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

163. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the QTIP trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an affirmative obligation to advise me and all beneficiaries of any information material to the trusts.

164. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the property held in trust by Thomas and Daniel Stevenson pursuant to the terms of the marital trust.

RESPONSE: Admitted; however, as a fiduciary receiving counsel from the Defendant Heyward Carter, Daniel Stevenson was under an

affirmative obligation to advise me and all beneficiaries of any
information material to the trusts.

165. In 2005 you made no written requests to Daniel Stevenson seeking information concerning transactions affecting the accounts owned by Mrs. Stevenson for which she had signature authority.

RESPONSE: Admitted.

166. In 2005 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

167. In 2005 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

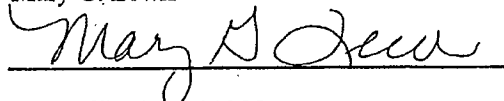
RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Mary G. Lewis



Post Office Box 11208

Columbia, South Carolina 29211

(803)771-8000

Attorneys for Plaintiffs

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C. Stevenson,
Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder and
Kathleen S. Turner, individually, as Co-Trustees
and beneficiaries of the Marital Trust and the
Qualified Terminable Interest Trust created by
the Thomas Stevenson Will, and Jacquelin S.
Bennett, and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter, Kunes &
Bennett, P.A.; Douglas Capital Management,
Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb &
Co., P.A.; and Lynne L. Kerrison.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

CERTIFICATE OF SERVICE

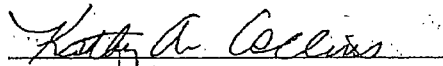
I, Kathy A. Collins, an employee of the law firm of Lewis & Babcock, L.L.P., hereby certify that I have this 9th day of June, 2011, served the foregoing Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions in the above-captioned action upon opposing counsel by placing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, South Carolina 29492

Frederick K. Sharpless, Esq.
Sharpless & Stavola, P.A.
Post Office Box 22106
Greensboro, North Carolina 27420

Susan Taylor Wall, Esq.
Parker Poe Adams & Bernstein, LLP
Post Office Box 160
Charleston, South Carolina 29402-0160

Gedney M. Howe, III, Esq.
Gedney M. Howe, PA
Post Office Box 1034
Charleston, South Carolina 29402


Kathy A. Collins

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS
LYNNE KERRISON AND DIXON
HUGHES' MOTION FOR SUMMARY
JUDGMENT**

Lynne L. Kerrison and Dixon Hughes, by and through counsel, submit this brief in support of their Motion for Summary Judgment.

The court should enter judgment as a matter of law in favor of defendants Lynne Kerrison and Dixon Hughes because:

- (1) Plaintiffs' claims are barred by the applicable statutes of limitations;
- (2) Plaintiffs' claims are based on theories of fraud and therefore did not survive the death of Jacquelin Stevenson;
- (3) Plaintiffs' claims are preempted by federal law;
- (4) Defendants Lynne Kerrison and Dixon Hughes owed no duty to plaintiffs;
- (5) Dixon Hughes did not knowingly participate in any alleged breach of fiduciary duty;

- (6) Individually and as beneficiaries of the trusts, plaintiffs suffered no damages;
- (7) Plaintiffs are not entitled to damages for actions occurring outside of the relevant time frame; and
- (8) Plaintiffs are not entitled to prejudgment interest.

NATURE OF THE MATTER BEFORE THE COURT

This matter is before the court on defendants' Motion(s) for Summary Judgment.

This lawsuit was filed on April 24, 2009, by:

- (1) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder in their individual capacity;
- (2) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as trustees;
- (3) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as beneficiaries of the Marital and QTIP trusts created by the will of their father, Thomas Stevenson; and
- (4) Kathleen Turner and Jacquelin Bennett as personal representatives of the estate of their mother, Jacquelin Stevenson.

The defendants were Heyward Carter, Jr., Evans Carter Kunes & Bennett, PA, Douglas Capital Management, Inc., Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., PA, and Lynne L. Kerrison.¹ On December 14, 2011, plaintiffs moved to amend their complaint to include a claim for aiding and abetting a breach of fiduciary duty. The court allowed the amendment by order dated May 17, 2012, and it was filed May 31, 2012. Plaintiffs seek damages in excess of six million dollars.

¹ The claims against Douglas Capital Management have been dismissed.

FACTUAL BACKGROUND

Mr. Thomas Stevenson, Jr. died in June of 1988. Mr. Stevenson's will created two testamentary trusts: the "Jacquelin K. Stevenson Marital Trust" ("marital trust") and a "Qualified Terminable Interest Property Trust" ("QTIP trust") (together the "trusts"). (Amend. Compl. ¶ 11.) Thomas Stevenson, Jr.'s widow, Jacquelin K. Stevenson, was the sole lifetime beneficiary of both trusts. The residual beneficiaries of the QTIP trust were Mr. Stevenson's children: Thomas Stevenson, III, Daniel Stevenson, II, Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder. (Amend. Compl. ¶ 14.) Mrs. Stevenson held a power of appointment over the remainder interest in the Marital Trust. (Amend. Compl. ¶ 12.) In her will, Mrs. Stevenson named Mr. Stevenson's children, along with her child from a former marriage, as residual beneficiaries of the Marital Trust. (Amend. Compl. ¶ 13.) Neither trust instrument contained any means by which trust assets could be distributed to any of the residual beneficiaries during Jacquelin K. Stevenson's lifetime.

The Thomas Stevenson will named Norman W. Stevenson (Thomas Stevenson, Jr.'s brother), Thomas Stevenson, III, Daniel Stevenson, II, Henry Buist, and James G. Boyd as trustees of both trusts. (Amend. Compl. ¶ 15.) By 1999, the only remaining co-trustees were Thomas and Daniel Stevenson. (Amend. Compl. ¶ 15.) Mrs. Stevenson was admitted to the Alzheimer's unit after suffering from a stroke in December of 2000. (Amend. Compl. ¶ 18.) On January 4, 2001, Mrs. Stevenson executed a power of attorney in favor of Kathleen Turner and Daniel Stevenson that was not durable. (November 9, 2011 Dep. of Kathleen Turner, Ex. 3, July 14, 2011 Dep. of Heyward Carter, 66-67.) Mrs. Stevenson remained competent until at least February 18, 2003, when she executed a second durable power of attorney in favor of Kathleen Turner and Daniel Stevenson. (November 9, 2011 Dep. of Kathleen Turner, Ex. 6; July 14, 2011 Dep. of Heyward Carter, 68.) On September 17, 2007, Mrs. Stevenson passed away.

The undisputed facts show that in 1997, Lynne Kerrison, then with Pratt-Thomas Gumb & Company, PA, began preparing tax returns for Mrs. Stevenson and the two subject trusts. (July 13, 2011 Dep. of Lynne Kerrison, 74.) At the time, tax preparation was her only engagement related to the trusts. Pat Neapolitan, an employee of Jacquelin Stevenson who was not associated with the defendants, kept the books and wrote and signed checks for the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 27, 37.) Ms. Neapolitan provided Ms. Kerrison with the information necessary to complete the tax returns. (July 13, 2011 Dep. of Lynne Kerrison, 30.) Included in the information Ms. Neapolitan provided to Ms. Kerrison were ledgers showing the checks drawn from the trust accounts, signed by Ms. Neapolitan. (July 13, 2011 Dep. of Lynne Kerrison, 37, 50.) In 2001, while reviewing information received from Ms. Neapolitan, Ms. Kerrison noticed checks written to Daniel Stevenson from the trusts, and contacted Ms. Neapolitan to discuss the checks. (July 13, 2011 Dep. of Lynne Kerrison, 30, 121.) Ms. Kerrison was concerned about how those distributions should be characterized for tax purposes. (July 13, 2011 Dep. of Lynne Kerrison, 116, 122.) When questioned by Ms. Kerrison about the checks, Ms. Neapolitan expressed no concern that the checks written were improper, and may have characterized the withdrawals as "gifts." (July 13, 2011 Dep. of Lynne Kerrison, 118-123.)

Despite Ms. Neapolitan's assurances, Lynne Kerrison contacted Heyward Carter, Mrs. Stevenson's attorney, (in the fall of 2001) to tell him about the transactions. (July 13, 2011 Dep. of Lynne Kerrison, 45-46, 67; July 14, 2011 Dep. of Heyward Carter, 38.) On October 23, 2001, Daniel Stevenson, Thomas Stevenson, Heyward Carter and Lynne Kerrison met to discuss the transactions. (July 13, 2011 Dep. of Lynne Kerrison, 146; July 14, 2011 Dep. of Heyward Carter, 46.) Lynne Kerrison received a follow-up letter from Heyward Carter, dated November 29, 2001, saying that Thomas and Daniel Stevenson would prepare promissory notes and were "discussing a strategy" for meeting with the residual beneficiaries of the trusts. (July 13, 2011 Dep. of Lynne

Kerrison, 79, Ex. 7.) The letter also asked Thomas and Daniel Stevenson to tell Ms. Kerrison and Mr. Carter if they needed to be present for the meeting. (July 13, 2011 Dep. of Lynne Kerrison, 79, Ex. 7.)

Though entitled to receive information on her mother's behalf as her attorney-in-fact, Ms. Turner never, during her entire tenure as co-power of attorney, requested any information about her mother's personal finances or the trusts, and left the care of her mother's finances to her brothers. (November 9, 2011 Dep. of Kathleen Turner, 38-47, 52-58.) Ms. Turner did not know who paid the bills or wrote checks drawn on her mother's accounts. (November 9, 2011 Dep. of Kathleen Turner, 46-47.) In fact, Lynne Kerrison had no dealings at all with Ms. Turner about her mother's finances. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.)

On May 21, 2003, Thomas and Daniel Stevenson met with Kathleen Turner at their mother's Meeting Street home. (November 9, 2011 Dep. of Kathleen Turner, 62.) At that meeting, according to Kathleen Turner, Thomas Stevenson "mumbled" and "looked at a piece of paper." (November 9, 2011 Dep. of Kathleen Turner, 62-72.) Despite the fact that she claimed she was unable to understand what was being said to her, Ms. Turner did not ask Thomas Stevenson to speak more clearly or explain what he was talking about, though, admittedly, she "thought something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) Tom Stevenson testified that he provided her with a written accounting of the trust assets, including the loans made to him, to Dan, and their businesses, and clearly described it. (February 13, 2013 Dep. of Thomas Stevenson, 77-87.)

Between 2001 and 2003, Ms. Kerrison communicated with Howell Morrison, the attorney for Tom and Dan in their capacity as trustees, about the withdrawals by the trustees. In early 2006, Ms. Kerrison again spoke with Heyward Carter about Thomas and Daniel Stevenson's continued withdrawals. (July 13, 2011 Dep. of Lynne Kerrison,

123, 129.) On April 19, 2006, Kathleen Turner met with Thomas Stevenson. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) Thomas Stevenson again informed Kathleen Turner that he and Daniel Stevenson had removed money from the trusts. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 171.) On April 27, 2006, yet another meeting was held where Kathleen Turner received additional information about her brothers' actions as trustees. (November 9, 2011 Dep. of Kathleen Turner, 112-113; July 14, 2011 Dep. of Heyward Carter, 77-78.)

In their complaint and amended complaint, plaintiffs contend that Lynne Kerrison and Dixon Hughes, while providing accounting services to Mrs. Stevenson and the two subject trusts, breached a duty by failing to inform the *plaintiffs* (not Jacquelin Stevenson) of the alleged "improper self-dealing withdrawals" made by trustees Thomas Stevenson, III and Daniel Stevenson, II. (Amend. Compl. ¶ 24.)² Plaintiffs further allege that money "improperly taken from the Trust and Estate" was used by Thomas and Daniel Stevenson to fund other companies that were also clients of Dixon Hughes, creating a conflict of interest. (Amend. Compl. ¶ 25.) From these factual allegations, plaintiffs pursue three legal theories against Lynne Kerrison and Dixon Hughes: professional negligence, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty.

QUESTIONS PRESENTED

- I. Did plaintiffs bring this lawsuit outside the applicable statute of limitations period?
- II. Did the causes of action alleged by the plaintiffs survive the death of Jacquelin Stevenson?

² The matter against the former trustees, Thomas Stevenson, III, and Daniel Stevenson, II, was disposed of in another action. *Jacquelin S. Bennett, et al v. Thomas Stevenson, et al*, 2008-CP-10-0806. A settlement agreement was reached between the plaintiffs and Thomas Stevenson and a judgment for actual and punitive damages was entered against Daniel Stevenson.

- III. Are plaintiffs' claims against defendants Lynne Kerrison and Dixon Hughes preempted by 26 U.S.C. § 7216?
- IV. Did defendants Lynne Kerrison and Dixon Hughes breach any duty owed to the plaintiffs?
- V. Did defendants Lynne Kerrison and Dixon Hughes actively participate in the alleged breach of fiduciary duty by the trustees?
- VI. Did plaintiffs, individually and as beneficiaries of the trusts, suffer any damages?
- VII. What is the relevant time frame for damages at issue in this action?
- VIII. Are plaintiffs entitled to prejudgment interest?

SUMMARY OF THE ARGUMENT

Taking the facts in a light most favorable to the plaintiffs, there is no genuine issue of material fact and defendants Lynne Kerrison and Dixon Hughes are entitled to summary judgment. Plaintiffs brought this lawsuit outside the three-year statute of limitations period. Plaintiffs' claims are based on fraud and deceit and are therefore barred by the doctrine of abatement because they did not survive the death of Jacquelin K. Stevenson. South Carolina has no recognized cause of action for an accountant's failure to disclose information to a non-client, and the creation of a common law duty requiring accountants to disclose confidential information to non-clients contradicts federal law. Defendants Lynne Kerrison and Dixon Hughes owed no duty of care to the beneficiaries in the performance of accounting services for the trusts. Plaintiffs provide no evidence indicating a fiduciary relationship between the plaintiffs and defendants Lynne Kerrison and Dixon Hughes. Defendants did not participate in the trustees' alleged breach. Individually and as beneficiaries of the trusts, plaintiffs suffered no damages. Finally, even if plaintiffs were to prevail on their claims, they would only be entitled to damages relevant to a specific time frame and are not entitled to prejudgment interest.

LEGAL STANDARD

Summary judgment must be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. Rule of Civil Procedure 56(c). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 788, 199 (S.C. Ct. App. 1998).

ARGUMENT

I. PLAINTIFFS BROUGHT THIS LAWSUIT OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS PERIOD

S.C. Code Ann. § 15-3-530(5) provides a three-year statute of limitations for negligence, professional malpractice and breach of fiduciary duty claims. Pursuant to S.C. Code Ann. § 15-3-535, all actions initiated under S.C. Code Ann. § 15-3-530(5) "must be commenced within three years after the person knew or by exercise of reasonable diligence should have known that he had a cause of action." Under the "discovery rule," the statute of limitations begins to run "when a person could or should have known through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or the facts giving rise thereto." *Dorman*, 331 S.C. at 184, 500 S.E.2d at 789. See also, *Burgess v. American Cancer Society*, 300 S.C. 182, 386 S.E.2d 798 (S.C. Ct. App. 1989). "The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (S.C. 1995). "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial." *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (S.C. 1996).

Based on the undisputed evidence, the applicable three-year statute of limitations expired before plaintiffs filed suit. Plaintiffs filed their complaint on April 24,

2009. The undisputed facts show that the statute of limitations ran on plaintiffs' claims on: (1) October 2004, three years after Heyward Carter, Jacquelin Stevenson's attorney, was notified of the withdrawals; alternatively, (2) May 21, 2006, three years after Kathleen Turner initially met with her brothers; alternatively, (3) April 19, 2009, three years after Thomas Stevenson informed Kathleen Turner that he and Daniel Stevenson removed money from the trust; or alternatively, (4) anytime after January 1, 2002, three years after plaintiffs, through the exercise of reasonable diligence, could have learned of the loans through a request for an annual statement of the trusts pursuant to the pre-2005 S.C. Code Ann. § 62-7-303. Therefore, this action was instituted after the expiration of the statute of limitations governing all claims alleged by the plaintiffs.

1. October 2004

"In general, notice to an attorney is notice to his client." *Wardlaw v. B. Troy Oil Mill*, 74 S.C. 368, 54 S.E. 658 (S.C. 1906). Furthermore, the "acts and omissions of an attorney are directly attributable to the client." *Clark v. Clark*, 271 S.C. 21, 23, 244 S.E.2d 743, 744 (S.C. 1928). "Just as a party cannot obtain relief from the consequences of his own neglect, he is without relief when the neglect is that of his attorney." *Id.* See also, *Dorman*, 331 S.C.179, 500 S.E.2d 786 (the question of whether a plaintiff received actual notice of facts giving rise to a cause of action was "irrelevant" where the plaintiff's attorney had knowledge of those facts). See also *Crystal Ice Company of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (S.C. 1979).

In *Dorman*, homeowners who had engaged in an exchange of their home, brought fraud, constructive fraud, civil conspiracy and unfair trade practices claims against the owners of the original homeowners and real estate agent four years after the closing on the home because a portion of their home was below flood level. *Dorman*, 331 S.C.179, 500 S.E.2d 786. The undisputed facts showed that the attorney

for the original homeowners sent a letter to the plaintiff's attorney disclosing the flood level issue prior to closing in 1991. *Id.* Plaintiff's contended that they did not see the letter from the original homeowner's attorney disclosing the problems with the home and were not on notice of the issues until they tried to sell the house in 1994. *Id.* The trial court granted summary judgment to the defendants on statute of limitations grounds. *Id.* The plaintiffs appealed, arguing that a material issue of fact existed over whether they were on constructive notice of the potential lawsuit as of the date of closing. *Id.* Affirming the trial court's grant of summary judgment, the Court of Appeals found that the question of whether the plaintiffs were on actual notice of the flood level issue was irrelevant because the knowledge of the information contained in the letter was imputed to the plaintiffs through their attorney. *Dorman*, 331 S.C. at 185, 500 S.E.2d at 789.

As in *Dorman*, the undisputed facts show that in the fall of 2001, Ms. Kerrison made Heyward Carter, counsel for Jacquelin Stevenson, aware of the loans Thomas Stevenson and Daniel Stevenson were making to themselves. At the latest, Mr. Carter was aware of the loans to Thomas and Daniel Stevenson by October 23, 2001, when he met with the trustees. (July 14, 2011 Dep. of Heyward Carter, 24, 38, 46.) Because Heyward Carter, as the attorney for Jacquelin Stevenson, had actual knowledge of Thomas and Daniel Stevenson's actions, the statute of limitations began to run no later than October 23, 2001. Under the holding of *Dorman*, Mr. Carter's knowledge of the facts upon which this lawsuit is based should be imputed to Jacquelin Stevenson.

Under South Carolina law there is no cause of action for the deprivation of the right to inherit. *Bemis v. Waters*, 170 S.C. 432, 170 S.E. 475, 476 (1933). As such, the statute of limitations on this action (for damages suffered by Mrs. Stevenson during her lifetime) began when Mrs. Stevenson had actual or constructive "that a cause of action might exist" in her favor. *Dorman*, 331 S.C. at 184, 500 S.E.2d at 789.³ As Mrs.

³ Mrs. Stevenson was the sole lifetime beneficiary of the two subject trusts from their creation until her death in 2007 and the only party with any interest in her property during her lifetime. Because plaintiff's

Stevenson's attorney and agent, Mr. Carter's actual knowledge of the present cause of action must be imputed to Mrs. Stevenson and her actual knowledge is irrelevant. *Id.* The statute of limitations thus began to run when Mr. Carter became aware of Thomas and Daniel Stevenson's actions, no later than October of 2001, when Lynne Kerrison first informed him of the loans. Based on principles of agency and the well established principle that a notice to an attorney constitutes notice to his client, the statute ran no later than October 2004, three years after the date Lynne Kerrison made Heyward Carter aware of Thomas and Daniel Stevenson's actions.

2. May 21, 2006

According to her own testimony, Kathleen Turner met with Thomas Stevenson on May 21, 2003. (November 9, 2011 Dep. of Kathleen Turner, 62.) At that meeting, according to Kathleen Turner, Thomas Stevenson "mumbled" and "looked at a piece of paper" while Daniel Stevenson "hovered." (November 9, 2011 Dep. of Kathleen Turner, 62-72.) Despite the fact that she was unable to understand what was being said to her, Ms. Turner did not ask Thomas Stevenson to speak more clearly or explain what he was talking about, though she recognized that "something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) The paper was actually given to her, and disclosed the loans that had been made. (February 13, 2013 Dep. of Thomas Stevenson, 77-82.)

The meeting between Ms. Turner, as co-power of attorney for her mother, and the trustees, with the odd behavior of her brother were sufficient to indicate that, as she put it, "something must be very wrong." (November 9, 2011 Dep. of Kathleen Turner, 82.) This meeting was sufficient to put Kathleen Turner on inquiry notice which, if she pursued the issue, would have revealed her brother's alleged wrongdoing. *Burgess v.*

rights to the property contained in the marital trust and estate derived exclusively from Mrs. Stevenson's will, so too does their cause of action against the defendants for damages to their mother's property and the marital trust during Mrs. Stevenson's lifetime. *Bemis*, 170 S.C. 432, 170 S.E. 475, 476 (1933).

Am. Cancer Soc., S. Carolina Div., Inc., 300 S.C.at 185, 386 S.E.2d 7at 799. Rather than follow up on the meeting with her brothers and seek information to which she was entitled as co-power of attorney and beneficiary of the trust, Ms. Turner did nothing. Had Kathleen Turner exercised reasonable diligence and made a reasonable request under S.C. Code Ann. § 62-7-813 for information regarding her mother's finances or the accounts of the trust, she would have been made aware of the trustees' withdrawals. Because a "party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances and the law also provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence," the statute of limitations ran no later than May 21, 2006. *Burgess v. Am. Cancer Soc., S. Carolina Div., Inc.*, 300 S.C.at 185, 386 S.E.2d at 799.

As Mrs. Stevenson's co-power of attorney, Kathleen Turner acted as Mrs. Stevenson's agent and fiduciary. *In re Thames*, 344 S.C. 564, 570, 544 S.E.2d 854, 856 (S.C. Ct. App. 2001) ("With a durable power of attorney, a principal creates an agency in another that continues despite the principal's later physical disability or mental incompetency."). All of plaintiffs' claims stem from alleged losses suffered by Mrs. Stevenson during her lifetime.⁴ As such, the knowledge of Kathleen Turner, as Mrs. Stevenson's agent, is therefore imputed to Mrs. Stevenson and to all of the plaintiffs as successors-in-interest to Mrs. Stevenson. *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (S.C. 1979) ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.").

⁴ None of the alleged wrongdoing occurred after Mrs. Stevenson's death. Plaintiffs' rights as beneficiaries under the estate and the subject trusts accrued only after Mrs. Stevenson's death. *Bemis*, 170 S.C. 432, 170 S.E. 475, 476 (1933) ("The right to inherit, during the life of an ancestor, does not exist."). Before Mrs. Stevenson's death, plaintiffs held only the inchoate expectation of a future interest in the marital trust, subject to Mrs. Stevenson's use of the trust assets, power of appointment and testamentary wishes. Plaintiffs held no interest in their mother's assets. All of her personal assets and both trusts could have been exhausted for her benefit.

Because the statute began to run during Mrs. Stevenson's lifetime, the claims of plaintiffs as Mrs. Stevenson's successors-in-interest also began to run at that time.

3. April 19, 2009

On April 19, 2006, Kathleen Turner met with Thomas Stevenson. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) During that meeting, Thomas Stevenson informed Kathleen Turner that he and Daniel Stevenson removed money from the trusts. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 170.) As of April 19, 2006, Ms. Turner had actual knowledge that Thomas and Daniel Stevenson had taken money from the trusts and, necessarily, that she had not been previously informed by Lynne Kerrison of these withdrawals. As such, the statute of limitations for any claims based on the removal of money from the trusts by Thomas and Daniel Stevenson ran on April 19, 2009. As previously discussed, Ms. Turner's knowledge was imputed to Mrs. Stevenson and her successors-in-interest.

4. Any time after January 1, 2002

The plaintiffs, though entitled to receive a statement of the accounts of the trust as contingent beneficiaries, never made a written request for information about the trusts from either of the trustees between 1999 and 2005. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 62-65, 76-82, 94-99, 110-116, 126-131, 144-148, 161-165; Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 62-65, 76-82, 94-99, 110-116, 126-131, 144-148, 161-165; Plaintiff Jacquelin S. Bennett's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 62-65, 76-82, 94-99, 110-116, 126-131, 144-148, 161-165.) In their Amended Complaint against the former trustees, *Jacquelin S. Bennett, et al v. Thomas Stevenson, et al*, 2008-CP-10-0806, plaintiffs alleged that the trustees breached the trust by failing to keep them informed of the status of the accounts of the trusts.

If plaintiffs used reasonable diligence and exercised their rights under the existing S.C. Trust Code, they would have known of Thomas and Daniel Stevenson's actions far earlier. Under S.C. Code Ann. § 62-7-303, as it existed prior to 2005, the trust beneficiaries had the right to a statement of the trust accounts. Because the facts and circumstances showing that Thomas and Daniel Stevenson made withdrawals from the trusts "*could have been known*" to the plaintiffs, the statute of limitation for plaintiffs' claims based on the alleged improper removal of monies from the trusts by Thomas and Daniel Stevenson ran on January 1, 2002 and every year thereafter that plaintiffs did not receive or request from the trustees an annual statement of the trust accounts. *Burgess v. Am. Cancer Soc., S. Carolina Div., Inc.*, 300 S.C. at 185, 386 S.E.2d 7 at 799 (emphasis in original).

Because the statute of limitations on plaintiffs' claims ran, at the latest, on April 19, 2009 and they did not file suit until April 24, 2009, defendants Lynne Kerrison and Dixon Hughes are entitled, as a matter of law, to summary judgment.

II. PLAINTIFFS' CLAIMS DID NOT SURVIVE THE DEATH OF JACQUELIN K. STEVENSON

The claims asserted by plaintiffs did not survive the death of Jacquelin Stevenson. Though S.C. Code Ann. §15-5-90 provides that actions based on injuries to an individual shall survive the death of that person, the common law recognizes an exception to the survivability of a claim in cases involving fraud or deceit. Furthermore, the "fraud exception to survivability is not limited only to a cause of action titled "fraud"" but to all actions based on theories of fraud or deceit. *Brailsford v. Brailsford*, 380 S.C. 443, 449-50, 250, 669 S.E.2d 342, 345-46 (S.C. Ct. App. 2008). The label given to the claim by the plaintiff is irrelevant where the claim arises from fraudulent and/or deceptive conduct. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 97 (S.C. 2002). Because the actions in this case are based on the

alleged fraudulent conduct of Thomas and Daniel Stevenson towards Jacquelin Stevenson, they do not survive the death of Jacquelin Stevenson.

Plaintiffs' claims against defendants Lynne Kerrison and Dixon Hughes are based on the allegation that:

During Thomas C. Stevenson, III and Daniel R. Stevenson, II's terms as co-trustees both improperly took money from the Marital Trust, QTIP Trust and the Estate of Jacquelin K. Stevenson.

(Amend. Compl. ¶ 19.) Plaintiffs alleged that Lynne Kerrison and Dixon Hughes, upon learning of the withdrawals, were required either to tell the plaintiffs of Thomas and Daniel Stevenson's actions or to withdraw from any engagement with the trusts.

(Amend. Compl. ¶ 43, 48.) In order to prove their case, plaintiffs must first show that Thomas and Daniel Stevenson engaged in improper self-dealing withdrawals without the knowledge or consent of Jacquelin Stevenson, the sole lifetime beneficiary of the trusts.⁵ Unless there were fraud committed by Thomas and Daniel Stevenson, plaintiffs could show no wrongdoing on the part of defendants Lynne Kerrison and Dixon Hughes.

Plaintiffs' claims, while labeled professional negligence and breach of fiduciary duty, are actually claims arising out of fraud, based on the alleged duty of Lynne Kerrison and Dixon Hughes to disclose information which was "significant and material to the plaintiffs." (Amend. Compl. ¶ 23.) A "nondisclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (S.C. Ct. App. 1993). The essence of the plaintiffs' claims against defendants Lynne Kerrison and Dixon Hughes is their failure to disclose the actions of Thomas and Daniel Stevenson, and by their very nature the claims are, in effect, claims of fraud for failure to disclose. See also *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 101, 594 S.E.2d 485, 497 (S.C. Ct. App.

⁵Under S.C. Code Ann. § 62-7-1009 a trust beneficiary may ratify, consent or release a trustee from liability for actions relating to the breach of trust. "No consideration is required for the consent, release or ratification to be valid." *Id.*

2004) ("where a party has a duty to disclose, non-disclosure may be fraudulent"); *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (S.C. Ct. App. 1995) ("parties in a fiduciary relationship must disclose to each other all known information that is significant and material, when this duty to disclose is triggered, silence may constitute fraud"). Because this action, if viable at all, arises out of a fraud in the guise of an action for professional negligence, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty, it did not survive the death of Jacquelin Stevenson.

In *Brailsford v. Brailsford*, the Court of Appeals determined that an action by the widow of a trust beneficiary, both individually and in her capacity as personal representative of the estate, against trustees for various instances of fraudulent conduct did not survive the death of her husband. *Brailsford*, 380 S.C. at 449-450, 669 S.E.2d at 345-346. The court held that to the extent the widow's causes of action were "essentially a cause of action for fraud simply disguised under a different title," such actions did not survive the death of her husband. *Id.* The court relied on the case of *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 564-565, 564 S.E.2d 94, 97 (S.C. 2002), where the South Carolina Supreme Court found that where the essence of the alleged misconduct amounted to misleading the deceased by either intentional deception or gross negligence, such actions fit within the ambit of fraud or deceptive conduct and, regardless of the label given, did not survive the deceased.

The reasoning behind disallowing suits based on theories of fraud to survive an individual is that evidence of the state of mind of the victim is crucial to determining whether a fraud was perpetrated. In *Faircloth v. Finesod*, 938 F.2d 513 (4th Cir. 1991), finding that civil conspiracy claims did not survive the death of the victim, the Fourth Circuit upheld the constitutionality of S.C. Code Ann. §15-5-90 and the recognized exception for fraud. The Court acknowledged that a rational basis for the fraud exception to the survivability statute is "that fraud is a tort that requires a special quality of proof, and the states of mind of the victim (e.g., whether he knew the statement was

false, relied upon it, and was justified in so relying) and the perpetrator are especially vital." *Id.* See also *Mattison v. Palmetto State Life Insurance Company*, 197 S.C. 256, 15 S.E.2d 117 (S.C. 1941); *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 564 S.E.2d 94; *Pamplico Bank & Trust Company v. Prosser*, 259 S.C. 621, 193 S.E.2d 539 (S.C. 1972); *Cline v. Southern Railway Company*, 113 S.C. 440, 102 S.E.2d 641 (S.C. 1920). Because the issue of Jacquelin Stevenson's state of mind and knowledge is crucial to the issue of whether a duty was breached and a fraud committed, either by trustees Thomas and Daniel Stevenson or defendants Lynne Kerrison and Dixon Hughes, plaintiffs' claims did not survive her death.

III. PLAINTIFFS' CLAIMS ARE PREEMPTED BY FEDERAL LAW

Implicit in plaintiffs' complaint is the requirement that this court impose a duty on accountants to: (1) review all confidential information received in the preparation of tax returns for indications that client is committing harm to some third-party; (2) identify any and all third parties who the confidential information may indicate are being harmed by the actions of their clients; and (3) disclose the confidential information received from the client to the third parties, or face potential civil liability. No statute or common law in South Carolina supports this proposition. See also *ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997) ("since it is the law of the case that the investor was not an accountant's client, we reverse the court of appeals ruling that an accountant had a duty to disclose"). Not only has it never been recognized, a common-law duty requiring accountants to disclose confidential client information to non-clients would directly conflict with existing federal law.

In 1971, Congress enacted 26 U.S.C. § 7216, which prohibits "any person who is engaged in the business of preparing, or providing services in connection with the preparation of" federal tax returns from disclosing any information "furnished to him for, or in connection with, the preparation any such return" and imposes criminal sanctions for a violation of this prohibition. The legislative history of the bill clearly indicates that

Congress sought to keep tax preparers from disclosing or making available information received during the preparation of tax returns by providing for criminal penalties.

Congress allowed only three exceptions to the general rule. H.R. CONF. REP. 92-708, Amendment no. 69 (1971) ("under the conference agreement, a criminal penalty is provided if a person engaged in the business of preparing returns and declarations (or who does so for compensation), or in providing services in connection with the preparation of returns and declarations, discloses any information furnished to him for the preparation of a return or declaration or uses any such information other than for the preparation of such return or declaration").⁶

Any common-law duty to disclose taxpayer information to third parties would therefore be preempted by 26 U.S.C. §7216. "If a state statute, administrative rule, or common law cause of action conflicts with a federal statute, it is incontestable that the state law has no efficacy." *Jamison v. Ford Motor Company*, 373 S.C. 248, 264, 644 S.E.2d 755, 763 (S.C. Ct. App. 2007). "Such a conflict arises when either compliance with both laws is impossible or when the state law frustrates the federal purpose and creates an obstacle to the fulfillment of federal objectives." *Professional Samplers, Inc. v. South Carolina Employment Security Commission*, 334 S.C. 392, 397, 513 S.E.2d 374, 377 (S.C. Ct. App. 1999). The disclosures that plaintiffs seek to mandate are exactly the disclosures that 26 U.S.C. § 7216 prohibits.

To adopt the position advocated by plaintiffs, that accountants hold a duty to inform non-clients of the possible misdeeds of their clients, would place tax preparers in the untenable position of having to choose between facing either civil liability or criminal liability. Such a conflict is evident in this case. Plaintiffs allege that Lynne Kerrison and Dixon Hughes breached a duty of care owed to the beneficiaries by "failing to inform the

⁶ In addition to the three original exceptions to the general rule that tax information may not be disclosed (court orders, preparation of state taxes, and disclosures required by the Internal Revenue Code) in 1989 Congress allowed tax information to be disclosed for the purposes of "quality or peer reviews." 26 U.S.C. § 7216 (b) (3).

Plaintiffs, including Kathleen Turner as power of attorney for Jacquelin Stevenson, of the improper self-dealing withdrawals known to these Defendants.” (Amend. Compl. ¶ 43.) The disclosure of information to Kathleen Turner or the other beneficiaries, as non-clients, would have subjected Lynne Kerrison and Dixon Hughes to criminal liability under federal law. Therefore, to the extent that plaintiffs’ claims are based on an alleged duty which conflicts with federal law, they should be dismissed.

IV. LYNNE KERRISON AND DIXON HUGHES DID NOT BREACH ANY DUTY OWED TO THE PLAINTIFFS

“Whether the law recognizes a particular duty is an issue of law to be determined by the court.” *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (S.C. 1996). *See also Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011), reh’g denied (Nov. 17, 2011) (“The determination of the existence of a duty is solely the responsibility of the court. Whether the law recognizes a particular duty is an issue of law to be decided by the Court.”) “Ordinarily, the common law imposes no duty on a person to act.” *Johnson v. Robert E. Lee Acad., Inc.*, 401 S.C. 500, 737 S.E.2d 512, 514 (S.C. Ct. App. 2012). “In other words, a person has no duty to protect another from harm inflicted by a third person.” *Rayfield v. S. Carolina Dept. of Corr.*, 297 S.C. 95, 100-01, 374 S.E.2d 910, 913 (S.C. Ct. App. 1988). Because neither an accountant-client relationship nor a fiduciary relationship existed between the plaintiffs and defendants with regards to the subject trusts, Lynne Kerrison and Dixon Hughes had no duty to disclose any malfeasance perpetrated by the trustees.⁷

1. The Plaintiffs were not the clients of Lynne Kerrison and Dixon Hughes.

The undisputed facts show that plaintiffs were not the clients of Dixon Hughes or Lynne Kerrison for the purposes of performing accounting services for the trusts, and therefore, defendants owed no professional duty to the plaintiffs. “An essential element

⁷To the contrary, as previously discussed, as tax preparers, they were prohibited under federal law from disclosing any confidential client information. 26 U.S.C. § 7216.

in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Doe v. Greenville County School District*, 375 S.C. 63, 72, 651 S.E.2d 305, 309-310 (S.C. 2007). “Without a duty, there is no actionable negligence.” *Id.* South Carolina recognizes that “a public accountant who fails to perform in accordance with the accepted professional standards may be liable in tort to his *client* for his negligence.” *Folkens v. Hunt*, 290 S.C. 194, 200, 348 S.E.2d 839, 842-43 (S.C. Ct. App. 1986), (emphasis added).⁸ South Carolina law does not mandate that accountants for trusts owe a professional duty to non-client prospective beneficiaries. *C.f. Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (S.C. 2009) (finding that an attorney had no duty to non-client prospective beneficiaries of a will which was not properly executed.) Without evidence of an accountant-client relationship, plaintiffs’ claims for professional negligence, as beneficiaries of the trusts, or those on behalf of the estate of Jacquelin Stevenson as a beneficiary of the trusts, must fail because accountants do not owe a duty to non-client trust beneficiaries.

Plaintiffs allege in their complaint that “Defendants Kerrison and Dixon-Hughes served as accountants for the two subject Trusts and Jacquelin K. Stevenson.”

(Amend. Compl. ¶ 42.) Thus, the complaint outlines engagements between Lynne Kerrison and Dixon Hughes, and three separate and distinct clients: (1) trustees of the marital trust; (2) the trustees of the Q-TIP trust and (3) Mrs. Jacquelin Stevenson.

Plaintiffs have presented no evidence that the trust beneficiaries were the clients of Lynne Kerrison or Dixon Hughes in connection with the engagement to perform

⁸As this is not a case of negligent misrepresentation, the holding of *ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997), allowing claims by non-clients against accountants does not apply. Other courts have found that negligent misrepresentation is the only appropriate claim for persons who are not clients of an account for professional malpractice. See e.g. *White v. BDO Seidman, LLP*, 249 Ga. App. 668, 670, 549 S.E.2d 490, 492 (2001) (“Georgia law, however, provides only one cause of action to persons who are not clients of an accounting firm but who wish to sue the firm and any of its accountants for professional malpractice: an action for negligent misrepresentation.”)

accounting services for the trusts. Nor do plaintiffs contend that they engaged Lynne Kerrison or Dixon Hughes on behalf of the trusts, or that they represented the trusts in any way. In fact, plaintiffs admit that they did not meet with Lynne Kerrison, discuss the trust finances with Lynne Kerrison or make any requests for trust information between 1999 and 2005. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Jaquelin S. Bennet's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.)

The only clients to whom Lynne Kerrison and Dixon Hughes provided accounting services related to the trusts were Thomas and Daniel Stevenson, the co-trustees of the trust. It is elementary that "[I]n a trust, the trustee holds the legal estate or title for the benefit of the beneficiary. The beneficiary holds the equitable estate and enjoys the benefits of the estate." *Epworth Children's Home v. Beasley*, 365 S.C. 157, 170-71, 611 S.E.2d 710, 718 (S.C. 2005). As holder of legal title, the trustee "has a fiduciary obligation to administer the trust in the best interest of the trust beneficiaries." *University of Southern California v. Moran*, 365 S.C. at 281, 617 S.E.2d at 141. As a result, a trustee may inherit property on behalf of a trust and is vested with the right to enter into settlements for the trust. *Id.* A trustee holds all "powers appropriate to achieve the proper investment, management, and distribution of the trust property." S.C. Code Ann. § 62-7-815 (a)(2)(B). Beneficiaries of a trust lack these rights as they only hold, at best, an equitable title with no rights to administer the trust.⁹ As such, plaintiffs were not in an accountant-client relationship with defendants.

⁹Beneficiaries do not lack all legal rights regarding administration of the trusts as they are allowed to petition the court for the removal of a trustee. S.C. Code Ann. § 62-7-706.

2. There is no duty to disclose client information to non-clients.

Because no accountant-client relationship existed between defendants Lynne Kerrison and Dixon Hughes and plaintiffs as beneficiaries of the trusts, plaintiffs' claims for professional negligence must fail. South Carolina law does not require accountants to disclose information about their clients to non-clients. *ML-Lee Acquisition Fund, L.P.D. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (S.C. 1997). In *ML-Lee*, the Supreme Court addressed whether or not an accountant held a duty to disclose a overstatement in inventory to a non-client investor after they learned of it. *Id.* Reversing the Court of Appeals, the South Carolina Supreme Court found that because the law of the case showed that ML-Lee "as not Accountant's client" the accountant did not have a duty to disclose information about its client to a non-client. *Id.*

In *ML-Lee*, the South Carolina Supreme Court also adopted §552 of the Restatement of Torts (1977). *Id.* This limited exception allows non-clients who justifiably rely on information affirmatively communicated by an accountant to recover from an accountant who fails to exercise reasonable care or competence in obtaining or communicating information. *Id.* Though *ML-Lee* created a limited duty of care by accountants to non-clients, the Court expressly limited this duty to cases involving an affirmative negligent misrepresentation. *Id.* The Court specifically refused to create a duty to disclose information to non-clients, holding that § 552 of the Restatement of Torts "imposes no duty to disclose information." *Id.*, 327 S.C. at 241, 489 S.E.2d at 472 footnote 3 (emphasis in original).

Recently, in *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 737 S.E.2d 512 (S.C. Ct. App. 2012), the Court of Appeals declined to extend the liability of an accountant to third-parties in a case not involving negligent misrepresentation. In *Johnson*, an accounting firm was hired by Robert E. Lee Academy after the school bookkeeper discovered funds missing. *Id.* at 513. The one of the firm's accountants incorrectly determined that a deposit had not been made by the school's bookkeeper

and communicated this information to the police. *Id.* The police arrested the school's bookkeeper based, in part, on information from the accountant, though the charges were later dropped. *Id.* Before the police arrested the bookkeeper, the accountant learned that the deposit at issue had been made, but did not inform the police. *Id.* Among others, the bookkeeper sued the accountant and his firm for negligence based on his failure to inform the police that the deposit at issue had been made. *Id.* The trial court determined, as a matter of law, that the accountants and accounting firm owed no duty to the plaintiff. *Id.* Affirming the trial court's grant of summary judgment, the Court of Appeals recognized that an "affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance" and "the common law imposes no duty on a person to act." *Id.* at 514. Because the accountant did not render a service to the plaintiff and his actions were not taken for her protection, no duty was owed to her. *Id.*

While South Carolina has not specifically addressed the issue of whether accountants owe a duty of care to trust beneficiaries for accounting services performed for trustees, other courts have disallowed actions by beneficiaries against accountants serving the trustee and have refused to hold accountants liable for failing to disclose the malfeasance of trustees to trust beneficiaries. See *Blair v. ING*, 95 Hawaii 247, 268-69, 21 P.3d 452, 473-74 (Hawaii 2001) (An accountant engaged to prepare tax returns owed no duty to trust beneficiaries); *Witzman v. Lehrman, Lehrman & Flome*, 601 N.W.2d 179, (Minn. 1999) (holding that absent evidence of aiding and abetting a breach of trust, an accountant does not owe a duty of care to the beneficiary of the trust); *Gillespie v. Seymour*, 14 Kan. App. 2d 563, 796 P.2d 1060 (Kan. App. 1990) *rev. on other grounds*, *Gillespie v. Seymour*, 250 Kan. 123, 823 P.2d 782 (Kan. 1991) (beneficiaries failed to state a claim based for the negligence against accountants because accountants owed no duty to non-client beneficiaries and had no reason to believe that any services they performed would be relied on by non-client beneficiaries, further finding that no fiduciary

relationship existed between accountants and beneficiaries of a trust). See e.g., *Morin v. Trupin*, 711 F. Sup. 97 (S.D.N.Y. 1989) (accountants are not required "to blow the whistle on their clients"): These courts determined that allowing a beneficiary to sue a trustee or personal representative's attorney or accountant could subject those professionals to impermissible conflicts of interest, as the professional would hold duties to parties with potentially divergent interests.¹⁰

In *Rydde v. Morris*, the South Carolina Supreme Court determined "not to impose a duty on an attorney in favor of a prospective beneficiary." *Rydde*, 381 S.C. at 645, 675 S.E.2d at 432-33. In *Rydde*, the prospective beneficiaries of an unprepared will filed a malpractice suit against the decedent's attorney for failing to draft and execute a will. The prospective beneficiaries sought damages for losses associated with the estate passing through intestacy. The beneficiaries "filed this legal malpractice action under various theories, all of which were premised on the position of a duty of Morris [the attorney] in favor of the non-client prospective beneficiary." *Rydde*, 381 S.C. at 645, 675 S.E.2d at 432-33. The Supreme Court upheld the trial court's dismissal under rule 12(b)(6) of the South Carolina Rules of Civil Procedure, finding that the beneficiary's complaint failed to state facts sufficient to constitute a cause of action. *Id.* The Court held that a plaintiff in a legal malpractice action must show an attorney-client relationship, because to hold otherwise would create an impermissible conflict of interest between the duties to the client and to the non-client beneficiaries. *Id.*

The policy concerns expressed in *Rydde* regarding conflicts of interests are applicable to accountant as well as attorneys. An accountant for a trust holds a duty to the trustee to perform services in accord with the trustee's authority as the holder of legal title to the property contained in the trust. Without legal title, the trust beneficiaries

¹⁰ The nature of this conflict lies in the legal obligations and interests of a trustee, as opposed to those of a beneficiary. A trustee is in a fiduciary relationship and is obligated to act in the best interest of the beneficiaries *as a whole*, while a beneficiary's only obligation is to his *own interest*.

hold no right under the law to participate in the administration of the trust. The adoption of a joint duty to both the trustees and beneficiaries would create the danger of a conflict of interest. In a case where a trustee is in conflict with a beneficiary, or where one or more of the beneficiaries are conflict with each other, an accountant owing a duty to both the trustee(s) and each beneficiary individually would be in an untenable position. It is this sort of conflict which the *Rydde* court sought to avoid. *Id.*

Plaintiffs' claims for professional negligence and breach of fiduciary duty are predicated on the theory that Lynne Kerrison and Dixon Hughes held an affirmative duty (either professional or fiduciary) to inform the plaintiffs of the alleged malfeasance of Thomas and Daniel Stevenson. Under *ML-Lee* and *Johnson*, the duties accountants to non-client third-parties are limited cases of negligent misrepresentation. Because Lynne Kerrison and Dixon Hughes owed no duty to the plaintiffs relating to the administration of the trusts because, their claims for professional negligence must fail.

3. No fiduciary relationship existed between the plaintiffs and Lynne Kerrison and/or Dixon Hughes.

South Carolina does not recognize a per se fiduciary relationship between accountant and client. In order to determine whether a fiduciary relationship exists, the courts must look to particulars of the relationship between the parties. *Pitt v. Jackson National Life Insurance Company*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (S.C. Ct. App. 2002). A "confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith with due regard to the interest of the one imposing the confidence." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (S.C. Ct. App. 1987). Furthermore:

The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him. As a general rule, mere respect for another's judgment or trust in his character is usually not

sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.

Burwell v. South Carolina National Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (S.C. 1986) (internal citations omitted) (no fiduciary duty between bank and depositor). The courts have thus usually "reserved imposition of fiduciary duties to legal or business settings often in which one person entrusts money to another." *Hendricks v. Clemson University*, 353 S.C. 449, 579 S.E.2d 711 (S.C. 2003) (finding no fiduciary relationship between adviser and student).

The undisputed evidence shows that no fiduciary relationship existed between any of the plaintiffs and Lynne Kerrison and Dixon Hughes. Plaintiffs did not meet with Lynne Kerrison during the relevant time frame or discuss the status of the trusts with her. (Plaintiff Kathleen S. Turner's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Genevieve S. Felder's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, , 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158; Plaintiff Jaquelin S. Bennet's Responses to Defendant Lynne L. Kerrison's First Request for Admissions, 54-59, 68-73, 83-89, 100-107, 117-123, 134-140, 151-158.) Lynne Kerrison did not meet Jacquelin Stevenson, but instead communicated with Pat Neapolitan, Heyward Carter, and the trustees regarding preparation of the tax returns for Mrs. Stevenson and the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 30, 40, 46, 110-113.) Ms. Kerrison did not sign checks for Mrs. Stevenson or the trusts. (July 13, 2011 Dep. of Lynne Kerrison, 75.) She had no control over Mrs. Stevenson's assets or the assets of the estate. Ms. Kerrison, as an accountant, was never in a position to bind the trust or Mrs. Stevenson in any way or to take advantage of the plaintiffs for her own benefit. From these facts, it is impossible to reasonably infer a fiduciary relationship.

No South Carolina courts have held that accountant-client relationship is per se fiduciary in nature. Other jurisdictions which have dealt with this issue have found no per se fiduciary relationship between an accountant and client. See *Iacurci v. Sax*, 139 Conn. App. 386, 408, 57 A.3d 736, 750 (2012) (An accountant who provides a plaintiff with only tax preparation services is not a fiduciary.); *RTR Technologies, Inc. v. Helming*, 815 F.Supp.2d 411, 433 (D.Mass.2011) (without some evidence that accountants exercised control over the client, no fiduciary relationship existed); *Caprer v. Nussbaum*, 36 A.D.3d 176, 825 N.Y.S.2d 55 (N.Y.A.D. 2006) (accountants are not fiduciaries to their clients, except when the accountants are directly involved in managing the client's investments); *Peterson v. H & R Block Tax Services, Inc.*, 971 F. Supp. 1204 (N.D. ILL. 1997) (absent a showing of a significant degree of dominance and superiority over the client, the accountant-client relationship is a non fiduciary one); *Squyres v. Christian*, 253 S.W.2d 470, 471 (Tex. Civ. App. 1952) (the accountant-client relationship does not always involve a fiduciary duty); *Congregation of the Passion v. Touche, Ross & Co.*, 224 Ill. App. 3d 559, 586 N.E.2d 600, 621 (Ill. App. 1991) (tax adviser-client relationship is not fiduciary as a matter of law); *Fleet National Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 242 (D. Mass. 1996) aff'd, 96 F.3d 532 (1st Cir.1996), cert. denied, 520 U.S. 1155, 117 S.Ct. 1335, 137 L.Ed.2d 495 (1997) ("absent particular circumstance, an accountant-client relationship does not give rise to fiduciary obligations"); *Stainton v. Tarantino*, 637 F. Supp. 1051, 1066 (E.D. PA. 1986) ("an accountant is not automatically a fiduciary for his client").

Absent facts indicating that any of the plaintiffs placed a special confidence in Ms. Kerrison, and that she accepted that confidence, plaintiffs' claims must fail because Lynne Kerrison and Dixon Hughes did not owe plaintiffs a fiduciary duty. Plaintiffs have put forth no evidence suggesting that Ms. Kerrison ever had any sort of special relationship with any of the plaintiffs that amounted to more than a "mere respect" for her judgment or trust in her character. *Burwell*, 288 S.C. at 41, 340 S.E.2d at 790.

Because plaintiffs put forth no facts indicating the existence of a fiduciary duty, the claim for breach of fiduciary duty must fail.

V. PLAINTIFFS CANNOT SHOW THAT DEFENDANTS LYNNE KERRISON AND/OR DIXON HUGHES KNOWINGLY PARTICIPATED IN ANY BREACH OF FIDUCIARY DUTY PERPETRATED BY THOMAS AND DANIEL STEVENSON

"The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008). The gravamen of a claim for aiding and abetting a breach of fiduciary duty is "the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). Plaintiffs cannot show that defendants Lynne Kerrison and Dixon Hughes knowingly participated in the alleged breach by the trustees or was aware of any improper transfers before or at the time they were made. See e.g., *Gordon v. Busbee*, 397 S.C. 119, 133-34, 723 S.E.2d 822, 830 (S.C. Ct. App. 2012).

In *Gordon*, the plaintiffs contended that because an the attorney for the personal representative of an estate knew, or should have known, of improper transfers made by the personal representative, the attorney was guilty of aiding and abetting the personal representative in breaching his fiduciary duty. *Id.* Court of Appeals, upheld the trial court's grant of a directed verdict in favor of the attorney on the claim of aiding and abetting a breach of fiduciary duty because there was no evidence that the attorney knew of the improper withdrawals "prior to his [the personal representative] making them or at the time he made them." *Id.* at 133, 723 S.E.2d at 830.

Ms. Kerrison never assisted or participated in the alleged breaches. Absent some evidence of active participation in the alleged malfeasance of the trustees, plaintiffs' claim for aiding and abetting a breach of fiduciary must fail. *Id.*

VI. INDIVIDUALLY AND AS BENEFICIARIES OF THE TRUSTS, PLAINTIFFS SUFFERED NO DAMAGES

The basis of plaintiffs' claims for damages is that they were deprived of their right to inherit from Mrs. Stevenson, as beneficiaries of her will and of the trusts. "The right to inherit, during the life of an ancestor, does not exist." *Bemis v. Waters*, 170 S.C. 432, 170 S.E. 475, 476 (S.C. 1933). Under South Carolina law, trusts or trustees are the devisees of testamentary gifts; "*beneficiaries are not devisees.*" S.C. Code Ann. 62-1-403(8) (emphasis added). Moreover, the "point in time that a claim for the object of a bequest arises necessarily depends on when the legatee has a legal right to it." *Church v. McGee*, 391 S.C. 334, 348, 705 S.E.2d 481, 489 (S.C. Ct. App. 2011), *reh'g denied* (Feb. 28, 2011). During Mrs. Stevenson's lifetime, plaintiffs, as individuals and trust beneficiaries, held *no legal right* to Mrs. Stevenson's personal assets or the assets of the trusts. Because all of the alleged improprieties occurred during Mrs. Stevenson's lifetime, plaintiffs suffered no damages.

In *Bemis*, five of Irene Austin's children sued a sixth, Irene Waters, for damages. The plaintiffs in that matter alleged that Ms. Waters had unduly influenced Mrs. Austin to convey to her certain real property. Ms. Waters demurred to the complaint and the trial court sustained her demurrer. The Supreme Court upheld the trial court, finding that the defendants could not sustain a claim "based upon the deprivation of their right to inherit by the conduct of the defendant." *Bemis*, 170 S.C. at 432, 170 S.E. at 476. The Court explained that "[d]uring the lifetime of an ancestor, there are no heirs and certainly no vested right to inherit from such ancestor." *Id.* The most a potential beneficiary holds is an "expectancy" which, through "the voluntary act of the ancestor, done in a perfectly legal way," could be rendered a "mere delusion." *Id.* Therefore, plaintiffs could not proceed on a cause of action "based upon the deprivation of their right to inherit by the conduct of the defendant." *Bemis v. Waters*, 170 S.C. 432, 170 S.E. 475, 476 (1933).

As with the plaintiffs in *Bemis*, these plaintiffs held no more than an expectancy to their mother's estate and the trusts. Before Mrs. Stevenson's death, plaintiffs held only the inchoate expectation of a future interest in the marital trust, subject to Mrs. Stevenson's use of the trust assets, power of appointment and testamentary wishes. During her lifetime, Mrs. Stevenson was the sole beneficiary of both trusts, and the entire corpus of both trusts could have been used for her benefit. Neither trust instrument provided a means by which trust assets could have been distributed to the residual beneficiaries during Mrs. Stevenson's lifetime. Plaintiffs held no interest in their mother's personal assets, and Mrs. Stevenson held the legal right to dispose of those assets. Consequently, while Mrs. Stevenson lived, plaintiffs, as individuals and beneficiaries, held no legal right to the assets of the trusts or Mrs. Stevenson's personal assets. Plaintiffs' rights accrued only after Mrs. Stevenson's death, long after the actions alleged in the complaint.

Plaintiffs cannot show that their individual rights were invaded. Plaintiffs do not allege that anything was improperly taken from their personal assets, only that Thomas and Daniel Stevenson "both improperly took money from the Marital Trust, QTIP Trust, and Estate of Jacquelin K. Stevenson." (Amend. Compl. ¶ 19.) Because plaintiffs held no right to the assets of either trust while their mother lived, nor any protected expectation in the remainder, and no money was taken from them personally plaintiffs, as individuals and trust beneficiaries, suffered no damages, and therefore defendants Lynne Kerrison and Dixon Hughes are entitled to summary judgment as a matter of law.

VII. SHOULD PLAINTIFFS' CLAIMS FOR DAMAGES BE ALLOWED, DAMAGES SHOULD BE LIMITED TO DAMAGES SUFFERED AFTER OCTOBER 1, 2001

Plaintiffs, through their expert, George DuRant, claim that their damages are in excess of four million dollars. (March 13, 2012 Dep. of George DuRant, Ex. 12.) Mr. DuRant calculates this amount by taking all the money ever received by Thomas and Daniel Stevenson from their mother or the trusts, including loans made with their

mother's knowledge years before Ms. Kerrison and Mr. Carter were aware of the loans (before October 1, 2001), and including amounts taken after the plaintiffs admit they were aware of the loans (April 27, 2006), enhancing it with prejudgment interest at 8.75%, subtracting Thomas Stevenson's repayments, calculating what plaintiffs "would have" received had these amounts, with interest, plus the fees paid the Hood Law Firm in suing their brothers, been added to the estate and distributed to the plaintiffs. (March 13, 2012 Dep. of George DuRant, Ex. 12.) For reasons unclear, Mr. DuRant's analysis also included, as damages suffered by plaintiffs, over \$500,000 in additional, hypothetical distributions to plaintiffs' step-brother, James King, even though he is not a plaintiff in this action.

Plaintiffs' claim is flawed for a number of reasons. It is inconsistent with the law of damages, which only allows recovery of damages that occur because of defendants conduct (or inaction). It also impermissibly uses prejudgment interest rate as a hypothetical rate of return.

The relevant dates of loans (whether advances or embezzlement) for calculation of damages are, at most, from October 23, 2001, the date when Ms. Kerrison became aware of the loans and notified Heyward Carter, through April 27, 2006, the date Ms. Turner met with Lynne Kerrison, Heyward Carter, Thomas Stevenson and Daniel Stevenson to discuss the withdrawals.

While defendants contend that Ms. Turner was told of the withdrawals in 2003 and again on April 19, 2006, all parties agree that a meeting was held at Heyward Carter's office on April 27, 2006, at which Kathleen Turner was told (again) of her brothers' actions. After April 27, 2006, no liability would exist for any defendants because Kathleen Turner admits she was aware of her brothers' malfeasance at that time. Any withdrawals after that date resulted from plaintiffs' failure to act, not from any alleged negligence on the part of any defendant.

Because the undisputed facts show that the relevant time frame for the purposes of determining damages is at most between October 23, 2001 and April 27, 2006, defendants Lynne Kerrison and Dixon Hughes are entitled to partial summary judgment on the issue of damages and an order from this court specifying that no amounts taken from the trusts before October 23, 2001 or after April 27, 2006 may be recovered in this action.

VIII. PLAINTIFFS ARE NOT ENTITLED TO PREJUDGMENT INTEREST

The evidence in this case does not support an award of prejudgment interest because the alleged damages are unliquidated. See, S.C. Code Ann. § 34-31-20(A), *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 58-59, 691 S.E.2d 135, 154 (S.C. 2010). "The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (S.C. 2009). The award of prejudgment interest is governed by S.C. Code Ann. § 34-31-20(A). Under S.C. Code Ann. § 34-31-20(A), prejudgment interest should not be awarded where "monetary recovery could not have been reduced to certainty." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 58-59, 691 S.E.2d 135, 154 (S.C. 2010).

"Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. at 435, 673 S.E.2d at 457. *Black's Law Dictionary* defines unliquidated as "not previously specified or determined." *Black's Law Dictionary* 1537 (7th ed. 1999). The South Carolina courts have found that the proper test is whether or not "the amount of damages, is fixed by conditions existing at the time the claim arose." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. at 435, 673 S.E.2d at 457 (internal citations omitted.)

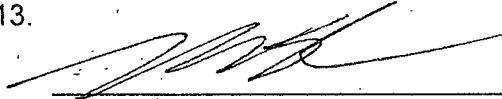
In *Austin v. Stokes-Craven Holding Corp.*, the Supreme Court of South Carolina determined that the trial court correctly denied an award of prejudgment interest based on S.C. Code Ann. § 34-31-20(A) under various causes of action arising out of the purchase of a used automobile because damages were not liquidated at the time the claim arose. "Because Austin alleged claims of fraud, constructive fraud, negligence, and violations of state and federal motor vehicle acts his prospective damages were unliquidated and could not have been ascertained without evidence of the retail value of the truck." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. at 58-59, 691 S.E.2d at 154. Because recovery could not have been "reduced to a certainty," the court determined that the denial of prejudgment interest was proper. *Id.* See also *Church v. McGee*, 391 S.C. at 349, 705 S.E.2d at 488. (Denying an award of prejudgment interest on a claim by a beneficiary of the estate against the personal representative for failure to provide him with a specific bequest because "a legatee has a legal right to the object of the bequest only when and if the estate has sufficient assets after all debts and expenses of administration have been paid.").

As in *Austin*, plaintiffs' claims here are unliquidated and could not be reduced to a certainty at the time the claims arose. Plaintiffs' discovery responses indicate that the amount of "attorney's fees, accounting fees, expert fees, costs, and lost time spent in pursuing and developing claims against Dan and Tom Stevenson" is "continuing to accrue." (Plaintiff Kathleen Turner's Answers to Defendant Lynne L. Kerrison's First Set of Interrogatories ¶ 11.) Moreover, plaintiffs seek "interest ranging from 5.84% through 10%, compounded yearly." *Id.* Plaintiffs' damages, which plaintiffs contend are continuing to accrue, cannot be "ascertained without evidence" or "reduced to a certainty." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. at 58-59, 691 S.E.2d at 154. As such, defendants Lynne Kerrison and Dixon Hughes are entitled to judgment as a matter of law as to plaintiffs' claims for prejudgment interest.

CONCLUSION

For the reasons stated, defendants Lynne Kerrison and Dixon Hughes respectfully request that this court grant summary judgment on plaintiffs' claims against them and grant all of the relief in their favor that the court deems just and appropriate.

This the 26 day of April, 2013.



Frederick K. Sharpless
Attorney for Defendants Dixon-Hughes, PLLC
and Lynne L. Kerrison
SHARPLESS & STAVOLA, PA
P O Box 22106
Greensboro, NC 27420
Telephone: (336) 333-6384

OF COUNSEL:

M. Dawes Cooke, Jr.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401
Telephone: (843) 577-7700

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DIXON HUGHES
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs submit this Memorandum in Opposition to the Dixon-Hughes Defendants' Motion
for Summary Judgment.

INTRODUCTION

This is a case involving the malpractice of an accountant, which resulted in two trustees
improperly withdrawing millions of dollars from two family Trusts.¹ As clearly demonstrated by the

¹This case originally had claims of legal malpractice against Heyward Carter and Evans,
Carter; Kunes & Bennett, P.A. Those claims have recently been settled.

opinions and testimony of Plaintiffs' expert, George DuRant,² Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A. and Lynne L. Kerrison (hereinafter "the DH Defendants"), breached the standard of care in failing to disclose to Kathleen Turner, the holder of her mother's Power of Attorney, the improper actions of the trustees. DuRant Aff. (TAB 1). This negligence resulted in damages to Plaintiffs of millions of dollars. DuRant Jan. 2012 Report (TAB 2).

STANDARD OF REVIEW

Summary judgment is not proper where further inquiry in to the facts is desirable to clarify the application of law. *Standard Fire Insur. Co. v. Marine Contracting & Towing*, 492 S.E.2d 460 (SC 1990). Summary judgment has been characterized as a drastic and extreme remedy, one that should be cautiously invoked. *Holloman v. McAllister*, 289 S.C. 183, 345 S.E.2d 728 (1986). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Baugus v. Wessinger*, 404 S.E.2d 169 (SC 1991). In fact, "[i]n order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla of evidence*." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (emphasis added).

BACKGROUND

This case arises out of Defendants' professional negligence, breaches of fiduciary duty and their assistance in the trustees' breach of fiduciary duty that resulted in losses to the Plaintiffs of millions of dollars.

Plaintiffs Jacquelin S. Bennett (Jacquelin), Genevieve S. Felder (Genevieve) and Kathleen S. Turner (Kathleen), along with Thomas C. Stevenson, III (Tom) and Daniel R. Stevenson, II (Dan),

²Mr. DuRant has executed an Affidavit, issued several reports, and has been deposed.

are beneficiaries of the Last Will and Testament of their late father, Thomas C. Stevenson, Jr.³ (hereinafter "Thomas Stevenson Will") and the Last Will and Testament of Jacquelin K. Stevenson⁴ (hereinafter "Jacquelin Stevenson Will"). The Thomas Stevenson Will created two testamentary trusts: the "Jacquelin K. Stevenson Marital Trust" (hereinafter "Marital Trust") and a qualified terminable interest property trust (hereinafter "QTIP Trust"). The Marital Trust provided Jacquelin K. Stevenson with a power of appointment to name the beneficiaries of the Marital Trust in her Will; she named Jacquelin, Genevieve, Kathleen, Tom and Dan, as well as her child from a former marriage, James King, as beneficiaries of the Marital Trust upon her death.

The Thomas Stevenson Will also provided that, upon the death of Jacquelin K. Stevenson, the beneficiaries of the QTIP Trust would be his children, Jacquelin, Genevieve, Kathleen, Tom, and Dan. That Will also named Tom and Dan as co-trustees of both the Marital Trust and the QTIP Trust, along with Norman W. Stevenson, Henry Buist and James G. Boyd. As of 1999, Tom and Dan were the only remaining co-trustees.

T. Heyward Carter and Evans, Carter, Kunes & Bennett, P.A., (Carter) were the attorneys for the trusts and Mrs. Stevenson. Defendants Lynne L. Kerrison (Kerrison) and Dixon-Hughes, f/k/a/ Prat-Thomas, Gumb & Co., P.A. were accountants for the trusts, Mrs. Stephenson, Dan and several companies he owned.

As of early 2001, Kathleen and Dan held powers of attorney for Mrs. Stevenson, who had recently suffered a stroke. Both Mr. and Mrs. Stevenson are now deceased. In 2007, Kathleen and

³Mr. Stevenson died in 1988.

⁴Mrs. Stevenson died in 2006.

Jacquelin were appointed Personal Representatives of Mrs. Stevenson's Estate and all three Plaintiffs were appointed as co-Trustees of the Trusts, replacing Tom and Dan.

During Tom and Dan's terms as co-trustees, they both improperly withdrew money from the Marital Trust, the QTIP Trust and the Estate of Jacquelin K. Stevenson. This case centers on the knowledge of the DH Defendants of these improper withdrawals, their failure to fulfill their duty to disclose the withdrawals to the Plaintiffs, and their assistance in the continuation of such withdrawals. In 2001, both Carter and Kerrison learned that Dan and Tom were making withdrawals from both Trusts. However, neither disclosed their knowledge of this self-dealing to Kathleen, who held a power of attorney for Mrs. Stevenson, or to any other beneficiary, until April of 2006. Incredibly, the DH Defendants had possession of the Trusts' checkbooks and actually wrote the improper checks to Dan and Tom. Kerrison Dep. 75:6-16 (TAB 3). In addition, one of the other accountants at the firm had a financial interest in the business for which Tom and Dan were borrowing money; thus, the firm had incentive to keep the business solvent by allowing the improper withdrawals. Kerrison Dep. 107:12-17 (TAB 3). With the knowledge and assistance of the DH Defendants, Tom and Dan continued to engage in self-dealing by withdrawing millions of dollars from the Trusts.

Kerrison and Dixon Hughes have now moved for judgment as a matter of law or partial summary judgment on various grounds. Specifically, the DH Defendants assert that they are entitled to judgment as a matter of law based on: 1) the statute of limitations; 2) the survivability of claims beyond the death of Mrs. Stevenson; 3) 26 U.S.C. § 7216; 4) the duty owed to Plaintiffs; 5) the knowing participation in breach of fiduciary duty; 6) damages; 7) a limitation of the time period for damages; and 8) prejudgment interest. The DH Defendants are wrong on each issue.

I. The statute of limitations did not begin to run until April 27, 2006.

This case was filed on April 26, 2009, within three years of April 27, 2006, the date the statute began to run. The statute of limitations could not have started until that date as it was the date of the meeting in which Plaintiffs were finally informed of the looting of the trusts.

Section 15-3-530 of the South Carolina Code (Supp.2003) sets forth a three-year statute of limitations for negligence actions. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith*, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987). One is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct.App.1987). Plaintiffs were not put on notice until April 27, 2006 when Tom and Dan held a meeting and informed Kathleen Turner about the monies they had improperly taken from the Trusts.

The record indicates that the only meeting in which any of the Plaintiffs were informed about assets and the withdrawals by Tom and Dan was not held until April 27, 2006. Kerrison testified that she told Carter about the improper withdrawals in 2001. Kerrison Dep. 36:11-25; 54:10-17 (TAB 3). She also testified that she knew that Dan and Tom were supposed to hold a family meeting but did not do so. Kerrison Dep. 75:17-77:6 (TAB 3). Hewyard Carter's billing records and testimony indicate that there was a conference with Tom and Dan Stevenson, Kathleen Turner, Lynne Kerrison and himself on April 27, 2006, in which Kathleen was informed about the "funds that had been taken out over a period of time by Dan and Tom out of the two trusts." Carter Depo. (9/24/08) 149-150:16 (TAB 4). Kerrison also acknowledged being at that meeting and that Kathleen was shown various

documents regarding the withdrawals by Dan Stevenson. Kerrison Dep. 84:22-85:9; Depo. Ex. 3 (TAB 3). Kerrison has described it as the meeting which was designed to disclose to Kathleen the improper withdrawals:

Q. Are you referring to the meeting at Heyward Carter's office on April the 27th, 2006?

A. Yes, sir.

Q. And that was a meeting attended by you, Mr. Carter, Dan, Tom and Edward Bennett?

A. I have Kathleen on here because I have listed on here present at meeting and I don't list Edward Bennett's name.

Q. Where are you referring to there, sorry, so I can see it? It's on the second page.

A. Right here.

Q. Oh, okay. So on the second page you indicate Heyward Carter, Lynne Kerrison, Tom Stevenson, Dan Stevenson, Kathleen Turner were at the meeting?

A. Yes, sir.

Q. And this is the meeting to do the full disclosure to Kathleen?

A. Yes, sir.

Kerrison (11-6-09) Dep. 82:3-21 (TAB 5).⁵

The DH Defendants set forth multiple dates which on which they claim the statute ran. The DH Defendants are incorrect as to all of them.⁶ None of these are the correct deadline.

⁵In his deposition in this case, Carter tries to claim that he "thought" there had been a meeting in 2003 in which Dan and Tom told Kathleen about the withdrawals. Carter Dep. 19:9-20:1 (TAB 7). However, Carter admitted that he was not at that meeting. Id.

⁶The fact that the DH Defendants have posited so many alternatives (all of which are based on factual issues) suggests that this issue is not appropriate for determination on summary judgment.

The DH Defendants claim that notice to an attorney is notice to his client, and thus, once Kerrison told Carter in October 2001 of the improper withdrawals, the statute began to run. The DH Defendants rely on *Dorman v. Campbell*, 331 S.C. 179, 185, 500 S.E.2d 786, 789 (Ct. App. 1998). In *Dorman*, because the lawyer had been notified that a house was below flood level, his clients (the buyers) were also found to have on notice at that time, even if they had no actual notice. In *Dorman*, the court noted that the Dormans had viewed the house several times; had hired professionals to inspect the house; had received both a plat showing the house was a flood hazard area and a flood elevation certificate that clearly indicated the house was below the base flood elevation. In finding that the contents of the letter to the attorney was imputable to his clients, the court held: "We find that Buist's letter, *in conjunction with the other evidence*, put the Dormans on notice that some problem may have existed with the addition was below flood level. *Id.* at 186, 500 S.E.2d at 789.

Moreover, there is an exception to the rule that a principal is affected with knowledge his agent receives. *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 498 (1979). This exception "exists in situations where the agent is acting fraudulently against his principal or for any other reason has an interest in concealing his acquired knowledge from his principal." Because the DH Defendants were participating in legitimizing the withdrawals by writing the checks, that exception would apply in this case.

With regard to the May 21, 2006 date, the DH Defendants claim that Tom and Dan informed Kathleen of the improprieties at meeting on May 21, 2003. However, the DH Defendants were not at this meeting. While Tom and Dan may have claimed that they told Kathleen about these at earlier date, the testimony of Kathleen directly refutes that claim. Turner Dep., p. 64-67 (TAB 6). In other words, as Kathleen testified, there was nothing to put her on notice of a claim until the April 27, 2006

meeting. Furthermore, to the extent this is a factual issue, it should not be determined on a motion for summary judgment.

Despite the DH Defendants' claim, Kathleen was not put on notice on April 19, 2006 that Tom and Dan had improperly withdrawn monies from the Trusts. Kathleen testified that she met with Tom at his place of business on that date, but he did not discuss the Trusts with her:

Q. Ms. Turner, on April the 19th in the year 2006, you met with your brother Tom at his place of business FabTech, didn't you?

A. I did.

Q. And did he take you on a tour of his facility?

A. He did.

Q. And did he talk to you about the fact that monies from the trusts had been invested in his company FabTech?

A. No, he did not.

Turner Dep. 97:24 -98:9.⁷

Finally, the fact that the plaintiffs as contingent beneficiaries did not ask for a statement of the accounts of the Trusts has no effect. The DH Defendants claim that Plaintiffs, as beneficiaries, could have asked for statements of the trust beginning in 1999 and would have then seen the withdrawals. However, Plaintiffs were under no obligation to request such statements. The limitations clock does not start ticking on January 1, 1999 and thus expire on January 1, 2002 as the DH Defendants claim.

⁷The DH Defendants claim that Kathleen admitted being at this meeting in her Answers to Kerrison's Requests to Admit. However, the Request (the last one of 171 requests) stated: "Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006." That request could be interpreted as Tom told her that a withdrawal of the trust had been made on April 19, 2006 or that Tom told Kathleen on April 19, 2006 that withdrawals had been made. Thus, the admission is unclear. However, the testimony of Kathleen is very clear that on April 19, 2006, Tom did not disclose any withdrawals to her.

In summary, the evidence and testimony indicates that April 27, 2006 was the first time that Kathleen Turner was told of the improper withdrawals by Tom and Dan, and thus, the statute began running at that time. If Kathleen had been told earlier, there would have been no need for this meeting. Both Carter and Kerrison acknowledged that this was the meeting in which the disclosure to Kathleen was made (though the DH Defendants now attempt to avoid the effect of that admission). As this case was filed within three years of that date, the statute of limitations does not bar this action.

II. Plaintiffs' claims did survive the death of Mrs. Stevenson.

The DH Defendants argue that any claims against them did not survive the death of Mrs. Stevenson because they are based on a theory of fraud or deceit. That is not true. The claims are based on the *negligence and aiding and abetting* of the DH Defendants. The DH Defendants rely on *Ferguson v. Charleston Lincoln Mercury*, 349 S.C. 558, 564 S.E.2d 94 (2002), and argue that the claims cannot survive Mrs. Stevenson's death.

In *Ferguson*, Mr. Ferguson sued the dealership claiming that the assessment of a closing fee and failure to disclose it were unfair acts. The Court held that:

At the core of Mr. Ferguson's complaint was the allegation that CLM misled him into paying more for the car than he should have paid, and concealed the overcharge either through intentionally deceptive actions or through grossly negligent disclosure practices.

Id., 349 S.C. at 565. However, in this case, the claims against the DH Defendants are based on the professional negligence, breach of fiduciary duties, and aiding and abetting the breach of fiduciary

duties that allowed Tom and Dan to violate their duties as Trustees.⁸ Tom and Dan's duties are rooted in statute:

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this article.

S.C. Code § 62-7-801. Furthermore, "[a] trustee shall administer the trust solely in the interests of the beneficiaries." S.C. Code § 62-7-802(a). In addition:

A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust of the material facts necessary to protect their interests.

S.C. Code § 62-7-813.⁹ Thus, the claims against the DH Defendants are not based on fraud but on their negligence and breach of fiduciary duties.¹⁰ The DH Defendants, as the accountants for the Trusts and Jacquelin Stevenson (and by extension, Kathleen Turner, as holder of the power of attorney), had a duty of care to report the improper withdrawals of Tom and Dan (and to refuse to issue checks for additional withdrawals) which was breached. The conduct of the DH Defendants

⁸Even the DH Defendants have previously acknowledged that a trustee "has a fiduciary obligation to administer the trust in the best interest of the trust beneficiaries." Defendants' Memorandum in Support of the Motion to Dismiss, p. 11, quoting *Epworth Children's Home v. Beasley*, 365 S.C. 157, 611 S.E.2d 710 (2005). Obviously, depleting the trusts for personal gain is not "in the best interest of the trust beneficiaries."

⁹Similarly, personal representatives are fiduciaries who must observe the standards of care applicable to trustees and must act "for the best interest of the successors of the estate." S.C. Code § 62-7-703.

¹⁰The DH Defendants claim that survivability is crucial to a fraud case because the state of mind of the victim is an issue. Here, however, the claims in this case are rooted in negligence and breach of fiduciary duty. The state of mind of the victim (Mrs. Stevenson) is not an issue because whether a person breached a duty of care is an objective standard, and Plaintiffs' expert George DuRant has provided an opinion that the duty of care was breached. Furthermore, the DH Defendants do not deny that they did not disclose the withdrawals to Mrs. Stevenson. Thus, her state of mind is irrelevant in this case.

may involve a failure to disclose but also involves active participation in aiding and abetting Tom and Dan.¹¹ As such, their conduct is clearly within the ambit of professional negligence and breach of fiduciary duty. As a result, Plaintiffs' claims survive the death of Mrs. Stevenson under S.C. Code § 15-5-90.¹²

III. The claims are not preempted by 26 U.S.C. § 7216.

The DH Defendants wrongly rely on 26 U.S.C. 7216 for their argument that Plaintiffs' claims are preempted. Preemption can be explicit or implicit: "Congress' intent may be explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Cippollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). If there is no express congressional command, state law is only preempted if "federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress has left no room for the States to supplement it." *Id.* Here, there is neither an explicit nor implicit preemption.

Section 7216 does not have any explicit preemption language. Furthermore, it is clear from the language of the statute that it was not meant to occupy the field so as to displace state common law duties of an accountant. Section 7216 is a criminal statute which imposes misdemeanor liability

¹¹Furthermore, our courts allow evidence of fraudulent acts to support surviving claims. The very case the DH Defendants cite, *Brailsford v. Brailsford*, 380 S.C. 443, 669 S.E.2d 342 (Ct. App. 2008) rejected the argument that the fraud exception to survivability prevented a court from considering evidence of fraud on any other type of claim, and specifically stated that other causes of action that did survive could be "supported by evidence of the defendant's fraudulent and deceitful conduct." *Id.*

¹²S.C. Code 15-5-90 states: "Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person and the legal representative of an insolvent person or a defunct or insolvent corporation, any law or rule to the contrary notwithstanding."

on a tax preparer who "uses any such information for any purpose other than to prepare, or assist in preparing, any such return...." 26 U.S.C.A. § 7216(a)(2). The tax preparer "shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution." *Id.* As one court noted, the purpose of this section was "primarily oriented to discourage the misuse of confidential information received by nonprofessionals preparing tax returns." *Mitsui & Co. (USA), Inc. v. Puerto Rico Water Res. Auth.*, 79 F.R.D. 72 (D.C. Puerto Rico 1978).

Section 7216 contains several exceptions for disclosure, stating that this prohibition does "not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary under this section." 26 U.S.C.A. 7216(b)(3). The Code of Federal Regulations specifically allows the DH Defendants to disclose to a "related taxpayer" information obtained from the first taxpayer. 26 C.F.R. § 301.7216-2(e)(1)(i). For the purposes of that section, "a taxpayer is related to another taxpayer if they have any one of the following relationships: Husband and wife, child and parent, grandchild and grandparent, partner and partnership, *trust or estate and beneficiary*, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563." 26 C.F.R. § 301.7216-2 (e)(2) (emphasis added). Thus, Plaintiffs, as beneficiaries of the Trusts are related taxpayers and the DH Defendants were not barred by § 7216 from disclosing the to them.¹³

The exceptions contained in Section 7216 and the Regulations make it clear that Congress did not intend to so thoroughly occupy the field as to preempt common law duties of an accountant. According to the interpretation of the DH Defendants, Section 7216 would prevent an accountant

¹³Furthermore, the Defendant here were not releasing confidential information used to prepare tax returns, but actively writing improper checks to two trustees who were looting the Trusts.

from disclosing to a beneficiary a trustee's breach of fiduciary duties if the breach was revealed in preparing a tax return. Thus, an accountant would be forced to avoid her ethical duties and would be aiding and abetting the breaching trustee. That cannot be the congressional purpose and intent behind 7216, and indeed is likely one reason for the exception related to beneficiaries of a trust.

IV. The DH Defendants owed a duty to Plaintiffs.

The DH Defendants claim that Plaintiffs lack standing and that the accountants did not have a fiduciary relationship with Plaintiffs.¹⁴ These arguments are totally meritless. Under South Carolina law, a person who deals with a trustee for value (i.e., receives payment for accounting services) is insulated from liability only if he/she acts in good faith and without knowledge that the trustee is exceeding or improperly exercising the trustee's powers. S.C. Code § 62-7-1012. Here, the Defendant accountants were not only aware of these improper self-dealing withdrawals, but actually wrote the checks for the withdrawals and did not disclose those withdrawals to the beneficiaries. They are liable for the damages caused by these actions. While there are no cases that analyze S.C. Code § 67-7-1012, this code section is similar to the principles in the Restatement (Second) of Trusts, which states:

A third person who, although not a transferee of trust property, has notice that the trustee is committing a breach of trust and participates therein is liable to the beneficiary for any loss caused by the breach of trust.

Id. at § 326. In other words, because Defendant Kerrison knew that Tom and Dan were in breach of trust and furthered that breach, she is liable for Plaintiffs' losses.

¹⁴The existence of a fiduciary relationship between an accountant and his client is a question of fact. 2 *S.C. Jur. Accountants* § 16.

Additionally, the DH Defendants have overlooked the significant fact that Kathleen held her mother's Power of Attorney¹⁵ and as such, she was clearly in a fiduciary relationship with Defendant accountants. Plaintiff Kathleen Turner was appointed as her mother's attorney-in-fact under a Power of Attorney in 2001. "It has been said that *an attorney in fact is essentially an alter ego of the principal...*" *Muller v. Bank of Am., N.A.*, 12 P.3d 899, 904 (Kan. App. 2000) (emphasis in original), citing 3 *Am.Jur. 2d Agency* § 21. *See also, Estate of Keatinge v. Biddle*, 789 A.2d 1271, 1274 (Maine 2002); ("In essence, an attorney-in-fact is the alter ego of the principal."). "Furthermore, a person acting as an attorney-in-fact under a POA is an agent, one who stands in the shoes of a principal." *State v. Campbell*, 756 N.W.2d 263, 271 (Minn. Ct. App. 2008). As such, the DH Defendants owed a duty to Kathleen, as attorney-in-fact and alter ego of her mother. Defendants did have a duty to disclose the withdrawals to her. The Affidavit of George DuRant, specifically noted that Defendants should have given notice to Plaintiff Turner, in her capacity as the holder of a power of attorney, of the improprieties with regard to the trusts. DuRant Aff. ¶11 (TAB 1).

V. The DH Defendants knowingly participated in Tom and Dan's breach of fiduciary duty.

The DH Defendants claim that there was no "knowing participation" in the breach of Tom and Dan's fiduciary duty.¹⁶ This position is not correct.

In addition to active participation, a person can also provide assistance (and therefore aid and abet) through inaction or nonfeasance. *See, e.g., Kerbs v. Fall River Indus., Inc.*, 502 F.2d 731, 740 (10th Cir. 1974) (stating that party who assists in fraudulent acts may be liable, though assistance was

¹⁵All of the DH Defendants' arguments ignore that Kathleen is the holder of her mother's Power of Attorney and is her mother's alter ego, and thus, a client of the DH Defendants.

¹⁶Although Defendants' motion does not so state, this argument presumably applies to Plaintiffs' cause of action for aiding and abetting the breach of fiduciary duty.

comprised of mere silence or inaction) (abrogated on other grounds); *Green v. Jonhop, Inc.*, 358 F. Supp. 413, 419 (D. Or. 1973) (holding defendants liable for acquiescence in misleading financial prediction by remaining silent in face of inaccuracy). In *Chapin v. University of Massachusetts*, 977 F.Supp. 72 (D.Mass.1997), the court held the plaintiff had an actionable claim against the police chief for aiding and abetting sexual harassment where chief failed to act. The court noted that in situations where the nonfeasance results from "deliberate indifference" and not mere inattention or negligence, such nonfeasance "is not 'mere inaction,' but a designed and willful act of forbearance *in a situation where action is required.*" *Id.* at 79 (emphasis supplied).

The culpability of the DH Defendants is obvious and stems both from active participation and through inaction when they had a duty to act. Defendant Kerrison became aware in 2001 that Tom and Dan had improperly withdrawn money from the Trusts. Kerrison Dep. 27:9-17 (TAB 3). She knew there was a question about the legality of these withdrawals and contacted Heyward Carter. Kerrison Dep. 41:23-42:7; 42:10-43:2 (TAB 3). She attended a meeting with Dan, Tom and Carter on October 23, 2001, during which she was specifically advised by her Carter of the impropriety of the withdrawals. Carter explained that "It was not something the trustees were supposed to be doing, at least without the consent of beneficiaries." Carter dep. (9/24/08) 102:10-16 (TAB 4). Defendant Kerrison not only also failed to inform Kathleen and the other beneficiaries of the improper withdrawals, but also continued to issue the checks to Dan and Tom from the trust accounts:

- Q. And that Dixon Hughes at some point in time upon the death of Pat started writing the checks?
- A. Yes, sir, we wrote the checks.
- Q. And who okayed the checks to be written?

- A. Any of the siblings would come into the office and they would meet with Angela Heisenbottle, and Angela would write the checks and then either Dan or Tom would sign the checks.

Kerrison Dep. 75:9-16 (TAB 3).¹⁷ Clinging to an incredibly myopic view of herself as a mere “bookkeeper,” Kerrison failed to discharge her professional obligations and continued to be an integral part of Tom’s and Dan’s misconduct throughout 2003, 2004 and 2005. Kerrison Dep. 84:9-16 (TAB 3). As a result, Tom and Dan were free to continue raiding the trusts for several years, causing millions of dollars in damages, for which she is liable. The actions of the DH Defendants in issuing checks, along with their silence while knowing that Tom and Dan were acting improperly, clearly constitute knowing participation in the breach of fiduciary duty.

VI. The extent of Plaintiffs’ damages are issues of fact to be determined at trial.

The DH Defendants make the bald assertion that Plaintiffs have no damages. However, Plaintiffs’ expert George DuRant opined that the DH Defendants have breached their fiduciary duties. DuRant Aff. (TAB 1). Furthermore, these breaches have resulted in substantial damages to Plaintiffs. DuRant Jan. 10, 2012 Report (TAB 2). Mr. DuRant considered the monies taken by Tom and Dan and created an analysis in which the monies plus interest were paid and converted to cash. DuRant Dep. 53:2-13 (TAB 8). Mr. DuRant’s analysis demonstrates the amount the Plaintiffs would have received versus the amount they will receive under the Proposal for Distribution dated August 17, 2011. DuRant Dep. 53:14-19 (TAB 8).

The DH Defendants argue that Plaintiffs had no rights in the Trusts, but only an expectancy, relying on *Bemis v. Waters*, 170 S.C. 432, 170 S.E. 475 (1933). However, that case was a case of

¹⁷Certainly, once the DH Defendants attended the October 23, 2001 meeting in which Heyward Carter informed Tom and Dan that their actions were improper, the DH Defendants should have ceased issuing checks to Tom and Dan.

undue influence, and it has no application here. In that case, 5 siblings sued a sixth, alleging that she had unduly influenced her mother to convey property to her, but the court dismissed the suit, finding that siblings could not sue based upon a deprivation of a possible inheritance. The situation here is quite different. Plaintiffs had more than a mere expectancy; their interests in the QTIP trust were vested in 1988, upon the death of Mr. Stevenson. Unlike the actions of the mother in *Bemis*, the monies received by Dan and Tom were not gifts authorized by Mrs. Stevenson, but thefts by trustees from trusts in which their siblings had a vested interest.

Furthermore, to the extent of Plaintiffs' damages are an issue of fact, that matter should be determined at trial, not on a motion for summary judgment.

VII. Plaintiffs can recover for damages outside of the time frame suggested by Defendants.

The DH Defendants initially claimed that damages must be limited to the time frame of January 4, 2001 to April 27, 2006. (DH Mot. for Summary Judgment). In the Memorandum submitted April 26, 2013, the DH Defendant claim that only damages between October 23, 2001 (when Carter and Kerrison first discovered the withdrawals) and April 27, 2006 (the date of the meeting in which Tom and Dan told Kathleen about the withdrawals) can be recovered.

First, it should be noted that a motion for summary judgment on this issue is improper. Rule 56, SCRCF states:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

In plain language, Rule 56 goes to a claim, not evidence or specific issues: "[I]t is not appropriate to use summary judgment as a vehicle for fragmented adjudication of non-determinative

issues” because such motions waste judicial resources.” *Securities and Exchange Commission v.*

Thrasher, 152 F.Supp.2d 291, 295–96 & n. 2 (S.D.N.Y.2001). As one court noted:

The plaintiff does not seek summary judgment on her defamation claims as a whole, and she has utterly failed to establish that she is entitled to judgment as a matter of law on her claims. Instead, she seeks “summary judgment” on discreet issues which may or may not be relevant to her claims. Summary judgment cannot be decided in such a piecemeal fashion.

Mitchell v. KDJM-FM, 06-CV-01427-EWN-BNB, 2007 WL 2572342 (D. Colo. Aug. 8, 2007).¹⁸

Here, the DH Defendants are claiming that the damages time frame must be limited to January 4, 2001 through April 27, 2006. In other words, the DH Defendants are asking this Court to prevent Plaintiffs from presenting evidence on any damages prior to January 4, 2001 and any damages sustained after April 27, 2006 in mitigating the actions of the DH Defendants. That argument should be made as a motion in limine, not as a motion for summary judgment. *See, e.g., U.S.C.A. Evergreen Intern., S.A. v. Marinex Const. Co., Inc.*, 477 F. Supp. 2d 697 (D.S.C. 2007) (finding that the motion for partial summary judgment on issue of damages was in improper form, where facts and conclusions plaintiff wished to establish would not dispose of any of its claims entirely);¹⁹ *South Carolina Dept.*

¹⁸Defendants may argue that the court can determine specific issues under Rule 56(d), which provides that if judgment is not rendered on the whole case, the court can “if practicable ascertain what material facts exist without substantial controversy” and can enter an order specifying those facts. However, the procedure prescribed in subdivision (d) is designed to be ancillary to a proper motion for summary judgment. Wright, Miller & Kane, Federal Practice and Procedure § 2737. “Rule 56(d) does not authorize the entry of a judgment on part of a claim or the granting of partial relief, however. It simply empowers the court to withdraw sham issues from the case and to specify those facts that really cannot be controverted.” *Id.* Rule 56(d) “is merely intended to salvage some constructive result from the effort expended on a proper summary judgment motion that is ultimately denied; it does not authorize a litigant to seek a ruling at the outset only on subsidiary issues.” *Member Services, Inc. v. Sec. Mut. Life Ins. Co. of New York*, 06-CV-1164, 2010 WL 3907489 (N.D.N.Y. Sept. 30, 2010).

¹⁹Prior to 2010, the Federal Rule 56(a) was almost identical to the South Carolina rule quoted herein (with the only difference being the time in which a claimant could move for

of *Highways & Pub. Transp. v. Galbreath*, 315 S.C. 82, 83, 431 S.E.2d 625, 626 (Ct. App. 1993)(lower court properly granted motion in limine to exclude testimony as to certain area of damages).

Furthermore, the time period prior to January 4, 2001 should be included. Had the DH Defendants taken action as soon as the improper were discovered, the monies could have been recovered from Tom and Dan and restored to the Trusts (and no additional would have occurred). However, because the DH Defendants took no action for over 5 years, Tom and Dan had become insolvent and were unable to repay all of the stolen funds.

In addition, losses that occurred in the time period after April 27, 2006 can and should be included as they are a proximate result of DH's negligence. For example, due to the negligence of the DH Defendants, Plaintiffs were forced to correct the actions of the DH Defendants, or at least attempt to mitigate the damages caused, and brought suit against Tom and Dan Stevenson. The cost of this corrective action, which took place after April 27, 2006, can be included as an element of damages here.²⁰ See, e.g., Jacob L. Todres, Tax Malpractice: Areas in Which It Occurs and the Measure of Damages-an Update, 78 St. John's L. Rev. 1011, 1019 (2004)(attorney or accountant fees and other costs incurred to correct, or attempt to correct, the effects of the defendant's negligence.)

While South Carolina appellate courts have not addressed the issue, other courts have and they have found that attorney's fees are a proper element of damages in an accountant malpractice

summary judgment). Thus, federal interpretations can provide guidance. *Dalon v. Golden Lanes, Inc.*, 320 S.C. 534, 541, 466 S.E.2d 368, 372 (Ct. App. 1996) (where state rules are the same as federal rules, courts may look to treatment of the federal rules for guidance in interpreting state rules).

²⁰There may be damages other than the legal fees for corrective action and Plaintiffs' focus on the legal fees here does not reflect any abandonment of other damages.

action. See, *Profl Rodeo Cowboys Ass'n, Inc. v. Wilch, Smith & Brock*, 589 P.2d 510 (1978). In holding that the accountants' client was entitled to recover cost of attorneys' fees incurred in settling dispute which resulted from accountants' malpractice, the court in that case stated:

When the natural and probable consequence of a wrongful act has been to involve plaintiff in litigation with others, the general rule is that the reasonable expenses of the litigation may be recovered from the wrongdoer.

Id. at 513. See also, *Harvey v. Dixie Graphics, Inc.*, 593 So. 2d 351, 355 (La. 1992) (plaintiff had sustained damages by incurring substantial accountant's and attorney's fees in investigating and informing himself of the deficiencies of the return another accountant had prepared).

Here, Plaintiffs sued Dan and Tom Stevenson in an attempt to recover the improper withdrawal or thefts, which were facilitated by the DH Defendants' negligence. The evidence in the record is that Plaintiffs have paid or incurred \$825,672.57 in that attempt. The Client Ledger Report from the Hood Law Firm (**TAB 9**) shows the amounts charged and paid in the litigation against Dan and Tom. As set forth in the case law above, this amount is recoverable as a component of the damages caused by the DH Defendants, despite the fact the damages occurred after April 27, 2006.

VIII. Plaintiffs' claims are liquidated and entitled to prejudgment interest.

First, it must be noted, this is not a matter suitable for summary judgment. As set forth more fully in Section VII, Rule 56 goes to a claim, not evidence or specific issues. Because the DH Defendants are seeking to exclude prejudgment interest, this issue is more appropriate as a motion in limine at trial.

Furthermore, prejudgment interest is allowed on a claim of liquidated damages, i.e., where, the sum is certain or capable of being reduced to certainty. *Bickerstaff v. Prevost*, 380 S.C. 521, 525,

670 S.E.2d 660, 662 (Ct. App. 2009). The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest." Id.

Here, Tom and Dan took an ascertainable amount out of the Trusts. As Plaintiffs' expert testified:

Q. And why did you come to calculate the interest rate for purposes of your first report dated April the 1st, 2010, Exhibit No. 7, at 8.75?

A. Because that's the statutory rate in South Carolina on amounts such as the amounts that were taken out of these trust funds -- amounts that are ascertainable.

DuRant Dep. 24:1-7 (TAB 8). Furthermore, he appropriately applied the interest rate of 8.75% as these were not true loans, but thefts from the Trusts:

Q. So in looking at this Bates number 2 document, do you see at the top there's an indication of "Date, Loan Amount, AFR Interest Rate, Years, Number of Days, Interest Total." Do you see that?

A. Yes.

Q. And again, in performing your calculations with regard to interest, why did you not use the AFR interest rate that is in fact indicated on Bates 16344?

A. I used 8.75 percent because I thought the loans -- the documentation -- I didn't look for the documentation. I view all of these loans as takings, they're not loans.

Q. And what did you base your conclusion that these were takings and not loans?

A. Well, I think the breach of fiduciary duty -- obviously, the trustees had no -- no right to loan themselves money. They took the money.

Q. Was it your conclusion from looking at the documentation that they were loaning themselves money or loaning monies to various businesses in which they had an interest?

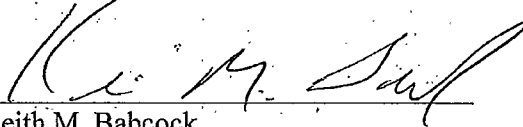
A. It's my conclusion they were taking the money. What they did with it, that was not of concern to me.

DuRant Dep. 27:9-28:9 (TAB 8). In conclusion, the amounts Tom and Dan took from the Trusts are liquidated. While the DH Defendants may dispute liability in this case, the damages are undisputed and subject to prejudgment interest at the statutory rate.

CONCLUSION

For the reasons stated above, the motion should be denied

Respectfully submitted,
LEWIS, BABCOCK & GRIFFIN, L.L.P.



Keith M. Babcock
James M. Griffin
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

April 28, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K.)
Stevenson, Deceased and the Estate)
Of Thomas C. Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S.)
Felder and Kathleen S. Turner, indi-)
Vidually, as Co-Trustees and bene-)
ficiaries of the Marital Trust and the)
Qualified Terminable Interest Trust)
Created by the Thomas Stevenson)
Will, and Jacquelin S. Bennett, and)
Kathleen S. Turner, as Co-Personal)
Representatives on behalf of the)
Estate of Jacquelin K. Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter,)
Kunes & Bennett, P.A.; Douglas)
Capital Management, Inc.; Dixon-)
Hughes f/k/a Pratt-Thomas Gumb &)
Co., P.A.; and Lynne L. Kerrison.)

Defendants.)

IN THE PROBATE COURT
FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2007-ES10-1437

CASE NUMBER: 1988-ES10-00747

AFFIDAVIT OF GEORGE W. DuRANT

The undersigned affiant, being first duly sworn, hereby deposes and states as follows:

1. My name is George W. DuRant and being first duly sworn, I give this affidavit to the Court, hereby state that the information contained herein is true and correct to the best of my knowledge and belief:

2. I am 56 years old and a resident of Richland County, South Carolina.
3. I am a Certified Public Accountant licensed to practice accounting in the State of South Carolina.
4. My *curriculum vitae* is attached to this affidavit.
5. The Plaintiffs have engaged me to review the following documents and opine as to whether the defendants Pratt-Thomas Gumb & Co., P.A. and Lynne L. Kerrison breached the standard of care expected of accountants practicing in the State of South Carolina.

A. The Summons and Complaint filed on April 24, 2009 by Lewis & Babcock, L.L.P. in this matter as above-captioned.

B. Attorney Brady R. Thomas' letter dated April 7, 2009 to me together with selected pages (98-113) of the deposition transcript of T. Heyward Carter, Jr. dated September 24, 2008 in Case No. 2008-CP-10-0806; listings of loans and accrued interest as of October 10, 2007 relating to the Q-TIP Trust and the Marital Trust as of September 13, 2006; and a print-out of "Transactions by Account for the Q-TIP and Marital Trust.

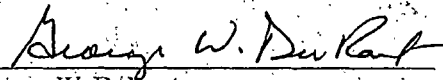
C. A transmittal letter dated October 12, 2001 from T. Heyward Carter, Jr. to Lynne Kerrison referencing and transmitting a copy of the Durable Power of Attorney given by Jacquelin K. Stevenson in favor of Kathleen S. Turner and Daniel R. Stevenson on January 4, 2001.

D. The affidavit and resume of John P. Freeman dated May 3, 2009 in the above captioned case.

6. Dixon-Hughes, PLLC is a public accounting firm practicing in South Carolina. Dixon-Hughes, PLLC is the successor to Pratt-Thomas, Gumb & Co., P.A., as result of its merger on November 1, 2006. Lynne L. Kerrison is a Certified Public Accountant and member of Dixon-Hughes, PLLC and/or its predecessor Pratt-Thomas, Gumb & Co., P.A.
7. Jacquelin K. Stevenson (Mrs. Stevenson) was the beneficiary of the Marital Trust and the Qualified Terminable Interest Trust (QTIP) created by the will of Thomas Stevenson.
8. On January 4, 2001, Mrs. Stevenson appointed Kathleen S. Turner and Daniel R. Stevenson acting jointly and together, as her lawful attorneys to act in, manage, and conduct all of her affairs. This appointment is evidenced by a document titled "Durable Power of Attorney" provided to Ms. Kerrison by T. Heyward Carter, Jr., on October 12, 2001.
9. Mr. Carter is an attorney and represented Mrs. Stevenson. Ms. Kerrison provided professional accounting services to the subject Marital Trust and QTIP Trust.
10. On October 23, 2001, Ms. Kerrison met with Mr. Carter and the co-trustees of the Marital and QTIP Trusts to discuss "distributions" made to the co-trustees, Daniel R. Stevenson and Thomas Stevenson (Carter 101:1-25). During that meeting, Mr. Carter informed Ms. Kerrison and the co-trustees of the impropriety of such distributions and "the fact that it was not something the

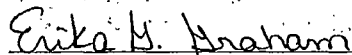
trustees were supposed to be doing, at least without the consent of beneficiaries" (Carter 102:13-16).

11. In my opinion, the standard of care for certified public accountants in South Carolina required Ms. Kerrison and Dixon-Hughes, PLLC immediately to give notice of the improprieties to Ms. Turner in her capacity as co-holder of the power-of-attorney for Mrs. Stevenson, the beneficiary of the two trusts. Based on my review of the information and facts above, Ms. Kerrison and Dixon-Hughes, PLLC were negligent in failing to give such notice.
12. Further affiant sayeth not.


George W. DuRant

Sworn and Subscribed before me

this 11 day of May, 2009.

, L.S.

Notary Public for the State of South Carolina

My commission expires: April 7, 2019

George W. DuRant, CPA/ABV, ASA
Curriculum Vitae

CONTACT

Business address: 4408 Forest Drive, Columbia, South Carolina 29206
Telephone: Business (803) 790-0020; Fax (803) 790-0011; Home (803) 788-6476

EDUCATION

Bachelor of Science in Business Administration, Accounting, Cum Laude, University of South Carolina, 1973.

EMPLOYMENT

December 1973 - December 1977 staff accountant with Derrick, Stubbs & Stith, CPAs, Columbia, South Carolina. January 1978 - December 2007, partner DuRant, Schraibman & Lindsay, CPAs (formerly DuRant & Company and Flynt, DuRant & Company). January 2008 - December 31, 2008 member, Sellers, DuRant, Schraibman, Lindsay & Cole, LLC. January 1, 2009 - member, DuRant, Schraibman & Lindsay, LLC.

PROFESSIONAL INVOLVEMENT

CPA, Certified Public Accountant (1975); member of the American Institute of Certified Public Accountants, the South Carolina Association of Certified Public Accountants, and the Central Chapter of the South Carolina Association of Certified Public Accountants. Past president, vice president, secretary and treasurer of the Central Chapter of the South Carolina Association of Certified Public Accountants.

ABV, Accredited in Business Valuation, American Institute of Certified Public Accountants (1998). Chairman, 2002 and 2003 Business Valuation & Litigation Services Committee, South Carolina Association of Certified Public Accountants. Member 2004-2005 Business Valuation & Litigation Services Committee, South Carolina Association of Certified Public Accountants. Member 2006-2008 Forensic & Litigation Services Task Force, South Carolina Association of Certified Public Accountants. Member 2009 Business Valuation and Forensic & Litigation Services Task Forces, South Carolina Association of Certified Public Accountants

ASA, Accredited Senior Appraiser (Business Valuation) American Society of Appraisers. (1998). President South Carolina Chapter of American Society of Appraisers (2001-2003). Secretary South Carolina Chapter of American Society of Appraisers (2000-2001).

CFF, Certified in Financial Forensics, American Institute of Certified Public Accountants (2009).

Past Chairman Columbia Tax Study Group

Treasurer, NAMI Mid-Carolina (2004-2008)

AUTHOR

George W. DuRant and Robert F. Anderson, Esq., *Look Before You Leap: Bankruptcy Tax Planning*, South Carolina Lawyer, Volume 4, Number 1, July/August 1992, pp. 32-35.

George W. DuRant and Frederick A. Crawford, Esq., *Appeals Court Weighs in on Stock Valuation* South Carolina Lawyer, Volume 11, Number 5, March/April 2000, pp. 14-18.

George W. DuRant and John O. McDougall, Esq., *Business Valuation in Family Court*, South Carolina Lawyer, Volume 13, Number 2, September/October 2001, pp. 15-17.

George W. DuRant and Robert E. Faulkner, *Family Limited Partnerships, Valuation Discounts, Is 30% About Right?*, The CPA Report, published by the SC Association of CPAs, October 2001, page 12.

Author of *Business Value*, a quarterly newsletter published by DuRant, Schraibman & Lindsay, CPAs focused upon business valuation issues (publication discontinued).

George W. DuRant, *Credibility*, The CPA Report, published by the SC Association of CPAs, April 2002, page 11.

George W. DuRant, *Deadlock*, The CPA Report, published by the SC Association of CPAs, August 2003, page 9.

George W. DuRant, *Goodwill at Divorce* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

George W. DuRant, *Professional Ethics for the CPA Expert Witness* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

George W. DuRant, *Calculating Lost Profits* included in course materials for the South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21-22, 2007, Kiawah Island, S.C.

Goodwill in Divorce, Family Law: Helping your Clients Through Difficult Cases, National Business Institute (NBI), December 3, 2007, Columbia, South Carolina.

Business Valuation and Forensic Accounting, National Business Institute (NBI), May 4, 2009, Columbia, South Carolina.

SPEAKING

Valuation of Business Interests in South Carolina Family Courts; CLE program delivered November 30, 1995, Columbia, South Carolina.

Discount for Lack of Marketability - Bernard Mandlebaum et al v. Commissioner T.C. Memo 1995-255; Presented to the Columbia Tax Study Group, May 21, 1996

Welfare-to-work Income Tax Credit; Representing Small Businesses - Keys for Success, South Carolina Bar's continuing legal education seminar, August 14, 1998.

FLP Valuations, Columbia Tax Study Group, December 8, 1998.

Income Tax & Divorce, Family Court Civil Mediation Training, June 28, 1999.

Facing the Daubert Challenge, American Society of Appraisers, Chapter 112, May 10,

2000.

Income Tax & Divorce, Family Court Civil Mediation Training, May 26, 2000.

Selected Income Tax Rules Applicable To Alimony, Child Support & Property Tax Settlement Payments, Family Court Mediation Training, November 16, 2000.

Valuation Discounts – Is 30% About Right? Columbia Tax Study Group, November 21, 2000.

Income Tax & Divorce, Family Court Civil Mediation Training, April 13, 2001.

IRC §2036 FLP Sins of Omission and Commission, Columbia Tax Study Group, January 21, 2003.

Understanding Business Valuation in South Carolina: Just the Basics, Lorman Education Services, July 8, 2004.

Panel, South Carolina Association of CPAs Litigation Conference, Columbia, South Carolina, September 16, 2004.

Lawyer Trust Accounts, with Desa Ballard, Esq. and S. Harrison Saunders, Esq., South Carolina Bar, Sidebar Video Presentation, November 6, 2006.

Preparing the Expert Witness Panel Discussion, South Carolina Bar / South Carolina Association of CPAs, Litigation Conference, *The Truth About Opinions: What CPA's and Attorneys Need to Know About Expert Witnesses*, November 21, 2006.

Successful Financial Settlements for Your Divorce Clients, Forensic Accounting and Valuation in Divorce, National Business Institute, May 11, 2007.

Business Valuation Panel Discussion, with the Honorable Timothy Brown, the Honorable Mikell Scarborough, Jim Joyner, III, CPA, Jim Ewart, CPA, and Catherine Stoddard, CPA, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Professional Ethics for the CPA Expert Witness, panel discussion with Professor John Freeman, A. Camden Lewis, Esquire, Patrice Viton, CPA, and Catherine Stoddard, CPA, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Calculating Lost Profits, co-presenter with A. Camden Lewis, Esquire, South Carolina Bar and South Carolina Association of CPAs, Litigation Conference, September 21, 2007, Kiawah Island, S.C.

Goodwill in Divorce, Family Law: Helping your Clients Through Difficult Cases, National Business Institute (NBI), December 3, 2007, Columbia, South Carolina.

Business Valuation and Forensic Accounting, National Business Institute (NBI), May 4, 2009, Columbia, South Carolina.

TRIAL TESTIMONY

In re Rochele Banks, 1998 United States Bankruptcy Court, Columbia, South Carolina.
Issue: Concealment of Assets.

In re Southern Textile Knitters. Case No. 98-07203 W. January 2000. United States Bankruptcy Court, Columbia, South Carolina. Issues: Misappropriation of assets, insolvency, preferential transfers, fraudulent transfers.

In re Paul V. Fitch and Southern Nurseries, Inc., United States Bankruptcy Court, Columbia, South Carolina Issue: insolvency and adequacy of records.

Anna Newsom v. South Carolina Department of Highways & Public Transportation. Richland County Court of Common Pleas; Case No. 92-CP-40-4850. Issue: Personal injury damage valuation.

Melvin H. Maynard v. Ben Arnold-Heritage Beverage Co. et al, Horry County Civil Action No. 95-CP-26-1217. Issue: Personal injury damage valuation.

In re Plantation Ford Tractor, Inc. United States District Court, Charleston, South Carolina. Issue: Insolvency and under capitalization of corporate debtor.

William P. Hatfield, Individually and on Behalf of the Hyman Law Firm v. Susan F. Van Epps, 99-CP-21-11, Florence County Court of Common Pleas, October 2001. Issue: Valuation of an interest in a medical professional association.

Young v. Roger Pack, Copier Masters, Inc. and Little Bucks, Inc. Civil Action No. 00-CP-40-3171. Richland County Court of Common Pleas, July 16, 2002. Issue: Valuation of 40% interest in S corporation.

Bryce N. Brown et al v. Woodside Development Limited Partnership et al. Civil Action No. 1:01-2568-22. United States District Court for the District of South Carolina, Aiken Division. August 29, 2002. Forensic Accounting. Testimony on behalf of the plaintiff, represented by Richard A. Harpootlian, Esquire. Carl Epps, Esquire for the defense.

W. James Kitchens, W. James Kitchens, Jr. and Weathers Family Investments, LLC, f/k/a Weathers Family Investment Partnership v. Matthew Iovanna and Crescent Capital, Inc. Arbitration before the Honorable Henry McKellar, Richland County, South Carolina. December 2002. Accounting for partnership allocations and distributions.

Shelley v. Shelley. Richland County Family Court. Forensic Accounting. May 2003.

Lenny Ivans v. WPSH, Inc., Don Corey, John Grue, and Golden Eagle Trading Company, S.A. County of Chesterfield in the Court of Common Pleas #01-CP-13-130 Issue: Lost Profits arising from breach of supply contract; March 26, 2003. Testimony on behalf of the plaintiff, represented by Keith M. Babcock, Esquire. Harry A. Swagart, III, Esquire on behalf of the defendant. Judge James E. Lockemy. December 2004.

Martha Ward, on behalf of herself and all others similarly situated v. Dixie National Life Insurance Company, National Foundation Life Insurance Company, United States District Court for the District of South Carolina, Columbia Division, December 8, 2008 in front of the Honorable Joseph Anderson. Accounting and audit sampling testimony on behalf of the plaintiff class, represented by Richard A. Harpootlian. Opposing counsel: J. Calhoun Watson, Sowell, Gray, Stepp & Laffitte, LLC.

William F. Tomz and Frances W. Tomz individually and as Class Representatives v. Capital Investment Funding, LLC and Arthur M. Field, Case No. 2008-CP-23-03665,

Greenville Court of Common Pleas; December 30, 2008. Insolvency and conflicts of interest considerations in appointment of a receiver for an LLC on behalf of the plaintiff class, represented by Gene Connell, Esquire.

DEPOSITION TESTIMONY

Pulliam Investment Company, Inc. v Cameo Properties, Banner Equites, Inc. et al United States District Court, Spartanburg Division, CA 7-85-683-3. Issue: residential real estate proforma; May 8, 1987. Testimony on behalf of the defendant, represented by Manton M. Grier, Esquire. Deposition taken by James C. Cothran, Jr. Esquire on behalf of the plaintiff.

East Richland Public Service Authority v. Wildewood Utilities. Issue: Valuation of 100% control interest in private water and sewer treatment plant (condemnation).

City of Columbia v. Midlands Utility, Inc., Richland County Court of Common Pleas # 87-CP-40-6364. Issue: value of 100% control interest in private water and sewer treatment plant (condemnation); November 11, 1988. Testimony on behalf of the defendant, represented by Mollie K. Dupriest, Esquire. Deposition taken by James S. Meggs, Esquire on behalf of the plaintiff.

FDIC v. Conco/Brinkcraft JV, et al. Evaluation of reorganization plan and valuation of proposed securities with regard to residential rental condominiums located in Dallas, Texas.

Lexington State Bank v. Ralph Wasson, Sr. Richland County Civil Action No. 93-CP-32-1569 Wasson Pontiac-GMC, Inc. Valuation of automobile dealership as of December 31, 1988. Testimony on behalf of the defendant, represented by Harry M. Swagart, Esquire.

Cousins v. Cousins, Newberry County Case No. 89-CP-36-322. Opinion as to fair market value of grain/farm products business and business segments located in Newberry, South Carolina.

In re Southco, Inc., U.S. Bankruptcy Court. Issue: insolvency.

Gaines W. Hammond, M.D. v. Butler, Means, Evins & Browne et al County of Spartanburg in the Court of Common Pleas #92-CP-42-574. Issue: value of minority interest in start up medical technology venture, May 12, 1992. Testimony on behalf of the plaintiff, represented by A. Camden Lewis, Esquire. Deposition taken by Ellis M. Johnson, II, Esquire on behalf of the defendants.

Pen Pals, Inc. v. James H. Farrow, Jr., Crouch Construction Company & M.A. Robitsky Construction Co., Inc., Richland County Court of Common Pleas No. 91-CP-32-3054. Issue: lost profits; July 29, 1993. Testimony on behalf of the plaintiff, represented by Edward D. Barnhill, Jr., Esquire. Deposition taken by James L. Bruner, Esquire.

Thomas Hearon v. Widewater Square Associates – 84, Richland County Court of Common Pleas #92-CP-40-2232. Issue: partnership accounting, September 15, 1993. Testimony on behalf of the plaintiff, represented by William R. Calhoun, Jr., Esquire. Deposition taken by Harry M. Swagart, Esquire and John P. Freeman, Esquire.

Carl H. Almond v. Arthur M. Swanson et al. Richland County Court of Common Pleas No. 94-CP-40-0164. Issue: Business Valuation; June 6, 1996. Testimony on behalf of the plaintiff, represented by Anne D. Zuckerman, Esquire. Deposition taken by Robert Y. Knowlton, Esquire on behalf of the defendants.

Della McElveen v. Leland J. McElveen, Richland County Family Court C.A. No.: 94-DR-40-5024. Issue: Valuation of a one-ninth interest in a medical professional association; June 13, 1996. Testimony on behalf of the defendant, represented by J. Mark Taylor, Esquire. Deposition taken by James T. McLaren, Esquire on behalf of the plaintiff.

TLC Home Health v. Medshares Management Services, Inc. United States Bankruptcy Court for the District of South Carolina, Case No. 97-11095-W. Issue: valuation of a home health company, July 27, 1999. Testimony on behalf of the plaintiff, represented by Barry L. Johnson, Esquire. Deposition taken by Julio E. Mendoza, Jr. Esquire on behalf of the defendant.

In re Southern Textile Knitters. Robert F. Anderson, Trustee v. Simchon et al United States Bankruptcy Court for the District of South Carolina, Case No. 98-07203 W. Issues: Preferential and fraudulent transfers, May 25, 1999; October 4-5, 1999. Testimony on behalf of the plaintiff, represented by H. Flynn Griffin, Esquire. Deposition taken by Richard R. Gleissner, Esquire and Michael M. Beal, Esquire on behalf of the defendants.

John L. Linnerud v. Timmothy L. Cantrell, and Royce D. Camp and R. Ray Dennis. County of Spartanburg in the Court of Common Pleas #2000-CP-42-1982. Issue: Valuation of a 20% membership interest. August 15, 2001. Testimony on behalf of the plaintiff, represented by Thomas H. Pope, III, Esquire. Deposition taken by Steven E. Farrar, Esquire and Michael S. Pitts, Esquire representing the defendants.

Michael Derrick Shelley v. Judy Butler Shelley. Richland County Court of Common Pleas #C/A No. 01-DR-40-4247. Forensic Accounting relating to husband's continuing ability to pay alimony; February 26, 2003. Testimony on behalf of wife, represented by Kathyne Ann Shelton, Esquire. Deposition taken by Yulee E. Harrelson, Esquire on behalf of the husband.

Lenny Ivans v. WPSH, Inc., Don Corey, John Grue, and Golden Eagle Trading Company, S.A. County of Chesterfield in the Court of Common Pleas #01-CP-13-130 Issue: Lost Profits arising from breach of supply contract; March 26, 2003. Testimony on behalf of the plaintiff, represented by Keith M. Babcock, Esquire. Deposition taken by Harry A. Swagart, III, Esquire on behalf of the defendant.

Anonymous Taxpayers v. South Carolina Department of Revenue, Administrative Law Judge Division, Docket No. 01-ALJ-17-0227-CC. Issue: economic impact of 1989 change in taxability of South Carolina Retirement System benefits; April 29, 2003. Testimony on behalf of petitioner, represented by A. Camden Lewis, Esquire. Deposition taken by Vance J. Bettis, Esquire on behalf of the respondent.

NSN Machining Co., Inc. v. Meritor Heavy Vehicle Systems, LLC., Arvin Meritor, Inc. United States District Court, SC Case No.: 7:02-3238. January 23, 2004. Lost Profits arising from breach of supply agreement.

Nicole Ohrin v. Scott Middleton and Agape Assisted Living, Inc. et. al. Case No. 03-CP-

32-2938; November 2004. Insolvency.

Carter v. Steedley Cynthia A. Carter and Melissa Carter Coursen, as beneficiaries of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78, Testamentary Trust U/W Dorothy A. Carter Dated 2/26/98, v. W. Mark Steedley, McLain, Moise & Associates, PC; Robert Moise; Edisto Beach Land Development, L.L.C.; The Retreat at Edisto, L.L.C.; The Southeastern Trust Company and Branch Banking and Trust Company of South Carolina, Successor in Interest by Merger to Southeastern Trust Company, as personal representatives of the Estate of Dorothy A. Carter, deceased, and as trustees of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78, and John T. Black, Jr., individually and as personal representative of the Estate of Dorothy A. Carter, deceased, and as Trustee of the Testamentary Trust U/W Robert W. Carter Dated 7/3/78; The Atwood Agency, Inc.; James K. Kuyk; and Grant, Kuyk & Rogers, P.C., Colleton County Court of Common Pleas; Civil Action No. 02-CP-15-494; Civil Action No. 02-CP-15-471. Testimony on behalf of plaintiffs regarding accounting malpractice, valuation of interest in LLC owning resort real estate. Plaintiffs represented by L. Henry McKellar, Esq., Charles W. Whetstone, Jr., Esq., and John Eric Fulda, Esq. Deposition taken on August 17, 2005 by John C. Moylan, III, Esq.

In re: HomeGold Financial, Inc. (Case No.: 03-03865-B), HomeGold, Inc. (Case No.: 03-03864-B), Carolina Investors, Inc. (Case No.: 03-04409-B) Debtors, Ralph C. McCullough, II As Trustee for the Estate of HomeGold Financial, Inc. HomeGold, Inc. and Carolina Investors, Inc. vs. USA Digital Communications, Inc. Adv. Pro. No: 05-80065-B. Testimony on behalf of the defendant regarding ordinary course of business and new value defense in preferential and fraudulent transfer recovery action. Plaintiff represented by Richard R. Gleissner, Esq. and Michael Brown, Esq. of Finkel & Altman; defendant represented by Robert F. Anderson, Esq. October 3, 2005.

Georgetown Steel Company, LLC, Debtor, David O. Shelley as Liquidating Trustee for the Georgetown Steel Company, LLC Liquidating Trust, Plaintiff v. Stahl, Inc. Case No. 03-13156-W; Adversary No. 05-80218-W. Testimony on behalf of the defendant regarding ordinary course of business and contemporaneous exchange for new value defenses in preferential transfer recovery action. Plaintiff represented by Michael Beale, Esq. of McNair Law Firm; defendant represented by Robert F. Anderson, Esq. May 3, 2006.

QZO, Inc. d/b/a Palmetto Ambulance Service v. Cherry Bekaert & Holland, LLP, Larson Allen - Cherry Bekaert, LLP, Elizabeth Menger, and Mickey Smith Case No. 05-CP-02-40. Testimony on behalf of the plaintiff regarding accounting malpractice, breach of CPAs' duty to avoid conflicts of interest and duty to maintain confidentiality. Plaintiff represented by Blaney Coskrey. Defendant represented by Paul Childers and Steve Farrar, June 9, 2006.

Caterpillar, Inc. v. J. Garner Scott, Individually and as Trustee for the Jacqueline Marie Scott Trust, the James Garner Scott Trust, the Stephen Matthew Scott Trust, the Christine Ann Scott Trust, and Robert Young, as Trustee for the Manhattan Trust Civil Action No. 3:04-21789-17 United States District Court, District of South Carolina, Columbia Division. Testimony on behalf of the plaintiff regarding generally accepted accounting

principles, breach of contract, damages related to breach. Counsel for plaintiff: W. Francis Marion, Esq., Haynesworth, Sinkler & Boyd, P.A., Greenville, South Carolina. Counsel for defendants: Keith M. Babcock, Esq. Lewis & Babcock, LLP, Columbia, South Carolina. October 5, 2006.

Harris Teeter, Inc. v. Moore & Van Allen, PLLC. Civil Action No. 05-CP-10-2902. Testimony on behalf of the plaintiff, represented by Mary G. Lewis, Esq., Lewis & Babcock, LLP. Damage calculation based on economic difference between real estate leases, discounted rent differential. Counsel for defendant: Clayton B. McCullough, Esq., Pratt-Thomas, Epling & Walker, P.A. February 12, 2007.

Harris Teeter, Inc. v. McNair Law Firm, P.A. Civil Action No. 2006-CP-10-1169. Testimony on behalf of the plaintiff, represented by Mary G. Lewis, Esq., Lewis & Babcock, LLP. Damage calculation based on economic difference between real estate leases, discounted rent differential. Counsel for defendant: Robert Stepp, Esq., Sowell Gray Stepp & Laffitte, LLC. June 14, 2007.

Stephen Anvar, M.D. v. Greenville Hospital System, et al, Greenville County Civil Action 2003-CP-23-3706. Testimony on behalf of the plaintiff, represented by L. Henry McKellar, Esquire. Calculation of lost earnings. Counsel for defendants, Matthew P. Utecht, Esquire. February 24, 2009.

T. Alexander Beard v. Christa M. Dunn and Dixon Hughes, PLLC, Berkeley County C/A No.: 2007-CP-08-2271. Testimony on behalf of the plaintiff, pro se. Accountant's Standard of Care. May 5, 2009. Defendant's counsel Frederick K. Sharpless, Esquire, Greensboro, N.C.

DuRant, Schraibman & Lindsay, LLC

Certified Public Accountants

Attorney Work Product

January 10, 2012

A. Camden Lewis, Esquire
Lewis, Babcock & Griffin, LLP
1513 Hampton Street
Columbia, South Carolina 29201

Re: Jacquelin S. Bennett et al v. T. Heyward Carter, Jr. et al
Case Number: 2011-CP-10-400

Dear Mr. Lewis:

Dan and Tom's unpaid withdrawals plus interest at 8.75% per annum through August 17, 2011¹ totals \$8,503,087.31. The following is a summary of individual amounts; see pages B1-B10 attached for specific withdrawals and detailed calculations of interest.

	Principal	Interest	Total
Advances to Dan			
Q-TIP Trust	2,150,635.00	1,618,216.82	3,768,851.82
Marital Trust	1,727,141.00	1,336,922.82	3,064,063.82
Non-Trust	295,057.00	340,118.26	635,175.26
Total - Dan	4,172,833.00	3,295,257.90	7,468,090.90
Advances to Tom			
Q-TIP Trust	242,500.00	369,214.64	611,714.64
Marital Trust	0.00	219,683.13	219,683.13
Non-Trust	79,601.00	123,997.64	203,598.64
Total - Tom	322,101.00	712,895.41	1,034,996.41
Totals			
Q-TIP Trust	2,393,135.00	1,987,431.46	4,380,566.46
Marital Trust	1,727,141.00	1,556,605.95	3,283,746.95
Non-Trust	374,658.00	464,115.90	838,773.90
Total - Tom	4,494,934.00	4,008,153.31	8,503,087.31

¹ August 17, 2011 was chosen as it is the date the *Proposal for Distribution* in the matter of Estate of Jacquelin K. Stevenson was filed in the Charleston County Probate Court.

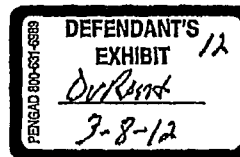
4408 Forest Drive, Third Floor • Columbia, South Carolina 29206 • Telephone 803-790-0020 • Fax 803-790-0011
www.dslecpas.com

50968

51470

55724

0364



Each beneficiary's interest in the \$8,503,087.31 and \$846,144.00 in legal fees (total \$9,349,241) was calculated based on the Estate's *Proposal for Distribution* (copy attached; see pages A1-A12). Methodologically, the Estate's *Proposal for Distribution* was replicated and adjusted to reflect the distribution of an additional \$9,349,241. The following is a summary of the net additional distributions to each beneficiary.

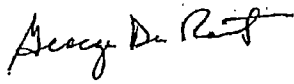
	Ref.	Kathleen Turner	Jacquelin Bennett	Genevieve Felder	Tom Stevenson	Dan Stevenson	James King	Total
<i>Adjusted Proposal</i>								
Estate	C2	887,633	887,633	562,633	672,815	672,815	522,815	4,206,345
Q-Tip Trust	C3	1,090,002	1,090,002	1,090,002	1,090,002	1,090,002	0	5,450,008
Marital Trust	C4	697,260	697,260	697,260	697,260	697,260	697,260	4,183,560
Total		2,674,895	2,674,895	2,349,895	2,460,077	2,460,077	1,220,075	13,839,913
<i>Proposal for Distribution</i>								
Estate	C2	772,812	772,812	447,812	72,000	48,000	407,993	2,521,427
Q-Tip Trust	C3	356,481	356,481	356,481	0	0	0	1,069,442
Marital Trust	C5	224,953	224,953	224,953	0	0	224,953	899,813
Total		1,354,245	1,354,245	1,029,245	72,000	48,000	632,946	4,490,682
Net Additional		1,320,649	1,320,649	1,320,649	2,388,077	2,412,077	587,129	9,349,231

Excluding Dan and Tom, the net additional distributions total \$4,549,078 as of August 17, 2011; daily interest thereafter is \$1,091.

	Ref.	Kathleen Turner	Jacquelin Bennett	Genevieve Felder	Tom Stevenson	Dan Stevenson	James King	Total
<i>Adjusted Proposal</i>								
Estate	C2	887,633	887,633	562,633			522,815	2,860,715
Q-Tip Trust	C3	1,090,002	1,090,002	1,090,002			0	3,270,005
Marital Trust	C4	697,260	697,260	697,260			697,260	2,789,040
Total		2,674,895	2,674,895	2,349,895			1,220,075	8,919,760
<i>Proposal for Distribution</i>								
Estate	C2	772,812	772,812	447,812			407,993	2,401,427
Q-Tip Trust	C3	356,481	356,481	356,481			0	1,069,442
Marital Trust	C5	224,953	224,953	224,953			224,953	899,813
Total		1,354,245	1,354,245	1,029,245			632,946	4,370,682
Net Additional		1,320,649	1,320,649	1,320,649			587,129	4,549,078
Daily Interest @ 8.75% from 8/17/11		317	317	317			141	1,091

My detailed calculation of the net additional amounts is appended to this letter and marked as pages C1-C5.

Sincerely,

A handwritten signature in cursive script, appearing to read "George W. DuRant".

George W. DuRant

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: JACQUELIN K.
STEVENSON

IN THE PROBATE COURT
PROPOSAL FOR DISTRIBUTION

FILED

11 AUG 17 PM 2:39

CASE NUMBER: 2007ES10-01437

PROBATE COURT
CHARLESTON COUNTY

Personal Representative(s): Kathleen S. Turner
Jacquelin S. Bennett

Name and Address of Distributee	Amount or Item
Kathleen S. Turner P.O. Box 498 Folly Beach, SC 29402	See the attached 10-page report
Jacquelin S. Bennett P.O. Box 1231 Charleston, SC 29402	See the attached 10-page report
Genevieve S. Felder 337 Cedar Creek Rd Andrews, SC 29510	See the attached 10-page report
James K. King c/o Elaine Fowler Turner, Padgal, Graham & Laney P.A. P.O. Box 22128 Charleston, SC 29413	See the attached 10-page report
Thomas C. Stevenson, III c/o Robert Brunson, Esquire Nelson Mullins Riley & Scarborough, LLP P.O. Box 1806 Charleston, SC 29402	See the attached 10-page report
Daniel R. Stevenson 4 Hollyridge Drive Asheville, NC 28803	See the attached 10-page report

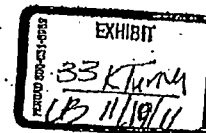
Executed this 15 day of August, 2011.

Signature: [Signature]
Name: Kathleen S. Turner
Address: P.O. Box 498
Folly Beach, SC 29439
Telephone (O):
(H): 843.588.2479

Signature: [Signature]
Name: Jacquelin S. Bennett
Address: P.O. Box 1231
Charleston, SC 29402
Telephone (O):
(H):

FORM #410PD (1/81)
62-3-1001, 62-3-1002, 62-3-1003

163



A1

50971

55727

0367

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: JACQUELIN K.
STEVENSON

IN THE PROBATE COURT

PROPOSAL FOR DISTRIBUTION

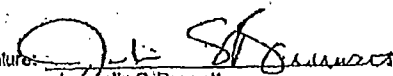
CASE NUMBER: 2007ES10-01437

Personal Representative(s): Kathleen S. Turner
Jacquelin S. Bennett

Name and Address of Distributee	Amount or Item
Kathleen S. Turner P.O. Box 498 Folly Beach, SC 29402	See the attached 10-page report
Jacquelin S. Bennett P.O. Box 1231 Charleston, SC 29402	See the attached 10-page report
Genevieve S. Felder 337 Cedar Creek Rd Andrews, SC 29510	See the attached 10-page report
James K. King c/o Elaine Fowler Turner, Padgett, Graham & Laney P.A. P.O. Box 22129 Charleston, SC 29413	See the attached 10-page report
Thomas C. Stevenson, III c/o Robert Brunson, Esquire Nelson Mullins Riley & Scarborough, LLP P.O. Box 1808 Charleston, SC 29402	See the attached 10-page report
Daniel R. Stevenson 4 Hollyridge Drive Asheville, NC 28803	See the attached 10-page report

Executed this 15 day of August, 2011.

Signature: _____
Name: Kathleen S. Turner
Address: P.O. Box 498
Folly Beach, SC 29402
Telephone (O): _____
(H): _____

Signature: 
Name: Jacquelin S. Bennett
Address: P.O. Box 1231
Charleston, SC 29402
Telephone (O): 843 577 7950
(H): 843 577 7903

FORM 8410PG (1/99)
62-3-1001, 62-5-1002, 62-3-1003

A2

50972

55728

0368

Stevenson Estate		Pay		Pay		Pay Insurance Loans		Sub-Total	
Rev 7 Allocation		Q-Tip	Marital	Sub-Total	KST	JSB	GSF	JKK	Sub-Total
Cash	24,688	16,069		14,897	(2,463)	(2,463)	(2,463)		11,208
Perflections of Deposit	290,000			290,000					290,000
Douglas Capital - Cash Account	17,415			17,415					17,415
Rockville	1,450,000			1,450,000					1,450,000
Lot - Paradise Island	390,000			390,000					390,000
Lot - Riskey Island	725,000	(494,000)		231,000					231,000
Lake Sammak	1,100,000			1,100,000	(300,000)	(300,000)	(100,000)		200,000
Will Street 9.08 acres marsh	200			200					200
Will Street 18.49 acres marsh	200			200					200
Grayto Street 5.70 acres marsh	200			200					200
Albemarle Road 2.0 acres marsh	200			200					200
Albemarle Road 2.5 acres marsh	200			200					200
Personal property	119,455			119,455					119,455
Claim - Yorn Stevenson	702,170		(228,735)	473,435	(118,356)	(118,356)	(118,356)		118,356
Douglas Capital - Investments	14,247			14,247					14,247
Due From NCDDR (Audit)	2,772			2,772					2,772
Total Wachovia Securities - FRPT	49,305			49,305					49,305
Prior distribution (GSF)	50,000			50,000					50,000
Prior distribution (JKK)	108,500			108,500					108,500
Due Disallowed Gifts	473,000			473,000					473,000
Due Allowed Gifts	58,000			58,000					58,000
Due to IRS (Audit)	(49,853)			(49,853)					(49,853)
Due to Personal Representatives	(260,830)			(260,830)					(260,830)
Advances from Marital Trust	(228,735)		228,735						
Advances from Q-Tip Trust	(500,000)	500,000							
Due for Final Expenses	(50,000)			(50,000)					(50,000)
Loan from Genevieve Fekler	(420,822)			(420,822)	420,822				
Loan from Kathleen Turner	(420,822)			(420,822)		420,822			
Loan from Jacquelyn Benish	(420,822)			(420,822)			420,822		
Sub-Total	3,223,597			3,223,597					3,223,597

A3

50973

55729

0369

Stevenson Estate						
Rev7 Allocation						
	From Page 2	Pay Specific Bequests				Sub-Total
		RST	JSB	CSF	JJK	
Cash	11,208					11,208
Certificates of Deposit	180,147			(43,500)	(24,830)	121,817
Douglas Capital - Cash Account	17,435					17,435
Rockville	1,450,000	(725,000)	(725,000)			
Lot - Paradise Island	350,000			(238,000)	(110,000)	
Lot - Bailey Island	170,170				(170,170)	
Lake Sunnyside						
Mill Street 8.00 acres marsh	200					200
Mill Street 18.49 acres marsh	200					200
Drayton Street 5.70 acres marsh	200					200
Albemarle Road 2.9 acres marsh	200					200
Albemarle Road 2.6 acres marsh	200					200
Personal property	119,455	(30,818)	(18,818)	(38,818)		
Claim - Tom Stevenson	119,358				(45,000)	73,358
Douglas Capital - Investments	14,247					14,247
Due From NCDOR (Audit)	2,772					2,772
Total Wachovia Securities - FRPT	49,305					49,305
Prior distribution (CSF)	50,000			(50,000)		
Prior distribution (JJK)	108,500					108,500
RIS Disallowed Gifts	473,000			(78,500)		394,500
RIS Allowed Gifts	50,000					50,000
Due to RIS (Audit)						
Due to Personal Representatives						
Advances from Marital Trust						
Advances from Q-Tip Trust						
Due for Final Expenses						
Loan from Geneva-Fred Fidler						
Loan from Kathleen Turner						
Loan from Jacqueline Bennett						
JST		784,818				784,818
JSB			714,818			714,818
CSF				438,818		438,818
JJK					400,000	400,000
TCS IV						
RIS II						
Sub-Total	3,223,597					3,223,597

A5

50975

55731

0371

Stevenson Estate Rev7 Allocation								
	From Page 3	KST	JSE	CSF	JJK	TCS II	RPS II	Total
Cash	11,208		(1,318)	(5,462)	(1,427)			0
Certificates of Deposit	121,877	(28,851)	(22,867)					(0)
Douglas Capital - Cash Account	17,435	(17,435)						
Rockville								
Lot - Paradise Island								
Lot - Bailey Island								
Lake Summit								
Wili Street 0.06 acres marsh	200	(50)	(50)	(50)	(50)			
Will Street 10.49 acres marsh	200	(50)	(50)	(50)	(50)			
Drayton Street 5.79 acres marsh	200	(50)	(50)	(50)	(50)			
Altamaha Flood 2.9 acres marsh	200	(50)	(50)	(50)	(50)			
Altamaha Flood 2.5 acres marsh	200	(50)	(50)	(50)	(50)			
Personal property								
Claim - Tom Stevenson	73,358				(73,358)			
Douglas Capital - Investments	14,247			(14,247)				
Due From NCDOR (Audit)	2,772			(2,772)				
Total Wachslyer Securities - 7/27/7	45,383			(45,383)				
Prior distribution (CSF)								
Prior distribution (JJK)	108,500				(108,500)			
RIS Borrowed Gains	238,500	(110,000)	(14,000)	(108,500)		(34,000)	(48,000)	
RIS Allowed Gains	58,000	(17,000)	(5,000)			(34,000)		
Due to RIS (Audit)								
Due to Personal Representatives								
Advances from Marital Trust								
Advances from Q.H. Trust								
Due for Final Expenses								
Loan from Genevieve Fisher								
Loan from Kathleen Turner								
Loan from Jacquelin Bennett								
KST	764,818	163,535						940,354
JSE	764,818		183,535					940,354
CSF	419,818			183,535				603,353
JJK	400,000				183,535			583,535
TCS II						72,000		72,000
RPS II							48,000	48,000
Subtotal	3,223,697							3,223,697

A6

50976

55732

0372

Allocation of net test estate except Rockville									
		KST	JSB	GSF	JOK				
Paradise Island	Estate	-	-	230,000	180,000	350,000			
Bailey Island	Estate	30,415	30,415	-	170,170	231,000			
Bailey Island	Q-Tip	184,667	164,667	164,667	-	494,000			
Bailey Island	Marital	-	-	-	-	-			
Total Bailey Island		195,082	195,082	164,667	170,170	725,000			
Lake Summit	Estate	400,000	400,000	300,000	-	1,100,000			
Summary of distribution and proof of total									
	Estate	Q-Tip	Marital	Sub-Total	PR Fees	Inc Taxes	Total	Correct	Proof
KST	840,354	350,480	224,953	1,415,787	130,415	420,422	2,061,025	2,061,025	-
JSB	840,354	350,480	224,953	1,415,788	130,415	420,422	2,061,025	2,061,025	-
GSF	823,353	350,480	224,953	1,408,787	-	420,422	1,829,209	1,829,209	-
JOK	803,515	-	224,953	1,028,468	-	-	803,469	803,469	-
TCS III	72,000	-	-	72,000	-	-	72,000	72,000	-
DRS M	48,000	-	-	48,000	-	-	48,000	48,000	-
Totals	3,223,606	1,069,441	899,813	5,192,851	260,830	1,260,844	6,716,147	6,716,147	-
Q-Tip Trust distribution									
Cash	4,319	102,133	108,452	(35,444)	(35,404)	(35,404)			
Prepaid SG tax	70	-	70	(23)	(23)	(23)			
Due from estate	0	-	0	-	-	-			
Investment accounts	571,053	(102,133)	468,920	(150,207)	(150,207)	(150,207)			
Bailey Island	494,000	-	494,000	(164,667)	(164,667)	(164,667)			
	1,069,441	-	1,069,441	(356,480)	(356,480)	(356,480)			
Marital Trust distribution									
Cash	10,120	102,660	112,780	(28,185)	(28,185)	(28,185)			
Due from Q-Tip	-	-	-	-	-	-			
Due from estate	-	-	-	-	-	-			
Investment accounts	600,958	(102,660)	498,298	(139,574)	(139,574)	(139,574)			
Bailey Island	-	-	-	-	-	-			
Tom Storch's claim	228,735	-	228,735	(57,164)	(57,164)	(57,164)			
	839,813	-	839,813	(224,953)	(224,953)	(224,953)			

A7

50977

55733

0373

KST	Cash	Securities	Rockville	Paradise Island	Bailey Island	Lake Summit	TCS III Claim	Other	Total
EST									
Cash									
Certification of Deposit	28,851								28,851
Douglas Capital - Cash Account	17,435								17,435
Rockville			725,000						725,000
Lot - Paradise Island									
Lot - Bailey Island									
Lake Summit									
Mt. Street 0.08 acre marsh								50	50
Mt. Street 18.43 acres marsh								50	50
Dixton Street 5.73 acres marsh								50	50
Albemarle Road 2.8 acres marsh								50	50
Albemarle Road 2.8 acres marsh								50	50
Personal property								39,818	39,818
Clown - Tom Stevenson									
Douglas Capital - Investments									
Due From NCUOR (AUG)									
Total Wachovia Securities - FRO									
Prior distribution (GSF)									
Prior distribution (LWK)									
IRS Disallowed Gains	28,500							100,500	129,000
IRS Allowed Gains									
GRIP Total									
Cash	35,484								35,484
Prepaid BC Exp.									
Investment securities		158,387						23	158,330
Bailey Island					164,667				164,667
GRIP Total									
Cash	28,105								28,105
Investment securities		139,574							139,574
Bailey Island									
Tom Stevenson claim							57,104		57,104
GRIP Total									
P.R. Fee					30,415	100,000			130,415
Insurance Loss	2,463					300,000	118,350		420,813
Total	149,927	295,881	725,000		195,042	400,000	176,543	148,592	2,081,015
Revelon 7	7%	14%	33%	0%	9%	15%	8%	7%	100%
Revelon 6	6%	15%	31%	0%	11%	21%	8%	7%	100%

A8

50978

55734

0374

JSB	Cash	Securities	Rockville	Paradise Island	Bailey Island	Lake Summit	TCS M. C. Inc.	Other	Total
<i>Exhibit</i>									
Cash	1,318								1,318
Certificate of Deposit	73,467								73,467
Bought Capital Cash Account									
Rockville			725,000						725,000
Lot - Paradise Island									
Lot - Bailey Island									
Lake Summit									
Mill Street 8.06 acres marsh								50	50
Mill Street 11.48 acres marsh								50	50
Dayton Street 5.70 acres marsh								50	50
Albemarle Road 2.9 acres marsh								50	50
Albemarle Road 2.9 acres marsh								50	50
Personal property								30,818	30,818
Claim - Tom Stevenson									
Douglas Capital - Investments									
Due From NCDOR (ARCA)									
Total Wachovia Securities - FRPT									
Prior distribution (GSP)									
Prior distribution (RUC)									
IRS Disallowed Gifts								100,500	100,500
IRS Allowed Gifts									
<i>Q-Tip Trust</i>									
Cash	35,484								35,484
Prepaid SG Tax								23	23
Investment securities		150,307							150,307
Bailey Island					104,067				104,067
<i>Maribel Trust</i>									
Cash	28,195								28,195
Investment securities		130,574							130,574
Bailey Island							57,184		57,184
Tom Stevenson claim									
<i>Other</i>									
P.R. Fee					30,415	100,000			130,415
Insurance Loans	2,403					300,000	116,303		420,706
Totals	140,927	295,881	725,000		195,082	400,000	116,303	140,592	2,067,025
Revision 7	8%	14%	33%	6%	9%	18%	8%	7%	100%
Revision 8	8%	15%	33%	6%	11%	21%	8%	7%	100%

A9

50979

55735

0375

GSP	Cash	Securities	Rockville	Paradise Island	Bayley Island	Lake Summit	YCS II Claim	Other	Total
Estate									
Cash	8,442								8,442
Certificates of Deposit	43,500								43,500
Douglas Capital - Cash Account									
Rockville									
Lot - Paradise Island				230,000					230,000
Lot - Bayley Island									
Lake Summit									
Mt Street 8.00 acres marsh								50	50
Mt Street 18.49 acres marsh								50	50
Drayton Street 5.78 acres marsh								50	50
Albemarle Road 2.8 acres marsh								50	50
Albemarle Road 2.5 acres marsh								50	50
Personal property								33,818	33,818
Claim - Tom Stevenson									
Douglas Capital - Investments		14,247							14,247
Due from KLDOR (AUCR)	2,772								2,772
Total Wachovia Securities - FRPT		48,343							48,343
Prior distribution (GSP)	50,000								50,000
Prior distribution (JRG)									
IRS Disallowed ERM	78,500							104,500	183,000
IRS Allowed ERM									
Q-TIP Trust									
Cash	35,484								35,484
Prepaid 50 tax								23	23
Investment securities		158,307							158,307
Bayley Island					164,667				164,667
Marital Trust									
Cash	28,195								28,195
Investment securities		138,574							138,574
Bayley Island									
Tom Stevenson Claim							57,184		57,184
Other									
P.R. Fee									
Insurance Loan	2,403					300,000	118,359		420,822
Total	247,315	359,433		230,000	164,667	300,000	176,543	148,592	1,625,609
Revision 7	15%	22%	0%	14%	10%	18%	11%	0%	100%
Revision 8	10%	15%	0%	12%	10%	18%	10%	0%	100%

A10

50980

55736

0376

JMK	Cash	Securities	Rockville	Paradise Island	Bailey Island	Lake Summit	TCS II Claim	Other	Total
Cash									
Cash	1,427								1,427
Certificates of Deposit	24,630								24,630
Douglas Capital - Cash Account									
Rockville									
Lot - Paradise Island				160,000					160,000
Lot - Bailey Island					170,170				170,170
Lake Summit									
Mid Street 9.06 acres marsh								50	50
Mid Street 18.42 acres marsh								50	50
Dixton Street 5.79 acres marsh								50	50
Alexander Road 2.9 acres marsh								50	50
Albemarle Road 2.5 acres marsh								50	50
Personal property									
Clair - Tom Stevenson							118,358		118,358
Douglas Capital - Investments									
Due From NCDOR (Audit)									
Total Wachovia Securities - FIRST									
Prior Distribution (GSP)									
Prior Distribution (JMK)								108,500	108,500
IRS Disallowed Gifts									
IRS Allowed Gifts									
Q-TIP Trust									
Cash									
Prepaid 60 day									
Investment securities									
Bailey Island									
Married Trust									
Cash	28,185								28,185
Investment securities		133,674							133,674
Bailey Island									
Tom Stevenson claim							57,184		57,184
Other									
P.R. Fee									
Insurance Loan									
Total	54,452	133,674		160,000	170,170		175,542	108,750	808,489
Revision 7	7%	17%	0%	20%	21%	0%	22%	17%	100%
Revision 8	13%	12%	0%	24%	19%	0%	16%	12%	100%

A11

50981

55737

0377

SUMMARY OF AMOUNTS DUE AS OF DECEMBER 31, 2011

	Principal	Interest	Total
Advances to Dan			
Q-TIP Trust	2,150,635.00	1,688,333.41	3,838,968.41
Marital Trust	1,727,141.00	1,393,232.35	3,120,373.35
Non-Trust	295,057.00	349,737.93	644,794.93
Total - Dan	<u>4,172,833.00</u>	<u>3,431,303.69</u>	<u>7,604,136.69</u>
Advances to Tom			
Q-TIP Trust	242,500.00	377,120.80	619,620.80
Marital Trust	0.00	219,683.13	219,683.13
Non-Trust	79,601.00	126,592.85	206,193.85
Total - Tom	<u>322,101.00</u>	<u>723,396.79</u>	<u>1,045,497.79</u>
Totals			
Q-TIP Trust	2,393,135.00	2,065,454.22	4,458,589.22
Marital Trust	1,727,141.00	1,612,915.48	3,340,056.48
Non-Trust	374,658.00	476,330.78	850,988.78
Total - Tom	<u>4,494,934.00</u>	<u>4,154,700.48</u>	<u>8,649,634.48</u>
Due to Q-TIP Trust			
Dan	2,150,635.00	1,688,333.41	3,838,968.41
Tom	242,500.00	377,120.80	619,620.80
Total	<u>2,393,135.00</u>	<u>2,065,454.22</u>	<u>4,458,589.22</u>
Due to Marital Trust			
Dan	1,727,141.00	1,393,232.35	3,120,373.35
Tom	0.00	219,683.13	219,683.13
Total	<u>1,727,141.00</u>	<u>1,612,915.48</u>	<u>3,340,056.48</u>
Due to Estate			
Dan	295,057.00	349,737.93	644,794.93
Tom	79,601.00	126,592.85	206,193.85
Total	<u>374,658.00</u>	<u>476,330.78</u>	<u>850,988.78</u>

B1

50983

55739

0379

Interest rate:
Interest calculation date:

8.75%
12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Q-TIP Loans Receivable from Daniel R. Stevenson, II (see Tab 7, doc. #51183)			
8/30/1999	25,000.00	4506	27,005.14
9/30/1999	25,000.00	4475	26,819.35
10/14/1999	10,000.00	4461	10,694.18
12/9/1999	10,000.00	4405	10,559.93
1/5/2000	7,500.00	4378	7,871.40
2/24/2000	15,000.00	4328	15,563.01
3/30/2000	15,000.00	4293	15,437.16
5/5/2000	17,500.00	4257	17,858.99
6/20/2000	20,000.00	4211	20,189.73
7/19/2000	15,000.00	4182	15,038.01
7/31/2000	15,000.00	4170	14,994.86
9/13/2000	20,000.00	4126	19,782.19
10/12/2000	25,000.00	4097	24,553.94
10/25/2000	12,500.00	4084	12,238.01
11/29/2000	25,000.00	4049	24,266.27
12/27/2000	5,000.00	4021	4,819.69
1/10/2001	40,000.00	4007	38,423.29
2/12/2001	17,500.00	3974	16,671.75
2/23/2001	350,000.00	3963	332,511.99
6/21/2001	50,000.00	3845	46,087.33
7/5/2001	25,000.00	3831	22,959.76
7/17/2001	25,000.00	3819	22,887.84
8/10/2001	25,000.00	3795	22,744.01
8/29/2001	50,000.00	3776	45,260.27
9/14/2001	30,000.00	3760	27,041.10
10/26/2001	10,000.00	3718	8,913.01
11/2/2001	7,500.00	3711	6,672.17
11/7/2001	7,500.00	3706	6,663.18
11/16/2001	15,000.00	3697	13,294.01
11/30/2001	5,000.00	3683	4,414.55
12/3/2001	25,000.00	3680	22,054.79
1/7/2002	25,000.00	3645	21,845.03
3/22/2002	10,000.00	3571	8,560.62
4/9/2002	5,000.00	3553	4,258.73
4/29/2002	50,000.00	3533	42,347.60
5/15/2002	25,000.00	3517	21,077.91
6/7/2002	10,000.00	3494	8,376.03
7/5/2002	10,000.00	3466	8,308.90
7/15/2002	13,500.00	3456	11,184.66
7/29/2002	10,000.00	3442	8,251.37
9/9/2002	10,000.00	3400	8,150.68
10/28/2002	3,500.00	3351	2,811.63
3/10/2003	15,000.00	3218	11,571.58
3/10/2003	7,500.00	3218	5,785.79
4/21/2003	80,000.00	3176	60,909.59
5/12/2003	15,000.00	3155	11,345.03
7/10/2003	5,000.00	3096	3,710.96
7/18/2003	15,000.00	3088	11,104.11
8/8/2003	10,000.00	3067	7,352.40
9/4/2003	10,000.00	3040	7,287.67
9/25/2003	15,000.00	3019	10,855.99
9/30/2003	7,500.00	3014	5,419.01

B2

50984

55740

0380

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Q-TTP Loans Receivable from Daniel R. Stevenson, II (cont.)			
10/15/2003	15,000.00	2999	10,784.08
10/16/2003	1,485.00	2998	1,067.27
10/22/2003	7,500.00	2992	5,379.45
10/30/2003	45,000.00	2984	32,190.41
11/6/2003	12,500.00	2977	8,920.80
12/15/2003	7,500.00	2938	5,282.36
1/14/2004	22,500.00	2908	15,685.27
2/4/2004	50,000.00	2887	34,604.45
3/8/2004	15,000.00	2854	10,262.67
3/16/2004	10,000.00	2846	6,822.60
3/25/2004	15,000.00	2837	10,201.54
4/29/2004	12,500.00	2802	8,396.40
5/18/2004	10,000.00	2783	6,671.58
6/9/2004	7,500.00	2761	4,964.13
6/15/2004	7,500.00	2755	4,953.34
7/9/2004	7,500.00	2731	4,910.19
7/23/2004	2,500.00	2717	1,628.34
8/24/2004	5,000.00	2685	3,218.32
8/26/2004	5,000.00	2683	3,215.92
9/14/2004	4,500.00	2664	2,873.84
11/10/2004	3,500.00	2607	2,187.38
11/17/2004	5,000.00	2600	3,116.44
12/9/2004	10,000.00	2578	6,180.14
12/22/2004	6,000.00	2565	3,689.38
1/5/2005	37,500.00	2551	22,932.79
1/31/2005	5,000.00	2525	3,026.54
2/14/2005	3,500.00	2511	2,106.83
3/15/2005	3,000.00	2482	1,785.00
3/28/2005	10,000.00	2469	5,918.84
4/6/2005	35,000.00	2460	20,640.41
4/18/2005	1,900.00	2448	1,115.01
4/18/2005	3,000.00	2448	1,760.55
4/29/2005	1,000.00	2437	584.21
5/5/2005	25,000.00	2431	14,569.35
5/11/2005	35,000.00	2425	20,346.75
5/11/2005	5,000.00	2425	2,906.68
5/19/2005	35,000.00	2417	20,279.62
5/31/2005	35,000.00	2405	20,178.94
5/31/2005	5,000.00	2405	2,882.71
7/21/2005	1,250.00	2354	705.39
7/27/2005	10,000.00	2348	5,628.77
7/27/2005	33,000.00	2348	18,574.93
8/8/2005	4,000.00	2336	2,240.00
8/23/2005	4,000.00	2321	2,225.62
9/1/2005	7,000.00	2312	3,879.73
9/8/2005	7,000.00	2305	3,867.98
9/29/2005	2,500.00	2284	1,368.84
10/19/2005	10,000.00	2264	5,427.40
10/19/2005	12,000.00	2264	6,512.88
11/2/2005	14,000.00	2250	7,551.37
11/2/2005	5,000.00	2250	2,696.92
11/7/2005	1,000.00	2245	538.18

B3

50985

55741

0381

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Q-TIP Loans Receivable from Daniel R. Stevenson, II (cont.)			
12/1/2005	10,000.00	2221	5,324.32
12/7/2005	6,000.00	2215	3,185.96
1/9/2006	4,000.00	2182	2,092.33
1/26/2006	40,000.00	2165	20,760.27
2/7/2006	6,500.00	2153	3,354.85
3/6/2006	10,000.00	2126	5,096.58
3/10/2006	5,000.00	2122	2,543.49
7/14/2006	40,000.00	1996	19,139.73
8/11/2006	20,000.00	1968	9,435.62
9/13/2006	9,500.00	1935	4,406.76
10/12/2006	20,000.00	1906	9,138.36
11/7/2006	24,000.00	1880	10,816.44
12/27/2006	20,000.00	1830	8,773.97
Totals	<u>2,150,635.00</u>		<u>1,688,393.41</u>

B4

50986

55742

0382

Interest rate:
Interest calculation date:

8.75%
12/31/2011

	Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Q-TIP Loans Receivable from Thomas C. Stevenson, III (See Tab 12, doc. #51447 and Tab 14, doc. #51469)				
	11/3/1999	100,000.00	4441	106,462.33
	3/7/2001	50,000.00	3951	47,357.88
	6/21/2001	150,000.00	3845	138,261.99
	11/23/2001	75,000.00	3690	66,344.18
	5/15/2002	50,000.00	3517	42,155.82
	8/4/2003	25,000.00	3071	18,404.97
	3/30/2004	12,500.00	2832	8,486.30
	4/8/2004	12,500.00	2823	8,459.33
	9/23/2005	100,000.00	2290	54,897.26
	9/29/2005	42,500.00	2284	23,270.21
	10/11/2005	25,000.00	2272	13,616.44
	7/25/2007	(300,000.00)	1620	(116,506.85)
	2/8/2008	(100,000.00)	1422	(34,089.04)
		<u>242,500.00</u>		<u>377,120.80</u>

B5

50987

55743

0383

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Marital Trust Loan Receivable from Daniel R. Stevenson, II (see Tab 5, doc. # 50988)			
11/9/1999	10,000.00	4435	10,631.85
1/5/2000	7,500.00	4378	7,871.40
2/23/2000	10,000.00	4329	10,377.74
3/30/2000	15,000.00	4293	15,437.16
5/5/2000	17,500.00	4257	17,858.99
6/20/2000	20,000.00	4211	20,189.73
7/19/2000	15,000.00	4182	15,038.01
7/30/2000	15,000.00	4171	14,998.46
9/13/2000	20,000.00	4126	19,782.19
10/12/2000	25,000.00	4097	24,553.94
10/25/2000	12,500.00	4084	12,238.01
11/29/2000	25,000.00	4049	24,266.27
12/27/2000	7,500.00	4021	7,229.54
2/13/2001	17,500.00	3973	16,667.55
2/28/2001	220,000.00	3958	208,743.84
4/19/2001	200,000.00	3908	187,369.86
7/6/2001	25,000.00	3830	22,953.77
7/19/2001	25,000.00	3817	22,875.86
8/8/2001	25,000.00	3797	22,755.99
10/25/2001	10,000.00	3719	8,915.41
11/1/2001	7,500.00	3712	6,673.97
11/8/2001	7,500.00	3705	6,661.39
11/15/2001	15,000.00	3698	13,297.60
12/3/2001	25,000.00	3680	22,054.79
1/7/2002	25,000.00	3645	21,845.03
3/22/2002	10,000.00	3571	8,560.62
4/9/2002	5,000.00	3553	4,258.73
4/29/2002	50,000.00	3533	42,347.60
5/15/2002	25,000.00	3517	21,077.91
6/7/2002	10,000.00	3494	8,376.03
7/5/2002	10,000.00	3466	8,308.90
7/12/2002	13,500.00	3459	11,194.37
7/29/2002	10,000.00	3442	8,251.37
9/10/2002	10,000.00	3399	8,148.29
10/28/2002	3,500.00	3351	2,811.63
3/10/2003	15,000.00	3218	11,571.58
3/21/2003	7,500.00	3207	5,766.01
4/16/2003	7,500.00	3181	5,719.26
4/21/2003	80,000.00	3176	60,909.59
7/10/2003	5,000.00	3096	3,710.96
7/18/2003	15,000.00	3088	11,104.11
7/30/2003	5,791.00	3076	4,270.27
8/8/2003	10,000.00	3067	7,352.40
9/4/2003	10,000.00	3040	7,287.67
9/15/2003	7,500.00	3029	5,445.98
9/25/2003	7,500.00	3019	5,428.00
9/30/2003	7,500.00	3014	5,419.01
10/15/2003	15,000.00	2999	10,784.08
10/22/2003	8,700.00	2992	6,240.16
10/30/2003	45,000.00	2984	32,190.41
11/6/2003	12,500.00	2977	8,920.80
12/15/2003	7,500.00	2938	5,282.36

B6

50988

55744

0384

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Marital Trust Loan Receivable from Daniel R. Stevenson, II (cont.)			
1/14/2004	22,500.00	2908	15,685.27
2/4/2004	50,000.00	2887	34,604.45
3/8/2004	15,000.00	2854	10,262.67
3/16/2004	10,000.00	2846	6,822.60
3/25/2004	15,000.00	2837	10,201.54
4/29/2004	12,500.00	2802	8,396.40
6/9/2004	7,500.00	2761	4,964.13
7/9/2004	7,500.00	2731	4,910.19
7/23/2004	2,500.00	2717	1,628.34
8/24/2004	5,000.00	2685	3,218.32
8/26/2004	5,000.00	2683	3,215.92
9/14/2004	4,500.00	2654	2,873.84
11/10/2004	3,500.00	2607	2,187.38
11/17/2004	5,000.00	2600	3,116.44
12/9/2004	10,000.00	2578	6,180.14
12/22/2004	6,000.00	2555	3,689.38
1/5/2005	37,500.00	2551	22,932.79
1/31/2005	5,000.00	2525	3,026.54
2/14/2005	3,500.00	2511	2,106.83
3/15/2005	3,000.00	2482	1,785.00
3/28/2005	10,000.00	2469	5,918.84
4/6/2005	35,000.00	2460	20,640.41
4/18/2005	4,900.00	2448	2,875.56
4/29/2005	1,000.00	2437	584.21
5/5/2005	25,000.00	2431	14,569.35
5/11/2005	40,000.00	2425	23,253.42
5/19/2005	15,000.00	2417	8,691.27
5/31/2005	40,000.00	2405	23,061.64
7/21/2005	1,250.00	2354	705.39
7/27/2005	43,000.00	2348	24,203.70
8/8/2005	4,000.00	2336	2,240.00
8/23/2005	4,000.00	2321	2,225.62
9/1/2005	7,000.00	2312	3,879.73
9/8/2005	7,000.00	2305	3,867.98
9/29/2005	2,500.00	2284	1,368.84
10/19/2005	10,000.00	2264	5,427.40
11/2/2005	19,000.00	2250	10,248.29
11/7/2005	1,000.00	2245	538.18
1/19/2006	4,000.00	2172	2,082.74
9/13/2006	6,500.00	1935	3,015.15
Totals	<u>1,727,141.00</u>		<u>1,393,232.35</u>

B7

50989

55745

0385

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Marital Trust Loan Receivable from Thomas C. Stevenson, III (see Tab 10, doc. 51425 and Tab 14, doc. #51469)			
5/3/2000	100,000.00	4259	102,099.32
3/7/2001	50,000.00	3951	47,357.88
6/20/2001	50,000.00	3846	46,099.32
11/23/2001	75,000.00	3690	66,344.18
5/15/2002	50,000.00	3517	42,155.82
8/4/2003	25,000.00	3071	18,404.97
3/30/2004	12,500.00	2832	8,486.30
4/8/2004	12,500.00	2823	8,459.33
9/23/2005	100,000.00	2290	54,897.26
9/29/2005	7,500.00	2284	4,106.51
10/11/2005	25,000.00	2272	13,616.44
7/25/2007	(407,500.00)	1620	(158,255.14)
2/8/2008	(100,000.00)	1422	(34,089.04)
Totals	0.00		219,683.13

B8

50990

55746

0386

Interest rate: 8.75%
Interest calculation date: 12/31/2011

Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Non-Trust Loans to Daniel R. Stevenson, II (see Tab 4, doc. #50983)			
3/16/1993	100,000.00	6864	164,547.95
5/6/1992	22,000.00	7178	37,856.58
3/7/1991	5,000.00	7604	9,114.38
10/5/2001	20,000.00	3739	17,926.71
1/24/2002	128,057.00	3628	111,374.51
11/27/2006	20,000.00	1860	8,917.81
Totals	<u>295,057.00</u>		<u>349,737.93</u>

B9

50991

55747

0387

Interest rate: 8.75%
Interest calculation date: 12/31/2011

	Advance Date	Loan Amount	Days Outstanding	Accrued Interest
Non-Trust Loans to Tom Stevenson (see Tab 9, doc. #51424)				
	11/1/1993	79,601.00	6634	126,592.85
Totals		<u>79,601.00</u>		<u>126,592.85</u>

B10

50992

55748

0388

A	B	C	D	E	F	G	H	I	J	K	L	M
	State Distribution (Adjusted Proposal)	Reference	Category	Beneficiary	Category	Beneficiary	Category	Beneficiary	Category	Beneficiary	Category	Beneficiary
54	State Assets Balance (McClure Rev. Allocation)	CL line 3	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets
55	Adjustment for non-interest of Tom Stevenson (Plan)	CL line 48	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets	State Assets
56	Net estate assets available											
57	Add: non-interest assets to Dan & Tom Stevenson											
58	Principal	B9-10										
59	Interest through 12/31/11	B9-10										
60	Add: legal fees											
61	Adjusted net estate assets available											
62	PAYMENT OF DEBTS & EXPENSES:											
63	Pay third party estate creditors cash											
64	Pay third party estate creditors cash											
65	Pay third party estate creditors cash											
66	Pay third party estate creditors cash											
67	Pay third party estate creditors cash											
68	Pay third party estate creditors cash											
69	Pay third party estate creditors cash											
70	Pay third party estate creditors cash											
71	Pay third party estate creditors cash											
72	Pay third party estate creditors cash											
73	Pay third party estate creditors cash											
74	Pay third party estate creditors cash											
75	Pay third party estate creditors cash											
76	Pay third party estate creditors cash											
77	Pay third party estate creditors cash											
78	Pay third party estate creditors cash											
79	Pay third party estate creditors cash											
80	Pay third party estate creditors cash											
81	Pay third party estate creditors cash											
82	Pay third party estate creditors cash											
83	Pay third party estate creditors cash											
84	Pay third party estate creditors cash											
85	Pay third party estate creditors cash											
86	Pay third party estate creditors cash											
87	Pay third party estate creditors cash											
88	Pay third party estate creditors cash											
89	Pay third party estate creditors cash											
90	Pay third party estate creditors cash											
91	Pay third party estate creditors cash											
92	Pay third party estate creditors cash											
93	Pay third party estate creditors cash											
94	Pay third party estate creditors cash											
95	Pay third party estate creditors cash											
96	Pay third party estate creditors cash											
97	Pay third party estate creditors cash											
98	Pay third party estate creditors cash											
99	Pay third party estate creditors cash											
100	Pay third party estate creditors cash											
101	Pay third party estate creditors cash											
102	Pay third party estate creditors cash											
103	Pay third party estate creditors cash											
104	Pay third party estate creditors cash											
105	Pay third party estate creditors cash											
106	Pay third party estate creditors cash											
107	Pay third party estate creditors cash											
108	Pay third party estate creditors cash											
109	Pay third party estate creditors cash											
110	Pay third party estate creditors cash											
111	Pay third party estate creditors cash											
112	Pay third party estate creditors cash											
113	Pay third party estate creditors cash											
114	Pay third party estate creditors cash											
115	Pay third party estate creditors cash											
116	Pay third party estate creditors cash											

C2

50994

55750

0390

A	B	C	D	E	F	G	H	I	J	K	L	M
117	Q-TIP Trust											
118												
119												
120	Cash											
121	Prize SC 144	A7	106,432	106,432								
122	Investment Securities	A7	70	70								
123	Bakery Island	A7	468,970	468,970								
124	Adm. fees to Dan Stevenson	A7	995,000	995,000								
125	Principal	B4										
126	Interest through 12/31/11	B4		2,180,035								
127	Adm. fees to Tom Stevenson	B4		1,618,217								
128	Principal	B5										
129	Interest through 12/31/11	B5		345,590								
130	Adm. fees to Dan Stevenson	B5		300,750								
131	Balance for Cash		1,069,442	3,480,033	4,380,566							
132												
133												
134												
135	TOTAL DISTRIBUTIONS (Adjusted Proposal)		Kathleen Turner	Janet K. Turner	Constance Fidler	Ken Stevenson	Dan Stevenson	James K. Stevenson	Q-TIP	Marital	Other	Total
136	TOTAL DISTRIBUTIONS (Proposal for Distribution)	A7	1,090,002	1,090,002	1,090,002	1,090,002	1,090,002	1,090,002	0	0	0	5,430,008
137	Net Addition (Decrease)		739,521	739,521	739,521	739,521	739,521	739,521	0	0	0	1,069,442
138												4,380,566
139												
140												
141												
142												
143												
144												

C3

50995

55751

0391

A	B	C	D	E	F	G	H	I	J	K	L	M
145	Mortgage Trust											
146												
147												
148												
149	Cash	Reference: Proposed for Difference										
150	Due from Estate	A2	12,380	12,380								
151	Investment securities	A2	223,533	223,533								
152	AM4, loans to Dan Stevenson	A2	338,298	338,298								
153	Principal	B7		1,727,141								
154	Interest through 12/31/11	B7		1,336,923								
155	AM4, loans to Tom Stevenson	B9										
156	Interest through 12/31/11	B9		219,850								
157	Balance for distribution	B9	899,411	4,131,500	3,232,089							
158												
159												
160												
161												
162	TOTAL DISTRIBUTIONS (Adjusted Proposal)											
163												
164	TOTAL DISTRIBUTIONS (Proposed for Distribution)	A7	899,411	4,131,500	3,232,089							
165	Net Addition (Decrease)											
166												
167												
168												
169												
170												
171												
172												
173												

C4

50996

55752

0392

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 IN RE: The Estate of Jacquelin
4 K. Stevenson, Deceased and the
5 Estate of Thomas C. Stevenson,
6 Deceased.

7 Jacquelin S. Bennett, Genevieve S.
8 Felder and Kathleen S. Turner,
9 individually, as Co-Trustees and
10 beneficiaries of the Marital Trust
11 and the Qualified Terminable Interest
12 Trust created by the Thomas Stevenson
13 Will, and Jacquelin S. Bennett, and
14 Kathleen S. Turner, as Co-Personal
15 Representatives on behalf of the
16 Estate of Jacquelin K. Stevenson,

17 Plaintiff(s),

18 vs.

Case No: 2011-CP-10-400

19 T. Heyward Carter, Jr.; Evans, Carter,
20 Kunes & Bennett, P.A.; Douglas Capital
21 Management, Inc.; Dixon-Hughes f/k/a
22 Pratt-Thomas Gumb & Co., P.A.; and
23 Lynne L. Kerrison.

24 Defendant(s).

25 D E P O S I T I O N

WITNESS: LYNNE L. KERRISON

DATE: July 13, 2011

TIME: 10:00 a.m.

LOCATION: Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS:

3 LEWIS & BABCOCK, L.L.P.
4 BY: A. CAMDEN LEWIS, ESQUIRE
5 AND: MARY G. LEWIS, ESQUIRE
6 1513 Hampton Street
7 Columbia, South Carolina 29201
8 mgl@lewisbabcock.com
9 (803)771-8000

10 ATTORNEYS FOR THE DEFENDANT T. HEYWARD CARTER
11 and EVANS, CARTER, KUNES & BENNETT, P.A.:

12 PARKER POE ADAMS & BERNSTEIN, LLP
13 BY: SUSAN TAYLOR WALL, ESQUIRE
14 AND: HAL W. FRAMPTON, IV, ESQUIRE
15 200 Meeting Street, Suite 301
16 Charleston, South Carolina 29401
17 susanwall@parkerpoe.com
18 (843)727-2692

19 ATTORNEYS FOR THE DEFENDANTS DIXON HUGHES f/k/a
20 PRATT-THOMAS, GUMB & CO., P.A.; and LYNNE L.
21 KERRISON:

22 SHARPLESS & STAVOLA, P.A.
23 BY: FREDERICK K. SHARPLESS, ESQUIRE
24 200 South Elm Street, Suite 400
25 Greensboro, North Carolina 27401
FKS@sharpless-stavola.com
(336)333-6400

BARNWELL WHALEY PATTERSON & HELMS, LLC
BY: M. DAWES COOKE, JR., ESQUIRE
885 Island Park Drive
Charleston, South Carolina 29492
(843)577-7700

ALSO PRESENT: Mr. Heyward Grimball
Ms. Melanie Blease
Ms. Caitlin Fletcher
T. Heyward Carter, Jr., Esq.

1 A. Yes, sir.

2 Q. All right. Now, did -- what is it? -- that
3 farm, did it make money?

4 A. No, sir.

5 Q. Huh?

6 A. (Witness shakes head.)

7 Q. Do you know how he supported that farm?

8 A. No, sir.

9 Q. Did you know he was getting loans from his
10 mother or from the trusts or from any of the family
11 entities?

12 A. At a certain point in time I did, yes, sir.

13 Q. Okay. When was that time?

14 A. In -- would have been in 2000/2001, during
15 that time frame.

16 Q. And how did you find it out?

17 A. Pat was the bookkeeper for Mrs. Stevenson.

18 MR. LEWIS: What are these hand signals
19 here? They're getting --

20 MR. SHARPLESS: Mr. Lewis, the problem
21 here -- and the reason I'm not stopping the witness
22 is because I know the answer is going to relate to
23 information she learned in her capacity as doing
24 work for Ms. Stevenson. We represent Ms.
25 Stevenson's estate. There's no question of

1 MR. LEWIS: Uh-huh.

2 (The record was read back.)

3 MR. LEWIS: You have an obligation to go to
4 the court.

5 MR. SHARPLESS: I understand that,
6 Mr. Lewis.

7 BY MR. LEWIS:

8 Q. All right. Your lawyer has instructed you
9 not to answer that. That answers the question,
10 doesn't it?

11 Did you learn of loans to Dan or money
12 taken by Dan from anybody other than Mrs. Stevenson?

13 A. There would not have been any -- I knew
14 about the loans from Mrs. Stevenson's book.

15 Q. I'm sorry?

16 A. I knew about the loans from
17 Mrs. Stevenson's book.

18 Q. From the books?

19 A. From Mrs. Stevenson's book.

20 Q. Did you tell anybody?

21 A. Yes, sir.

22 Q. Who did you tell?

23 A. I told Heyward Carter.

24 Q. Heyward Carter?

25 A. Yes, sir.

1 A. I wanted him to know.

2 BY MR. LEWIS:

3 Q. Were you trying to wash your hands of it?

4 MS. WALL: Object to the form.

5 A. No, sir. I wanted him to know what was
6 going on.

7 BY MR. LEWIS:

8 Q. And did you expect him to tell somebody?

9 A. I expected him to act on it, yes, sir.

10 Q. What did you expect him to act? How did
11 you expect him to act?

12 A. As an attorney.

13 Q. And do what?

14 A. What attorneys do.

15 Q. What did you think he was supposed to do?
16 We're going in a circle here. What did you want him
17 to do?

18 MR. SHARPLESS: Object to the form.

19 A. I wanted him, as an attorney, to look at
20 the transaction and do what he felt he should do
21 with that information.

22 BY MR. LEWIS:

23 Q. Well, let's go through it then. There was
24 the information. Were you concerned about the
25 legality of it? If you give it to a lawyer, you're

1 trying. -- you're concerned about the legality of
2 something.

3 A. That's why I called Mr. Carter.

4 Q. Okay. So you had a concern about the
5 legality?

6 A. I think most people call an attorney, they
7 have a concern about the legality of something.

8 Q. Good. I'm glad we can agree on that.
9 Okay. So the legality.

10 Okay. Now, was that loans just -- or the
11 transactions that you -- was that only Dan's?

12 A. There were some loans to Tom also.

13 Q. So you called him about both Dan and Tom?

14 A. Yes, sir.

15 Q. And you were worried about the legality of
16 both Dan and Tom's?

17 A. I wanted Mr. Carter to know what was going
18 on.

19 Q. And you were worried about the legality,
20 why you call a lawyer. We just went through that.

21 A. I wanted to make sure he knew what was
22 going on. Whether it was legal or not legal, I
23 wanted Mr. Carter to know what was going on.

24 Q. But at least you had concern about the
25 legality?

1 A. Yes, sir.

2 Q. Did you know what positions Dan and Tom
3 held at that time with reference to the estate,
4 Ms. Stevenson, the trust and so forth?

5 MR. SHARPLESS: Object to the form.

6 A. I knew they were trustees of the trust.

7 BY MR. LEWIS:

8 Q. You knew that Dan and Tom were trustees of
9 the trust.

10 A. And I knew they were Mrs. Stevenson's
11 children.

12 Q. And they were Mrs. Stevenson's children.
13 Did you know who -- of Mrs. Stevenson's children who
14 were -- had the powers of attorney?

15 A. I cannot -- to my knowledge, I do not know
16 the answer to that.

17 Q. Did you and Mr. Carter talk about who had
18 the powers of attorney in the conversation?

19 A. I do not remember.

20 Q. Did you and Mr. Carter talk about the
21 concerns of the legality of these loans or these
22 transactions in your conversation?

23 A. I already testified, I don't remember
24 exactly what the conversation was. I just remember
25 that I called Heyward to tell him what was going on.

1 question, Mr. Lewis.

2 A. We kept this to tie -- if this schedule was
3 prepared when we were trying to get everything
4 together with Howell Morrison at that time, yes, we
5 kept -- would have stopped it at those points,
6 because each year we prepared a set of books and we
7 had paperwork to tie it to the balance sheet
8 numbers.

9 BY MR. LEWIS:

10 Q. All right. Let's go back what you -- back.
11 You had -- you were -- you had legal concerns about
12 what you found out from Pat, the bookkeeper, that
13 you told to Heyward Carter?

14 A. Yes, sir.

15 Q. And you told him that in 2001?

16 MS. WALL: Object to the form.

17 A. I told him in 2001, yes, sir.

18 BY MR. LEWIS:

19 Q. Okay. And what did you tell him in 2001
20 other than, these are the transactions? And looking
21 at your Exhibit Number -- what is that exhibit? --
22 3. Looking at your Exhibit 3, would that have been
23 what you told him, not in that form, but generally?

24 A. Yes, sir. I would have told him that Dan
25 was writing -- having checks to himself from the

1 A. When did Mrs. Stevenson pass away?

2 Q. I don't know.

3 A. So if she passed away in 2008, then that
4 would be correct. 2007 would have been the last
5 ones that I prepared.

6 Q. And that you -- that Dixon Hughes
7 maintained a general ledger for the trust?

8 A. Yes, sir.

9 Q. And that Dixon Hughes at some point in time
10 upon the death of Pat started writing the checks?

11 A. Yes, sir, we wrote the checks.

12 Q. And who okayed the checks to be written?

13 A. Any of the siblings would come into the
14 office and they would meet with Angela Heisenbottle,
15 and Angela would write the checks and then either
16 Dan or Tom would sign the checks.

17 Q. Did it ever occur to you that Dan and Tom
18 were writing -- your company was writing checks to
19 Dan and Tom for them to sign to give money to Dan
20 and Tom?

21 A. That was -- there was -- different things
22 had happened -- steps had happened before that part
23 came.

24 Q. Well, did it bother you that these two guys
25 that were getting the money, that your company was

1 writing checks to the two people who signed the
2 checks? Did that bother you?

3 A. But when we got to that point, different
4 attorneys had looked at it, and they had structured
5 a note and were treating that money as a loan.

6 Q. So you were happy with that; that was fine
7 with you then?

8 A. That's the way it was structured.

9 Q. Was it fine with you?

10 A. That is the way it was structured.

11 Q. I didn't ask you that. Was it okay with
12 you?

13 A. Because different attorneys had looked at
14 it and that's the way it was supposed to be
15 structured, that's the way it was structured.

16 Q. Were you ever in a conversation where
17 Heyward Carter told the boys they had to tell
18 Kathleen and/or the other sisters about the loans?

19 A. I was -- I was in a -- definitely in a
20 meeting when Kathleen was told. Now, whether I was
21 in a meeting when Heyward told them that
22 specifically, I cannot answer that. But I know that
23 Howell Morrison was involved at a point. And Howell
24 Morrison, he's an attorney. He told them that they
25 needed to tell Kathleen, and they were supposed to

1 have a family meeting.

2 Q. He told who?

3 A. Dan and Tom.

4 Q. Did they?

5 A. To my knowledge, no. But they were
6 supposed to.

7 Q. All right.

8 MR. LEWIS: What exhibit is this?

9 THE COURT REPORTER: 6.

10 (Exhibit No. 6 was marked.)

11 BY MR. LEWIS:

12 Q. Look at Exhibit 6. Do you remember getting
13 that?

14 A. Yes, sir, I remember getting this.

15 Q. You remember getting that?

16 A. Yes, sir.

17 Q. And it had a place for you to sign?

18 A. Yes, sir.

19 Q. Did you ever sign it?

20 A. I thought that I did.

21 Q. So you have no problem signing this?

22 A. I mean, it states the facts.

23 Q. Well, I just asked you a question. You
24 said you thought you did. If you thought you did,
25 you had no problem.

1 upon request the beneficiaries are entitled to a
2 statement of the accounts of the trust annually?

3 A. I said I know that now. I don't know if I
4 knew that then or not.

5 Q. Well, did you ever see a statement of the
6 accounts of the trusts?

7 A. I wasn't hired to prepare that, and I never
8 saw one.

9 Q. So as I understand it, your firm wrote the
10 checks and you kept the records for Ms. Stevenson
11 and the trusts in Quickbooks?

12 A. Yes, sir.

13 Q. I understand that you knew that Dan and Tom
14 continued to take money out of the trust during
15 2003, 2004, and 2005?

16 A. Yes, sir.

17 Q. Did you ever have an understanding that
18 Mr. Carter agreed to delay sending a letter to
19 Kathleen or the other beneficiaries? Do you
20 remember anything about that?

21 A. No, sir.

22 Q. Were you at the meeting on April 27th, 2006
23 with Kathleen?

24 A. Was that at Heyward Carter's office?

25 Q. Uh-huh.

1 A. Yes, sir, I was at that meeting.

2 Q. Do you remember anything about that?

3 A. I remember that I had a bunch of documents
4 that I, you know, showed Kathleen the documents, the
5 schedules like this.

6 Q. Like that?

7 A. Uh-huh.

8 Q. When you say "this," what exhibit is that?

9 A. This is Exhibit 3.

10 Q. Okay. When did you find out that Kathleen
11 had a power of attorney?

12 A. I don't know off the top of my head. I
13 know that I was sent a power of attorney from
14 Heyward at some point. And I want to say it was --
15 I don't know exactly when it was.

16 MR. LEWIS: All right. Would you mark
17 this.

18 (Exhibit No. 8 was marked.)

19 BY MR. LEWIS:

20 Q. Looking at this Number 8, It's a power of
21 attorney and it has a date on it.

22 MS. WALL: Can you just give me a minute?
23 We want to make sure we're given anything --

24 MR. LEWIS: I'm not going to ask her
25 anything but what's in it. But you're more than

1 tax returns for Easy Tray. Do you recall that?

2 A. Yes, they did.

3 Q. Okay.

4 (Exhibit No. 12 was marked.)

5 BY MS. WALL:

6 Q. I'm going to hand you what we've marked as
7 Exhibit 12 and ask you if you recognize this as a
8 copy of the 2005 tax return prepared by your firm
9 for Easy Tray, LLC, a U.S. Return of Partnership
10 Income form?

11 A. Yes.

12 Q. And do you recall that, in fact, one of
13 your shareholders at Pratt-Thomas Gumb was on the
14 board of managers and an investor in Easy Tray, LLC?

15 A. Yes.

16 Q. And was that Harold Pratt-Thomas?

17 A. Yes, ma'am.

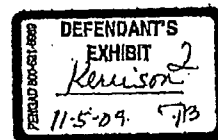
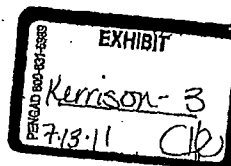
18 Q. Did your accounting firm also prepare tax
19 returns for Commerce Circle on behalf of Tom
20 Stevenson?

21 A. I think so. I don't know definitely, but I
22 would assume. Yes.

23 Q. Do you have any recollection that those tax
24 returns were prepared for Commerce Circle on behalf
25 of Tom Stevenson for the years 1999 through 2008?

Loans to Dan Stevenson

Q-Tip Trust			Marla Trust		
1999	30-Aug	25,000.00	09-Nov	10,000.00	
	30-Sep	25,000.00			
	14-Oct	10,000.00			
	09-Dec	10,000.00			
		<u>70,000.00</u>			<u>10,000.00</u>
2000	05-Jan	7,500.00	05-Jan	7,500.00	
	23-Feb	15,000.00	23-Feb	10,000.00	
	29-Mar	15,000.00	29-Mar	15,000.00	
	05-May	17,500.00	05-May	17,500.00	
	20-Apr	20,000.00	20-Jun	20,000.00	
	18-Jul	15,000.00	19-Jul	15,000.00	
	19-Jul	15,000.00	19-Jul	15,000.00	
	13-Sep	20,000.00	13-Sep	20,000.00	
	12-Sep	25,000.00	12-Sep	25,000.00	
	26-Oct	12,500.00	25-Oct	12,500.00	
	29-Nov	25,000.00	29-Nov	25,000.00	
	27-Dec	5,000.00	27-Dec	7,500.00	
		<u>192,500.00</u>			<u>190,000.00</u>
		<u>262,500.00</u>			<u>200,000.00</u>



DixonHughes_000590

22872

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON
JACQUELIN S. BENNETT, GENEVIEVE S. FELDER AND
KATHLEEN S. TURNER, INDIVIDUALLY, AS CO-TRUSTEES
AND BENEFICIARIES, AND JACQUELIN S. BENNETT AND
KATHLEEN S. TURNER, AS CO-PERSONAL REPRESENTATIVES
OF THE ESTATE OF JACQUELIN K. STEVENSON,
Plaintiffs,

vs. CASE NO. 2008-CP-10-0806
THOMAS C. STEVENSON, III, DANIEL R. STEVENSON, II,
FABTECH, INC., LAURENTIDE, INC., EASY TRAY, LLC,
CAROLINA FRESH CUT, LLC, D/B/A TOOGODOO FARMS
AND TOOGODOO FARMS OF THE CAROLINAS,

Defendants.

DEPOSITION OF: T. HEYWARD CARTER, JR.

DATE: September 24, 2008

TIME: 9:57 AM

LOCATION: Law Offices of
Nelson, Mullins,
Riley & Scarborough
151 Meeting Street
Charleston, SC

TAKEN BY: Counsel for the Defendant
Thomas C. Stevenson, III

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DEPO
SCHEDULEDEPO.COM

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

JACQUELIN S. BENNETT, GENEVIEVE S.
3 FELDER AND KATHLEEN S. TURNER,
INDIVIDUALLY, AS CO-TRUSTEES AND
4 BENEFICIARIES, AND JACQUELIN S. BENNETT
AND KATHLEEN S. TURNER, AS CO-PERSONAL
5 REPRESENTATIVES OF THE ESTATE OF
JACQUELIN K. STEVENSON:

6 HOOD LAW FIRM, LLC

7 BY: ROBERT H. HOOD

172 Meeting Street

8 Charleston, SC 29401

(843) 577-4435

9 Bobby.Hood@hoodlaw.com

10 ATTORNEYS FOR THE DEFENDANT

THOMAS C. STEVENSON, III:

11 NELSON, MULLINS, RILEY &

12 SCARBOROUGH, LLP

BY: ROBERT H. BRUNSON

13 ERIN E. RICHARDSON

151 Meeting Street, Suite 600

14 Charleston, SC 29401

(843) 853-5200

15 robert.brunson@nelsonmullins.com

erin.richardson@nelsonmullins.com

16 ATTORNEYS FOR THE DEFENDANT

17 DANIEL R. STEVENSON, II:

18 MARK W. McKNIGHT

154 King Street, 2nd Floor

19 Charleston, SC 29401

(843) 577-2837

20 mmcknight@bellsouth.net

1 Q. And what did you find out?

2 A. Found out that they indeed had
3 distributed monies to themselves out of these
4 trusts and at that time they had not been repaid.

5 Q. Did you understand those distributions
6 to be loans or outright distributions?

7 A. I think they were -- they were -- they
8 were described by Dan and Tom as either loans or
9 investments.

10 Q. And did you say anything to Tom and Dan
11 and Miss Kerrison in this meeting about the
12 propriety of that?

13 A. Yes, we did discuss the propriety of
14 that and the -- the fact that it was not something
15 the trustees were supposed to be doing, at least
16 without the consent of beneficiaries.

17 Q. What was their reaction when you
18 provided them with that information?

19 A. Well, I advised them that they needed
20 to tell their siblings and they said that they
21 would do so.

22 Q. At this point are you the attorney for
23 Tom and/or Dan?

24 A. No.

25 Q. You're the attorney for their mother?

1 Q. But in the meeting he did agree to go
2 ahead and schedule a meeting on or before April 28,
3 2006?

4 A. Yeah.

5 Q. Do you recall if he gave any reasons as
6 to why he did not want the meeting to take place?

7 A. The meeting on --

8 Q. The meeting with Kathleen.

9 A. I don't think there was any discussion
10 about he didn't want -- that he didn't want the
11 meeting to take place.

12 Q. I'm sorry, I understood you to say that
13 he met -- came to see you and that the substance of
14 the meeting was that he didn't want the meeting to
15 take place.

16 A. Oh, not this particular meeting, I
17 think just that he wanted to explain to me again as
18 I recall for some reason that it wasn't a good time
19 to have this conversation with --

20 Q. And that's what I'm asking.

21 A. -- to bring it before the family.

22 Q. Do you recall why he said it?

23 A. Particularly, no. No.

24 Q. And from your billing entries it
25 appears that this meeting took place on April the

1 27th, is that correct, you had a conference then
2 with Mrs. Turner and Messrs., plural, Stevenson and
3 Miss Kerrison?

4 A. Right.

5 Q. And I believe that -- was Edward
6 Bennett in that meeting too?

7 A. This doesn't indicate that he was. I
8 don't remember one way or the other, but there's no
9 time for him down here.

10 Q. And what transpired in that meeting?
11 What can you recall about it?

12 A. You know, all I can recall about it is
13 what this indicates, is that it would have been a
14 discussion with Kathleen as to these funds that had
15 been taken out over a period of time by Dan and Tom
16 out of the two trusts.

17 Q. Would you characterize that as a full
18 disclosure of the trusts -- of the loans from the
19 trusts?

20 A. I think it would have been, at least as
21 far as I had any information on them and I think as
22 far as Lynne Kerrison would have had any
23 information on them as far -- which as far as I
24 know was complete.

25 Q. What was Kathleen's reaction?

THE STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

JACQUELIN S. BENNETT, GENEVIEVE S. FELDER AND
KATHLEEN S. TURNER, INDIVIDUALLY, AS CO-TRUSTEES
AND BENEFICIARIES, AND JACQUELIN S. BENNETT AND
KATHLEEN S. TURNER, AS CO-PERSONAL REPRESENTATIVES
OF THE ESTATE OF JACQUELIN K. STEVENSON,

Plaintiffs,

vs.

CASE NO. 2008-CP-10-0806

THOMAS C. STEVENSON, III, DANIEL R. STEVENSON, II,
FABTECH, INC., LAURENTIDE, INC., EASY TRAY, LLC,
CAROLINA FRESH CUTS, LLC, D/B/A TOOGOODOO FARMS
AND TOOGOODOO FARMS OF THE CAROLINAS,

Defendants.

DEPOSITION OF: LYNNE L. KERRISON

DATE: November 6, 2009

TIME: 10:10 AM

LOCATION: Law Offices of Nelson, Mullins,
Riley & Scarborough, LLP
151 Meeting Street, Suite 500
Charleston, SC

TAKEN BY: Counsel for the Defendant
Thomas C. Stevenson, III

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DEPO
SCHEDULEDEPO.COM

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 JACQUELIN S. BENNETT, GENEVIEVE S.
4 FELDER AND KATHLEEN S. TURNER,
5 INDIVIDUALLY, AS CO-TRUSTEES AND
6 BENEFICIARIES, AND JACQUELIN S. BENNETT
AND KATHLEEN S. TURNER, AS CO-PERSONAL
REPRESENTATIVES OF THE ESTATE OF
JACQUELIN K. STEVENSON:

HOOD LAW FIRM, LLC
BY: ROBERT H. HOOD
172 Meeting Street
Charleston, SC 29401
(843) 577-4435
Bobby.Hood@hoodlaw.com

10 ATTORNEYS FOR THE DEFENDANT
11 THOMAS C. STEVENSON, III:

12 NELSON, MULLINS, RILEY &
13 SCARBOROUGH, LLP
BY: ROBERT H. BRUNSON
151 Meeting Street, Suite 600
Charleston, SC 29401
(843) 853-5200
robert.brunson@nelsonmullins.com

15 ATTORNEYS FOR THE DEPONENT

16 LYNNE L. KERRISON:

17 BARNWELL, WHALEY, PATTERSON &
HELMS

18 BY: M. DAWES COOKE, JR.
885 Island Park Drive
19 Charleston, SC 29492
(843) 577-7700

20 MDC@barnwell-whaley.com
21 and

22 SHARPLESS STAVOLA

23 BY: GABRIELLE AMBER PITTMAN
200 South Elm Street, Suite 400
Greensboro, NC 27401
24 (336) 333-6387
25 GAP@sharpless-stavola.com

1 paperwork that I prepared for the meeting at
2 Heyward Carter's office.

3 Q. Are you referring to the meeting at
4 Heyward Carter's office on April the 27th, 2006?

5 A. Yes, sir.

6 Q. And that was a meeting attended by you,
7 Mr. Carter, Dan, Tom and Edward Bennett?

8 A. I have Kathleen on here because I have
9 listed on here present at meeting and I don't list
10 Edward Bennett's name.

11 Q. Where are you referring to there,
12 sorry, so I can see it? It's on the second page.

13 A. Right here.

14 Q. Oh, okay. So on the second page you
15 indicate Heyward Carter, Lynne Kerrison, Tom
16 Stevenson, Dan Stevenson, Kathleen Turner were at
17 the meeting?

18 A. Yes, sir.

19 Q. And this is the meeting to do the full
20 disclosure to Kathleen?

21 A. Yes, sir.

22 Q. And is Exhibit 21 --

23 MR. HOOD: Note my objection to the
24 last question, please, the form of the question.

25 BY MR. BRUNSON:

STATE OF SOUTH CAROLINA THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON CASE NO.: 11-CP-10-400

IN RE: The Estate of Jacquelin K.) VOLUME I
Stevenson, Deceased and the Estate)
of Thomas C. Stevenson, Deceased,) VIDEO
) DEPOSITION OF:
) KATHLEEN S. TURNER
) November 9, 2011

Jacquelin S. Bennett, Genevieve S.)
Felder and Kathleen S. Turner,)
individually, as Co-Trustees and)
beneficiaries of the Marital Trust)
and the Qualified Terminable)
Interest Trust created by the)
Thomas Stevenson Will and)
Jacquelin S. Bennett, and Kathleen)
S. Turner, as Co-Personal)
Representatives on behalf of the)
Estate of Jacquelin K. Stevenson,)

Plaintiffs,)

vs.)

T. Heyward Carter, Jr.; Evans,)
Carter, Kunes & Bennett, P.A.;)
Douglas Capital Management, Inc.;)
Dixon-Hughes f/k/a Pratt-Thomas)
Gumb & Co., P.A.; and Lynne L.)
Kerrison,)

Defendants.)

The video deposition of KATHLEEN S. TURNER,
taken before Lynda A. Bousquet, Professional Court
Reporter and Notary Public, at the law offices of
Parker Poe Adams & Bernstein, 200 Meeting Street,
Charleston, South Carolina, on Wednesday, November 9,

APPEARANCES

REPRESENTING THE PLAINTIFFS:

MARY G. LEWIS, ESQUIRE
Lewis Babcock Griffin, LLP
1513 Hampton Street
Columbia, South Carolina 29201
(803) 771-8000
MGL@LBGLegal.com

REPRESENTING THE DEFENDANTS:

(T. Heyward Carter, Jr. and Evans, Carter, Kunes &
Bennett, P.A.)

SUSAN TAYLOR WALL, ESQUIRE
HENRY W. FRAMPTON, IV, ESQUIRE
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina 29401
(843) 727-2650
susanwall@parkerpoe.com

(Lynne Kerrison and Dixon-Hughes)

GABRIELLE AMBER PITTMAN, ESQUIRE
Sharpless Stavola
200 South Elm Street, Suite 400
Greensboro, North Carolina 27401
(336) 333-6387
GAP@sharpless-stavola.com

ALSO PRESENT:

Mrs. Genevieve S. Felder
Mrs. Jacquelin S. Bennett
Mr. Bill Bennett
Dr. William Turner
Mr. Heyward Carter

VIDEOGRAPHER:

Doug White, Clearview Legal Video

1 A Okay.

2 Q I'm on the meeting of May the 21st, 2003,
3 that took place at 58 Meeting Street with you and
4 your brothers Tom and Dan. The question is: Who
5 called that meeting?

6 A My guess is Tom did. I don't remember, but
7 my guess is Tom did.

8 Q Did Tom --

9 A It wasn't me.

10 Q Did Tom call you on the phone and ask you to
11 meet with him and Dan?

12 A I don't remember that, but I would think he
13 did.

14 Q What time was the meeting?

15 A It was at five o'clock.

16 Q Did you go to the meeting from work?

17 A Yeah. Yes.

18 Q So you drove to the meeting from your work;
19 is that correct?

20 A Yes.

21 Q And were Tom and Dan already at your
22 mother's house?

23 A Yes.

24 Q When Tom called you to set up the meeting,
25 did you ask him what it was for?

1 A No.

2 Q Why not?

3 A He knew what it was about, and I knew I was
4 going to find out what it was about.

5 Q Did you find it in any way curious that you
6 were being asked to go to a meeting with Tom and
7 Dan?

8 A I was certainly interested.

9 Q Did you ask him why he was asking you to go
10 to a meeting?

11 A No.

12 Q Did you understand that your sisters would
13 be there?

14 A I did not know.

15 Q So when you arrived at approximately five
16 o'clock, Tom and Dan were already at your mother's
17 house, correct?

18 A Yes.

19 Q Were you surprised that your sisters were
20 not there?

21 A I didn't know -- no. Yes. No. I wasn't
22 surprised. I didn't know what was going on.

23 Q Did you ask why your sisters weren't
24 there?

25 A No.

1 Q Did you -- when you walked through the door,
2 did you ask why they had called you to your mother's
3 house?

4 A I knew he was going to tell me. I knew I
5 was going to find out.

6 Q You knew you were going to find out. So you
7 walked in and what happened?

8 A We went in the dining room, and Tom pulled
9 up two chairs facing each other. We sat down in
10 those two chairs. He hunched over his chair. He
11 just -- he just hunched over. He had a piece of
12 paper in front of him. He started mumbling. I was
13 waiting. And he mumbled. And then he looked up at
14 me, and I looked up at him. And he stood up, and I
15 knew the meeting was over, whatever it was, and we
16 left.

17 VIDEOGRAPHER: I'm sorry. You lost
18 your microphone.

19 THE WITNESS: Again. There.

20 BY MS. WALL:

21 Q All right. Now, it's your testimony that
22 you walked through the door, that all three of you
23 went into the dining room, but only you and Tom sat
24 on chairs. Where was Dan?

25 A I don't -- I don't think Dan went in. Dan

1 hovered around, but I don't know where he was really.

2 Q Was he in the dining room --

3 A No.

4 Q -- with you when you --

5 A No, he was not. He was hovering around
6 outside.

7 Q Let me -- for the record, you need to let me
8 finish my question before you answer, please.

9 A Excuse me.

10 Q It's extremely difficult for the court
11 reporter, and it makes for a difficult record. And
12 we are making a record here. My question for you is:
13 When you went into the dining room and sat down
14 across from Tom, where was Dan?

15 A Dan was not in the room, but I think Dan was
16 out in the hall. He kind of just hovered around.

17 Q So Dan was hovering in the hall; Tom was
18 sitting across from you?

19 A Yes.

20 Q And how long did you sit across from Tom?

21 A I don't know how long, but it was not a long
22 meeting. It was long enough for him to do that.

23 Q Are we talking two minutes or 20 minutes or
24 more?

25 A I would say less than 20 minutes and not a

1 whole lot more than five or ten.

2 Q So it's your testimony that you sat at the
3 dining room table across from your brother Tom?

4 A No. No. No. No. We were sitting in two
5 chairs like this, not across the table, two chairs.

6 Q You were sitting in two chairs next to each
7 other?

8 A Facing each other.

9 Q Facing each other on one side of the
10 table?

11 A No. Not on one side of the table. Two
12 chairs pulled out just face-to-face. This chair,
13 this chair.

14 Q We're going to forget the table because
15 you're not really sitting around a table?

16 A We're not at the table.

17 Q All right. So you're in the dining room.
18 There happens to be a table in the dining room.

19 A Right.

20 Q But you're not doing anything with the
21 table, correct?

22 A Right.

23 Q Tom pulls out two chairs away from the
24 dining room table?

25 A Yes.

1 Q He seats you face-to-face so that if you
2 were touching each other, your knees would touch,
3 correct?

4 A Yes.

5 Q And has a piece of paper in his lap; is that
6 correct?

7 A In his hands.

8 Q In his hand, over his lap, correct?

9 A Yes.

10 Q And it's your testimony he hunched over the
11 paper and started mumbling?

12 A Yes.

13 Q What did the paper look like?

14 A I never really saw the paper. I think that
15 it was something that maybe he had generated off of
16 his computer. In other words, it had print on it.
17 It wasn't handwritten, but I didn't really see it.

18 Q Did it have a title at the top Family
19 Assets?

20 A I could not really see it.

21 Q Do you recall that at all?

22 A No. I don't recall that. And then later
23 on, he has referred to that enough so that I think
24 that that is what that is, but I didn't see it.

25 Q So it's your testimony you're sitting facing

1 why.

2 Q Were you involved in any discussions with
3 either Tom or Dan or both at year-end with regard to
4 your mother's finances and any distributions that
5 would or would not be made?

6 A We all participated in this.

7 Q And what do you mean by we all participated
8 in this?

9 A Well, generally, this was to pay the life
10 insurance policy. And we would -- we would -- we
11 would all participate in this; although, I don't know
12 why Jacquelin isn't.

13 Q I apologize if my question is not clear. My
14 question to you is: Did you have conversations with
15 Tom and Dan year-end with regard to your mother's
16 finances?

17 A No.

18 MS. WALL: Take a quick break.

19 VIDEOGRAPHER: Off the record at

20 12:24.

21 (A break was taken.)

22 VIDEOGRAPHER: On the record at 12:32.

23 BY MS. WALL:

24 Q Ms. Turner, on April the 19th in the year
25 2006, you met with your brother Tom at his place of

1 business FabTech, didn't you?

2 A I did.

3 Q And did he take you on a tour of his
4 facility?

5 A He did.

6 Q And did he talk to you about the fact that
7 monies from the trusts had been invested in his
8 company FabTech?

9 A No, he did not.

10 Q Why was he giving you a tour of FabTech?

11 A Well, I knew we had a meeting coming up that
12 week or week after with Heyward, and my guess was
13 that this was related because then my brother Dan did
14 the very same thing and took me on a tour of his
15 company's facilities. And so I figured it had
16 something to do with this meeting with Heyward. I
17 was sure about that.

18 Q And what did you think the meeting with
19 Heyward was going to be about?

20 A I did not know. I did not know, but I was
21 sure it had something to do with their two companies
22 since the two of them took me on tours.

23 Q Did you ask them why they were taking you on
24 a tour?

25 A I did not. I knew I would find out, but I

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 IN RE: The Estate of Jacquelin
4 K. Stevenson, Deceased and the
5 Estate of Thomas C. Stevenson,
6 Deceased.

7 Jacquelin S. Bennett, Genevieve S.
8 Felder and Kathleen S. Turner,
9 individually, as Co-Trustees and
10 beneficiaries of the Marital Trust
11 and the Qualified Terminable Interest
12 Trust created by the Thomas Stevenson
13 Will, and Jacquelin S. Bennett, and
14 Kathleen S. Turner, as Co-Personal
15 Representatives on behalf of the
16 Estate of Jacquelin K. Stevenson,

17 Plaintiff(s),

18 vs.

Case No: 2011-CP-10-400

19 T. Heyward Carter, Jr.; Evans, Carter,
20 Kunes & Bennett, P.A.; Douglas Capital
21 Management, Inc.; Dixon-Hughes f/k/a
22 Pratt-Thomas Gumb & Co., P.A.; and
23 Lynne L. Kerrison.

24 Defendant(s).

25 D E P O S I T I O N

WITNESS: T. HEYWARD CARTER, JR., ESQUIRE

DATE: July 14, 2011

TIME: 10:00 a.m.

LOCATION: Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS:

3 LEWIS & BABCOCK, L.L.P.
4 BY: A. CAMDEN LEWIS, ESQUIRE
5 AND: MARY G. LEWIS, ESQUIRE
6 1513 Hampton Street
7 Columbia, South Carolina 29201
8 mgl@lewisbabcock.com
9 (803) 771-8000

10 ATTORNEYS FOR THE DEFENDANT T. HEYWARD CARTER
11 and EVANS, CARTER, KUNES & BENNETT, P.A.:

12 PARKER POE ADAMS & BERNSTEIN, LLP
13 BY: SUSAN TAYLOR WALL, ESQUIRE
14 AND: HAL W. FRAMPTON, IV, ESQUIRE
15 200 Meeting Street, Suite 301
16 Charleston, South Carolina 29401
17 susanwall@parkerpoe.com
18 (843) 727-2692

19 ATTORNEYS FOR THE DEFENDANTS DIXON HUGHES f/k/a
20 PRATT-THOMAS, GUMB & CO., P.A.; and LYNNE L.
21 KERRISON:

22 SHARPLESS & STAVOLA, P.A.
23 BY: FREDERICK K. SHARPLESS, ESQUIRE
24 200 South Elm Street, Suite 400
25 Greensboro, North Carolina 27401
FKS@sharpless-stavola.com
(336) 333-6400

GEDNEY M. HOWE, III, P.A.
BY: GEDNEY M. HOWE, III, ESQUIRE
8 Chalmers Street
Charleston, South Carolina 29401
(843) 722-2140

23 ALSO PRESENT: Mr. Heyward Grimball

1 A. I thought --

2 Q. -- of telling Kathleen?

3 A. I thought it would be best, in light of my
4 judgment as to Mrs. Stevenson's situation, the
5 family history, my knowledge of the family history,
6 the pertinent rules of conduct, that they discuss it
7 with Kathleen and then discuss it with their
8 sibling.

9 Q. Okay. And were Dan and Tom the ones that
10 were taking money from the trusts for which they
11 were trustees?

12 A. Yes. They had taken money from the trusts
13 that were characterized as loans.

14 Q. Okay. And you felt no obligation upon
15 yourself to tell Kathleen?

16 A. I felt not a legal obligation, but I felt
17 that it would be best for the family if Kathleen
18 were told. And in fact, Kathleen was told. She was
19 told in the spring of 2003, and she was told again
20 in 2006.

21 Q. Were you at the meeting in the spring of
22 2003?

23 A. No, I wasn't.

24 Q. So you don't know what she was told; that's
25 just what you understand?

1 A. That's what I understand.

2 Q. But you just said she was told. Now, would
3 you please, when you answer a question, let me know
4 what you understand and what you heard. Because
5 what you understand is a lot different than what you
6 hear. Okay?

7 A. I understand.

8 MS. WALL: Object to the form.

9 BY MR. LEWIS:

10 Q. Was Tom at that meeting?

11 A. What meeting?

12 Q. With Ms. Stevenson in 2003.

13 A. Meeting -- there was -- I don't know what
14 meeting --

15 Q. With Ms. Turner. The one you just talked
16 about.

17 A. Now, when you said "Ms. Stevenson," you
18 mean Ms. Turner?

19 Q. Yeah, Ms. Turner. I'm sorry.

20 A. Okay. I don't know. It's my
21 understanding, my understanding -- I wasn't there --

22 Q. And you --

23 A. -- but it was my understanding that he was
24 at that meeting.

25 Q. That's great. And you understood that your

Jacqueline S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacqueline S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacqueline K. Stevenson,

vs.

Defendants.

DATE: March 8, 2012

TIME: 10:53 a.m. to 3:58 p.m.

LOCATION: McNair Law Firm, P.A.
1221 Main Street
Columbia, South Carolina

REPORTED BY: Beth Walters

1 This transcript may not be reproduced,
2 emailed to another party or transcribed in any form
3 or by any means, electronic, mechanical,
4 photocopying, recording or otherwise, without the
5 prior written permission of the Court Reporter.

6 A-P-P-E-A-R-A-N-C-E-S

7 For the Plaintiff:

8 By: A. Camden Lewis, Esquire
9 LEWIS BABCOCK GRIFFIN, LLP
10 Post Office Box 11208
11 Columbia, SC 29211
(803) 771-8000
acl@lbglegal.com

12 For Defendants T. Heyward Carter, Jr. and
13 Evans, Carter, Kunes & Bennett, P.A.:

14 By: Susan Taylor Wall, Esquire
15 McNAIR LAW FIRM, P.A.
16 100 Calhoun Street, Suite 400
17 Charleston, SC 29401
(843) 973-6850
swall@mcnair.net

18 For Defendants Dixon-Hughes f/k/a
19 Pratt-Thomas Gumb & Co., P.A., and
Lynne L. Kerrison:

20 By Frederick K. Sharpless, Esquire
21 SHARPLESS & STAVOLA, P.A.
22 Post Office Box 22106
23 Greensboro, NC 27401
24 (336) 333-6400
25 FKS@sharpless-stavola.com

1 Q And why did you come to calculate the
2 interest rate for purposes of your first report
3 dated April the 1st, 2010, Exhibit No. 7, at 8.75?

4 A Because that's the statutory rate in South
5 Carolina on amounts such as the amounts that were
6 taken out of these trust funds -- amounts that are
7 ascertainable.

8 Q Were you asked to apply an 8.75 percent
9 interest rate by counsel?

10 A No.

11 Q In performing your calculations as set
12 forth on Exhibit No. 7, and I think you mentioned
13 this, do we understand that in fact none of the
14 repayments are reflected on Exhibit No. 7?

15 A That may be true. I can't be certain but
16 that may be true. My subsequent letter addresses
17 what payments were not reflected.

18 Q Now I'm going to hand you what we will
19 mark as Exhibit No. 8 and ask if you can identify
20 this as your next report dated April the 27th, 2010.
21 And again I understand that's likely in your
22 notebook, but since I haven't seen your notebook
23 before, I have to do this separately. Exhibit No.
24 8.

25

1 Q Well, in looking at what we've marked as
2 Exhibit No. 9, do you know who prepared that table
3 at the top?

4 A I did not. I don't know who did it.

5 Q Do you -- and again, I'm handing this to
6 you because you reference it in your report marked
7 Exhibit No. 8; is that correct you do reference it?

8 A That's right.

9 Q So in looking at this Bates number 2
10 document, do you see at the top there's an
11 indication of "Date, Loan Amount, AFR Interest Rate,
12 Years, Number of Days, Interest Total." Do you see
13 that?

14 A Yes.

15 Q And again, in performing your calculations
16 with regard to interest, why did you not use the AFR
17 interest rate that is in fact indicated on Bates
18 16344?

19 A I used 8.75 percent because I thought the
20 loans -- the documentation -- I didn't look for the
21 documentation. I view all of these loans as
22 takings, they're not loans.

23 Q And what did you base your conclusion that
24 these were takings and not loans?

25 A Well, I think the breach of fiduciary

1 duty -- obviously, the trustees had no -- no right
2 to loan themselves money. They took the money.

3 Q Was it your conclusion from looking at the
4 documentation that they were loaning themselves
5 money or loaning monies to various businesses in
6 which they had an interest?

7 A It's my conclusion they were taking the
8 money. What they did with it, that was not of
9 concern to me.

10 Q You go on in Exhibit No. 8, first page,
11 again, looking at numbers 2 and 3 -- 3 references
12 the second page of Exhibit No. 9, that is Bates No.
13 1634. No, it doesn't. It references Bates stamp
14 16346. The Bates number that you reference on
15 number 3 -- would that have been a copy of the check
16 written by Tom Stevenson repaying the marital trust
17 in the amount of \$407,500.00?

18 A It could have been. I'd have to see that
19 document.

20 Q The information that you have on number 4
21 of that front page: that the Q-Tip trust and marital
22 trust were repaid \$100,000.00 each on February the
23 8th, 2008. Did that come from a document in your
24 file that you were provided?

25 A I believe I was informed of that by Mr.

1 A Mr. Lewis asked me to.

2 Q And what was the basis for doing that? I
3 mean what were you asked to do?

4 A Well, he asked me to construct a
5 hypothetical that these takings and interest were
6 all paid and converted to cash on August 17th, 2011,
7 and that cash was distributed consistent with Herb
8 McGuire's accounting included in the proposal for
9 distribution filed with the probate court in Ms.
10 Stevenson's estate. And to determine if that
11 happened what would the beneficiaries have received
12 versus what they were -- would have received under
13 Mr. McGuire's accounting.

14 Q So what the beneficiaries would have
15 received versus what they are receiving under the
16 proposal for distribution dated August 17, 2011?

17 A That's right.

18 MR. LEWIS: There's somebody at the door
19 there.

20 MR. WALL: Oh. Thank you.

21 BY MS. WALL:

22 Q So in preparing Exhibit No. 12, what
23 materials did you review that were new or different
24 from those that you reviewed with regard to your
25 earlier reports?

1 A I reviewed the proposal for distribution,
2 which is -- I've included as Appendix A to my
3 report. I believe that's the only relevant document
4 to this.

5 Q The only new document?

6 A The only relevant one. I think I've got a
7 copy of Mrs. Stevenson's will but I did not read it.
8 I started to and didn't.

9 Q Do you have any understanding of the basis
10 for the calculations set forth in the proposal for
11 distribution which would be the calculations being
12 what's marked on the right side A-3 through A-12?

13 A I discussed this with Mr. Lewis.

14 Q Did you discuss it with anyone else?

15 A I think Mrs. Lewis was in the conference.

16 Q And in the conference, what did you all
17 discuss?

18 A We discussed generally how this was laid
19 out and we discussed the \$750,000 claim from Tom
20 Stevenson, that \$702,170 balance was -- I was told
21 to assume that's not going to be paid. We
22 discussed --

23 Q And let me stop you there because I want
24 to follow where you are. On -- you're on A-3?

25 A A-3.

Primary Timekeeper: 3 BOBBY H. HOOD JR

Date	Ref #	Smt #	Fee Amount	Hours	Expense Amount	Advance Amount	Payment Amount	Apply to Smt #	Bill Total	Balance Due
392.000) Bill & Jacqueline Bennett										
RE: Bennett, Jacqueline et al v Stevenson, Dan & Tom										
02/08/2008	1	1	45,295.00	150.80	813.55				46,108.55	46,108.55
03/07/2008	2	2	28,837.50	103.60	1,448.09				30,085.59	76,194.14
03/24/2008	3	3					46,108.55R	1		30,085.59
04/24/2008	4	3	31,277.50	93.20	506.08				31,783.58	61,869.17
05/07/2008	5	4	3,317.50	11.40	2,802.92				6,120.42	67,969.59
05/12/2008	6	5					61,869.17R		6,120.42	6,120.42
06/16/2008	7	6	35,550.00	116.20	804.86				36,454.86	42,675.28
07/03/2008	8	6	47,872.50	150.30	6,644.49				54,516.99	97,092.27
08/18/2008	9	7	58,470.00	208.00	5,804.27				64,274.27	161,366.54
08/20/2008	10	8					6,120.42R	4		155,246.12
08/20/2008	11	8					36,164.66R	5		119,091.26
08/20/2008	12	8					54,077.99R	6		85,013.27
09/16/2008	13	8	28,045.00	91.40	168.63				28,213.63	91,228.90
10/01/2008	15	10					28,213.63R	8		65,013.27
10/01/2008	16	10					64,274.27R	7		739.00
10/14/2008	14	9	13,762.50	47.40	1,146.51				14,909.01	15,648.01
11/17/2008	17	10	2,325.00	9.60	577.95				2,902.95	18,550.96
12/05/2008	18	11	750.00	5.40					750.00	19,300.96
12/10/2008	19	12					18,438.98R			864.00
12/30/2008	20	12					750.00R	11		114.00
01/19/2009	21	12	11,397.50	37.50	273.25				11,670.75	11,784.75
02/09/2009	22	13	5,680.00	18.10	82.88				5,762.88	17,527.61
02/18/2009	23	14					17,527.61R			0.00
03/06/2009	24	14	18,455.00	62.40	38.95				18,491.95	18,491.95
04/03/2009	26	16					18,491.95R	14		0.00
04/13/2009	25	15	31,905.00	110.60	654.41				32,559.41	32,559.41
04/29/2009	27	16					32,559.41R	15		0.00
05/18/2009	28	16	18,105.00	71.50	1,029.24				19,134.24	19,134.24
06/10/2009	29	17	20,737.50	68.40	681.58				21,419.08	40,553.32
06/30/2009	30	18					40,553.32R			0.00
07/14/2009	31	18	11,612.50	45.70	1,146.98				12,759.48	12,759.48
08/14/2009	32	19	15,382.50	61.90	1,126.29				16,508.79	29,268.27
08/31/2009	33	20					12,759.48R	18		16,508.79
09/17/2009	34	20	39,577.50	162.90	704.35				40,281.85	66,790.64
10/16/2009	36	22					16,508.79R	19		40,281.85
10/27/2009	35	21	70,817.50	329.50	1,243.92				72,061.42	112,343.27
11/04/2009	36	23					40,281.85R	20		72,061.42
11/23/2009	37	22	86,410.00	346.50	4,032.80				90,442.80	162,504.22
12/03/2009	39	23	133,060.00	469.80	8,170.20				141,230.20	303,734.42
Write Off: 12/31/2009	40		23,426.00					23	-23,426.00	280,309.42
12/31/2009	41	24					280,309.42R			0.00
01/16/2010	42	24	7,300.00	33.20	1,142.39				8,442.39	8,442.39
02/12/2010	43	25	6,397.50	23.80	293.22				6,690.72	15,133.11
03/16/2010	44	26	6,400.00	15.60	1.64				6,401.64	21,534.75
04/01/2010	45	27					15,133.11R			6,401.64
05/10/2010	46	27	1,160.00	4.70	149.02				1,309.02	7,710.66
05/13/2010	47	28					6,041.64R	26		1,669.02
06/11/2010	48	28	1,667.50	5.60	200.75				1,868.25	3,537.27
07/12/2010	49	29	7,450.00	24.10	228.56				7,678.56	11,215.82
08/11/2010	50	30	2,327.50	9.90	172.15				2,499.65	13,715.47
09/15/2010	51	31	932.50	5.30	21.28				953.78	14,669.25
10/13/2010	52	32	8,767.50	33.00	117.56				8,875.06	23,544.31
11/08/2010	53	33	3,080.00	13.30	4.08				3,084.08	26,628.39
12/08/2010	54	34	397.50	2.10	23.77				421.27	27,049.66
12/30/2010	57	35					24,000.00R			3,049.66
Write Off: 01/11/2011	65		2,628.39					33	-2,628.39	421.27
Write Off: 01/11/2011	56		397.50		23.77			34	-421.27	0.00
01/13/2011	58	36	1,772.50	5.10	24.45				1,796.95	1,796.95
Write Off: 04/13/2011	59		1,772.50		24.45			35	-1,796.95	0.00
04/13/2011	60	36		6.80						0.00
Subtotal			804,085.00	2,951.80	42,359.04		818,172.43		846,444.04	0.00
Write Off:			28,223.39		48.22				-28,271.61	
Total for Primary Timekeeper			804,085.00	2,951.80	42,359.04		818,172.43		846,444.04	0.00
Write Off:			28,223.39		48.22				-28,271.61	

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
DIXON HUGHES DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Plaintiffs submit this Supplemental Memorandum in Opposition to the Dixon-Hughes Defendants' Motion for Summary Judgment. This Memorandum serves to respond to the Court's inquiries as to the identity of the individual employee of Dixon Hughes that wrote the checks to Tom and Dan, and whether that employee's position was subordinate to Kerrison.

Kerrison is a Certified Public Accountant. Kerrison Dep.6:-14. She was a partner and owner in the accounting firm during the period of time relevant to this law suit. Kerrison (11-6-09) Dep. 6: 10-16; 7:7-13. Angela Heisenbottle was a bookkeeper at the accounting firm. Kerrison (11-6-09)

Dep. 97:16-20. Ms. Heisenbottle was the employee who kept the Trusts' checkbook and who would write the checks for Tom and Dan. Kerrison Dep. 75:9-16.

Clearly, Kerrison, as a partner and owner in the firm, had supervisory authority over a bookkeeper/employee. The actions taken by Ms. Heisenbottle, in writing the checks to Tom and Dan, while negligent was within the scope of her employment.¹ Thus, under respondeat superior and the law on master and servant, both Kerrison and Dixon Hughes can be liable for the actions of their agent, in writing the improper checks to Tom and Dan. 20 S.C. Jur. *Master and Servant* § 66 (an employer is liable for injuries caused by persons engaged by the employee to assist him); Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004)(Under the doctrine of respondeat superior, the employer is liable for the acts of an employee acting within the scope of employment).

Regardless of who wrote the checks, Kerrison had a duty to inform Kathleen Turner, as the holder of the Power of Attorney, of the unauthorized and improper withdrawals of Tom and Dan. See, Muller v. Bank of Am., N.A., 12 P.3d 899, 904 (Kan. App. 2000) ("It has been said that an attorney in fact is essentially an alter ego of the principal...."). Kerrison has already acknowledged that she performed accounting work for Mrs. Stevenson and the Trusts, did tax returns for Mrs. Stevenson and the Trusts, and kept general ledgers of the Trusts. Kerrison dep.6:24-25; Kerrison (11-6-09) Dep. 19:25-20:4; 2918:13-24. Kerrison was therefore obligated to tell Kathleen, the

¹Q. Is this a normal function of your accounting firm to handle a checkbook for a trust?

A. We do that for some clients, yes.

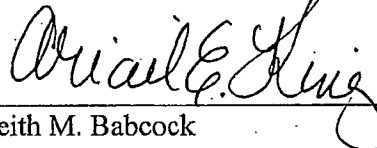
Q. And why?

A. For the accounting, you know, so that we have good recordkeeping.

Kerrison (11-6-09) Dep. 15:9-14.

attorney in fact for Mrs. Stevenson, about the withdrawals. As result of Kerrison's inaction, the brothers continued to deplete the Trusts.

Respectfully submitted,
LEWIS, BABCOCK & GRIFFIN, L.L.P.

A handwritten signature in cursive script, appearing to read "Ariail E. King", is written over a horizontal line.

Keith M. Babcock
James M. Griffin
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

April 29, 2013

LYNN KERRISON
EXCERPTS FROM 7/13/2011 DEPOSITION

1 A. A couple -- two days ago.

2 Q. Did you meet with them yesterday?

3 A. No, sir.

4 Q. Have you met with them this morning?

5 A. Just to say hello and speak a few words.

6 Q. Now, I want to ask you first -- well, when

7 you were an accountant, a CPA with Dixon Hughes and

8 Pratt-Thomas, were you a forensic accountant or were

9 you just a -- what kind of accountant were you?

10 Y'all have all got little names like all the doctors
11 have now.

12 A. Right. A general CPA.

13 Q. CPA?

14 A. Yes, sir.

15 Q. Did you work close with someone?

16 A. I worked with Harold Pratt-Thomas probably

17 more than any of the other partners, but not

18 exclusively with Harold. No.

19 Q. Did you work with Barry Gumb?

20 A. Very little.

21 Q. So when -- were you -- did you work on the

22 Tom C. Stevenson matters?

23 A. No, sir. Did not work on any of that.

24 Q. Did you work on Mrs. Stevenson matters?

25 A. I worked the Mrs. Stevenson, yes, sir.

1 A. When did Mrs. Stevenson pass away?

2 Q. I don't know.

3 A. So if she passed away in 2008, then that
4 would be correct. 2007 would have been the last
5 ones that I prepared.

6 Q. And that you -- that Dixon Hughes
7 maintained a general ledger for the trust?

8 A. Yes, sir.

9 Q. And that Dixon Hughes at some point in time
10 upon the death of Pat started writing the checks?

11 A. Yes, sir, we wrote the checks.

12 Q. And who okayed the checks to be written?

13 A. Any of the siblings would come into the
14 office and they would meet with Angela Heisenbottle,
15 and Angela would write the checks and then either
16 Dan or Tom would sign the checks.

17 Q. Did it ever occur to you that Dan and Tom
18 were writing -- your company was writing checks to
19 Dan and Tom for them to sign to give money to Dan
20 and Tom?

21 A. That was -- there was -- different things
22 had happened -- steps had happened before that part
23 came.

24 Q. Well, did it bother you that these two guys
25 that were getting the money, that your company was

**LYNN KERRISON
EXCERPTS FROM 11/06/2009 DEPOSITION**

1 went to work for J. W. Hunt and Company in Columbia
2 and I worked there until 1989. And I moved to
3 Charleston in 1989 and I worked for McKnight
4 Frampton for about three months and then I moved
5 and went to work for Harold Pratt-Thomas, it was
6 called Pratt-Thomas and Welch, and that was
7 probably in June or July of '89.

8 Q. And have you been with that firm
9 continuously?

10 A. Right. It was Pratt-Thomas and Welch
11 and then it was Pratt-Thomas Gumb and now I'm
12 employed by Dixon Hughes.

13 Q. Do you have -- within that firm do you
14 have a title, partner or shareholder or something
15 like that?

16 A. I was a partner but I'm a director now.

17 Q. What's the difference?

18 A. Well, I wanted to step down from being
19 a partner because I have children and I need to
20 spend more time with my children at this point in
21 my life.

22 Q. What ages are your kids?

23 A. My children are 12 and 13.

24 Q. So do you work a reduced schedule?

25 A. Yes.

1 Q. Do you still have an ownership share?

2 A. No.

3 Q. So it's nonequity?

4 A. (Witness moved head up and down.)

5 Q. Correct?

6 A. Correct, yes.

7 Q. But when you were a partner, were you
8 an owner?

9 A. Yes.

10 Q. During what time period were you a
11 partner?

12 A. I terminated my member as effective May
13 31st, 2009.

14 Q. And there was no reason for you to do
15 that other than your family reasons?

16 A. 100 percent family.

17 Q. In your time with -- I'll just say
18 Dixon Hughes to encompass all the time you've been
19 with Pratt-Thomas forward -- have you specialized
20 in any particular area?

21 A. About the only special area that I've
22 had another certification is medical practice
23 management, I have a certification that's called a
24 certified medical practice executive.

25 Q. Any other specialties?

1 requesting the check would come by and bring the
2 documentation for us to write the check and then we
3 would be in touch with the person that was signing
4 the checks so there was a time -- I don't know the
5 specifics of exactly but we would get everything
6 and make sure they were approved primarily by Dan
7 and then we would give the checks to Dan and he
8 would take them and sign them and mail them.

9 Q. Is this a normal function of your
10 accounting firm to handle a checkbook for a trust?

11 A. We do that for some clients, yes.

12 Q. And why?

13 A. For the accounting, you know, so that
14 we have good recordkeeping.

15 Q. Why would you do that instead of just
16 getting, you know, a ledger at the end of the year
17 or an on-line download?

18 A. It's -- if the client, you know, asks
19 us to do that, it's a service. It's a bookkeeping
20 service. We have a bookkeeping department.

21 Q. Did you receive bills for the trusts?

22 A. You mean like electricity bills and
23 things?

24 Q. Yeah, bills that needed to be paid.

25 A. Some things were mailed directly to our

1 A. Yes, sir.

2 Q. Do you recall any of the other siblings
3 ever coming in and asking for any information about
4 the trusts or Mrs. Stevenson's personal account?

5 A. No, sir.

6 Q. Did you receive bank statements for the
7 trust accounts and for Mrs. Stevenson's personal
8 checking account?

9 A. I'm not a hundred percent certain if
10 they went to a P.O. Box and then they were brought
11 to us or if they came straight to our office.

12 Q. Did you receive any statements from
13 Douglas Capital?

14 A. Yes, sir.

15 Q. What statements?

16 A. Their brokerage statements.

17 Q. Monthly, quarterly, annual?

18 A. Monthly.

19 Q. Did you receive those in hard copy or
20 electronically?

21 A. Hard copy.

22 Q. What did you do with them?

23 A. We would use those to reconcile the
24 ledgers.

25 Q. And you maintained a general ledger for

1 each of the trusts?

2 A. Yes, sir.

3 Q. And for Mrs. Stevenson's?

4 A. Yes, sir.

5 Q. So the information contained in those
6 general ledgers, it would accurately reflect all of
7 the Douglas Capital transactions from the time that
8 you became involved?

9 A. To the best of my knowledge, yes, sir.

10 Q. And did you prepare tax returns for the
11 trusts from 1997, fiscal year 1997 through the
12 present?

13 A. I did not prepare anything for the
14 trusts for 2008 so I believe 2007 would have been
15 the last returns I prepared.

16 Q. Do you know who's doing the accounting
17 now?

18 A. I'm not a hundred percent certain, no,
19 sir.

20 Q. Has any other accountant requested
21 information from you?

22 A. I know that Herb Maguire was helping
23 with the estate work.

24 Q. And did you also do the tax returns for
25 Mrs. Stevenson?

1 Q. Did that issue ever come up?

2 A. I don't remember.

3 Q. Whether she was incapacitated or not?

4 A. I do not remember at all.

5 Q. Tell me about your conversations with
6 Mr. Carter.

7 A. The main thing I can remember is
8 having, you know, to call him and tell him that
9 they had been borrowing some money and, you know,
10 what should we do. And I think -- I don't really
11 remember much more. I probably sent him some
12 information.

13 Q. Were you -- who were you working for at
14 that point?

15 A. I was preparing the tax returns for the
16 trust and Mrs. Stevenson. I guess I was working
17 for Tom and Dan and Mrs. Stevenson.

18 Q. So you were serving as an accountant
19 for the Q-Tip trust, correct?

20 A. Yes, sir.

21 Q. And the marital trust?

22 A. Yes, sir.

23 Q. Mrs. Stevenson personally?

24 A. Yes, sir.

25 Q. Were you acting personally as an

1 Carter's office with Kathleen Turner, did Miss
2 Turner provide you with any new or different
3 instructions about what type of reporting she
4 should receive going forward?

5 A. There was -- and I don't know what the
6 date of it was. There was a letter that she sent
7 that, you know, she said she was power-of-attorney
8 but I don't know what the date of it was. But it
9 would have followed the letter so it would have
10 been after this.

11 (DET. EXH. 24, Letter dated 2/20/07 to
12 Ms. Lynne Kerrison, C.P.A., and Ms. Angela
13 Heissenbottle, C.P.A., from Robert B. Pearlman, was
14 marked for identification.)

15 BY MR. BRUNSON:

16 Q. Exhibit 24 is a letter from Bobby
17 Pearlman to you and Angela Heissenbottle?

18 A. Heissenbottle, um-hum.

19 Q. And she's an accountant at your firm?

20 A. She's a bookkeeper, yes, sir.

21 Q. In it he says: Lynne and Angela,
22 regarding the loans made by Mrs. Stevenson's trust
23 to Easy Tray, et cetera, I am trying to figure out
24 whether we could gather a better tax benefit from
25 treating those as a capital investment, resulting

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,)
Deceased and the Estate of Thomas C.)
Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder)
and Kathleen S. Turner, individually, as Co-)
Trustees and beneficiaries of the Marital)
Trust and the Qualified Terminable Interest)
Trust created by the Thomas Stevenson Will,)
and Jacquelin S. Bennett, and Kathleen S.)
Turner, as Co-Personal Representatives on)
behalf of the Estate of Jacquelin K.)
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter; Kunes)
& Bennett, P.A.; Douglas Capital)
Management, Inc.; Dixon-Hughes f/k/a Pratt-)
Thomas Gumb & Co., P.A.; and Lynne L.)
Kerrison.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' OBJECTIONS TO
PROPOSED ORDER OF
DEFENDANTS LYNN KERRISON
AND DIXON HUGHES, OR IN THE
ALTERNATIVE, MOTION TO
AMEND A RESPONSE TO A
REQUEST TO ADMIT**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUN 21 PM 1:47

FILED

Plaintiffs submit the following objections to the Proposed Order and Judgment submitted by Defendants Lynn Kerrison and Dixon Hughes ("the DH Defendants") on June 13, 2013, or, in the alternative, move to amend their responses to a Request to Admit.

The proposed Order misstates and omits facts and then makes conclusions of law based on these erroneous facts. For example, on page 2 of the proposed Order, it states that this lawsuit

“seek[s]” to hold defendant-accountants, who prepared trust tax returns, liable....”¹ The DH Defendants did much more than simply prepare trust tax returns. They had possession of the Trust checkbooks and they wrote checks to Tom and Dan Stevenson from the Trusts, even though they knew that Plaintiffs had not consented to these withdrawals. The DH Defendants participated in, among others, an October 23, 2001 meeting with Tom and Dan and attorney Heyward Carter to discuss the impropriety of the withdrawals and the need to tell the Plaintiffs. The DH Defendants also participated in the preparation of promissory notes for Tom and Dan, in attempt to legitimize the withdrawals as loans.² One of the partners in the Dixon Hughes firm had a financial interest in the business for which Tom and Dan were borrowing money, and thus, had incentive to allow the withdrawals. The DH Defendants are disingenuous in stating that they only prepared tax returns.³

I. Knowing Participation

The proposed Order finds that there was no “knowing participation” by the DH Defendants in aiding and abetting Tom and Dan. However, the proposed Order acknowledges that the DH Defendants wrote checks from the trusts, but then concludes that there were no other acts to indicate

¹This “fact” leads to the conclusion that the DH Defendants did not “knowingly participate” in aiding and abetting Tom and Dan’s breach of fiduciary duty.

²The DH Defendants failed to fully evaluate Tom and Dan’s ability to actually pay back the monies taken.

³Similarly, on page 3 of the Order, it states that Pat Neopolitan, an employee of Jacquelin Stevenson (and not the DH Defendants) had possession of the checkbook and wrote the checks to Tom and Dan. While that was true for a time, the DH Defendants fail to mention that Ms. Neopolitan died and a bookkeeper in Dixon Hughes office then kept the checkbook and wrote checks to Tom and Dan whenever they asked for money.

“knowing participation.” The proposed Order ignores the following acts⁴ of “knowing participation”:

1. The DH Defendants were aware of the improper withdrawals in the Fall of 2001 and held a meeting with Tom and Dan and Carter Heyward to discuss the improprieties, as memorialized in the letter of Heyward dated November 29, 2001.
2. After the October 23, 2001 meeting (and up until 2006), the DH Defendants continued to write checks for Tom and Dan, with the knowledge that Tom and Dan were not supposed to withdraw any more monies.
3. The DH Defendants failed to inform any of the Plaintiffs of the improper withdrawals, despite the fact that Kathleen Turner had been appointed under the 2001 Power of Attorney to handle her mother’s affairs.
4. The DH Defendants had a conflict of interest in that one of the other accountants at Dixon Hughes had a financial interest in the business for which Tom and Dan were borrowing money. Thus, the firm had incentive to keep the business solvent by providing the checks that facilitated the improper withdrawals.
5. The DH Defendants had possession of the Trust check books and issued checks to Tom and Dan upon request. Incredibly, the Order proposed by the DH Defendants attempts to legitimize this conduct by noting that since the DH Defendants did not sign the checks, they are some how insulated from liability.

In summary, the financial interest of the DH Defendants in the business, coupled with the knowledge of the improper withdrawals, the failure to inform any of the Plaintiffs (particularly Kathleen Turner, who held a Power of Attorney for her mother), as well as the literal act of providing the checks to the Tom and Dan constitute “knowing participation” in aiding and abetting the breach of fiduciary duty.

⁴These acts were set forth in Plaintiffs’ Memorandum in Opposition to the DH Defendants’ Motion for Summary Judgment.

II. Request to Admit

The proposed Order improperly uses an answer to a request to admit, which is ambiguous, as a basis to find that the statute of limitations has run.⁵ On or around May 11, 2011, the DH Defendants served their First Requests for Admission on Plaintiff Kathleen Turner (relevant excerpt attached hereto as Exhibit A). There were a total of 171 requests. The Request at issue (the last one of the 171 requests) stated:

Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

This request could be interpreted as in at least two ways:

1) that at some unknown time after April 19, 2006, Tom Stevenson told Plaintiff Turner that a withdrawal of the trust had been made on April 19, 2006; or

2) that Tom told Plaintiff Turner on April 19, 2006 that withdrawals had been made at some previous point.

⁵The two other statute of limitation dates in the proposed Order also do not provide a basis for summary judgment. As for the May 21, 2003 meeting, Kathleen testified that Tom mumbled for a minute but did not disclose the withdrawals; thus, there was not notice of a potential claim. Turner Dep., p. 64-67. In addition, the DH Defendants' notice to Heyward Carter does not count as notice to the client because the DH Defendants and Heyward Carter were actively concealing the knowledge from Mrs. Stevenson and drafting notes to legitimize the loans. *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 498 (1979) (Agent's interest in concealing information from his principal is exception to the rule that a principal is affected with knowledge his agent receives.)

While the meaning of the request was unclear⁶ and Plaintiff Turner admitted it, from the deposition testimony, it is clear that on April 19, 2006, Tom Stevenson did not inform Plaintiff Turner that he had been withdrawing money from the Trusts :

Q. Ms. Turner, on April the 19th in the year 2006, you met with your brother Tom at his place of business FabTech, didn't you?

A. I did.

Q. And did he take you on a tour of his facility?

A. He did.

Q. And did he talk to you about the fact that monies from the trusts had been invested in his company FabTech?

A. No, he did not.

Turner Dep. 97:24-98:9 (emphasis added). The admission should not control where Kathleen has testified, under oath, about the events of that day.

A review of the case law indicates that courts have readily allowed amendments to requests to admit, especially when the truth becomes apparent in later discovery. See, Barber v. Hobbs, 313 S.C. 319, 437 S.E.2d 409 (1993). In considering amendment (or withdrawal) of admissions, court consider whether amendment will further presentation of the merits and whether the opposing party will suffer any prejudice. Id.; see also Rule 36, SCRPC.

⁶In Adams v. Orr, the Supreme Court affirmed the trial judge who had refused to hold that the an ambiguous request admitted, stating that “[i]n view of the fact that the request for admission was subject to more than one reasonable interpretation, we cannot say that the trial judge erred” in setting aside the admission. Similarly, in Talley v. U.S., 990 F.2d 695, 699 (2nd Cir. 1993), the court considered a purported admission by the defendant and stated “[t]his last request, whether deliberately or not, is an invitation to confusion.” The court noted that the request could construed in two different ways and that “[t]o the extent that the request is ambiguous, that ambiguity is to be construed against Talley (whose lawyer drafted the request).”

In Barber v. Hobbs, the defendant admitted that he "diagnosed" a patient with pneumonia on May 22. At his deposition several months later, Dr. Hobbs testified that he "suspected" pneumonia the night of May 22. At trial, Dr. Hobbs testified that though he was worried about pneumonia on May 22 and ordered x-rays, he did not diagnose pneumonia until the following morning after reviewing the x-ray report. The trial court found that it would be an injustice to preclude Dr. Hobbs from denying the admission, and, further ruling that the plaintiff had waived the benefit of the admission by thoroughly examining Dr. Hobbs on the issue.

Moreover, a federal court has addressed a situation almost identical to the one here. The court in F.D.I.C. v. Prusia, 18 F.3d 637, 639 (8th Cir. 1994) specifically considered an admission which affected the statute of limitations and whether the plaintiff had timely filed and found that admission could be withdrawn, stating:

Because allowing the erroneous admission to stand might have barred the FDIC's claim, permitting the amendment would have subverted the presentation of the merits.

F.D.I.C. v. Prusia, 18 F.3d 637, 640 (8th Cir. 1994).⁷ In other words, because courts favor decisions on the merits, the party whose admission prevents such a trial on the merits can withdraw the admission.

As to the second factor courts consider in allowing an admission to be withdrawn, it is clear that there will be no prejudice to the DH Defendants if the admission is withdrawn. The necessity of having to convince the trier of fact of the truth of a matter erroneously admitted is not considered prejudice. F.D.I.C. v. Prusia, 18 F.3d 637, 640 (8th Cir. 1994). As recognized in Wright Miller & Kane, 8B Fed. Prac. & Proc. Civ. § 2264 (3d ed.), relying on admissions in preparing a motion for

⁷Like the case here, that matter was before the Court on a motion for summary judgment.

summary judgment does not, by itself, constitute prejudice. (citing Conlon v. U.S., 474 F.3d 616 (9th Cir. 2007)). Furthermore, the deposition of Kathleen Turner, taken after the admission, fully explained the events of April 19, 2006. Thus, Plaintiffs should be permitted to withdraw the admission and the proposed Order should not include April 19, 2006 as a trigger for the running of the statute of limitations.

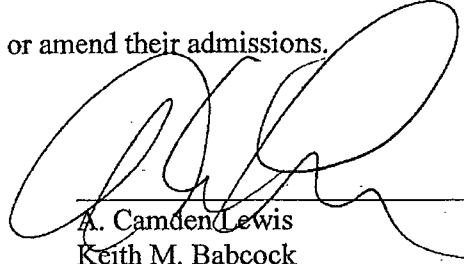
III. Duty of Defendants

In addressing the supposed lack of duty of the DH Defendants to “non-clients”, the proposed Order fails to even address the effect of the Power of Attorney held by Kathleen Turner. It is undisputed that Jacquelin Stevenson was a client of the DH Defendants.⁸ Kathleen Turner was appointed as attorney-in-fact for her mother in 2001. The holder of a power of attorney steps into the shoes of the grantor, and is basically an alter ego of the grantor. *Muller v. Bank of Am., N.A.*, 12 P.3d 899, 904 (Kan. App. 2000), citing 3 *Am.Jur. 2d Agency* § 21. In other words, as of 2001 when the Power of Attorney was executed, Kathleen Turner was Jacquelin Stevenson and the client of the DH Defendants. Thus, the fiduciary duty of the DH Defendants extends to Kathleen Turner. The proposed Order ignores this relationship and the resulting duty.

⁸As the proposed Order acknowledges, the DH Defendants performed accounting work for Mrs. Stevenson and the Trusts. Order p. 2.

CONCLUSION

Plaintiffs request that the proposed Order be revised to reflect the true facts of this case, or in the alternative, Plaintiffs move to withdraw or amend their admissions.



A. Camden Lewis
Keith M. Babcock
James M. Griffin
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

June 19, 2013

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.2011-CP-10-400

PLAINTIFF KATHLEEN S. TURNER'S
RESPONSES TO DEFENDANT LYNNE L.
KERRISON'S FIRST REQUEST FOR
ADMISSIONS

v.

11

Turner hereby responds to Defendant Lynne L. Kerrison's First Requests for Admissions as follows:

1. Between March 7, 2001 and October 11, 2005 Thomas Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$950,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital and QTIP trusts.

RESPONSE: Admitted.



166. In 2005 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

167. In 2005 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

168. You met with Thomas Stevenson in May of 2003 to discuss the administration of the trusts.

RESPONSE: Denied.

169. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trusts in May of 2003.

RESPONSE: Denied.

170. You met with Thomas Stevenson on April 19, 2006.

RESPONSE: Admitted.

171. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

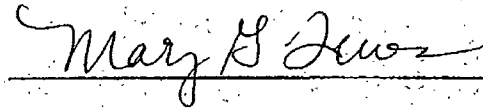
RESPONSE: Admitted.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Mary G. Lewis

A handwritten signature in cursive script, reading "Mary G. Lewis", is written over a horizontal line.

Post Office Box 11208

Columbia, South Carolina 29211

(803)771-8000

Attorneys for Plaintiffs

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**RESPONSE TO PLAINTIFFS'
OBJECTIONS TO PROPOSED ORDER
OF DEFENDANTS ON SUMMARY
JUDGMENT, AND TO ALTERNATIVE
MOTION TO AMEND A RESPONSE TO
REQUEST TO ADMIT**

Defendants offer the following response to plaintiffs' objections to the proposed order previously submitted, and to the plaintiffs' motion to amend a response to a request to admit.

OBJECTIONS TO PROPOSED ORDER

Plaintiffs' first objection is addressed to a statement on page 2 of the proposed order, that the lawsuit sought "to hold defendant-accountants, who prepared trust tax returns, liable" Contemporaneous with this response, defendants are submitting a revised order removing this language. Accordingly, plaintiffs' objection to this portion of the order is moot.

Plaintiff then objects to the finding that there was no "knowing participation" by the defendants in aiding and abetting the trustees' breaches of fiduciary duty. Plaintiffs advance a series of arguments, all of which were (by plaintiffs' own admission, footnote

4) previously argued to the court in connection with the motion for summary judgment. Defendants have previously set forth all pertinent arguments and authorities regarding this issue in their previous briefing and will not repeat them here. The finding that there was no "knowing participation" was consistent with the court's direction.

Next, plaintiffs complain of the order's reliance on plaintiffs' response to a request for admission, that plaintiff Turner was told on April 19, 2006, that the trustees had removed money from the trusts. This issue, as well, was argued by the parties in connection with the motion for summary judgment, the reliance on the response to request for admission is proper, and should not be disturbed. In any event, the claim would be barred by the statute of limitations whether or not the admission of disclosure on April 19, 2006, is relied upon (because the claim was barred as a result of other events and communications, as more completely set forth in the order).

Finally, plaintiffs object to the finding that the defendants owed no duty to the plaintiffs. This issue was addressed by the parties in their briefing on the motion for summary judgment, and the order finding a lack of duty is consistent with the court's ruling. The arguments previously made are incorporated by reference.

REQUEST TO AMEND RESPONSE TO REQUEST FOR ADMISSION

Following argument on summary judgment and a ruling by the court, plaintiffs now request leave to withdraw its response to a request for admission. Plaintiffs' request comes too late, and would in any event, not avail the plaintiffs, as even without the admitted fact, there were many other reasons to find that plaintiffs' claim was barred by the statute of limitations, as more completely set forth in the proposed order. This case is analogous to *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993). In *Foggie*, the Supreme Court affirmed a trial court's denial of a defendant's motion to amend its answer in order to withdraw an admission on the eve of trial in light of recently-discovered evidence. While noting that Rule 15, SCRCP, is liberal in permitting amendment of pleadings, the court noted that the remaining admissions

established substantially similar facts, that leave to amend was not requested until shortly before trial, and found that the trial court did not abuse its discretion in denying the motion to amend. In this case, the lateness of the request, and the fact that the ultimate result would not be changed, also favor denial of plaintiffs' motion for leave to withdraw its response to the request to admit.

WHEREFORE, having responded to the plaintiffs' objections to the proposed order and to the motion to amend a response to a request to admit, the defendants request:

1. That the court enter the proposed order, as modified, or with such other modifications as the court may deem proper; and
2. That the court deny plaintiffs' motion to amend a response to a request to admit.

This the 27 day of June, 2013.



Frederick K. Sharpless
Attorney for Defendants Dixon-Hughes, PLLC
and Lynne L. Kerrison
SHARPLESS & STAVOLA, P.A.
P O Box 22106
Greensboro, NC 27401
Telephone: (336) 333-6384

OF COUNSEL:

M. Dawes Cooke, Jr.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401
Telephone: (843) 577-7700

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter, Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

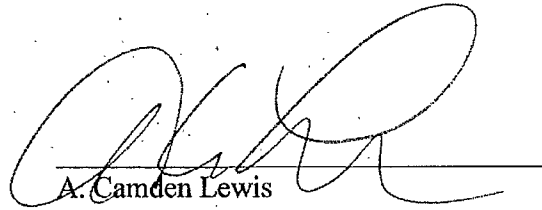
CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' REPLY TO THE
RESPONSE TO PLAINTIFFS'
OBJECTIONS TO PROPOSED ORDER**

Plaintiffs submit the following reply to the Response to Plaintiffs' Objections to Proposed Order submitted by Defendants Lynn Kerrison and Dixon Hughes ("the DH Defendants") on June 23, 2013. In their Response, the DH Defendants argue that Plaintiffs should not be permitted to amend or withdraw Plaintiff Turner's Responses to Kerrison's First Requests to Admit, citing on Foggie v. CSX Transportation, 313 S.C. 98,431 S.E.2d 587 (1992). However, that case has absolutely no application or relevance here as it does not involve Requests for Admission or Rule 36, SCRCp. Instead, that case addresses a party's request to amend the answer to a complaint under

Rule 15, SCRCF. The cases cited by Plaintiffs' in their original objections, especially Barber v. Hobbs, 313 S.C. 319, 437 S.E.2d 409 (1993),¹ do involve Rule 36 and the withdrawal of requests to admit and are the governing case law.

Plaintiffs request that the proposed Order be revised to reflect the true facts of the events of April 19, 2006, as testified to by Kathleen Turner, or in the alternative, Plaintiffs move to withdraw or amend their admissions.



A. Camden Lewis
Keith M. Babcock
James M. Griffin
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

June 26, 2013

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina.

¹This case has similar facts to the case at hand and the court allowed the amendment or withdrawal of the response to the requests to admit at trial.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,)

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,)

Plaintiffs,)

v.)

T. Heyward Carter, Jr.; Evans, Carter, Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' MOTION TO ALTER
OR AMEND PURSUANT TO RULE
59(e), SCRPC**

FILED
2013 JUL 24 PM 1:36
JACQUELIN K. STEVENSON
CLERK OF COURT

Plaintiffs submit this Motion to Alter or Amend the Court's Order dated July 3, 2013, pursuant to Rule 59(e). Plaintiffs received written notice of the entry of the order on July 12, 2013. The Order failed to address two issues - one involving the statute of limitations and the other involving the duty owed to Plaintiffs.

1. Statute of Limitations

The Order finds that Plaintiff's cause of action is barred by the statute of limitations under several alternatives. However, the Order one alternative date (April 19, 2006) is based upon a

request to admit that is ambiguous, and would result in the statute expiring five days before the filing of this action on August 24, 2006.¹ Plaintiffs raised this objection and moved to withdraw the Requests for Admission prior to the entry of the Order. See Plaintiffs' Objections to Proposed Order of Defendants Lynn Kerrison and Dixon Hughes, or in the Alternative, Motion to Amend a Response to a Request to Admit (attached hereto as Exhibit A). However, the Order fails to address that argument or rule on the motion. Thus, a motion to alter or amend is proper. Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)(A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review).

Here, the case law is clear that courts allow amendments to requests to admit, especially when the truth becomes apparent in later discovery. See, Barber v. Hobbs, 313 S.C. 319, 437 S.E.2d 409 (1993). In Barber, the court allowed a defendant to withdraw or amend his answer to a requests for an admission even though the trial had already started. Furthermore, in cases where the requests are ambiguous, courts have found that the ambiguity must be construed against the drafter and have declined to bind a party to the admission. See, e.g., Adams v. Orr, 260 S.C. 92, 194 S.E.2d 232 (1973); Talley v. U.S., 990 F.2d 695, 699 (1st Cir. 1993).

The request here is ambiguous on its face. Request No. 171 stated:

Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

This request could be interpreted as in at least two ways:

1) that at some unknown time after April 19, 2006, Tom Stevenson told Plaintiff Turner that a withdrawal of the trust had been made on April 19, 2006; or

¹Plaintiffs renew their previous objections to the other alternatives dates as well.

2) that Tom told Plaintiff Turner on April 19, 2006 that withdrawals had been made at some previous point.

Under the case law, this ambiguous request must be construed against the Defendants. Adams v. Orr, 260 S.C. 92, 194 S.E.2d 232 (1973); Talley v. U.S., 990 F.2d 695, 699 (1st Cir. 1993). Furthermore, the truth about the events of April 19, 2006 were revealed during the deposition of Kathleen Turner. For that reason,² Plaintiffs should be permitted to withdraw and amend their response under Barber. The Order does not address this argument or the case law and merely states that Plaintiffs are bound by their admission. Order, p. 9.

Because the Court did not rule on this issue or the pending Motion to Amend a Response to a Request to Admit, an amended order is needed. Plaintiffs request that the Order be amended to reflect the true facts of the events of April 19, 2006, as testified to by Kathleen Turner, and/or order grant Plaintiffs' motion to withdraw or amend their admissions. Furthermore, April 19, 2006 should not be used as the basis for the statute of limitations as Kathleen Turner testified that at her tour of Tom Stevenson's facility on April 19, 2006, he did not reveal the improper withdrawals.

2. Duty to Plaintiffs

The Order fails to recognize the effect of the Power of Attorney held by Kathleen Turner. The Order did not address that relationship with regard to the duty Dixon Hughes owed to Plaintiffs. The Order concludes that Plaintiffs were not clients and thus, could not assert claims for breach of any professional duties. However, Jacquelin Stevenson was a client of the DH Defendants and Kathleen Turner was appointed as attorney-in-fact for her mother in 2001. The holder of a power of attorney

²Plaintiffs also reassert and incorporate herein all arguments in Exhibit A, attached hereto.

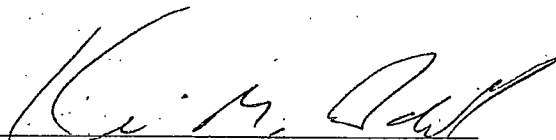
steps into the shoes of the grantor, and is basically an alter ego of the grantor. *Muller v. Bank of Am., N.A.*, 12 P.3d 899, 904 (Kan. App. 2000), citing 3 *Am.Jur. 2d Agency* § 21. In other words, as of 2001 when the Power of Attorney was executed, Kathleen Turner was Jacquelin Stevenson and the client of Dixon Hughes, who was owed a fiduciary duty. The Order ignores the Power of Attorney and should be amended to reflect that the fiduciary duty owed to Mrs. Stevenson extended to Kathleen.

The Order also finds that there was no duty to disclose client information to non-clients. However, because Kathleen Turner held the Power of Attorney for Mrs. Stevenson and the duty to disclose extends to her. Thus, the Order's reliance on *ML Lee Acquisition Fund, L.P.D.*, 327 S.C. 238, 489 S.E.2d 470 (1997), for the proposition that accountants are only allowed to disclose affirmative negligent misrepresentations to non-clients has no application; the Power of Attorney extends the client relationship to Plaintiffs. Furthermore, the other case cited by the Order, *Johnson v. Robert E. Lee, Inc.*, 401 S.C. 500, 737 S.E.2d 512 (Ct. App. 2012) would actually support Plaintiff's argument. That case held that an accountant's duty did not extend to a third party absent a "statute, contract, relationship, status, property interest, or **some other special circumstance.**" *Id.*, 401 S.C. at 504, 737 S.E.2d at 514 (emphasis added). The Power of Attorney is a special circumstance extending the duty, but the Order fails to address that Power of Attorney.

CONCLUSION

As set forth above (and in Plaintiffs' initial Objections), the Order should does not address the amendment of the requests to admit or the Power of Attorney held by Kathleen Turner. Plaintiffs respectfully request that this Court grant the motion and issue an amended order granting Plaintiffs' motion to withdraw the admission. In addition, the Order should be amended to find that the Power

of Attorney granted to Kathleen Turner by Mrs. Stevenson, extends the fiduciary duty of Dixon Hughes to the Plaintiffs.



A. Camden Lewis
Keith M. Babcock
James M. Griffin
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
Telephone: 803-771-8000
Facsimile: 803-733-3541

July 22, 2013

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: The Estate of Jacquelin K. Stevenson,
Deceased and the Estate of Thomas C.
Stevenson, Deceased,

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as Co-
Trustees and beneficiaries of the Marital
Trust and the Qualified Terminable Interest
Trust created by the Thomas Stevenson Will,
and Jacquelin S. Bennett, and Kathleen S.
Turner, as Co-Personal Representatives on
behalf of the Estate of Jacquelin K.
Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes
& Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-
Thomas Gumb & Co., P.A.; and Lynne L.
Kerrison.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

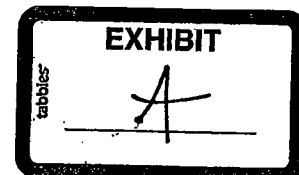
CASE NUMBER: 2011-CP-10-400

**PLAINTIFFS' OBJECTIONS TO
PROPOSED ORDER OF
DEFENDANTS LYNN KERRISON
AND DIXON HUGHES, OR IN THE
ALTERNATIVE, MOTION TO
AMEND A RESPONSE TO A
REQUEST TO ADMIT**

FILED
2013 JUN 21 PM 1:47
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

Plaintiffs submit the following objections to the Proposed Order and Judgment submitted by Defendants Lynn Kerrison and Dixon Hughes ("the DH Defendants") on June 13, 2013, or, in the alternative, move to amend their responses to a Request to Admit.

The proposed Order misstates and omits facts and then makes conclusions of law based on these erroneous facts. For example, on page 2 of the proposed Order, it states that this lawsuit



"seek[s]" to hold defendant-accountants, who prepared trust tax returns, liable...."¹ The DH Defendants did much more than simply prepare trust tax returns. They had possession of the Trust checkbooks and they wrote checks to Tom and Dan Stevenson from the Trusts, even though they knew that Plaintiffs had not consented to these withdrawals. The DH Defendants participated in, among others, an October 23, 2001 meeting with Tom and Dan and attorney Heyward Carter to discuss the impropriety of the withdrawals and the need to tell the Plaintiffs. The DH Defendants also participated in the preparation of promissory notes for Tom and Dan, in attempt to legitimize the withdrawals as loans.² One of the partners in the Dixon Hughes firm had a financial interest in the business for which Tom and Dan were borrowing money, and thus, had incentive to allow the withdrawals. The DH Defendants are disingenuous in stating that they only prepared tax returns.³

I. Knowing Participation

The proposed Order finds that there was no "knowing participation" by the DH Defendants in aiding and abetting Tom and Dan. However, the proposed Order acknowledges that the DH Defendants wrote checks from the trusts, but then concludes that there were no other acts to indicate

¹This "fact" leads to the conclusion that the DH Defendants did not "knowingly participate" in aiding and abetting Tom and Dan's breach of fiduciary duty.

²The DH Defendants failed to fully evaluate Tom and Dan's ability to actually pay back the monies taken.

³Similarly, on page 3 of the Order, it states that Pat Neopolitan, an employee of Jacquelin Stevenson (and not the DH Defendants) had possession of the checkbook and wrote the checks to Tom and Dan. While that was true for a time, the DH Defendants fail to mention that Ms. Neopolitan died and a bookkeeper in Dixon Hughes office then kept the checkbook and wrote checks to Tom and Dan whenever they asked for money.

"knowing participation." The proposed Order ignores the following acts⁴ of "knowing participation":

1. The DH Defendants were aware of the improper withdrawals in the Fall of 2001 and held a meeting with Tom and Dan and Carter Heyward to discuss the improprieties, as memorialized in the letter of Heyward dated November 29, 2001.
2. After the October 23, 2001 meeting (and up until 2006), the DH Defendants continued to write checks for Tom and Dan, with the knowledge that Tom and Dan were not supposed to withdraw any more monies.
3. The DH Defendants failed to inform any of the Plaintiffs of the improper withdrawals, despite the fact that Kathleen Turner had been appointed under the 2001 Power of Attorney to handle her mother's affairs.
4. The DH Defendants had a conflict of interest in that one of the other accountants at Dixon Hughes had a financial interest in the business for which Tom and Dan were borrowing money. Thus, the firm had incentive to keep the business solvent by providing the checks that facilitated the improper withdrawals.
5. The DH Defendants had possession of the Trust check books and issued checks to Tom and Dan upon request. Incredibly, the Order proposed by the DH Defendants attempts to legitimize this conduct by noting that since the DH Defendants did not sign the checks, they are some how insulated from liability.

In summary, the financial interest of the DH Defendants in the business, coupled with the knowledge of the improper withdrawals, the failure to inform any of the Plaintiffs (particularly Kathleen Turner, who held a Power of Attorney for her mother), as well as the literal act of providing the checks to the Tom and Dan constitute "knowing participation" in aiding and abetting the breach of fiduciary duty.

⁴These acts were set forth in Plaintiffs' Memorandum in Opposition to the DH Defendants' Motion for Summary Judgment.

II. Request to Admit

The proposed Order improperly uses an answer to a request to admit, which is ambiguous, as a basis to find that the statute of limitations has run.⁵ On or around May 11, 2011, the DH Defendants served their First Requests for Admission on Plaintiff Kathleen Turner (relevant excerpt attached hereto as Exhibit A). There were a total of 171 requests. The Request at issue (the last one of the 171 requests) stated:

Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

This request could be interpreted as in at least two ways:

- 1) that at some unknown time after April 19, 2006, Tom Stevenson told Plaintiff Turner that a withdrawal of the trust had been made on April 19, 2006; or
- 2) that Tom told Plaintiff Turner on April 19, 2006 that withdrawals had been made at some previous point.

⁵The two other statute of limitation dates in the proposed Order also do not provide a basis for summary judgment. As for the May 21, 2003 meeting, Kathleen testified that Tom mumbled for a minute but did not disclose the withdrawals; thus, there was not notice of a potential claim. Turner Dep., p. 64-67. In addition, the DH Defendants' notice to Heyward Carter does not count as notice to the client because the DH Defendants and Heyward Carter were actively concealing the knowledge from Mrs. Stevenson and drafting notes to legitimize the loans. *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 498 (1979) (Agent's interest in concealing information from his principal is exception to the rule that a principal is affected with knowledge his agent receives.)

While the meaning of the request was unclear⁶ and Plaintiff Turner admitted it, from the deposition testimony, it is clear that on April 19, 2006, Tom Stevenson did not inform Plaintiff Turner that he had been withdrawing money from the Trusts :

Q. Ms. Turner, on April the 19th in the year 2006, you met with your brother Tom at his place of business FabTech, didn't you?

A. I did.

Q. And did he take you on a tour of his facility?

A. He did.

Q. And did he talk to you about the fact that monies from the trusts had been invested in his company FabTech?

A. No, he did not.

Turner Dep. 97:24-98:9 (emphasis added). The admission should not control where Kathleen has testified, under oath, about the events of that day.

A review of the case law indicates that courts have readily allowed amendments to requests to admit, especially when the truth becomes apparent in later discovery. See, Barber v. Hobbs, 313 S.C. 319, 437 S.E.2d 409 (1993). In considering amendment (or withdrawal) of admissions, court consider whether amendment will further presentation of the merits and whether the opposing party will suffer any prejudice. Id.; see also Rule 36, SCRPC.

⁶In Adams v. Orr, the Supreme Court affirmed the trial judge who had refused to hold that the an ambiguous request admitted, stating that "[i]n view of the fact that the request for admission was subject to more than one reasonable interpretation, we cannot say that the trial judge erred" in setting aside the admission. Similarly, in Talley v. U.S., 990 F.2d 695, 699 (2nd Cir. 1993), the court considered a purported admission by the defendant and stated "[t]his last request, whether deliberately or not, is an invitation to confusion." The court noted that the request could construed in two different ways and that "[t]o the extent that the request is ambiguous, that ambiguity is to be construed against Talley (whose lawyer drafted the request)."

In Barber v. Hobbs, the defendant admitted that he "diagnosed" a patient with pneumonia on May 22. At his deposition several months later, Dr. Hobbs testified that he "suspected" pneumonia the night of May 22. At trial, Dr. Hobbs testified that though he was worried about pneumonia on May 22 and ordered x-rays, he did not diagnose pneumonia until the following morning after reviewing the x-ray report. The trial court found that it would be an injustice to preclude Dr. Hobbs from denying the admission, and, further ruling that the plaintiff had waived the benefit of the admission by thoroughly examining Dr. Hobbs on the issue.

Moreover, a federal court has addressed a situation almost identical to the one here. The court in F.D.I.C. v. Prusia, 18 F.3d 637, 639 (8th Cir. 1994) specifically considered an admission which affected the statute of limitations and whether the plaintiff had timely filed and found that admission could be withdrawn, stating:

Because allowing the erroneous admission to stand might have barred the FDIC's claim, permitting the amendment would have subverted the presentation of the merits.

F.D.I.C. v. Prusia, 18 F.3d 637, 640 (8th Cir. 1994).⁷ In other words, because courts favor decisions on the merits, the party whose admission prevents such a trial on the merits can withdraw the admission.

As to the second factor courts consider in allowing an admission to be withdrawn, it is clear that there will be no prejudice to the DH Defendants if the admission is withdrawn. The necessity of having to convince the trier of fact of the truth of a matter erroneously admitted is not considered prejudice. F.D.I.C. v. Prusia, 18 F.3d 637, 640 (8th Cir. 1994). As recognized in Wright Miller & Kane, 8B Fed. Prac. & Proc. Civ. § 2264 (3d ed.), relying on admissions in preparing a motion for

⁷Like the case here, that matter was before the Court on a motion for summary judgment.

summary judgment does not, by itself, constitute prejudice. (citing Conlon v. U.S., 474 F.3d 616 (9th Cir. 2007)). Furthermore, the deposition of Kathleen Turner, taken after the admission, fully explained the events of April 19, 2006. Thus, Plaintiffs should be permitted to withdraw the admission and the proposed Order should not include April 19, 2006 as a trigger for the running of the statute of limitations.

III. Duty of Defendants

In addressing the supposed lack of duty of the DH Defendants to “non-clients”, the proposed Order fails to even address the effect of the Power of Attorney held by Kathleen Turner. It is undisputed that Jacquelin Stevenson was a client of the DH Defendants.⁸ Kathleen Turner was appointed as attorney-in-fact for her mother in 2001. The holder of a power of attorney steps into the shoes of the grantor, and is basically an alter ego of the grantor. *Muller v. Bank of Am., N.A.*, 12 P.3d 899, 904 (Kan. App. 2000), citing 3 *Am.Jur. 2d Agency* § 21. In other words, as of 2001 when the Power of Attorney was executed, Kathleen Turner was Jacquelin Stevenson and the client of the DH Defendants. Thus, the fiduciary duty of the DH Defendants extends to Kathleen Turner. The proposed Order ignores this relationship and the resulting duty.

⁸As the proposed Order acknowledges, the DH Defendants performed accounting work for Mrs. Stevenson and the Trusts.. Order p. 2.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.2011-CP-10-400

PLAINTIFF KATHLEEN S. TURNER'S
RESPONSES TO DEFENDANT LYNNE L.
KERRISON'S FIRST REQUEST FOR
ADMISSIONS

V. .

www.

Turner hereby responds to Defendant Lynne L. Kerrison's First Requests for Admissions as follows:

1. Between March 7, 2001 and October 11, 2005 Thomas Stevenson, as co-trustee of the marital and QTIP trusts, misappropriated a total of \$950,000.00 from assets he and Daniel Stevenson held in trust under the terms of the marital and QTIP trusts.

EXHIBIT
A

166. In 2005 you made no requests to either trustee for a statement of the accounts of the QTIP trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

167. In 2005 you made no requests to either trustee for a statement of the accounts of the marital trust pursuant to S.C. Code § 62-7-303 as it existed from 1987 through 2005.

RESPONSE: Plaintiff objects to this request as S.C. Code § 62-7-303 did not exist until 2005.

168. You met with Thomas Stevenson in May of 2003 to discuss the administration of the trusts.

RESPONSE: Denied.

169. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trusts in May of 2003.

RESPONSE: Denied.

170. You met with Thomas Stevenson on April 19, 2006.

RESPONSE: Admitted.

171. Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006.

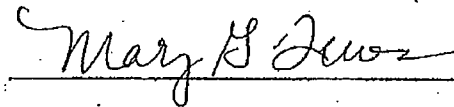
RESPONSE: Admitted.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis

Keith M. Babcock

Mary G. Lewis

A handwritten signature in cursive script, appearing to read "Mary G. Lewis", is written over a horizontal line.

Post Office Box 11208
Columbia, South Carolina 29211
(803)771-8000

Attorneys for Plaintiffs

Columbia, South Carolina

June 9, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND JUDGMENT**

Defendants offer the following response to plaintiffs' Motion to Alter or Amend
Judgment pursuant to S.C.R.C.P. 59(e)

PLAINTIFFS' MOTION

Plaintiffs have requested that the court alter or amend its judgment of July 3, 2013. First, plaintiffs request that the court rule upon their motion to amend their response to a request for admission, and then (if such ruling is favorable) to eliminate the finding in the court's order and judgment that (alternatively) plaintiffs' claims were barred April 19, 2009 in consequence of an admitted communication to Kathleen S. Turner on April 19, 2006.

Plaintiffs also object to the finding that the defendants owed no duty to the plaintiffs. They request that the court's order and judgment be altered or amended to adopt a new theory, that because Ms. Turner was an attorney in fact for her mother,

Jacqueline Stevenson, and because her mother was a client, the defendants owed duties (at times claimed to be fiduciary) to Ms. Turner and all other plaintiffs, notwithstanding the absence of any other relationship between defendants and plaintiffs.

APPLICABLE STANDARD

A court's decision on a motion to alter or amend a judgment under Rule 59 is committed to the court's discretion. *Sullivan v. Hawker Beechcraft Corp.* 397 S.C. 143, 723 S.E.2d 835 (S.C.App. 2012). A party cannot use a motion to alter or amend a judgment to present to the lower court an issue the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (S.C.App. 2009).

ARGUMENT

Following argument on summary judgment and a ruling by the court, plaintiffs now request leave to withdraw their response to a request for admission. Plaintiffs' request comes too late, and would in any event, not avail the plaintiffs, as even without the admitted fact, there were many other reasons to find that plaintiffs' claim was barred by the statute of limitations, as more completely set forth in the proposed order. This case is analogous to *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993). In *Foggie*, the South Carolina Supreme Court affirmed a trial court's denial of a defendant's motion to amend its answer in order to withdraw an admission on the eve of trial in light of recently discovered evidence. While noting that S.C.R.C.P. 15 is liberal in permitting amendment of pleadings, because the remaining admissions established substantially similar facts, and leave to amend was not requested until shortly before trial, the court found that the trial court did not abuse its discretion in denying the motion to amend. In this case, the lateness of the request, and the fact that the ultimate result would not be changed, also favor denial of plaintiffs' motion for leave to withdraw their response to the request to admit.

Plaintiffs then object to the court's ruling that defendants owed them no duty, because they were not clients. They argue that because Kathleen Turner served as an attorney in fact for defendants' client, Jacqueline Stevenson, Ms. Turner, and all other plaintiffs, somehow became clients, as well. The underlying issue of duty was addressed by the parties in their briefing on the motion for summary judgment, and the order's finding of a lack of duty is consistent with the court's ruling (which addresses the arguments made by plaintiffs in connection with the motion for summary judgment). The arguments previously made are incorporated by reference.

So far as plaintiffs' new argument (duty to agent by virtue of relationship with principal) is concerned, the argument is untimely. See *Gartside, supra*. This argument could have been fully-developed in connection with the underlying motion, it relies on no new facts, nor was there any "surprise" in defendants' argument or the court's ruling. The argument is also substantively unavailing. Plaintiffs argue that because defendants owed a duty to the principal, Jacqueline Stevenson, a duty was owed to the agent (attorney in fact), Kathleen Turner, individually. However, plaintiffs' argument assumes that the principal acts on behalf of the agent, while only the reverse is true. Plaintiffs seek to stand the law concerning the relation of principal and agent (or attorney in fact and principal) on its head. While it is clear that when an attorney in fact engages a professional on behalf of the principal, the professional will owe duties to the principal, the reverse is not true. In any event, Ms. Turner did not engage the defendants, their relationship with Jacqueline Stevenson long-predated Ms. Turner's service as her mother's attorney in fact.

The South Carolina Supreme Court has held that an attorney's representation of the agent in his individual capacity does not create duties from attorney to the principal, recognizing the separateness of agent and principal, and the non-transferability of obligations between them.

Because Respondent represented Son and not Appellant in the Beaufort Property transaction, the only duty of care arising out of that relationship was owed to Son. Thus, we agree with the trial court's finding that Respondent did not owe a duty of care to Appellant.

Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 401, 697 S.E.2d 551, 554-55 (2010). If a duty was owed to plaintiffs, it had to be owed as a result of the relation between defendants and one or more plaintiffs, not as a result of a relation between defendants and Jacqueline Stevenson. The evidence was uncontested that there was no relationship between defendants and plaintiffs.

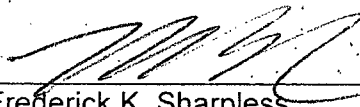
At one point, plaintiffs suggested that the court should find that the duty owed by defendants to plaintiffs, who were strangers to defendants, was a fiduciary duty. The issue of fiduciary duty was extensively briefed on the underlying motion for summary judgment, and those arguments are incorporated by reference. There is no support for the notion that accountants owe fiduciary duties to their clients, in the ordinary course of the relation, much less owing fiduciary duties to non-clients.

CONCLUSION

The court should enter an order:

- (1) Denying plaintiffs' motion to amend/withdraw their admission;
- (2) Denying plaintiffs' motion to alter or amend the judgment, specifically finding that defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney in fact for Jacqueline Stevenson.

This the 25 day of July, 2013.



Frederick K. Sharpless
Attorney for Defendants Dixon-Hughes, PLLC
and Lynne L. Kerrison
SHARPLESS & STAVOLA, P.A.
P O Box 22106
Greensboro, NC 27401
Telephone: (336) 333-6384

OF COUNSEL:

M. Dawes Cooke, Jr.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401
Telephone: (843) 577-7700

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young
Case No. 2011-CP-10-400

RECEIVED

APR 24 2014

SC Court of Appeals

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually,
as Co-Trustees and beneficiaries of the Marital Trust and the Qualified
Terminable Interest Trust created by the Thomas Stevenson Will, and
Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives
on behalf of the Estate of Jacquelin K. Stevenson,

Appellants,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Douglas Capital
Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants,

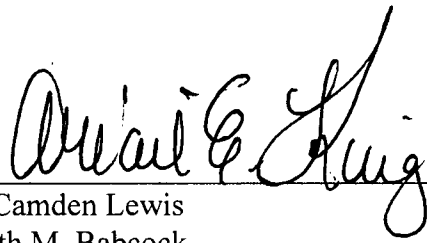
Of Whom

Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison are

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Amended Volume 1 of the Record on Appeal contains
all material proposed to included by any of the parties and not any other material, and that
Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data
Identifiers.



A. Camden Lewis

Keith M. Babcock

Ariail E. King

LEWIS, BABCOCK, & GRIFFIN, LLP

1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

(803) 771-8000

ATTORNEYS FOR APPELLANTS

Columbia, SC
April 17, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

The Honorable Roger M. Young
Case No. 2011-CP-400

RECEIVED
APR 28 2014
SC COURT OF APPEALS

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson,

Appellants,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison,

Defendants,

Of Whom

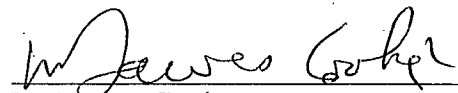
Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison are

Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents Dixon Hughes and Lynne L. Kerrison and Certificate of Counsel on Appellants by depositing a copy of same in the United States Mail, postage prepaid, on April ____, 2014, addressed to their attorneys of record, A. Camden Lewis, Keith M. Babcock, James M. Griffin and Ariail E. King at Lewis Babcock & Griffin, LLP, 1513 Hampton Street, P O Box 11208, Columbia, SC 29211.

Dated: 4/24/14


M. Dawes Cooke, Jr.
Barnwell Whaley Patterson & Helms, LLC
P. O. Drawer H
Charleston, SC 29402
(843) 577-7700
Attorney for Respondents