

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. 2013-2319

APPEAL FROM LAURENS COUNTY
COURT OF COMMON PLEAS

Civil Action No. 2012-CP-30-258
The Honorable Frank R. Addy, Circuit Court Judge

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay Appellant-Respondent,

vs.

Martha Brown and Mary Moses Respondents-Appellants.

RECORD ON APPEAL
VOLUME 1 OF 4

Pages 1-481

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007ES3000208

IN THE MATTER OF
THE ESTATE OF MARION M. KAY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED.** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other -
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at Laurens, South Carolina, this 24th day of May, 2011.

Donald B. Hocker

PRESIDING JUDGE

This judgment was entered on the 24th day of May, 2011, and a copy mailed first class this 24th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John R. Ferguson, Esquire

Daryl G. Hawkins, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty W. Hocker
Clerk of Court

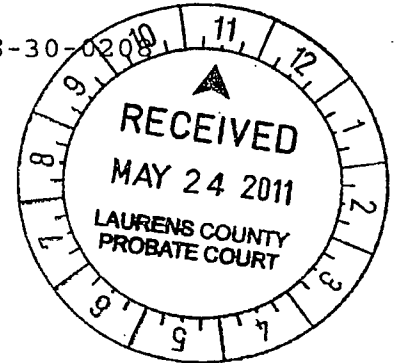
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

IN THE PROBATE COURT

Case No. 2007-ES-30-0208

IN THE MATTER OF MARION M. KAY



FINAL ORDER

This matter came before me on February 21 and 22, 2011 to consider Personal Representative Edward D. Sullivan's Petition for Settlement of the estate and related issues. Those related issues include determining PR commissions and costs, the parties' requests for attorney fees, the consideration of an offset pursuant to S.C. Code § 62-3-903, PR expenses pursuant to S.C. Code § 62-3-715(16) and (19), requested commissions for an unknown amount of PR work preparing tax returns and closing the estate, the treatment of exhibits marked for identification and a Motion to Remove the Personal Representative. Heirs Mary M. Moses and Martha M. Brown (hereinafter the Defendants) oppose the relief sought by the PR.

The Personal Representative has requested approval of the following:

- a) \$ 93,775.00 total commissions already paid;
- b) \$ 13,447.05 additional commissions not yet paid;
- c) \$ 12,195.93 paid to Collins and Lacey for attorney's fees and costs;
- d) \$ 5,000.00 paid to Paul Major for an appraisal;
- e) \$ 1,303.65 paid to Collins and Lacey for additional attorney fees and costs;
- f) \$ 750.00 paid to Wilson Forestry for consultant work;
- g) \$ 7,714.57 billed by Collins and Lacey for attorney's fees and costs but not yet paid;
- h) \$ 4,592.23 billed by Collins and Lacey for attorney's fees and costs but not yet paid;

- I) \$ 13,447.05 to Daryl Hawkins for attorney's fees and costs;
- j) \$ 1,695.00 for expert fees to Major and Co.;
- k) \$ 350.00 for expert fees to Wilson Forestry;
- l) \$ 285.00 court reporting fees to Shorb Court Reporting;
- m) \$ 875.00 court reporting fees to Garber Court Reporting.

Together these fees and costs total \$ 157,179.00; and the PR is claiming an additional unspecified amount for preparation of tax returns and closing the estate. Of this amount, only \$ 7,714.57 (5% of the total) related to litigation outside of litigation costs in connection with approval of all of these fees and expenses in the current action.

I make the following findings of fact:

1. The twin flaws in the PR's position are his failure to provide adequate proof for the hours he claims and his failure to prove a necessity for most of the hours he claims.

2. The PR unnecessarily complicated the Estate by insisting on filing a partition action. This was a fairly basic estate which could have been easily, quickly and cheaply settled by a deed of distribution. This would also have been in conformity with the Testatrix's Will.

3. The PR unnecessarily complicated the Estate by converting an eight month option to purchase the Estate's one half interest in its real estate into an indefinite right to purchase and by giving the option holder the right to buy only a portion of the property contrary to the Will.

4. There was no necessity for a sale of the real estate. The Court understands that a sale of real property generates proceeds.

5. The Court does not understand why the PR began charging the

#2
DBA

Estate before the Testatrix died on May 3, 2007 and before he was appointed PR on May 16, 2007.

6. The PR did an excellent job in securing the sales price for the real estate, but this does not justify the commission sought.

7. Although the PR argued the existence of novel issues regarding the real estate, I do not find any.

8. The PR failed to provide any legitimate basis for the fees he claimed and instead testified that he had no method or formula for determining the amount for the four draws he gave himself other than by pulling a figure out of the air. Although the PR in Memorandum argued that he had 468.6 hours of time as PR, the proof he provided failed to support this.

9. No explanation was offered to explain or excuse the PR's failure to provide interim accountings until the latter part of 2010 when the final accounting was in the offing, about three and a half years after the estate was opened.

10. The Supplemental Inventory reflects an Estate value, including real estate, of \$ 513,491.00; however, the addition of the personal property value of \$ 122,491.00, real estate proceeds of \$ 365,012.00 and additional income to the Estate of \$ 24,682.47 produces a total Estate value of \$ 512,185.47.

11. The PR's total draws to date equal 18.3% of the estate value. Adding the additional request of \$ 13,447.05 would boost the PR's share to 21.0% of the estate, and this percentage would go even higher if additional compensation were allowed for preparation of tax returns and closing of the estate. By contrast, the

#3
DJD

statutory rate of 5% would produce a commission of \$ 25,650; and a 10% commission would be \$ 51,300.

12. The claimed \$ 157,179.00 in commissions, attorney's fees and expenses would constitute 31% of the Estate's value. Although litigation can deplete an estate, that is not the situation here. Most of the amount claimed is not related to litigation resulting from the demand for a hearing on the final accounting.

13. The commissions sought by the PR are clearly excessive, and he failed to provide the Court with an alternate proposal for valuing his services.

14. I find that a PR fee of \$ 51,300, which is about ten (10%) percent of the Estate, is reasonable. The PR had previously paid himself \$ 93,775.00 without prior court approval. The balance of the commission draws previously taken (\$ 42,475.00) must be promptly refunded to the Estate. This compromise takes into account that not all of the heirs opposed the PR's final accounting and that the PR may face difficulties in obtaining the necessary funds to make the refund. The PR is not entitled to the additional \$ 13,447.05 he has claimed.

15. Although the PR has exemplary credentials and good standing in the Bar, this in and of itself does not ^{Automaticity} justify the relief requested. (DCH)

16. I do not find bad faith on the part of the PR.

17. I approve the previous payment of \$ 13,499.58 to Collins and Lacey and find that the Collins and Lacey is entitled to be paid an additional \$ 12,306.80. Although the Court questions the

[Handwritten signature]

necessity of 204.6 hours of paralegal time, they should be compensated for their work.

18. The PR is entitled to have the Estate pay \$ 5000 to Paul Major for an appraisal and \$ 750 to Wilson Forestry for consultant work.

19. Although Daryl G. Hawkins represented the PR well, his representation was primarily of the PR in his individual capacity seeking approval of the PR's commissions and expenses. I therefore do not find that the Estate should pay Mr. Hawkins or the trial expenses for his three experts, Major, Wilson and Massey.

20. There were three exhibits marked for identification (Plaintiff's L and Defendants' 4 and 14). All of these shall come into evidence and be made part of the record.

21. Defendants have sought attorney's fees for their attorney, John R. Ferguson; and I find that this is warranted. Mr. Ferguson has been in practice for more than 30 years and enjoys a high reputation. He is the author of a legal reference work. He necessarily devoted 99.3 hours to this case to date (all of which appears related to the merits of the matter) and the usual compensation rate in such situations is \$ 200 per hour. Through his efforts the Estate has benefitted substantially. Having considered all the *Glasscock* factors, I therefore find that he is entitled to be paid \$ 19,860.00 as his fee from the Estate.

I make the following conclusions of law:

1. Inasmuch as the Testatrix was a resident of Laurens County, jurisdiction and venue are properly with this court.

2. A personal representative has a duty to settle and distribute the estate in accordance with the terms of the Will and the Code as expeditiously and efficiently as is consistent with the best interests of the Estate. S.C. Code § 62-3-703.

3. A personal representative is a fiduciary and in equity and good conscience is bound to act in good faith and with due regard to the interests of the estate. *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 838 (Ct. App. 2009).

4. Equity requires that all the heirs pay for the work of Defendants' attorney, because his work preserved and protected a common fund, not just for the benefit of the Defendants, but for all the heirs. *Layman v. State*, 376 S.C. 434, 452, 658 S.E.2d 320 (2008).

5. While S.C. Code § 62-3-720 allows litigation expenses, including attorney's fees for the PR, I do not find this statute to be applicable to a situation where the representation was primarily for the benefit of the PR individually and not the Estate.

6. In light of the fact that this Estate is ready to be closed, Defendants' Motion for Removal of Personal Representative is denied. If the PR is willing to finish wrapping up the Estate (including filing the necessary tax forms), he shall be entitled to an additional \$ 2500 in commissions for this. See S.C. Code § 62-3-715(16) and (19).

7. Offset pursuant to S.C. Code § 62-3-903 is denied, as the PR did not present sufficient evidence to grant this relief.

8. In light of my other rulings, I do not reach the

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Defendants' contention that the PR is not entitled to enhanced compensation for legal services rendered to himself. See *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 545 (2000).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

a) the PR is granted the right to retain \$ 51,300.00 in commissions;

b) the PR must refund to the Estate within thirty (30) days of this Order all other commissions he has taken. His request for further compensation is denied;

c) the previous payment of \$ 13,499.58 to Collins and Lacey is approved, and Collins and Lacey is entitled to an additional \$ 12,306.80 from the Estate;

d) the payment of \$ 5000.00 to Paul Major for an appraisal and the payment of \$ 750.00 to Wilson Forestry for consultant work by the Estate are approved;

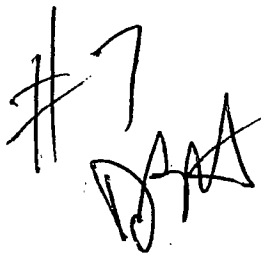
e) the Estate shall pay John R. Ferguson the sum of \$ 19,860.00 for his attorney fee pursuant to the common fund doctrine;

f) attorney fees for Daryl Hawkins are denied, and these are the responsibility of the PR and not the Estate;

g) costs pertaining to the Petition for Settlement and the expert witness fees of Major, Wilson and Massey, must be borne by the PR and not the Estate;

h) the exhibits marked for identification are admitted into evidence;

I) the Motion for Removal of the Personal Representative is

A handwritten signature, possibly "D. A. A.", is written over a large handwritten number "7".

denied. If Mr. Sullivan is willing to finish winding up the affairs of the Estate, he shall be entitled to an additional \$ 2500 in commissions. If he is not willing to continue, then both sides shall promptly submit the name of a possible successor who is willing to serve so that the Court may select a successor; and

k) offset pursuant to S.C. Code § 62-3-903 is denied.



DONALD B. HOCKER
Associate Judge
Laurens County Probate Court

Laurens, SC

May
24, 2011

#8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007ES3000208

IN THE MATTER OF
THE ESTATE OF MARION M. KAY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.**
- ☐ **ACTION DISMISSED.** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other -
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at Laurens, South Carolina, this 27th day of March, 2012.

Donald B. Hocker
PRESIDING JUDGE

This judgment was entered on the 27th day of March, 2012, and a copy mailed first class this 28th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

John R. Ferguson, Esquire
P.O. Box 286
Laurens, SC 29360

Daryl G. Hawkins, Esquire
P.O. Box 11906
Columbia, SC 29211

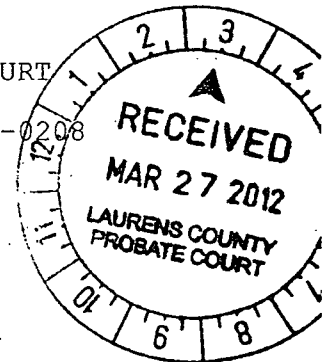
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Butler W. Baker
Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

IN THE PROBATE COURT
 CASE NO. 2007-ES-30-0208



IN THE MATTER OF MARION M. KAY

ORDER DISPOSING OF POST-TRIAL MOTIONS

This matter comes before me pursuant to the Personal Representative's Motion to Reopen the Record and Motion to Alter or Amend Judgment. He additionally sought attorney fees and a ruling concerning whether the PR had to provide to Mr. Ferguson a copy of a transcript he requested the Court to consider. By Return to the motions, counsel for Mary Moses and Martha Brown raised the additional issues of attorney fees since the merits hearing and the failure to rule on a five acre tract sought by Ms. Brown.

In addition to Daryl G. Hawkins, Esq., counsel for the PR, and John R. Ferguson, Esq., counsel for Ms. Moses and Ms. Brown, George R. McElveen III, Esq., attended the hearing as counsel for Bart Heard.

I have carefully considered the arguments of counsel and the exhibits presented at the hearing. I additionally allowed Mr. Hawkins to provide the PR's time records while at Collins and Lacy and a fee affidavit. No other evidence was considered.

I deny the Motion to Reopen the Record. I cannot find any compelling reason to reopen the record in this case to allow the time records and the Stomski Affidavit into evidence. There was no allegation that these documents were after-discovered evidence and

could not have been presented at trial.

Reopening the record now would mandate a continuation of the proceedings for cross-examination and the potential admission of new evidence. This case has already been fully litigated for a significant length of time by excellent attorneys. Both sides had a full and fair opportunity to present any existing and available evidence to the Court and are not entitled to re-litigate their cases.

Although I am unclear why the Boddifer bill for tax return preparation is in the Motion to Reconsider, I do find that it is a legitimate Estate expense which the Estate should pay. The Estate is authorized to pay this invoice out of Estate assets.

As to the court reporter bills, it appears that Shorb has been paid and that Garber has been partially paid. Both sides have benefitted and will benefit from these court reporting services; so the Estate shall pay any court reporting bills which are currently unpaid. Ms. Brown and Ms. Moses are responsible for one-half of the total, and their share is to be deducted at the closing of the Estate from their distributions. Any additional court reporting charges to date shall be paid equally from each side. Mr. Hawkins will provide Mr. Ferguson with a copy of the transcript, and the copying charges will be borne by Mr. Ferguson's clients.

I deny the Motion to Alter or Amend Judgment. The Court painstakingly reviewed the entire record in making its original decision and has once again reviewed everything. I find that there is no basis to alter or amend any provisions of the May 24, 2011

#2
DMS

Order.

Martha Brown had requested that I award her a five acre parcel which was allegedly part of a partition/land swap. Insufficient evidence was presented to grant any relief on this issue.

I deny both sides' request for attorney fees. The PR is not entitled to attorney fees because he did not prevail and his motions were primarily for his own benefit. Ms. Moses and Ms. Brown have sought an attorney fee award as well, but I find that the Common Fund Doctrine does not apply because no extra assets were generated for the Estate.

AND IT IS SO ORDERED.



DONALD B. HOCKER
Associate Probate Judge

Laurens, SC

March 27, 2012

#3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-30-258

IN THE MATTER OF THE ESTATE OF MARION M.
KAY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: LAURENS COUNTY CLERK OF COURT Attorney for ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

Disposition Type (Check One)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Having fully considered the evidence, argument of counsel at the hearing of July 19, 2013, and the supplemental filings submitted to the court post-hearing, the court affirms the order of the Probate Court dated March 27, 2012. All parties shall bear their own fees and costs associated with the appeal to this court. Finally, due to the fact that sufficient legal fees have been paid to counsel during this litigation, this form order shall constitute the final order in this matter.

Order Information

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order:			

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests

or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

2159

August 20, 2013

Fahlello J.
Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class this
day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:
Daryl G. Hawkins, Esq. John R. Ferguson, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-30-258

IN THE MATTER OF THE ESTATE OF MARION M.
KAY

LYNN W. LANCASTER

PLAINTIFF(S)

2013 OCT -1 P 2:30 DEFENDANT(S)

Submitted by:	Attorney for Defendant	☐ Plaintiff	☐
	LAURENS COUNTY CLERK OF COURT	☐ Self-Represented Litigant	

Disposition Type (Check One)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter comes before the court on competing motions for reconsideration of the court's order of August 20, 2013. The court received permission from counsel to decide the issue on the briefs submitted instead of oral argument. Having considered the arguments presented, the court reaffirms its prior ruling and affirms the order of the Probate Court.

On the question of whether the award against the PR for excessive fees bears post-judgment interest, the court is hesitant to even address this question because the law appears fairly clear. An award made in an action to review compensation under Section 62-3-808(d) falls within the meaning of "[a] money decree or judgment" under 34-31-20 (Supp. 2005). The underlying suit was in the way of an action for an accounting under Section 62-3-808(d). An action for an accounting sounds in equity, and Section 34-31-20(b) applies to equitable actions. *Casey v. Casey*, 311 S.C. 243, 245, 428 S.E.2d 714, 715-16 (S.C. 1993). A party need not request post-judgment interest in the complaint, nor must a party raise the issue at trial or Rule 59 motion, because the prevailing party is entitled to post-judgment interest "as a matter of course." *Calhoun v. Calhoun*, 339 S.C. 96, 102-04, 529 S.E.2d 14, 17-19 (S.C. 2000). Interest runs from the date of the original judgment even during the pendency of an appeal. *Calhoun, supra*, 339 S.C. at 104, 529 S.E.2d at 19. A judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal. *Horry County v. Woodward*, 291 S.C. 1, 351 S.E.2d 877 (S.C. App. 1986). To the extent further clarification is necessary, the matter should be briefed in the appeal of this court's orders affirming the trial court.

Order Information

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property	
JUDGMENT AGAINST PLAINTIFF:	JUDGMENT AGAINST DEFENDANT:

Judgment Amount	\$	Judgment Amount	\$
Taxable Costs	\$	Taxable Costs	\$
Attorney's Fees	\$	Attorney's Fees	\$
Interest	\$	Interest	\$
Other	\$	Other	\$
Total Amount to be Enrolled:	\$	Total Amount to be Enrolled:	\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

2159 September 30, 2013
 Circuit Court Judge J. R. Ferguson, Jr. Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:
Daryl G. Hawkins, Esq. John R. Ferguson, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCCP & CC

STATE OF SOUTH CAROLINA

COUNTY OF: LAURENS

IN THE MATTER OF: MARION MILAM KAY

IN THE PROBATE COURT

PETITION FOR SETTLEMENT

CASE NUMBER: 2007ES3000208

COPY

1. The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.
2. The Personal Representative(s) has/have filed:
 - ☒ Proof of Publication
 - ☒ an Inventory
 - ☒ a Proposal for Distribution
 - ☐ a Final Accounting
 - ☐ all required returns (including final income tax return, fiduciary income tax return, estate tax return). If not, please explain.
** FINAL FIDUCIARY INCOME TAX RETURN IS BEING PREPARED*
3. The time period for submission of claims has expired.
4. I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.
5. I request that the Court (check all that apply)
 - ☒ A. Consider and approve an accounting and the proposal for Distribution.
 - ☒ B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for distribution (Form #410PC)
 - ☐ C. Find that the decedent died testate and make a determination of the testacy status and beneficiaries of the decedent.
 - ☐ D. Find that the decedent died intestate and make a determination of the heirs at law of the decedent.
 - ☒ E. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
 - ☐ F. (Other:)
6. Notice of right to demand hearing and copies of the final accounting, the proposal for Distribution, and this petition have been/are being sent to all interested persons as required by law.

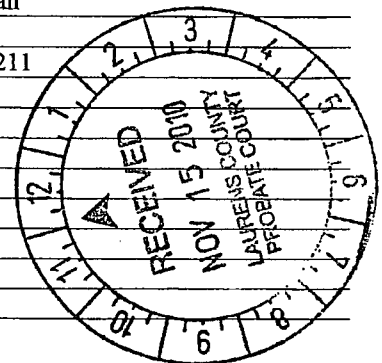
Executed this 12th day of November, 20 10SWORN to before me this 12 day of
November 20 10

Kristin M'Scann
 Notary Public for South Carolina
 My Commission Expires: 11/07/16

Signature: *Edward D. Sullivan*
 Name: Edward D. Sullivan
 Address: PO Box 11714
 Columbia, SC 29211
 Telephone (O): 803.451.2775
 (H): cell 803.261.8475

Signature: _____
 Name: _____
 Address: _____

Telephone (O): _____
 (H): _____



STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)

IN THE PROBATE COURT
PROPOSAL FOR DISTRIBUTION
 CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan
Page 1

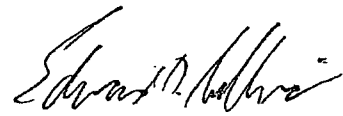
Name and Address of Distributee	Amount or Item
Collins and Lacy, PC - legal fees and costs pertaining to real estate litigation PO Box 12748 Columbia, SC 29211	\$7714.57
Collins and Lacy, PC - legal fees pertaining to estate administration PO Box 12487 Columbia, SC 29211	\$4,592.23
Clifton D. Bodiford, CPA - final tax return preparation 4406 Forest Drive Columbia, SC 29206	\$1,000.00
Lisbon Presbyterin Church c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Liisbon Presbyterian Church Cemetery Fund c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Presbyteriian Home of South Carolina Management Services Office PO Box 210037 Columbia, SC 29221	1/10 of residuary estate assets
Edward Bart Heard 3221 Fish Hatchery Rd Gaston, SC 29053	1/10 of residuary estate assets less advance of \$6000.00

Executed this 12th day of November, 2010.

Signature: _____
 Name: _____
 Address: _____

Telephone (O): _____

FORM #410PC (1/91)
 62-3-1001, 62-3-1002, 62-3-1003

Signature: 
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803.451.2775

cell: 803-261-8475

CASE NUMBER: 2007ES3000208

[illegible]

STATE OF SOUTH CAROLINA)

COUNTY OF: LAURENS)

IN THE MATTER OF: MARION MILAM KAY)

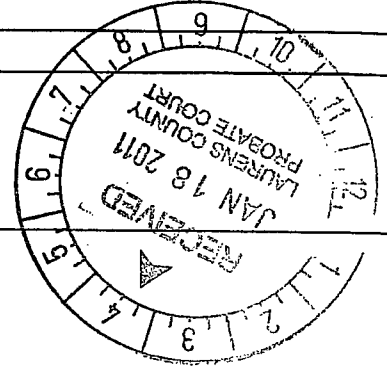
IN THE PROBATE COURT

AMENDED PROPOSAL FOR DISTRIBUTION

CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan
Page 1

Name and Address of Distributee	Amount or Item
Collins and Lacy, PC - legal fees and costs pertaining to real estate litigation PO Box 12748 Columbia, SC 29211	\$7714.57
Collins and Lacy, PC - legal fees pertaining to estate administration PO Box 12487 Columbia, SC 29211	\$4,592.23
Clifton D. Bodiford, CPA - final tax return preparation 4406 Forest Drive Columbia, SC 29206	\$1,000.00
Lisbon Presbyterian Church c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Lisbon Presbyterian Church Cemetery Fund c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Presbyterian Home of South Carolina Management Services Office c/o Penny Arnold 2817 Ashland Road Columbia, SC 29210	1/10 of residuary estate assets
Edward Bart Heard 982 Reynolds Drive West Columbia, SC 29172	1/10 of residuary estate assets less advance of Six Thousand (\$6000.00) dollars



Executed this 13th day of January, 2011.

Signature: _____
 Name: _____
 Address: _____
 Telephone (O): _____
 (H): _____

Signature: Edward D. Sullivan
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803.451.2775
 (C): cell 803.261.8475

STATE OF SOUTH CAROLINA)

COUNTY OF: LAURENS)

IN THE MATTER OF: MARION MILAM KAY)

IN THE PROBATE COURT

AMENDED PROPOSAL FOR DISTRIBUTION

CASE NUMBER: 2007ES3000208

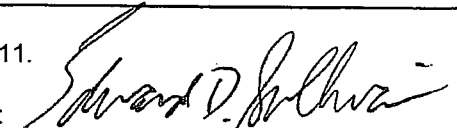
Personal Representative(s): Edward D. Sullivan
page 2

Name and Address of Distributee	Amount or Item
Marla Orias 206 Adair Place Laurens, SC 29360	1/10 of residuary estate assets
Martha Milam Brown c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286	1/10 of residuary estate assets, net of setoff relating to Estate expenditures for survey and appraisal benefiting jointly held property, as determined by the Court
Mary Leona Moses c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286	1/10 of residuary estate assets, net of setoff relating to Estate expenditures for survey and appraisal benefiting jointly held property, unauthorized removal and sale of hay, and proceeds from hunting leases, if any, a portion of which belong to the Estate, as determined by the Court
Edward D. Sullivan PO Box 11714 Columbia, SC 29211	Payment for legal fees, expert witness fees, and other costs incurred as Personal Representative, as determined by the Court.
Edward D. Sullivan PO Box 11714 Columbia, SC 29211	Personal Representative Compensation from Petition for Settlement (November 12, 2010) to Conclusion, as determined by the Court

Executed this 13th day of January, 2011.

Signature: _____
 Name: _____
 Address: _____

Telephone (O): _____
 (H): _____

Signature: 
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803-451-2775
 (C): 803-261-8475

January 10, 2011

Case: In the Matter of: Marion M. Kay
2007ES3000208

RE: Hearing Transcript of February 2, 2011
Before the Honorable Donald B. Hocker
Laurens County Probate Court
100 Hillcrest Square
Laurens, SC

Subject: Request by Edward Sullivan, Esquire, for Court
Reporter to verify the areas listed herein.
Court Reporter has reviewed audio and noted Page
and Line numbers corrected or stands as
transcribed.

Page 24, Line 24 - "wasn't expected to have the Deed about
the service."

Correction

... wasn't expected to have a need for services.

Page 42, Line 11 - "to fall such Memorandum"

Correction -

... involving such memorandum ...

Page 43, Line 16 - "Patsy had a neighbor."

Stands as transcribed - speaker error.

Correction -

Patsy [sic] had a neighbor.

Page 60, Line 6 - "Presbyterian"

Correction -

... Carolina Presbytery.

Page 135, Line 4 - "unless you left me two messages"

Correction -

... unless you left him two messages.

Page 143, Line 9 - "No, I was a partner there, I was employed."

Correction -

No, I was not a partner there; I was as employee.

Page 150, Line 20 - "I've never played golf."

Correction -

I've never played golf with him, no.

Page 163, Line 17 - "Mr." Copeland.

Correction -

Ms. Copeland

Page 178, Line 14 - "Jack Griffeth was my employer."

Correction -

... was my lawyer.

Page 178, Line 24 - "I have not conveyed, you know, for the last maybe ..."

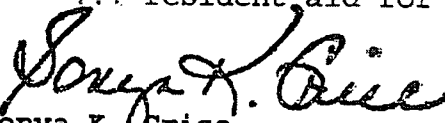
Correction -

I have not been paid, you know, for the last maybe ...

Page 214, Line 1 - "resident aid for our residence who have"

Correction -

... resident aid for our residents who have ...


Sonya K. Grice

1 STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
 2)
 3)
 4 COUNTY OF LAURENS) CASE NO.: 2007ES3000208
 5
 6
 7
 8

9 IN THE MATTER OF:)
 10)
 11)
 12 MARION M. KAY)
 13)
 14 _____)
 15
 16
 17
 18
 19

20 Probate Hearing, reported by Sonya K. Grice, Court
 21 Reporter and Notary Public in and for the State of South
 22 Carolina; before the Honorable Donald B. Hocker, Laurens
 23 County Probate Court, 100 Hillcrest Square, Laurens, South
 24 Carolina, on the 2nd day of February, 2011, scheduled for
 25 10:00 a.m. and commencing at the hour of 10:13 a.m.

P R O C E E D I N G

Page 2

1 APPEARANCES:

2
3
4 Representing Edward Sullivan, Esquire

5 DARYL G. HAWKINS, LLC

6 Law Offices of Daryl G. Hawkins, LLC

7 1331 Elmwood Avenue, Suite 305

8 Columbia, South Carolina 29211

9
10
11 Representing Mary Moses and Martha Brown

12 JOHN R. FERGUSON, ESQUIRE

13 Cox & Ferguson

14 107 E. Laurens Street

15 Laurens, South Carolina 29360

16
17
18 ALSO PRESENT:

19 Edward Sullivan, Esquire

20 Mary Moses

21 Martha Brown

22 Bart Heard

23 John Wilson

24 Paul Major

25 Penelope Arnold

GARBER REPORTING SERVICE
803-256-4500

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25

GARBER REPORTING SERVICE
803-256-4500

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EXHIBITS

(All exhibits retained by The Court)

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

P R O C E E D I N G

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1 THE COURT: We're on the record this morning in the Estate
2 of Marion M. Kay. It's a 2007 Estate, File Number
3 208. John Ferguson of the Laurens' Bar is present and
4 representing -- who do you represent, Mr. Ferguson?

5 MR. FERGUSON: I represent Mary Moses and Martha Brown.

6 THE COURT: Mary Moses and Martha Brown. Daryl Hawkins is
7 present representing Eddie Sullivan, who is the
8 Personal Representative; correct?

9 MR. HAWKINS: That is correct, Your Honor.

10 THE COURT: Okay. I'll give the attorneys an opportunity
11 to give me background on this case and also set out
12 the issues involved. Who's the moving party in this?

13 MR. HAWKINS: As I understand it, Ms. Moses and Ms. Brown
14 have requested the hearing, Your Honor.

15 THE COURT: Okay.

16 MR. FERGUSON: I think in that sense they would be the,
17 what we consider a moving party.

18 THE COURT: Okay. This -- and you'll just have to help
19 me, I've briefly gone through the file. Apparently
20 closing documents were sent out and as per Statutory
21 Right, interested parties have the right to demand
22 hearing concerning the closing of the Estate. And
23 evidentially, Mr. Ferguson, that's what you've done?

24 MR. FERGUSON: Yes, sir.

25 THE COURT: Okay. All right. If you'll give me a brief

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Page 6

1 background and set out the issues as you understand
2 them to be.

3 MR. FERGUSON: All right, sir.

4 THE COURT: And then after we do that, I noticed that we
5 have a fairly full courtroom and if anyone needs
6 introduction, whether or not they're interested
7 parties or otherwise, then I'll ask the lawyers to do
8 that as well. Okay?

9 OPENING BY MR. FERGUSON:

10 MR. FERGUSON: All right, Your Honor. As you have said,
11 this concerns the Estate of Marion Milam Kay, who died
12 on May 3rd, 2007. At the time of her death, she was
13 the co-owner, she had a one-half interest in 330 acres
14 and I believe some other real estate. This was a one-
15 half undivided interest. The other half was owned by
16 my clients. Mr. Sullivan was appointed under the Will
17 as the Personal Representative. At the time, he was
18 an attorney with Collins and Lacy, and he began work
19 on the Estate. Our concern is the amount of work that
20 he did on this Estate. Because from our prospective,
21 what he had to do -- the Will left Marion Kay's one-
22 half interest to the Lisbon Presbyterian Church, a
23 one-fourth interest -- one-fourth interest to Lisbon
24 Presbyterian Church Cemetery Fund; one-tenth to
25 Elizabeth Heard; one-tenth to Bart Heard; one-tenth to

P R O C E E D I N G

Page 7

1 Martha Brown; one-tenth to Mary Moses; one-tenth to
2 the Presbyterian Home. All the Personal
3 Representative had to do was a Deed of Distribution
4 but instead he took it upon himself to make this
5 Estate a major enterprise and devoted hundreds of
6 hours to this thing and paid himself ninety-eight
7 hundred -- thousand dollars [sic]. We're still trying
8 to figure out exactly what that is.

9 THE COURT: Paid how much? Ninety -- how much? Ninety?

10 MR. FERGUSON: Well, we know that as Personal
11 Representative he received \$93,775. And he also
12 received money from Collins and Lacy, but I'm not sure
13 whether that's included in the \$93,775.

14 THE COURT: As PR commission?

15 MR. FERGUSON: I think so.

16 THE COURT: Okay.

17 MR. FERGUSON: In addition to that, our concerns are that
18 wherever the road forked and there was an easy way to
19 do something or a complicated way to do something, he
20 consistently took the complicated way. In the Will
21 there was a clause that gave a neighbor the right to
22 buy out the interest of Ms. Kay's Estate in the real
23 estate. And that lasted, according to the Will, for
24 eight months. Considerably after eight months, the
25 person made an offer and the Personal Representative,

P R O C E E D I N G

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1 again, took it upon himself to try to force this
2 purchase of only a portion of the real estate into
3 being. So it's our position that the Personal
4 Representative caused a lot of the work that he
5 claimed he should be entitled to be paid for. And
6 that this was unnecessary work and would not have been
7 necessary but for the Personal Representative's
8 insistence on causing conflict and then resolving that
9 conflict with prolonged work. In addition to his own
10 work, he had paralegals from his law firm doing a
11 great amount of work on this case. Work that, if it
12 had to be done, could have been done by some college
13 student being paid minimum wage, for most of it. So
14 there's just a huge amount of charges that the
15 Guardian -- excuse me, that the Personal
16 Representative has caused the Estate to suffer and we
17 don't think he's entitled to be paid for all that.

18 THE COURT: All right. So from your prospective then, it
19 boils down to Mr. Sullivan's PR commissions, whether
20 or not he earned those commissions or whether or not
21 the charges were justified by work that either was not
22 necessary to be done or otherwise. I mean, that's
23 kind of the bottom line issue?

24 MR. FERGUSON: Yes, sir.

25 THE COURT: Okay.

P R O C E E D I N G

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1 MR. FERGUSON: In addition to the PR commissions, I
2 believe he received money for legal work that he
3 performed for the Estate.

4 THE COURT: Okay. Thank you, Mr. Ferguson. Mr. Hawkins.

5 OPENING BY MR. HAWKINS:

6 MR. HAWKINS: Thank you, Your Honor. I would like to
7 introduce a few people that are here.

8 THE COURT: Please.

9 MR. HAWKINS: There's several of the beneficiaries. Over
10 on the left is Ms. Marla Orias.

11 MS. ORIAS: Orias.

12 THE COURT: Orias.

13 MR. HAWKINS: Orias. Oh. I apologize for that. And next
14 to her I believe is her brother, Bart Heard, both of
15 whom are heirs and were one-tenth beneficiaries as
16 described by Mr. Ferguson. Also here is Ms. Penny
17 Arnold, who is seated at the rear. She's a
18 representative of the Presbyterian Home which was also
19 a one-tenth beneficiary under the residual clause. I
20 understand that Mr. Heard would like to speak today to
21 the Court.

22 THE COURT: Okay..

23 MR. HAWKINS: And he requests that opportunity.

24 THE COURT: Let me ask you, Mr. Hawkins. Were all of the
25 beneficiaries under the Will Noticed of today's

P R O C E E D I N G

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1 hearing?

2 MR. HAWKINS: Yes they were, Your Honor.

3 THE COURT: They were. Very good.

4 MR. HAWKINS: And the copies of the Proofs of Service --

5 THE COURT: Okay.

6 MR. HAWKINS: -- providing that Notice have been filed
7 with the Court.

8 THE COURT: Okay. All right. Very good. Very good.

9 MR. HAWKINS: To sort of give our prospective and respond
10 to one or two things that you may have just heard.
11 The Personal Representative in this matter, Mr.
12 Sullivan, has an extensive background, very
13 particularized and useful to this matter. He is a
14 CPA. Graduated from college and became a CPA. He has
15 a Master's in Accountancy. He also has a law degree.
16 He has received an LLM in taxation law recently from
17 the University of Alabama. He's also a licensed Real
18 Estate Broker. And he has a lot of business
19 experience and so forth. We have submitted to the
20 Court and filed in this matter an Affidavit from Mr.
21 Sullivan that does include his resume and describes
22 his background and describes the work that he did, and
23 there are a number of Exhibits that relate to that.
24 We've also already filed with the Court an Affidavit
25 of David Massey, who is an attorney in Greenville,

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1 South Carolina, an expert in this field.

2 MR. FERGUSON: Your Honor, may it please the Court? I
3 want to take the first opportunity to object to the
4 Affidavit if that person is not going to be present.

5 THE COURT: All right.

6 MR. HAWKINS: I think the Affidavit's appropriate that
7 Your Honor has the discretion to accept it but that
8 would just be our position on that.

9 MR. FERGUSON: And my perspective is hearsay.

10 THE COURT: Okay. Well, let me -- what we'll do is let me
11 just finish hearing from Mr. Hawkins so I can make
12 sure that I know what the issues are and then we can
13 address anything related to Affidavits coming in or
14 whatever. So I'll let you continue with your outline.

15 MR. HAWKINS: Thank you, Your Honor. Mr. Massey -- well,
16 when South Carolina first recognized Estates in Trust
17 area as an area that one could become specialized in,
18 Mr. Massey took the test and was recognized as a
19 specialist since that time to the present. He's
20 reviewed the Affidavit of Mr. Sullivan, the
21 attachment, spoken with him, all of which is reflected
22 in his Affidavit, and he feels that the fees and
23 expenses are reasonable under the circumstances of
24 this case. And so I'll tell you a little bit more
25 about that. As I heard it from Mr. Ferguson, the only

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1 thing that he says that the Personal Representative
2 had to do was provide a Deed of Distribution and that
3 that would resolve all the issues. But that is far
4 from accurate. In the first instance, in most Wills,
5 I know you see many of them in your position, you know
6 we normally see a person who passes away and they more
7 often than not have children or a spouse to whom they
8 leave the bulk or all of their Estate. And a person
9 who serves as a PR in that circumstance; it's a
10 relatively easier position to hold because the
11 jewelry, personal effects, or whatever there is, just
12 transfers to one or two people. And often if they
13 have two daughters, for example, a woman might say all
14 of my jewelry to be divided as they deem fit and if
15 they can't do it, then here's the way to resolve it.
16 In this matter, Ms. Kay had no children. Marion Kay.
17 But she did have multiple items of jewelry and about
18 163 items of other personal effect matters. And she
19 left behind instructions on who to give these things
20 to. And they weren't all given to one person. So
21 there was, you know, well in excess of 100; I think
22 it's less than 200, but it's, you know, more than 160,
23 of individualized items that had to be dealt with and
24 passed on to whomever. You know, various rings would
25 have something attached to them, for example, that

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1 would say who was supposed to get them. So part of
2 the Administration of this Estate, but we --
3 forgetting the real estate, which is the, I think the
4 main reason we're here today, but there was a
5 tremendous amount of other work that needed to be done
6 and had to done: the inventory of all these personal
7 items and get them to the right people and so forth.
8 With respect to the real estate, what Mr. Sullivan
9 learned, what the evidence would show you, is that
10 after the death of Ms. Kay, Ms. Moses and Ms. Brown,
11 either jointly or through one speaking, raised a
12 multiple of issues about the 330 acre tract of land in
13 which Ms. Kay owned an undivided one-half interest and
14 Ms. Moses and Ms. Brown, as I understand it, jointly
15 owned the other one-half undivided interest. The
16 first thing that came up is that they contested that
17 Ms. Kay could leave that property to anyone other than
18 them. Of course her Will doesn't leave it to them.
19 They also raised early on, that there had been in the
20 past a transaction involving this same property, where
21 Ms. Kay was deeded ten acres of land out of it and
22 they were supposed to get ten acres of land out of it.
23 They were deeded five acres of that land. At her
24 death the issue was raised that this other five acres
25 of this 330 acre tract, at one time it was said,

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1 should be deeded to Ms. Brown. But that created an
2 issue. We couldn't just do a Deed of Distribution.
3 Because we had contests about who was -- who owned
4 what part of this land and how much land is it we're
5 talking about anyway. In addition to that there was,
6 in the Will, an option granted to a neighbor, a Mr.
7 Copeland, and you may hear his name more, for him to
8 be able to buy all of her land. There are two other
9 parcels of property, Your Honor. There was the 330
10 acre tract that we've mentioned. Then there was
11 approximately, I think, six acres or so that had a
12 house on it. And then across the street but otherwise
13 contiguous with all of this land was a roughly four
14 acre tract. So at her death there are three separate
15 pieces of land in which she owned an interest. Mr.
16 Copeland was given an option to exercise to purchase
17 any or all of that land. It had to be done at the
18 Fair Market Value as of the time of her death. So
19 that created -- we've got this issue with a person
20 that has an option and the PR then had to deal with
21 that. He had appraisals done, met with numerous
22 people and so on. Over the course of his attempts to
23 resolve the various people's claims, he had also
24 discovered and was revealed to him, that back in the
25 1970's Ms. Kay's mother and herself, certain persons

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1 involved with the heirs of Milam, which is where Ms.
2 Brown and Ms. Moses' interest come out of, they had
3 entered into an option among themselves, giving each
4 other Rights of First Refusal. That agreement went to
5 the benefit of all of their heirs. And when that came
6 to the attention of Mr. Sullivan as the PR, he saw
7 several problems with it. One, the Will provided an
8 option to Mr. Copeland. Here was an option that had
9 been recorded that seemed to give Rights of First
10 Refusal to both halves of this family. They're all
11 related in a sense. Mr. Sullivan reviewed that
12 document and he consulted with other attorneys and
13 other people trying to get advice on what to do and
14 how to do it. And then a question came that that
15 option violated the rule against perpetuities. So,
16 far from there being a simple PR just needed to do a
17 Deed of Distribution, there was a multitude of issues
18 that grew up out of who had what rights in this
19 property. Including the claim by Ms. Moses and Ms.
20 Brown that Ms. Kay couldn't leave it to anybody but
21 them. They were the only people that should get it
22 and nobody else should have any part of it. By way of
23 some history, Mr. Sullivan had represented Ms. Kay in
24 some matters prior to the time of her death. And one
25 of the things that she engaged him to do, and there

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1 are letters that were sent to Ms. Brown and Ms. Moses,
2 is that she wanted to divide this property prior to
3 her death, the 330 acres. She wanted to, let's sit
4 down; lets divvy it up; lets find a way for y'all to
5 get whatever would be fair to you; I get whatever's
6 fair to me. In determining the Testators intent,
7 which, as you know, is one of the obligations of a
8 Personal Representative, Mr. Sullivan was armed with
9 the knowledge that -- and as he read the Will, as he
10 interpreted that Will, it was the desire of Ms. Kay
11 that this property be divided, that it be segregated,
12 and that Mr. Copeland have his option to then purchase
13 whatever it was. So he had a lot of competing
14 interest there. When we next look to the Residual
15 Beneficiaries, which have been generally identified
16 for Your Honor, one is Lisbon Presbyterian Church. I
17 think almost everybody involved in this case, other
18 than the expert witnesses and Ms. Arnold, who
19 represents Presbyterian Homes, works for Presbyterian
20 Homes, except those two, including Mr. Sullivan,
21 however; including Ms. Kay; including Ms. Brown and
22 Ms. Moses, all of them grew up in and were members of
23 Lisbon Presbyterian Church. Throughout Mr. Sullivan's
24 attempt to carry out his duties as the Personal
25 Representative, he had the church, as also one of the

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1 Residual Beneficiaries, asking him to try to make
2 everybody happy. That there's dissension within our
3 body. The Copelands are also members of that church.
4 So the Copelands have an option to purchase the land
5 that's granted in the Will, or Mr. Copeland does. The
6 Browns and Moses -- Ms. Brown, Ms. Moses, make their
7 claim as whatever those were that I've mentioned. The
8 church, as we otherwise -- the PR understood it,
9 really wanted to receive cash. It didn't want to take
10 land. Now that position changed some over the course
11 of time. But the church initially wanted cash, not
12 land. The Presbyterian Home needs to accept cash, not
13 land. So we have a PR that's faced with a lot of
14 competing interest out here about how people want
15 these matters resolved. And I think what you would
16 see in the Affidavit of what Mr. Sullivan would
17 testify to, if we call him to the stand, however the
18 Court's preferences are on these matters. It was not
19 a simple decision over what to do because there were a
20 lot of people with a dog in the fight, so to speak,
21 who had an interest to have it done a certain way.
22 So, for a year and a half, he tried to get people to
23 agree. He tried to set up meetings to have everybody
24 come together and let's discuss how can we resolve
25 this in a way that everybody agrees to. And Ms. Brown

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1 and Ms. Moses wouldn't agree to the things other
2 people wanted to agree to. There was a point in time
3 when an actual offer was made to purchase some of the
4 property. Our understanding is, we've never seen
5 where Ms. Brown or Ms. Moses ever made any offer to
6 purchase any part of this land. Yet I think that's a
7 contention that they made, Well, why don't you just
8 sell it to us? It's like, Well, make us an offer.
9 And no offer was ever made. So eventually, in January
10 of 2009, after a great deal of work and effort and
11 attempts -- and by this time the PR has disposed of
12 these personal items; the jewelry and the 163 other
13 things that were being divvied up. Frustrated with an
14 inability to get an agreement amongst the various
15 parties, having written them, What about if we do
16 this? Would this suit people? And trying to have
17 meetings with all the parties and so forth. In
18 January of 2009, he retained his law firm, Collins and
19 Lacy, to file a Partition Action that also included a
20 Declaratory Judgement action, asking a Court to decide
21 amongst these various claims, let's clear up the
22 title, please decide for us who owns what and who has
23 what rights. That action was vigorously defended.
24 Mr. Ferguson was involved in it. He asserted a
25 Counter-Claim. In the Counter-Claim he wrote the

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1 issue about the -- where I mentioned earlier that Ms.
2 Kay had gotten ten acres, Ms. Brown and Ms. Moses were
3 supposed to get an equal amount, they got five, didn't
4 get the other five; that issue was raised as a
5 Counter-Claim so it also was part of the, Let's get it
6 all resolved. The Court was asked to determine
7 whether the option to purchase by Ms. Brown and Ms.
8 Moses that had been created in the '70s, did it
9 violate the rule against perpetuity or not. Did Mr.
10 Copeland, who had this option to purchase, that did
11 state within eight months of the date of death, did he
12 have rights under that Right to Purchase? The
13 appraisal for the 330 acres was not created within
14 that eight months. Although work started on it, it
15 wasn't there until just outside of it. So there were
16 a lot of, you know, competing interest in who's going
17 to get what. Ms. Sullivan couldn't get an agreement
18 among the parties so he brought this action to try to
19 resolve these problems, after a long time of trying to
20 work it out. On the eve of mediation in that lawsuit,
21 Mr. Rowland Milam, who is a relative, as I understand
22 it of Ms. Moses and Ms. Brown, and sometimes they're
23 referred to as the Milam Heirs in some of the
24 documentation you might see; but as I understand it,
25 their interest in 330 acres remains undistributed to

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1 them by deed from the Estate that gives them their
2 rights. And it remains as heirs of Milam, and if
3 that's incorrect I'm sure somebody will correct me on
4 that. But Mr. Rowland Milam came forward on the eve
5 of the mediation and indicated he had an interest to
6 purchase all of the property. And that seemed a God
7 send to everybody, or certainly to Mr. Sullivan. The
8 initial offer of purchase was something in the
9 neighborhood of 70 percent, give or take, of the
10 appraised value of these properties. Now some things
11 had occurred between May of 2007 when Ms. Kay died and
12 now when we're in the middle of 2009, late 2009, as
13 we're getting to this circumstance, which is that real
14 estate values in America fell like a rock starting in
15 2008. The appraised values were as of the time of
16 death or close to it. One is the date of death for
17 the 330 acres. The other two appraisals, for whatever
18 reason, are for July 25th of 2007, and I think that's
19 a glitch that nobody's quite sure why that happened.
20 But it was an acceptable time frame to look at. And
21 the Will also provides to the PR, that he could
22 determine what he felt a fair market value was. And I
23 think appropriately he sought the aid of professionals
24 to have appraisals done. So the offer initially from
25 Mr. Milam was in the 70 percent range. Of those

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1 appraised values from '07, when in fact prices, you
2 know, was a depressed market. We have an expert who
3 could testify on that. Another issue at that time is
4 that it's sort of recognized in the real estate
5 industry that where a tract of land -- what's being
6 sold is not that dirt but an undivided one-half
7 interest in that dirt, so that if you purchased that
8 one-half interest, well, you're going to be in some
9 form of a partnership, in a broad sense of that term,
10 with these other people that have an ownership
11 interest. Ordinarily, that depresses the sale of that
12 property. If you looked at it and appraised it on a
13 per-acre basis and didn't consider the undivided one-
14 half interest, you'd get a number. Whatever that
15 number is, it's generally viewed that selling an
16 undivided one-half interest has to be discounted by 30
17 to 45 percent. Because most people don't want to
18 enter into that type of ownership/relationship. Well,
19 in this matter Mr. Milam offered something around 70,
20 Mr. Sullivan negotiated with him, got him to 95
21 percent of the appraised value, we have experts who
22 would say that that's a home run, that that was an
23 incredible deal to make. As I mentioned earlier, Mr.
24 Sullivan is a registered Real Estate Broker. If he
25 wanted to be overreaching in this matter, if he were

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1 intending to somehow take things from the Estate that
2 weren't appropriate for him to have -- and I submit to
3 the Court, that under his powers as the PR which are
4 broad as they could be when you read that paragraph,
5 Ms. Kay gave to the PR the broadest powers that a
6 Testator can give to their Personal Representative --
7 he could have put his sign on that property and sold
8 it and gotten a 10 percent real estate commission,
9 which is standard for farm land of this nature.
10 Instead, he did not get any real estate commission
11 whatsoever. He negotiated those sales. And in so
12 doing saved the Estate approximately \$36,000 by not
13 having insisted on him being the person who sold it
14 and taken a commission. Otherwise, we've had some
15 discussion -- I'm getting close to the end, Your
16 Honor.

17 THE COURT: Okay.

18 MR. HAWKINS: -- that Mr. Sullivan was employed by
19 Collins and Lacy; two files were opened at Collins and
20 Lacy with respect to these general matters. One is
21 the Administration of the Estate and those bills are
22 under a File Number 100, which is an Exhibit to Mr.
23 Sullivan's Affidavit or we'll otherwise authenticate
24 it, put it in, depending on how we go. The other
25 matter is 101, that is the litigation matter. In the

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1 representation of the Estate, Mr. Sullivan convinced
2 the people at Collins and Lacy to reduce the
3 attorney's time from the normal \$225 an hour to \$145
4 an hour. He didn't bill for his time. At the -- and
5 he spent a lot of time that'll you'll see on time
6 sheets. He has a lot of time in there for which there
7 is no charge. Once the bills were finalized and these
8 matters coming to an ending and so forth, Collins and
9 Lacy then agreed further to discount those bills. The
10 total of those bills would have been something in the
11 neighborhood of \$42,000 or so, and they discounted
12 them by about \$20,000. So the ultimate bill with
13 Collins and Lacy was about \$22,000. A substantial
14 savings to the Estate to have done that. Mr. Sullivan
15 otherwise has, including the time that he didn't bill
16 for but that is involved in these other files, he has
17 over 450 hours that he put into meeting with all of
18 these people, dealing with all of these issues and so
19 forth. He lives in Columbia, the property is all
20 located here in Laurens County. Which is his home. I
21 mean, he grew up here. This is a place he loves to
22 come to. But at the same time, whenever he came, he
23 obviously had to travel that distance to come and go
24 back. He visited the property to make sure it, you
25 know, hadn't burned down or nothing else happened.

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1 There's a lot of other minor things he did in there.
2 There was some damage, he collected insurance proceeds
3 and so on. But there is a huge volume of work that he
4 performed on behalf of the Estate. If we looked at
5 his time with the qualifications that I've mentioned:
6 we have a fellow who has a real estate broker's
7 license; he is a CPA; he has a Law Degree; he has a
8 LLM in taxation; and said that fellow could be hired
9 to do work for \$225 an hour, we'd all be happy to hire
10 him for that. At least people in my business are.
11 That's a -- that'd be a low rate for a man of those
12 qualifications. Today he charges \$325. If we took
13 his 400 and some odd hours that he put in the case and
14 you looked at that as a \$225 an hour billing rate,
15 which is what his rate was most of the time he was
16 with Collins and Lacy, then the bill, if we just
17 looked at time, and that's not all we looked at, but
18 if we just looked at time, that bill would be about
19 \$110,000, for the time period that we're all talking
20 about, which goes through November 12th of 2010. The
21 time he has spent since then we think also is
22 compensable, but that hadn't been provided because --
23 until there was a contested hearing request, there
24 wasn't expected to have the Deed about the service.
25 You also look at, when you're determining what is the

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1 appropriate fee for a PR? You don't just look at how
2 much time they spent on it and what's their education
3 and experience and training that they bring to the
4 table that helps get things done, you also look at the
5 result obtained. And in this circumstance, we would
6 say that among those results was taking this property
7 and getting 95 percent of the appraised value. We
8 have experts in those fields who will say that that
9 was a home run. It was a fantastic result for the
10 Estate to be able to get that price, under the
11 circumstances that existed. We also have that he
12 saved them \$36,000 by not making himself the real
13 estate broker selling that land and taking a
14 commission. We also have that he discounted, literally
15 the bills -- managed to get for the benefit of the
16 Estate, from his law firm, the discounts that I've
17 mentioned on the bills at Collins and Lacy. While
18 \$93,775 sounds like a lot of money on a 600-or-so
19 thousand dollar gross Estate income, and the actual
20 figures are in the interim accountings and whatnot,
21 Your Honor, as to gross. We believe when you look at
22 all of the factors that are generally to be considered
23 by courts, which quickly I will say to conclude, the
24 amount of time and labor that was required, the
25 novelty and difficulty of questions presented, and

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1 here we raised -- and there's a rule -- everybody that
2 ever went to law school struggled with the Rule
3 Against Perpetuities, so that's not an easy thing to
4 fool with. You know, people claiming that this land
5 couldn't be left to anybody but them. And there's
6 witnesses here that said, It went to me, and that's
7 what they said, nobody else can have it but us. You
8 have a fight over five acres of land for which there
9 is no written contract for anything. The only
10 information presented to Mr. Sullivan was a plat that
11 would show this other five acres going to, I believe
12 it was Ms. Moses's husband. Anyway, it's not even one
13 of the people involved in it. That's the only paper
14 evidence presented to Mr. Sullivan that they had a
15 claim to another five acres. Well, I guess there's
16 two things. One, Ms. Kay got ten acres, so that's a
17 suggestion that something was there. And Ms. Moses
18 got five acres, so that suggests well maybe there was
19 supposed to be something else happen. But aside from
20 that, there was a plat in somebody else's name. So I
21 put it to the Court that those are novel issues that
22 PR's don't normally have to deal with. The amount of
23 time involved is a factor of results obtained is a
24 significant factor and I think, you know, you've heard
25 what I had to say that our evidence would be on that.

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1 Any time limitations imposed, everybody -- as we
2 understood it, the church wanted things handled as
3 peacefully as they could be because they had members
4 of their congregation with different interests in what
5 was before them, so time dragged out. And then the
6 final is experience, reputation and ability of the
7 lawyer or lawyers who performed services. We offer
8 that by analogy and I've given that to you. So, as we
9 proceed, those are what we believe to be the broader
10 issues and why the compensation is reasonable.

11 THE COURT: Okay.

12 MR. FERGUSON: One procedural matter, Your Honor. I do
13 believe that they are the moving parties because the
14 whole purpose of this is dealing with their final
15 accounting. And it's true that we requested a hearing
16 but it's a matter of their final accounting they
17 presented they justify.

18 THE COURT: And I'll deal with that in just a moment.
19 Just a couple of housekeeping matters. I'm getting a
20 cold so I apologize if I have to periodically cough
21 and various other things related to having a cold.
22 Anything in the Administrative File does not necessary
23 mean that it will be a part of the record in this
24 case. In other words, for my consideration. Whether
25 it's the Last Will And Testament, the Inventory filed,

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1 or whatever. So if you want me to consider a
2 document, then it needs to be put into evidence at
3 this hearing. Don't rely on the fact that just
4 because it's in the Administrative File that I will
5 consider it because I will not. Okay?

6 MR. HAWKINS: Yes, sir.

7 THE COURT: Secondly, and I acknowledge that this was
8 delivered to me yesterday; I've not looked at it. It
9 was opened and I didn't know really what was in it.
10 So anything other than -- and again, I don't know
11 what's in here, but if it's some legal memorandum
12 certainly I can consider that now, but if there's
13 anything else in here, I don't want to consider it
14 unless it is admitted into evidence in the case. I'll
15 just leave it up here. And I think maybe a copy of
16 that was maybe brought and put in this Administrative
17 File. It can all remain in there but, again, I won't
18 consider it unless it's put into evidence. So if
19 there is any legal memorandum in here, maybe at a
20 break --

21 MR. HAWKINS: There is, Your Honor.

22 THE COURT: Okay. If you'll just pull that out for me.
23 Okay?

24 MR. HAWKINS: Yes, sir.

25 THE COURT: Thirdly, I cannot accept Affidavits, whether

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1 it's from Mr. Sullivan or from anyone else because I
2 think Mr. Ferguson would have the right to cross-
3 examine that person who has submitted an Affidavit.
4 And since this is a final proceeding, I cannot rely on
5 any witness Affidavits, unless Mr. Ferguson were to
6 agree to such Affidavit. Otherwise, you're going to
7 have to have the witness here. And I think it -- when
8 I've done these hearings when there's been a Demand,
9 it typically in most cases just makes a little more
10 sense, and I think the process goes a little smoother,
11 is if the -- because typically, it is a Complaint
12 about something the PR's done or not done. So
13 typically it runs a little smoother if we start the
14 case off as if you are the Moving party. So, if
15 there's not a big hangup with that, that's how I would
16 like to do it. Now, finally, let me just mention for
17 the record two things. One, I have known Mr. Sullivan
18 for a long time. I grew up in Laurens, as Mr.
19 Sullivan did. Now, our contacts over the years has
20 been purely on a professional basis. I don't see Mr.
21 Sullivan socially. I may run into him in the
22 Courthouse. I'm not even certain if we've ever had
23 any cases together. We might have. So I just want to
24 mention that. The fact that I do know him. But, of
25 course, that would in no way affect my ability to be

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1 fair and impartial in this case. But if you want to
2 talk with your clients about, Mr. Ferguson, you can.
3 I just wanted to note that. And secondly, Ms. Orias
4 lives in my neighborhood. But really the only time I
5 see her is when she's out jogging. And this is quite
6 a feat that she jogs with two dogs, Doberman Pinchers,
7 I think. And it's pretty neat to watch her do that.
8 But our only contacts with each other is just waving
9 in the street because she does live in my
10 neighborhood, so I don't believe that would in any way
11 affect my ability to be fair and impartial. With that
12 said, if you want to talk with your respective clients
13 about that for just a second, then I'll give you an
14 opportunity to do that at this time.

15 MR. FERGUSON: Your Honor, if you are convinced that you
16 can handle this case fairly and impartially, that's
17 good enough for me.

18 THE COURT: I'm certainly convinced of that, Mr. Ferguson.
19 Mr. Hawkins?

20 MR. HAWKINS: We have no problem with you going forward,
21 Your Honor.

22 THE COURT: All right. Very good. All right. Then so we
23 can get kind of a feel for how long this proceeding
24 may go, how many witnesses, Mr. Hawkins, do you think
25 you're going to have?

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1 MR. HAWKINS: I would anticipate, I think at this time,
2 Your Honor, four witnesses.

3 THE COURT: Okay.

4 MR. HAWKINS: And as I indicated --

5 THE COURT: Mr. Sullivan being probably the longest of the
6 four.

7 MR. HAWKINS: That's correct.

8 THE COURT: Okay. All right.

9 MR. HAWKINS: And I know Mr. Heard wishes to be heard.

10 THE COURT: Okay.

11 MR. HAWKINS: And we might call him as a witness or just
12 let him speak to the Court.

13 THE COURT: Well, probably the easiest thing to do is just
14 call him as a witness, even though I understand he's
15 not technically a witness for you, just call him in
16 your case at some point in time.

17 MR. HAWKINS: Happy to do that, Your Honor.

18 THE COURT: Okay. Mr. Ferguson, how many witnesses do you
19 believe?

20 MR. FERGUSON: I think probably three.

21 THE COURT: Three. Okay. All right. So, you think we're
22 going to go all day?

23 MR. HAWKINS: Pretty close to it, I would suspect. My
24 witnesses outside of Mr. Sullivan I think will be
25 relatively brief but they could be 30 to 45 minutes.

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1 THE COURT: I understand. Okay. All right. Well, let's
2 go ahead and get started. And Mr. Hawkins, call your
3 first witness, please, sir.

4 MR. HAWKINS: Your Honor, I will call Eddie Sullivan.

5 THE COURT: Okay. Come around, Mr. Sullivan, to the
6 witness stand And before you take your seat, if you'll
7 place your left hand on the Bible and raise your right
8 hand.

9 WHEREUPON:

10 EDWARD SULLIVAN, being duly sworn and cautioned to
11 speak the truth, the whole truth and nothing but the truth,
12 testifies as follows:

13 THE COURT: Okay. Have a seat. You may proceed.

14 DIRECT EXAMINATION

15 BY MR. HAWKINS:

16 **Q: Thank you. Mr. Sullivan, tell us a little bit about**
17 **your education background, please.**

18 A: Well, I went to Laurens High School. Left and went to
19 -- well, graduated there and went to Carolina. I got
20 a BS in accounting. In December of '76, went right
21 back into Graduate School and got a Master's of
22 Accountancy and graduated in August of '78. I worked
23 for seven years as a CPA. I then went to law school.
24 I finished law school at Carolina in December of '87.
25 Then I had a chance to pursue an LLM in Taxation from

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1 the University of Alabama School of Law and I received
2 that this past August.

3 **Q: Let me ask you to look at this document that we've**
4 **pre-marked as Exhibit A. And for Mr. Ferguson's**
5 **benefit that's also Exhibit A to the Affidavit of Mr.**
6 **Sullivan that we provided to you earlier. And these**
7 **Exhibits that we're going to go through, with a few**
8 **exceptions, are all Exhibits that were attached to**
9 **that Affidavit.**

10 THE COURT: Let me ask, Mr. Hawkins, they have been marked
11 for identification --

12 MR. HAWKINS: Yes, sir.

13 THE COURT: -- only no agreement as of yet as to any of
14 them coming into evidence?

15 MR. HAWKINS: That's correct, Your Honor.

16 THE COURT: Okay. Very good.

17 MR. HAWKINS: Mr. Sullivan, do you recognize that
18 document?

19 A: Yes, I do. It's a copy of my Curriculum Vitae.

20 **Q: Is it accurate as to your background, training and**
21 **experience?**

22 A: Yes, it is.

23 **Q: Your, Honor, we'd like to offer this into evidence as**
24 **Plaintiff's Exhibit A..**

25 MR. FERGUSON: No objections.

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1 THE COURT: All right. Without objection.

2 (Plaintiff's Exhibit A was admitted into evidence.)

3 **Q: Next, I'm going to hand Mr. Sullivan a copy of what I**
4 **believe is the Last Will and Testament of Marion Kay**
5 **and ask him if he can identify that for us. And we've**
6 **pre-marked that for identification as Exhibit B.**

7 THE COURT: Have you pre-marked it with the Court Reporter
8 or you've just done it -- your staff's done it.

9 MR. HAWKINS: We just did it ourselves, Your Honor.

10 THE COURT: Then that's fine. That's fine. Just go ahead
11 and each time it's going into evidence let's give the
12 Court Reporter an opportunity to mark it so we don't
13 load her up with a whole bunch of them at one time.

14 MR. HAWKINS: Yes, sir.

15 THE COURT: You want to do them 1, 2, 3, or A, B, C?

16 MADAM COURT REPORTER: He's referred to them as A, B, C,
17 so I'll continue.

18 THE COURT: Okay. All right. That'll be good.

19 **Q: Mr. Sullivan, do you recognize what we've pre-marked**
20 **as Exhibit B?**

21 A: Yes, sir, I do.

22 **Q: What is that document?**

23 A: This is the Last Will of Marion M. Kay.

24 **Q: Did you prepare that Will?**

25 A: Yes, sir, I did.

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1 MR. HAWKINS: Your Honor, we would offer the Will of
2 Marion Kay into evidence as Exhibit B.

3 MR. FERGUSON: No objection.

4 THE COURT: Without objection, so admitted.

5 (Plaintiff's Exhibit B was admitted into evidence.)

6 **Q: Mr. Sullivan, where were you born and where did you**
7 **grow up?**

8 A: I was born in Laurens and I grew up, it was in the
9 country, what is now known as Easy Road. My parents
10 attended church at Lisbon Presbyterian Church. So I
11 grew up there and was baptized there and I joined the
12 church when I was about eight.

13 **Q: Tell me whether, or tell the Court please if you would**
14 **whether or not you ever represented Ms. Kay other than**
15 **having prepared a Will for her?**

16 A: Yes. She asked me to help her divide property a
17 couple years before she passed away.

18 **Q: Okay. And I'm going to show you what is pre-marked by**
19 **us as Exhibit C-2.**

20 MR. FERGUSON: I'm thinking that probably I'm going to
21 need to raise a Deadman's Statute objection here. I'm
22 not precisely sure where he's heading with his
23 comments about what she told him before but.

24 MR. HAWKINS: Well, I understand the Deadman's Statute,
25 Your Honor. And at this point in time, so far as I'm

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1 understanding, nor in the future, are we intending to
2 illicit from Mr. Sullivan, you know, his recitation of
3 something Ms. Kay said to him. It might be the
4 Deadman's Statute we could have some application,
5 conceivably a hearsay objection could be involved.
6 But we're asking him what was he retained to do and
7 he's certainly competent to testify as to the subject
8 matter of what he was retained by a client to do.

9 THE COURT: All right. Let's do this, Mr. Ferguson, is
10 let this witness continue and then if you feel like
11 he's gone over into the Deadman's Statute, at least
12 from your position, then renew your objection and let
13 me deal with it. It may be something that will not be
14 of much concern.

15 MR. FERGUSON: Thank you, Your Honor.

16 THE COURT: Let's go a little bit longer.

17 **Q: Mr. Sullivan, I'm going to hand you another document,**
18 **which is a letter dated January 6, 2004. It's pre-**
19 **marked by us for identification as Exhibit C-2. It**
20 **appears to be addressed to Ms. Martha Brown and Ms.**
21 **Mary Leona Moses from you. Can you authenticate for**
22 **us what that document is?**

23 A: This is a letter from me to Martha and Mary Leona --
24 Martha and Leona Moses and Martha Brown. I'm sorry.
25 Mary Leona Moses and Martha Brown. And this is a

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1 letter from me dated January 6, 2004.

2 **Q: Let me show you another letter addressed the same with**
3 **a different date, October 23rd of 2003. Do you**
4 **recognize that document?**

5 A: Yes. This is a letter I sent to them in October of
6 2003.

7 **Q: What was the subject matter of the October 2003**
8 **letter?**

9 A: Ms. Kay retained me to assist her in dividing a 330
10 acre tract.

11 **Q: All right. And does this letter address that**
12 **question?**

13 A: Yes. We wrote this letter to the other Co-Tenants and
14 made a proposal of how we would divide the property
15 and who would pay for the survey, that would be
16 shared. And that I would prepare the Deeds at no
17 expense. And I asked them to call me to discuss the
18 matter.

19 **Q: All right. And what is the subject matter of the**
20 **January 6, 2004 letter?**

21 A: The January 6, 2004 letter is the follow up on the
22 October 23rd, 2003 letter. It's reminding them that
23 we wanted to divide -- that Ms. Kay wanted to divide
24 the property. And I was trying to set up a meeting
25 with them so we could discuss it.

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1 MR. HAWKINS: Your Honor, we'd offer these two letters
2 into evidence and have them marked jointly together as
3 Exhibit C-2.

4 MR. FERGUSON: No objection.

5 THE COURT: Okay. Without objection.

6 (Plaintiff's Exhibit C-2 was admitted into evidence.)

7 THE COURT: Is this a -- you say C-2. That is a --
8 there's going to be several Exhibits under C?

9 **Q: That's correct, Your Honor.**

10 THE COURT: Okay. All right.

11 MR. HAWKINS: I'd probably use some other numbers but
12 that's how we did it earlier.

13 THE COURT: So long as our Court Reporter is comfortable
14 with that.

15 MADAM COURT REPORTER: That's fine. We skipped C-1?

16 MR. HAWKINS: We skipped C-1. That is correct. And for
17 brevity's sake I may skip a few others.

18 **Q: Mr. Sullivan, I'm going to hand you now what we have**
19 **pre-marked for identification as Exhibit C-4. Can you**
20 **tell us what that document is?**

21 A: This document appears to be -- it's a Title and Option
22 Agreement. I would call this Reported Right of First
23 Refusal between the Co-Tenants of this 330 acre tract.
24 It's dated 1972.

25 **Q: Okay. And is this the option that -- in the opening**

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1 statement I mentioned to the Court that there was an
2 option --

3 A: Yes, it is.

4 Q: -- that created some concerns for you. Is this the
5 option we're talking about?

6 A: Yes, it is.

7 Q: Would you explain to the Court what your concern was
8 about that option and when you discovered it?

9 A: Well, I guess shortly after Ms. Kay passed away we did
10 a title search and this turned up. When I got this I
11 was concerned because Mr. Copeland had the option and
12 I knew that this was just going to be another issue.
13 In talking about how to deal with this matter, I
14 talked with, I think Terry Howe, who is a auctioneer.
15 And in talking with the auctioneer of thoughts subject
16 to this Right of First Refusal and he raised an issue
17 and I followed up on that issue, and I began to think
18 that this Right of First Refusal may be unenforceable
19 since it was maybe void as it violates the Rule
20 Against Perpetuities.

21 Q: Let me go back with you for a moment to Exhibit B,
22 which is the Will of Ms. Kay. And please feel free to
23 refer to that, if necessary. And if there's another
24 document you would like to see in order to answer some
25 question, if you will tell us what that is, we'll try

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1 **to provide it to you. Who did you understand the**
2 **heirs to be under the Residual Clause of the Will?**

3 A: Item IV in the Will, Ms. Kay left one-fourth interest
4 to Lisbon Presbyterian Church and a one-fourth
5 interest to the Lisbon Presbyterian Church Cemetery
6 Fund. Then she left a tenth to Laura Heard, who is
7 Marla Orias. A tenth to Bart Heard. And Bart and
8 Marla are step-grandchildren. She left a tenth to
9 Martha Milam Brown. A tenth to Mary Leona Milam
10 Moses. And she left a tenth to the Presbyterian Home
11 of South Carolina.

12 **Q: When you learned of Ms. Kay's death, did you take**
13 **steps to probate her Will?**

14 A: Yes. I brought it up here and had it probated.

15 **Q: You were aware that you were the identified Personal**
16 **Representative in the Will itself, of course, right?**

17 A: I had prepared the Will and was aware that I was the
18 Personal Representative.

19 **Q: Tell us a little bit about the issues that you had to**
20 **deal with as the Personal Representative in the**
21 **initial phases of doing that work.**

22 A: Well, the first thing we did was we cleaned out her
23 apartment. She had an apartment at the Presbyterian
24 Home in Clinton and she died on May the 3rd. So we
25 hustled to get her personal effects and furniture out

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1 of the apartment before the end of May so they
2 wouldn't have to pay another month's rent. I met them
3 there, I think it was the Sunday before Memorial Day
4 and we had shifts where people would come in and get,
5 what we understood Marion wanted, Ms. Kay, wanted for
6 each person. This wasn't easy. There's some tension
7 among these folks that goes back a ways for various
8 reasons and -- but we got through it and we gave out
9 those personal effects. The next thing we did was, I
10 think, Bart -- Marion wanted Bart Heard to have her
11 car. So we -- I think I had the right -- we had a
12 Memorandum, that was a copy, that indicated Bart
13 should get the car. To make sure that I wasn't doing
14 anything wrong, I circulated consent among all the
15 beneficiaries here and everyone consented to give Bart
16 the car, so we got Bart the car.

17 **Q: Let me -- let me stop you for a moment.**

18 A: Okay.

19 **Q: You mentioned a memorandum.**

20 A: Right.

21 **Q: For the record, what is the Memorandum?**

22 A: All right. Well, in the Will she left a provision
23 that says I'm making a Memorandum of Record. A
24 Memorandum of Personal Effects. The Memorandum we had
25 was a copy. And I don't know that we ever got the

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1 original until after the 90 days had passed.

2 **Q: The 90 days you're referring to is -- the Judge**
3 **probably hasn't read the Will yet so --**

4 A: All right. I'm sorry, Judge.

5 **Q: -- I'm asking you to explain that for me.**

6 A: Well, in the Will it says that she may leave a
7 personal Memorandum. If no such Memorandum is found
8 within 90 days after the Personal Rep represents his
9 qualification, it shall be conclusively presented
10 there is no such Memorandum. And then she gave me the
11 right, I think, to fall to such Memorandum, she gave
12 personal household effects of every kind to my
13 Personal Representative, who shall distribute my
14 personal and household effects to my family and
15 friends as he shall deem appropriate. We had a copy
16 of what she had prepared and we used that to start
17 giving out the furniture at the apartment and the car.

18 **Q: With respect to jewelry and personal items, aside from**
19 **whatever Memorandum you may have discovered, were**
20 **there otherwise identifications, notes or attachments**
21 **to items that suggested where Ms. Kay --**

22 A: Yeah.

23 **Q: -- wanted those things to go?**

24 A: She had marked pictures and so forth on the back of
25 who was to get what. She spent a lot of time

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1 designating who was to get -- she had a lot of
2 personal effects: old rings and watches and necklaces
3 and so forth. And she had it all organized as to who
4 got what. And so she had them labeled and, like I
5 said, tags. And we knew -- and no one ever, to my
6 knowledge, no one ever raised an issue about who got
7 what of her personal effects.

8 **Q: Was one of your responsibilities as the Personal**
9 **Representative to have all of those items evaluated as**
10 **to what their value was?**

11 A: Yes. We had them appraised. We had the jewelry and
12 so forth appraised. We had every -- the furniture
13 appraised. We had everything appraised.

14 **Q: And were you the person who contacted an appraiser to**
15 **do that work?**

16 A: I'm not sure if I did that or not. Patsy had a
17 neighbor. Chuck Copeland. Chuck married Patsy.
18 Marion loved Patsy like a daughter. And so Patsy
19 helped me, you know, arrange appraisals and that sort
20 of thing. So she may have taken -- she may have
21 called the person to -- I think that she referred me
22 to -- was it Hoyt, something like that, jewelry in
23 Clinton. So she assisted me in some of that. As well
24 as the folks at my law firm.

25 **Q: Why did you utilize anyone in your law firm to help**

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1 **with any of the administration of the Estate?**

2 A: Well, it was so much work. And their rates are much
3 cheaper than mine.

4 Q: **Did you know these people in the law firm that were in**
5 **the nature of paralegals who did work in helping**
6 **administer the Estate?**

7 A: Yes, I did.

8 Q: **What was your opinion of their competency?**

9 A: Well, they were trusted people that I knew. And I
10 knew I could rely on them.

11 Q: **Did you consider hiring college students to do any of**
12 **that work?**

13 A: Not -- not at all. No.

14 Q: **Is that because you thought that in order to have the**
15 **work done appropriately and correctly you wanted**
16 **people of a certain caliber to do it?**

17 A: That's correct. I never considered hiring a college
18 student to do anything.

19 Q: **All right. At what point, if ever, did you discover**
20 **that there were issues about who owned what of the**
21 **real property?**

22 A: Well, in June, I sent a letter to all these folks that
23 were named as beneficiaries. And I said, You've been
24 named as an heir and this is the way Ms. Kay left her
25 property. And, well, that was bad because Martha and

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1 Mary Leona were very unhappy that they didn't inherit
2 that land. They had expected that land and they
3 didn't get it and they were mad about it. And bitter
4 about it. So the first thing I heard was that Marion
5 didn't have the right to leave this land to anybody
6 else but them. And I had to check that out. I
7 checked it out. I tried to understand what they were
8 saying. Show me the paper. Then they -- it was
9 something about Marion's momma told us we were
10 supposed to get the land. And that sort of thing.
11 And so I didn't find any merit to that. And then the
12 next thing is, Marion had gotten 10 acres out of this
13 10 [sic] acre tract. I mean the 330 acre tract. What
14 turned out to be 330 acres. And Martha and Mary Leona
15 had gotten like about five acres. And they claimed
16 they were due another five acres since Marion got 10
17 acres. But there was no record of that. There was no
18 contract. There's no deed. There was nothing except,
19 I think there was a plat that was filed on the five
20 acres that they claimed. And I think it was in the
21 name of Frank Moses. I'm not sure.

22 MS. MOSES: He was dead.

23 **Q: Well, there was a plat but no deed; is that fair to**
24 **say?**

25 **A:** There was no deed. There was nothing. There's no

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1 evidence of a conveyance of land. I mean -- and we
2 had title, we did a title search. And then the Estate
3 owned -- had a half interest in 330 acres of land.

4 **Q: All right. Did you inquire of and request of Ms.**
5 **Moses and Ms. Brown that if they had any kind of**
6 **documentation to corroborate that there was some**
7 **agreement for another five acres of land to be deeded**
8 **to someone?**

9 **A: Yes, I wanted --**

10 **Q: Did they bring it to you?**

11 **A: No, I never got any --**

12 **Q: But you asked them? I mean you asked them for that?**

13 **A: Yes. I tried to get to the bottom of all these**
14 **claims.**

15 **Q: In terms of anybody purchasing the real estate, did**
16 **either Ms. Brown or Ms. Moses ever make any written**
17 **offer presented to you --**

18 **A: No.**

19 **Q: -- for either or both of them to purchase any of the**
20 **real property that Ms. Kay owned at the time of her**
21 **death?**

22 **A: No, sir.**

23 **Q: All right. Well, let's continue on with the issues**
24 **that you were seeing develop. There are two at this**
25 **point that you've identified for us. One is the --**

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1 well, I guess there's three you've talked about up to
2 this point. One was the option of Rights of First
3 Refusal that had been executed -- at what time is
4 that, so we get it into the record.

5 A: This is back in 1972.

6 Q: All right. In 1972 there was some sort of an option
7 that was created that you are aware of. You were told
8 by Ms. Moses, Ms. Brown, one of the other or both,
9 that they thought they were the only ones who could
10 inherit the property; correct?

11 A: That's correct. Right.

12 Q: And then they had raised the question to you about
13 whether or not they were to be deeded an additional
14 five acres of land out of the original tracts of
15 whatever size it was; correct?

16 A: That's correct.

17 Q: Did anyone else have a claimed interest to any of that
18 property that you're aware of?

19 A: Marion, as I said, loved Patsy, her neighbor, and
20 Patsy's husband Chuck. She left Chuck, Charles P.
21 Copeland, an option to buy the real estate. So he --
22 and I made him aware of that sometime shortly after
23 she died, and he expressed an interest that he wanted
24 to buy some of the real estate.

25 Q: In terms of these properties existing and that

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1 conceivably he could have bought all of it; correct?

2 A: Correct.

3 Q: Where would that money go, if he bought it?

4 A: Into the Estate.

5 Q: And then where would it go?

6 A: Distributed to the heirs.

7 Q: Through the Residuary Clause --

8 A: Right.

9 Q: -- to the various people and two entities that you've
10 identified earlier?

11 A: That's correct.

12 Q: All right. Did you learn at the earlier
13 administration of the Estate, any position that was
14 the preference of any of those Residuary
15 Beneficiaries, as to whether they receive a devise of
16 a piece of land or whether they receive cash?

17 A: Bart Heard and the church and the Presbyterian Home
18 Session all told me that they wanted to be paid --
19 they wanted cash. They could not -- didn't want the
20 dirt. And now I find out that the Presbyterian Home
21 says they could not have taken the dirt. I'm sorry --
22 an interest in the real estate.

23 Q: So tell us how you went about trying to resolve these
24 competing interests.

25 A: Well, I contacted Mary Leona and Martha. We had a

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1 couple of meetings. And I came up with a proposal
2 sometime in the Spring of 2008 that would accommodate
3 all these interests. What I was -- what I had was a
4 compromise. In my proposal -- and the first thing I
5 did was I met with the church session. And the church
6 had indicated to me that they wanted me to accommodate
7 everybody. You know, they loved -- Pasty and Chuck
8 were members of that church. Everybody else was
9 connected to the church. So all of this was causing,
10 you know, a disturbance in the church. So we're
11 trying to keep everybody happy. So my --

12 **Q: How large is -- I apologize for interrupting you.**
13 **Roughly how -- what's the size of the congregation of**
14 **Lisbon Presbyterian Church?**

15 A: Well, you know, when I grew up they had 25 and 30
16 people. Now it's probably like ten or 12. You know,
17 they're --

18 **Q: Let me ask you this. This might help us to move on a**
19 **little faster.**

20 A: I'm sorry.

21 MR. HAWKINS: Would you have an objection to us putting
22 that in? That's part of the package we gave you. I
23 don't know if you've had a chance to see it.

24 MR. FERGUSON: I was given this yesterday afternoon, Your
25 Honor. And --

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1 THE COURT: If you need a minute or two, Mr. Ferguson, to
2 look over that, let's take about a five minute recess.
3 You need some time, Mr. Ferguson? Let's take a five
4 minute recess.

5 (Recess from 11:15 a.m. until 11:24 a.m.)

6 THE COURT: Mr. Hawkins, did you want that Exhibit 4 --
7 or, I mean, C-4 into evidence? Because it hasn't been
8 put in yet. An Option.

9 MR. HAWKINS: We do. We want to put it in evidence, Your
10 Honor.

11 THE COURT: Mr. Ferguson, any objection to C-4, the
12 Option, coming in?

13 MR. FERGUSON: (No response.)

14 MR. HAWKINS: The Option to Purchase is in the Will.

15 THE COURT: Mr. Ferguson, did you have any objection to
16 the Option, which is marked as C-4, coming into
17 evidence?

18 MR. FERGUSON: No, I don't.

19 THE COURT: I think it got marked --

20 MR. FERGUSON: No, sir.

21 THE COURT: -- without maybe us mentioning that. That's
22 fine.

23 (Plaintiff's Exhibit C-4 was admitted into evidence.)

24 THE COURT: Okay. You may proceed, Mr. Hawkins.

25 MR. HAWKINS: I think where we were is whether or not Mr.

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1 Ferguson has an objection to us putting C, I believe
2 it is, into evidence?

3 MR. FERGUSON: I don't remember having seen this before,
4 but if it is a summary of the proposed -- or the
5 testimony of the witness, then I suppose it's
6 admissible on that basis, although we certainly don't
7 agree with the contents of it.

8 THE COURT: Okay. Well, the only way I can rule on it
9 would be to take a look at it.

10 MR. HAWKINS: That is in essence what it is, Your Honor.
11 It's a summary of the issues and sort of a timeline of
12 things.

13 THE COURT: Okay. So it appears to be a summary. And I
14 guess if this witness authenticates this document as a
15 summary of his testimony, do you have an objection to
16 that?

17 MR. FERGUSON: If he will authenticate it, then on that
18 basis, I suppose it's admissible, only certainly not
19 agreed to.

20 THE COURT: Okay. Then the Court -- right, you would not
21 be agreeing to it, so you're just agreeing to its
22 admissibility but certainly not to the contents and
23 the subject to any cross-examination, if any, that you
24 would like to make concerning this document. So I'm
25 going to hand it back to you, Mr. Hawkins, and get him

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1 to authenticate it then we can mark it as -- whatever
2 we're going to mark it as.

3 MR. FERGUSON: And I've been informed that I will get a
4 copy of that at some time?

5 MR. HAWKINS: Yes, you will.

6 THE COURT: Is that the only copy you have?

7 MR. HAWKINS: It is, I believe.

8 THE COURT: Well, don't worry about it. Let's get it
9 marked.

10 MR. HAWKINS: I can get it.

11 THE COURT: Well, we've -- I'll ask my Bailiff to give it
12 to one of the girls and they'll make a copy and bring
13 it right back to us.

14 MR. HAWKINS: Well, let me ask you -- Mr. Sullivan, can
15 you identify Exhibit C for us and tell us what that is
16 and how it was prepared?

17 A: Yes, this is a statement of facts and issues that I
18 put together based on my recollection of the events of
19 the administration of the Estate.

20 **Q: Does it generally state the actions that you took as**
21 **the Administrator -- I'm sorry, the Personal**
22 **Representative?**

23 A: Yes, it does.

24 MR. HAWKINS: Your Honor, we'd offer it on that basis.

25 THE COURT: All right. It's without objection. Let's

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1 mark it as C-1.

2 MR. HAWKINS: If you don't mind, Your Honor, let's just --
3 well, C-1 works. C-1 is fine. I'm not using what was
4 C-1.

5 THE COURT: Okay.

6 (Plaintiff's Exhibit C-1 was admitted into evidence.)

7 **Q: Let me hand you now what -- and I'm going to show it**
8 **to Mr. Ferguson first in the event something happened**
9 **this was not in his package.**

10 MR. FERGUSON: Is Mr. Copeland here today?

11 MR. HAWKINS: He's not. I think Mr. Sullivan can
12 authenticate it.

13 MR. FERGUSON: Well, let's see if Mr. Sullivan can
14 authenticate it.

15 MR. HAWKINS: Okay.

16 **Q: Mr. Sullivan, I'm going to offer you now what was pre-**
17 **marked for identification as Exhibit C-5. Do you**
18 **recognize that document?**

19 A: I do.

20 **Q: What is it?**

21 A: It's a note to me, or a letter to me, essentially from
22 Charles P. Copeland, essentially making an offer of
23 \$56,400 for 46.85 acres of land that adjoins his
24 property.

25 **Q: And what's the date on that letter, if it has one?**

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1 A: April 16th, 2008.

2 Q: Did you receive that letter from Mr. Copeland?

3 A: Yes, I did.

4 Q: Did you discuss it with him?

5 A: Yes, I did.

6 Q: Did he, in discussions, verify that offer?

7 A: He did.

8 MR. HAWKINS: Your Honor, we'd offer that into evidence.

9 MR. FERGUSON: No objection.

10 THE COURT: All right. Without objection, to be marked as
11 C-5.

12 (Plaintiff's Exhibit C-5 was admitted into evidence.)

13 Q: Mr. Sullivan, I've handed you now what we've pre-
14 marked as three Exhibits. I believe they are C6, C7,
15 and C8. Have you seen those documents before?

16 A: Yes, I have.

17 Q: Let's start with C6 and tell us how that came into
18 being and what you know about it.

19 A: Well, I guess I kind of jumped ahead earlier. In the
20 Fall of '07, there's much -- after kind of the dust
21 had settled in how the Will had been written and how
22 the property, the distribution was to be made in that
23 they only got a tenth of the property; and that we had
24 all these conflicting interests. The first thing I
25 did was order a survey. Along with that, I also

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1 ordered an appraisal of the 330 acre tract. And
2 that's what Exhibit C6 is.

3 **Q: And that is an appraisal of which tract?**

4 A: This is an appraisal of the 330 acre tract of land
5 that was jointly held by Marion Kay and the heirs of
6 W.H. Milam.

7 **Q: What did you understand the appraised value to be**
8 **under that appraisal?**

9 A: \$614,000 was the appraised value of the entire
10 interest. 330 acres.

11 **Q: And understanding Ms. Kay's interest it would have**
12 **been one half, in terms of value, if we just looked at**
13 **the value, it would have been one half of that?**

14 A: That's exactly right. \$307,000, I think.

15 **Q: And look at C7 for us, if you would. Is that also an**
16 **appraisal?**

17 A: C7 is an appraisal. This was done in July. Ms. Kay
18 had ten acres. This is really a ten acre tract. It
19 cut across the road, however, so what we did is,
20 there's one -- there's one parcel, but what we did is
21 we had it appraised in two different pieces. The
22 house and about six acres of land is appraised in C7.
23 It appraised for \$64,000.

24 **Q: And what is C8?**

25 A: C8 is the other piece of the ten acres which is across

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1 the road, and that's like three and a half acres or
2 something like that.

3 **Q: Okay. And what was its appraised value?**

4 **A:** It appraised at \$20,000.

5 **Q: When you received these appraisals, did you rely upon**
6 **them to help you understand what the values of the**
7 **three properties -- and I understand one is a single**
8 **tract of roughly ten acres but appraised in two**
9 **separate parts. I might have misstated that earlier**
10 **to the Court. I apologize.**

11 **THE COURT:** I think I've got it. Thank you.

12 **Q: Did you rely upon these appraisals to help you**
13 **determine what the values were as of the time of Ms.**
14 **Kay's death?**

15 **A:** I did. In fact, we used these to prepare our
16 Inventory and Appraisal.

17 **Q: And you had to pay for those appraisals; is that**
18 **correct?**

19 **A:** Yes, sir.

20 **MR. HAWKINS:** Your Honor, we'd offer into evidence at this
21 time Exhibits C6, 7 and 8.

22 **THE COURT:** Mr. Ferguson?

23 **MR. FERGUSON:** My understanding is that there will be
24 someone to come to authenticate C6. I'm not --

25 **MR. HAWKINS:** We do not have a witness that was involved

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1 in the preparation of C7 or C8. We're offering them
2 as information that the PR -- as the PR, within his
3 duties, ordered these appraisals to be done, paid for
4 them, and relied upon them in determinating their
5 value.

6 THE COURT: I think Mr. Ferguson really doesn't have too
7 much of a concern for 7 and 8, maybe because of the
8 value, I don't know. But it's your understanding that
9 they will have the Appraiser present for the 330 acre
10 tract?

11 MR. HAWKINS: That's correct.

12 MR. FERGUSON: Right. Well, I would certainly prefer to
13 have someone here from Palmetto Heritage if we're
14 going to get into the numbers but certainly the
15 Personal Representative could testify that he did get
16 an appraisal and that he relied on whatever appraisal
17 he got.

18 THE COURT: Is your position, I don't think you made an
19 objection necessarily, but your position is that for
20 the value to come out into evidence, you want the
21 Appraiser to be present to testify as to the value; is
22 that correct?

23 MR. FERGUSON: Yes, sir.

24 THE COURT: Okay. As to all three pieces?

25 MR. FERGUSON: Yes, sir. But my understanding is that

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1 there's no problem with the -- the large piece really
2 is the major thing that we're dealing with.

3 THE COURT: Right. So as to the small, the six acres and
4 the house and the four acres, are you agreeing for the
5 appraisal to come into evidence without the Appraiser
6 being present or do you want the Appraiser present?

7 MR. FERGUSON: I think for right now I would prefer that
8 the Appraiser be present.

9 THE COURT: All right. Okay. He is entitled to cross-
10 examine any of your witnesses. And how much trouble --
11 - all right, who did the large tract? Who's the
12 Appraiser on that? Because I haven't seen the
13 appraisal.

14 MR. HAWKINS: Mr. Paul Major, who is here.

15 THE COURT: Oh, he is here. Okay. And then Palmetto
16 Heritage did the two small ones?

17 MR. FERGUSON: Yes, sir.

18 THE COURT: Okay. All right. Who at Palmetto Heritage?
19 Mr. Cartee?

20 MR. HAWKINS: It was a woman.

21 THE COURT: Patty Craine?

22 MR. HAWKINS: I do not know her.

23 MR. SULLIVAN: Melinda Gray.

24 THE COURT: Oh, Melinda Gray. Okay. Probably during
25 break it may be good to see if she is available. So,

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1 let's mark the three appraisals for identification
2 purposes only right now and then, of course, I know
3 you've got the large tract and let's just see where
4 you stand with Melinda Gray on the others.

5 MR. HAWKINS: All right, Your Honor.

6 THE COURT: I'm going to place these over here with the
7 Court Reporter in that we have marked them for
8 identification.

9 MR. FERGUSON: Your Honor, we --

10 THE COURT: Hold that thought. Give the Court Reporter a
11 chance to mark them. Even though I'm sure she can do
12 several things at one time. I'm not insinuating that
13 you can't.

14 MR. FERGUSON: In the interest of moving things along, we
15 will consent to these two Palmetto Heritage appraisals
16 coming in.

17 THE COURT: Okay. All right. Well, then they -- all
18 three will come in because we do have the witness on
19 the large tract so they are into evidence and not just
20 marked for identification.

21 (Plaintiff's Exhibits C-5, C-6 and C-7 was admitted into
22 evidence.)

23 MR. HAWKINS: Thank you, Your Honor. And Mr. Ferguson.

24 **Q: Did there ever come a time, Mr. Sullivan, when you had**
25 **interaction with any attorney who was, in your**

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1 understanding, acting on behalf of the Presbyterian
2 Church USA?

3 A: Yes. Mr. Fuller I believe his name was.

4 Q: What topics did the two of you discuss?

5 A: I think he represented the Presbyterian -- South
6 Carolina Presbyterian. I think the church had
7 consulted with him about what their role was; what
8 their responsibilities were; I guess what the protocol
9 was; what the Order required. And it had to do with,
10 you know, what did they have to do to convey title to
11 the property. And I think he wrote a letter about
12 that.

13 Q: And at this time, I want to offer you to look at for
14 us Exhibit C-9 which is a letter on the letterhead of
15 Robert F. Fuller, dated April 21st, 2008. It is
16 addressed to Neely Blackmon. It appears to have a
17 signature of Mr. Fuller on it. And it shows as the
18 copied recipients the Reverend M. Hampton Hunter, III,
19 Edward D. Sullivan, Esquire and the Reverend Dr. Alan
20 Arnold. Do you recognize Exhibit C-9, that letter?

21 A: Yes, I do.

22 Q: And did you maintain that letter in your records as a
23 business record of the Personal Representative's
24 actions on behalf of the Estate of Marion Kay?

25 A: Yes, I did.

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1 Q: Did you receive it on or about April 21st of 2008?

2 A: I guess I received it a couple days after that.

3 Q: And did you have any conversation with Mr. Fuller
4 where he, in any fashion, you understood that he was
5 authenticating that that was a letter from him that
6 came to you and not some imposter?

7 A: Yes, I did. We talked -- I called him or he called
8 me. I'm sure I probably called him and discussed the
9 letter and its contents.

10 MR. HAWKINS: Your Honor, we would offer into evidence
11 Exhibit C-9 as a business record of the Personal
12 Representative.

13 MR. FERGUSON: No objection.

14 THE COURT: All right. Without objections, into evidence,
15 C-9.

16 (Plaintiff's Exhibit C-9 was admitted into evidence.)

17 MR. HAWKINS: We'll give the Court Reporter some time to
18 attend to some of the collateral duties.

19 Q: Mr. Sullivan, have you estimated the number of hours
20 that you spent in attending to matters relevant to the
21 Estate?

22 A: Yes, I have.

23 Q: And up through November the 12th of 2010, what have
24 you estimated the number of hours that you personally
25 spent involved in the Estate to be?

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1 A: I can't remember the exact number but it's around 450
2 hours.

3 Q: As you have looked earlier at what's now in evidence
4 as Exhibit C-1 --

5 A: Yes.

6 Q: -- are there things that you did on behalf of the
7 Estate that are not included in this list of items?

8 A: Oh, yes. There are a lot things that happened and
9 telephone calls that were made. I can't remember
10 everything.

11 Q: Did you write down all the time that you spent on
12 this?

13 A: No, I did not. I mean, I got calls at home; calls in
14 the car. I mean, it was impossible to keep up with
15 everything. I lived with this Estate for almost four
16 years.

17 Q: Mr. Sullivan, I'm going to hand you now what we've
18 pre-marked as Exhibit D and ask you if you recognize
19 that set of documents?

20 A: I do. They are invoices from Collins and Lacy to me
21 as Executive of the Estate of Marion Kay.

22 Q: Tell us how the files were set up at Collins and Lacy
23 for the work that was done on the Estate, or on behalf
24 of the Estate?

25 A: Well, we opened up a file, Number 1147-100. That was

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1 the Estate Administration file. And that was the file
2 that all the time was billed to until January '09 when
3 we filed the Petition action. We opened up a
4 litigation filed. And it think it's Number 1147-101.

5 **Q: The invoices that -- are these invoices for the time**
6 **spent by the firm?**

7 A: Yes, they are.

8 **Q: Did you deduct from those bills, or not have included**
9 **as billing time, your own time that you spent in the**
10 **two matters?**

11 A: Most of my time I wrote down but I listed as no charge
12 and it was not charged for. Very little of my time, I
13 think, was charged for.

14 **Q: And if I understand it -- well, tell the Court, if you**
15 **would, what if any special arrangement did the Law**
16 **Firm of Collins and Lacy allow to be made with respect**
17 **to representation by attorneys of Collins and Lacy in**
18 **the litigation matter?**

19 A: Okay. Well, the lawyers at that time were generally
20 billing out at \$225 an hour. And they allowed me to
21 bill out the lawyers' time at \$145 an hour. That
22 saved about \$80 an hour.

23 **Q: How was paralegal time billed?**

24 A: I think these are their normal rates.

25 **Q: Whatever their full rate was?**

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1 A: Right. But, you know, down the road there were
2 discounts issued and so forth.

3 Q: All right. That's the thing I wanted to talk about
4 next, but before we get there. To the best of your
5 knowledge, do the invoices that we have received
6 reflect the time that was spent by paralegals and
7 attorneys other than yourself, in working on either an
8 administrative matter or a litigation matter?

9 A: Yes.

10 Q: Have there been any subsequent billings from Collins
11 and Lacy that are included in Exhibit D that you're
12 aware of?

13 A: The last two bills were dated August 16th and August
14 17th, so.

15 Q: Was there any further discount of billings that would
16 otherwise be attributable to Collins and Lacy then --

17 A: Well --

18 Q: -- what we see on these bills. Were they discounted
19 beyond the amounts that we see on the bills?

20 A: For example, this first bill, which is July 6, 2007,
21 if you add the hours and you extend time of the rate -
22 - times of the rates, and I think I've got a schedule
23 here somewhere, it comes out to be like \$12,000 and
24 some odd dollars. And they billed, at my request, the
25 bill was \$3,000 plus our expenses, so the bill was

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1 \$3,777. We wrote off almost 9 -- over \$9,000 on the
2 first bill. And later, the last two bills, they're
3 discounted almost 50 percent. Each one is discounted
4 almost 50 percent. One is discounted, I think the
5 administration file might be discounted \$7,500. And
6 one, the litigation file is discounted like \$3,500.
7 \$3,750. \$3,750.

8 **Q: Was it your intent that as the bills were discounted,**
9 **any time that you had listed for which an amount of**
10 **money had been applied was included in the total, that**
11 **that time would be eliminated from the bill?**

12 A: Yes.

13 **Q: Have you paid Collins and Lacy for their services?**

14 A: There are two -- the last two invoices are
15 outstanding. I think we owe them \$7,000 on one and
16 \$4,000 on the other. Right at \$12,000.

17 **Q: And that's reflected in your Petition for**
18 **Disbursement?**

19 A: My Proposal for Distribution; correct.

20 **Q: Right. Proposal for Distribution. Thank you. The**
21 **total amount of the write-off or deduction from the**
22 **bill is roughly \$20,000?**

23 A: The discounts are about \$20,000.

24 **Q: All right.**

25 A: I was doing all I could to keep the costs down:

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1 Q: And I noticed in the August 16th, 2010 bill that is in
2 the litigation file, the 101 file. I guess the whole
3 number is 1147-00101?

4 A: Yes.

5 Q: That there's a time entry for December the 30th of
6 2008 that says no charge, and it reflects some of your
7 time. Let me show you this page so you don't have to
8 fumble through all of what's there. See that entry,
9 December 8th of 2008?

10 A: Yes.

11 Q: And in that particular billing, just showing by way of
12 example, does it show you having a telephone
13 conversation with another Collins and Lacy lawyer?

14 A: Yes.

15 Q: And who was that? I think there's only initials
16 there.

17 A: That was Jack Griffeth. Jack D. Griffeth.

18 Q: I do not see on that bill a charge where Mr. Griffeth
19 billed for his time talking to you. Do you agree with
20 that?

21 A: Well, he's JDG -- there's an entry here for JDG that
22 he refers to exchanging emails and telephone --

23 Q: Well, do you think he is referring to that -- you
24 would interpret that as meaning that he is
25 acknowledging the same conversation that you're

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1 **referencing in your bill?**

2 A: I believe so. I'm not sure.

3 **Q: All right. Do you know whether not anybody other than**
4 **you did time on the case but didn't put it into their**
5 **time sheets and it didn't end up on these bills?**

6 A: I don't know.

7 MR. HAWKINS: Your Honor, we would offer into evidence at
8 this time the invoices that were sent to the Personal
9 Representative by Collins and Lacy and that are
10 included in that compilation as Exhibit D.

11 MR. FERGUSON: No objection.

12 THE COURT: Without objection to be marked as Exhibit D.
13 (Plaintiff's Exhibit D was admitted into evidence.)

14 **Q: Let me show you now what's marked as -- pre-marked as**
15 **C-11. There's a letter dated May 2nd, 2008 on**
16 **letterhead that has your name, Edward D. Sullivan, and**
17 **references Collins and Lacy. It's addressed to Ms.**
18 **Martha Milam Brown and Ms. Mary Leona Milam Moses, and**
19 **Mr. Charles Copeland. Do you recognize this letter?**

20 A: Yes, sir.

21 **Q: And did you send it to those persons who are**
22 **identified as addressees on that letter?**

23 A: Yes, sir.

24 **Q: Tell us what the letter discusses.**

25 A: Well, this is a Compromised Proposal that I came up

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1 with. This -- I think this --

2 **Q: Well, let's talk about the time frame first. This is**
3 **May 2nd of 2008?**

4 **A:** That's correct.

5 **Q: It's about a year after the death of Ms. Kay; correct?**

6 **A:** Almost exact; right.

7 **Q: What is the status of trying to resolve any issues, in**
8 **your mind, at the time you wrote this letter?**

9 **A:** Okay. We were hung up. Mary Leona and Martha wanted
10 the five acres. And I couldn't give them. And Chuck
11 wanted to buy a piece that was behind his house.
12 Chuck Copeland wanted to exercise his option behind
13 his house. I wanted -- so I was trying to accommodate
14 those interests. We were in a stalemate. So I met
15 the Session on a Saturday evening, right before this
16 letter went out, and I showed them -- I guess I showed
17 them a draft -- I'm not guessing, I showed them a
18 draft of this letter. And my Proposal, a Compromised
19 Proposal of what I thought to be a way to work all
20 this out. And so therefore I thought it was a very
21 good compromise. Where it met everybody's needs. And
22 I sent it out on the 2nd. I sent it to Chuck, and
23 Mary Leona and Martha and all.

24 **Q: Looking at the second page, it shows some other copies**
25 **you had sent out. Who else did you send copies to?**

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1 A: The other beneficiaries. So all the interested
2 parties got a copy of this letter. Either was sent
3 directly to them or copied.

4 **Q: Did you get any response from either Ms. Brown or Ms.**
5 **Moses to that letter?**

6 A: No. We, you know, we -- after that, you know, we met
7 and so forth, but there was no real direct we'll do
8 this or we'll do that, to this letter. They did not -
9 - they did not want Mr. Copeland to buy any of the
10 land. And they wanted their five acres.

11 **Q: Do you recall there being a meeting where you invited**
12 **all the various parties to come together, and at least**
13 **some appeared, in Newberry?**

14 A: Yes. After this failed to generate any interest --

15 **Q: You're referring to the May 2nd, 2008 letter?**

16 A: The May 2nd, 2008 letter failed to generate any
17 momentum, the next thing I did is invited the folks
18 that -- all the heirs, I think, to come meet with Paul
19 Major, the Appraiser, in Newberry. To discuss, you
20 know, possible resolutions and proposal to divide the
21 property.

22 MR. HAWKINS: Your Honor, we'd offer into evidence at this
23 time the May 2nd, '08 letter marked as Exhibit C-11.

24 MR. FERGUSON: No objection.

25 THE COURT: Without objection, so marked and entered into

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1 evidence.

2 (Plaintiff's Exhibit C-11 was admitted into evidence.)

3 **Q: Were you able to resolve the issues related to the**
4 **real property, in some fashion, that was satisfactory**
5 **to the various heirs during the calendar year of 2008?**

6 A: No, sir.

7 **Q: Had you discussed with any of the parties that if some**
8 **resolution wasn't reached at some point, you were**
9 **going to file some kind of an action to try to resolve**
10 **the questions as you saw them?**

11 A: I think -- yes. In the Fall or late Summer, early
12 Fall, because we -- after we had our meeting or right
13 about that time, with Mr. Major, about what we could
14 do to divide the property, I kind of set a, you know,
15 a limit. I said -- and I told Mary Leona and Martha,
16 we needed to come to some sort of resolution by the
17 end of the year, 2008, or I'd have to file a Petition
18 Action, a Declaratory Action, so that we could move
19 this along. It had already been -- that, you know,
20 that -- at the end of December, 2008, Ms. Kay would
21 have been passed away about 19 months, I think.

22 **Q: Was that action in fact filed?**

23 A: Yes, it was. It was filed in, I think, January 2nd,
24 2009.

25 **Q: And after the Complaint was initially filed, was it**

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1 **served?**

2 A: Yes.

3 **Q: And was there a response to that Complaint?**

4 A: Yes. I think counsel for Ms. Brown and Ms. Moses
5 filed a Motion to Dismiss.

6 **Q: And in response to that was a further Amended Pleading**
7 **then filed by the Plaintiff?**

8 A: Yes. Yes. There was an Amended Complaint filed;
9 that's correct.

10 **Q: Let me show you what we've marked as Exhibit C-12 and**
11 **ask you if that's a copy of the Summons -- Amended**
12 **Summons and Amended Complaint filed in that action?**

13 A: Yes, sir, it is:

14 **Q: And let me show you what we will ask to have marked as**
15 **-- I guess we would offer these in a moment as C-12A**
16 **and C-12B. Do you recognize what we would ask to have**
17 **marked as C-12B as an Answer and Counterclaim that**
18 **were filed in response to the Amended Complaint?**

19 A: This is an Answer to an Amended Complaint and
20 Counterclaim filed by counsel for Ms. Moses and Ms.
21 Brown.

22 **Q: And does the Counterclaim raise issues about the five**
23 **acres, or ten acres of the property that we've been**
24 **discussing earlier in testimony?**

25 A: Yes, it does.

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1 Q: And the Complaint itself, does it seek both a
2 Declaratory Judgement and a Partition of the Property?

3 A: Yes, it does.

4 Q: Did you have any understanding about whether or not
5 the value of Ms. Kay's interest in the 330 acres,
6 being an undivided one-half interest, would be as
7 compared to if she owned half of the 330 acres in fee
8 simple absolute?

9 A: There would be a market discount applied for half
10 interest. Half ownership interest.

11 Q: Well, in your judgement as the PR, did you feel that
12 it would be in the best interest of the Estate to
13 partition the property under the circumstances then
14 existing or not?

15 A: Right. I could not sell the property as it then
16 existed, unless one of the family members came forward
17 and made me an offer that was as generous as Mr.
18 Milam's.

19 Q: Well, at the time when the Partition action and
20 Declaratory Judgement action was filed, was there any
21 offer to purchase all of the land?

22 A: No.

23 MR. HAWKINS: All right. Your Honor, we'd like to offer
24 into evidence at this time as Exhibit C-12A and C-12B
25 the Amended Summons and the Amended Complaint as the

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1 former and the Answer and Counterclaim as the later.

2 MR. FERGUSON: No objection.

3 THE COURT: All right. Without objection, so admitted
4 into evidence.

5 (Plaintiff's Exhibit D was admitted into evidence.)

6 **Q: What was the progress then of that litigation after it**
7 **was filed?**

8 A: Well, Discovery ensued right away. Then it kind of
9 languished, I guess. There were no depositions taken.

10 **Q: Was there any sort of a Scheduling Order or Agreement**
11 **by the parties, or an Order of the Court that the case**
12 **be mediated?**

13 A: Yes. Eventually, yes.

14 **Q: And was that something that the Court Ordered or the**
15 **parties agreed to, or do you recall?**

16 A: You know, I can't remember. I think the Court got
17 after us sometime in 2010 that this case was coming to
18 trial and we needed to, you know, mediate. And I kind
19 of -- Jack Griffeth handled that part of it.

20 **Q: Well, what happened to end that litigation?**

21 A: Well, what happened is, sometime in the Summer of 2009
22 I got a call from Rowland Milam, who was a cousin.
23 And he expressed an interest in buying Ms. Kay's --
24 the Estate's one-half interest. And I was glad to
25 hear that. I talked to Chuck -- before then, I wanted

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1 to, as I've said, I wanted to accommodate Chuck
2 Copeland and his option. I talked to him that Summer
3 and I think by then he'd about had enough of all of
4 this. In fact, I got the impression that Mr. Copeland
5 was willing to just release his option and so that
6 would no longer be an issue. I went out -- I prepared
7 a document for him to do that and I went out and I met
8 with Chuck at his farm and I gave him the document and
9 then he would not sign it. What he was telling me is,
10 if Rowland or anybody else buys the entire half
11 interest, I'm willing to back out. But, if that
12 property is ever divided so that the Estate gets, you
13 know, one-half -- or gets a full interest in half the
14 acreage, then he wanted to exercise his option and get
15 that property that adjoined his property. So that's
16 what happened in the Summer of 2009. After that,
17 moving on, in October I got a call from Senator Bryan,
18 who is representing Rowland.

19 **Q: He's an attorney?**

20 **A:** He's an attorney here in Laurens. And he told me he'd
21 been retained to prepare a contract and to move
22 forward with this thing. And that's when I started to
23 see a light at the end of the tunnel.

24 **Q: Who did you understand him to represent, Senator**
25 **Bryan?**

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1 A: He represented Rowland Milam.

2 Q: All right. As I heard you reference in the Will the
3 option that was granted to Mr. Copeland, it had --
4 that option was to be exercised within eight months of
5 the death of Ms. Kay; is that what it says?

6 A: That's what -- that's the way it reads. That's
7 correct.

8 Q: Okay. Now, obviously, we're talking about a period of
9 time that's more than eight months after her death.
10 Did you ever consider that the option itself had
11 expired because it wasn't exercised within those eight
12 months?

13 A: No. Because I think the way it was written and the
14 ownership of the property, he couldn't be expected to
15 buy a half interest in the land. In my opinion, that
16 option wouldn't really kick in until the land was
17 divided so he'd have something to buy. I did not
18 expect him to buy Ms. Kay's half interest in the land
19 and be in ownership with Ms. Moses and Ms. Brown.

20 Q: That was based on your interpretation of the Will?

21 A: That's correct. And that's based on my understanding
22 of -- you know, my objective was to carry out the
23 intent of Ms. Kay and to carry out her wishes. And to
24 act in the best interest of the Estate. And that's
25 what I did.

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1 Q: So your understanding of part of her testamentary
2 intent was to allow Mr. Copeland a reasonable
3 opportunity to purchase the land?

4 A: That's correct. And to divide the property so that I
5 could do that and distribute the money to the
6 beneficiaries. That's what I understood Ms. Kay to
7 want.

8 Q: All right. Let me offer you now what we've pre-marked
9 as Exhibit C-14 [sic]. It's a letter dated March 1st,
10 2010 on the Collins and Lacy letterhead, with your
11 name on it, addressed to Neely Blackmon, the Clerk of
12 Sessions Lisbon Presbyterian Church, Mr. Heard, Ms.
13 Arnold for the Presbyterian Homes of South Carolina,
14 Ms. Moses, Ms. Brown, Mr. Orias -- Ms. Orias, and
15 Reverend Hunter. Do you recognize that letter?

16 A: Yes, sir, I do.

17 Q: To the best of your knowledge, was it sent to those
18 persons that it indicates it's being sent to?

19 A: Yes, sir.

20 Q: What did that letter convey? What information did it
21 provide to these people?

22 A: Well, I'd received a written -- I finally received a
23 written contract, an offer, on this property. And it
24 was an offer from Rowland Milam and I guess -- I think
25 it was sent by his lawyer. And it was a Contract of

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1 Sale, a Proposed Contract of Sale and it offered
2 essentially about 70 percent of the value. When
3 Rowland first came along, he was interested in buying
4 the Estate's half interest in the 330 acre tract. He
5 wasn't interested in buying the home and the ten
6 acres, or the home and the six acres of the other
7 piece. He wanted -- he was interested in the half of
8 the 330 acre tract. And eventually it grew so that he
9 got -- he made an offer on the entire -- all of her
10 property. All of her real estate. And he offered
11 about 70 percent of what I had told him I would need
12 to sell the property.

13 **Q: I understood in your qualifications that you're a**
14 **licensed Real Estate Broker. Are you in fact a**
15 **licensed Real Estate Broker?**

16 A: Yes. Yes, I am.

17 **Q: And were you a licensed Real Estate Broker during the**
18 **time that you were administering this Estate?**

19 A: Yes, sir.

20 **Q: Did you ever determine to contract with yourself as**
21 **the PR to sell the property under your broker's**
22 **license?**

23 A: No, sir. In fact -- in fact, you know, I didn't want
24 to hire any broker to list this property and show it.
25 That would cost money.

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1 Q: You had the qualifications yourself to be able to sell
2 the property; is that correct?

3 A: Yes, I think I could have done that, yes.

4 Q: And my point of that is, while you might have hired a
5 broker, you could have hired a friend or someone else
6 to allow them to get a commission out of it; is that
7 not something you could have done?

8 A: That's true.

9 Q: Do you know people who are in the real estate
10 business?

11 A: I do.

12 Q: Do you know real estate agents?

13 A: I do.

14 Q: Do you know brokers?

15 A: I know some.

16 Q: If you had wanted to do one of them a favor by giving
17 them this listing, your powers as the PR would have
18 allowed you to do that?

19 A: I guess I could have. That never occurred to me.

20 Q: By not having a broker's fee, or a real estate agent's
21 commission to apply to any of the sales of this
22 property -- let me back up a step. What do you
23 believe the commission would have been if a real
24 estate agent had been hired and a listing agreement
25 entered into --

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1 MR. FERGUSON: Your Honor, this whole line of questioning
2 is so speculative, I really don't see the purpose.

3 MR. HAWKINS: It's not, Your Honor. He's a licensed Real
4 Estate Broker. It's not speculative at all.

5 THE COURT: Well, based upon the sale -- I assume that the
6 sale went through, did it not?

7 A: Yes.

8 THE COURT: All right. Based upon the sale, we know that
9 amount. And I think it's -- I'd take Judicial Notice
10 of a typical ten percent commission for selling non-
11 residential property, if that's what I'm being asked
12 to take Judicial Notice of. So I think it wouldn't
13 really be speculative -- ten percent of whatever was
14 actually sold. So I'll overrule the objection. You
15 may proceed.

16 A: \$36,700 would have been the fee. The commission.

17 MR. HAWKINS: Your Honor, we move to admit into evidence
18 at this time, Exhibit 13. Which is the letter that
19 went to the various heirs advising them of the offer
20 that had been made and details of it..

21 MR. FERGUSON: No objection.

22 THE COURT: Did you say 13 or 14?

23 MR. HAWKINS: 13.

24 THE COURT: 13. I had written 14 down.

25 MR. HAWKINS: I may have said that earlier. If I did, I

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1 apologize.

2 THE COURT: All right. So admitted.

3 **Q: Subsequent to that letter you had further negotiations**
4 **with Mr. Milam regarding his, Rowland Milam, of**
5 **purchasing the property; is that correct?**

6 A: That's correct.

7 **Q: Did you negotiate a higher price for the property than**
8 **he had initially offered?**

9 A: Well, yes. We had two or three more rounds of
10 negotiation and eventually he agreed to pay about 95
11 percent of the Fair Market Value, according to these
12 appraisals. He agreed to pay \$367,000 for all of the
13 real estate. In addition, I think his first proposal
14 was that, as to the house, the Estate would be
15 responsible for a termite inspection and repairs and
16 all of that. And it also -- his first offer required
17 a general Warranty Deed. So I went back to him and I
18 got the deed changed to a Quitclaim Deed and I did
19 away with all of the nonsense about the -- we were not
20 going to be responsible for any repairs on that old
21 house.

22 **Q: Okay. Let me show you now what's marked as -- pre-**
23 **marked for identification as Exhibit C-14. It's three**
24 **Contracts of Sale. Do you recognize those? It's**
25 **three or two. I apologize if I misstate.**

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1 A: Well, the first one is 330 acres at \$292,500. The
2 second one is for the house and the 6.2 acres and it's
3 in the amount of \$57,000. And the third contract is
4 for the 3.762 acres across the road and he paid
5 \$17,500. Well, he offered it. That was the Contract
6 price, \$17,500. Which he paid at the closing.

7 **Q: Who prepared the Contracts of Sale?**

8 A: I prepared these Contracts of Sale.

9 **Q: All right. And do they also bear your signature in**
10 **addition to the purchaser?**

11 A: Yes, they do.

12 MR. HAWKINS: Your Honor, we'd offer into evidence at this
13 time as Exhibit C-14 the three Contracts of Sale.

14 MR. FERGUSON: No objection.

15 THE COURT: All right. Without objection, so admitted.

16 (Plaintiff's Exhibit C-14 was admitted into evidence.)

17 **Q: As part of that transaction, did you also obtain the**
18 **consent of the various heirs to the proposed sale?**

19 A: That was a condition to the Contract that I put in
20 there.

21 **Q: So --**

22 A: Yes. Yes, I obtained the Consents.

23 **Q: And let me show you now what's marked as -- pre-marked**
24 **as Exhibit C-15 and have you tell us are those the**
25 **Consents, with the exception of one from Ms. Moses?**

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1 A: Yeah. I don't -- in the file, I did not see a copy of
2 Mary Leona's, but I know I -- I know she consented.
3 In fact, we have a cover letter here from Mr. Ferguson
4 where he sent us the Consent that Ms. Moses and Ms.
5 Brown signed.

6 **Q: Well, did that ever become any point of contention**
7 **that anyone had not consented?**

8 A: No, it did not.

9 MR. HAWKINS: We'd offer into evidence at this time as
10 Exhibit C-15 the Consents, along with Mr. Ferguson's
11 letter.

12 MR. FERGUSON: No objection.

13 THE COURT: Without objection, so admitted.

14 (Plaintiff's Exhibit C-15 was admitted into evidence.)

15 **Q: Do you recall who prepared the Consent forms?**

16 A: I prepared those forms.

17 **Q: Did you have consideration to what type of deed would**
18 **be the type of deed appropriate for this transaction?**
19 **These transactions? The sales of the property?**

20 A: Well, I only wanted to give a Quitclaim Deed because
21 of all of these claims. I didn't know -- I didn't
22 know who owned it -- who -- what claims were valid. I
23 didn't think any of them were. And now I think, as I
24 understand the Probate Code, I, as an Executor or
25 Personal Representative can only give a Quitclaim

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1 Deed. I'm not sure about that. But that's what I
2 negotiated with Rowland. You know, it was a Quitclaim
3 Deed. And that was what was prepared and that's what
4 -- I prepared the Deeds and Rowland signed them and we
5 closed on those deeds.

6 **Q: Well, so that we discuss and have it in the record,**
7 **are you familiar with the General Warranty Deed?**

8 **A: Yes.**

9 **Q: Now, if a General Warranty Deed is utilized to**
10 **transfer property, rather than a Quitclaim Deed, and**
11 **there are potentially claims by third-parties that may**
12 **claim an interest, what is the risk to the Seller if**
13 **you have a General Warranty Deed?**

14 **A: Well, they could come back against the Estate, or me,**
15 **at a future time. So it's important just to give them**
16 **a Quitclaim Deed. Whatever I owned, I sold it.**

17 **Q: And nothing more?**

18 **A: Nothing more.**

19 **Q: So whether you -- if you owned nothing, you sold them**
20 **nothing?**

21 **A: That's correct.**

22 **Q: All right. Let me show now what we've pre-marked as**
23 **Exhibit C-16 and ask you if those are the Quitclaim**
24 **Deeds that were utilized?**

25 **A: Yes.**

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1 **Q: And who prepared those deeds?**

2 A: I prepared the deeds. I prepared these deeds.

3 MR. HAWKINS: Your Honor, we'd offer into evidence at this
4 time as Exhibit C-17 [sic], the Quitclaim Deed.

5 THE COURT: Okay.

6 MR. FERGUSON: No objection.

7 THE COURT: No objection.

8 (Plaintiff's Exhibit C-16 was admitted into evidence.)

9 **Q: Mr. Sullivan, when you had attempted to communicate**
10 **with Ms. Brown and Ms. Moses prior to the death of Ms.**
11 **Kay to get together and divide the property, what came**
12 **of those attempts?**

13 A: Nothing. We were pretty much ignored by Ms. Brown and
14 Ms. Moses.

15 MR. HAWKINS: I believe I have just a few other exhibits,
16 Your Honor.

17 THE COURT: Okay.

18 **Q: Mr. Sullivan, I'm going to hand you this folder that**
19 **has in it what I believe to be various filings that**
20 **you made on behalf of the Estate with the Probate**
21 **Court.**

22 A: Yes, sir. That's correct. This is the First Interim
23 Accounting, the Second Interim Accounting, Third
24 Interim Accounting, and Fourth Interim Accounting.

25 **Q: Do those accountings reflect the amount of money that**

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1 **had been disbursed through the Estate, the Interim**
2 **Accounting?**

3 A: Reflects the amount of money that came in and the
4 amount of money that went out.

5 **Q: What was the total gross dollars into the Estate, if**
6 **you know?**

7 A: Well, I think the -- well, the sale generated \$365,000
8 or so after the expenses but the total Estate,
9 including the money that came in, was like \$535,000.

10 THE COURT: Excuse me? I didn't catch that figure.

11 A: \$535,000 --

12 THE COURT: \$535,000.

13 A: -- was the appraised value of the Estate plus the
14 monies that came in to the Estate.

15 THE COURT: Does that include the sale proceeds from the
16 real estate?

17 A: Well, that's the real estate appraised at the
18 \$307,000. I mean, that's the -- that's the appraised
19 value of the real estate, plus the monies that came
20 into the Estate.

21 **Q: You're saying that the figure that you gave us, so**
22 **we're all clear, does it use the appraised value or**
23 **the actual sale value?**

24 A: It used the appraised value.

25 **Q: All right. And that is reflected on which document**

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1 that you have there?

2 A: Well, it would be reflected on, first of all, if you
3 have the Inventory -- there's a Supplemental Inventory
4 and Appraisal that shows the value of the properties
5 at the date of death. And that's in here. And then
6 the monies that came into the Estate would be
7 reflected in the Interim Accountings.

8 Q: It appears under Schedule B of the Inventory and
9 Appraisement that was filed with the Court on October
10 18th, 2010 -- do you see that document?

11 A: Wait a minute.

12 Q: And it has checked Supplemental Number One. Let me
13 show you what I'm looking at.

14 A: Right. Supplemental Inventory and Appraisement.

15 Q: As I look at that document, Schedule A identifies real
16 estate. Now, am I understanding you to say that that
17 number is the appraised value -- the total of the
18 appraised values of the real estate?

19 A: That's correct. That's the total of her interest in
20 the 330 acre tract plus the \$84,000 house and lot.

21 Q: Under Schedule B it references stocks and bonds in the
22 amount of \$60,516.41. Do you see that?

23 A: I do.

24 Q: Do you know, is that the valuation as of some specific
25 point in time?

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1 A: That's the date -- that was like a money market
2 account and that's the date of the death.

3 Q: So the value that we're seeing on here is if it had
4 earned interest since that time?

5 A: Yeah, if that --

6 Q: And it would be a higher number today?

7 A: That's correct.

8 Q: Has any of that money been distributed? The money
9 that was in the money market account?

10 A: The money market -- the money went into the --
11 essentially went into a checking account and was paid
12 out over time for expenses.

13 Q: All right. And the next item, Schedule C, is Notes
14 Due Decedent in cash. And there may be an attached
15 Schedule that explains. I'm just trying to get this
16 in the record now. If you would identify for us the
17 other assets that there were in the Estate, as part of
18 your general --

19 A: Well, there was a checking account for \$19,000.

20 Q: I think we have another copy. For some reason this
21 was not in there. I apologize. Let me -- Mr.
22 Sullivan, did you say that Schedule C, does that
23 represent money in the checking account?

24 A: Yes, sir. \$19,125.88 at the time of death.

25 Q: Then there is Insurance on a person's life, Part one

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1 payable to Estate. Those monies were collected from
2 an insurance carrier?

3 A: Yes, sir.

4 Q: That's \$1,228?

5 A: That's correct.

6 Q: And then the next line shows something about Payable
7 to beneficiary. What is that?

8 A: That was a policy that the Estate owned but Patsy
9 Copeland was the beneficiary.

10 Q: With the Estate and your responsibility as the
11 Personal Representative, would you have had to have
12 been involved in that or would the, so far as you
13 know, the carrier would have just paid to the
14 beneficiary.

15 A: The carrier paid the beneficiary.

16 Q: And you're just noting it --

17 A: Well, I think it's required --

18 Q: Well, it's on the form; I see that. Required to be
19 disclosed.

20 A: That's right.

21 Q: But I'm saying you're just disclosing it because part
22 of your work, you had to find out about it and
23 disclose it; correct?

24 A: That's correct.

25 Q: Then we have, for Schedule F, Other miscellaneous.

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1 A: Yes, sir.

2 Q: \$38,621.11. Can you tell us where that number comes
3 from?

4 A: Well, that was all of her personal effects: jewelry
5 and car and these were all -- there are appraisals to
6 support all of that. The car, I may have gotten from
7 the Blue Book value.

8 Q: But the values of the jewelry and the furniture and --

9 A: Those were all --

10 Q: -- clothing and so forth, was from an appraiser?

11 A: That's correct. The antique dress -- there were three
12 dresses and, you know, I found out -- I had
13 information that one dress may be worth \$500. And the
14 shop equipment and so forth. I had someone, an
15 auctioneer, come and walk through the property with me
16 and tell me what that stuff might be worth. The --
17 all that was distributed to the various friends and
18 relatives of Ms. Kay.

19 Q: All right. The Interim filings that were made and are
20 reflected as Interim Numbers 1, 2, 3, and 4, do they
21 reflect all of the disbursements that have been made
22 thus far?

23 A: Yes.

24 Q: And do they also reflect all the income or values of
25 items that were part of the Estate?

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1 A: Yes, sir. There's additional interest has accrued
2 since then and I got the bank to return \$50 in bank
3 charges.

4 Q: All right. There was a Petition for Settlement that
5 was filed. It appears to have been clocked-in on
6 November 15th, 2010 and it's dated November 12th of
7 2010. Is that in the set of information you have
8 there?

9 A: Yes, sir.

10 Q: But that was created by yourself; is that correct?

11 A: That's correct.

12 Q: You sent Notices to the various parties and attached
13 that and a Proof of Delivery; is that correct?

14 A: That's correct.

15 Q: There is an Accounting -- I'm sorry. Nevermind. We
16 also have a Petition for Settlement -- Well, I guess
17 we just discussed that. We have a Proposal for
18 Distribution and an Amended Proposal for Distribution.
19 Can you explain for us what those represent?

20 A: Well, Proposal for Distribution was to show -- it went
21 out with the Accounting to show, and with the
22 Petition, to ask the Court for permission to
23 distribute the assets as noted in this Proposal for
24 Distribution. After a hearing -- after the hearing
25 was Noticed, I updated it and I asked that the Court

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1 approve the expenses of this hearing and maybe
2 possibly some set offs or offsets to the shares going
3 to Ms. Brown and Ms. Moses.

4 **Q: Looking at the Proposal for Distribution, Item I is**
5 **legal fees pertaining to real estate litigation; is**
6 **that correct?**

7 A: Yes.

8 **Q: And that is an amount not yet paid to Collins and Lacy**
9 **but you would request the Court to approve that that**
10 **payment be made?**

11 A: Yes. It's due and owing.

12 **Q: The \$7,714.57?**

13 A: And that's for the -- that's the amount of the
14 litigation file, \$4,592.23, according to this, is the
15 Estate administration.

16 THE COURT: Give me those figures again, please, sir.

17 MR. HAWKINS: Yes, sir. And they are -- we're going to
18 put this in evidence, Your Honor. They're off the
19 Proposal for Distribution. And it's probably easier
20 to show it to you.

21 THE COURT: Okay. I'll give it back to you in just a
22 minute.

23 MR. HAWKINS: Yes, sir.

24 THE COURT: Mr. Sullivan, you indicate that these two
25 expenses have not been paid, the \$7,000 figure and the

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1 \$4,000 figure to Collins and Lacy?

2 A: Still due, yes, sir.

3 Q: And there's also listed on here a Request for payment
4 for preparation of the final tax return by Clifton D.
5 Bodiford in the amount of \$1,000.

6 A: Yes. That --

7 Q: That's a tax return that has not yet been done; is
8 that correct?

9 A: Yes, that's correct.

10 Q: And you're asking the Court to approve that; correct?

11 A: Well, part of that may be for a return that he
12 prepared last year that wasn't -- that he didn't bill
13 for. I got the bill for him with an understanding
14 that \$1,000 will be the last tax returns filed.

15 Q: Would include -- would cover the final return to be
16 filed?

17 A: That's correct.

18 Q: Do you prepare tax returns yourself --

19 A: No, sir.

20 Q: -- for other people?

21 A: No, sir.

22 Q: All right. Now, when you were petitioning for a final
23 approval of distributions in the Estate, and approval
24 of the accountings that have taken place up to now,
25 you received a Request for Hearing from counsel on

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1 **behalf of Ms. Brown and Ms. Moses; correct?**

2 A: That's correct.

3 **Q: At that time, were you given any explanation by**
4 **counsel on behalf of Ms. Moses or Ms. Brown as to what**
5 **it was that they were contesting?**

6 A: I guess just the amount of the Personal Representative
7 compensation.

8 **Q: But you weren't advised that --**

9 MR. FERGUSON: Objection. I've tried not to object but
10 he's been leading the witness a whole lot throughout
11 this whole thing and it's -- I just really need to
12 object.

13 MR. HAWKINS: I'll rephrase the question.

14 THE COURT: Okay. Just rephrase it.

15 **Q: What information, if any, were you provided by the**
16 **people contesting your fee as to what it was about**
17 **your fee that they were unhappy about?**

18 A: Nothing really, other than the letter saying we want
19 to have a hearing.

20 **Q: And so, in other words, for you to prepare to come**
21 **here today and be able to put up evidence to show what**
22 **a reasonable fee is, you've not been told anything you**
23 **needed to worry about? Any area to concentrate on**
24 **that would say, Well, let's call a witness on X and**
25 **that will resolve the dispute. Nothing of that**

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1 **nature. Is that fair to say?**

2 A: That is fair to say. I started -- went back to day
3 one and tried to remember everything that we did in
4 this Estate administration.

5 **Q: Are you familiar with the phrase that, He who has**
6 **himself for a lawyer has a fool for a client?**

7 A: I've heard that.

8 **Q: Did you feel it was appropriate and indeed necessary**
9 **for you to retain counsel to represent you in this**
10 **hearing?**

11 A: Yes. And I think I have -- I know I have the right
12 under the Probate code.

13 **Q: And have you in fact retained counsel?**

14 A: Yes, I have.

15 **Q: You retained myself and my law firm?**

16 A: That's correct.

17 **Q: Have you reviewed an Interim Statement that we**
18 **provided to you for time up through, I think day**
19 **before yesterday?**

20 A: Yes, I have.

21 **Q: Do you recall the amount of that statement?**

22 A: \$3,500 or so, I can't remember exactly.

23 **Q: And you and I prepared, something in the neighborhood**
24 **of eight hours yesterday; is that --**

25 A: That's correct.

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1 Q: And we did some preparation in traveling here today
2 for this hearing; is that fair to say?

3 A: Absolutely. Very bright and early this morning.

4 Q: At my advice, did you authorize me to retain two
5 expert witnesses to come and testify about things you
6 had done as the Personal Representative so that we
7 could prove that you did things that were necessary to
8 do a good job?

9 A: That's correct. Yes.

10 Q: And you expect to have to pay those people for their
11 testimony out of the Estate; correct?

12 A: I do. Yes, I do.

13 Q: Did you ever receive from counsel on behalf of Ms.
14 Moses and Ms. Brown, or they themselves, circumventing
15 their counsel, any kind of a proposal or offer to
16 resolve this matter so that we didn't have to have a
17 hearing today?

18 A: No.

19 MR. HAWKINS: Your Honor, I'd like to offer into evidence
20 at this time the Final Interim Accounting. And I
21 think these matters were all filed with the Court but
22 I want to make sure we have them properly in evidence.
23 We have four Interim Accountings, and they're numbered
24 1 through 4. We have the Proposal for Distribution,
25 the Amended Proposal for Distribution, the Petition

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1 for Settlement, and I would put in the Notice of this
2 Hearing just to be certain it shows who all received
3 copies, and the Inventory and Appraisement.

4 THE COURT: Okay. Mr. Ferguson, any objections?

5 MR. FERGUSON: No, Your Honor.

6 THE COURT: Okay. Without objection they'll be marked as
7 -- you want that C-17?

8 MR. HAWKINS: I'd probably do them all as one.

9 THE COURT: Right. Okay. This will be marked as C-17.

10 (Plaintiff's Exhibit C-17 was admitted into evidence.)

11 MR. HAWKINS: I'm just checking over some notes, Your
12 Honor.

13 THE COURT: Sure. Take your time.

14 MR. HAWKINS: I'm about concluded here. I want to make
15 sure I'm not leaving something out.

16 THE COURT: Take your time.

17 **Q: Mr. Sullivan, we have marked a number of letters and**
18 **items that you were involved in during the course of**
19 **your administration of the Estate. Have we marked all**
20 **of the letters that you either sent or received while**
21 **you were the PR?**

22 A: No. Not at all.

23 **Q: There are some banker's -- what I call banker's boxes**
24 **over here on the floor.**

25 A: That's correct.

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1 Q: How many of those are there?

2 A: Four boxes, I believe.

3 Q: And what do they contain?

4 A: They contain work we did to administer the Estate.

5 Q: Okay. Is it fair to say that there are hundreds, if
6 not thousands, of sheets of paper that constitute the
7 file created as part of your duties as the Personal
8 Representative?

9 A: That's fair to say.

10 MR. HAWKINS: Your Honor, I have no other questions of
11 this witness at this time.

12 THE COURT: Okay. All right. Mr. Ferguson, I would have
13 to assume that you probably will take more than 20
14 minutes to conduct cross-examination?

15 MR. FERGUSON: Yes, sir.

16 THE COURT: And I base that totally on the length of
17 direct examination. I'm not basing that on anything
18 else. Okay? I would like to break at one. Would you
19 have any short witnesses that we could take? If you
20 don't, that's fine.

21 MR. HAWKINS: I suspect that Mr. Heard would fit into that
22 time frame.

23 THE COURT: Okay. All right. What we're going to do is
24 we will adjourn examination of Mr. Sullivan after
25 lunch break. And I don't have to remind you of this,

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1 Mr. Sullivan, because you're an attorney but, for the
2 record and for the benefit of the others in the
3 courtroom, you can't talk with anyone, including Mr.
4 Hawkins, concerning your testimony. Certainly you can
5 talk with him about other things, if you care to, but
6 you cannot talk with him or anyone else about your
7 testimony. So if you'll step down.

8 MR. HAWKINS: Your Honor, can I verify -- the one thing
9 that I didn't really cover with him is his time since
10 the November 12th --

11 THE COURT: Okay.

12 MR. HAWKINS: -- accounting that was provided and I do
13 need to do that.

14 THE COURT: Okay. Sure. Sure.

15 **Q: I apologize. Mr. Sullivan, have you estimated your**
16 **time since the November 12th accounting?**

17 A: Yes, I have.

18 **Q: And I believe you actually, did you create --**

19 A: I did. I think it's in my briefcase. It's about 41.6
20 hours or so.

21 THE COURT: So you want to go down and -- it would be
22 easier for you to find it.

23 **Q: Oh, this briefcase. I better let him go in there.**
24 **It's too much stuff for me. Mr. Sullivan, I'm going**
25 **to offer you a document and ask you to explain to the**

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1 Court what that represents.

2 A: This is the time I've spent on this matter since --
3 well, some of the time I've spent on this matter since
4 11/12/2010, the day I submitted the first -- the
5 Proposal for Distribution and Petition for Settlement.

6 Q: Okay. And I noticed that the statement includes the
7 number of hours and then it uses an hourly rate of
8 \$225 per hour and it comes to a number, add in some
9 mileage. That's just for informational purposes; is
10 that correct?

11 A: That's correct.

12 Q: You're not billing the Estate for \$9,360. You're just
13 showing that if you were billing at the rate that you
14 normally had billed for your full time at Collins and
15 Lacy, that's what it would be for the time since
16 November 12th of 2010; correct?

17 A: That's correct. And I'm asking the Court to award --

18 Q: The Court to recognize additional time?

19 A: To award fees since the Proposal for Distribution was
20 filed and the accountings, and preparation for this
21 hearing.

22 Q: Do you believe that that is a reasonable fee for the
23 Court to reward for the time that you have spent since
24 November 12th?

25 A: Well, that's -- that's just a portion of the time so I

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1 feel that's reasonable.

2 **Q: All right. And you have not included in this the time**
3 **to come here today?**

4 A: No, I have not.

5 MR. HAWKINS: We'd like to offer that into evidence, Your
6 Honor.

7 THE COURT: Mr. Ferguson, any objection?

8 MR. FERGUSON: No objection.

9 THE COURT: Okay. Without objection it will be marked as
10 C-18.

11 (Plaintiff's Exhibit C-18 was admitted into evidence.)

12 MR. HAWKINS: Okay. That's all I have, Your Honor.

13 A: Your Honor, may I point out a housekeeping matter?

14 THE COURT: You may want to talk with Mr. Hawkins first.

15 I realize you're an attorney but in this situation --

16 A: Okay.

17 THE COURT: -- you're not an attorney so before you talk
18 to me, you can go down and talk with Mr. Hawkins about
19 that one particular thing.

20 A: All right.

21 MR. HAWKINS: Your Honor, I think it's probably a
22 meritorious point of clarification. We marked as an
23 Exhibit the Quitclaim Deeds that were prepared by Mr.
24 Sullivan. But, as part of that Exhibit, he points out
25 to me there are also HUD closing statements and wanted

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1 to make clear that he didn't prepare those HUD closing
2 statements. He didn't testify to that but didn't want
3 anybody to be confused when they look at the Exhibit.

4 THE COURT: All right. Very good.

5 MR. HAWKINS: Is that correct, Mr. Sullivan?

6 A: That's correct.

7 THE COURT: All right. If you'll step down, Mr. Sullivan.

8 And you want to call this gentleman?

9 MR. HAWKINS: Sure.

10 THE COURT: Come around please, sir.

11 MR. HAWKINS: We call Bart Heard at this time.

12 THE COURT: Just go up there and place your left hand on
13 the Bible and raise your right hand.

14 EDWARD BART HEARD, being duly sworn and
15 cautioned to speak the truth, the whole truth and nothing
16 but the truth, testifies as follows:

17 THE COURT: Okay. Have a seat. You may proceed.

18 DIRECT EXAMINATION

19 BY MR. HAWKINS:

20 Q: Mr. Heard, would you state your full name for the
21 record, please?

22 A: Edward Bart Heard.

23 Q: And what's your date of birth?

24 A: 3/1/69.

25 THE COURT: Spell your last name for me, sir.

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- 1 A: H-E-A-R-D.
- 2 Q: Where were you born?
- 3 A: Lakeland, Florida.
- 4 Q: And when did you move to South Carolina?
- 5 A: 1981.
- 6 Q: Have you lived here ever since?
- 7 A: I moved back to Florida -- back and forth. My parents
8 divorced and I moved back to Florida for my mother and
9 my father.
- 10 Q: Did you have roots here in Laurens County?
- 11 A: On my mother's side, I did.
- 12 Q: All right. How far did you go in school?
- 13 A: I went through college; I never did finish.
- 14 Q: But you completed high school and you have some years
15 of college credit?
- 16 A: Yes, sir.
- 17 Q: What sort of work have you done since then?
- 18 A: I've been in law enforcement my whole career.
- 19 Q: All right. And what is your current position?
- 20 A: I'm a Front Desk Deputy for Lexington County Sheriff's
21 Department.
- 22 Q: Well that's down in my neck of the woods sort of.
- 23 A: Yes, sir.
- 24 Q: You are an heir of the Estate of Marion Kay; is that
25 correct?

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1 A: Yes, sir.

2 Q: Did you know Ms. Kay when she was living?

3 A: Yes, sir. She was my grandmother.

4 Q: Were you involved in attempts to resolve the disputes
5 that you've heard test- -- you've been here during the
6 trial so far; is that correct?

7 A: Right.

8 Q: Have you heard the testimony of Mr. Sullivan?

9 A: (Nods head affirmatively.)

10 Q: That's a -- you need to answer out loud.

11 A: Oh, yes, sir. I'm sorry.

12 Q: That's all right.

13 THE COURT: The Court Reporter needs to hear a verbal
14 response instead of a nod of the head and --

15 A: Okay.

16 THE COURT: -- I understand that sometimes not easy to be
17 done.

18 Q: Did you feel there was a difficulty in trying to get
19 people to resolve the real estate issues?

20 A: Very much so.

21 Q: Did you attend any meetings where it was discussed?

22 A: Yes, sir.

23 Q: Do you have anything you want to tell the Court about
24 your prospective from having been one of the heirs in
25 this matter?

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1 A: I do. First of all, thank you for allowing me this
2 time, Your Honor.

3 THE COURT: Certainly.

4 A: As Marion's grandson --

5 **Q: These are emotional times. Everybody understands**
6 **that.**

7 A: I'm sorry.

8 THE COURT: That's okay.

9 A: I'm sorry.

10 THE COURT: Take all the time you need to collect yourself
11 and we've got some tissue there if you need it.

12 A: I hate that all this has happened. I feel that if the
13 land was divided way back when before Marion passed
14 away, all this could have been resolved. I don't
15 object to any of Mr. Sullivan's fees that he's --
16 that's accrued at all. I don't think it's right that
17 the Estate is paying for -- again, this is my opinion,
18 Your Honor. That the Estate is paying -- it's coming
19 out of the Estate's pocket, these proceedings that are
20 happening today. I think it's only fair that Mary
21 Leona and Martha help pay for the Appraiser on the
22 survey and some of these legal fees that have accrued
23 recently because of this hearing. I don't think it's
24 right that the Estate has to come out of their pocket
25 for this -- for this. My family -- my wife was just

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1 diagnosed with breast cancer and we're going to have
2 some major medical bills facing us. So part of my
3 inheritance is being dwindling away because of these
4 proceedings. And, again, I don't think it's right.
5 And my inheritance is being thrown away. And it could
6 go to paying some of these medical bills that we're
7 going to be facing that my insurance doesn't cover.
8 And I just -- I don't know. I think it's only fair
9 and I ask you that they be responsible for some of
10 these fees. And that's all I have to say.

11 MR. HAWKINS: Nothing further, Your Honor.

12 THE COURT: Mr. Ferguson, any questions?

13 MR. FERGUSON: No questions.

14 THE COURT: Okay. Thank you very much, sir. You may step
15 down. Mr. Hawkins, I assume that you would not have
16 any other real short witnesses?

17 MR. HAWKINS: No, sir, Your Honor.

18 THE COURT: Okay. All right Ladies and Gentlemen, we're
19 going to take a break. It's about ten till one.

20 Let's come back about 2:15, if that suits everybody.

21 MR. HAWKINS: I don't know about the cross, Your Honor,
22 but I don't think my other witnesses will take more
23 than an hour and 15 - 20 minutes or so. That would be
24 my thought.

25 THE COURT: All right. If you -- the Courtroom will be

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1 locked if you need to leave your stuff. I don't know
2 if y'all want to haul all of that around with you.
3 You can, if you like, but the Courtroom will be locked
4 if you need to leave any of your documents here. It
5 will be safe guarded and not be opened until we start
6 back. Okay. Thank you very much. All right.
7 Adjourn for lunch and back at 2:15.

8 (Lunch taken 12:58 p.m. until 2:24 p.m.)

9 MR. HAWKINS: Your Honor, I did pull out of that package a
10 Memorandum of all that we submitted.

11 THE COURT: Good. Thank you. I appreciate that.

12 MR. HAWKINS: I do want to mention that it makes a couple
13 references to the Affidavits.

14 THE COURT: Okay.

15 MR. HAWKINS: And we just ask the Court to ignore any
16 references to the Affidavits.

17 THE COURT: Okay. That's fine. I can do that. Okay. I
18 think we're now -- do we want to go ahead and start
19 back with cross examination of Mr. Sullivan? Is that
20 okay?

21 MR. HAWKINS: Yes, sir.

22 THE COURT: Mr. Sullivan, if you'll come back up on the
23 witness stand and remind you that you're still under
24 oath.

25 A: Yes, sir.

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1 THE COURT: And we'll turn it over to you, Mr. Ferguson.

2 EDWARD SULLIVAN (CONTINUED)

3 CROSS EXAMINATION

4 BY MR. FERGUSON:

5 Q: Thank you, Your Honor. That Memorandum that was just
6 mentioned, you said that you needed to expend so much
7 time because of complications and novell issues. And
8 the first one that you mentioned was the Charles P.
9 "Chuck" Copeland option to purchase. Somewhere in
10 here --

11 THE COURT: C-4. They are -- I put them in order
12 numerically as opposed to how they were admitted into
13 evidence because sometimes they would -- a C-4 would
14 go before a C2, or whatever.

15 MR. FERGUSON: I'm actually looking for the Will.

16 THE COURT: Oh, that's B.

17 MR. HAWKINS: It was B, I believe.

18 MR. FERGUSON: Oh, there it is.

19 THE COURT: I had an opportunity, by the way, during lunch
20 to go through all the Exhibits, since I had not had an
21 opportunity to do that prior to that.

22 Q: All right. I'm going to show you Plaintiff's Exhibit
23 B. And I'm going to ask you to read for us Item 14.

24 A: Option to Purchase. It is my desire and I hereby
25 direct that Charles P. Copeland be permitted to buy my

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1 interest in the real estate within eight months after
2 my death at the fair market value at the date of my
3 death. The decision of my Personal Representative
4 regarding the fair market price to be final.

5 **Q: Okay. To buy my property. So what was it that she**
6 **owned?**

7 A: She owned a half interest in the 330 acre tract and
8 she owned a house and ten acres.

9 **Q: All right. So she was going to offer him, and she did**
10 **offer him, the right to buy, among other things, that**
11 **320 [sic] acre tract -- her half interest in it?**

12 A: That's correct.

13 **Q: Okay. And that right of his to buy that real estate**
14 **lasted for eight months from the date of her death?**

15 A: Not the way I interpret the Will. My objective was to
16 carry out Ms. Kay's intent.

17 **Q: Well --**

18 A: Based on what I understood and to act in the best
19 interest of the Estate. And to me, that option was
20 meaningless until the land was divided.

21 **Q: It says within eight months after my death; is that**
22 **what it says?**

23 A: Well, it also says the decision of my Personal
24 Representative regarding the fair market price to be
25 final. And we didn't have a final -- we didn't have a

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1 fair market value until like nine or ten months later.

2 **Q: So you can delay -- if you delay getting a fair market**
3 **value, you can infinitely extend the eight months?**

4 **A:** Well I didn't do that. But I have the -- I have the
5 power and the right to have that property divided.
6 And make this provision meaningful to Mr. Copeland.
7 He was not going to buy a half interest and be co-
8 tenants with Ms. --

9 **Q: This Will says --**

10 **A:** -- Moses and Ms. Brown.

11 **Q: -- that she has -- she is giving him the right, quote,**
12 **To buy my interest in real estate. And you just got**
13 **through telling me that's a half interest in the big**
14 **one of 320 [sic] acres.**

15 **A:** It's 330 acres.

16 **Q: For the big parcel?**

17 **A:** That's right.

18 **Q: Irregardless of the exact number of acres in it, is it**
19 **not a fact -- okay, there's a parcel of 330.2268**
20 **acres. Is that what we're talking about?**

21 **A:** That's correct.

22 **Q: Okay. So, she said she was offering him the right to**
23 **buy her one-half interest?**

24 **A:** Well, I interpret that to, or any part thereof.

25 **Q: Excuse me?**

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1 A: I interpret that to mean, or any part thereof.

2 Q: Where does it say, or any part thereof?

3 A: Well I don't -- that's the way I interpret it.

4 Q: Well, I mean, if you do that, then you've got to get
5 into all kinds of surveys and other stuff, don't you?

6 A: We had to survey the property.

7 Q: Why did you have to survey it?

8 A: So --

9 Q: If she wanted to sell the entirety of what she owned?

10 A: I don't know that she wanted to sell the entirety. I
11 interpret that to he could have any piece he wanted.
12 I asked her about that before she died.

13 Q: Well, you -- as a lawyer, you know you can't beat
14 Deadman's Statute -- trying to get around the Deadman's
15 Statute, don't you?

16 MR. HAWKINS: Your Honor, I object that that's an improper
17 application of the Deadman's Statute.

18 THE COURT: Any evidentiary rulings that are brought to my
19 attention, the Court will deal with that.

20 Q: All right. So you couldn't use the tax appraisal
21 value to get a value to give to Chuck for what the
22 land was?

23 A: I would say that's probably half of what it was
24 ultimately worth. I didn't -- no, I could not.

25 Q: But yet you used the tax appraiser's -- tax assessors

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1 **value for your Inventory and Appraisement at one**
2 **point; didn't you?**

3 A: I don't remember. If we did, we changed it.

4 **Q: So you don't know whether you used it or not?**

5 A: The Supplemental Inventory and Appraisement shows the
6 real estate at \$391,000, based on these appraisals.

7 MR. FERGUSON: Where's the time sheet?

8 THE COURT: What are you looking for, Mr. Ferguson?

9 MR. FERGUSON: The time sheet, sir.

10 THE COURT: The time sheet?

11 MR. FERGUSON: The time sheets. Collins and Lacy.

12 THE COURT: Oh.

13 MR. HAWKINS: They're around Exhibit D. Well, they are
14 Exhibit D.

15 **Q: Is there a listing or a charge on 1/18/08?**

16 A: Let's see -- '07, '09. Unless they're out of order, I
17 don't see it.

18 **Q: You don't see any '08s?**

19 A: Unless they're out of order. I see 10/27/08.

20 **Q: Well, do you see 1/18/08.**

21 A: No, that's where it starts. I don't see -- and the
22 next one before that is 11/26/07.

23 MR. HAWKINS: There are -- if I might just for clarity.

24 Within this Exhibit there are several separate
25 billings that cover different time periods. I'm not

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1 seeing a 1/18/08. I'm not saying it isn't there, but
2 I'm not spotting that. Do you have a page flagged out
3 of your information that might just show --

4 A: I have it in my notes but -- I don't see 1/18/08. I
5 see 1/17/08.

6 Q: Well, maybe we can come back to that. But in your
7 Memorandum in Support of Petition for Settlement you
8 said that one of the complications and novell issues
9 was Chuck Copeland's right to -- or option to
10 purchase, which was supposed to last for eight months
11 but you extended it indefinitely, didn't you?

12 A: I extended it for a while.

13 Q: How long?

14 A: Well, it eventually just went away because of the way
15 the transaction closed. He had an option, as I saw
16 it, that may have clouded the title to that property.
17 And if that property was ever divided, that option
18 might be out there. So, if I -- the Estate got its
19 half of the land, it may not be able to sell it. So I
20 was trying to work a compromise so that he was dealt
21 with fairly and that everybody else was dealt with
22 fairly.

23 Q: But my point is, that you're saying that the fact that
24 he had an option was a complication, and it would have
25 gone away on its own at the eighth month mark but you

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1 **extended that complication.**

2 A: I don't know about that. I don't know that it would
3 have gone away. I don't know when he would have
4 asserted. He could have asserted it and it didn't go
5 away. He didn't have anything -- he wasn't going to
6 buy into this partnership with Mary Leona and Martha.

7 Q: **So he --**

8 A: And I --

9 Q: **-- wasn't --**

10 A: -- think --

11 Q: **-- going to exercise his option?**

12 THE COURT: Wait a minute. We've got -- ask a question;
13 answer it. We don't need to have both of you talking
14 at the same time. It creates a problem for the
15 record.

16 Q: **He wasn't going to exercise an option to buy the**
17 **entirety of one-half interest in that property within**
18 **eight months, was he?**

19 A: I have -- the way I read it, he could get any piece he
20 wanted. He wanted the piece adjoining -- that
21 adjoined his property.

22 Q: **And was he going to do that within eight months?**

23 A: He was going to do that as soon as we got clear title
24 to the property.

25 Q: **In fact, when he made an offer to buy the property, it**

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1 **was more -- it was almost a year after the Testatrix**
2 **had died; right?**

3 A: I think it was about a month after we determined what
4 the fair market value was.

5 **Q: He could have made an offer, could he have not?**

6 A: He could have.

7 **Q: But he didn't make an offer within the eight months?**

8 A: He didn't -- he didn't know what I was asking for the
9 property.

10 **Q: He didn't know what?**

11 A: He didn't know what the property was being listed for.
12 Offered for sale.

13 **Q: He didn't know what Ms. Kay owned?**

14 A: He didn't know what the sale price was. I didn't know
15 what the sale price was until we got the appraisal.

16 **Q: Why did it take you so long to get an appraisal?**

17 A: Well, let's see. She died in March and we --

18 MR. HAWKINS: May.

19 A: May. We cleaned out the apartment. Then we gave the
20 car out. Then we started down the road, they got
21 upset because they didn't get all the property. We
22 got into the Fall. There was a lot of talk about how
23 they wanted the property. You know, I think there was
24 some conversation about if they wanted the property
25 maybe we could avoid a survey, avoid the cost. But no

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1 offer was ever made to me where they said, I want to
2 offer you this much money for the land. And sometime
3 around the Fall of '07 we hired a surveyor and we got
4 the survey in. And then we hired the Appraiser and he
5 got it to us as fast as he could, I imagine, about
6 February 8th of or 12/08.

7 **Q: And you had not solicited any kind of offer from Chuck**
8 **Copeland?**

9 A: I didn't know what the property was worth. And
10 another reason it took so long to get -- we
11 interviewed. We shopped the appraisal and we shopped
12 the surveyor. We just didn't hire the first ones, so
13 that took a couple months.

14 **Q: Okay.**

15 A: The survey, I guess, took a couple of months. And he
16 couldn't do the appraisal until he had the survey.

17 **Q: If the only thing that was extending this eight month**
18 **option to purchase was waiting for an appraisal, why**
19 **is it that on May 13th of 2010 you invited Mr.**
20 **Copeland to sue the Estate? And you're saying, if**
21 **you're interested in pursuing the option as is written**
22 **in the Will, please let me know and we'll ask the**
23 **Probate Court to set a hearing. Isn't that your**
24 **letter?**

25 A: Well, you have the premises all wrong. That wasn't

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1 the only thing that was stopping him from buying the
2 property or exercising the option. I wanted the
3 property divided.

4 **Q: Is that your letter?**

5 A: This is a letter I wrote him, yes.

6 MR. FERGUSON: Okay. I'd like to introduce this.

7 THE COURT: All right. Counsel?

8 MR. HAWKINS: No objection, Your Honor.

9 THE COURT: All right. Without objection, to be marked
10 as, I guess we'll refer to you as Defendant?

11 MR. FERGUSON: Yes, sir.

12 THE COURT: Exhibit Number 1.

13 (Defendant's Exhibit 1 was admitted into evidence.)

14 **Q: It was pretty clear to you, wasn't it, from talking**
15 **with the heirs, that what people wanted was to get**
16 **everything sold; right?**

17 A: At the highest value; correct.

18 **Q: Okay. And not just 40 something acres that Chuck**
19 **Copeland, 46.85 acres?**

20 A: The goal, the objective, was to sell it all and
21 disburse the proceeds to the beneficiaries.

22 **Q: Now, you said that everybody wanted to sell everything**
23 **and eventually you got it sold to Rowland Milam?**

24 A: Correct.

25 **Q: Rowland Milam was sent to you by Mary Moses; wasn't**

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1 **he?**

2 A: I don't know that.

3 **Q: You don't?**

4 A: No. He never told me that. I mean, I think that he's
5 her cousin.

6 **Q: And did you or your -- did your attorney receive**
7 **letters from me on the subject of Rowland Milam?**

8 A: Pardon me?

9 **Q: Did your attorney receive letters from me on the**
10 **subject of Rowland Milam's interest to buy the real**
11 **estate?**

12 A: I don't know that I ever saw a letter with Rowland
13 Milam's name in it.

14 **Q: When Mr. Sullivan [sic] made his offer on April 16th,**
15 **2008 --**

16 A: I'm Mr. Sullivan.

17 **Q: I'm sorry. When Mr. Copeland made his offer to buy**
18 **the 46.85 acres on April the 16th of 2008, what was**
19 **your reaction?**

20 A: Well, one thing I recall, the price per acre that he
21 offered I think was just a little bit less than what
22 the appraisal was, and my reaction was I was glad, you
23 know, and that he's going to have to pay \$1,500 if he
24 wanted it.

25 **Q: So on May the 2nd, 2008, you wrote a letter to the**

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1 **heirs to get their approval on that? On Chuck**
2 **Copeland's purchase?**

3 A: I made a proposal to the heirs whereby they could get
4 their four -- their five acres, whatever it was, and
5 he could exercise his option and they could buy the
6 rest of the land or whatever was setting there, and it
7 would all work out and everybody walked away happy.
8 Get it over and done with.

9 Q: **Again, this is a year after Marion Kay has died and**
10 **you say Chuck Copeland has an option to buy Marion's**
11 **real estate?**

12 A: That's correct.

13 Q: **Okay. And so in order for that purchase by Chuck**
14 **Copeland to go through, would you have had to do --**
15 **file a lawsuit; in your opinion?**

16 A: Yes. He was not going to buy an undivided interest.
17 And they've not budged, they wouldn't let him -- they
18 wouldn't agree to any compromise whereby he could buy
19 their interests as well. They didn't want him to have
20 the property.

21 Q: **So you were going to incur the expense of filing a**
22 **Partition action to force the heirs to sell to Mr.**
23 **Copeland?**

24 A: I also filed a Declaratory Judgement action as part of
25 that asking the Court to tell me who had what rights

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1 to this property. My goal was to divide the property
2 so that I had clear title to it. I have the value of
3 the property. And then I could do with it, as best I
4 could, to get the money to the heirs as fast as I
5 could.

6 **Q: Well, let's talk about that Right of First Refusal**
7 **from the '70s. Tell us what, in your opinion, that**
8 **Right of First Refusal said?**

9 **A:** Well, as I recall, it says that either owner of each
10 half of the property -- I guess there were two
11 families, if they got an offer, they had to present it
12 to the other side so the other side could accept the
13 offer.

14 **Q: Okay. So why is that such a problem? You get an**
15 **offer, you ask them if they want to buy it; they say**
16 **no, we don't -- we're not going to be able to match**
17 **that offer; you go ahead with your sale.**

18 **A:** I'm not sure that -- first of all, I'm not sure that
19 Right of First Refusal is enforceable.

20 **Q: Well, let's assume for the moment that it was**
21 **enforceable. What's wrong with telling these people,**
22 **I've got an offer for X number of dollars, you've got**
23 **a Right of First Refusal. Do you want to pay that**
24 **much money for it or not?**

25 **A:** I didn't think that Right First Refusal was

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1 enforceable.

2 **Q: Well, why do you even have to get to that point of**
3 **wondering whether it's enforceable?**

4 **A: Well, listen. They -- they had all that in front of**
5 **them. They could have made an offer at any time.**
6 **Show me an offer in writing where they said, I'll pay**
7 **this for this.**

8 **Q: Well, that suggests it's unlikely they would make an**
9 **offer and unlikely that they would ultimately claim**
10 **the Right of First Refusal. My point is, you don't**
11 **have to file a lawsuit to get at that. You just get**
12 **an offer, you present it to them and tell them either**
13 **they match it or they lose their Right of First**
14 **Refusal, and that's that. You don't need a Judge.**

15 **A: Well that's not the way I read it. They could have**
16 **offered any amount of money at any time. They never**
17 **made an offer. Never.**

18 **Q: So the Right of First Refusal really wasn't a problem?**

19 **A: Well, I don't know about that. It was there. It was**
20 **there. It had to be dealt with. And they brought it**
21 **to my attention.**

22 **Q: What it gave them was the right to take the first shot**
23 **at buying the property if somebody else wanted to buy**
24 **it; right?**

25 **A: If it was enforceable.**

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1 Q: If it was enforceable. But it's academic whether it's
2 enforceable or not if they're not going to exercise
3 it.

4 A: I don't know if they're going to exercise it or not.

5 Q: Well you just got through saying they never made you
6 any kind of a proposal?

7 A: They didn't.

8 Q: Okay. Okay. So we've talked about the eight month
9 option to purchase. We've talked about the Right of
10 First Refusal. And you said the other complication
11 and novel issue was the five acres.

12 A: They claimed five acres of land was theirs. There was
13 -- there was more than one war. First of all, they
14 said it was not Marion's to give to anybody. They had
15 to -- she had to leave it to them. They made that
16 plain.

17 Q: Assuming they actually said that, was there any legal
18 basis for that?

19 A: Abs- -- not that I could determine.

20 Q: So that wasn't going to be a problem?

21 A: Well, I -- you know, it's a claim against the other
22 property so it could have been a problem.

23 Q: Well, if there's no legal basis for it, people say all
24 kinds of things.

25 A: Especially these folks.

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1 **Q: But they can't do anything to you if they don't have a**
2 **legal basis.**

3 A: I had to determine what the basis -- what the
4 legalities were.

5 **Q: But you had the documents.**

6 A: Well, I had to round up the documents. I came up here
7 to the Probate Court and looked up Wills and so forth.
8 They said Marion didn't have the title. We had -- we
9 had to check that out. That was another issue. Then
10 they claimed the five acres that you're talking about.
11 Okay? They had no -- I saw no basis for that. But
12 they wanted it, and that was a roadblock until the
13 very end.

14 **Q: Well, aside from the testimony of Ms. Moses about the**
15 **rest of that transaction, there were documents on**
16 **file, like the deed that said it was part of a**
17 **Partition.**

18 A: I'm sorry. Marion got ten acres and they got five
19 acres.

20 **Q: Right.**

21 A: And there's some plat out there that really had no
22 meaning.

23 **Q: And in the deed, that ten acre deed to Marion, didn't**
24 **it say it was part of a Partition?**

25 A: I don't remember that. Maybe it does. And maybe the

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1 five acres was the other side of the Partition. How
2 do I know?

3 **Q: All right. But, I mean, you eventually worked that**
4 **out; right?**

5 **A:** We worked it out when we finally sold the property.
6 And I think Rowland agreed to maybe give them the
7 land.

8 **Q: Okay.**

9 **A:** So I submitted it to the Court to determine the right,
10 who got the five acres, what was Chuck Copeland's
11 interest in the option, and what was their Right of
12 First Refusal. How did all of that play together?
13 That was the purpose of that..

14 **Q: Yeah, but you're a lawyer. You already knew most of**
15 **that stuff and how that was going to turn out. Maybe**
16 **the five acres, you had to deal with circumstantial**
17 **evidence, but the other stuff is straight law; isn't**
18 **it?**

19 **A:** well, it depends on -- it depends on what the facts
20 are and what the jury believes. All those issues
21 clouded the title, in my opinion, until they were
22 resolved.

23 **Q: Okay. But anybody who's going to buy this property is**
24 **probably going to wind up taking a Quitclaim Deed, so**
25 **you don't really have to worry. It's not your**

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1 **problem.**

2 A: It's my problem if they won't buy it because of these
3 issues.

4 **Q: Well somebody did buy it, with a Quitclaim Deed.**

5 A: s After I got all those releases signed. He can use
6 that to make the argument that all of those claims
7 were released. So he doesn't have anything to worry
8 about.

9 **Q: Well everybody signed the releases without giving you**
10 **any trouble; didn't they?**

11 A: Four years later, or whatever it was. Three years
12 later.

13 **Q: Well how long after you presented the releases did**
14 **they sign them?**

15 A: I didn't have an offer to give them a release, or a
16 contract, until May 4th of '10. Three years after
17 she's gone.

18 **Q: Okay. So as soon as the opportunity and the need**
19 **arose for the releases, you presented them and they**
20 **were signed; right?**

21 A: Well, I had to go out to Chuck's house and explain it
22 to him. And at that time he stepped aside. But yeah,
23 they were signed and that set the way to close the
24 deal. But, until then, it was a stalemate.

25 **Q: As a well-educated person with a law degree, do you**

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1 truly believe that in 2010 Chuck Copeland had any kind
2 of option to buy this land?

3 A: I do.

4 Q: We talked before about the possibility of getting this
5 Estate closed at an early date by just doing a Deed of
6 Distribution. Now, theoretically, would that have
7 been possible?

8 A: I wasn't going to do that.

9 Q: Well, I understand that wasn't your preference but
10 could you have done that?

11 A: I don't know. I don't know. Ms. Arnold says they
12 couldn't take that.

13 Q: Okay. I mean, that's their problem. They can't --

14 A: No. I'm sorry, Your Honor. My job was to carry out
15 her wishes and her intent. Acting in the best
16 interest of these heirs. And she wanted it divided
17 and sold and the money given to the church and to all
18 those beneficiaries. I did the job that she hired me
19 to do.

20 Q: And she wanted you to incur \$94,000 worth of fees to
21 do that?

22 A: She agreed to pay me a reasonable fee. And that's
23 what it took.

24 Q: Reasonable fee.
25

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1 MR. HAWKINS: I'm sorry, is that a question? If it's not
2 a question, Your Honor, I move for it to be stricken
3 from the record.

4 THE COURT: It's stricken from the record. I'll give you
5 guys a chance to make closing arguments at the
6 appropriate time.

7 **Q: Well, as long as we're talking about your fee, let's**
8 **look at some of these time sheet things.**

9 THE COURT: Are you going to be asking about that Exhibit,
10 the Collins and Lacy Exhibit?

11 MR. FERGUSON: Yeah. I think he's got it right here.

12 THE COURT: Okay.

13 **Q: June 6th, 2007.**

14 A: Okay.

15 **Q: It says a paralegal spent 3.3 hours preparing and**
16 **summarizing documents that you brought in, including**
17 **tax returns from 1998 to 2006. Why do you need a**
18 **summary that involves tax returns from the '90s?**

19 A: It looks like he was just inventorying what I pulled
20 from her files.

21 **Q: Excuse me?**

22 A: It looks like he was just inventorying what we had
23 come across in her files.

24 **Q: It's not an inventory if he's preparing a summary.**
25 **Preparing and Summarizing, is what it says.**

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1 A: Well, that's not my entry so I'm not sure what it is.

2 **Q: Well, he spent 3.3. hours doing it, didn't he?**

3 A: Well, let's look at this bill.

4 THE COURT: Let's just stop. Mr. Sullivan, I need for you
5 to get closer to that microphone. We're having --

6 A: I'm sorry.

7 THE COURT: That's okay. We're having a little bit of
8 trouble, the Court Reporter, hearing everything that
9 you say. Just pull that to you.

10 A: This bill --

11 THE COURT: Tap it and make sure it's on.

12 A: -- has 12,000-plus-dollars in time in it. And \$9,000
13 was written off and discounted. So the bottom line
14 was like \$3,000. So, you know, anything like that I
15 think is well covered.

16 **Q: You know, you can say that things got written off but**
17 **you've got to start somewhere with what there was**
18 **before there was a writeoff. And how good a deal the**
19 **writeoff was depends on how valid the charges were, so**
20 **we're going to talk about that. Look at December the**
21 **11th and the 12th of 2007.**

22 THE COURT: Mr. Ferguson, for my benefit, would you tell
23 me what is, because I don't have it before me, tell me
24 what the entry is?

25 MR. FERGUSON: Okay.

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1 THE COURT: Because when you ask him a date, just tell
2 what's noted there and that will help me a little bit.

3 MR. FERGUSON: We might have a spare copy somewhere.

4 THE COURT: That's okay. Just --

5 MR. FERGUSON: Well, the --

6 THE COURT: When you ask him, just tell what's noted
7 there.

8 **Q: Okay. The entry deals with -- there are several**
9 **entries where a paralegal is valuing silver dollars.**
10 **Have you found that?**

11 A: No.

12 THE COURT: Thank you.

13 **Q: December 11th and 12th of 2007.**

14 A: Which --

15 MR. HAWKINS: If you don't mind, I can show him that page?

16 **Q: Tell him what the page number is. Bates number?**

17 MR. HAWKINS: I don't think it -- the copy I have doesn't
18 have a Bates number. And the exhibit did not have a
19 Bates number. But there are two entries: one on the
20 11th and one on the 12th that reference a 1890 Morgan
21 Silver Dollar. Is that what you're asking about?

22 MR. FERGUSON: That's what I'm asking about.

23 **Q: Do you remember that silver dollar?**

24 A: I don't think that's my entry. I guess I kind of
25 remember. I remember a lot of different coins.

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1 **Q: Well, they spent a \$135 in paralegal time valuing that**
2 **coin. Do you remember how much it was worth?**

3 A: I do not.

4 **Q: All right. Let's look up April 28th, 2008.**

5 MR. HAWKINS: Excuse me. What was the date again?

6 MR. FERGUSON: April 28th, 2008.

7 **Q: Okay. That's 2.8 hours of paralegal time to dig up**
8 **dirt on Mary Moses. For \$336?**

9 MR. HAWKINS: I don't see that entry.

10 THE COURT: Wait a minute. Characterize it as is it
11 stated on the entry instead of your own
12 characterization.

13 **Q: Read for me what it says.**

14 A: Obtained residential history of Mary Moses from
15 database number three.

16 **Q: Keep going..**

17 A: Obtained comprehensive report on Mary Moses from
18 database number three. Obtained SLED criminal history
19 report of Mary Moses. Obtained additional data of
20 Mary Moses from database number one; cross referenced
21 data with comprehensive report and to collect new
22 data. Obtained civil and criminal records from
23 Greenville County and Circuit Court regarding Mary
24 Moses. Obtained civil and criminal records from
25 Greenville County and Summary Court regarding Mary

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1 Moses. Obtained civil and criminal records from the
2 Spartanburg County Circuit Court regarding Mary Moses.
3 Obtained civil and criminal records from Spartanburg
4 County Summary Court regarding Mary Moses. Obtained
5 civil and criminal records from Pickens County Circuit
6 Court regarding Mary Moses. Obtained civil and
7 criminal records from Pickens County in Summary Court
8 regarding Mary Moses.

9 **Q: I have that as 2.8 hours of paralegal time; does that**
10 **sound about right?**

11 A: I don't know.

12 **Q: \$336?**

13 A: I don't know.

14 **Q: Well, let's look at May the 1st --**

15 A: Well, let's -- you know, there's a reason for that.
16 Mary is talking about how she's going to buy this or
17 buy that and so we -- I didn't think she had resources
18 to buy the land and so the paralegal just pulled up
19 some records on her and found all these Judgements out
20 there.

21 **Q: So it seems unlikely she was going to be exercising**
22 **any Right of First Refusal; doesn't it? Based on what**
23 **you say you found?**

24 A: Yes. But Ms. Brown, on the other hand, may have had
25 the resources. I didn't know. But Mary Leona was

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1 telling me how she was going to buy this and buy that
2 and couldn't -- she had Judgements. Those Judgements
3 affected the title to this real estate -- could have
4 affected the title to the real estate. And that was
5 another issue that I had to deal with.

6 **Q: She had -- she already had a one-half interest in that**
7 **real estate -- she had a one-fourth interest in that**
8 **real estate, didn't she?**

9 A: That's -- I don't think so. I think she had a half of
10 an undivided half. They all --

11 **Q: One-fourth undivided interest?**

12 A: You can look at it like that. But under the law, I
13 think she had a half of a half.

14 **Q: Okay. Well she had a significant ownership interest**
15 **in this real estate and there were no creditors trying**
16 **to partition the real estate?**

17 A: You know what? The name is not in her name. The
18 property is titled in the heirs of W.H. Milam. So
19 it's not in her name. So, that may have been a ploy.
20 I don't -- I don't know. But those Judgments could
21 have been filed down here and then that would really
22 have thrown a wrench into the works.

23 **Q: May the 1st, 2008.**

24 A: So I think that \$200 was money well spent.

25 MR. HAWKINS: Do you have a year that goes with May the

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1 1st? I don't mean to be rude.

2 THE COURT: I think he said '08.

3 MR. FERGUSON: I said 2008.

4 MR. HAWKINS: I apologize. Thank you. Still on the same
5 time sheet?

6 A: Wait a minute. May the 1st. I don't see May 1st.

7 Wait a minute. Here it is.

8 THE COURT: It appears to be on the very same page that
9 you ended your testimony about Mary Moses.

10 A: Okay.

11 THE COURT: Two entries.

12 **Q: Do you see that?**

13 A: Yeah.

14 **Q: And what's it say?**

15 A: Research Rowland Milam in databases number one and
16 three regarding residential match the history.

17 **Q: Okay. Eight-tenths of an hour at \$72?**

18 A: They -- yeah, I think that's money well spent.

19 **Q: And what did you find out about him?**

20 A: We found out he was doing well and lived in Florida.
21 And apparently was successful and if he called me and
22 made an offer -- expressed an interest then I would
23 listen to him.

24 **Q: Would it surprise you to know that in 99.99 percent of**
25 **the closings in Laurens County, nobody is doing a**

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1 **check on the purchaser, you just wait to see if the**
2 **check clears?**

3 MR. HAWKINS: Your Honor, without some evidence to support
4 the question, I object.

5 THE COURT: Well, I guess he can ask if Mr. Sullivan knows
6 and then Mr. Sullivan can say whether or not he knows
7 that or not. I realize it's assuming a fact not in --

8 MR. FERGUSON: I'll rephrase the question.

9 THE COURT: Let him rephrase it and everybody will be
10 happy.

11 **Q: Do you think it's standard procedure to do this kind**
12 **of a check on a buyer at closing, as opposed to just**
13 **telling him to bring a certified check?**

14 A: First of all, there was no closing. I don't even --
15 he hadn't even called me at that point. I didn't know
16 where Rowland was. I guess somebody floated his name
17 out (indicating). I guess I thought he was somewhere
18 in Florida and so we tried to find where he was.

19 **Q: Okay. When you said somebody floated his name out,**
20 **you were pointing to my clients.**

21 A: Yeah.

22 **Q: Do you now remember that they suggested Rowland Milam**
23 **to you?**

24 A: Well, you know what? I heard a lot of stuff
25 throughout all this process. I think Bart Heard may

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1 have told me that he heard that Rowland was going to
2 step in and loan them the money or buy the property or
3 something like that. And that may have triggered why
4 we tried to find where Rowland was and what Rowland
5 was doing. And that, again, I think was money well
6 spent. I think it was money well spent. I needed to
7 know where Rowland was.

8 **Q: On February 1st, 2009.**

9 A: I don't see February 1st, 2009.

10 THE COURT: There's not one on my copy.

11 **Q: Do you see anything on that page about reviewing the**
12 **Abbeville County Court Roster?**

13 A: I'd have to read every entry, I guess. I don't --

14 THE COURT: You need to speak up a little bit, Mr.

15 Sullivan. Please, sir.

16 A: I'm sorry, Your Honor. You know, to scan through it,
17 I don't see that.

18 **Q: Then I will move on. July 10th, 2009?**

19 A: I don't see that in this bill.

20 **Q: Right there.**

21 A: July 10th, 2009, received a voice mail from John
22 Ferguson.

23 **Q: Do you see that's double billed?**

24 A: Yes. That's a mistake, I guess. For \$29, I believe
25 it was. A \$29 mistake.

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1 **Q: These are just the ones that I caught. We're talking**
2 **about how accurate this billing is. Okay. January**
3 **6th and 7th.**

4 A: Unless you left me two messages. I don't --

5 **Q: January 6th and 7th --**

6 A: Maybe you left two messages.

7 **Q: -- 2010.**

8 THE COURT: Now, wait a minute now. I'm reminding both of
9 you. Please don't talk at the same time. We need to
10 have an accurate record and when both are talking at
11 the same time it's hard to create an accurate record,
12 even though we have an excellent and very competent
13 Court Reporter.

14 A: Your Honor, I just wanted, on that last question,
15 maybe there were two messages. I don't know.

16 MR. FERGUSON: I will represent to the Court there were
17 not two messages.

18 MR. HAWKINS: Well, unless Mr. Ferguson is going under
19 oath, I don't believe he can --

20 THE COURT: Okay.

21 MR. FERGUSON: I will submit my time sheets --

22 MR. HAWKINS: -- testify to how many there were.

23 MR. FERGUSON: -- as part of my attorney request for --

24 THE COURT: Okay. Let's move on, please.

25 **Q: Okay. January 6th and 7th of 2010. If you've got a**

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1 **Bates number on yours, it's 66.**

2 MR. HAWKINS: I didn't bring a Bates set, it appears.

3 **Q: January 6th, 2010.**

4 A: Yeah.

5 **Q: And 7. Find it?**

6 A: Yes.

7 **Q: Okay. There's a charge for 6.9 hours to organize the**
8 **file because the documents had not been filed**
9 **carefully. Do you see that?**

10 A: I don't see that. There are two different file
11 numbers. That may be part of the confusion.

12 **Q: All right. Let me show it to you.**

13 A: Oh, these two.

14 **Q: January 6th, January 7th.**

15 THE COURT: Evidently you added them together and they're
16 actually noted separate, 4.0 and 2.9?

17 MR. FERGUSON: Yes, sir. \$360 plus \$261 is \$621.

18 A: I see it.

19 **Q: All right. Read what the entries say so we can be**
20 **sure that we have it accurately.**

21 A: This is from a paralegal, PKB, Put the file back in
22 order as many of the folders are empty and the
23 documents have been crammed in various boxes in no
24 specific order. Continue putting the file back in
25 order as many of the file folders are empty and the

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1 documents have been crammed in various boxes in no
2 specific order. Notify all magazine subscriptions, et
3 cetera, of Ms. Kay's passing and to stop all mailings.

4 **Q: Okay. Do you think it's fair the Estate should pay**
5 **\$621 for that?**

6 A: Well, I think -- I think we had to notify the people
7 that were sending mail that she was no longer alive.
8 The rest does appear to be filing or something like
9 that, so. But again, I think that the discounts more
10 than offset that.

11 **Q: There is a charge on July 19th, 2010 of one hour to**
12 **draft a Stipulation of Dismissal. Do you remember**
13 **the Stipulation of Dismissal?**

14 THE COURT: What was the date?

15 **Q: 7/19/10.**

16 A: I see it.

17 **Q: Okay. Do you think one hour is a reasonable amount of**
18 **time to draw up a Stipulation of Dismissal?**

19 A: You know, it might be.

20 **Q: It takes you one hour to draw up a Stipulation of**
21 **Dismissal?**

22 A: I didn't draw up the Stipulation of Dismissal.

23 **Q: I understand.**

24 A: You know, it depends on the issues.

25 **Q: Well, all it said pretty much was the case is over.**

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1 **We've settled everything and we want it dismissed;**
2 **isn't that right?**

3 A: Well, I think, you know, it was a mutual Release and
4 there was some -- wanted to make sure everything was
5 covered.

6 Q: **Collins and Lacy has standard forms for that, don't**
7 **they?**

8 A: I don't know. I didn't prepare that.

9 Q: **August 17th, 2010.**

10 A: Which file are we in?

11 Q: **Unfortunately, I don't have that.**

12 MR. HAWKINS: It should be at the top if you -- do you
13 actually have the page, John, are you looking at the
14 page?

15 MR. FERGUSON: I don't.

16 MR. HAWKINS: I think it would have the file number at the
17 top of the page. If you had the page.

18 Q: **And while we're looking, I'll ask you about it and**
19 **maybe since it's unusual you'll be able to tell us**
20 **something. On August 17th, 2010 on an invoice there's**
21 **a charge for three and a half hours for investigator**
22 **time. Do you have any idea what that was about?**

23 A: No.

24 Q: **What was there to investigate?**

25 A: Can I see the bill?

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1 **Q: Pardon?**

2 A: Can I see what you're looking at?

3 **Q: I'm looking at my notes. And I'm trying to find the -**
4 -

5 THE COURT: Why don't we do this. Let's take a five
6 minute recess and maybe, Mr. Ferguson, give you an
7 opportunity to try to find -- I know some of these
8 entries are hard to find, at least I've had some
9 difficulty in locating them on the invoice, maybe give
10 you some time to be able to do that. So let's take a
11 five minute recess.

12 (Recess 3:13 p.m. until 3:28 p.m.)

13 THE COURT: Okay. Mr. Sullivan, if you will go back to the
14 witness stand, please. Okay. Mr. Ferguson.

15 **Q: Bates number 73.**

16 MR. HAWKINS: He doesn't have Bates numbers.

17 **Q: Okay. September the 2nd, 2010 SLED report. What's**
18 **that about?**

19 MR. HAWKINS: I just need to see what you're showing him.

20 THE COURT: What was the date?

21 MR. FERGUSON: September 2nd, 2010.

22 MR. HAWKINS: Your Honor, it's at the end of a bill. It's
23 a reimbursement item of \$25.

24 MR. FERGUSON: 73 is the Bates number.

25 THE COURT: Okay.

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1 MR. HAWKINS: He doesn't have Bates numbers either.

2 A: You know, that is the report that you saw earlier
3 where the paralegal --

4 Q: Why does it say September 2nd?

5 A: Because that's the day it was billed.

6 Q: And it was incurred, you think, when?

7 A: We held those bills for a long time. They weren't
8 billed until the end of August and then I guess
9 September 2nd. That was the date that she ran that, I
10 guess that bill and it captured that cost. It had
11 never been billed. Those bills are broken down by
12 services and costs.

13 Q: 2/9/09. Have you found it?

14 A: Yeah.

15 Q: Okay. It says a letter from you to clients. Who are
16 the clients?

17 MR. HAWKINS: I'm sorry, can you -- there's actually
18 multiple entries on February 9th, can you tell us the
19 initials of the person maybe and the line you're
20 looking at?

21 A: 2/9/09. Letter to clients [inaudible] Motion to
22 Dismiss.

23 THE COURT: Mr. Sullivan, I know you're soft spoken but
24 you've got to get close to that microphone. And if
25 I'm having a hard time hearing you, I know the Court

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1 Reporter is. So please get close to that microphone.
2 If you want to scream into it, that would be fine too.
3 We just need to hear you.

4 A: Yes, sir. Sorry, Your Honor.

5 THE COURT: That's okay.

6 **Q: 2/9/09.**

7 A: Letter to clients enclosing Motion to Dismiss. That's
8 not my entry.

9 **Q: So who do you think clients would be?**

10 A: Probably the beneficiaries, just to let them know what
11 was going on with the litigation.

12 **Q: Okay, when you were acting as an attorney and billing**
13 **as an attorney, you were representing yourself as**
14 **Personal Representative?**

15 A: I was doing work for the Estate.

16 **Q: In your May the 2nd, 2008 letter. Let me see if I can**
17 **--**

18 THE COURT: C-11.

19 MR. FERGUSON: C-11. Thank you.

20 **Q: You say, As I'm sure you're all aware, I'm the**
21 **Personal Representative for the Estate; therefore, my**
22 **fiduciary duty and obligations are to the Estate. I**
23 **cannot and do not act as anyone's attorney in any**
24 **matter related to the Estate of Marion M. Kay. You**
25 **see that?**

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1 A: This letter is to Mr. Copeland and to Martha Brown and
2 Mary Leona Milam Moses. Right, I was not their
3 attorney.

4 Q: It says, I cannot and do not act as anyone's attorney,
5 in any matter, related to the Estate of Marion M. Kay.

6 A: That's correct. I was the Personal Representative.

7 Q: Okay. But you were charging as an attorney; weren't
8 you?

9 A: I listed my time as an attorney and I think almost all
10 those hours were at no charge. I just kept up with
11 the time while I was in the office.

12 Q: But when you did charge it, it was as an attorney;
13 wasn't it?

14 A: I guess as an attorney for the Estate. But I don't
15 think there are that many charges. There are a couple
16 but not very many.

17 Q: So were you or were you not an attorney in this
18 matter?

19 A: I was the Personal Representative in this matter and I
20 handled some of the drafting of the documents and so
21 forth.

22 Q: Okay. Well, I mean, Personal Representatives charge
23 one way and attorneys charge another. You say you
24 charge both ways?

25 A: No, I did not. I tried to -- I took efforts -- I made

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1 a special effort not to charge both ways.

2 Q: All right. So your compensation in year one, which I
3 guess was 2007, is \$7,500. How was that charged?

4 A: What do you mean, how was it charged?

5 Q: To what extent was that attorney fee and to what
6 extent was that Personal Representative?

7 A: All fees I received were Personal Representative fees.

8 Q: So you didn't receive anything from Collins and Lacy?

9 A: No, I was a partner there, I was employed.

10 Q: But Collins and Lacy was charging for you, they just
11 weren't giving you any part of that money; is that
12 what you're telling me?

13 A: No, sir. All those charges were no charged, I
14 believe, except for a couple.

15 Q: You're saying there was no charge whatsoever for your
16 legal services?

17 A: A little bit, but very little. There was also \$20,000
18 worth of discounts.

19 Q: So you did have some charges as an attorney?

20 A: There were some in there that didn't get no charged
21 for some reason.

22 Q: And how much did you charge -- or did Collins and Lacy
23 charge, on your behalf, as an attorney?

24 A: Zero, if you count -- they're offset by discounts.

25 Q: You're saying Collins and Lacy never charged anything

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1 **for your services?**

2 A: You can find a few items where they're listed on the
3 bill with an hourly rate, but the discount of \$20,000
4 more than offset that, I believe.

5 **Q: And when you were charging as a Personal**
6 **Representative, how did you make your charges?**

7 A: I looked at the time I'd spent and the effort I'd put
8 into it and the results that were obtained.

9 **Q: So you were, as a Personal Representative, you were**
10 **charging on an hourly basis?**

11 A: No, I wasn't.

12 **Q: Well what did you mean when you said you looked at the**
13 **time you had into it to figure your charges?**

14 A: I looked at what I thought was a reasonable fee. And
15 as we went down the road, I took draws, I guess you
16 might say, toward what I thought was a reasonable fee,
17 given the amount of time that I had into it and the
18 result that was expected.

19 **Q: So you were charging on a time basis for your Personal**
20 **Representative fees?**

21 A: No. I had a -- I thought I knew what the bill -- what
22 a fair and reasonable fee would be for this
23 administration as we started down the road. And I
24 set, I guess, my draw against that target. And then
25 as we went down the road and we got a bigger and

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1 better result, the final result was based on all the
2 factors and the rule, the time, and the result
3 obtained, and the novelty of the issues.

4 **Q: Well, that's how attorneys charge, so that gets me**
5 **back to my question before; are you charging as an**
6 **attorney or are you charging as a Personal**
7 **Representative?**

8 A: I'm charging as a Personal Representative.

9 **Q: But you're using your attorney's standard --**

10 A: By analogy, yes.

11 **Q: You realize, of course, that we have Statutes that**
12 **deal with how Personal Representatives are**
13 **compensated?**

14 A: I sure do.

15 **Q: Okay. And do those Statutes say that you charge by**
16 **your time or that time is one of the factors?**

17 A: The Statute says -- I think it gives percentages. I
18 think you can get up to five percent of the Estate.
19 And then for extraordinary services, you can get more,
20 if approved by the Court. Unless -- but then Item C
21 of that Statute says, if the Will -- if the Will
22 directs otherwise, the Statute does not apply.

23 **Q: And the Will says reasonable, so that means whatever**
24 **you consider to be reasonable?**

25 A: The Will says reasonable, then that depends on, yeah,

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1 one's opinion to what's reasonable. And that -- then
2 I looked to the Rule as applied to lawyer, what's
3 reasonable? I looked at the law in Florida to see
4 what they looked at, the factors that they looked at,
5 and they're similar. It talks about the sale of real
6 estate. It talks about litigation. I also consulted
7 Alan Medlin of the USC Law School about his
8 interpretation of the Statue and the Will. And I
9 relied on other counsel.

10 **Q: In your document that was filed as C-18, entitled For**
11 **Professional Services Rendered, you're charging on an**
12 **hourly basis; aren't you? 41.6 hours times \$225 an**
13 **hour?**

14 **A:** Well, that's -- I'm submitting that to the Court for
15 his consideration.

16 **Q: But you're telling the Court that you should be able**
17 **to charge as an attorney for your Personal**
18 **Representative work?**

19 **A:** I'm telling the Court that I should -- I'm entitled to
20 a reasonable -- I'm asking the Court to award me
21 additional reasonable compensation, as provided in Ms.
22 Kay's Will.

23 **Q: I wonder if what we're dealing with here is not just**
24 **whether you actually did the work. I mean, we can**
25 **assume for the sake of argument that whatever's down**

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1 there is what you did, but it's also a question of
2 whether there was a necessity to do everything that
3 you did. Are you familiar with the stockbroker term
4 of churning?

5 A: I am.

6 Q: Okay. What's churning?

7 A: Churning would be, I guess, selling and buying, buying
8 and selling.

9 Q: For the purpose of increasing stockbroker's
10 commissions?

11 A: I think so, yeah.

12 Q: Okay. I looked through the time sheets and whatnot,
13 to see your trips to Laurens and there were 27 of
14 them. Why were there 27? Why did it take you 27
15 trips to do this Estate which could have been a fairly
16 straightforward matter with a Deed of Distribution?

17 MR. HAWKINS: I object to the form, Your Honor.

18 THE COURT: Rephrase your question, Mr. Ferguson. It was
19 a little bit argumentative and I'll sustain the
20 objection.

21 MR. FERGUSON: Okay.

22 Q: Why did it take 27 trips?

23 A: This went -- there were four years, right? We're
24 talking about 27 trips over three and a half years?

25 Q: Yes, sir.

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1 A: All right. Well, what's the math on that, about six
2 times a year? I should have gone more. My job was --
3 part of my job was to safeguard the property, so I
4 spent time at the property.

5 **Q: Well --**

6 A: And these were on Collins and Lacy invoices. I don't
7 know that they were charged. Were they charged?

8 **Q: I'm asking why you took so many trips? That's my**
9 **starting point. Why was there a necessity?**

10 A: It was three and half years. So I came up to the
11 house several times.

12 **Q: One reason --**

13 A: You know, I also came up -- excuse me for
14 interrupting. I came up here to check the Judgements
15 that we found. I had a lot of different reasons to
16 come up here.

17 **Q: The first charge on your time sheet, I believe, is a**
18 **trip to Laurens on April the 29th, 2007, which is**
19 **before Marion Kay died. Why is that there?**

20 A: We had some business to attend to. She was in the
21 hospital and we came up here to -- I can't remember
22 exactly what we did, but I worked on -- I tried to
23 help her. I guess I had to do a Power Of Attorney.
24 She was in -- had had a stroke and was in the
25 hospital, incapacitated.

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1 Q: But the Estate hadn't come into existence so why is
2 that a charge against the Estate?

3 A: Well, we could have opened a -- then she died a week
4 later. We could have opened a new -- we could have
5 opened a file that said an intervillous file, but why
6 do that? It was a claim against her Estate anyway so
7 we just -- she died so quickly after that, we opened
8 the file, and that time got put in that file.

9 MR. FERGUSON: Your Honor, I'd like to introduce this
10 document entitled Sullivan trips to Laurens County as
11 a summary from the time sheets.

12 THE COURT: Okay. Any objection?

13 MR. HAWKINS: Your Honor, I haven't had a chance to check
14 them and see if that's an accurate reflection of the
15 time sheets.

16 THE COURT: All right. I tell you what. Let's --

17 MR. HAWKINS: And if it is, we have no objection.

18 THE COURT: Let's -- all right. Let's do this. Let's
19 mark it for identification purposes only and then
20 maybe during our next break you can take a look at it
21 and just let us know.

22 MR. HAWKINS: Will do.

23 THE COURT: I may forget, so make sure we deal with that.

24 MR. HAWKINS: Assuming they match up, I have no problem.

25 THE COURT: Sure.

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1 (Defendant's Exhibit 2 was marked for identification
2 purposes.)

3 A: Can I just follow up with that? We had to give out
4 those personal effects. I made a lot of trips up here
5 for that. There are a lot of reasons to come up here.
6 Come here to the bank.

7 Q: On --

8 A: I came up here to help give away the car.

9 Q: **Something ministerial like passing along property, why**
10 **could someone here not do that and get a receipt for**
11 **you?**

12 A: Well, they ultimately did. But I had to come up here
13 to the bank and open up the boxes and get into the
14 material and effects. But ultimately, I did retain
15 Turner and Burney to have people come in and pick up
16 their items.

17 Q: **You're a good friend with Hampton Hunter; aren't you?**
18 **The pastor over at Lisbon? Don't you play golf with**
19 **him a lot?**

20 A: I've never played golf.

21 Q: **Really?**

22 A: Never.

23 Q: **Are you good friends with Hampton Hunter?**

24 A: Yeah, I guess so.

25 Q: **Okay. Well, couldn't he have helped you with**

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1 transmitting this property that you said was carefully
2 labeled?

3 A: You know I have a lot of friends in Laurens that I
4 could have asked to do that. I got Rhett Burney to do
5 it for me.

6 Q: And did he do it for free?

7 A: I paid him \$200 or something like that. But I had to
8 come up here and go in the bank and get the personal
9 effects. I had to come up here and take them down and
10 have them appraised. I had a lot of reasons to come
11 up here.

12 Q: At least 27 reasons.

13 A: Probably more.

14 Q: It's a fact, isn't it, that if you had done a Deed of
15 Distribution, that you would not have received a
16 commission on the property that was transmitted
17 through the Deed of Distribution?

18 A: That was not what Ms. Kay intended. She wanted the
19 property sold and the property -- and the proceeds
20 distributed.

21 Q: I'm asking you, and I ask that you answer the question
22 that you were asked, if you had transmitted the
23 property by a Deed of Distribution instead of
24 expending all of these hours, would you have earned a
25 commission on the property that was transmitted

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1 **through the Deed of Distribution?**

2 A: I was not charging a commission in this case. The
3 Will says I'm entitled to a reasonable fee. And what
4 is a reasonable fee? I mean, I tried to be fair. I
5 looked at the factors. I talked to a law school
6 professor. I talked to another lawyer and we came up
7 with a number.

8 Q: **As far as the personal things that was bequeathed to**
9 **particular people, did you get that appraised?**

10 A: Yes.

11 Q: **Okay. And why was there a necessity to have a**
12 **professional appraisal of that?**

13 A: I don't think it cost that much. And I had no idea
14 what a ring is worth; what a watch is worth. And I
15 think we paid \$200 to some jewelry person to appraise
16 it. The silverware and all that, I didn't know what
17 it was worth. I could have just picked a number out
18 of the blue, I guess, but I was trying to do a good
19 job.

20 Q: **So, as far as you know, of the \$25,806.38 that was**
21 **billed by Collins and Lacy, you didn't receive --**

22 THE COURT: What was that total?

23 MR. FERGUSON: \$25,806.38.

24 THE COURT: Is that after the discount? Because I just --
25 I have gone through this sheet and, you guys please

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1 correct me if I'm wrong, I went through and just added
2 the total charges and I get around \$36,000. And
3 that's just a rough estimate. And I know that there's
4 been discussion about discounts by Collins and Lacy.

5 MR. FERGUSON: I believe that that was what was paid, Your
6 Honor. It might be worthwhile to --

7 THE COURT: Maybe ask the witness about that. Or maybe
8 Mr. Hawkins can help us there.

9 MR. FERGUSON: This is a document that was given to me by
10 the Plaintiff's.

11 THE COURT: All right, sir.

12 **Q: So is the total amount that Collins and Lacy charged**
13 **\$25,806.38?**

14 A: That's correct. And two unpaid bills.

15 MR. FERGUSON: Okay. I'd like to introduce --

16 THE COURT: Is that without objection?

17 MR. HAWKINS: That's without objection, Your Honor. I
18 apologize.

19 THE COURT: All right. That will be marked as Defendant's
20 Exhibit 3.

21 (Defendant's Exhibit 3 was admitted into evidence.)

22 A: All right. So, again, the \$25,806.38, that is what
23 has been actually paid to Collins and Lacy?

24 MR. FERGUSON: I think they are two outstanding invoices.

25 THE COURT: Right.

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1 MR. FERGUSON: The amounts of those outstanding invoices
2 are listed there. But they actually are charging.

3 THE COURT: All right. The Proposal for Distribution does
4 have one or two entries that still is owing to Collins
5 and Lacy. But has Collins and Lacy actually been paid
6 anything yet?

7 A: No, sir.

8 THE COURT: Well --

9 MR. HAWKINS: Yeah.

10 MR. FERGUSON: They've submitted --

11 MR. HAWKINS: They've been paid about --

12 MR. FERGUSON: -- five invoices and three --

13 MR. HAWKINS: -- \$13,000 or so.

14 MR. FERGUSON: -- have been paid, is my understanding.

15 THE COURT: Okay. Let me ask it this way. If the
16 outstanding invoices are approved, assuming that I
17 approve those, what will be the total receipt by
18 Collins and Lacy?

19 MR. HAWKINS: The \$25,000.

20 THE COURT: The \$25,000. Okay. All right. That's what I
21 needed to know. Thank you.

22 **Q: Earlier, your attorney introduced your Interim**
23 **Accountings. We're in our fourth year here, so there**
24 **should be four of them and I believe you did produce**
25 **four of them; is that correct?**

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1 A: That's correct.

2 Q: But they're all dated October and November of last
3 year. Why is that?

4 A: Well, as I understand it, at least as I understand the
5 law, Interim Accountings aren't required by the law
6 and I was never asked for an Interim Accounting.

7 Q: Then why submit them at all?

8 A: Well, that's kind of the way the information had been
9 organized and I thought it would be a good way to
10 submit it.

11 Q: Did you tell the heirs at any point before October of
12 last year what you were paying yourself?

13 A: I told some of the heirs that this was going -- that
14 this has been very expensive.

15 Q: But did you tell them a dollar amount?

16 A: No.

17 MR. FERGUSON: All right. That's all the questions I
18 have. Thank you.

19 THE COURT: Anything in re-direct, Mr. Hawkins?

20 MR. HAWKINS: Let me see, Your Honor. Just sort of
21 briefly. The one thing that I would cover with him,
22 because I've been going through and looking as quickly
23 as I could, the dates on Defendant's Exhibit 2 for
24 identification, match them up to the time sheet so we
25 can say what was done on these trips. I've only

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1 gotten through about five but let me --

2
3 THE COURT: At the next break we might could --

4 MR. FERGUSON: Let me say for the benefit -- you can't
5 just go through the time sheets because at the very
6 end there were two separate bills that were presented
7 out of order. They were dated September the 3rd,
8 2010, that had a lot of these trips on them. So the
9 ones that don't have an hour designation beside them
10 are from those 2010 bills.

11 MR. HAWKINS: Right. Well, let me cover just a few little
12 issues here, Your Honor, and I may ask a question or
13 two about that. I want to try to -- we have a couple
14 of these folks that we brought here today that I want
15 to get in this afternoon --

16 THE COURT: Yeah. I was wondering about them.

17 MR. HAWKINS: -- if at all possible.

18 RE-DIRECT EXAMINATION

19 BY MR. HAWKINS:

20 **Q: Mr. Sullivan, you were asked questions about the**
21 **portion of the Will that provided an option to Mr.**
22 **Copeland to be exercised within eight months of, I**
23 **believe, the date of death?**

24 A: Right.

25 **Q: You're familiar with the principal of tolling?**

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1 A: Yes, I am.

2 Q: All right. Generally speaking, what is tolling?

3 A: Well, that puts the lawsuit or, in this case, a Cause
4 of Action or a Right on hold until some future event.

5 Q: And in terms of Mr. Copeland having been granted a
6 Right under the Will, did you consider at all the
7 equitable principals of tolling that, for example,
8 because the appraisal on the 330 acres wasn't even
9 ready until after the eighth month, did you talk to
10 him about partitioning property and so on? Did it
11 ever, was it ever in your mind that his right to
12 exercise --

13 MR. FERGUSON: Your Honor, he's really putting a whole lot
14 into this guy's mouth.

15 MR. HAWKINS: I'm not trying to.

16 THE COURT: All right. Try not to lead and maybe rephrase
17 a little bit, or break up your questions a little bit.

18 Q: Did you consider that Mr. Copeland's right to exercise
19 his option was tolled by things going on with the
20 Estate?

21 A: I did. I didn't think his Right, it didn't really
22 start to run until his eight months was starting to
23 run until the property was divided. He had nothing to
24 buy.

25 Q: The testimony you gave earlier, of that nature, about

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1 the property hadn't been divided and so on -- I'm
2 trying to put a legal label on that. Would tolling be
3 an appropriate label for your understanding?

4 A: Yes.

5 Q: In terms of whether you would -- to maximize benefits
6 for the Estate with the sale of the real estate, did
7 you consult with any kind of real estate or timber
8 people, to help you decide what you ought to do in
9 terms of how to sell the property?

10 A: I sure did. I spoke with Johnny Wilson for one. And
11 I came to Laurens to meet with Johnny Wilson at the
12 property.

13 Q: And did you in fact meet with Mr. Wilson at the
14 property?

15 A: At least -- a couple of times, at least, I think.

16 Q: And you had conferences with him otherwise by
17 telephone?

18 A: Oh, absolutely.

19 Q: Were there various ways that somebody could try to
20 sell this land? Meaning, sell the house and its six
21 acres by itself? Sell the other four acres and so on.
22 Could it have been broken up and sold different ways,
23 if everybody was agreeable?

24 A: That's correct. There's a lot of things that we could
25 have done. We looked at -- looked at mark- -- or

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1 selling the house. We decided not to actively market
2 the house because we thought that would chill the sale
3 of the -- our interest in the 330 acre tract. So we
4 had a lot of decisions like that to make.

5 **Q: Is it fair to say that in deciding what to do and when**
6 **to do it, you didn't just make decisions alone in a**
7 **vacuum, you consulted with people you consider to be**
8 **experts in their field?**

9 A: Absolutely.

10 **Q: Okay. And one of those people you've indicated was**
11 **Mr. Wilson.**

12 A: (Nods head affirmatively.)

13 **Q: What areas do you feel he has expertise in?**

14 A: Real estate sales, real estate appraisal. Timber
15 consultant. There's a lot of timber on the property.

16 **Q: You mentioned an Alan Medlin. Why was he a person**
17 **that you consulted? What are his qualifications?**

18 A: Alan Medlin is a Trust and Estates Professor at The
19 USC School of Law. And I called him regarding the
20 interpretation of the Statutes for compensation of the
21 Personal Representatives.

22 **Q: Did you follow advice and suggestions he gave you in**
23 **the consultation?**

24 A: Yes, I did.

25 **Q: You were asked some questions about how could the**

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1 Right of First Refusal from the '70s affect the
2 property. And Mr. Ferguson posed his question as
3 Well, so somebody makes an offer and then you offer it
4 to Ms. Brown or Ms. Moses, or both, to give them their
5 Right, and if they don't take it, so what. Well, in
6 your experience, are buyers interested in making
7 offers knowing somebody else gets to step in and take
8 it at that price if they want it?

9 A: I'm sorry, are buyers?

10 Q: Does it affect purchasers? From whatever experiences
11 you have in real estate and so on, if you're looking
12 at a piece of property and you're thinking about
13 buying that table and you want to negotiate with me
14 about that table, does it affect your desirability to
15 do it if I told you, Listen, Mr. Sullivan, whatever
16 offer you make me on this table, I need to tell you
17 that I'm going to have to go up to somebody else,
18 after you made the offer, and say, Do y'all want to
19 buy it for that price?

20 A: Yes.

21 Q: And why would people be affected by that? Why would
22 they care if somebody else could come along and buy it
23 at the price they might offer on it?

24 A: Well, they'd be doing a lot of work and go to a lot of
25 trouble to come up with an offer and then have it

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1 taken away.

2 Q: Now, every time entry that I heard some objection made
3 to and query about you is as follows; \$120 for 3.3
4 hours of paralegal time; \$336 for 2. hours of
5 paralegal time, that was for researching Judgments and
6 Actions on people that maybe had an interest in the
7 land; \$72 for research --

8 MR. FERGUSON: Is there a question in here somewhere?

9 MR. HAWKINS: There will be when I get to the end, sir.

10 MR. FERGUSON: I'm hoping.

11 MR. HAWKINS: Or you can stipulate that all that added up
12 to \$1,500. Would you like to stipulate?

13 MR. FERGUSON: I can add it up.

14 MR. HAWKINS: Well, then I apologize, I'll continue with my
15 question.

16 Q: The next was the May 1st of '08 research of Rowland
17 Milam, \$72. The next item was a claim that a
18 telephone call was billed twice at \$29. The next was
19 people organizing files because they'd gotten
20 unorganized. And while there was one other entry in
21 there, I'm going to forget that, that they did some
22 other work as well. On January 6th of 2010, January
23 7th of 2010, a total of 6.9 hours at \$621. There was
24 a question about a draft of a Stipulation of Dismissal
25 that LW, is that an associate? Logan --

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1 A: Yes. I think so, yes.

2 Q: Okay. On July 19th of 2010, \$140. One mention was
3 something that no time sheet was ever produced for us
4 to look at and examine. And a bill for a SLED report
5 of \$29, which you seemed to explain. \$25. And
6 finally, a letter written by JDG, and that would have
7 been who?

8 A: Jack Griffeth.

9 Q: All right. He's an attorney that was in Greenville
10 that worked on the case?

11 A: Right. Worked on the litigation.

12 Q: February 9th, 2009, .3 hours for \$43.60. We can tally
13 those with a calculator. I tallied it up to be a
14 little less than \$1,500. Does that sound roughly
15 accurate to you?

16 A: Yes, sir.

17 Q: All right. Am I correct to understand that Collins
18 and Lacy agreed to deduct from their billed time
19 \$20,000 and some change after these time entries had
20 been logged in?

21 A: That's correct.

22 Q: I'm going to show you out of my book, which is a copy
23 of these same time entries for brevity. They are
24 there before you, and it might even be that very first
25 one, but the first five items on Defendant's Exhibit 2

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1 for identification, April 29th was the Power of
2 Attorney for Ms. Copeland. You don't consider that to
3 be time spent as the Personal Representative; correct?
4 Because you weren't --

5 A: That's right, I was her lawyer.

6 Q: Okay. So out of your 468 hours and some change time,
7 that four hours should not be considered as any part
8 of the time on the Estate; correct?

9 A: Correct.

10 Q: All right. May 8th is entered here. It says,
11 Traveled to Laurens, conference with Probate Court.
12 Was that something you considered necessary for the
13 Estate in order to be the Personal Representative and
14 carry out your duties?

15 A: Absolutely.

16 Q: And on that same trip, you met with who?

17 A: Mr. Copeland.

18 Q: All right And y'all talked about?

19 A: Personal effects.

20 Q: Okay. On May the 24th, which is the next page, it
21 enters that you came here -- what is it that you did
22 on May the 24th?

23 A: It says, Review assets, conference with banker. I
24 think I went to the bank and opened up the safety
25 deposit box.

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1 Q: Okay. Do you think you could have sent the Reverend
2 over to deal with the bank? Or --

3 A: The bank --

4 Q: -- is this something the Personal Representative is
5 supposed to do?

6 A: The banker wouldn't let anybody in but me.

7 Q: The next entry is May the 27th of 2007. It talks
8 about distributing personal effects and visit
9 residence. Did you feel it was appropriate for you as
10 the Personal Representative to have some role in
11 overseeing the distribution of the effects?

12 A: Absolutely. I was responsible for that.

13 Q: And I just got up to May 31st so that's the last one
14 I'll ask you to look at. It says in part, Pick up
15 vehicle. What does that mean?

16 A: Marion left Bart her car and I came up here and picked
17 up the car and -- to get it to Bart.

18 Q: The next item is close apartment. I think you
19 mentioned something about that before. That she had
20 an apartment. So let's talk about why was the time
21 important to get it done then. Why did you want to
22 come and get it closed in May; the same month in which
23 she died?

24 A: She lived at the Presbyterian Home. I've forgotten
25 how much the rent was every month. But we tried -- we

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1 got her out of there so they wouldn't bill us for
2 another month of rent. So we got her out in the month
3 of May.

4 **Q: Without my holding up the Court and everybody else to**
5 **try to go through the rest of the time entries, can**
6 **you tell us whether or not, to the best of your**
7 **knowledge, information and belief, the trips that you**
8 **made to Laurens were things that you at least felt**
9 **were necessary or appropriate for the PR to do?**

10 A: They were part of my job as the PR; yes.

11 MR. HAWKINS: I have no other questions, Your Honor.

12 THE COURT: Mr. Ferguson, any re-cross --

13 MR. FERGUSON: Yes.

14 THE COURT: -- in direct response to the re-direct
15 questions?

16 MR. FERGUSON: There is.

17 RE-CROSS EXAMINATION

18 BY MR. FERGUSON:

19 **Q: Your counsel, as far as I know, did an admirable job**
20 **of adding up the things that I called to your**
21 **attention that were wrong with the invoices, but I**
22 **think he's missing the point. I want to ask you,**
23 **don't you think it's important that these invoices be**
24 **accurate?**

25 A: It is important that the invoices be accurate.

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1 Q: When you were discussing this situation with Alan
2 Medlin, did you give him a copy of the time sheets?

3 A: No.

4 Q: Okay. So he had no idea --

5 THE COURT: What's the answer? I'm sorry?

6 A: No, sir.

7 Q: So he had no idea of whether the amount of time you
8 spent on this case was reasonable, did he?

9 A: We talked about interpretations of Statutes and
10 interpretation of the Will.

11 Q: But not about the amount of time that you spent on the
12 case?

13 A: I don't know that we got into detail on that.

14 Q: You were being asked before about tolling. So does
15 your letter of May 13th, 2010 to Chuck Copeland,
16 inviting him to sue the Estate, have anything to do
17 with your theory about tolling?

18 A: First of all, I didn't invite anybody to sue the
19 Estate. That is a mis-characterization.

20 Q: All right. Read it.

21 A: It says, On the other hand, if you're interested in
22 pursuing your option, please let me know and we'll ask
23 the Probate Court to set a hearing. In other words, I
24 wanted to sell this property to Rowland Milam and I
25 wanted to get it done. And if he wanted to still

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1 assert his option; then I was going to say fine, let's
2 come up here and let the Probate judge.

3 **Q: So in your view, and your understanding of tolling,**
4 **did he still have a claim to assert in 2010?**

5 A: He could have. But by then he had -- I knew that he
6 wasn't going to do this. All I was saying to him is,
7 look, this is the deal and the Contract's contingent
8 not only on everybody's consent, but I also put in
9 there the Probate Court's approval, if necessary. And
10 if he didn't sign Consent, I was going to file a -- I
11 was going to file a Petition to sell the property and
12 let the Court determine the right -- his right to his
13 option. So I didn't invite anybody to sue this
14 Estate.

15 **Q: You had indicated before that my clients had been a**
16 **problem with your being able to get this Estate closed**
17 **and get the property sold; is that correct?**

18 A: I don't know -- a problem?

19 **Q: That they had impeded your being able to make a sale?**

20 A: They wouldn't go along with any proposals that we had.
21 We tried to invite them to a table and reach a
22 compromise. That's what we tried to do.

23 **Q: In your testimony just now, you also said that in**
24 **order for there to be a sale that, in your view,**
25 **everybody had to agree; is that correct?**

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1 A: It's -- in order for me to convey that property, I
2 wanted everybody to consent to it.

3 Q: Okay. And you didn't have any kind of consent from
4 Lisbon Presbyterian Church to make any sale of the
5 property until May of 2010, did you?

6 A: The church told me early on they wanted money not
7 land; is that your point? The church told me that
8 they wanted -- that they wanted cash proceeds from the
9 Estate, not an interest in the property.

10 Q: You're talking about a conversation with the Session;
11 right? Or was it the pastor that you were talking
12 with?

13 A: Well, I know it was at least the pastor. It may have
14 been the Session as well. I met the Session.

15 Q: In order for there to be a sale by a -- approved by a
16 Presbyterian church, it has to be approved by the
17 congregation, doesn't it?

18 A: According to their lawyer. But I had the power of
19 sale under the Statute and under the Will. I could
20 have -- I think I could have sold that property.

21 Q: So --

22 A: But I was very cautious not to do that. I didn't want
23 to -- I didn't want to do that. I wanted everybody to
24 be on board, that's why I sought everybody's consent.

25 Q: Okay. But you could have sold it without everybody's

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1 **consent?**

2 A: I had power of sale in the Will. And the power under
3 the Statute.

4 MR. FERGUSON: Okay. Thanks.

5 THE COURT: Anything further from this -- I've got a few
6 questions. Anything further?

7 RE-DIRECT EXAMINATION

8 BY MR. HAWKINS:

9 Q: **The last thing I'd say is, Well, if you hadn't gotten**
10 **everyone's consent at the time when Mr. Milam, Rowland**
11 **Milam, was making an offer and you were wanting to**
12 **negotiate with him, then another option would have**
13 **been to, rather than dismiss the Partition and**
14 **Declaratory Judgement Action would be to play out --**

15 MR. FERGUSON: I think we're getting into testimony here.

16 THE COURT: Wait a minute. Wait a minute.

17 MR. FERGUSON: He's making a statement.

18 THE COURT: Ask the question. Go ahead.

19 Q: **Was another option, if you didn't get everyone's**
20 **consent, to continue with the lawsuit that had been**
21 **filed, a copy of the Summons and Complaint and Answer**
22 **and Counterclaim of which there are Exhibits in the**
23 **courtroom?**

24 A: That was the plan.

25 MR. HAWKINS: Thank you. Nothing further.

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CROSS EXAMINATION

BY THE COURT:

Q: All right. I've got several questions. I want to make sure that I understand. The \$25,806.38, that is the total paid to Collins and Lacy if I approve the two outstanding invoices; is that correct?

A: Yes, sir.

Q: Okay. And the \$25,806.38, and that includes, if I approve the outstanding invoices, would include Estate work and litigation work?

A: Right. Two different bills.

Q: Excuse me?

A: Two different bills.

Q: All right. So, approximately \$13,5 -- and these are round figures now, \$13,500 has already been paid to Collins and Lacy and are owed about another \$12,300. Does that sound about right?

A: Yes, sir.

Q: Okay. All right. Now, Exhibit D, and this is not the actual marked Exhibit, but I think Mr. Ferguson shared this with me so I could follow along. And this represents all of the bills from Collins and Lacy Estate work and litigation work? The Exhibit D?

A: I haven't studied Exhibit D, but there's a package of bills for the four years; yes. Three and a half

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1 years.

2 Q: Okay. All right. Did you receive any money from
3 Collins and Lacy as a result of any of these invoices?
4 I understand you work for them as an employee
5 attorney. I understand that. But did you receive any
6 money as a direct result from any of these invoices?

7 A: I was an employee. I got a paycheck.

8 Q: Right. Okay. All right.

9 A: No, I did not get any -- I didn't get any monies based
10 on these invoices.

11 Q: Okay. Okay. All right. Now, what would have been
12 the reason for noting entries for your work, whether
13 it's travel to Laurens or whatever, on these invoices,
14 if you did not receive any money as a result of those
15 services on these invoices? What was the purpose for
16 noting your work if you didn't get paid for it?

17 A: I just kept up with my time.

18 Q: Okay. Now, it was stated earlier, and I know you've
19 been on the witness stand all day long. You're
20 probably kind of whipped a little bit, I would image.
21 Just hang in there with us a little bit longer. Okay?
22 If you need to take a break, we can take another
23 break.

24 A: All right, sir.

25 Q: You okay?

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1 A: I'm good.

2 Q: Okay. All right. It was noted early on in Direct
3 that you had about 450 hours.

4 A: I think it was a little more than that.

5 Q: Well, I think, and correct me if I'm wrong.

6 A: I did say 450.

7 Q: I think 450, but there probably was more time that was
8 never recorded. Okay?

9 A: Right.

10 Q: All right. Now, any of the 450 hours -- is any of
11 that noted on these invoices?

12 A: Yes.

13 Q: Okay. All the 450? If I go through --

14 A: No, sir. No, sir.

15 Q: Okay. All right. So did you keep separate notes or
16 separate records on the part of the 450 hours that are
17 not reflected on these invoices?

18 A: I have some notes that I have; yes. And we have that
19 somewhere.

20 Q: Okay. All right.

21 A: It's about 200 and some hours. That included the time
22 that I don't think are on this -- are on there. Plus
23 the time after I left Collins and Lacy in August.

24 Q: All right. So, is it fair to say that -- and I
25 understand your point, you actually put in more than

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1 450 hours. I understand that. But let's just leave
2 it at 450. Okay?

3 A: All right.

4 Q: Is it fair to say that 450 hours are recorded in two
5 places: one, your time sheets with Collins and Lacy?

6 A: Uh-huh (affirmative response).

7 Q: And then recorded in a separate document or a separate
8 place; is that fair to say?

9 A: Yes.

10 Q: Okay. Now, in looking at your various accountings, it
11 looks like you have received four draws, and I think
12 you used the word draws and I'll use the word draws;
13 is that correct?

14 A: No. I got -- I got more than that. I got -- I took a
15 draw like once a month or once every other month, or
16 something like that.

17 Q: Okay. All right. Well, as far --

18 A: It's an -- I'm sorry.

19 Q: All right. As far as what is reflected on the
20 accountings, you show four draws. Now, in like the
21 first accounting, \$7,500; that may have been different
22 draws?

23 A: Yes.

24 Q: Okay. But, as far as what is shown on the
25 Accountings, we'll say four draws. Fair enough?

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1 A: Okay.

2 Q: Okay. And that totals \$93,775. Does that sound about
3 right?

4 A: Yes, sir.

5 Q: Okay. All right. And then, of course, I understand
6 you're requesting an additional \$9,464.55.

7 A: I submit that for your consideration, Your Honor.

8 Q: I understand. All right. Now, what method, or
9 formula, or process, did you go through when you took
10 a draw?

11 A: Well, I looked at what the fee was going to be at the
12 end of the day. When I started out, I thought I --
13 when I first looked at the Statute and it said five
14 percent, I looked at the five percent of the Inventory
15 and Appraisement. And then as we got down the road
16 and it became more and more work. I realized that,
17 you know, you could apply for extra compensation,
18 based on extraordinary services. And then after
19 talking with Mr. -- Professor Medlin and studying the
20 Will further, I saw that the Statute didn't apply. So
21 then I just based my fee on the time that I had
22 involved, the amount of trouble and the efforts, and
23 the result. At the very end, we had such a good
24 result, I determined that that figure was a fair and
25 reasonable amount.

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1 Q: All right. So it's not strictly an hourly basis?

2 A: No, sir.

3 Q: Okay. It was not strictly a percentage basis?

4 A: No, sir.

5 Q: So would it be -- you say, use the word, end of the
6 day, and I know you didn't pay yourself everyday.

7 But, you would just kind of go back over what was done
8 in a particular month and say, That's probably worth a
9 couple thousand dollars and that's what you would pay
10 yourself?

11 A: It was generally \$2,000 or so. Or \$2,500.

12 Q: Okay.

13 A: Sometimes it -- I wouldn't take any.

14 Q: Okay.

15 A: I wouldn't pay myself anything.

16 Q: But it definitely was not an hourly basis or any kind
17 of percentage basis?

18 A: No, it was -- I was just trying to be fair to the
19 Estate, Your Honor. I was trying to be reasonable,
20 but I wanted to be fair to myself as well. And, I was
21 very mindful of, you know, of the amount. I didn't
22 want to over charge the Estate. I took every step I
23 could to -- with the fees and the, you know, the --
24 everything, to avoid costs.

25 Q: All right. Let me ask you this. Out of the, and I'm

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1 rounding off, \$25,000 to Collins and Lacy, what
2 percentage of that would be paralegal work and what
3 percentage of that would be attorney work? Not you
4 attorney work, but the other lawyers involved. What
5 percentage would you say?

6 A: Well, in the Estate Administration, it's probably very
7 little attorney work.

8 Q: Well, just give me your best percentages as far as
9 Estate and then litigation, attorney and paralegal.

10 A: Well, I'm guessing, just my best guestimate. On the
11 administration of the Estate, I'd say only one or two
12 percent.

13 Q: Okay.

14 A: I guess that'd be my time.

15 Q: All right.

16 A: You've got to bill for it.

17 Q: Okay. All right. And the other -- and for the Estate
18 Administration, and the other 99 percent paralegal.

19 How about --

20 MR. FERGUSON: Your Honor, if I may, I have some notes on
21 paralegal time, for what it's worth. For the 11/26/07
22 Collins and Lacy bill, I show 34 hours of paralegal
23 time and 2.9 hours of law clerk time. For the August
24 16th, 2010 invoice, I show 68.4 hours of paralegal
25 time.

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1 THE COURT: Okay. Wait a minute. Go back to the first
2 one. How many hours?

3 MR. FERGUSON: November 27, 2007, 34 hours of paralegal
4 time --

5 THE COURT: Okay.

6 MR. FERGUSON: -- 2.9 hours of law clerk time.

7 THE COURT: Okay.

8 MR. FERGUSON: August 16th, 2010, 6.6 hours for associates
9 and 68.4 hours of paralegal time.

10 THE COURT: All right.

11 MR. FERGUSON: August the 17th, 2010, 2.3 hours law clerk
12 time, 60.4 hours of paralegal time.

13 **Q: Okay. Mr. Sullivan, does that sound about right?**

14 A: Your Honor, I couldn't follow that. I think at the
15 end of each bill there's a summary of, a recap of the
16 time.

17 MR. HAWKINS: There is, Your Honor, if I might. These --
18 when you look at Exhibit D, I think it's at least four
19 separate bills that are there.

20 THE COURT: Right.

21 MR. HAWKINS: And if you go and find the last page of
22 them, and we'd be happy to submit to you tomorrow or
23 whenever, these summary sheets that are already in
24 there.

25 THE COURT: Right.

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1 MR. HAWKINS: But it does break down each person and it
2 gives a title. Whether it's a lawyer, paralegal, law
3 clerk, senior paralegal. And it shows the summary of
4 how many hours each of those people had. And it
5 converts that out to dollars.

6 THE COURT: All right.

7 MR. FERGUSON: That's what I used for my summary.

8 A: I was behind the scenes.

9 Q: Okay. All right. Now, concerning the litigation, Mr.
10 Sullivan, you were not involved in that in any way,
11 other than being a party to that action?

12 A: I was behind the scenes.

13 Q: Right.

14 A: Jack -- Jack Griffeth was my employer.

15 Q: Okay.

16 A: But I was -- I was involved. I was, you know, I may
17 have prepared the Complaint.

18 Q: Okay. Now the money, the \$93,000 you've already
19 received and I'd have to, I guess, go back through
20 your accountings. Would that include reimbursement
21 for any expenses that you outlaid yourself? Or would
22 outlay of expenses, whatever those have been, be in
23 addition to the \$93,000?

24 A: I have not conveyed, you know, for the last maybe
25 eight or ten trips to Laurens from Columbia.

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1 Q: Well, let me ask you this, did you advance any costs
2 or expense that you sought reimbursement for as
3 Personal Representative?

4 A: No.

5 Q: Okay.

6 A: The law firm -- I turned my mileage into the law firm
7 and the law firm paid me all along. Now their bills,
8 the costs, are in here.

9 Q: All right. So, on Exhibit D, you did receive some
10 money from Collins and Lacy as far as what they billed
11 and that would have been mileage reimbursement?

12 A: Yes.

13 Q: Okay.

14 A: Yeah. I'm sorry.

15 Q: Okay. Anything else, other than mileage
16 reimbursement?

17 A: No, sir.

18 THE COURT: Okay. Okay. Do the lawyers, first Mr.
19 Hawkins, have any questions in direct response to the
20 Court's questions?

21 MR. HAWKINS: None from me, Your Honor.

22 THE COURT: Okay. Mr. Ferguson?

23 MR. FERGUSON: No, Your Honor.

24 THE COURT: Okay. All right. Thank you very much, Mr.
25 Sullivan. You can step down. And I think you may --

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1 look and see, you may have an Exhibit or two with your
2 documents. I want to make sure we get those back to
3 the Court Reporter.

4 A: All right, sir. Thank you.

5 THE COURT: Just take a moment and take a look. I think
6 you may have at least one.

7 MR. HAWKINS: Could we take about three minutes to run
8 down the hall?

9 THE COURT: Sure. Before you do that you -- and we're not
10 going to finish this case today, evidently. I mean,
11 Mr. Ferguson, you told me at the beginning you had
12 like three, four or five witnesses, I think.
13 Something like that.

14 MR. FERGUSON: Yeah. I think that they'll be short ones,
15 but never the less.

16 THE COURT: Well, I mean -- you've got how many more, Mr.
17 Hawkins?

18 MR. HAWKINS: I have three. I might change my mind about
19 one to get us done, but I do have two experts who are
20 here.

21 THE COURT: Okay.

22 MR. HAWKINS: And if at all we could squeeze them in --

23 THE COURT: Right.

24 MR. HAWKINS: -- I think they're roughly 30 to 40 minutes
25 witnesses.

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1 THE COURT: Yeah. Yeah.

2 MR. HAWKINS: It'll push us a little late but --

3 THE COURT: All right. Roughly, Mr. Ferguson, how long do
4 you think your case would take? And I know it's all
5 subject to a lot of stuff, plus, you know, Mr.
6 Hawkins' cross examination, and how many objection
7 y'all throw at me. And that sort of thing. But,
8 about how long would you say? Based upon your
9 experience?

10 MR. FERGUSON: Two, two and a half hours?

11 THE COURT: Okay. All right. So we're definitely going
12 to have to go another day because it's already 4:30.

13 MR. HAWKINS: I know one of my experts has a real estate
14 closing -- some sort of thing tomorrow morning he
15 really needs to be at.

16 THE COURT: Well, yeah. I think -- I think your experts
17 need to be up and out. So we'll make sure we get them
18 done. So, well, whenever we adjourn for the day, then
19 we'll just have to figure out when we're going to
20 finish up the case. But this doesn't look like we'll
21 be able to finish up today, even if we go a little bit
22 longer than normal. Okay. All right. Well, let's
23 take a five minute recess.

24 MR. HAWKINS: Thank you, Your Honor.

25 THE COURT: Yes, sir.

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1 (Recess 4:30 p.m. until 4:44 p.m.)

2 THE COURT: Okay. Mr. Hawkins, you want to call your next
3 witness?

4 MR. HAWKINS: Yes, sir, Your Honor. We call John Wilson.

5 THE COURT: Okay. Come around please, sir. And before
6 you take your seat, if you'll place your left hand on
7 the Bible, and raise your right hand.

8 JOHN WILSON, being duly sworn and cautioned to
9 speak the truth, the whole truth and nothing but the truth,
10 testifies as follows:

11 THE COURT: Thank you very much. Have a seat. Your
12 witness.

13 MR. HAWKINS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. HAWKINS:

16 **Q: Mr. Wilson, what's your date of birth?**

17 A: 7/9/52.

18 THE COURT: And your name again was what, sir?

19 A: John Wilson.

20 THE COURT: Wilson. Okay.

21 **Q: Where do you currently reside?**

22 A: In Newberry.

23 **Q: And how long have you lived there?**

24 A: Since '92. But it's my home. I have been away at
25 other jobs but that's my residence.

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1 Q: All right. Let's talk about your educational
2 background. Where'd you go to undergraduate school?

3 A: That was Clemson University.

4 Q: And what sort of Degree did you obtain there?

5 A: Forestry Degree, Bachelor of Science.

6 Q: Did you subsequently obtain a Masters?

7 A: I did, from Duke University.

8 Q: And what year was that?

9 A: 1991.

10 Q: And what year did you finish Clemson?

11 A: '74.

12 Q: All right. Tell us a little bit more about the type
13 of business you do, any other professional education
14 that you might have?

15 A: Well, I'm a South Carolina registered Forrester, doing
16 consulting work, consulting forestry work. I'm a Real
17 Estate Broker. And also a South Carolina General Real
18 Estate Appraiser.

19 Q: And how long have you been in the appraisal business?

20 A: Since '92.

21 Q: And how long have you been involved as a Real Estate
22 Broker or Real Estate Agent, even prior to that time?

23 A: I've been involved in real estate since I went to work
24 with my first forestry job in the early '70s.

25 Q: And have you been involved as an agent and/or broker

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1 selling property for other people?

2 A: Since 1992.

3 Q: Is that something you're pretty regularly engaged in?

4 A: Yes, it is.

5 Q: And has that involved land similar to the land that's
6 involved in this case?

7 A: Yes. I targeted -- what we sell is usually timberland
8 or farmland.

9 Q: In this -- let me offer to you the CV, or resume, of
10 yourself. Is that an accurate recitation of your
11 educational background and experience?

12 A: Yes, it is.

13 MR. HAWKINS: Your Honor, we'd like to offer this into
14 evidence as the next Exhibit.

15 MR. FERGUSON: No objection.

16 THE COURT: Okay. Without objection. Let's mark this as
17 E. Exhibit E.

18 (Plaintiff's Exhibit E was admitted into evidence.)

19 MR. HAWKINS: Your Honor, we'd like to offer Mr. Wilson at
20 this time as an expert witness in the field of real
21 estate sales, consulting with respect to real estate
22 sales and forestry.

23 THE COURT: Mr. Ferguson, any questions you want to
24 examine the witness on as concerns qualifications?

25 MR. FERGUSON: I guess I'd like to know how much work he

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1 does in Laurens County.

2

3 THE COURT: Okay. Go ahead and ask the question.

4 VOIR DIRE EXAMINATION

5 BY MR. FERGUSON:

6 **Q: How much work do you do in Laurens County in your**
7 **professional capacity?**

8 A: I don't know how to label that exactly but I'm here
9 routinely. I could be here weekly, it may be a few
10 months pass and I'll be here daily. Actually, my real
11 office was in Jalapa, so not that far out.

12 MR. FERGUSON: Well, he went to Duke, so he's bound to be
13 an expert.

14 THE COURT: All right. I will qualify Mr. John Wilson as
15 an expert in the field of real estate sales and
16 consulting work. You may proceed.

17 MR. HAWKINS: Thank you, Your Honor.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. HAWKINS:

20 **Q: In this particular matter that we're here in the trial**
21 **today for, Mr. Wilson, have you been here in the**
22 **Courtroom ever since the trial started?**

23 A: Yes, sir, I have.

24 **Q: So you -- that just saved me, hopefully, a little bit**
25 **of going back through some of the issues we've already**

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1 talked about. Did you provide consulting services to
2 Mr. Edward Sullivan in his capacity as the Personal
3 Representative of the Estate of Marion Kay?

4 A: Yes, I did.

5 Q: Tell us what that involved?

6 A: Well, a number of things. Eddie contacted me when he
7 realized he was going to be working with this Estate.
8 We talked about several things. And I will just --
9 I've got some notes here I will look at. I think we
10 met a couple times on the property. We talked about
11 some strategies. It being a larger property, some
12 specific questions came up; what if I sell the house
13 that's in the property, how would that impact the 330
14 acres. Which it could negatively impact because you'd
15 have a void in the middle -- or a donut hole along the
16 road frontage. He asked questions like what was my
17 opinion of the appraisal that was performed by Mr.
18 Major. Which I reviewed the appraisal and gave him my
19 opinion of the appraisal. I think later we worked on
20 a project where the property was going to be subject --
21 -- was going to be divided. And Mr. Major was asked to
22 do that. I gave input on that division. We later
23 came and, after that division was made, I had some
24 issues with road frontage, which was corrected and --
25 well, changed. Not necessarily corrected but was

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1 taken into consideration as to how important that road
2 frontage might have been. Again, that was probably a
3 moot point because the property was, I assume, was
4 never divided. We did -- you know, Eddie would call
5 me on a fairly regular basis. I might catch him -- I
6 might be down in the woods cruising timber and get a
7 call about, you know, maybe a question about the
8 timber or what about this. And I remember when, I
9 think it was Mr. Rowland Milam made that offer, he
10 gave me a call about that. And just asking questions
11 and trying to be there as a consultant to ask --

12 **Q: What general time period did your consulting**
13 **relationship with the Personal Representative cover?**

14 A: I didn't bring my day calendars, but it was off and on
15 for a period of two or three -- probably three years.

16 **Q: Did you have an opinion as to whether it could benefit**
17 **the property if one could subdivide or divide the 330**
18 **acres so that it was no longer an undivided half**
19 **interest that one was involved in?**

20 A: Well, we talked about that. Of course, it was
21 important to get a clear title before you try to sell
22 something. And we did have this undivided interest,
23 which is always a thorn in your side when you're
24 trying to merchandise land. I know the appraisal was
25 done under the assumption that, you know, the land was

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1 fee simple, the divided interest, it was subject to
2 that limited condition. The condition that there was
3 no undivided interest as far as the appraised value
4 goes.

5 Q: So as you understand -- and I've offered to you there
6 what was marked as Plaintiff's Exhibit C-6.

7 A: Uh-huh (affirmative response).

8 Q: Is that the appraisal done by Mr. Major that you have
9 referred to?

10 A: Yes, it is.

11 Q: Your understanding is that that appraisal just
12 appraised the 330 acres, what is its value, without
13 taking into consideration any undivided interest by
14 owners?

15 A: What was the appraised value?

16 Q: Yeah. Was the appraised value determined just by the
17 acreage of the land and not looking at --

18 A: Yes, sir.

19 Q: -- whether anybody had an undivided interest in it?

20 A: I recall that being the case; yes.

21 Q: All right.

22 A: That's correct.

23 Q: Do you recognize, in the field of real estate, that
24 the attempt to sell an undivided interest in a piece
25 of property diminishes the value of what you're

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1 selling over what the acreage would be worth if you
2 weren't selling an undivided interest?

3 A: It usually does diminish the value. It certainly
4 reduces the number of potential buyers.

5 Q: Are there any percentages that you feel are reasonable
6 estimates to talk about what a diminished value likely
7 is?

8 A: I don't have a percentage.

9 Q: All right. In this particular matter, have you
10 researched and looked for what are known as
11 comparables for the sale of the property?

12 A: Yes, I have. The property was appraised in its
13 original --

14 Q: Let me stop you there for one moment and let you start
15 there. Tell the Court what are -- and the Judge may
16 be aware of it. But let's get in the record. What
17 are comparables? What I use that phrase, what are we
18 talking about?

19 A: Well, comparable sales are sales that have transacted,
20 usually they'll be over in the Clerk of Court's
21 office. They are comparable to the subject. We look
22 at the comparable sales to try to get an indication of
23 value for the subject. We look at how much timber is
24 on the comparables. How much open land is on the
25 comparables. And how much actually -- actual acreage

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1 is in timber. Then we make a comparison. And then we
2 make adjustments for those differences. So, yes, I
3 have found some comparables just looking at the sale
4 as of last July.

5 **Q: Tell us what you discovered and what the relevance of**
6 **it is?**

7 A: Well, what I did was, of course, I think Mr. Sullivan
8 sold the property in July of 2010. I think the price
9 was \$292,000, plus or minus, and what I -- that's a
10 half interest. So I multiplied that by two. And then
11 basically come up with a value. What I'm trying to do
12 here is take some comparable sales and see how he came
13 in. You know, what was his batting average, you might
14 say. And if I take the \$292,000 that he sold it for,
15 multiply it by two, that's \$584,000, had he sold it at
16 100 percent interest. I'm doing this just for
17 calculation purposes. The entire tract, I think it
18 sold for \$584,000. It had about \$46,000 worth of
19 timber on it. What I'm trying to do here is come up
20 with a land value. Because that's what we do with
21 comparables. We want to look at the raw land. We
22 want to look at the contributory value of the land and
23 then we can look at the contributory value of the
24 timber. Add those together and you get a total value.
25 In this case, what he received for that property would

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1 have been -- would equate to \$1,629 per acre in the
2 raw land. Well this appraisal was done several years
3 before and, of course, the date of -- the effective
4 date of the appraisal is May 3rd, 2007. Since 2007,
5 land prices have certainly -- well, plummeted in some
6 cases, but they're certainly down. So what I did, is
7 I looked at six sales that took place in '09 and 2010,
8 that were comparable to the subject. From those six
9 sales, which I have here some information on, I broke
10 down those six sales into timber and land. So
11 basically, if I add the per acre land value for six
12 sales and then divide by six, what I'm trying to do
13 here is get a simple average raw land value. That
14 value on these comparables under today's land market
15 indicates \$1,112 per acre. Keep in mind that when
16 Eddie sold the property, and by adjusting it to a 100
17 percent sale, which it was not, it was really only
18 half an interest, but we are looking at it as a 100
19 percent interest. He received what equates to \$1,629
20 per acre, in raw land; as compared to the comparable
21 sales. This represents more than \$500 over and above
22 what the indicators subject value would be if we were
23 doing an appraisal of that property at this time. I
24 did use the timber value, which I feel like is still
25 applicable, that Mr. Major come up with, because trees

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1 grow and over these periods they have grown some. And
2 even though timber prices are down, I think we're
3 close to the \$46,000 of timber value. The growth
4 probably has compensated for any loss of timber value.

5 **Q: Well, how, in your opinion, how would you rate the**
6 **ability to have sold it at the price that it was sold**
7 **as compared to your comparables?**

8 A: Well, the comparables indicate that \$1,112 per acre --
9 this was a -- he achieved quite a bit above the--
10 average per acre sale.

11 **Q: And is it a good result, in your experience of seeing**
12 **people --**

13 A: I think it's a very good result having sold a partial
14 interest too. Which I think he did really good on
15 this sale, as far as the price goes.

16 **Q: Would you give us a little bit of the background on**
17 **the comparables that you used?**

18 A: I can. I can -- I don't know what kind of background
19 you want but, for instance, there's a 550 acre sale
20 down on --

21 **Q: Let's talk about size first.**

22 A: All right.

23 **Q: The size of the other acreage.**

24 A: The 550 acres. I think I wrote this down here. Yeah.
25 I've got a sale that's 550 acres -- and, of course,

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1 we're looking at everything on a per acre basis. I've
2 got a sale of 530 acres. A sale of 213 acres. A sale
3 of 221 acres. I sale of 120 acres and a sale of 274
4 acres.

5 **Q: Where were those properties generally located?**

6 A: They were generally located fairly close to the
7 subject. I have a location map and I'll refer to
8 that. One sale was just over the county-line in
9 Newberry County. But the majority of the comps were
10 pretty close to the subject. In and around the
11 Mountville area. Up on Old Milton Road were a couple
12 of them. Down on Highway 560. Down below Mountville
13 were a couple.

14 **Q: Are those, because I don't know the geography that**
15 **well with the street names, are those Laurens County?**

16 A: Well, they're all -- yeah, I have five Laurens County
17 and one Newberry County comp. Again, the Newberry
18 County comp was just across the county-line.

19 **Q: How much mileage are we talking about, roughly, as the**
20 **crow flies, if you know, from the subject property to**
21 **the Newberry County property?**

22 A: Well, Newberry is probably 10 miles or 12 miles. And
23 the others are closer.

24 **Q: What was your understanding, if anything, during the**
25 **time you were consulting with Mr. Sullivan about any**

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1 **issues that may have clouded the title at all?**

2 A: Well, he gave me enough background to kind of realize
3 that, you know, it was some problems with the title
4 and such. You know, that come under the, I guess, the
5 legal aspects of the title I really didn't address. I
6 was more interested in the real estate. You know,
7 what would detract from the sale of real estate, if it
8 would come to that. You know, again, you know,
9 numbers. A lot of numbers we talked about. Eddie was
10 always trying to do the best he could for that Estate.

11 **Q: He made that clear to you --**

12 A: Oh, he made it clear to me because he called me all
13 the time. I mean, that's what we were talking about.
14 We were talking about issues with the Estate. What do
15 I think about -- again, I remember one of them was the
16 house. I'm going to sell the house. Uh, let's don't
17 sell the house. It could be a negative because you're
18 selling road frontage off of a much larger tract
19 behind you, you see?

20 **Q: All right. Have you ever been involved in the sales**
21 **of property in the past where some third-party, not -**
22 **- you know, the seller is looking to sell, but there's**
23 **a third-party that has an Option of First Refusal such**
24 **that if you bring another buyer to the table to look**
25 **at it, you have to advise them that somebody else has**

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1 the Right of First Refusal, so whatever offer they
2 make, you're going to have to let somebody else
3 potentially take it away from them?

4 A: I've been involved with similar situations as that.
5 Not exactly that situation. But, people with rights
6 to purchase before others, I have run into and usually
7 it does create a problem. It almost, you just have to
8 wait and see what they're going to do a lot of times
9 before you try and do any real marketing.

10 Q: Do you consider that a negative on a piece of
11 property?

12 A: Any time you take property off the market for days and
13 that's a lost opportunity. And, yes, that's a
14 negative.

15 Q: And when you say, Off the market, if somebody made an
16 offer and you're now having to wait on the people with
17 the Option to exercise or not exercise, during that
18 time period it's off the market?

19 A: That's -- that's -- yeah, that's one time period. The
20 other is, if you just can't put it on the market
21 because of these folks -- you know there's a lot of
22 questions go into real estate transactions. You have
23 to -- where's the funds coming from? Time it takes to
24 line up a purchase, even for someone to make an offer
25 -- he's got to do a lot of homework before he can make

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1 an offer. Most people don't have that kind of money
2 sitting in the bank you can just go get. So, it just
3 -- it deters them from making that move.

4 MR. HAWKINS: Thank you, Mr. Wilson. I have no other
5 questions, Your Honor.

6 THE COURT: Mr. Ferguson, anything in cross?

7 CROSS EXAMINATION

8 BY MR. FERGUSON:

9 **Q: How long have you known Eddie Sullivan?**

10 A: It's hard to give you a year, but I'm sure eight or
11 nine years. I could be off a year.

12 **Q: And do you know him socially or just professionally?**

13 A: Just professionally.

14 **Q: Have you done a good bit of work for him?**

15 A: I've done some work for him and his timberland,
16 management of his timberland. His mother's
17 timberland.

18 **Q: Okay.**

19 A: Over the years. As a forestry consultant.

20 **Q: Okay. You said something about the road frontage**
21 **issues with the house and whether to sell the house**
22 **separately; is that what you're talking about?**

23 A: Well, he was asking, you know, doing some what if's.
24 You know? You know, what if we sell the house
25 separate from the land? And I'm saying, you know,

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1 that just creates a problem with road frontage.

2 MR. FERGUSON: Okay. No further questions, Your Honor.

3 CROSS EXAMINATION

4 BY THE COURT:

5 Q: Mr. Wilson, you -- I guess you've -- you've kind of
6 worn two hats here, so to speak. One, you served as a
7 consultant for the Personal Representative during the
8 course of the administration and advising him on the
9 various issues that he had; correct?

10 A: That is correct.

11 Q: And do you have records to show what you've been paid
12 for that consulting work?

13 A: I do at the office. Yes, sir.

14 Q: Okay.

15 A: It's not very much.

16 Q: Okay.

17 A: I can't get that now, but I can get it.

18 Q: That's okay. And then are you charging a separate fee
19 for expert witness testimony in this trial?

20 A: Yes, sir. I will charge for my time today. Yes.

21 Q: Okay. All right. Do you know how much you'll charge?

22 A: No, sir.

23 Q: Okay.

24 A: I mean, I don't. But I can again, give you that, too.

25 THE COURT: That's fine. That's fine. Okay. Any

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1 questions in response to the Court's questions? Mr.
2 Hawkins?

RE-DIRECT EXAMINATION

BY MR. HAWKINS:

5 **Q: I guess I would ask, do you have an hourly rate that**
6 **you believe you would be applying --**

7 A: I usually -- I usually charge \$350 a day.

8 MR. HAWKINS: Thank you.

9 THE COURT: Mr. Ferguson, any questions --

10 MR. FERGUSON: No, sir.

11 THE COURT: -- in response to the Court's questions?

12 MR. FERGUSON: No, sir.

13 THE COURT: Thank you, sir, for your testimony. You can
14 step down. You're welcome to stay with us or you can
15 leave. Whatever your pleasure.

16 A: Thank you, sir.

17 MR. HAWKINS: Thank you, Mr. Wilson. Your Honor, we would
18 call at this time Paul Major.

19 THE COURT: Paul Major, come around, please, sir. Before
20 you take a seat, place your left hand on the Bible and
21 raise your right hand.

22 PAUL MAJOR, being duly sworn and cautioned to
23 speak the truth, the whole truth and nothing but the truth,
24 testifies as follows:

25 THE COURT: Thank you very much. Have a seat. Your

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1 witness.

2 MR. HAWKINS: Thank you, Your Honor.

3 DIRECT EXAMINATION.

4 BY MR. HAWKINS:

5 Q: Thank you, Your Honor. Mr. Major, would you tell us
6 your date of birth?

7 A: June 8th, 1951.

8 Q: And where were you born?

9 A: Wilmington, Delaware.

10 Q: Where do you reside today?

11 A: Prosperity, South Carolina.

12 Q: And how long have you lived there?

13 A: 35 years.

14 Q: What sort of work are you engaged in at this time?

15 A: Very much like Mr. Wilson, I have a forestry
16 consulting business. We manage, market, appraise and
17 sell land and timber.

18 Q: Are you a licensed Real Estate Agent and broker?

19 A: I am, yes, sir. A broker.

20 Q: All right. And how long have you been a broker?
21 Approximately?

22 A: 25 years?

23 Q: And have you actively engaged in buying and selling
24 real estate as a broker for other people?

25 A: Yes, sir.

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1 **Q: Tell me about your undergraduate of school. Where did**
2 **you attend college?**

3 A: I went to Clemson University and obtained a BS in
4 Forestry in 1973.

5 **Q: Do you have other formal education after Clemson?**

6 A: No, sir.

7 **Q: In the businesses that you've engaged in, forestry**
8 **consulting business, brokerage business and the**
9 **appraisal business, you are a licensed appraiser;**
10 **correct?**

11 A: I am. Certified General, South Carolina Appraisers.

12 **Q: Has any of that work involved work in Laurens County?**

13 A: Yes, sir.

14 **Q: What sort of time periods have you been involved in**
15 **Laurens County and sort of how would you quantify your**
16 **experience for us?**

17 A: Well, when I first came to Newberry as a forester, I
18 worked with Champion International and I managed all
19 of Champion's land in Laurens County, so I've been
20 very familiar with the county since 1974. I started a
21 consulting business in '85. I have clients in Laurens
22 County. I manage land here, and appraised land and
23 timber here for the last 25 years.

24 **Q: Have you ever testified as an expert witness in court**
25 **before?**

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1 A: Yes, sir.

2 Q: In what courts have you testified as an expert?

3 A: Oh, gee. In various cases --

4 Q: In different counties in South Carolina?

5 A: Newberry County, Richland County, Lexington County.

6 Q: Has it been Circuit Court?

7 A: I guess so, yes, sir.

8 Q: You know what I'm talking about? Civil litigation in
9 the County Courthouse?

10 A: Yes.

11 Q: All right. Have you been qualified as an expert
12 witness in the field of appraisals?

13 A: Yes, sir.

14 Q: And have you ever testified as an expert in the field
15 of real estate?

16 A: I have. Yes, sir.

17 MR. HAWKINS: All right. Your Honor, we would offer at
18 this time Mr. Major as an expert witness in the fields
19 of real estate and appraisals.

20 THE COURT: Okay. Mr. Ferguson, any questions concerning
21 qualifications?

22 VOIR DIRE EXAMINATION

23 BY MR. FERGUSON:

24 Q: How long have you known Eddie Sullivan?

25 A: Eddie first contacted me in January of '08.

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1 **Q: Okay. And what have you -- you didn't know him before**
2 **then?**

3 A: No.

4 **Q: And what have you been paid in this case?**

5 A: I've been paid my fee for the appraisal. And for the
6 consultancy regarding the proposed subdivision that he
7 gave me perimeters for in which I've produced.

8 **Q: And what fee was that? What amount?**

9 A: I've been paid \$5,000 for preparation of the appraisal
10 and for the proposed subdivision.

11 **Q: And what are you being paid for your services today?**

12 A: By the terms of our Appraisal Agreement, \$150 an hour
13 for my services here, for preparation and for my time.

14 MR. FERGUSON: Okay. No further questions.

15 THE COURT: Okay. Mr. Major is qualified as an expert in
16 the field of Real Estate Appraisals.

17 **Q: We have before you here, Mr. Major --**

18 MR. HAWKINS: Your Honor, I'd also ask in the field of
19 real estate.

20 THE COURT: The field of real estate appraisal and just
21 real estate?

22 MR. HAWKINS: Buying and selling real estate, acting as a
23 real estate agent or broker.

24 THE COURT: Okay. In the field of real estate appraisals
25 and in the field of real estate -- real estate agent

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1 work.

2 MR. HAWKINS: Consulting, as well, as he indicated he had
3 done that.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. HAWKINS:

6 Q: Mr. Major, I hand you now what we've previously marked
7 as Plaintiff's Exhibit C-6. Is that an appraisal that
8 you prepared?

9 A: Yes, sir.

10 Q: Are you familiar with what this property sold for
11 after you had prepared the appraisal?

12 A: I've been told what that is; I've not seen a record of
13 it but I have some idea what that was.

14 Q: If I asked you to assume that that -- that the sales
15 price was \$292,500, what would your opinion be as to
16 whether that was a good price, great price, bad price.
17 However you would feel comfortable --

18 A: That is an exceptional price.

19 Q: All right. Do you know roughly what percentage that
20 would be of the appraisal that you did on this
21 property, understanding that the sale actually is of a
22 half interest, not the whole?

23 A: Without trying to calculate it specifically, I would
24 guess 90 - 95 percent of the value I found.

25 Q: Do you recognize in your experience, history,

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1 training, education, is there generally, if someone is
2 trying to sell an undivided interest in a piece of
3 property, in this case we're talking about an
4 undivided half interest in 330 acres, is the sale of
5 an undivided half interest typically something that
6 you would expect to be discounted versus selling just
7 the land itself?

8 A: Definitely. The evaluation of a fractional interest
9 is generally less than the whole.

10 Q: Are there any percentages that you've seen as to how
11 much that discount might be?

12 A: In my experience and appraisals that I've done that
13 involved fractional interest, on a sale of this size,
14 this type of property, I would anticipate diminution
15 in value of 30 to 35 percent.

16 Q: Is that an opinion you hold to a reasonable degree of
17 certainty?

18 A: That is what I have found in appraisals I have done.

19 MR. HAWKINS: Thank you. I have no other questions for
20 this witness, Your Honor.

21 THE COURT: Mr. Ferguson, any questions?

22 MR. FERGUSON: No, Your Honor.

23 CROSS EXAMINATION

24 BY THE COURT:

25 Q: All right. You say you've been paid for the appraisal

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1 --

2 A: Yes, sir.

3 Q: -- that you did? And what was the appraisal amount?
4 What did you value the property at? Would you please
5 look?

6 A: \$614,000.

7 Q: Okay. And that's, of course, for the total amount?

8 A: Yes. For the property as a whole.

9 Q: Yes, sir. All right. Now, you mentioned you did some
10 consulting work for the Personal Representative?

11 A: At Mr. Sullivan's request I --

12 Q: Okay. What was that -- what was the nature of that
13 consulting work?

14 A: He asked for a proposed division of the property that
15 would equally divide the property between the two
16 groups of heirs and provide an opportunity for the
17 adjoining neighbor, who's name, I think, I guess, is
18 Coleman, to receive the portion that he anticipated.

19 THE COURT: Any questions, Mr. Hawkins, in response to the
20 Court's questions?

21 MR. HAWKINS: You know, I do have just a little small
22 matter, Your Honor.

23 RE-DIRECT EXAMINATION

24 BY MR. HAWKINS:

25 Q: Mr. Major, did you ever meet with any of the parties

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1 **who had interest in the land?**

2 A: Yes, I did. I believe it was in July of --

3 MR. FERGUSON: Your Honor, is that in response to --
4 responsive to --

5 THE COURT: Well, it's probably not in response to the
6 Court's questions but I'll be lenient and I'll give
7 you a little leniency too.

8 MR. HAWKINS: Thank you, Your Honor.

9 A: I believe in July of '08 we had a meeting in my office
10 in Newberry with the heirs and Mr. Sullivan to discuss
11 the appraisal and my proposed subdivision.

12 **Q: Do you recall if Ms. Penny Arnold was there? The**
13 **young lady back here at the back of the courtroom?**

14 A: I believe she was, yes, sir.

15 **Q: Was any resolution worked out at that meeting?**

16 A: No. The consensus was that my original proposal for
17 subdivision did not adequately address road frontage
18 as something to be equally divided. And I went back
19 and re- -- or addressed again that subject, including
20 the need for equitable division of road frontage. And
21 I provided subsequent proposed subdivision to Mr.
22 Sullivan which he distributed to the heirs.

23 **Q: Did you ever meet with the heirs again?**

24 A: No, sir.

25 **Q: Did you get some feedback as to what the reaction was**

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1 to that --

2 MR. FERGUSON: Objection to hearsay.

3 **Q: -- subsequent proposal?**

4 THE COURT: Okay.

5 MR. HAWKINS: I think I can ask the questions and avoid
6 the hearsay, Your Honor.

7 THE COURT: Okay.

8 **Q: Did you speak with Mr. Sullivan about whether or not**
9 **that proposal was going -- was being accepted by the**
10 **various persons who had expressed an interest in --**

11 MR. FERGUSON: He's trying to get in hearsay by having
12 somebody tell him what other people have said. And
13 also this is -- this goes well beyond, I think, your
14 initial allowing him to ask a question or two that was
15 supposed to be responsive to what you said.

16 THE COURT: Well, I think it's been pretty much throughout
17 this case that there has not been too many situations
18 of meeting of the minds, so to speak. So I think it
19 just -- I mean, I'll allow the question. Your point
20 is well taken and I pretty much know what the answer's
21 going to be, so go ahead and ask it.

22 MR. HAWKINS: Thank you, Your Honor.

23 **Q: What I've attempted to do, I think the law allows me**
24 **to say, what's the topic of the conversation and then**
25 **what was his state of mind after it? That's all I'm**

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1 **trying to ask. What was the topic of your**
2 **conversation or subject of your conversation with Mr.**
3 **Sullivan after you had provided him with a second**
4 **proposal?**

5 A: All I recall is him saying that he was going to --

6 MR. FERGUSON: Objection.

7 THE COURT: All it recalls him saying -- what Mr. Sullivan
8 said? Are you objecting to what Mr. Sullivan said?

9 MR. FERGUSON: Yeah. If he's going to be quoting --

10 THE COURT: Well, let's hear -- let's hear what this
11 witness says, and if you want to renew your objection,
12 then if I sustain it, then I'll strike it from the
13 record and I won't consider it. Let's first see what
14 he says.

15 A: I just simply recall Mr. Sullivan saying that he was
16 going to provide this information to the heirs, the
17 interested parties, and see what they said -- had to
18 say.

19 **Q: And did you ever hear back from him after that?**

20 A: Not until just a few weeks ago in preparation for our
21 meeting here today.

22 MR. HAWKINS: I don't have anything else, Your Honor.

23 THE COURT: Mr. Ferguson?

24 MR. FERGUSON: No, questions.

25 THE COURT: Okay. You can step down. Thank you for your

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1 testimony. You're free to leave if you care to.

2 A: Thank you.

3 THE COURT: Mr. Hawkins, anything further?

4 MR. HAWKINS: We have one other witness who's here, Your

5 Honor.

6 THE COURT: Sure.

7 MR. HAWKINS: Ms. Penny Arnold.

8 THE COURT: Okay.

9 MR. HAWKINS: Who is from the Presbyterian Home, which is

10 one of the beneficiaries. I think she would, you

11 know, another 20 or 30 minute witness, at the most, if

12 you'd like to try -- that would conclude our --

13 THE COURT: Okay. All right. Let's bring her on.

14 MR. HAWKINS: She came so far. Ms. Arnold.

15 THE COURT: Have you been here all day, ma'am?

16 MS. ARNOLD: Yes, sir.

17 THE COURT: Okay. I thought so. We won't make you come

18 back. If you'll place your left hand on the Bible.

19 Just prop your cane up there anywhere that's

20 convenient for you.

21 MS. ARNOLD: I've had two hips replaced.

22 THE COURT: Okay.

23 PENELOPE ARNOLD, being duly sworn and cautioned

24 to speak the truth, the whole truth and nothing but the

25 truth, testifies as follows:

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1 THE COURT: Have a seat. Your witness.

2 DIRECT EXAMINATION

3 BY MR. HAWKINS:

4 Q: Ms. Arnold, if you said it, I apologize. Have you
5 stated your name for the record?

6 A: No, sir.

7 Q: Okay. Would you please do that now for us?

8 A: My legal name is Penelope B. Arnold. I go by Penny.

9 Q: Ms. Arnold, where were you born?

10 A: Washington, D.C.

11 Q: I'm not going to ask you when you were born.

12 THE COURT: Don't ever do that.

13 Q: Did you go to college?

14 A: Yes, sir, I did.

15 Q: Where'd you go to college?

16 A: I went to Colorado Women's College and the Hendrix
17 College in Conway, Arkansas. I've got a Degree and I
18 have a Masters from Vanderbilt University.

19 Q: What year did you get your Masters Degree at
20 Vanderbilt?

21 A: '91.

22 Q: And subsequent to that, what sort of work have you
23 done? Just generally speaking?

24 A: I have been a fund-raiser and a church employee for
25 Presbyterian non-profits.

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1 Q: And did there come a time when you moved to South
2 Carolina?

3 A: Moved to South Carolina in 1995 and for a position
4 with church foundation.

5 Q: And you've lived here ever since?

6 A: I have. In Chapin.

7 Q: Where do you live? Which County?

8 A: Lexington. In Chapin, South Carolina.

9 Q: Okay. Do you live on the lake?

10 THE COURT: What part of Chapin do you live? /

11 A: Timberlake.

12 THE COURT: Okay. My in-laws live on Lake Murray in the
13 Chapin area.

14 Q: Are you -- in 2007, did you begin a new position?

15 A: I did. I began to be with the Presbyterian Home Of
16 South Carolina, d/b/a Presbyterian Communities of
17 South Carolina, the Director of their Charitable
18 Foundation and Church Relations.

19 Q: And shortly thereafter, did you become aware that Ms.
20 Marion Kay had passed away and she had left a -- had
21 recognized the Presbyterian Home -- can I call it
22 Presbyterian Home? Is that --

23 A: That's fine.

24 Q: -- as a beneficiary of her Will?

25 A: Yes, sir. I received notification.

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1 Q: All right. How did you then get involved, if at all,
2 to -- I guess I should back up and ask. What did your
3 role then become, on behalf of the Presbyterian Home,
4 if any, with respect to that recognition in the Will?

5 A: When we receive recognition that we've received a
6 bequest, or we are a beneficiary of a Trust or any
7 kind of charitable vehicle, then I am the one that
8 becomes the person that signs Release forms and
9 receipts and receives all of the letters from
10 attorneys or Personal Representatives, bank trust
11 officers, however.

12 Q: You work with Personal Representatives on a regular
13 basis?

14 A: Yes, sir, I do.

15 Q: And have you done that prior to the position at
16 Presbyterian Home?

17 A: Yes, sir, I have.

18 Q: Is that something that you've generally been involved
19 with since 1995?

20 A: Well, actually --

21 Q: Or thereabout?

22 A: Yes. Yes, sir. Actually, since 1985, in other work.

23 Q: Thank you. In this case, would it be fair to say that
24 you were the point person for the Presbyterian Home?

25 A: Yes, sir.

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1 Q: Did you then have interaction with Mr. Eddie Sullivan,
2 who was the PR?

3 A: Yes, sir.

4 Q: How would you describe those interactions? How did it
5 go along from your prospective? You know, was he easy
6 to contact; easy to get information from; or
7 difficult? How would you describe him?

8 A: Well, he just regularly kept me informed either
9 through letters or emails or telephone conversations,
10 about what was going on with the settlement of the
11 Estate of Marion Kay.

12 Q: Did the Presbyterian Home have any preference in this
13 matter as to whether it took land, in some sense, an
14 interest in land, or cash, for whatever its interest
15 was going to be in the Estate?

16 A: Yes, sir, we do. The Board of Trustees -- we didn't --
17 -- it hasn't come -- didn't come to that, but they
18 would have had quite a discussion and deliberation on
19 receiving property with other heirs. We do not have
20 the wherewithal financially to pay property taxes, to
21 keep the land up, which we would be responsible for
22 doing or paying someone to do that. And so the
23 preference is always to sell real estate and receive
24 the proceeds. And the proceeds from Marion Kay's
25 Estate would actually, at this point, would pay for

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1 five days of resident aid for our residence who have
2 simply lived longer than their resources have lasted.

3 **Q: Ms. Arnold, did you ever attend any meetings with the**
4 **other heirs to try to work out the -- let me back up**
5 **to this, I guess. Was there a point in time when you**
6 **recognized that there was a problem with taking the**
7 **bequest and turning it into cash?**

8 **A:** Yes, sir.. The heirs were all invited to the meeting
9 that Mr. Major indicated that we had in July in
10 Newberry. And Reverend Hunter and I took the
11 opportunity to meet with the other heirs in Mr.
12 Major's office at that time. And we were not well
13 received as being there at that time. And,
14 unfortunately, we didn't know whether the meeting was
15 going to happen or not because some of the other heirs
16 were not happy that Reverend Hunter and I had been
17 invited and were there. And of course, as
18 beneficiaries, we have a vested interest and we have
19 to do due diligence also and hold up the interest of
20 our entity, that is the beneficiary. And so it --
21 things did not get off to a good start.

22 **Q: And I'm recognizing hesitancy on your part to identify**
23 **who was it that made you feel unwelcome, but I have to**
24 **ask you in this proceeding, which heirs were they that**
25 **made you feel unwelcome?**

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1 A: (No response.)

2 Q: Let me ask it differently. Was it the ladies to my
3 right, Ms. Brown and Ms. Moses?

4 A: Yes. They -- they were unhappy. They didn't know we
5 were going to be there.

6 Q: When you returned to your office, did you give any
7 kind of a report to the other people there that were
8 involved in these things, the Board or others, about
9 your perception of where things now stood?

10 A: With the President of our organization. I just shared
11 with her what had happened and the discomfort and that
12 I was really sorry about that. And I said I didn't
13 believe that this would be a short resolution. That
14 we might not ever see any funds from this Estate.

15 Q: And if I understand it, you deal with Estates and
16 Personal Representatives, it's part of your business
17 as a daily occurrence? More or less, a regular
18 occurrence?

19 A: Yes, sir.

20 Q: Did you consider this to be an unusual Estate in that
21 respect that you felt like it was not going to have an
22 early resolution?

23 A: Yes. Yes, sir. Usually, we're notified that there is
24 a Probate time, which is eight or nine months or a
25 year, and then they are resolved pretty quickly.

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1 **Q: You indicated that Mr. Sullivan kept you regularly**
2 **informed on what was going on in the Estate. At any**
3 **time, have you been dissatisfied with him in his role**
4 **as Personal Representative?**

5 **A: No, sir. We were really excited when we heard the**
6 **amount of the sale of the property because that, as I**
7 **said, that meant that we would receive enough for the**
8 **resident aid.**

9 **Q: Do you have any objection to the fees that he's**
10 **requested for his services?**

11 **A: No, sir.**

12 **MR. HAWKINS: I don't have any other questions, Your**
13 **Honor.**

14 **THE COURT: Okay. Mr. Ferguson, any questions of this**
15 **witness?**

CROSS-EXAMINATION

17 **BY MR. FERGUSON:**

18 **Q: What is your understanding of how much in the way of**
19 **fees he's charged?**

20 **A: The amount is \$93,000. That was -- we got the**
21 **information about what he had charged before this**
22 **proceeding.**

23 **Q: Okay. And do you know about the Collins and Lacy**
24 **bills in addition to that?**

25 **A: We have copies of that. Yes, sir.**

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1 Q: All right. In the meeting of the heirs that you were
2 talking about, were all of the heirs there?

3 A: No, sir. My understanding was, the letter I got
4 listed all the heirs and they were all invited but not
5 everybody could attend.

6 Q: And so you really wouldn't have been able to come to a
7 conclusion anyway? If everybody wasn't there?

8 A: Oh, I don't -- I don't -- I didn't know that one way
9 or the other.

10 MR. FERGUSON: All right. Thanks. No further questions.

11 THE COURT: Any re-direct?

12 MR. HAWKINS: None, Your Honor.

13 THE COURT: Okay. You can step down, ma'am. Thank you
14 for your testimony.

15 A: Thank you.

16 THE COURT: Okay. Anything further, Mr. Hawkins, in your
17 case?

18 MR. HAWKINS: Your Honor, the one thing that I -- I don't
19 have another witness to call at this time. And I'm
20 understanding that we're going to talk about when we
21 might come back together. The only other possibility
22 that we might do. We had submitted an Affidavit, and
23 I understood the Court's Ruling about not being
24 willing to look at the Affidavits and whatnot. We
25 might, depending on when we get back together, we

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1 might consider calling Mr. Massey as a witness.

2 THE COURT: All right. And that's fine and we'll leave
3 the record open for your case. If you would -- of
4 course, we'll need to determine when we're going to
5 get back together. But if you would give Mr. Ferguson
6 some advance notice if you're going to do that --

7 MR. HAWKINS: Yes, sir.

8 THE COURT: -- so then he'll know whether or not he's
9 going to start first up.

10 MR. HAWKINS: I understand, Your Honor.

11 THE COURT: If you'll do that.

12 MR. HAWKINS: Absolutely.

13 THE COURT: Okay. All right. Let's go ahead and go off
14 the record and then let's talk for a minute about when
15 we're going to resume.

16 *****

17 (The hearing was adjourned at 5:23 p.m.)
18
19
20
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23
24
25

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1 CERTIFICATE OF REPORTER

2
3 I, SONYA K. GRICE, COURT REPORTER AND NOTARY PUBLIC IN
4 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
5 CERTIFY THAT I REPORTED THE FOREGOING PROBATE HEARING, ON
6 THE 2ND DAY OF FEBRUARY, 2011, THAT THE FOREGOING 218 PAGES
7 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE SAID
8 HEARING.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO DARYL G.
15 HAWKINS, LLC, LAW OFFICES OF DARYL G. HAWKINS, LLC, 1331
16 ELMWOOD AVENUE, SUITE 305, COLUMBIA, SOUTH CAROLINA, WHO
17 WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE
18 RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL
19 OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY
20 ISSUE. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
21 THIS 27TH DAY OF MAY, 2011.

22
23 _____
24 SONYA K. GRICE, COURT REPORTER
25 MY COMMISSION EXPIRES 6/15/2015

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State of South Carolina) In The Probate Court
County of Laurens) Case No.: 2007-ES-30-00208

In The Matter Of:

Marion M. Kay

Hearing

The within Probate Hearing, taken before Andrea S. Shorb, a notary public in and for the State of South Carolina, commencing at the hour of 3:10 p.m., Monday, February 21, 2011, at the Laurens County Annex, 100 Hillcrest Drive, Laurens, South Carolina.

Transcribed by
Andrea S. Shorb

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*** (All exhibits were retained by the Court.)

P R O C E E D I N G S

THE COURT: Mr. Milam, my name is Don Hocker. I'm the associate probate judge in Laurens. And as I understand it from Mr. Ferguson, you are a witness for him; is that correct?

MR. MILAM: Correct.

THE COURT: Okay. Well, since we're doing this by telephone, I'm just going to ask that you speak up as loud as you can so we can hear you. We're in a conference room. Our phone jack in the courtroom is not working at the present time, so we're in a little small conference room. In here with me are both the attorneys and the court reporter; and, of course, she'll be taking down everything that -- that is said. So what I want to do, is go ahead and swear you in, and then I will turn the record over to Mr. Ferguson initially; and he'll be asking you some questions.

Okay?

MR. MILAM: Okay.

THE COURT: All right. I'm going to trust that you are raising your right hand.

(Witness is duly sworn.)

THE COURT: All right. Mr. Ferguson, I'll

1 turn the record over to you, sir.

2 MR. HAWKINS: Your Honor, I did want to just
3 briefly note on the record our objection to
4 doing Mr. Milam by phone because we're not
5 able to show him exhibits that we'd like to
6 have him review.

7 THE COURT: Right, I understand. And, you
8 know, if the exhibits are a problem, then
9 we'll just have to deal with the situation.

10 MR. HAWKINS: I understand.

11 EXAMINATION

12 BY MR. FERGUSON:

13 Q All right. Mr. Milam, state your full name.

14 A Rowland Wade Milam.

15 Q And what's your age?

16 A Sixty-four.

17 Q And your education?

18 A Four years of college, lifetime of business.

19 Q And what is your relationship to the late Marion
20 Kay?

21 A First cousin.

22 Q And your relation ---

23 A Oh, excuse me, excuse me. Second cousin.

24 Q Okay.

25 A I apologize.

1 Q And your relationship to Mary Leona Moses and
2 Martha Brown?

3 A Second cousins.

4 Q All right. What line of work are you in?

5 A I own several businesses and one of them is a
6 medical transcription company.

7 Q Okay. And how successful are you at that?

8 A Well, it's been very successful. I just don't
9 want to brag about it yet.

10 Q Okay. Where are you at present?

11 A I'm in Clearwater, Florida.

12 Q Okay. What was the understanding in the family
13 about what was to happen to Marion Kay's share of
14 the farm when she died?

15 MR. HAWKINS: Your Honor, I object to
16 relevance --

17 THE COURT: Wait one minute there, Mr. Milam.
18 I've got an objection, and I'll have to deal
19 with that. State your objection, please.

20 MR. HAWKINS: Initially, Your Honor, that I
21 object to the relevance of what an
22 understanding between family would be. We
23 don't have a definition of who are the family
24 members. I think it would -- of necessity
25 calls for hearsay.

1 THE COURT: Okay. Mr. Ferguson, restate your
2 question and ask him what was his
3 understanding.

4 MR. FERGUSON: All right.

5 EXAMINATION BY MR. FERGUSON RESUMES:

6 Q What was your understanding about what was to
7 happen to the -- the land that was partially owned
8 by Marion Kay upon her death?

9 A It was always thought that the family, the three
10 girls, would end up with the land and regardless
11 of who died first because of their fathers owning
12 the land.

13 Q When you say "three girls," what -- who are you
14 talking about?

15 A Mary -- Mary Leona -- Mary Leona Moses, Martha
16 Brown, and Marion Kay.

17 Q Okay. When did you first hear that Marion had not
18 given her share of the farm to Mary and Martha?

19 A After she had passed away and the -- I guess, her
20 will became knowledge.

21 Q Okay. And how did you find out?

22 A Oh, gosh. I think the first person to tell me
23 would have been my Uncle Cecil Milam, and then
24 Mary Leona had called me. And then visiting
25 there, they, I guess -- I believe Mary Leona

1 showed me a copy of it.

2 Q And -- and what was your response to the
3 situation?

4 A I can't believe she did this.

5 Q Did you approach Eddy Sullivan about buying the
6 land, or did he approach you?

7 A I looked at the land with Mary Leona and -- and
8 Martha because at the time I felt that they were,
9 you know, still was going to get the land. And
10 then as the -- I guess, the proceedings continued
11 to blowout, it looked obvious that it wouldn't.
12 And then I actually came to your office to talk to
13 you about a couple of things. I think, I even
14 asked you and your partner, because he's in real
15 estate, to represent me if I were to go buy the
16 land. And that was based on my uncle, which going
17 through some family history of my -- of my
18 grandfather, which was Mary Leona, Martha, and
19 Marion's brothers. Their father's brothers are
20 all -- all brothers, Uncle Boon, Uncle Henry, and
21 my grandfather. And to try to keep it in the
22 family name, and at that time I had several
23 conversations with him. Eddy had called me, I
24 think, on a Sunday when I was up in South
25 Carolina, asking me -- that he heard I had an

1 interest it. But he did not call me, in my
2 opinion, like a -- a real estate person would have
3 called me, but he was the person I worked with;
4 but I had already talked to several people about
5 it at that time and even had two people look at it
6 as a -- not a -- not a paid appraisal but a drive-
7 by appraisal. And Eddy and I -- our main
8 conversation then was the way in my -- in my
9 opinion, the way it was divided up in parcels;
10 which I totally understand why he did it that way,
11 but for farm land it just was not the way I
12 wanted. And that's why we ended up buying it the
13 way we did and not having it separated between
14 Mary Leona, Martha, and myself until after the --
15 the purchase.

16 Q So you made him aware that you were willing to buy
17 an undivided one-half interest in the land?

18 A Correct.

19 Q Did you two have long, drawn out, difficult
20 negotiations; or were you able to come to a
21 reasonable resolution fairly soon?

22 A We had several phone calls, several and I -- and I
23 say "several," meaning more than two or three on
24 it. And a lot of the calls I just felt that the
25 -- the -- the price was too high and the way it

1 was split up, and then calling about the house.
2 And then I -- I hired James Bryan as my attorney,
3 and then there was several back and forth's with
4 e-mails and contract changes and all that. I
5 don't consider anything normal -- anything
6 different than a normal real estate transaction
7 that I've been involved in with other things.

8 Q All right. At one point during her life, Marion
9 received clear title to ten acres of land from
10 Mary and Martha. Do you know anything about what
11 was involved there?

12 A From an involvement of how it got done, I don't
13 know; but I just know that it was kind of a Milam
14 historical or -- or -- or -- or a family deal that
15 the kids all got ten acres. And my grandfather,
16 he all -- gave all of his children ten acres, and
17 it's been kind of a Milam thing. Why it's ten
18 acres, I have no clue, but that's been the thing.
19 And so Marion got ten acres; Mary Leona and Martha
20 got supposedly ten acres. And I didn't know -- I
21 did not know that Martha did not have her five
22 acres until after this -- this process started
23 with the will. I have in turn told Martha,
24 because of I felt that she should have it, on my
25 half that I bought I'm giving her an additional

1 five acres.

2 Q Okay. Back -- back when you were discussing the
3 purchase of the land with Eddy Sullivan, did you
4 tell him the -- the history of that five acres and
5 what was supposed to be done with that?

6 A. We talked about that --

7 MR. HAWKINS: Object to the form of the
8 question.

9 THE COURT: Okay. Wait a minute, Mr. Milam.
10 Mr. Milam, wait a minute. I've got an
11 objection.

12 MR. HAWKINS: Object to the form of the
13 question.

14 THE COURT: Okay. Restate your question. It
15 might have been a little leading.

16 EXAMINATION BY MR. FERGUSON RESUMES:

17 Q. Okay. Did you have a discussion with Eddy
18 Sullivan about the five acres that you say were to
19 go to Martha?

20 A. Yes, I did.

21 Q. Okay. And did you tell him the position that
22 you've described to us?

23 A. Yes, I did.

24 Q. Okay.

25 A. It wasn't exactly the same exact words, but the

1 message was the same, yes.

2 Q. Okay.

3 A. And I -- if I -- if I can comment on that, he told
4 me that was not something that was going to be
5 negotiated in this other property. And I
6 personally just took that I'll just take care of
7 it.

8 Q. Okay. Do you have some idea of the work that Eddy
9 did on the estate?

10 A. You have to explain that question to me.

11 Q. Well, let -- let me come at it a different way.
12 From what you know, is it reasonable for Eddy to
13 receive a fee of \$100,000 for his work on the
14 estate?

15 MR. HAWKINS: Object to his competency --

16 THE COURT: Okay. Wait a minute, Mr. Milam.
17 I've got an objection.

18 MR. HAWKINS: Objection to the competency he
19 give an opinion on that, Your Honor. We
20 don't know what information he's examined in
21 order to form an opinion on it.

22 THE COURT: Mr. Ferguson, do you want to
23 respond to that?

24 EXAMINATION BY MR. FERGUSON RESUMES:

25 Q. Mr. Milam, how much do you know about Eddy's work

1 on the estate?

2 A. I do know that when they were getting ready to --
3 I think to decide on paying him or whatever, that
4 people were -- some people were very concerned and
5 upset of the amount that he had charged a bill to
6 the estate. And I do know that there were several
7 people that had questions about that, and I know
8 obviously Mary Leona and Martha were upset by it.
9 And I -- I don't know firsthand, but I know from
10 talking to several people, the church was somewhat
11 concerned about that. I -- I bill -- I don't have
12 -- I've never -- I'm not an attorney and I've not
13 done any estate work, but that estate, the little
14 bit amount of money that it was and the amount of
15 money that was charged, it seems to be that is --
16 those percentages are (inaudible) but that's my
17 personal opinion.

18 Q. All right. I think that's going to be all the
19 questions I needed to ask, Mr. Milam today.

20 THE COURT: All right. Mr. Milam, the
21 attorney for the Personal Representative,
22 Daryl Hawkins, has a right to cross-examine
23 you and ask you some questions, so I'm going
24 to turn the record over to him.

25 THE WITNESS: Okay.

1 MR. HAWKINS: Thank you.

2 EXAMINATION BY MR. HAWKINS:

3 Q. Mr. Milam, when do you believe it was that you
4 first contacted or received -- let me rephrase it.
5 When do you believe it was that you received the
6 telephone call from Eddy Sullivan, where he
7 indicated to you that he had heard that you might
8 be interested in purchasing some part of the
9 property?

10 A. Wow, it -- it was -- I believe it was spring or
11 maybe March or something like that in -- my gosh,
12 we closed in '10, so it had to be '9.

13 Q. In 2009, you believe?

14 A. And you know what, I'm not in my office so I
15 cannot pull that up; but I have some of those
16 things. But it could have been September, but I
17 think it was spring, but it was '09.

18 Q. And had you met with Mr. Ferguson and/or some
19 members of his firm prior to when you received the
20 phone call from Mr. Sullivan?

21 A. I believe so. Again, I'd have to go back and
22 check those dates, but I'm pretty sure that I did.
23 There was -- yes, I'm pretty sure that I did.

24 Q. Okay. Is it fair to say your best recollection at
25 this time is that that was spring, March or so, of

1 2009?

2 A. Actually, what it was, it would have been the same
3 weekend. I was up visiting family, and I met with
4 him, I believe, on a Friday morning. And then I
5 -- well, I heard from Eddy sometime over the
6 weekend, and we actually talked, I believe, Sunday
7 night. It could have been early -- Sunday night,
8 I believe, yeah.

9 Q. And is it your testimony today that the very first
10 time you ever spoke with Mr. Sullivan, you told
11 him that your desire was to purchase an undivided
12 one-half interest in the property?

13 A. Our first discussion would have been that I don't
14 understand why he's got it setup -- broken out
15 that way and that I would if -- if I was going to
16 buy, that I would definitely want to look at the
17 -- the purchasing a full half and use the acreage
18 as a -- as a sacrificing not -- not the blocks. I
19 don't know if you can cut it -- I don't know if he
20 looked at the way it was broken out. And again,
21 as I said before, I understand what he was trying
22 to do. He was trying to maximize the sale of the
23 property, but we -- we worked it out better than
24 that.

25 Q. Well, did that seem like a reasonable thing to you

1 for PR of the estate to be trying to do?

2 A. Well, I mean, to me, the reasonable thing would
3 have been to split the property up before you ever
4 did that. I mean, quite frankly, my -- from
5 looking at the whole deal to -- to take property
6 owned by multiple people and to divide it for sale
7 without input from the other people, I don't -- I
8 don't see how -- I don't see how that was ever
9 his, excuse me, (inaudible) by probate. I don't
10 -- I don't know how that even happened, because he
11 basically paid survey people and -- and real
12 estate people and created value on the land and
13 half of it's not even owned by the estate.

14 Q. Is it your belief that Mr. Sullivan somehow
15 partitioned the property into pieces without any
16 input from Ms. Moses or Ms. Brown?

17 A. That's what they have told me.

18 Q. And at that time that you were interested in
19 buying some of the property, was it your
20 understanding -- when you were first interested,
21 was it your understanding that the property had
22 already been partitioned into parts?

23 A. I saw the partition. I was -- I was made
24 available -- that was made available to me by
25 Moses and Brown.

1 Q. And they told you that that was something that had
2 already occurred?

3 A. There was a presentation that Eddy had put
4 together that he made available to, I think, all
5 the heirs.

6 Q. And the way it was expressed to you, is that they
7 were not permitted, asked, or allowed to have any
8 input in what sort of partition would take place?

9 A. That is my -- you're saying that with a -- with a
10 definite, but that is my understanding from them
11 explaining it to me.

12 Q. And that's all I'm asking, is how did they explain
13 to you.

14 A. And I didn't -- I can't tell that their words were
15 exactly what you said, but, now, they were very --
16 I think they had been very upset from day one,
17 because they go back to the first thought that we
18 talked about, that they thought it was going to be
19 theirs anyway. And -- and then through the whole
20 process, I mean, they felt they were not -- they
21 were not bought into the process at all or to
22 their satisfaction by -- by Eddy.

23 Q. And did you ever yourself in negotiating a
24 purchase of any of the property that was part of
25 the estate of Marion Kay, did you try to discuss

1 with Ms. Moses and Ms. Brown partitioning the
2 property so that you would buy a set out partial
3 separate from their land?

4 A. We talked about it. And after having
5 conversations with -- with Eddy and with Jim
6 Bryan, that to go through the process again and
7 risk -- because that thing's -- I'm pretty sure it
8 was surveyed, which is very expensive. To go
9 through that process it just -- -- it was -- it
10 was spending money that didn't need to be spent.
11 But yeah, they agreed -- we agreed in principle
12 the three of us, that if I bought the -- the
13 estate side, Marion's side of it, then we would at
14 a later date divide it up as best interest to all
15 three of us.

16 Q. Well, prior --

17 A. And so that's when I negotiated for half of the
18 property and not -- not for the different pieces,
19 parcels.

20 Q. Prior to your actual purchase of any of the
21 property, did you ever write to Mr. Sullivan or
22 anybody else and tell them you were trying to work
23 out an agreement with Mary Leona Moses and Martha
24 Brown to partition the property so that you could
25 purchase partitioned portion of the property

1 rather than an undivided interest in the whole?

2 A. We discussed potentially the -- the breakouts, and
3 it just got to the point that to do that without
4 going through process was going to be more
5 difficult. But yeah, I'm sure there's an e-mail
6 to him that I was going to do that.

7 Q. That you were going to try to partition it with
8 Ms. Moses and Ms. Brown?

9 A. Exactly..

10 Q. All right. Well, why were you doing that?

11 A. Well, I mean, have you -- let me ask you a
12 question. Have you looked at the way it was
13 partitioned?

14 Q. Well, I --

15 THE COURT: Just answer, answer his
16 questions, Mr. Milam.

17 THE WITNESS: Okay. Dividing the property
18 into thirds and having it tied to what Mrs.
19 Moses' five acres is and where Mrs. Brown had
20 said she wanted her property, it was -- is --
21 is very logical. Doing it by the parcels
22 that was -- that was put into presentation
23 that -- that it was -- with Eddy didn't fit
24 that, so that's why had the conversation.
25 And I wasn't going to divide with them

1 without having some understanding that we
2 were going to split it the way, you know,
3 that we talked about, not -- not parcels or
4 road front and other things for sale.

5 EXAMINATION BY MR. HAWKINS RESUMES:

6 Q. I have a document that I want to, I guess, read to
7 you from since I can't show you a copy of it.

8 A. That's okay.

9 Q. It purports to be something that was e-mailed to
10 Eddy Sullivan from yourself, with copies to Mary
11 Moses, Martha Brown and John Ferguson. It's dated
12 October 19th, 2009, and I will read the -- the
13 body of the letter. It says, "Eddy, to follow up
14 on our telephone conversation on September 29th, I
15 have interest in purchasing the real property
16 (land) that is in the estate of Marion M. Kay.

17 As we discussed in July and September, the
18 current division of the property is of concern. I
19 will be" -- I'm sorry. Let me re-read this
20 sentence. "I will be presenting to Mary Moses and
21 Martha Brown an alternative divisional plan.

22 I will be available to discuss this interest
23 via telephone at your convenience." The last
24 sentence, "I look forward to working with you,
25 Mary Moses and Martha Brown on this." And -- and

1 if I didn't state it earlier, it's dated October
2 19th, 2009. Do you recall sending that letter to
3 Mr. Sullivan by e-mail?

4 A. Yes, I do. And that means the call I had with him
5 was not March. It was properly July. I thought
6 it was March.

7 Q. All right. And we're going to offer this into
8 evidence as Exhibit F.

9 (Exhibit F marked; retained by
10 the Court.)

11 EXAMINATION BY MR. HAWKINS RESUMES:

12 Q. Then I'm going to read to you a letter that is --
13 purports to be dated October 27th, 2009, that is
14 from Eddy Sullivan to you; and it says via e-mail,
15 and ask if you recall receiving this letter. It
16 says, "Dear Rowland. This is to follow up on your
17 correspondence of October 19th, 2009, and our
18 telephone conference later that day. I am glad to
19 hear of your interest in purchasing the real
20 property in the estate of Marion M. Kay and
21 understand you are working with Martha and Mary
22 Leona on a division that is mutually acceptable to
23 you three. I understand that you are in the
24 process of retaining counsel to represent you and
25 present a contract on your behalf to the estate

1 for its interest in the property.

2 The estate, of course, will not be bound by
3 any division of the property to which you and Ms.
4 Moses and Ms. Brown agree. My thought is that if
5 we can agree to the terms of the purchase and sale
6 of the estate's interest, we would have a closing
7 at which I would convey the estate's one-half
8 undivided interest in the property to you, and
9 you, Martha and Mary Leona would simultaneously
10 exchange deeds to effect the division of property
11 to which you three have agreed.

12 Any contract with the estate would be
13 contingent upon the Probate Court's approval as
14 well as the input from all of the estate
15 beneficiaries. Hopefully that would not be a
16 problem. I understand your interest is primary"
17 -- I'm sorry -- "primarily in the 323 acres
18 jointly held by the estate, Martha and Mary Leona;
19 however, I also understand that you may be
20 interested in purchasing the ten-acre homesite.
21 Either way we look forward to continuing
22 discussions and hopefully having a closing in the
23 very near future. Sincerely Eddy." Do you recall
24 receiving that e-mail on or about October 27th,
25 2009?

1 A. Yes, I do.

2 Q. All right. We'd mark that as Exhibit G.

3 MR. FERGUSON: Based on the witness's
4 identification, I have no objection.

5 THE COURT: Okay, without objection.

6 (Exhibit G marked; retained by
7 the Court.)

8 EXAMINATION BY MR. HAWKINS RESUMES:

9 Q. Do you recall having any knowledge, Mr. Milam, in
10 the time period when these e-mail letters were
11 being exchanged between yourself and Mr. Sullivan
12 that there was a person named Chuck Copeland who
13 had been given an option to purchase Ms. Kay's
14 real property through her estate?

15 A. There was some -- there was some conversation
16 there. But, I think, if you look at the estate,
17 and he had a certain time period and that period
18 was up, so that really was not relevant to the --
19 to the property at all.

20 Q. All right. And what is your knowledge about
21 tolling of options, for people to exercise their
22 options, if any?

23 A. Say that again.

24 Q. What is your knowledge, if any, about tolling, t-
25 o-l-l-i-n-g, of an option for purchasing -- to

1 purchase property or anything else? Are you
2 familiar with that concept at all?

3 A. I don't -- I'm not familiar with tolling other
4 than a toll booth, but --

5 Q. Are you qualified to give a legal opinion on
6 whether or not the option because matters to be
7 performed by the estate had not been completed
8 within the time period for the option to be
9 exercised, would allow the optionee, in this case
10 Mr. Copeland, rights to make claims after the date
11 when the option had otherwise expired?

12 A. Obviously, I'm not.

13 Q. All right.

14 A. It never --

15 Q. Would you agree that if somebody gave you an
16 option --

17 A. It never came up other than my conversation with
18 Eddy, so it's in the function there as well.

19 Q. All right. Well, that matter of Mr. Copeland's
20 option that was provided in the will, is it
21 something that you ever undertook to have anyone
22 research on your behalf, an attorney or a person
23 familiar with titles to property?

24 A. Oh, goodness, I'm -- I'm not sure I can answer
25 that. I'd have to -- I'd have to have a

1 conversation with Jim Bryan whether I asked him
2 that question or not. I do know that, I think,
3 John Ferguson and I talked about it, but he was
4 ~~not my attorney so I don't guess~~ that that will
5 count. But I -- I -- from the time -- all the
6 conversation I had with Eddy, it was never
7 presented that that was still an option that they
8 had, and -- and he was giving me the opportunity
9 instead of the Copelands.

10 Q. All right. Is it fair to say that if somebody
11 researched that issue on your behalf, that was
12 qualified to do so, you don't have a recollection
13 of it at this time?

14 A. No.

15 Q. Meaning no, you don't have a recollection?

16 A. No, I do not have a recollection.

17 Q. Thank you. All right. I'm going to read you two
18 e-mails that appear to be one from you to Mr.
19 Sullivan, that's also copied to Mr. Ferguson and
20 Mr. Bryan, and a reply to you from Mr. Sullivan.
21 The e-mail from you to those three gentlemen is
22 dated Monday, November 2nd, 2009, and it reads as
23 follows:

24 "John and Eddy, I have retained Jim Bryan to
25 represent my interest in pursuing the property in

1 the estate of Marion M. Kay.

2 I appreciate your professional courtesies
3 extended to me as I have worked toward this
4 position.

5 Jim and I will work toward a contract to
6 present hopefully before the end of the year."
7 Then it says "Great day," and it shows "Rowland W.
8 Milam, president OSI, LLC." And there is a reply
9 to you dated November 2nd, 2009, with a copy to a
10 fellow named Jack Griffith. And it's -- it's from
11 Mr. Sullivan, and it says, "Thanks, Rowland - look
12 forward to hearing from you. E Sullivan." Do you
13 recall that exchange of e-mails?

14 A. Yes, I do.

15 Q. All right. The top of it is something that I
16 don't think you'd have any knowledge of and is
17 just a -- somebody showing this to go and be put
18 in a file.

19 MR. HAWKINS: Let me show that to you. Your
20 Honor, if we could, we would offer this in,
21 and we can redact the top portion if there's
22 an objection to it.

23 THE COURT: Okay.

24 MR. FERGUSON: No objection.

25 THE COURT: Okay. Without objection, be

1 marked as H.

2 (Exhibit H marked; retained by
3 the Court.)

4 ~~EXAMINATION BY MR. HAWKINS RESUMES:~~

5 Q. Mr. Milam, the next thing I have is a letter from
6 Eddy Sullivan to yourself, dated November 9th,
7 2009, by e-mail. It says, "Dear Rowland, this is
8 a follow up" -- I apologize. Let me start over.
9 "This is to follow up on our recent discussions
10 and my telephone conference with Mr. Bryan and to
11 outline the material terms which should be
12 obtained or contained in your offer to acquire the
13 estate's interest in certain real property. No. 1
14 is premises. The estate's one-half undivided
15 interest in 330.226 acres in a plat of survey for
16 the estate of Marion Milam Kay and the heirs of
17 W.H. Milam, dated October 12th, 2007, and recorded
18 in the offices of Laurens County Clerk of Court,
19 Book PCA607, page 5-5." And it has a TMS number.

20 "Purchase price - \$307,000 (one-half of the
21 appraised value set forth by appraisal by Major
22 and Company, dated February 25th, 2008, in the
23 amount of \$614,000). Item No. 3, method of
24 payment - cash at closing. Item 4, earnest money
25 - to be determined." There's another Item 4,

1 obviously, a typographical error. But the -- the
2 second No. 4 says, "Closing - on or before
3 December 31st, 2009. Number Item 5, "Conditions
4 proceeded to estate's obligations - such approvals
5 received as maybe being necessary by the estate."
6 Item No. 6, "Other - ten acres with improvements
7 that are located at 4647 Elizabeth Road,
8 Mountville, South Carolina." It has the ZIP code
9 and the TMS number. And then it says, "Purchase
10 price of \$84,000 (total appraised value is set
11 forth by appraisals of Palmetto Heritage dated
12 July 25th, 2007). Sincerely Eddy." It shows copy
13 sent to James E. Bryan, Esquire and Jack D.
14 Griffith, Esquire, all by e-mail. Do you recall
15 receiving that letter?

16 A. Yes, I do.

17 MR. HAWKINS: We would mark that as "I," if
18 my alphabet working.

19 THE COURT: Okay. Any objection, Mr.
20 Ferguson?

21 MR. FERGUSON: No objection.

22 THE COURT: All right. Without objection.

23 (Exhibit I marked; retained by
24 the Court.)

25 EXAMINATION BY MR. HAWKINS RESUMES:

1 Q. The next thing I have, Mr. Milam, is a couple of
2 e-mails that are --

3 A. We did a lot of emailing.

4 Q. Yes, sir.

5 MR. HAWKINS: Did he say, "Wait a minute"?

6 THE COURT: No. He said, "We did a lot of e-
7 mailing."

8 MR. HAWKINS: Oh.

9 EXAMINATION BY MR. HAWKINS RESUMES:

10 Q. I got you. I apologize. If I could read faster,
11 I would.. Or if I could show them to you, I'd do
12 that, but unfortunately --

13 A. (Inaudible) okay.

14 Q. All right. We're now to a swap of e-mails. The
15 first one is from you to Mr. Sullivan, and then
16 the second one a reply to Mr. Sullivan.

17 MR. HAWKINS: Is that our phone or --

18 THE COURT: No.

19 THE WITNESS: Oh, no. I'm sorry.

20 THE COURT: (To witness) Do you need -- do
21 you need to catch that?

22 THE WITNESS: No. I can hear -- I can hear
23 you.

24 THE COURT: Okay.

25 EXAMINATION BY MR. HAWKINS RESUMES:

1 Q. All right. The one from you to Mr. Sullivan is
2 dated Monday, December 14th, 2009. It has copies
3 to James E. Bryan and Rowland Milam, subject land.
4 It says, "Eddy, I am working with Mary Leona and
5 Martha on the division. Still moving forward,
6 would like to consider a February date just based
7 on my schedule." And then it says, "Have a great
8 day." The reply from Mr. Sullivan is also
9 December 14th, 2009, and is addressed to you,
10 which copies to James E. Bryan and Jack Griffith,
11 same subject. It says, "Rowland, good to hear
12 from you.

13 I appreciate the hearing" -- let me rephrase,
14 I'm sorry, I misread. "I anticipate the hearing
15 coming up on this the first of the year, and I'm
16 reluctant to agree to continue without more
17 assurance that a deal is in the works and will
18 happen for sure in February.

19 For example, one thing you could do is send
20 an acceptable binding offer contingent on an
21 agreement of a division.

22 I would take that into consideration and at
23 least there would be something to show the heirs
24 (and the judge) to justify continuing the hearing.

25 This estate has been open almost three years.

1 We've been very patient in trying to work with the
2 co-tenants. We need to press ahead with all
3 deliberate and speed to wind this up. Regards,
4 Eddy." Do you recall swapping those e-mails with
5 Mr. Sullivan?

6 A. Yes, I do.

7 MR.. HAWKINS: We would -- there's some
8 language at the top that, again, is just
9 sending it to the file, that we'd be happy to
10 either redact; or if there's no objection, we
11 would offer this as the next exhibit.

12 MR. FERGUSON: No objection.

13 THE COURT: All right. Without objection, it
14 will be marked as J.

15 (Exhibit J marked; retained by
16 the Court.)

17 EXAMINATION BY MR. HAWKINS RESUMES:

18 Q. The next thing, Mr. Milam, is also some e-mails
19 that are exchanged between yourself and Mr.
20 Sullivan with some copies to others. The first in
21 the series is dated Tuesday, December 15th, 2009,
22 at 8:15 a.m. It is from you to Edward Sullivan,
23 with copies to James Bryan and Rowland Milam
24 again. I guess you sent yourself a copy, subject
25 land. It says, "Eddy, can you send me the

1 appraisal for the house and ten acres. I thought
2 I had it but cannot locate. I would prefer
3 electronically, as I am traveling all week. There
4 is a question about the additional 4.6," and then
5 is says, "(?) acres that is plotted not deeded to
6 Martha Brown, thanks." It says, "Have a great
7 day," and has your name typed at the end. Then
8 there's from Edward Sullivan to you at 9:49 a.m.
9 on the same day, copies to James E. Bryan, Patty
10 Boatwright, Jack Griffith and Barbara Delarno
11 (phonetic). "Rowland, we're scanning the
12 appraisal, and I'll send you shortly.

13 There is no question about the 4.6 acres as
14 far as I'm concerned." And the word "no" is
15 underlined.

16 "The acreage is part of the undivided tract
17 in which the estate has a one-half interest and it
18 has not been previously conveyed. There is no
19 deed or agreement to convey the property. I hope
20 you can reach an agreement with Mary Leona and
21 Martha." And the last sentence, "It seems you're
22 meeting the same resistance that we have. Regards
23 Eddy." And it does not look like there was any
24 reply to that, but there's another e-mail to you
25 from Eddy at 10:03 on that day, so ten or fifteen

1 minutes later. It has copies to Barbara Delarno,
2 Jack Griffith, and Patty Boatwright. It says,
3 "Attachments, 6.238 acres appraisal" -- some kind
4 of numbers going with that -- ";3.762 acre
5 appraisal" and some other numbers, like file
6 number or something. Then it says, "Rowland -
7 please see appraisal of ten acre homesite
8 attached." Second sentence, "Let me know if any
9 questions - Eddy." Do you recall that exchange of
10 e-mail?

11 A. Yes, I do.

12 Q. All right.

13 MR. HAWKINS: All right. We would offer this
14 as the next exhibit, Your Honor.

15 THE COURT: Any objection?

16 MR. FERGUSON: Can I ask who Patty Boatwright
17 and Barbara Delarno are?

18 MR. HAWKINS: From what I've seen of these,
19 Barbara Delarno would appear to be a staff
20 person in Mr. Sullivan's office. These notes
21 are going to her to be filed, from the other
22 ones we saw. And Patty Boatwright also
23 appears to be a staff person in their office.
24 And, I mean, I would suggest that that middle
25 -- or the second e-mail down on the first

1 page is her sending to Mr. Sullivan the
2 appraisals as attachments so he can forward
3 them to Mr. Milam.

4 MR. FERGUSON: No objection.

5 THE COURT: Okay. Without objection, K.

6 (Exhibit K marked; retained by
7 the Court.)

8 EXAMINATION BY MR. HAWKINS RESUMES:

9 Q. Do you have any recollection, Mr. Milam, that
10 whatever discussions you were having with Ms.
11 Moses and Ms. Brown about subdividing the land in
12 some fashion was something that you were unable to
13 accomplish?

14 A. No. As I said earlier, I mean, you know, the -- I
15 would have liked to had it all done before I
16 bought the property, but it was not because of
17 their resisting it; it was just a process of the
18 time and getting it all done. I don't -- I --
19 Eddy and I just talked about, I'm not sure what he
20 meant by his -- the comment I'm having the same
21 resistance there and then his thought of -- his
22 part of that of the land with Martha. That had
23 been discussed multiple times. It might be the
24 first time by an e-mail, but we -- we had as many
25 voice conversations as we did e-mail

1 conversations.

2 Q. Was it your plan that after you got the undivided
3 one-half interest you would then reach some

4 agreement with Ms. Moses and Ms. Brown to carve
5 out part of that property for yourself, that you
6 would then get a deed to?

7 A. That is correct.

8 Q. And has that ever happened?

9 A. It has not happened yet.

10 Q. Are y'all still negotiating about it?

11 A. Well, it's been -- it's been my -- my schedule has
12 been so busy, yeah, I have not -- I've not
13 completed that.

14 Q. Do you recall when y'all closed on the property?

15 A. You know, I'm sitting here trying to think of
16 that, and I -- I've bought several things between
17 now and then and sold two companies, and I cannot
18 tell you that date. I was -- I was going to say
19 July, but, obviously, it was not then.

20 Q. How about -- well, does the summer of 2010
21 sometime in the July-ish time frame --

22 A. Yeah, that should -- that's if -- if I had to
23 guess, that's what I would guess; but without
24 being -- looking at my -- I mean, it's -- I don't
25 mean like it was a small event, but just I don't

1 remember; but I think it was July (inaudible)

2 Q. What I want to do now is read you a letter that's
3 actually not addressed to you. It was addressed
4 to James Bryan, who I understand was representing
5 you at the time --

6 A. Yes, he is. Yes, he was.

7 Q. -- and see if you recall this. It looks like the
8 same letter was also sent to Mr. Ferguson and
9 instead of showing it as a copy sent, it's just
10 the same letter but addressed to him instead of
11 Mr. Bryan. Well, it's not the same. They're not
12 identical. I apologize. Let me read you the
13 December 16th, 2009, letter to Mr. Bryan and ask
14 you if Mr. Bryan forwarded you a copy and do you
15 recognize it. It says -- and it's from Jack D.
16 Griffith, who I will tell you if you don't -- is
17 an attorney who was representing the estate in
18 litigation with Ms. Moses and Ms. Brown that was
19 pending at the time, and I guess I'll ask you
20 that. Did you understand there was a lawsuit that
21 was pending in the fall of '09 and into the early
22 part of 2010 related to the property?

23 A. Yes, I did.

24 Q. Did you understand that part of that litigation
25 was to have the -- get it -- what's called a

1 declaratory judgement, for the court to declare
2 the rights of the various people and the land?
3 A. I think I might have remembered it in exactly that
4 way. I'm not -- I cannot tell you everything
5 there. I do remember that I -- I don't know
6 whether it was conversation with them or whether
7 it was Jim Bryan. It might have -- I'm not sure
8 who this was; but, in fact, Eddy might have even
9 shared this with me as well, that if they couldn't
10 come to some kind of a decision, they would ask --
11 it would go to the probate judge and the judge
12 would -- would auction the entire property and
13 then divide the -- the monies or whatever up
14 between the estate and -- and Mary Leona and
15 Martha. And, I mean, I just -- then the land
16 would be gone, because my understanding of land in
17 that area people are buying it for hunting
18 preserves and all out. And I do not want -- well
19 (inaudible) land there now, 158 acres. It doesn't
20 adjoin, but it's very close; and I just wanted to
21 -- to keep what I could. So, again, back to the
22 first point you asked my involvement, but I cannot
23 tell you I understand exactly what the reason of
24 the whole lawsuit --
25 Q. But you were aware that there was some litigation

1 pending that dealt with controversies about --

2 A. Yes, I was.

3 Q. -- the land? All right. I'm going -- again, I'm
4 going to read you this into the record, and let us
5 know if you recall Mr. Bryan either giving you a
6 copy or acquainting you with this letter. It's
7 dated December 16th, 2009. "Dear Jim recently,
8 Eddy Sullivan received an e-mail from Rowland
9 Milam, citing inability in reaching an agreement
10 with Mary Leona Moses and Martha Milam as to a
11 division of the property and suggesting delaying
12 this matter until February 2010. We regret that
13 Mr. Milam's purchase of the estate's interest in
14 the property at fair market value does not appear
15 to be the solution for which we had all hoped.

16 If Mr. Milam is truly interested in
17 purchasing this property, he needs to provide a
18 viable written offer including the terms that we
19 have previously provided. Otherwise, we are not
20 interested in considering further delays as we
21 must begin to prepare for trial in this matter.

22 Please give Eddy or me a call if you'd like
23 to discuss this matter further." Then, "Kind
24 regards Jack E. Griffith," signed Jack. Do you
25 have memory of -- of that correspondence?

- 1 A. Well, if you go back to the December or whatever
2 it was that you read while ago, that's when we
3 said that. So I think he was responding -- I
4 ~~don't know what the date you said the letter was--~~
- 5 Q. It's December 16th. It is, I think, the very next
6 day.
- 7 A. Okay. So that's -- it's kind of redundant of --
8 of what we did already.
- 9 Q. Well, I --
- 10 A. Eddy's response back to -- to you need something
11 forward, and so I'm not sure what the -- whether I
12 sent the correspondence, I guess, I did; but I
13 think my question is -- it was already -- it was
14 already discussed, so it's like a redundant
15 letter.
- 16 Q. Yeah. And I think it's -- the way I would read it
17 and see if it sounds reasonable to you, is that
18 you and Mr. Sullivan had swapped e-mail and now
19 his lawyer is writing to your lawyer to have a
20 lawyer-to-lawyer discussion about where the matter
21 stood. But in any event, do you remember Mr.
22 Bryan ever forwarding you a copy of that letter?
- 23 A. I -- I can't remember that.
- 24 Q. Okay.
- 25 A. No, I do not remember; but I can't tell you that

1 he didn't.

2 Q. All right.

3 THE COURT: Did you want to have that marked
4 for identification?

5 MR. HAWKINS: Yeah, I think that's a good
6 idea, Your Honor.

7 THE COURT: Okay.

8 MR. HAWKINS: If I can find you a good, clean
9 copy for that. Is that marked for
10 identification as Exhibit L?

11 THE COURT: Right.

12 MR. HAWKINS: All right.

13 (Exhibit L marked; retained by
14 the Court.)

15 EXAMINATION BY MR. HAWKINS RESUMES:

16 Q. Mr. Milam, do you recall after the correspondences
17 that were occurring in December of 2009 that
18 sometime prior to March 1st of 2010 you made a
19 formal offer on the property?

20 A. I -- I remember making an offer. I -- I would
21 have to pull my files out for that date, but
22 that's reasonable.

23 Q. And what I'm looking at is all unsigned, but it is
24 a proposed contract of sale.

25 A. And if I could, if I may, and I don't mean to

1 interrupt you, but let me just put some
2 clarification. Eddy and I had several phone
3 conversations about numbers before we ever put
4 anything in writing; and, so, I mean, but I'm not
5 sure of the dates of everything there, but we
6 talked about it multiple times.

7 Q. And what I was going to ask you, the values or
8 what I'm seeing is the offer here is less than
9 what the -- what the ultimate purchase price was.
10 And I --

11 A. I would hope so; I would hope so.

12 Q. And I guess my question was going to be to you --
13 well, let me read these numbers in for you. Do
14 you recall that the -- there's a 330 acre
15 approximately tract that's the one-half undivided
16 interest that Ms. Kay had. And then there were
17 two other actual tracts, one was 3.762 acres and
18 one was roughly 6.238 acres; and it had a house
19 and maybe a barn or some other kind of buildings
20 on it.

21 A. Correct.

22 Q. You recollect that it was actually three? If you
23 walked on them, three different pieces of land?

24 A. Well, they were continuous -- contiguous, but the
25 -- the tip of -- the two pieces of the house and

1 the other three, whatever it is, is the ten acres
2 that she -- that she got as being the daughter.
3 And one of them was actually across the street,
4 another plat based on what the tax people -- the
5 real estate taxes, and that's why it's separated
6 that way.

7 Q. And that's what I meant, was it your -- that is
8 divided by a road and it's not all --

9 A. Correct.

10 Q. -- on the same, you know, piece of land, where you
11 wouldn't have to cross the road or something to
12 get to it.

13 A. Right.

14 Q. But in any event, the --

15 A. And part of that is that -- that piece across the
16 road connects to what Mary Leona has and -- and
17 her five-plus acres, whatever it was, and other
18 property that was part of the division, so that's
19 why some of that took a little bit longer.

20 Q. The numbers that we have as your offers, and I'm
21 just going to call them six acres, three acres for
22 simplicity. The six-acre tract with the house and
23 building was an offer of 48,000. The appraised
24 value that was on the appraisal, mentioned in some
25 of this earlier correspondence, was 64,000. The

1 three-plus acres, your offer was 4500 and the
2 appraised value was 20,000. And the roughly 330
3 acre of undivided one-half interest, your offer
4 was \$224,410 and the appraised value was 307,000;
5 and somebody had approximated that to be roughly
6 70 percent of the total appraised value from the
7 earlier appraisal. Do you have a recollection of
8 ever making a written offer in those numbers or
9 something similar to them?
10 A. Yes. I'm pretty sure that we did and -- and with
11 -- with the understanding -- and this is what I
12 continued to talk to Eddy about. This was done in
13 what, '08, and we all know the market in '08
14 versus '10 or '9, so -- it might have actually
15 been during '07, but it was in -- if you look at
16 those appraises, I -- I questioned him several
17 times on were they really comparables. And but --
18 because of the -- the house, the location, the
19 different distance from -- from cities and all
20 that and the comparables had to go from the other
21 side, some -- I'm going from memory now, but I
22 think they're actually from the other side of the
23 county. And my -- so, and, you know, as his -- as
24 -- as he did, it was all -- he was trying to get
25 what he could for the estate he said. But anyway,

1 yes, I -- I did -- pretty sure we that -- if I
2 didn't make it, Jim Bryan made an offer.

3 Q. Okay. But it's fair to say that y'all negotiated
4 over the price for some period of months?

5 A. Well, yeah. I mean, it -- we negotiated for a
6 while, yeah.

7 Q. All right.

8 A. I mean, part of it was timing. His timing, he was
9 busy; and then I was busy, and yeah.

10 Q. All right. And I'm going to read you another e-
11 mail. And I believe this is probably the last one
12 I'm going to read you, and I'm sure you're happy
13 to hear that. This one is from Eddy Sullivan to
14 yourself, and then the one after it is also -- is
15 just, I think, asking to have this thing to a
16 file, but it's not to you in any event. So I'm
17 only going to read you the one e-mail that is
18 addressed to you from Mr. Sullivan, dated Tuesday,
19 March 16th, 2010, to Rowland Milam, with copies to
20 James E. Bryan and Jack Griffith. The subject is
21 counterproposal, "RE: Estate of Marion M. Kay."
22 And it says, "Rowland, attached please find our
23 counterproposal to your offer.

24 I've broken the transaction into three
25 contracts - one for each property - the 330 acres,

1 the house and six plus acres, and the three plus
2 acres.

3 Each contract should be just about the same
4 as the other two except for purchase price and
5 description of property.

6 (I'm also attaching for reference a "compare-
7 right" version that highlights the changes I made
8 to your contract as it relates to my proposal on
9 the same of the 330 acres)

10 I think that a contract for each property is
11 appropriate in that each property is unique and
12 not necessarily dependent on the others. We'd
13 obviously like for you to buy all of the
14 properties if we can reach agreement.

15 As to the purchase price for each property, I
16 followed up with the real estate appraisers and
17 they both tell me that, although the number of
18 transaction is down, the properties are holding
19 their value so that the numbers they gave me are
20 still good. In addition, the appraiser told me
21 her appraisal on the house took into account its
22 condition. Nevertheless, I've reduced the
23 collective sales price for the properties several
24 thousand dollars. I am unable to give" -- this is
25 a new paragraph.

1 "I'm unable to give anything other than a
2 quick claim deed on these properties. I believe
3 that's all the law allows for an estate.
4 Hopefully, that won't present a problem.

5 Lastly I want the Probate Court to approve
6 these transactions. I don't anticipate a problem
7 and hope that we would get an order of approval
8 quickly.

9 If we're going to get this done, we need to
10 move quickly. Please give me a call at" -- and
11 "then he gives you a couple of phone numbers -- "to
12 discuss. Regards E. Sullivan" Do you have a
13 recollection of receiving that e-mail on or about
14 March 16th, 2010?

15 A. I do remember receiving an e-mail. I couldn't
16 verify the date, but it's probably correct as you
17 read it in the letter. At the same time we had
18 conversation about, you know, I've never found an
19 appraiser that would tell me that they appraised
20 it wrong and if I'm the seller, that I would --
21 that would give me a lower appraisal; so, I mean,
22 I just looked at that information as just
23 negotiation words.

24 Q. Okay.

25 MR. HAWKINS: Your Honor, I'd like to offer

1 this into evidence as the next exhibit.

2 THE WITNESS: You know, what I'm saying.

3 MR. HAWKINS: I hear you.

4 THE WITNESS: Okay.

5 THE COURT: Any objection, Mr. Ferguson?

6 MR. FERGUSON: I think he's identified it

7 sufficiently, so I have no objection.

8 THE COURT: All right. It will be M.

9 (Exhibit M marked; retained by

10 the Court.)

11 MR. HAWKINS: I think that's all the

12 documents and only a couple of other

13 questions.

14 THE COURT: Okay.

15 EXAMINATION BY MR. HAWKINS RESUMES:

16 Q. Mr. Milam, did you ever see any sort of a written

17 agreement about transferring certain numbers of

18 acres of land to family members that related to

19 the Milam family? I'm talking about the --

20 A. I didn't --

21 Q. -- as I understood it --

22 A. -- understand your question.

23 Q. As I understood it earlier, you were testifying

24 that as some matter of historical acts or

25 otherwise that the Milam family had some habit,

1 and maybe I misunderstood you, of giving to
2 children out of tracts of land ten acres. Is that
3 -- did I misunderstand you?

4 A. No. That is correct.

5 Q. All right. Did you ever see that in writing? Is
6 there any written --

7 A. All the letters from my family that my grandfather
8 did, I've seen all of those, yes.

9 Q. You mean the deeds themselves that transferred the
10 property, or are you saying that somewhere back in
11 the history maybe 100 years ago or 50, or whatever
12 it would have been, that family members who owned
13 the property entered into some sort of an
14 agreement that said as we pass away and land
15 moves, you know, down to our children and their
16 children and so forth, all the children should get
17 ten acres of land for as long as we can do that,
18 something to that effect?

19 A. No, no. No, it was not that; it was not that way.
20 I know a lot of people got the ten acres before my
21 -- my grandfather had passed away, so his death --
22 the death had nothing to do with that. It was
23 just a -- a consideration of -- of my grandfather,
24 but it was pretty -- I mean, as I said before,
25 there's nothing written. If things were written

1 down, it would have been a will between Uncle Boon
2 and Uncle Henry that we wouldn't be in this
3 situation, but it was not done.

4 ~~Q. Were you aware that out of the land that the 330~~
5 acres that we've talked about comes from, that at
6 a prior date in roughly 1989 five acres was
7 transferred -- approximately five acres were
8 transferred to Mary Leona Moses?

9 A. Yes, I was.

10 Q. Do you know why it is that some equal or similar
11 amount of land was not transferred to Martha Brown
12 at the same time?

13 A. Well, the -- I can -- the reason the land was
14 transferred to Mary Moses, her daughter and her
15 husband at the time was building a house, which
16 her daughter lives in now, on the property, and
17 they could not build on that -- on that property
18 unless it was in their name. And -- and if you go
19 back and look at the deeds, I think, part of that
20 5 point, whatever it is, acres was transferred
21 over to her daughter and her husband's name at
22 that time. And that's why -- that's why that land
23 was transferred. And why at that time Martha did
24 not get all of hers, I cannot answer that, but she
25 should have.

1 Q. Once you cut out some of the acreage, then the
2 real estate taxes on the remaining acreage would
3 go down for those who owned undivided interest.
4 Do you agree with that?

5 A. Yes (inaudible) your taxes should be less, yes.

6 Q. And so, I mean, it would have saved money for
7 those who were still in the undivided interest if
8 they had at the same time gone ahead and given Ms.
9 Brown some of that property. Do you agree with
10 that?

11 A. I think that -- I think Marion should have done
12 that.

13 Q. And -- and -- but you don't know why that didn't
14 happen; correct?

15 A. I do not know why that didn't happen.

16 Q. And would you agree that it would have actually
17 been in Marion's best interest, that she would
18 have been paying less real estate taxes if -- if
19 she was going to transfer it at some point in
20 time, as soon as she did it, the more money she
21 would save? Do you agree with that?

22 A. Well, I -- I think that's a -- a point that you
23 could make. At the same time they all owned it
24 together and paid their taxes together, and so at
25 the end of the day she might pay a little less

1 (inaudible) on -- on the base of the whole land,
2 I'm not sure that's probably what the -- the --
3 the amount of money would take to deed it. But
4 from -- from -- from a saving point, I'm not sure
5 that's a good idea.

6 Q. Well, it would have -- I mean, it's just math,
7 isn't it? I mean, if you had less land, you'd
8 save money on the taxes; correct?

9 A. Well, that's also math if you were to deed it out.
10 It's like if you have to pay more to get it all
11 deeded out, have to register the deed and all
12 those sort of things (inaudible) --

13 Q. Well, understanding the general concept --

14 MR. FERGUSON: Objection, argumentative.

15 THE COURT: Okay.

16 MR. FERGUSON: Asked and answered.

17 THE COURT: Right. I believe so. Go on to
18 something else, please, Mr. Hawkins.

19 MR. HAWKINS: Okay.

20 EXAMINATION BY MR. HAWKINS RESUMES:

21 Q. You agree that had Ms. Kay wanted to transfer any
22 of the land to someone else, she could have
23 offered to do it to them and they could have
24 accepted and the transfer could have taken place?

25 A. I do agree with that.

1 MR. HAWKINS: I don't have any other
2 questions, Your Honor.

3 THE COURT: Okay. Mr. Ferguson, anything in
4 re-direct?

5 MR. FERGUSON: No, sir. I think we need to
6 move on.

7 THE COURT: Okay. All right. Mr. Milam,
8 that concludes your testimony. Thank you
9 very much.

10 MR. FERGUSON: Thank you, Rowland.

11 THE WITNESS: Thank you all.

12 MR. HAWKINS: Nice to meet you by phone.

13 THE WITNESS: Thank you, same here.

14 (Off the record from 4:20 p.m.
15 until 4:35 p.m.)

16 THE COURT: Okay. Gentleman, we're back on
17 the record after having a witness examined
18 via telephone in the conference room. And
19 that was your first witness, Mr. Ferguson --

20 MR. FERGUSON: Yes, sir.

21 THE COURT: -- so turn the record over to
22 you, sir.

23 MR. FERGUSON: All right, sir.

24 MR. HAWKINS: Your Honor, if I might first,
25 I'd indicated that there were some other

1 expense items that the Personal
2 Representative wanted to submit --
3 THE COURT: Okay.

4 MR. HAWKINS: -- to the Court. If we might
5 go ahead and get that administratively out --
6 THE COURT: Okay. All right.

7 MR. HAWKINS: -- of the way. I've given
8 copies to Mr. Ferguson. One is the invoice
9 for Wilson Forestry and Appraisal, Inc.,
10 which was Mr. Johnny Wilson who testified on
11 the first day of hearing. The second one is
12 for Clifton D. Bodiford, some type of --

13 THE COURT: Spell that last name, please.

14 MR. HAWKINS: B-o-d-i-f-o-r-d.

15 THE COURT: Okay.

16 MR. HAWKINS: He's a CPA, and it is for
17 preparation of the 2011 federal and state tax
18 returns. I'll give these amounts too, Your
19 Honor, if you'd like them. The next is the
20 invoice for Brown, Massey, Evans, McLeod, and
21 Haynsworth, LLC, for providing an affidavit
22 and review of documentation on behalf of the
23 estate. The next one is from Major and
24 Company for testimony by Mr. Paul Major at
25 the hearing and his expense travel time. The

1 next one is an invoice from my office, Your
2 Honor, for appearing previously or carries us
3 up to the time of that first hearing. And
4 finally, we have -- I think part of this may
5 already be in the record. It is a statement
6 of services by the Personal Representative
7 from November the 15th of 2010 through the
8 last hearing and some preparation time for
9 this hearing.

10 THE COURT: Okay. Any objections, Mr.
11 Ferguson, to any of those coming into
12 evidence?

13 MR. FERGUSON: No, sir.

14 THE COURT: Okay. They will be marked N
15 through S.

16 (Exhibits N - S marked;
17 retained by the Court.)

18 THE COURT: Okay, Mr. Ferguson.

19 MR. FERGUSON: Your Honor, I believe you told
20 us at an earlier point in the hearing if
21 there were documents that were filed in the
22 estate file that we wanted you to take notice
23 of, instead of asking you to take judicial
24 notice of, that we should introduce it into
25 the evidence; so --

1 THE COURT: That's correct.

2 MR. FERGUSON: -- I would like to introduce
3 the -- the letter from the Clerk of Session
4 of Elizabeth Presbyterian Church. It's a
5 cover letter plus a letter that was sent to
6 Mr. Sullivan from the -- the Session of
7 Elizabeth Presbyterian Church, and both of
8 these were filed with the court on November
9 the 22nd, 2010.

10 THE COURT: Okay. Mr. Hawkins, any
11 objection?

12 MR. HAWKINS: Mr. Sullivan's indicating he's
13 not seen the first page that's dated November
14 19th, 2010. It does have a stamp that would
15 suggest it was filed with the court, but he
16 has not previously seen that document. And
17 we would like the opportunity to cross-
18 examine Ms. Blackman on this document because
19 I have seen records that would contradict the
20 statement.

21 MR. FERGUSON: Your Honor, we --

22 MR. HAWKINS: We can't agree to that as an
23 exhibit for which a proper foundation's been
24 laid and (inaudible) --

25 THE COURT: All right. Mr. Ferguson.

1 MR. FERGUSON: Your Honor, we can certainly
2 hold open the record and come back for a
3 third day on this.

4 THE COURT: Well, we may be coming back for a
5 third day anyway depending on --

6 MR. FERGUSON: Okay. Your Honor, I have an
7 e-mail from Ms. Blackman's husband from this
8 afternoon telling me that they just got back
9 from the doctor's office. She's been
10 diagnosed with pneumonia, so she is -- even
11 though she was under a subpoena, she's
12 obviously not able to -- to be here today.

13 THE COURT: Well, why don't we do this,
14 because in just some discussions with the
15 lawyers and -- and certainly through no fault
16 at all of our court reporter, we did start
17 late and then, I think, maybe that phone
18 testimony took maybe a little bit longer than
19 possibly we had anticipated, so, I mean --
20 and because of my situation, as I explained
21 to the lawyers, it looks like we're probably
22 going to have to reconvene for another day;
23 so why don't we have that marked for
24 identification purposes only at this time,
25 and then let's just see how -- see how things

1 go.
2 MR. FERGUSON: All right. Would that be No.
3 4?

4 ~~THE COURT: That would be No. 4 for~~
5 identification purposes only. If you'll
6 bring that up, please, sir.

7 (Exhibit No. 4 marked;
8 retained by the Court.)

9 THE COURT: Okay. Mr. Ferguson.

10 MR. FERGUSON: All right. I'm going to go
11 ahead and offer into evidence some summaries
12 relating to previous exhibits. This was the
13 -- the billing, one is entitled "Invoice
14 Accounting Periods" that deals with the
15 periods of time that are covered by
16 individual invoices; and the other one is
17 entitled "Non-attorney Time Itemized by
18 Collins and Lacy Invoices," which also is
19 invoice by invoice with a total at the
20 bottom.

21 THE COURT: Okay. Mr. Hawkins, any
22 objection? I take it these are two separate
23 --

24 MR. FERGUSON: Yes, sir.

25 THE COURT: -- those exhibits. Now, do you

1 want the -- we'll stick a note on that one.

2 MR. HAWKINS: We'll note that we haven't been
3 able to check the math, but we don't have an
4 objection, Your Honor.

5 THE COURT: Okay.

6 MR. HAWKINS: If we found some discrepancy,
7 we'd raise to the Court prior to conclusion.

8 THE COURT: Okay. All right. So the
9 document that's designated as "Invoice
10 Accounting Periods" will be Exhibit 5 into
11 evidence and then "Non-attorney Time Itemized
12 by Collins and Lacy Invoices" as Exhibit 6.

13 (Exhibit Nos. 5 and 6 marked;
14 retained by the Court.)

15 THE COURT: Okay. Mr. Ferguson.

16 MR. FERGUSON: I call Martha Brown.

17 THE COURT: Come around, please, ma'am, to
18 the witness stand. And before you take your
19 seat, if you'll place your left hand on the
20 Bible and raise your right hand.

21 (Witness duly sworn)

22 THE COURT: Okay. Have a seat and make
23 yourself comfortable and just sit up close to
24 the microphone so we can -- everyone,
25 including the court reporter, can hear your

1 testimony. Your witness.

2 EXAMINATION BY MR. FERGUSON:

3 Q. Give me your full name.

4 A. ~~My name is Martha Patterson Milam Brown.~~

5 Q. Okay. And you are one of the heirs of Ms. Kay?

6 A. That's right.

7 Q. And what's your relationship with Mary Moses?

8 A. She's my sister.

9 Q. Okay. And can you tell me whether or not you were
10 surprised at the way Marion devised her half of
11 the farm?

12 A. Yes, I was surprised.

13 Q. And what had you expected her to do?

14 A. Well, I expected her to do what our fathers had
15 told us, what she would do is to leave her half of
16 the farm to us.

17 Q. Okay. Were you bitter and did you plan to abort
18 whatever Mr. Sullivan might want to do with the
19 land?

20 A. No. Because I've seen enough wills. I've worked
21 in law offices, and I know that anything can
22 happen when it comes to a person, you know, and
23 their stuff.

24 Q. Okay.

25 A. And it's not always what the family thinks is

1 going to happen, and so sometimes people are
2 surprised and -- but I was not bitter. And at --
3 at the time that I read the will, all that was
4 left to do was just to move on.

5 Q. What about Mary? Was she determined to prevent
6 dividing of the land, or was she willing to come
7 to an acceptable agreement with Mr. Sullivan too?

8 A. I think she was willing to come to an agreement.
9 She said she was.

10 Q. Okay. Did Mr. Sullivan invite you two to a
11 meeting in Newberry to discuss dividing the land?

12 | A. Yes, he did. .

13 Q. Is that a copy of the letter?

14 | A. . . Yes.

15 MR. FERGUSON: (To Mr. Hawkins) Do you have a
16 copy of this?

17 MR. HAWKINS: Yes, I have a copy.

18 MR. FERGUSON: (To the Court) I'd like to
19 introduce this.

20 THE COURT: Okay. Mr. Hawkins, any
21 objection?

22 MR. HAWKINS: No, sir, Your Honor.

23 THE COURT: Okay. It'll be marked as
24 Defendant's 7.

25 (Exhibit No. 7 marked;

1 retained by the Court.)

2 EXAMINATION BY MR. FERGUSON RESUMES:

3 Q. And to whom was this invitation addressed?

4 A. It was addressed to Martha Milam Brown and Mary
5 Leona Milam Moses.

6 Q. All right. And when you got to the meeting in
7 Newberry, who was there?

8 A. Mrs. Penny Arnold (phonetic), I believe is her
9 name, and Reverend Hampton Hunter.

10 Q. All right. These other parties who were there,
11 the other heirs, were they looking for land; or
12 were they looking for money?

13 A. Money.

14 Q. So did they care at all where the line was drawn?

15 A. It would seem not. Reverend Hunter said he was
16 there to keep the peace.

17 Q. Can you tell me whether or not there was any need
18 to involve those folks in the preliminary
19 discussions about where to divide the lines, put
20 the lines in to divide property?

21 A. No. There was nothing personal about their
22 appearance there, but it just did not seem that it
23 was in order because he was there to discuss the
24 division of the property. At the time it would
25 have been between Eddy Sullivan and myself and my

1 sister, which is indicated by the letter.

2 Q. So are you saying that their presence impeded
3 working something out?

4 A. Yes.

5 Q. And were you and Mary willing to work something
6 out with Mr. Sullivan?

7 A. Yes.

8 Q. And did he try to work out something with you, or
9 did he try to impose his solution on you --

10 A. When I saw what he proposed, I was aware that, you
11 know, it was not what we had wanted.

12 Q. Did he make his proposal at the meeting or
13 sometime later?

14 A. At the meeting, there were five divisions, tracts
15 of property here. And according to Marion's will
16 and to the way her letter read that she wanted the
17 property divided, she wanted the property near her
18 house to be considered hers and the property near
19 our home place to be considered ours. That
20 division, as indicated on this, made no such
21 division.

22 Q. When you say "this," that's the document you were
23 given about --

24 A. Yes.

25 Q. -- a proposed --

1 A. Right, uh-huh.

2 Q. -- distribution?

3 A. She would get tracts A and C, and we would get B,
4 D, and E under that division.

5 Q. Aside from the difficulties of where to draw the
6 lines, did you have other urgent family matters to
7 be dealing with at that time?

8 A. I certainly did, and I also had suggested a plan.
9 I suggested a plan halfway between the two home
10 places that I had already run by an attorney
11 friend of mine, who handles most of the real
12 estate in Rock-Dale County, Georgia, where I live.
13 And he said that made more sense to him than
14 anything that he could come up with. And yes, we
15 had pressing family matters. My husband has had
16 three back operations. He has had two stints;
17 he has had staph infection; he has had cellulitis.
18 During this time, I was working; and I fell and
19 broke my arm and dislocated three fingers. So,
20 you know, I had my hands full at the time that the
21 original division was proposed; and it was ongoing
22 and is ongoing today. He's not here today because
23 of pain.

24 Q. Okay. I think you've already covered this, but is
25 there anything else you need to say about why the

1 proposed division from Mr. Sullivan was not
2 acceptable?

3 A. Well, it didn't -- it has us all over everywhere.
4 And then when Mr. -- when I suggested what I did
5 about the line between the two home places and
6 then any difference be divided with cash, then he
7 indicated that he would do that; but instead when
8 we got the stuff from him, there were errors in
9 this map --

10 Q. When you say "the stuff," do you mean the -- the
11 second proposal?

12 A. Uh-huh. Errors in the map, and then here he has
13 it even worse than before. He has all this road
14 frontage belonging to Marion Kay, which is clearly
15 on our side, you know, and then leaves us sort of
16 landlocked except for a little bit of road
17 frontage here. And it -- it just made no sense if
18 you were going to do two pieces of property around
19 the home places.

20 Q. Did you inform Mr. Sullivan that you, yourself,
21 didn't want to buy the property and you were
22 willing for it to be divided?

23 A. I certainly did from the very start.

24 Q. And when -- when you made the proposal for
25 dividing the land, what kind of response did you

1 get?

2 A. Negative.

3 Q. When did you --

4 ~~THE COURT: What was your answer, ma'am? I~~
5 didn't hear that.

6 THE WITNESS: "Negative."

7 THE COURT: Oh, negative. Okay.

8 EXAMINATION BY MR. FERGUSON RESUMES:

9 Q When did you get an attorney in this matter?

10 A November the -- November 13th, 2008.

11 Q Okay. And did you notify Mr. Sullivan that you
12 had engaged an attorney?

13 A Yes.

14 Q Was that pretty soon after you did that?

15 A Yes.

16 Q Did his not charging the estate for legal services
17 start about this time?

18 A Started, I believe, a little bit before that time
19 --

20 Q Okay. Do you feel that Mr. Sullivan did only the
21 work which was necessary for the estate?

22 A No.

23 Q From what you've observed, is there any way that
24 Mr. Sullivan earned and is entitled to a fee of
25 something like \$100,000?

1 A No, I do not think so. That is money that should
2 be put back into the estate and is distributed to
3 all heirs, not just my sister and myself.

4 Q And did Mr. Sullivan collect all the government
5 benefits that were due to the estate?

6 A No.

7 Q Okay. Expand on that. What did he do --

8 A Under a program with the Federal -- and I'm not
9 sure of the correct name, but anyway, you get a
10 settlement, but where we have to sign for it. And
11 he did sign for it, so my sister and I got ours
12 and he did not -- that money was not put into the
13 estate.

14 Q Would the estate have gotten the same amount of
15 money that you got?

16 A No. Her estate would have -- well, her estate
17 would have gotten twice what I got.

18 Q Okay. What did you get?

19 A I don't remember. I don't remember how much that
20 was.

21 Q But he didn't even apply for it?

22 A No.

23 Q Can you tell me whether or not this estate could
24 have been handled much more quickly, easily, and
25 cheaper?

1 A I think so, yes. You know, I have seen estate's
2 settled and with complications, and they have been
3 settled satisfactory without -- you know, one
4 ~~thing that I picked up on right away in the~~
5 meeting with Mr. Sullivan in his office was there
6 were some \$68,000 at that time in bonds and all,
7 and he just remarked that that was good. And he
8 said that it would take that to settle the estate,
9 and I was shocked that right then, right there he
10 decided that it would take that to settle the
11 estate.

12 Q And at which stage of -- of his administration
13 would you say it was at?

14 A That was the first meeting.

15 Q And that was about how long after Ms. Kay died?

16 A That was several months, I believe, after she
17 died.

18 Q So at that stage he was saying it was going to
19 take 60 or \$70,000 of -- of his efforts to get
20 this estate settled?

21 A Uh-huh.

22 Q Was it because of any kind of obstruction from you
23 and Mary Moses that the estate took so long to
24 close?

25 A No. As a matter of fact, he let the whole eight

1 month -- eight-month option go by without saying
2 anything.

3 Q This is for Chuck Copeland to buy --

4 A This is --

5 Q -- all the real estate?

6 A Uh-huh. That was in June, and, you know, that
7 rocked on. You know, we thought that that was
8 over, but evidently we were wrong.

9 Q So why did this estate take so long to close?

10 A Seems to me that there has been just an inordinate
11 amount of legal maneuverings, of people hired, of
12 appraisals made. You know, when people receive
13 items as part of an estate, it seems to be over
14 the top for them to go and have those items
15 appraised before they are given out.

16 Q You're --

17 A And I've not seen that done.

18 Q You're talking about specific bequests --

19 A Right.

20 Q -- where she said I want this bracelet --

21 A Right.

22 Q -- to go to this person?

23 A Bracelet.

24 Q Okay.

25 A You know, a coin, a dress.

1 Q Okay. So all this maneuvering and hiring and such
2 that you were talking about, was that -- are you
3 talking about what Mr. Sullivan did?

4 A Yes.

5 Q Okay.

6 A I'd never seen that done.

7 Q Did -- did you read Marion Kay's will?

8 A Yes, I did.

9 Q And did you read that portion that pertained to
10 Chuck Copeland having a right to -- to buy her
11 land?

12 A Yes. It said, "My interest in."

13 Q So the whole half interest?

14 A Right.

15 Q And for what period did he have that right?

16 A Eight months from her death.

17 Q And if Mr. Copeland had exercised that right to
18 buy all of her half interest, would that have
19 required the hiring of experts and the filing of a
20 lawsuit?

21 A I would not think so.

22 Q Did Mr. Sullivan interpret the will the way it was
23 written, as -- as far as you can tell?

24 A I don't think so.

25 Q And did he instead try to carve out a small

1 portion of the farm to sell to Chuck Copeland?

2 A That's what it seemed to me because there were
3 only 46, I think, acres that Chuck Copeland was
4 willing to buy; and, you know, that's not nearly
5 part of -- you know, her half of the estate.

6 Q So the whole -- whole farm was about 330 acres?

7 A That's right.

8 Q So was -- did the will say that he could buy only
9 46 acres of -- of her half?

10 A No, it did not say that he could pick and choose.

11 Q And did Mr. Sullivan hold open the option a whole
12 lot longer than eight months?

13 A Oh, yes.

14 Q How long did he hold it open?

15 A It was -- as I remember, it was over a year.

16 Q And this -- did this vastly complicate the
17 administration of the estate?

18 A Exactly.

19 Q Okay. I'm going to show this document and ask if
20 you can identify it.

21 A Yes.

22 Q What's that?

23 A This is -- this is the option to buy that was
24 signed in -- or it was registered with the court
25 already in '73.

1 Q You say an option. Isn't that a deed?

2 A Yes, it is a deed. I'm sorry.

3 Q Okay. And who -- who gave that deed to whom?

4 A This is a deed Marion Milam Kay, Ruby Milam,
5 Martha M. Brown, and Mary Moses; and that is a
6 deed for the -- where the surveyor did the deed
7 for the property of Al G. Milam.

8 Q How much land was conveyed?

9 A There were ten acres.

10 Q Okay.

11 A (Inaudible) side of her house.

12 Q And this says, "It's Consideration of \$10," and
13 what?

14 A Partial partition.

15 MR. FERGUSON: I'd like to introduce this.

16 THE COURT: Mr. Hawkins?

17 MR. HAWKINS: No, objection, Your Honor.

18 THE COURT: Without objection, will be marked
19 as No. 8.

20 (Exhibit No. 8 marked;

21 retained by the Court.)

22 EXAMINATION BY MR. FERGUSON RESUMES:

23 Q What's that "partial partition" you're talking
24 about?

25 A Ten acres and the house was set apart for each

1 home place for the widows of (inaudible) Milam, my
2 uncle and father.

3 Q Okay. Is that the plat that goes to that deed?

4 A Yes, it is.

5 MR. FERGUSON: I'd like to introduce that.

6 THE COURT: Any objection?

7 MR. HAWKINS: Yes, Your Honor. My objection
8 would be that there ought to be a plat that
9 is recorded at the courthouse, and this is
10 not a recorded version, that I can tell. We
11 would request the original plat, whatever it
12 may be.

13 THE COURT: Well, I'm looking at the deed,
14 and it does not have any recording
15 information; so it may be a situation,
16 especially with older deeds, that the plat
17 never got recorded and it's just described in
18 a -- in the deed itself.

19 MR. HAWKINS: I'm not objecting or did not
20 object to the deed, but my copy's actually
21 ineligible; and I can't really read what it
22 says.

23 THE COURT: Oh --

24 MR. HAWKINS: But I'm happy for it to go in.
25 We don't -- we don't dispute that the land

1 changed hands.

2 THE COURT: All right. Well, I'm going to
3 overrule the objection. The witness has said
4 that that plat goes with that deed, even
5 though it's not recorded. Mr. Ferguson, give
6 me that Exhibit 7, unless you're not finished
7 with it. I just don't want it to get mixed
8 up other papers.

9 (Exhibit No. 9 marked;
10 retained by the Court.)

11 EXAMINATION BY MR. FERGUSON RESUMES:

12 Q All right. So you said that -- that there was a
13 deal with the -- the three widows, that each get
14 ten acres?

15 A Two widows.

16 Q Two widows.

17 A Uh-huh.

18 Q Okay. And you were supposed to get how much in
19 that?

20 A I was supposed to get five of it, five of my
21 mother's half, five of her ten.

22 Q And Mary Moses was supposed to get how much?

23 A Five.

24 Q And did she get her land?

25 A Yes, she did.

1 Q And did -- is that the deed where Mary got her
2 share?

3 A Yes.

4 MR. FERGUSON: I'd like to introduce that.

5 THE COURT: Mr. Hawkins, any objection?

6 MR. HAWKINS: No objection, Your Honor.

7 THE COURT: Without objection, it will be No.
8 10.

9 (Exhibit No. 10 marked;
10 retained by the Court.)

11 EXAMINATION BY MR. FERGUSON RESUMES:

12 Q And is that the plat that goes with that deed?

13 A Yes.

14 MR. FERGUSON: I'd like to introduce the
15 plat.

16 MR. HAWKINS: I guess, if we just might
17 clarify for the record there's three tracts
18 of land on the plat. Which part of this plat
19 are you indicating is the transfer to Ms.
20 Moses?

21 MR. FERGUSON: If you could look at the deed,
22 beginning at iron pin in the center of
23 Highway South 30-49 running Southeast along
24 said Highway South 60-06E 686 feet to an iron
25 pin is turning and running South 39-30 West

1 356.3 feet iron pin, that's turning and
2 running North 58-45 West 683.5 feet iron pin,
3 that's turning and running North 3930 East
4 339.9 feet iron pin in the center of said
5 highway.

6 MR. HAWKINS: If she could tell us she's
7 talking about the 2.7 acre tracts or the
8 4.59, I would understand what she's saying.

9 MR. FERGUSON: I think --

10 MR. HAWKINS: What you're saying or --

11 MR. FERGUSON: I think that the deed is going
12 to be the -- the best evidence on what tract
13 is involved.

14 MR. HAWKINS: I mean, I'm not trying to be
15 argumentative. I understood her to say this
16 was the plat that went with the deed. If she
17 could -- those numbers aren't matching up --

18 THE COURT: Okay. I think what Mr. Hawkins
19 is -- is wanting, is to designate which piece
20 on that plat goes with that deed that you
21 have in your hand.

22 THE WITNESS: (Inaudible)

23 THE COURT: Ma'am, when you speak, you've got
24 to speak up loud enough so this -- the court
25 reporter can hear you.

1 THE WITNESS: I understand. I'm just talking
2 to myself right there. This -- I think that
3 property in front of (inaudible)

4 EXAMINATION BY MR. FERGUSON RESUMES:

5 Q Okay. That's 2.7 acres, so it's --

6 A Well, that whole --

7 Q Okay. The 2.7 acre parcels, you think?

8 A Yes, that's what I think (inaudible)

9 THE COURT: No, ma'am.

10 MR. FERGUSON: Your Honor, I think that the
11 deed is -- is going to be the -- the final
12 authority on that. She's given the best
13 answer, I believe, that she can give.

14 THE WITNESS: I know that the Belue property
15 is behind us.

16 MR. FERGUSON: Well, I can --

17 THE COURT: What you may want to do --

18 MR. HAWKINS: She said she believed it's the
19 2.7 acre tract. I mean, that's fine with me,
20 Your Honor.

21 THE COURT: Okay. And why don't you just
22 place a little checkmark or "X" or something
23 on the piece that she said (inaudible)

24

25 EXAMINATION BY MR. FERGUSON RESUMES:

1 Q The 2.7 acre tract.

2 A Yeah, uh-huh.

3 THE COURT: All right. With no objections,
4 it will be No. 11.

5 (Exhibit No. 11 marked;
6 retained by the Court.)

7 EXAMINATION BY MR. FERGUSON RESUMES:

8 Q Now, it looks like that all of this land together
9 is about 10 acres.

10 A That is correct.

11 Q Okay. So this -- this other acreage, 4.59 acres--

12 A Uh-huh.

13 Q -- whose would that be?

14 A That would be mine.

15 Q Okay. But was it ever deeded to you?

16 A No, it was not.

17 Q Okay. Was it supposed to be deeded to you?

18 A Yes, it was.

19 Q And why was it not deeded to you?

20 A It just didn't get done.

21 Q Okay.

22 A And I had a lot on my plate at the time.

23 Q Did Marion Milam Kay get her 10 acres?

24 A Yes, she did.

25 Q And is that the deed that gave her the -- the 10

1 acres?

2 A Yes, it is.

3 Q And all of these transfers were part of the same
4 deal?

5 A Yes.

6 MR. FERGUSON: I'd like to introduce that.

7 THE COURT: Okay. Mr. Hawkins.

8 MR. HAWKINS: Yeah, Your Honor, I would
9 object that this is not a deed to Marion Kay;
10 therefore, it can't be what the witness just
11 testified to.

12 THE COURT: Take a look at it, Mr. Ferguson,
13 and see if ...

14 MR. HAWKINS: Which one do you have? Linda
15 Elma G. Milam.

16 MR. FERGUSON: Marion Milam Kay.

17 MR. HAWKINS: Oh, I see what you're saying.
18 This is where -- well, this not from these
19 ladies, but we don't dispute that this is a
20 deed that grants 10 acres of land to Elma --
21 from Elma Milam to Marion Kay; but we would
22 object to testimony that says this was a
23 transfer from either Ms. Moses or Ms. Brown
24 to Ms. Kay.

25 THE COURT: Is that something maybe you could

1 clear up in cross-examination?

2 MR. HAWKINS: Sure, Your Honor. It says --
3 for the record, this deed is dated 1975.

4 THE COURT: All right. Over the objection of
5 Mr. Hawkins, I will admit it into evidence
6 and it will be No. 12, I think.

7 (Exhibit No. 12 marked;
8 retained by the Court.)

9 EXAMINATION BY MR. FERGUSON RESUMES:

10 Q And about the same time that this agreement first
11 came into effect, I believe, the first deed is in
12 1972; was that when that option agreement was
13 signed --

14 A About the same time.

15 Q -- that's already in evidence? Let me see if I
16 can find the citation on that.

17 THE COURT: I think it's C4.

18 MR. FERGUSON: You're absolutely right, C4.

19 EXAMINATION BY MR. FERGUSON RESUMES:

20 Q And C4 bears a date of December 28th, 1972. Does
21 that sound about right?

22 A It sounds about right.

23 Q And Marion Kay signed that option?

24 A Yes.

25 Q The same Marion Kay who signed the will?

1 A Yes.

2 Q As far as you know, did she intend for those
3 documents to be harmonious and not conflictive?

4 A I would think so.

5 MR. HAWKINS: I object to her ability to know
6 what was in the mind of Marion Kay.

7 THE COURT: Sustained.

8 EXAMINATION BY MR. FERGUSON RESUMES:

9 Q In a previous exhibit, we set out the visits that
10 Mr. Sullivan made to Laurens County supposedly
11 because of his Personal Representative duties.
12 Did Mr. Sullivan have relatives living near the
13 farm who he visited regularly?

14 A He does have relatives living near the farm.

15 Q And who are they?

16 A That would be his mother and his sister, sisters.

17 Q Okay.

18 A His mother and his sisters.

19 Q Would it be fair for him to bill the estate for
20 time he spent visiting his relatives?

21 A I wouldn't think so.

22 Q Can you tell me whether or not he faced with a
23 simple and noncontentious way of -- when he was
24 faced with a simple and noncontentious way of --
25 of doing something or a complicated, and

1 contentious way of doing things, which way he
2 consistently chose?

3 A He (inaudible) --

4 MR. HAWKINS: I object to the form without
5 some explanation of what matters are
6 allegedly being offered to the --

7 MR. FERGUSON: We're talking about the -- the
8 administration of the estate as a whole, Your
9 Honor.

10 THE COURT: Restate your question. And, Mr.
11 Hawkins, if do you want to make another
12 objection --

13 EXAMINATION BY MR. FERGUSON RESUMES:

14 Q With regard to Mr. Sullivan's administration of
15 the estate, can you tell me whether or not when he
16 was faced with a simple and noncontentious way of
17 doing something or a complicated and contentious
18 way of doing things, which was he consistently
19 chose?

20 A (Inaudible)

21 MR. HAWKINS: Your Honor, I object --

22 THE COURT: Wait a minute, ma'am. Mr.
23 Hawkins, tell me your base -- basis for your
24 objection.

25 MR. HAWKINS: I object to the form that --

1 that it's vague and ambiguous. What is
2 alleged to have been a simple anything or --
3 and then some contentious resolution of it?
4 It's just in a (inaudible) to let her know
5 what matters are being discussed in order for
6 us to be able to put in some evidence to
7 contradict it.

8 THE COURT: And your point is well taken. I
9 think I pretty much know what her answer's
10 going to be. But is there any way that you
11 can identify it? Instead of just asking in
12 general terms, is there any way of
13 specifically asking something that you would
14 believe was simple so they can -- I mean,
15 give them a little bit better chance of
16 responding if they feel compelled to respond?

17 EXAMINATION BY MR. FERGUSON RESUMES:

18 Q Would it have been -- tell me whether or not it
19 would have been much simpler just to do a deed of
20 distribution to the heirs instead of all this
21 hiring of experts and filing of lawsuits and --
22 and then just let the heirs decide how divide
23 things?

24 A Yes, that would have been the preferred method I
25 would have thought.

1 Q And was the approach that was exhibited very
2 typical of the way Mr. Sullivan handled this
3 estate?

4 A Which -- which approach?

5 Q Taking the complicated way instead of the simple
6 way.

7 A The complicated way was not what I would have
8 preferred --

9 Q As far as the way he handled things.

10 A It -- it was the more complicated way that he
11 chose.

12 Q Do you feel that the fees Mr. Sullivan is charging
13 are fair, or are they bloated?

14 A I feel like they're --

15 MR. HAWKINS: I object --

16 THE COURT: Wait a minute, ma'am. Try to
17 remember -- if they have an objection, try to
18 just stop before you -- you answer. Mr.
19 Hawkins.

20 MR. HAWKINS: The question is leading and it
21 -- and it produces a conclusion for the
22 witness rather than having testimony from the
23 witness.

24 THE COURT: I think just ask this witness how
25 she would describe the fees in her opinion.

1 And if she wants to use the word -- whatever
2 word, bloated or whatever, then that would be
3 her right; but just ask her to describe.

4 EXAMINATION BY MR. FERGUSON RESUMES:

5 Q Characterize the fees that Mr. Sullivan has
6 charged the estate.

7 A I believe that things have been hasty, sloppy, a
8 recollection of actions (inaudible) in desperate
9 attempt to justify the exorbitant fees and charges
10 that he put upon the estate.

11 Q Show you a letter from Mr. Sullivan to you and
12 Mary. Do you remember this letter?

13 A Yes.

14 Q And what's the date on that letter?

15 A The date is May the 2nd, 2008.

16 Q And how long after the death of Ms. Kay is that?

17 A This is about a year, almost a year.

18 Q Okay. And in the -- the first sentence under No.
19 1, read that first sentence to me.

20 A "Chuck Copeland has an option to buy Marion's real
21 estate."

22 Q So the -- the eight-month option is still going
23 after a year?

24 A Right. That -- that statement surprised me very
25 much because, you know, I knew that the option had

1 gone away after eight months.

2 Q Okay. And in this letter, did he tell you or did
3 he ask you about dividing up the estate, the --
4 the land?

5 A He said the remainder of the real property would
6 be divided into four tracts based on the concept
7 that I previously discussed with Martha and Mary
8 Leona, that the exact lines eventually would be
9 determined.

10 Q Read this sentence to me.

11 A Okay. "I expect to meet with the appraisal and
12 the surveyor next week."

13 Q So was -- was he getting your input on where to
14 draw the lines, or was he telling you this is what
15 I'm going to do whether you like it or not?

16 A He did not want my input or ask for it at all.

17 Q Okay. And finally, in the last paragraph of that
18 letter, what does Mr. Sullivan say his role is?

19 A He says that he's the Personal Representative for
20 the estate. "I cannot and do not act as any one's
21 attorney in any matter relating to the estate of
22 Marion M. Kay." But I know that he charged money
23 based on lawyer's fees.

24 MR. FERGUSON: I'd like to introduce this
25 letter.

1 MR. HAWKINS: We have no objection.

2 THE COURT: Without objection, No. 13.

3 (Exhibit No. 13 marked;
4 retained by the Court.)

5 EXAMINATION BY MR. FERGUSON RESUMES:

6 Q As a result of Mr. Sullivan's insistence on
7 generating huge fees for himself, were you forced
8 to hire counsel?

9 A Yes.

10 MR. HAWKINS: Your Honor, I object to the
11 form that --

12 THE COURT: Right. Restate.

13 EXAMINATION BY MR. FERGUSON RESUMES:

14 Q Because of the way Mr. Sullivan conducted the
15 estate, were you forced to hire counsel?

16 A Yes, I was.

17 Q Are you asking the Court to require the Personal
18 Representative or the estate to reimburse you for
19 your costs in this case, including my fee?

20 A Yes.

21 MR. HARRIS: Your Honor, I guess, we'll let
22 it go, but there's no statute and no contract
23 that I'm aware of that would allow for any
24 award of costs or fees. And we'd move to
25 strike that testimony as irrelevant.

1 THE COURT: You aware -- there's three ways
2 to get attorney's fees in Probate Court, as
3 it is in most other courts, that I'm aware
4 of, is by statute, by contract; and there is
5 a theory called "Common Fund Theory" that in
6 some isolated cases was allowed for some
7 attorney's fees. The basis that you are
8 requesting for fees would be what, Mr.
9 Ferguson?

10 MR. FERGUSON: As a matter of equity, Your
11 Honor, we believe that ultimately the fact
12 that my clients requested this hearing will
13 result in a substantial benefit to the estate
14 and that I see no way that Your Honor can
15 approve a fee of \$100,000 for this man; and
16 that therefore, there should be some more
17 money coming back to the estate; and as a
18 matter of equity in that these people have
19 benefitted the entire estate, it would be
20 inequitable for them and them alone to bear
21 the -- the cost of -- of having produced that
22 benefit to the estate.

23 THE COURT: Well, what I'm going to do is --
24 I mean, I --

25 MR. FERGUSON: In fact, I'd like to hand up

1 an affidavit.

2 THE COURT: Fee affidavit. I'm going to
3 allow it into evidence. Now, that is in no
4 way any kind of indication that I would
5 authorize payment of any fees to Mr.
6 Ferguson. I'm going to allow it into
7 evidence, and that be something that the
8 lawyers will need to explore a little further
9 as far as providing the basis if I were to go
10 in that direction. I'm going to go ahead and
11 have it marked as Defendant's Exhibit 14.

12 (Exhibit No. 14 marked;
13 retained by the Court.)

14 MR. HAWKINS: Exhibit 14 is for
15 identification, Your Honor?

16 THE COURT: Yeah, for identification at this
17 point in time. And we'll just kind of wait
18 to see how things -- how things shake out.
19 How about that? Fair enough?

20 MR. HAWKINS: Yes, sir.

21 THE COURT: Is that fair enough for you, Mr.
22 Ferguson?

23 MR. FERGUSON: Yes, sir. Your Honor, I'm
24 still concerned about the absence of the --
25 of Ms. Blackman who, as I say, is battling

1 pneumonia as we speak. But in the interest
2 of trying to get this case over with, Your
3 Honor, I'll reserve my request possibly to
4 ~~hold open the record to hear from her as to~~
5 the document that -- that she filed. But I
6 think in the interest of moving things
7 forward, I'm going to rest my case at this
8 point.

9 THE COURT: Okay. And then, I guess, after
10 whatever reply, if any, that Mr. Hawkins puts
11 up, then you will tell the Court whether or
12 not you want to keep the record open for this
13 lady's testimony. Is that --

14 MR. FERGUSON: Yes.

15 THE COURT: -- essentially where you're
16 coming from?

17 MR. FERGUSON: Yes, sir.

18 THE COURT: Okay. All right. Mr. Hawkins,
19 do you have any reply witnesses or evidence?

20 MR. HAWKINS: Well, we'd like to cross-
21 examine Ms. Brown and --

22 THE COURT: All right. Right, you do have
23 the right to cross-examine this witness. All
24 right. Well, go ahead and do your cross-
25 examination, and then we'll kind of see where

1 -- where things are.

2 MR. HAWKINS: Thank you, Your Honor.

3 THE COURT: And, I guess, Mr. Ferguson, you
4 are not necessarily resting your case --

5 MR. FERGUSON: Yeah --

6 THE COURT: -- until after you have brought
7 --

8 MR. FERGUSON: Just my case --

9 THE COURT: -- any re-direct of this witness
10 there. Mr. Hawkins, how long do you
11 anticipate your cross to take?

12 MR. HAWKINS: Twenty, twenty-five minutes.

13 THE COURT: Okay. That's fair enough. I'm
14 going to hold you to it, now.

15 MR. HAWKINS: All right.

16 EXAMINATION BY MR. HAWKINS:

17 Q Ms. Brown, I'm going to show you now what was
18 previously marked as Plaintiff's Exhibit B.

19 A Uh-huh.

20 Q And it is the last will of -- of Ms. Kay.

21 A Right.

22 Q And I want to direct your attention to item 7 that
23 is the powers of the Personal Representative.

24 A Uh-huh.

25 Q I understood you to earlier testify that you have

1 read the will; correct?

2 A Yes, I have.

3 Q And at that time did you note that the Personal

4 Representative as -- as starts in line 3 at the

5 middle of it, "My Personal Representative is

6 specifically authorized and empowered with respect

7 to any property, real or personal, at any time

8 held under any provisions of this my will to

9 allocate, allocate between principal and income,

10 assign, borrow, buy, care for, collect." The next

11 thing says "compromise claims." Do you agree that

12 the Personal Representative was given the power to

13 compromise claims?

14 A Yes, in her will.

15 Q And the contract with respect to real and personal

16 property, the next one down says, "Convey personal

17 property." He had the right to do that; do you

18 agree with that?

19 A Right.

20 Q He had the right to convert real property?

21 A Right.

22 Q He had the right to deal with, dispose of, enter

23 into, exchange, hold, improve, incorporate any

24 business of mine, invest, lease, manage mortgage

25 real estate as he so chose; correct?

1 A Right.

2 Q He could grant and exercise options with respect
3 to real estate. Do you see that?

4 A Right.

5 Q Can you tell me why it is that he couldn't grant
6 an option to Chuck Copeland to buy 46 and some
7 change in acres of land if he so chose to do?

8 A But the will says my interest in, which would
9 indicate that that would be all of the --

10 Q I'm talking about forget that, forget that the
11 eight months ran out --

12 A (Inaudible)

13 Q Well, doesn't he have the power, under the will,
14 to grant options with respect to the real estate?

15 A Yes. But under her will that option ran out in
16 eight months.

17 Q And once it -- and I'm accepting that. I don't
18 agree with your legal analysis, but I'm accepting
19 that it ran out in eight months. The will gave
20 the Personal Representative the power to enter
21 into options for purchase of the real estate with
22 anybody that he wanted to enter into an option
23 with; does it not?

24 A It does.

25 Q Okay. So you don't disagree that subsequent to

1 the eight months if the Personal Representative
2 chose to do it, he could have granted you an
3 option to purchase some portion of the real
4 property had he cared to do so? Do you agree with
5 that?

6 A It wasn't listed so in the will. I wouldn't --

7 Q You don't disagree that the powers granted to the
8 Personal Representative by Marion Kay gave to the
9 Personal Representative the right to option
10 property if he so chose to do?

11 A And where it says that I would not have assumed it
12 that it meant that I would have had an option
13 because, well, I had a previous option --

14 Q I'm saying he could have given you an option --

15 MR. FERGUSON: Your Honor, this is getting
16 argumentative --

17 THE COURT: Right.

18 MR. FERGUSON: -- and repetitive.

19 THE COURT: Right. And certainly I'm aware
20 of where you're coming from, Mr. Hawkins, and
21 --

22 MR. HAWKINS: Well, I'll move on, Your Honor.

23 THE COURT: All right.

24 EXAMINATION BY MR. HAWKINS RESUMES:

25 Q He was granted the right to sell real and personal

1 property if he chose to do it; do you agree?

2 A Yes.

3 Q And granted the right to sue for the estate if he
4 chose to do and if he thought there was issue that
5 needed a lawsuit; correct?

6 A Uh-huh.

7 Q He was allowed to make distributions of divisions
8 in cash or in kind or (inaudible) if he chose to
9 do that, wasn't he?

10 A Right.

11 Q All of these powers are given to the Personal
12 Representative, and what you're telling us today
13 is you disagree with how he chose to exercise his
14 powers; isn't that correct?

15 A I think what I am saying here today is that he
16 never treated us like we owned one-half of the
17 property, my sister and I. We own one-half of the
18 property. We do not own her half of it, but we
19 own the other half of it; and our wishes were not
20 entertained at all when it came to dividing the
21 property.

22 Q Didn't you tell Mr. Sullivan in one of the first
23 occasions when you met with him that Ms. Kay
24 didn't have the right to leave this property to
25 anybody else; she was supposed to leave it to you

1 and your sister?

2 A I think what we said to Mr. Sullivan when we first
3 met with him, that this was not what -- and I will
4 tell you, that from the time we were this high,
5 our fathers impressed on us what was to happen to
6 that property. And Marion herself used that
7 against us, I mean, you know, as that, you know,
8 you know what your daddy wanted, I will say that.
9 So we were very disappointed; but, as I said, we
10 saw the will and you just move on. If I were to
11 come to court over every disappoint in my life,
12 there would be plenty of lawyers and I would be in
13 debtors prison.

14 Q But didn't you state in front of other people, Ms.
15 Arnold included, when you were in Paul Major's
16 office on or about May 31st of 2008, that Marion
17 Kay didn't have the right to leave this property
18 to anybody but the two of you?

19 A I don't remember making that statement.

20 Q You don't?

21 A No, I don't.

22 Q You say that the deed transferred property to your
23 sister in 1989 --

24 A Right.

25 Q -- of about roughly five acres, a little more than

1 five acres; correct?

2 A Right.

3 Q And you were asked, well, why didn't you get the
4 deed to the property at the same time. Do you
5 remember that?

6 A Yes.

7 Q And you said you were busy?

8 A Well; that's not exactly what I said.

9 Q Well, why didn't you get a deed at the same time
10 that your sister got a deed?

11 A Well, I really just didn't, and I don't know why.
12 We just -- she wanted it at the time. She wanted
13 her daughter to be able to build on it, and I was
14 not -- you know, I just signed it and I said fine.
15 And I did -- I did not have any plans to come up
16 here and live there now, and so I did not exercise
17 my option at that time.

18 Q You agree, though, there is no written agreement
19 that exists between anybody for Marion Kay or her
20 estate to have transferred to you approximately
21 five acres --

22 A Well --

23 Q -- of property?

24 A Well, the thing of it is, there were ten acres set
25 aside for each home place (inaudible) --

1 Q Just answer me if there was a written agreement,
2 yes or no?

3 A There was -- there was the agreement to set aside
4 ~~the house and ten acres for each widow.~~ I should
5 have gotten five acres of my mother's share of the
6 ten, and I never did. So, you know, that's as it
7 is, and that has been resolved now with Rowland
8 and I; so I don't --

9 Q Have you gotten that five acres deeded to you now?

10 A No. I don't have it deeded to me now, but Rowland
11 hasn't prepared the deeds yet; so we're -- that's
12 in process and it will be done.

13 Q And he got the property more than six months ago;
14 right?

15 A Yes, he did.

16 Q And you haven't agreed with him on any division of
17 the property either, have you?

18 A Yes, we have.

19 Q You have?

20 A Yes.

21 Q You have agreed to partition the 330 acres roughly
22 or, I guess, it would now be roughly 325 acres
23 once the five is carved out?

24 A We have -- yes, we have agreed.

25 Q You've agreed to where the line's going to be and

1 what you're going to get and what he's going to
2 get?

3 A Well, I told him what I wanted, which part I
4 wanted, and he said yes; and he said he put timber
5 crews down there, and he was going to do the lines
6 and do the deed.

7 Q Well, do you think he's taking too long to get it
8 done?

9 A I don't know. You know, we are going to get it
10 done. I -- I don't think that is pertaining to
11 this right now.

12 Q But you claim Mr. Sullivan had delayed matters and
13 taken too long and here you are knowing that
14 Rowland Milam has bought the --

15 A (Inaudible)

16 Q Ma'am, let me finish my question, please -- has
17 bought this undivided one-half interest that used
18 to belong to Ms. Kay. You say y'all have reached
19 some agreement to divide and partition that
20 property, and you say you have reached an
21 agreement where he's going to give you five acres
22 of land and yet he bought it in July of 2010.

23 A Right.

24 Q And now we're in February of 2011 and nothing's
25 been done on that, has it?

1 A And we are not -- we are not talking about almost
2 four years either.

3 Q Well, it hadn't been done, so you don't know how
4 ~~long it's going to take; do you?~~

5 A Well, it will be done before (inaudible)

6 Q Well, you know that he just testified earlier
7 today, and he said there's been no agreement on
8 where the line will be to divide this property.

9 A Right. But he knows which -- which part I want.
10 I asked him, and he said that that would be fine.

11 Q You claim that you made --

12 A He's a man of his word.

13 Q Do you claim in this case that you made a written
14 offer on how you would agree to have the 330 acres
15 partitioned to Ms. Sullivan?

16 A It was not written. I told him that at the -- at
17 Mr. Major's office how I would like it done and
18 nothing -- as I said, I had already gone over this
19 with a lawyer friend of mine in Conyers.

20 Q You were given a copy of the survey that was
21 prepared on behalf of the estate; correct?

22 A Yes.

23 Q Why didn't you take that survey and draw a line on
24 it and say this is me and my sister and this would
25 be you and send it to Mr. Sullivan?

1 A I did tell him that at the meeting.

2 Q Well, I'm asking you, and I may have
3 misunderstood. At the meeting you said what you
4 said and other people said what they said.

5 A No --

6 MR. FERGUSON: We can argue back and forth
7 forever, but, you know, we need to at some
8 point move this thing along instead of
9 endlessly asking the same question.

10 THE COURT: He has the right to cross-
11 examine. You may -- may continue.

12 EXAMINATION BY MR. HAWKINS RESUMES:

13 Q That meeting was in May of 2008; was it not?

14 A Yes. And when I made that suggestion, when I made
15 my proposal, Mr. Major indicated, I thought and my
16 sister thought that he was going to do the
17 division along that line. But when it came back
18 here with the five pieces of -- five tracts and
19 all done in a different way.

20 Q It was not what you expected --

21 A No, no.

22 Q All right. So following -- and you got that in
23 June of 2008?

24 A Somewhere like that --

25 Q And from June of 2008 until the land was finally

1 sold to Mr. Rowland Milam and he closed on it --

2 A Uh-huh.

3 Q -- you were multiple times asked did you want to
4 make a proposal as to how to divide the property,
5 weren't you?

6 A I had said that. You know, I said that in
7 Newberry at Mr. Major's office. I told Eddy that,
8 and I told -- I think, I told him one other time
9 too.

10 Q You agree that you were asked multiple times if
11 you wanted to make a proposal to make one, don't
12 you?

13 A I made the proposal.

14 Q After the meeting in May when you claim you made
15 the proposal, do you agree or disagree that
16 subsequent to that day you were asked that if you
17 wanted to make a proposal, send something in
18 writing that described where you wanted the line
19 to be?

20 A At that time I was, you know, with legal counsel
21 and, you know, I don't know what we did according
22 to that; but I think that my wishes were clear at
23 that meeting and it -- I never heard from Eddy on
24 that about anything.

25 Q Well, you -- you agree that you never, ever made a

1 written proposal of any kind --

2 A I didn't make a written one. I made a verbal
3 proposal at that meeting, and maybe it was my
4 error I should have; but it was clear then that
5 this is not going to work.

6 Q My question is (inaudible) do you agree you never
7 made a written proposal --

8 A No, I didn't make a written --

9 Q All right. And not only did you not make a
10 written proposal on where to draw the line; you
11 never made a written proposal to purchase anything
12 --

13 A I said from the get go I did not intend to
14 purchase.

15 Q Do you recall your attorney sending a letter
16 talking about the possibility of you purchasing
17 property?

18 A The attorney sent no such letter, because I did
19 not intend to buy the property.

20 Q Never?

21 A Never, never.

22 Q And did your sister ever intend to buy the
23 property?

24 A I think she would have liked to have.

25 Q Did she ever make a written proposal to buy any

1 property?

2 A Not as far as I know. You'd have to ask her. No
3 proposal was made to us either.

4 Q Well, and meaning that no proposal was made as to
5 a dollar amount of money?

6 A Right.

7 Q Well, let me show you what was marked as Exhibit
8 13. Oh, here we go.

9 THE COURT: You're talking about Defendant's
10 13?

11 MR. HAWKINS: Yes, sir. The letter dated May
12 2nd of 2008. Those are not them.

13 THE COURT: The court reporter make these --

14 MR. HAWKINS: Let's see, there might be --

15 THE COURT: We don't need to do it now, but
16 these need to be marked. They're
17 plaintiff's. That's all right, we'll just
18 leave them right here, right there.

19 MR. HAWKINS: Oh, I see.

20 THE COURT: Yeah.

21 MR. HAWKINS: She put plaintiff, which is
22 fine.

23 EXAMINATION BY MR. HAWKINS RESUMES:

24 Q Ma'am, I'm going to hand you what was marked
25 actually as Plaintiff's Exhibit 13 earlier. Do

1 you recall looking at that record, May the 2nd of
2 2008?

3 A Right.

4 Q The first line No. 1 says, "As of May 2nd, 2008,
5 Chuck Copeland has an option to buy Marion's real
6 estate. Chuck has agreed to pay the fair market
7 value of \$1,500 per acre as per the recent
8 appraisal of 46.85 acres more or less that extends
9 behind his home." So that was a written offer
10 provided to you about purchasing some of this
11 property for a specific price, wasn't it?

12 A Well, yes. I thought you were talking about was
13 one given to us as to a specific price.

14 Q Meaning, divide your land from you?

15 A Divide her land for us to buy her land. That's
16 what I thought you were talking about. I'm sorry.
17 I didn't know what you --

18 Q I understand that, but there was nothing that
19 prevented you from making an offer to purchase her
20 land or your sister, had you chosen to do so, was
21 there?

22 A Right.

23 Q Okay. And did you understand that when Mr. Milam
24 began negotiating to try to buy the property, he
25 offered a sum substantially less than what it had

1 been appraised for and he was only interested
2 initially in purchasing part of what was the 330
3 acres?

4 A Right.

5 Q And through Mr. Sullivan's effort, those offers to
6 purchase were raised to almost 95 percent of the
7 appraised value?

8 A I'm not sure that that was the way it went.
9 Because I was not in on the negotiations, I don't
10 know how you can ask me that question.

11 Q Okay. Well, and unfortunately you weren't there
12 when Mr. Milam testified by telephone earlier, and
13 he said that he hoped he'd make -- that he had
14 made a low offer because he wanted to get it as
15 cheap as he could.

16 A Right (inaudible)

17 Q Would you agree that at one time you were sent a
18 letter telling you that he had offered what was
19 about 70 percent of the appraised value?

20 A Yes.

21 Q Do you remember that? And Mr. Sullivan managed to
22 negotiate that up to almost 95 percent of the
23 appraised value?

24 A As I said, I wasn't there (inaudible)

25 Q What he got for the estate through his

1 negotiations was depending on (inaudible) what the
2 value was up to \$108,000 more than what its value
3 was at the time it was being sold in 2010.

4 A I can't say --

5 Q Would you agree with that?

6 A I can't say that it was due to his efforts or not.
7 I was not there.

8 Q Well, let me ask this. If due to his efforts he
9 got \$108,000 more for the sale of the property
10 than what at that time the comparables of the
11 market and -- and the time of its sale would have
12 been, he did a good job to get that money; didn't
13 he?

14 A I'm not sure how the negotiations went, so I feel
15 unqualified to answer that question.

16 Q But if you were certain that he got \$108,000 over
17 the fair market value at the time of the sale,
18 would you agree --

19 A I was --

20 Q -- (inaudible)

21 MR. FERGUSON: (Inaudible)

22 THE COURT: Whoa, whoa, got an objection.

23 MR. FERGUSON. I'm objecting because I think
24 his question is calling for speculation on
25 part of the witness.

1 THE COURT: I think so, and I'm going to
2 sustain the objection.

3 EXAMINATION BY MR. HAWKINS RESUMES:

4 Q Do you agree that Mr. Sullivan saved the estate
5 about \$36,000 by not having listed this property
6 with a real estate agent who could have taken a 10
7 percent normal commission for the sale of this
8 property?

9 A Well, there again, you know, look at all the other
10 expenses, look -- look at everything on that
11 ledger sheet, all the expenses. Now, how do you
12 know -- that's one thing -- I'm -- I'm not going
13 to answer that because I don't know.

14 Q You don't know if he saved \$36,000 by not hiring a
15 real estate agent to sell the property --

16 A No, I don't know.

17 Q Okay.

18 A Because (inaudible) and I'm good friends in the
19 real estate market, we don't know.

20 Q Do you agree that the Personal Representative had
21 a responsibility to try to fulfill the wishes of
22 Ms. Kay in his administration of the estate?

23 A I think, yes, he had -- he had a responsibility
24 and obligation, as all Personal Representatives
25 do.

1 Q Do you agree that Ms. Kay wanted to divide the
2 property before her death; correct?

3 A Yes, I do. I did too.

4 Q But did you make any attempt to divide it?

5 A No. Because at the time I was sent the letter, my
6 husband was in extreme pain and facing back
7 surgery. He had cellulitis and he had staph. He
8 had his back surgery. And three weeks later, he
9 had to be admitted into the hospital and he had
10 staph infection again. And he was at home with IV
11 that I had administer for six weeks. After that
12 he had another back surgery. He has had three
13 back surgeries over the last several years, since
14 2003. He's had a knee replacement; he's had a
15 knee replacement redone. And the reason he's not
16 here right now here today is because he's in too
17 much pain to be here.

18 Q If I'm follow you, you're telling us that your
19 husband's health issues --

20 A Yes.

21 Q -- kept you from working anything out with Ms. Kay
22 before her death?

23 A Yes. And I -- I told her that. I called her up
24 and I said, Marion (inaudible) I want to buy
25 (inaudible) I want you to (inaudible) you know,

1 that I agreed that should be given. And the part
2 of it that's near our house that she would -- what
3 was our home place, that should be ours. And I do
4 ~~want to work this out, but I cannot come up there~~

5 and do anything. I can't do anything right now.
6 I am just -- and in the meantime too I was working
7 and I broke my arm, so, you know, I had all I
8 could (inaudible) --

9 Q And those are the reasons why you couldn't
10 negotiate or partition with -- with Ms. Kay?

11 A Yes.

12 Q Okay.

13 A She called several times to check on us and, you
14 know, was concerned about Tom and sent cards and
15 that sort of thing.

16 Q Were you ever concerned that Marion Kay was going
17 to leave the property to Mrs. Copeland?

18 A It crossed our mind (inaudible)

19 Q And that was something you didn't want to see
20 happen?

21 A Well, what could I do if she did? You know, I
22 understand how wills are and what the (inaudible)

23 Q Do you recall a point in time when there was a
24 lawsuit filed asking the Court to declare the
25 rights of the parties as to this property make a

1 decision over whether it should be partitioned and
2 if so how?

3 A Uh-huh.

4 Q And just for the record, that's a "yes"? I'm not
5 trying to be rude, but when you say uh-huh,
6 sometimes --

7 A Yes.

8 Q And during the course of that discovery,
9 interrogatories were exchanged between parties?

10 A Yes.

11 Q (Inaudible)

12 A Yes.

13 Q And do you remember that the question was asked as
14 to whether or not you or your sister had been
15 involved in any civil litigation?

16 A Yes.

17 Q Do you remember that that was answered no, that
18 neither one of you had?

19 A Yes.

20 Q And then when Mr. Ferguson wrote the subsequent
21 letter to the counsel for the estate and said made
22 a mistake, not a mistake, but he had learned new
23 information; and, in fact, Ms. Moses had several
24 judgements against her.

25 A Yes.

1 Q Do you agree that that would have been a hampering
2 and that somebody would have to stop and look at
3 those and make a decision on whether they
4 ~~interfered with the ability to transfer interest~~
5 in the property --

6 A I'm not sure it would have had anything -- delayed
7 anything because everything was being delayed
8 anyway. There was a letter where there was going
9 to be an appraisal; then several months later, you
10 know, it -- it was just being done. So, you know,
11 I'm not sure that that really hampered anything,
12 ~~and all these investigations I was really~~
13 surprised about. Even my own character, you know,
14 that was a little bit (inaudible)

15 Q I don't think you challenged Mr. Sullivan's
16 character in the same suite, did you?

17 A Well, yes, but he's the Personal Representative.
18 He's been on this (inaudible) I mean, it's just
19 not been an easy thing to do, because I've always
20 considered Eddy and his family part of the family.
21 Eddy was named from my uncle. His parents were in
22 our house almost weekly. I played piano for this
23 little sister to compete in talent contests. I
24 would not ever come into this Court if I hadn't a
25 problem that the expenses were just way over what

1 they should have been and the estate was not being
2 served. I never would have if it hadn't been such
3 a degree, because we grew up together and I -- you
4 know, his mother is just (inaudible) of the earth
5 people, and his dad was close to my uncle. He was
6 named from my uncle. And, you know, it -- it
7 pains me to have to do this, it really does and --

8 MR. HAWKINS: Your Honor, this is all non-
9 responsive and I'm --

10 THE COURT: Just try to be responding. You
11 can always explain your -- your answer to the
12 question, but try to -- try to focus on the
13 answer -- I mean, on the question (inaudible)

14 THE WITNESS: (Inaudible)

15 EXAMINATION BY MR. HAWKINS RESUMES:

16 Q The question was (inaudible) the character of Mr.
17 Sullivan in litigation, and I think the answer is
18 well beyond. (Inaudible) Mr. Sullivan convinced
19 his law firm to reduce their hourly rates from
20 \$225 an hour to \$145 an hour?

21 A (Inaudible) through it all Mr. Sullivan has said
22 that he was not her lawyer, that he was her
23 Personal Representative -- Marion's lawyer, that
24 he was her Personal Representative. So my point
25 is if he's not her lawyer, why is he charging

1 lawyer fees.

2 Q Well, you understand that he didn't charge
3 lawyer's fees?

4 A I don't know. The charges I saw were pretty
5 (inaudible) you know, per hour.

6 Q Well, he's also -- do you not understand that what
7 Mr. Sullivan (inaudible) is that somebody has to
8 measure what reasonable compensation would be by
9 some standard. And he has offered as one of the
10 standards to look at, is the amount of time he
11 spent working in the case and that his hourly rate
12 would have been \$225 per hour? Do you understand
13 that?

14 A But, now, if I were administering an estate, would
15 I be able to do that? I don't think so.

16 Q Well, do you hold a lawyer --

17 A No, I don't.

18 Q Do you have (inaudible) taxation --

19 A But I'm not -- no. But I --

20 Q Are you a certified public --

21 THE COURT: Let her, let her finish her
22 answer.

23 THE WITNESS:

24 A No, I'm none of those things. But if he's saying
25 that he is not acting as an attorney in this

1 matter, then why is he charging attorney fees?
2 That's what I'm saying and just look at all the
3 fees.

4 EXAMINATION BY MR. HAWKINS RESUMES:

5 Q I'm just saying -- you're testifying that you
6 believe that Mr. Sullivan has charged for his time
7 as an attorney in the case?

8 A I believe he's -- bulk of his charges is based on
9 --

10 Q Okay.

11 A -- attorney fees (inaudible)

12 Q Do you understand that he convinced the law firm
13 to reduce a bill by \$9,000?

14 A I know that's what he said, but I'm taking the
15 fees in total, okay.

16 Q Okay. Well, you've seen the time sheets from the
17 law firm that go with the statement, the \$12,000,
18 and that they then reduced the bill by \$9,000?
19 You've seen that, haven't you?

20 A There again --

21 Q And I'm rounding off --

22 A That's what I'm telling you, though. If I'm a
23 Personal Representative, I couldn't go with that.
24 I don't think so.

25 Q You mean, you couldn't -- you couldn't charge

1 those fees because you don't have those skills;
2 correct?

3 A No. What I'm saying is, anyone who does personal
4 -- and I know plenty of people who have done lots
5 of estates as Personal Representatives.

6 Q Yes, ma'am.

7 A They have -- as a matter of fact, in the State of
8 Georgia you cannot be -- an attorney and Personal
9 Representative, you know, cannot be the same
10 person.

11 Q Did you hear Ms. Arnold testify at the first
12 hearing?

13 A Yes.

14 Q Did you hear her testify that she's been working
15 with estates and Personal Representatives as her
16 job professionally since 1985?

17 A Right. I did hear that.

18 Q She does it on behalf of varies groups but within
19 the Presbyterian Home setting as regard to
20 (inaudible)

21 A Right (inaudible)

22 Q And didn't she help with dozens, hundreds,
23 perhaps, of Personal Representatives in the state?
24 Did you hear that testimony?

25 A Right.

1 Q But she didn't have any objection to the fees that
2 Mr. Sullivan has asked to be compensated for in
3 this case. Did you hear that testimony?

4 A Yes. And, I guess, we've got a difference of
5 option.

6 Q Well, you would agree that she has a lot more
7 experience dealing with estates than you do,
8 wouldn't you?

9 A Probably so.

10 Q No other questions, Your Honor --

11 A But I have dealt with my share.

12 THE COURT: Mr. Ferguson, anything in re-
13 direct?

14 MR. FERGUSON: Yes, sir. I'll try be brief
15 too.

16 RE-EXAMINATION BY MR. FERGUSON:

17 Q Mr. Hawkins went through a list of the Personal
18 Representative's powers under the will. Would you
19 agree that the fact that a Personal Representative
20 has the power to do something is separate from
21 whether it's wise to use that power?

22 A Yes, I would definitely (inaudible)

23 Q Do you remember when Mr. Sullivan was testifying
24 and he talked about the option that Chuck had,
25 Chuck Copeland?

1 A Yes.

2 Q Did he say that this was the option under the
3 will, or did he say this was an option that --
4 that he had granted Chuck as Personal
5 Representative?

6 A He said that it was one that he felt he had
7 (inaudible) option.

8 Q He said that this was an option. Which option?

9 A As Personal Representative.

10 Q This was an option that he had granted Chuck
11 himself as Personal Representative you say?

12 A Uh-huh.

13 Q And not -- not under the will?

14 A No. Under the will he had eight months.

15 Q Okay. So you're saying that because under the
16 will it was eight months, he must have granted him
17 an option?

18 A Right.

19 Q They asked you about Rowland supposedly delayed in
20 dividing the land. Is Rowland charging you any
21 kind of fee?

22 A No, he is not. As a matter of fact, he didn't
23 even ask for tax money; but I looked up the taxes
24 on the internet and paid half of it and sent half
25 of it to him.

1 Q Okay. But other the -- the powers of the Personal
2 Representative under the will, did he have the
3 power absolutely to set the price for Mr. Copeland
4 to buy land?

5 A Yes.

6 Q And did he -- was he required to get any
7 information or permission from anybody else from
8 setting -- before setting that price?

9 A No.

10 Q Okay. That's all the questions I have.

11 THE COURT: Mr. Hawkins.

12 MR. HAWKINS: Nothing further, Your Honor.

13 THE COURT: Okay. I think there was a couple
14 of exhibits, Mr. Ferguson, if you'll come up.
15 (To witness) You can step down, ma'am. Thank
16 you for your testimony. Okay. Mr. Ferguson,
17 do you -- have you made a decision what you
18 want to do about --

19 MR. FERGUSON: Your Honor, I would like that
20 document into evidence; and if Mr. Hawkins
21 will allow an affidavit from Ms. Blackman
22 that that is indeed her letter, that would
23 suit me fine. Other than that, I think we're
24 going to have to come back and have Ms.
25 Blackman come and say, yeah, that document

1 that's on file in the court was the one she
2 sent.

3 THE COURT: Okay.

4 MR. HAWKINS: As long as -- I tell you what,
5 Your Honor, as long as we can put in counter
6 affidavits from other members of the Session
7 that say that's not what the -- my objection
8 to the letter, Your Honor, is it represents
9 what the Session did. The Session is part of
10 a governing body of the church, and Ms.

11 Blackman is a member of the Session, was at
12 the time a member of the Session, along with
13 others. Other people didn't agree with her
14 about what she's put in this letter that I'm
15 seeing now filed with the Court. So my
16 objection to it is that she gives a letter
17 where she claims to be speaking for the
18 Session; whereas, we know there was a vote
19 three to one and she was the one and not to
20 object to any of this.

21 THE COURT: Okay. All right.

22 MR. HAWKINS: So I will -- if I could have
23 the right to submit the counter affidavits of
24 the other people, I will agree to let it in
25 with assuming she gives us the affidavit and

1 we submit counter affidavits.

2 THE FERGUSON: And I think we might want to
3 have the right to respond to the affidavits;
4 but other than that (inaudible) affidavits.

5 THE COURT: Well, you know, I don't want this
6 thing to cluster and everybody submitting
7 these papers in response to other papers.

8 MR. FERGUSON: Well, there is -- I had
9 assumed that at some point Mr. Sullivan might
10 get on the stand about his -- his charges;
11 but if that is not to be the case, then I
12 would like to submit one more summary.

13 THE COURT: Well, let's -- before we get to
14 that, let's -- let's deal with this -- this
15 witness. Now, what Mr. Hawkins is saying, is
16 that he could submit -- you submit an
17 affidavit from this lady concerning the
18 letter, and then he wants affidavits that he
19 can submit and counter that. And then what
20 you're saying, is that you want to be able to
21 submit affidavits to counter his counter
22 affidavits.

23 MR. FERGUSON: Well, the point of the
24 affidavit was just to identify the exhibit so
25 that -- that it could properly be placed into

1 evidence. And my understanding of his
2 counter affidavit is that it will go well
3 beyond the identification of the exhibit as
4 having come from Ms. Blackman.

5 THE COURT: Well, I mean, if you -- if the
6 lady had been available to testify, would not
7 Mr. Hawkins have the right to put up some
8 reply witnesses to counter or try to counter
9 your lady's testimony. So I think that's
10 what he's asking to be able to do, is to
11 counter what your lady says in the -- in her
12 letter. And I understand you're saying to
13 authenticate the letter or make it more
14 admissible, you do an affidavit. I
15 understand that, but is he not asking the
16 right to -- just to put up some reply
17 evidence.

18 MR. FERGUSON: Yeah. I don't have a problem
19 with that. My problem comes in that if he
20 had put up reply, I would have a right to
21 cross-examine or to in some way respond to
22 that; and because I just don't have any idea
23 what he's going to put in his affidavits, I'm
24 hesitant to say whatever he puts in the
25 affidavits I don't have a right to respond

1 to.

2 THE COURT: Right, I understand that. And it
3 looks like to me the only way to remedy that
4 is to reconvene and you bring in your witness
5 to testify. I know that's not what y'all
6 want to do, but I just envision I'm going to
7 be swamped with affidavits on this one
8 particular point. I haven't read the letter
9 and don't intend to until it comes into
10 evidence, but I'm just concerned that I'm
11 just opening up the flood gates to you fine
12 attorneys and I'm going to be just loaded up
13 with more paperwork; that's my concern. And
14 so the way to remedy the Court's concern, is
15 to reconvene and you call this lady to
16 testify; and then Mr. Hawkins can cross-
17 examine, and he can put up any reply or
18 witnesses that he wishes to. Unless y'all
19 can -- can think of another way to handle
20 this, because I know y'all are wanting to
21 hear it today; and certainly Mr. Hawkins is
22 in Columbia and Mr. Sullivan is in Columbia
23 too, so help me. Do y'all want a minute or
24 two to talk, possibly?

25 MR. FERGUSON: Okay.

1 THE COURT: Can we do that? So as far as any
2 reply, I guess, you've got to solve this
3 issue before you tell me for sure whether or
4 not you want to put up any reply about the
5 case. And then you say you've got another
6 summary that you -- let's go ahead and deal
7 with that. You said you've got another
8 summary that you would like to put in
9 (inaudible)

10 MR. FERGUSON: Okay. It's really just based
11 on the -- the previous exhibit. Well, it's a
12 summary based on the -- the billing, the
13 Collins and Lacy billing and --

14 THE COURT: Mr. Hawkins.

15 MR. HAWKINS: Your Honor, we have -- we have
16 no objection.

17 THE COURT: Okay. So this is a summary of
18 the Collins and Lacy?

19 MR. FERGUSON: Well, yeah. This ultimately
20 comes from the Collins and Lacy materials,
21 and there was a separate exhibit about the --
22 the Sullivan trips to Laurens; and this just
23 lays out --

24 THE COURT: Do you mind me writing on -- on
25 here the reference to the Collins and Lacy

1 invoice?

2 MR. FERGUSON: Go right ahead.

3 THE COURT: Okay. And do you have any
4 problems with that, Mr. Hawkins, me writing
5 on this exhibit in reference to Collins and
6 Lacy invoice?

7 MR. HAWKINS: No, sir, Your Honor.

8 THE COURT: Okay, all right. I'm going to
9 give y'all just a few minutes, and then I'll
10 come back in and you let me know if you've
11 resolved this. This will be Defendant's 15.

12 (Exhibit No. 15 marked;
13 retained by the Court.)

14 THE COURT: We'll be off the record.

15 MR. HAWKINS: Thank you, Your Honor.

16 (Off the record from 6:03
17 p.m. until 6:06 p.m.)

18 THE COURT: Okay.

19 MR. FERGUSON: A total 100 percent final
20 understanding of the situation is going to
21 require that I talk with Ms. Blackman who
22 presently has the pneumonia. So what I am
23 asking and what opposing counsel has agreed
24 to, is that I be allowed to talk with her to
25 see precisely what the situation is. And

1 based on that conversation, I may or may not
2 want to put in an affidavit from her with the
3 letter attached; but if I do that, then they
4 would have the right to file affidavits in
5 response.

6 THE COURT: Okay. And -- but it would stop
7 there; correct?

8 MR. FERGUSON: Right.

9 THE COURT: Okay. All right. So to make
10 sure I understand, you will decide whether or
11 not you want that letter into evidence or not
12 with a accompanying affidavit? You may
13 decide not; and if you decide not, then, of
14 course, there's no need to do your affidavits
15 on your end. But if you do, then he has the
16 right to put counter affidavits in for my
17 consideration?

18 MR. FERGUSON: Yes, Your Honor.

19 THE COURT: But we will not do the hearing
20 under any circumstance?

21 MR. FERGUSON: That is correct.

22 THE COURT: Okay, all right. Well, let me
23 just say this to the parties and, of course,
24 I can't, you know, make the decision until
25 the record is closed and all the evidence is

1 in here. And even if the record were closed
2 now, I would not make the ruling from the
3 bench because I've got, as you can see, a lot
4 of the paperwork that I want to review. I've
5 got a general idea what direction I'm going
6 to head in; but again, I want to make sure
7 that the Court impose all the time necessary
8 in making a decision. The lawyers certainly
9 have put a lot of time into this; and I
10 commend both lawyers for the job well done,
11 so I want to do the same. I want to devote a
12 sufficient amount of time before I render my
13 decision, so I will wait -- do we have any
14 kind of time frames when, when I'll be
15 hearing from you guys?

16 MR. FERGUSON: I am hopeful that before the
17 expiration of 10 days --

18 THE COURT: Okay.

19 MR. FERGUSON: -- that she would be well
20 enough for me to talk with her; and I would
21 hope get an affidavit, if I have to, maybe --
22 maybe in 15 days.

23 THE COURT: Okay. Let's -- let's give you 15
24 days; and then if you do submit an affidavit,
25 then you've got 15 days.

1 MR. HAWKINS: I'll try not to take all that
2 time (inaudible)

3 THE COURT: Well --

4 MR. FERGUSON: And I'll try to not take that
5 much time --

6 THE COURT: Things -- things come up. All
7 right. So I'm going to make this -- that
8 will be 15 days from today. And then when
9 you submit the affidavit, then Mr. Hawkins
10 would have 15 days to submit a counter.
11 Okay. All right. Anything further on the
12 record before we adjourn today? Anything Mr.
13 Hawkins?

14 MR. HAWKINS: However this revolves, whether
15 we do the affidavits or not, would you like
16 to have post-trial briefs to (inaudible) our
17 position?

18 THE COURT: I think I've got -- I mean, if
19 you want one, if you want to write or do one,
20 I certainly give you the right to do one.
21 I've got a pretty good idea of each side's
22 position and where you're coming from, a
23 pretty good idea on that. So unless you've
24 just got a real strong notion to do a post-
25 trial brief, I'm not going to require it.

1 MR. HAWKINS: Okay.

2 THE COURT: Fair enough?

3 MR. HAWKINS: Thank you. Yes, sir.

4 THE COURT: All right. Thank you very much.

5 This hearing's adjourned and have a good
6 evening.

7 (Whereupon, there being no
8 further testimony, the hearing
9 was adjourned at 6:10 p.m.)

10 (This transcript may contain quoted material.
11 Such material is reproduced as read or quoted by
12 the speaker.)

13 (Certificate accompanies sealed original only.)

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT

)

)

COUNTY OF LAURENS

) CASE NO.: 2007ES3000208

IN THE MATTER OF:

) HEARING

)

)

MARION M. KAY

)

)

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Reported by Sonya K. Grice, Court Reporter and Notary
Public in and for the State of South Carolina; before the
Honorable Donald B. Hocker, Laurens County Probate Court,
100 Hillcrest Square, Laurens, South Carolina, on the 11th
day of January, 2012, scheduled for 10:00 a.m. and
commencing at the hour of 10:09 a.m.

IN THE MATTER OF: MARION M. KAY

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1 APPEARANCES:

2

3

4 Representing Edward Sullivan, Esquire:

5 DARYL G. HAWKINS, LLC

6 Law Offices of Daryl G. Hawkins, LLC

7 1331 Elmwood Avenue, Suite 305

8 Columbia, South Carolina 29211

9

10 Representing Mary Moses and Martha Brown:

11 JOHN R. FERGUSON, ESQUIRE

12 Cox & Ferguson

13 107 E. Laurens Street

14 Laurens, South Carolina 29360

15

16 Representing Bart Heard:

17 GEORGE R. MCELVEEN, III, ESQUIRE

18 2229 Bull Street

19 Columbia, South Carolina 29201

20

21 ALSO PRESENT:

22 Edward Sullivan, Esquire

23 Mary Moses

24 Martha Brown

25 Charles Blackmon

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CONTENTS

(In the Matter of Marion M. Kay)

EXHIBITS

(All Exhibits Retained by The Court)

PR Exhibits 1 - 5
Beneficiary Exhibit 1

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

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1 THE COURT: On the record this morning in the Marion
2 Kay Estate. It's a 2007 Estate, File Number 208.
3 It appears that the matter's before the Court
4 today upon a Motion, Mr. Hawkins, that you filed
5 some time ago. Around the same time as the
6 Appeals were filed by both sides. And I do
7 recognize that we have an Order from the Circuit
8 Court allowing this matter to proceed forward in
9 this Court, notwithstanding the Appeals that I
10 assume are still pending.

11 MR. HAWKINS: Actually, Your Honor, I think that, you
12 know, we moved to Dismiss the Appeal and we were
13 having argument -- we did have argument with
14 Judge Griffin on that matter. And I believe that
15 Mr. Ferguson then, at some point, consented that
16 we were correct on the law as to whether or not
17 the Appeal had been timely filed and he consented
18 to having -- as I -- you know I'm not positive, I
19 don't want to speak for Mr. Ferguson. I think
20 that those Appeals are dismissed.

21 THE COURT: Okay.

22 MR. HAWKINS: So we are back at square one, in other
23 words, with you on the Motion that we filed.

24 THE COURT: Yeah.

25 MR. HAWKINS: And then if -- the point I'm trying to

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1 clarify is that those Appeals are not pending any
2 longer, as I understand it. And once the Court
3 would rule, at this time, then if there are going
4 to be Appeals they would --

5 THE COURT: Right.

6 MR. HAWKINS: -- they would be from that Order.

7 THE COURT: Fair enough. But the only Motion -- and I
8 realize it's more than actually one Motion, but
9 the only Motion is what you have filed to re-open
10 the record and alter and amend. I don't think,
11 Mr. Ferguson, you filed any sort of like Motion;
12 correct?

13 MR. FERGUSON: No, sir. I just filed a Return to his
14 Motion.

15 THE COURT: Right. You filed a Return but no Motion.
16 Okay. All right. Well, Mr. Hawkins, since you
17 are the moving party, I'll be glad to hear from
18 you, sir.

19 OPENING - MR. HAWKINS:

20 MR. HAWKINS: Thank you very much, Your Honor. First I
21 want to just state for the record that any
22 matters that are raised in our Motion, and the
23 Motion itself contains more or less a brief on
24 the issues, we would rely on the Motion and those
25 arguments for any matters that I don't somehow

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1 recollect to argue to the Court at this time.

2 THE COURT: Right. And I don't know if it's going to
3 be -- and I have gone through your Motion. Gone
4 through Mr. Ferguson's Return. And I think
5 probably for the Court's benefit, if you would
6 just highlight -- and certainly if you don't
7 cover in your oral presentation certain matters
8 that are covered in the Motion, then of course
9 naturally you'll be fine with that. But I think
10 maybe just highlighting your position and
11 certainly Mr. Ferguson do the same thing.

12 MR. HAWKINS: All right.

13 THE COURT: And then I just need to spend time with
14 all this. I'll take it under advisement.

15 MR. HAWKINS: Yes, sir.

16 THE COURT: I would certainly not rule from the bench
17 today. But -- so if we can kind of proceed in
18 fashion, that will probably be the best way of
19 going about it.

20 MR. HAWKINS: I understand, Your Honor. And so the
21 first thing I'd want to do in the presentation is
22 file with the Court the transcripts from the
23 hearing that were previously taken. I'll give
24 these to the Court Reporter.

25 THE COURT: Okay. Let's, for purposes of this

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1 hearing, and I realize that you object possibly
2 to -- I think your -- your Return alluded to some
3 of that. And what we could do -- you'll
4 certainly have -- be protected on the record as
5 to any objections you want to make as far as
6 whatever comes in today. We'll just deal with
7 that. Just make your objections when you present
8 your argument.

9 MR. FERGUSON: Okay.

10 THE COURT: If that's okay. But let's go ahead and
11 just, for purposes of whatever Mr. Hawkins wants
12 to submit today, let's go ahead and mark those as
13 -- I'm trying to figure out -- Plaintiff -- how
14 did we have you guys designated when we tried
15 this case? I'm trying to --

16 MR. HAWKINS: You know, in the Order, Your Honor, I
17 think the folks who appeared and made whatever
18 statements, you refer to the Personal
19 Representative in that capacity; the PR this,
20 that or the other thing.

21 THE COURT: Okay.

22 MR. HAWKINS: And Ms. Brown and Ms. Moses were
23 occasionally referred to as Defendants.

24 THE COURT: Okay. All right.

25 MR. HAWKINS: And there may be one reference where you

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1 refer to Mr. Sullivan as the Plaintiff.

2 THE COURT: Okay.

3 MR. HAWKINS: And how we proceed is not important to
4 us. I mean we -- I would sort of perceive it,
5 because they're not formally Plaintiffs and
6 Defendants, we don't have a Complaint and Answer
7 and that sort of thing, that the Personal
8 Representative, Mr. Sullivan, and beneficiaries
9 of the Estate are Ms. Brown and Ms. Moses.

10 THE COURT: Well let's go ahead and for purposes of
11 marking Exhibits, let's put it as PR, Personal
12 Representative, PR Exhibit. You want them marked
13 together? I mean, it's just one transcript.
14 It's in two parts.

15 MR. HAWKINS: You may recall, Your Honor, we ended up
16 having to use two different Court Reporter
17 Services because the folks who were supposed to
18 be here that we made arrangements with, for
19 whatever reason they didn't have it -- something
20 happened.

21 THE COURT: Okay.

22 MR. HAWKINS: And so we -- I think you might have even
23 recommended a --

24 THE COURT: A local --

25 MR. HAWKINS: -- woman here in town who was a Court

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1 Reporter that we ended up, she was available and
2 she got here as quick as she could.

3 THE COURT: Okay. Okay.

4 MR. HAWKINS: And did a great job. So we do have two
5 different hearings with two different Court
6 Reporters.

7 THE COURT: Okay.

8 MR. HAWKINS: I don't know how really important it is
9 to mark them separately but --

10 THE COURT: Let's mark them as one. It will be PR's
11 Exhibit Number 1 for today's hearing.

12 (PR Exhibit Number 1 was marked for identification
13 purposes.)

14 MR. HAWKINS: And I would add to that, and I guess
15 we'd call it PR Exhibit 2, we have a letter from
16 Ms. Grice, who is here today again with Garber
17 Reporting Service, of some items in the
18 transcript that would be revised. Would be
19 changed. It's not a lot. There's some, you
20 know, words that were changed. Like, for
21 example, there's a reference to Page 143, Line 9,
22 says -- it was transcribed originally as, No, I
23 was a partner there, I was employed. And the
24 correction is, No, I was not a partner there, I
25 was an employee. And there's some other little,

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1 I guess, more or less --

2 THE COURT: Okay. All right. Well let's mark that as
3 PR Exhibit Number 2.

4 (PR Exhibit Number 2 was marked for identification
5 purposes.)

6 MR. HAWKINS: And a copy of that has been given to,
7 the correction letter, to Mr. Ferguson.

8 THE COURT: All right. Well, let's hold off. Let's
9 give the Court Reporter an opportunity to make
10 her markings before we continue. And really,
11 they're being marked really at this point for
12 identification just so we can keep up with them.
13 I'm not putting them into evidence for
14 consideration until I hear both sides and then we
15 can go from there. Is that kind of your concern,
16 Mr. Ferguson?

17 MR. FERGUSON: Yes, sir.

18 THE COURT: Okay. All right. Now, Mr. Hawkins, back
19 to you, sir.

20 MR. HAWKINS: Thank you, Your Honor. And at whatever
21 point in time we'll -- if there needs to be
22 argument about what is the transcript and does it
23 belong to the Court or the parties or the who,
24 you know, it's a -- you know, we want the
25 opportunity to do that if we're -- somehow don't

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1 get to it today or overlook it by whatever means
2 we --

3 THE COURT: Okay.

4 MR. HAWKINS: -- believe it's appropriate record of
5 the Court's -- of what happened in the Courtroom
6 because -- and I'll move on. The two biggest
7 issues before the Court today, and they may have
8 sub-issues. But the two biggest issues is, one,
9 whether or not the Court would reopen the record
10 for the admission of what I would say two
11 categories of evidence. And the second is the
12 request to alter or amend the Judgement. And
13 then that has many sub-parts to it. The first
14 aspect of reopening the record, there is ample
15 authority in South Carolina, going back as far as
16 1834, for a Court sitting non-jury, a Court of
17 Equity, to open the record and accept additional
18 evidence after the conclusion of a hearing. One
19 case that's often cited today is Brown versus
20 LaFrance Industries, decided by the Court of
21 Appeals in 1985. It's an opinion authored by
22 Judge Sanders. It's found at 333 SE 2d 348. I
23 do have copies of the opinion for the Court and
24 opposing counsel if y'all would like them at any
25 point.

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1 THE COURT: Sure -- yeah. Any cases that you --
2 either side relies on, you want to hand it up
3 will be perfectly fine for me. It would be
4 helpful to me.

5 MR. HAWKINS: I highlighted on the head notes'
6 portion, Your Honor, there -- I think that's
7 items three and four, Reopening Workers'
8 Compensation case to allow Claimant to take and
9 submit doctor's deposition after scheduled
10 hearing was concluded was not abusive discretion
11 where employer was expressly authorized to
12 present rebuttal testimony. And second, item
13 number four under the head notes, Allowing party
14 to reopen case will not be reversed unless
15 opposing party was prejudiced thereby. There is
16 a plethora of cases that all cite that great
17 latitude is given to a Court sitting non-jury to
18 reopen a hearing and accept additional evidence
19 if they decide to do so. There are some case
20 where it's been allowed, some cases where it's
21 been not allowed. And it's an abusive discretion
22 standard in whether or not allowing additional
23 evidence was appropriate or inappropriate, as the
24 case might be. This particular case that I have
25 handed up to the Court was a Workers'

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1 Compensation case. And in that case it discusses
2 that the burden of proof was on the worker to
3 provide medical testimony to connect his injury
4 to his job. That he did suffer an injury that
5 was of whatever nature. For whatever reason in
6 the case-in-chief, the evidence wasn't provided.
7 Subsequent to the hearing, after it had been
8 ended, the worker's lawyer asked to be allowed to
9 reopen, to put in evidence on this medical -- of
10 medical testimony. And to do it by way of
11 deposition and depose a physician who would
12 provide testimony. And the opposing party was
13 given the opportunity to retain their own expert
14 or -- and to cross-examine that person by dep and
15 so forth. And the Court found that a) there was
16 discretion to do it and b) there was no prejudice
17 to the other party because they had an
18 opportunity both to cross-examine that
19 information evidence testimony and to get an
20 expert of their own if they disagreed with
21 whatever the conclusions and opinions were of the
22 expert being offered by the Claimant. In this
23 matter, we have two issues that I feel like arose
24 -- they're mentioned in the trial. But post-
25 trial I think they're relevant for this Court's

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1 consideration based on the Court's ruling. And I
2 think it can be done without any prejudice to any
3 party. In the testimony of Mr. Sullivan when he
4 was on the witness stand, and I believe -- you
5 know, it's hard for me to tell in the transcript;
6 I looked at these various pages -- was I asking
7 the question or was the Court? It doesn't say at
8 that point that it was a Court's question. But
9 in the answer Mr. Sullivan says, Your Honor --
10 whatever he testifies to. So conceivably he just
11 looked to the Court and addressed you,
12 conceivably it was a question by the Court. I
13 don't think it ever matters really in the case
14 who asked the question. It's what's in the
15 evidence is what's important. In this particular
16 circumstance you were -- we were inquiring about
17 how much time did Mr. Sullivan spend working on
18 the Estate and what records were there of his
19 time spent on the Estate. We put into evidence
20 bills from Collins and Lacy, which was the law
21 firm that Mr. Sullivan had been employed with
22 when he began work on the Estate. Or if not at
23 the beginning, at some time during. Prior to the
24 Estate concluding and us coming to the hearing
25 before Your Honor, Mr. Sullivan left that law

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1 firm. We put into evidence bills of Collins and
2 Lacy that are itemized. And, in fact, the format
3 of how the bills show the time of the -- that was
4 work done on the Estate is pretty much the same
5 format that Mr. Ferguson utilized in his
6 Application for Attorney's Fees. And it shows
7 tenths of an hour time and what was done, some
8 description of what the work was. Those are in
9 evidence and many of them make reference to the
10 specific work that was done by Mr. Sullivan at
11 that time. When he left the firm, he continued
12 to keep records and that's mentioned in his
13 testimony. But those four -- or however many
14 sheets of paper that have those time entries on
15 them, were not formally offered into evidence.
16 We had, you may recall, Your Honor, just prior to
17 the hearing, we filed with the Court an Affidavit
18 of Mr. Sullivan that had many attachments. And
19 one of those attachments was these time records
20 I'm talking about now. You didn't allow the
21 Affidavit. And I think that may be on my part
22 and, if me, then, you know, all I can say is I
23 made a mistake and I'm asking now to be allowed
24 to correct it. Those time sheets were attached
25 to that Affidavit. They -- reference was made to

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1 those notes on the witness stand by Mr. Sullivan
2 when he was testifying that he did keep time of
3 what he did that was not part of the Collins and
4 Lacy bills. We attached those, however many
5 sheets it is, of his time sheets, as Exhibit E to
6 our Motion to reopen the record and alter or
7 amend the Court's Order. So those -- they're
8 available. I mean people have seen them. I
9 don't think there's any prejudice to Ms. Brown or
10 Ms. Moses in the admission of those documents.
11 The Affidavit was served on them prior to the
12 original hearing, so they saw them then; had the
13 opportunity to see them. They were attached to
14 our Motion that was filed a good while ago as I
15 think it was filed June the 8th of 2011. And we
16 are wanting to put them into evidence now.

17 (PR Exhibit Number 3 was marked for identification
18 purposes.)

19 MR. HAWKINS: We further would offer two alternatives;
20 that if the Defense wants to be able to cross-
21 examine on those matters, and I'm using that term
22 to refer to Ms. Moses and Ms. Brown, if they want
23 to cross-examine, Mr. Sullivan is here. We're
24 happy to put him on the stand. He will testify
25 as to those records and be subjected to cross-

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1 examination on those records. I think there
2 would be no prejudice to them. Depending on the
3 Court's time and availability or the preference
4 of Mr. Ferguson and his clients, that could be
5 done by a de bene esse deposition. That if Mr.
6 Ferguson said he felt like he needed some more
7 time than what he'd already had to look at those
8 time sheets and he wants to take a deposition on
9 it, we're happy to allow him to do that. And
10 have that be a de bene esse deposition to be
11 provided to the Court so that you wouldn't need
12 to reconvene and take testimony. You could take
13 that deposition and read it for what it says. So
14 I think there's at least those two different
15 methods that we offer, to cure or deal with any
16 claim of, there would be some prejudice if the
17 Court allowed those time records into evidence
18 now. The second thing is what the testimony of
19 Ms. Stomski would be. Teri Stomski is, we
20 believe, an expert in the field of title
21 insurance.

22 THE COURT: Spell the last name for us?

23 MR. HAWKINS: That's S-T-O-M-S-K- --

24 MR. SULLIVAN: -I.

25 MR. HAWKINS: -I. I thought it was an I but I wanted

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1 to make sure so I looked at it. That's correct.
2 S-T-O-M-S-K-I. And the Teri is T-E-R-I. Terri
3 Stomski. She is with South Carolina -- she's
4 South Carolina State Counsel for Investor's Title
5 Insurance Company. The Court may or may not be
6 familiar with Investors Title, but they're a
7 national insurance underwriter. She'd been with
8 them about five years at the time she did the
9 Affidavit, and has other experience. Mr.
10 Sullivan testified in the case-in-chief that he
11 had consulted with a title insurance person,
12 along with other folks. He talked about having
13 talked to Allen Medlin at the South Carolina Law
14 School, and whomever. He consulted with various
15 experts to make a decision about what should he
16 do in this Estate when these various issues had
17 arisen about there was an option to purchase by
18 Mr. Copeland; Ms. Brown was claiming that she was
19 entitled to five acres of this common property
20 that needed to be deeded out to her; and there
21 were various claims about who had what right to
22 this land and what interest in it by virtue of an
23 option or otherwise. Her Affidavit, which is
24 also part of our Motion, is attached as a copy of
25 the Motion, discusses the uninsurability of the

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1 title in that status with these various Claimants
2 and these options and what evidence there was of
3 a claim by Ms. Brown that she was entitled to
4 five acres of that land. It needed to be titled
5 to her and that went back historically to
6 whatever it went back to. I'm not going to
7 reiterate that.

8 THE COURT: Was this an Affidavit that you attempted
9 to put into evidence at trial or is this -- this
10 is after the fact?

11 MR. HAWKINS: It's after the fact, Your Honor.

12 THE COURT: Okay.

13 MR. HAWKINS: You know, I think central in the Court's
14 determination of what was a reasonable fee or
15 commission -- I refer to it as a fee; I think
16 more technically commission may be the proper
17 term under the statutes and so forth, for what a
18 Personal Representative receives for their work.
19 So if I say fee, I mean commission; the same
20 thing. I think central to the Court's decision
21 ultimately was a finding or a determination that
22 the filing of the partition action, which
23 included a Declaratory Judgment action, it was
24 two causes of action in the Complaint, to try to
25 settle any disputes about who had what interest

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1 in the property. The Court determined in your
2 Order that that unnecessarily complicated this
3 Estate. That it should have just been a Deed of
4 Distribution. Mr. Sullivan, as we say, he
5 testified that before he went out and did all
6 that he consulted with various people to get
7 their opinions on was the title insurable or was
8 it not and so forth. But it became a very
9 important part in the Court's decision. And in
10 terms of what is or isn't reasonable
11 compensation, as we understand the Court's
12 ruling, the Court determined that there was no
13 compensation that should be provided to Mr.
14 Sullivan for any of the time that he spent
15 involved in trying to clear the title. And those
16 issues at that time was, in essence, disallowed
17 because the Court felt like it was inappropriate
18 on his part. He should have just done a Deed of
19 Distribution. Now in our Memorandum we, or in
20 our Motion, which is also in the form of a
21 Memorandum, we've discussed those issues. We've
22 talked about problems with the title and why it
23 was a reasonable thing for it facing those issues
24 for the PR, and we'll talk a little later about
25 his discretion, I'll give you that in the

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1 argument, you know, what was -- you know, whether
2 somebody else would do it different is not the
3 question for the Court. It's what did the PR in
4 his belief and under what the Will granted him as
5 authority, what did he feel was appropriate.
6 But, the importance of Ms. Stomski, or her
7 relevancy, is that we didn't call a witness
8 specifically on that point. And so we're
9 offering her to provide testimony for the Court,
10 to help the Court in coming to a fair and just
11 decision, about whether or not the PR's decision
12 to file a Declaratory Judgment action to clear
13 the title and to try to partition the property --
14 first declare who the rights are and then once
15 you've decided the rights, well now let's
16 partition it so we can sell it. Her testimony
17 would be relevant and important to that. And I
18 think in fairness to the PR as the representative
19 of the Estate and what he did, and to the Estate
20 for what it needed to do or not do, we think
21 that's relevant and important for the Court. I
22 think it is similar to the Brown case, which I've
23 handed up, where there was a Workers'
24 Compensation hearing and the Plaintiff didn't put
25 in testimony, or the Claimant didn't put in

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1 testimony, on the medical issue. And they needed
2 a medical doctor to do it. So we're, I think, in
3 light of the Brown case, this issue about having
4 an expert witness come and talk about the
5 uninsurability of the title in the condition that
6 the land was in at that time with these various
7 competing interests is necessary for a just
8 resolve and for the Court to have a full and fair
9 and adequate consideration of that issue from a
10 third party. Again, I would say there's no
11 prejudice to Moses or Brown because the Court can
12 handle this in several ways. We could -- you
13 could accept her Affidavit as we took Ms.
14 Blackmon, I believe it was, somebody -- there was
15 some other testimony I think came in. I may be
16 mistaken. That would be one thing. Brown and
17 Moses have objected to that. They would be not
18 allowed cross-examination. We understand that.
19 We respect that. So the Court could set another
20 hearing date and have Ms. Stomski come and
21 testify. Or, what I think would be more
22 reasonable and would put less burden on the Court
23 is allow us, the PR, to take her deposition as a
24 de bene esse deposition and give Mr. Ferguson the
25 Notice and the opportunity to come there and be

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1 present. And we take her deposition, he gets to
2 cross-examine her and then we submit that de bene
3 esse deposition to the Court for its
4 consideration. And in that fashion, there's no
5 prejudice to anybody else in the proceeding. So
6 I think the reopening the case is to address
7 those two matters. Now also I guess there is --
8 there are, individual time sheets that were
9 filled out at Collins and Lacy by Mr. Sullivan
10 that we could offer in. We have them with us
11 here today. For his various time entries that
12 show up on the Collins and Lacy bills, this would
13 be the original piece of paper that he would have
14 filled out there in their system that would have
15 then gone to the accounting folks or whomever,
16 whoever it is that prepares the bills there. And
17 became part of those records that you have. So
18 this is a backup support to perhaps further
19 authenticate those particular bills. But I
20 didn't take it from the Court's ruling that you
21 were not accepting that those time records did
22 substantiate Mr. Sullivan's time while he was
23 there. And I may be mistaken and, if so, we'd
24 certainly want you to have those.

25 THE COURT: Exhibit E was prepared based upon what you

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1 say that you have and that you'll offer to the
2 Court?

3 MR. HAWKINS: It's different. Exhibit E --

4 THE COURT: Okay. All right.

5 MR. HAWKINS: -- was prepared -- is a keeping of time
6 after Mr. Sullivan left Collins and Lacy. When
7 he was at Collins and Lacy their policy there was
8 -- I remember in my law office we once had these,
9 you had some sort of -- you got one I can easily
10 (addressing Mr. Sullivan) --

11 MR. SULLIVAN: I left them in the truck.

12 MR. HAWKINS: All right. Well, they're out in the
13 car. We can bring them in. I apologize for
14 that. You fill out a slip; write down what you
15 did, the date, the time, how much -- isn't that
16 what they look like?

17 MR. SULLIVAN: Yes.

18 MR. HAWKINS: And then you tear them out of a book and
19 they end up going in to whoever ultimately types
20 those things up to create the bills. And I've
21 seen other firms do it. I've seen it in other
22 matters. It's one method of time keeping that
23 some people use.

24 THE COURT: All right. So just so I understand what
25 you're wanting me to consider, if I allow a

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1 reopening of the record, is time records while he
2 was at Collins and Lacy, which you say you have
3 or are out in the car?

4 MR. HAWKINS: That's correct, Your Honor.

5 THE COURT: And then what is included in Exhibit E,
6 which is time records after Collins and Lacy?

7 MR. HAWKINS: That's correct, Your Honor.

8 THE COURT: Yeah. Again --

9 MR. HAWKINS: As -- go ahead. I am sorry.

10 THE COURT: Well -- yeah, I will accept anything that
11 you want me to consider whether or not to reopen
12 the record on and -- so yeah, if you want to put
13 those in and then I'll see, you know, exactly
14 what you're wanting and then make a determination
15 whether or not I'll reopen the record on any
16 particular point. So you can hand those to me.
17 Is that -- was that somebody --

18 MR. HAWKINS: He's just gone to get them. I think
19 that they're literally -- they're tabbed, but
20 they're literally in the -- we have the original
21 Collins and Lacy files on the billing.

22 THE COURT: Right.

23 MR. HAWKINS: And we're going to have to individually
24 take them out of that.

25 MR. SULLIVAN: That need to be redacted.

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1 MR. HAWKINS: What would be redacted?

2 MR. SULLIVAN: The other cases I worked on.

3 MR. HAWKINS: Oh, for sure. We might have
4 administratively a little bit of a task to do on
5 those documents, Your Honor, to redact if there's
6 -- if a -- I need to look at one of those sheets
7 more carefully. Obviously I didn't look at them.
8 They may have other clients' time on them.

9 THE COURT: Well, if it looks like you need to do some
10 of that then, I mean, I'll allow you, you know,
11 some time after this hearing to submit them to
12 me, give a copy to Mr. Ferguson and then, you
13 know, that will be fine.

14 MR. HAWKINS: Okay.

15 THE COURT: Because I'm taking this under advisement
16 anyway so --

17 MR. HAWKINS: Sure. Well I'm confident we can get
18 that done swiftly.

19 THE COURT: Okay.

20 MR. HAWKINS: That we'd have them here in short order.

21 THE COURT: However you want to do it is fine.

22 MR. HAWKINS: All right. Those are the two items with
23 respect to reopening the record, or time entries
24 of Mr. Sullivan in the two categories, the after
25 and the during. And then testimony of Ms.

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1 Stomski on title issues, going to the alter or
2 amend the Judgment, I suppose, and then as part
3 of that are attorney's fees and expense items
4 with related to both parties. Talking some more
5 about just the merits though of our request for
6 the Court to reconsider its ruling and alter or
7 amend that Judgment with respect to what the PR
8 did and what would be reasonable in terms of his
9 commission or fees in this matter. The Court
10 held, as I said earlier, that -- the Court felt
11 like this case was unneces- -- or the Estate was
12 unnecessarily complicated by the filing of the
13 Declaratory Judgment action that included a
14 request for partition. In that sense our
15 disagreement, I think, is over the propriety of
16 filing that. And that goes to the discretion of
17 a Personal Representative. That we respectfully
18 argue that I don't think the Court gave --
19 certainly not discussed in the opinion, per se,
20 the weight that I believe a Personal
21 Representative is entitled to under both the Laws
22 of the State of South Carolina, and specifically
23 under the Will in this case. In the Will itself
24 it was stated that, All acts my Personal
25 Representative may deem proper or necessary to

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1 carry out for purposes of this my Will. And in
2 that instance, and in others, the Testator is
3 specifically saying and giving to her Personal
4 Representative a great power of discretion to
5 say, I want you, my PR, to do what you believe is
6 proper and necessary to carry out the purposes of
7 this Will. Now the next thing that becomes very
8 important in light of that, that she specifically
9 said, I'm giving you the power to do what you
10 deem; not what other people might think is
11 appropriate; not what a reasonable person would
12 do under the same circumstances, but what the
13 person she chose as her Personal Representative
14 deemed was appropriate under the circumstances.
15 We next looked to say the beneficiaries that are
16 involved in this matter, including Ms. Brown and
17 Ms. Moses, they're not devisees of the tract of
18 land. The Will doesn't say, I own this piece of
19 property and I want it to be given to these
20 people in these percentages. Their right of any
21 interest in that piece of real estate comes from
22 the fact that they are beneficiaries under the
23 residuary clause. They have percentages of
24 ownership of whatever is in this Estate when all
25 is said and done. Residuary beneficiaries, not

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1 devisees. Therefore, any Personal Representative
2 who begins to deal with this Estate has to make a
3 decision. That decision is, there is this piece
4 of property that has an undivided 50 percent
5 interest in it, am I going to try to do some form
6 of Deed of Distribution in the percentages of
7 ownership that these residuary beneficiaries
8 would have, or, am I going to convert that asset
9 into cash money, and they then get their
10 appropriate shares of that cash money. So the
11 Personal Representative had to make some kind of
12 decision about that. What's the best way to go
13 about that? The record is replete with a
14 disagreement between the various beneficiaries
15 over whether they desired to have cash or did
16 they desire to have an undivided interest in this
17 property? Ms. Brown and Ms. Moses have always
18 contended that the property should never be sold;
19 it shouldn't be changed. Ms. Brown testified
20 that Marion Kay was supposed to leave it to the
21 two of them in her Will and she didn't do it and,
22 you know, she couldn't do anything about it but
23 that was a wrongful -- it was supposed to be left
24 to us. Every piece of evidence that there is is
25 that they fought at every opportunity to have

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1 that property divided in any way. It had to be
2 deeded to people as property. Nobody else agreed
3 with them. Now, some -- one group changed their
4 position in the life of the case. But in the
5 beginning, and never changing his position, is
6 Bart Heard, for example. Bart didn't want land.
7 He didn't want to share land with anybody else.
8 He didn't want to have to pay taxes on land. He
9 didn't want to have to worry about upkeep on
10 land. He wanted money. His sister, we believe,
11 who's also there is similar. We had Penny Arnold
12 testify that with respect to the Presbyterian
13 Home of South Carolina, and she was an employee
14 there, she had a lengthy experience in dealing
15 with Estates and whatnot, that they're not set up
16 to own land. They're not -- they don't have a
17 fund to pay taxes on land. They don't have a
18 fund to buy insurance to protect against general
19 liability on land. They don't have funds to use
20 to maintain property. They need cash. They run
21 a nursing home. Or a residence facility. So the
22 record is replete with, in the beginning,
23 everybody preferred land, except Moses and Brown.
24 They wanted that land. So the PR had to make
25 some kind of a decision given that the residual

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1 beneficiaries who are not devisees of the land
2 but have perhaps an option that under the
3 dictates of the Will given to the Personal
4 Representative, he's going to decide how to make
5 this happen. What are we going to give to
6 anybody? Well that further got complicated by
7 the fact that there was an option that was given
8 to a neighbor to purchase this piece of property
9 that was to be exercised within eight months.
10 And you've heard the testimony on that earlier,
11 Your Honor. The reason it wasn't done within
12 that time, according to the PR, is that they
13 didn't have an appraisal yet completed to tell
14 them, you know, what would be a fair price. And
15 there were title problems because Ms. Brown was
16 continuing to claim, and continues to this day,
17 as I understand it, she's entitled to some five
18 acres of land. If you look at page 12 of the
19 Revised Return filed by Mr. Ferguson on behalf of
20 his clients, he says that the Court somehow has
21 overlooked dealing with this five acre tract of
22 land and that that needs to be addressed. He
23 doesn't explain in there what he means by that.
24 I'm not sure what it is that he may be going to
25 ask the Court, but when he argues I'm confident

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1 he will explain what he meant by that. But in a
2 separate paragraph on page 12 of his Memo, he
3 says that you haven't dealt with that five acres
4 and that needs to be done. I take that to say,
5 the same problem that Mr. Sullivan had when he
6 started dealing with this situation as to wanting
7 to do something with that land still exists to
8 some degree even now as we're here in the
9 Courtroom. And we've already had a hearing and
10 that land's already been sold to Rowland Milam.
11 Somebody wants you to deal with that five acres.
12 So, in any event, if we look at all of the
13 testimony that there was, we believe that when
14 the PR had to make a decision about, How am I
15 going to get the residuary beneficiaries the
16 residual estate? I can perhaps do a Deed of
17 Distribution. Or, I can sell this property
18 because the Will specifically allows him to sell
19 the land during the period of the Estate. So I
20 could do one or the other. Let's see what we can
21 do to work it out and be fair. And the testimony
22 was that he first tried to get people to agree to
23 a partition. Don't want to take any land away
24 from these ladies. They own an undivided 50
25 percent. Let's see if we can't agree on drawing

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1 a line somewhere or do whatever it is we can do.
2 And they would never agree to anything. The
3 evidence is clear on that. They never -- you
4 know, finally he hired a person to draw up a
5 proposed partition, which was they were invited
6 to a meeting to sit down and all -- you may
7 recall that testimony and it's certainly in the
8 transcript. It couldn't -- they couldn't reach
9 an agreement. The option for Mr. Copeland, the
10 eight months had run out. But the PR had been
11 trying to keep everybody happy and tried to keep
12 Mr. Copeland happy. I can't give you a right to
13 exercise the option until I get an appraisal
14 done. We don't have that yet. Give us some more
15 time. They get an appraisal done, he's willing
16 to consider other possibilities. Mr. Copeland
17 is. He's willing to consider the possibility --
18 he would purchase not all of the land but part of
19 the land. The PR tried to negotiate with
20 everybody to see if they would agree to that. Is
21 that a way to resolve it? They couldn't get any
22 resolutions. He consulted with a title opinion
23 person. He consulted with trust and estate
24 people. He talked to real estate folks. He had
25 a consultant for the real estate. And he decided

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1 that the best thing to do was to try to clear the
2 title; get rid of these competing interests,
3 whatever they were, about is there a five acres
4 that supposed to go over here and is there an
5 option that I now have to offer to this other guy
6 at whatever price and so forth. And, let's
7 partition the property. Once a Court decides who
8 has what rights, then we're going to -- we want
9 the Court then to partition this land, allow us
10 to sell it and distribute that money. The
11 litigation was fought. In that litigation, Ms.
12 Brown and Ms. Moses filed a Counterclaim asking
13 for this five acres of land to get distributed in
14 whatever fashion. That they were claiming they
15 had long -- Ms. Brown had long had an entitlement
16 to have that five acres cut out of it.
17 Thankfully all that was resolved when Rowland
18 Milam came along and ultimately negotiated with
19 the PR and bought the land. The central question
20 is whether or not it was reasonable for the PR,
21 in his discretion, to make a decision to try to
22 clear the title and partition the property and
23 turn it into cash and distribute it. And what
24 I'm putting forward to the Court on this argument
25 is that the Will plainly gave him that

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1 discretion. It's what he deems is proper. The
2 fact that somebody else might have done it
3 different is irrelevant. The fact that it could
4 have been done more than one way is irrelevant.
5 The only question is whether or not that was
6 something that is within a person's discretion.
7 And that discretion, I submit to the Court, is
8 the same as a Judge's discretion. How do we
9 judge discretion? Is there an abuse or is there
10 not? In deciding that, one of the things you
11 look to is to say is there any evidence to
12 support the decision that a judge makes, for
13 example, when they're exercising their
14 discretion. Was there any evidence that
15 supported what they did? If there is, then what
16 they did is within their discretion and it's not
17 an abuse. In this case, there's a plethora of
18 evidence that made it reasonable for the PR to
19 exercise discretion to try to sell the land. The
20 first piece of that evidence -- and I'm going to
21 try not to repeat myself too much for you. But
22 the first piece of that evidence is the Will
23 itself. These people are not devisees. They're
24 residuary beneficiaries. They don't have a right
25 to the land. Nobody had a right to the land. So

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1 the first piece of evidence that says that the
2 Personal Representative had the right to exercise
3 discretion to sell it is the Will itself. In the
4 Will itself it gave him the power to sell land if
5 he chose to do so, and it gave him the power to
6 transfer to these people what they're entitled to
7 in the way that he thought was best. And so he's
8 got a right to sell land, he's got Heirs that
9 don't want land. So he had to make a decision
10 between those. Now had he chosen to do the Deed
11 of Distribution, which is what people say, Well
12 that'd be the simple thing -- that's with a
13 simple Estate, do a Deed of Distribution. He
14 would not have been doing what Ms. Kay wanted for
15 those folks who have told him, We don't want the
16 land. And let's talk about another complication
17 with, if the land was done in a Deed of
18 Distribution. Ms. Brown and Ms. Moses already
19 owned an undivided 50 percent interest. Under
20 the Will they would have acquired additional
21 interest in that property; such that they would
22 then have had a 60 percent interest in this
23 undivided piece of land. And they would have had
24 people with, then a minority interest as to
25 theirs, to do whatever was going to come forward

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1 after that. I'll put it to you that that's why
2 it's hard to sell. If you didn't have a Rowland
3 Milam come along and say all right, these are
4 family members of mine, I think I can work with
5 them. Other people aren't interested in buying
6 land where somebody else owns 60 percent; it's
7 undivided; I don't have any control and I'm going
8 to have to help pay the taxes; I'm going to have
9 to help pay the maintenance; I'm going to have to
10 help pay for insurance; whatever comes up they
11 have to help pay for it. Certain of the heirs
12 weren't set to do that. I call them heirs. I
13 think more technically they're beneficiaries. If
14 I say heirs, I mean beneficiary. That wasn't
15 what they wanted. And so that's the second piece
16 of evidence that I offer to the Court that says,
17 when the Personal Representative finally made the
18 decision after untold hours and efforts of
19 attempting to get an agreement between the
20 parties about how they could partition this
21 property and sell it, he filed the DJ action and
22 the Partition action, is you've got heirs, or
23 beneficiaries, who did not want the land. So for
24 somebody to say he should have done a Deed of
25 Distribution says, you wanted him to ignore the

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1 desires and wishes of the Presbyterian Home of
2 South Carolina who said, We don't have a way to
3 handle land. We don't have a -- we don't have a
4 fund for paying taxes. We don't have a way to do
5 the maintenance. We're not set up for that. We
6 need -- ignore them. That's what you're telling
7 him. Ignore them and do what Moses and Brown
8 want. Distribute this land where they'll now own
9 60 percent of it. Ignore Mr. Herd, who doesn't
10 want the land. And so I say that had he
11 distributed the land, we'd be sitting here with a
12 different fight with other people saying why'd
13 you do that? Look at this mess you've put me in.
14 Now I'm stuck over here having to deal with this
15 blah, blah, blah. So you're between the devil
16 and the hard spot and you've got to make a
17 decision. And he was required to do it and he
18 did. And the Will gives him discretion. The
19 statutes give him discretion. And I urge the
20 Court to recognize he did not abuse that
21 discretion. He had a decision to make. It
22 wasn't an easy decision. He worked very hard to
23 try to get a compromise between the parties and
24 Brown and Moses would not compromise. And so
25 there was only one thing left to do and that was

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1 file the lawsuit. And the only reason that
2 lawsuit didn't go to a conclusion and then the
3 property be partitioned and sold is because
4 Rowland Milam showed up and was willing to buy
5 it. And at that time there was, in his testimony
6 that we took back in your office by phone, I
7 think, he says they negotiated over the price for
8 a good while. He talks about there were multiple
9 emails put into evidence. He said for every
10 email there would have been a phone call
11 somewhere. And Mr. Sullivan is still dealing
12 with him today. Most recently, either Ms. Milam
13 [sic] or Ms. Brown one changed the locks on the
14 house that Mr. Sullivan sold him and he couldn't
15 get in the house. He called up Mr. Sullivan
16 angry. He had to drive up there and meet with
17 him and try to help get him in. Then they
18 realized that there'd been a break in or
19 something so somebody changed the locks. I'm not
20 accusing them of anything bad, I just don't --

21 MR. FERGUSON: I do want to object to new testimony --
22 new evidence coming in the record.

23 MR. HAWKINS: Well I'll with -- that's not important,
24 Your Honor. I'm just trying to explain, it's
25 still at issue. It's still a problem. It was a

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1 problem before. It is a problem now. You may
2 recall Mr. Milam testified that in the purchase
3 of this they're supposed to agree to do a
4 partition; where now, a year and a half or
5 whatever later, in the real estate records that I
6 think you can take judicial notice of there has
7 been no partition of the property. In any event,
8 on that point of discretion, I think that there
9 is an abundance of evidence that shows that the
10 Personal Representative was required to take in
11 the desires of all those parties and, when they
12 couldn't come to agreement, then he had to
13 decide. And it was going to make somebody
14 unhappy. And it did make somebody unhappy and
15 that's why we're here today. But that he was
16 within his discretion, granted to him by the Will
17 and granted to him by statutory authority of
18 South Carolina, to make that decision that it was
19 in the best interest. Took care of what the
20 people that were the heirs wanted to have happen
21 in the way that he felt was most fair at the end
22 of the day. So that's what he did. And the
23 Court has determined that that was inappropriate
24 and unnecessary and he should have just deeded it
25 and, as I'm trying to urge on you, to reconsider

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1 that and recognize that there's more to it than
2 that. Let me talk for a minute about attorney's
3 fees issues. One of those is the PR's attorney's
4 fees and expenses in this proceeding, which the
5 Court held that, South Carolina Code Section 62-
6 3-720, that deals with litigation expenses of
7 Personal Representatives. You know, the statute
8 basically says that in any proceeding that a PR
9 prosecutes or defends, if he does it in good
10 faith, whether he's successful or not, he's
11 entitled to receive from the Estate his necessary
12 expenses including reasonable attorney's fees.
13 The Court held that where most of those services
14 were to in some fashion represent or defend the
15 PR's position, then you didn't feel like the
16 statute applied. And what I would say is that,
17 or what we argue, is that if that's an
18 interpretation then every single time that any PR
19 ever comes to the Court to try to get their
20 commission paid, if they have an attorney to help
21 them in it -- and there's an old adage in the
22 law, he who represents himself has a fool for a
23 client -- every time one comes forward then
24 they're not entitled to have the Estate pay for
25 them to do that work to have a final accounting

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1 and settlement take place. And I urge you, Your
2 Honor, that that's not how this statute ought to
3 be interpreted. That you can't say that when the
4 PR tries to settle the Estate at the end of the
5 day and one of the things that's always going to
6 be considered in that proceeding is what the PR's
7 reasonable commission ought to be. You can't say
8 they're not entitled to have their attorney's
9 fees paid in what the Court deems as reasonable.
10 Because otherwise nobody would ever get them.
11 They can't. Nobody can. Because in every single
12 final proceeding they're going to be asking for a
13 commission. That's going to be part of it. You
14 could determine some -- and there are other
15 things that were approved. You know, when we
16 came before you it wasn't just his compensation,
17 there were other expenses and bills of other
18 people involved who did things for the Estate
19 that the Court approved; doing tax returns, the
20 Collins and Lacy bills which are part litigation
21 and part having people do things for the Estate;
22 taking the personal effects and itemizing them
23 and getting them distributed and so forth. There
24 was an appraisal that had to be done on the
25 property that the Court approved. And there may

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1 be some other items that are on there. My point
2 of that is, that to say that he's not entitled to
3 any attorney's fees or expenses whatsoever in
4 connection with that proceeding I think is not
5 proper and appropriate under the statute. And
6 you may exercise some discretion to say it's not
7 all; it should be a percentage or it should be
8 whatever it is. But I -- what we're urging on
9 the Court is that the Court reconsider that
10 matter and determine, Well, the statute might
11 apply but I don't think it applies for all of the
12 attorney's fees and expenses. And you would
13 determine in your discretion what is or isn't a
14 reasonable fee in that light. The next thing
15 that we would talk about is the award of
16 attorney's fees for Moses and Brown. And in that
17 connection, what was looked at was what's called
18 the common fund doctrine. In order for
19 something to be a common fund doctrine then the
20 people have to have worked for the benefit of
21 everybody. And our argument is that based on the
22 testimony of Ms. Brown and looking at the time
23 records, they didn't come into this case to try
24 to work for everybody. They came into this case
25 to try to work for themselves. Now the ultimate

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1 result of that may in fact be that there is some
2 benefit to other beneficiaries besides
3 themselves. But there's nothing that indicates
4 that was their goal when they commenced the
5 proceeding. If we look at the time sheets -- so
6 first we would say that under that, and looking
7 to see that even now, again I refer to page 12 of
8 the Revised Return, they're asking for some kind
9 of relief on this five acres. It's not clear to
10 me what that relief is they want. But there is
11 some relief being sought on the five acres and
12 that is not anything that would benefit anybody
13 else who's involved as a beneficiary in the
14 Estate. It doesn't help the church; it doesn't
15 help the Presbyterian Home of South Carolina; it
16 doesn't help Mr. Herd; it doesn't help -- it
17 doesn't anybody else. If that relief is granted,
18 it only helps whoever gets the five acres and
19 perhaps her sister for love and affection kind of
20 a thing. But that is a motivation that has
21 nothing to do with anybody else. Looking at the
22 time sheets themselves. The time records that
23 were presented to the Court start in January of
24 2008. The petition that brought us together was
25 filed in November of 2010. And that's what was

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1 at issue before the Court was that petition that
2 was filed in November of 2010. We would suggest
3 to the Court that all of the time prior to that
4 date, and I think, you know, what we tallied it
5 up to be was about 18.3 hours, can't be related
6 to any common fund doctrine issue. And it talks
7 about pleadings in March of 2009. Well, whatever
8 pleadings were being worked on in March of 2009,
9 they didn't -- they didn't have anything to do
10 with what was before the Court when you were
11 determining what was or wasn't a reasonable
12 compensation or commission for the Personal
13 Representative. So we -- there's been no
14 explanation, nothing offered into evidence, to
15 explain how any of the time that was submitted to
16 the Court for payment that occurred prior to the
17 filing of the petition is related to the
18 petition. The last time entry was November the
19 5th of 2009. Almost a year prior to the petition
20 being filed for settlement of the Estate. So we
21 would say that all of that time from January of
22 2008 through November of 2009 should not be
23 allowed as part of any compensation. If you
24 determine, you know, that the common fund
25 applies, that time doesn't seem to have any

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1 factual basis to be related to that claim. By
2 our calculation on that time, at \$200 per hour,
3 which is what we understood the rate to be, I
4 think the Court awarded \$19,860. That's the
5 number I took out of the Order. 18.3 hours, if
6 our math was accurate, would be \$3,660. And
7 accordingly, that would reduce the figure awarded
8 to \$16,200. Again, somebody else could check my
9 math and if they found an error I would certainly
10 apologize for it. Your Honor, we also raised
11 accounting fees for Clifton Bodiford, who
12 prepared tax returns. Do you have an extra copy
13 of these, by any chance?

14 MR. SULLIVAN: Oh yeah.

15 MR. HAWKINS: Let me offer a set to Mr. Ferguson.

16 THE COURT: Is this in connection with your Motion for
17 Reconsideration or the reopening of the record?

18 MR. HAWKINS: That's a great, great question, Your
19 Honor. These two bills were previous and I don't
20 -- were either one of them on the Final --

21 MR. SULLIVAN: I believe both of them were submitted
22 for approval.

23 MR. HAWKINS: At the --

24 MR. SULLIVAN: Yeah.

25 MR. HAWKINS: In the beginning?

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1 MR. SULLIVAN: Yeah.

2 MR. HAWKINS: Mr. Sullivan believes -- I just don't
3 have it here in front of me right now. But he
4 thinks these two bills were also part of the
5 petition for settlement of the Estate which we
6 ought to be able to check that on a break or
7 something and probably dig that -- we just
8 thought it was an oversight that those particular
9 bills weren't addressed. I know that's how we
10 reacted to it at the time was, Well, it just kind
11 of got overlooked inadvertently.

12 THE COURT: Okay.

13 MR. HAWKINS: So it was not something that we were
14 asking for as part of the reopening. But I would
15 say that if we determine that it's somehow not
16 part of the Petition for Settlement that was
17 applied, then either I'd want to reopen to put it
18 in or we'd want to amend that petition in some
19 fashion to deal with that.

20 THE COURT: Okay. Well let's do this. Let's just
21 take about a two minute break and let me get
22 these two bills to the Estate Clerk on this and
23 she can be looking at the Petition for
24 Settlement. I don't think I have any of that up
25 here with me. I don't think I do.

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1 MR. HAWKINS: I think I have it in one of these many
2 boxes over here but I'm not positive.

3 THE COURT: She might' can put her hands on it quick
4 and let's just see if it's been a part of the
5 Petition for Settlement; if that helps you guys
6 any, you know, any at all.

7 MR. HAWKINS: I don't know if there's any objection to
8 them. I mean, tax returns had to be filed and
9 they were filed. Mr. Bodiford filed them.

10 MR. FERGUSON: I think that the Petition did make a
11 claim for payment to Mr. Bodiford and the Order
12 denied it. I don't recall offhand what sort of
13 documentation was provided for the claim.

14 THE COURT: So what you're saying, Mr. Ferguson, that
15 the Order -- I think Mr. Hawkins is saying that
16 it was just an oversight in some fashion but
17 you're saying the Order addressed it and denied
18 it?

19 MR. FERGUSON: I believe the Order did deny it.

20 THE COURT: Well let's just go ahead and take a real
21 short break. I'll have her look at the Petition
22 for Settlement, if that helps, and then maybe you
23 guys can review the Order and figure out what to
24 do. So everybody be at ease for a few minutes.

25 MR. HAWKINS: Thank you, Your Honor.

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1 (Off the Record)

2 MR. FERGUSON: Your Honor, I checked the Order and I
3 was incorrect that Mr. Boniford was mentioned in
4 the Order.

5 THE COURT: Okay. We have pulled the Petition for
6 Settlement and these two bills were not attached.
7 So for whatever help or -- that gives you --

8 MR. HAWKINS: I wonder if they was --

9 THE COURT: The Petition for Settlement that Ms. Coker
10 pulled out for me and she says it's not a part of
11 it, so how do you want to deal with this then?

12 MR. HAWKINS: I guess we'll offer them in now, Your
13 Honor.

14 THE COURT: Okay.

15 MR. HAWKINS: I did find -- there was a -- what's it
16 called here? An Amended Proposal for
17 Distribution.

18 THE COURT: Wait a minute. Mr. McElveen is not here.
19 Do we need to wait on Mr. McElveen?

20 MR. HAWKINS: I guess we should.

21 THE COURT: Can you go out and check -- let's just be
22 at ease for just a moment.

23 (Off the Record)

24 THE COURT: I mean, I guess the bottom line is, is
25 there really an issue with this? I mean,

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1 reportedly paid somebody to do some tax returns
2 for the Estate. Is there a problem with this?

3 MR. FERGUSON: You know, they have some stuff they say
4 they requested to be ruled on and it wasn't ruled
5 on. We had some stuff that we requested to be
6 ruled on that wasn't ruled on. And, you know, if
7 we could agree that those things which weren't
8 ruled on can be ruled on, then that solves the
9 problem.

10 THE COURT: Okay.

11 MR. HAWKINS: I'm not sure what that means, other than
12 -- I think one has to file a Motion to Preserve
13 an issue that wasn't covered in the original
14 Order to then be ruled on. We filed a Motion for
15 that very purpose.

16 THE COURT: Well, let's do this then. Let me go ahead
17 and get these marked and I will consider these as
18 part of your Motion to Reopen the Record.

19 MR. HAWKINS: That's fine.

20 THE COURT: That be -- would that be okay?

21 MR. HAWKINS: Yes sir, Your Honor. I do want to note
22 that the Amended Proposal for Distribution was
23 filed January 18th, 2011.

24 THE COURT: All right. Well now --

25 MR. HAWKINS: And it references -- I don't know if

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1 that's what you're --

2 THE COURT: No. No. What's been handed to me was the
3 original or the first Proposal or Petition for
4 Settlement.

5 MR. HAWKINS: Let me show this to Mr. Ferguson. This
6 is a clocked copy, your Honor. It's upside down
7 for you. That's January 18th of 2011.

8 THE COURT: Okay. Yeah.

9 MR. HAWKINS: And it does show the \$1,000. It does
10 not show the \$400 and some odd dollars. But
11 we're happy to offer them now --

12 THE COURT: Yeah.

13 MR. HAWKINS: -- in any fashion.

14 THE COURT: I'm going to go ahead and have these two
15 marked and then I will just consider these, if
16 there's not an agreement, consider these as part
17 of your Request to Reopen the record, Mr.
18 Hawkins.

19 MR. HAWKINS: Thank you, Your Honor.

20 THE COURT: Wait one minute.

21 MR. HAWKINS: Your Honor, also subsequent to the
22 hearing in the matter we received, or the Estate
23 received, two bills from the Court Reporters for
24 transcription of those proceedings. One is dated
25 -- well, it doesn't have a date but it says for

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1 the date -- for the hearing that took place on
2 February 21st, 2011. And this bill is from Shore
3 Court Reporting for \$723.20. And we also have
4 one dated May 27th, 2011 from Garber Reporting
5 Service that's for the hearing on February 2nd,
6 2011 in the amount of \$5,000 -- I'm sorry -- the
7 amount of \$1,592.10. And we would like to submit
8 those as, I suppose, under our Request to Reopen
9 the hearing.

10 THE COURT: Okay.

11 MR. HAWKINS: You did rule -- there were appearance
12 fees from the Court Reporters that you address in
13 your Order. You identify them as something that
14 you're being requested to grant. You --

15 THE COURT: These have not been paid by anyone?

16 MR. SULLIVAN: Of the 12 -- how much is the -- the one
17 of Garber Reporting, \$875 was the original
18 appearance fee; that's been paid. So that would
19 -- that's not due. So that amount's to be
20 reduced by \$875.

21 THE COURT: All right. Is \$875 a part of the \$1,592,
22 or something separate?

23 MR. SULLIVAN: That's my understanding. You back out
24 the \$875.

25 THE COURT: You back out the \$875?

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1 MR. SULLIVAN: Right.

2 THE COURT: Okay. And on Shore, has that been paid?

3 MR. SULLIVAN: That's a new bill. That has not been
4 paid. We just got it yesterday. Her appearance
5 fee of \$285 has been paid.

6 THE COURT: And do we know whether or not the \$285
7 should be backed out of \$723.20?

8 MR. SULLIVAN: We do and she told me no. That's the -
9 - that amount is due and owing, she says.

10 THE COURT: All right. Everybody be at ease for just
11 a moment. We'll mark Garber as 4 and Shore as 5.

12 COURT REPORTER: Do you mean 5 and 6?

13 THE COURT: We did not need to mark this one. This
14 was just sitting up here.

15 COURT REPORTER: Okay.

16 THE COURT: I'm just going to pull off your tab here.

17

18 COURT REPORTER: Okay.

19 THE COURT: And the appearance fee on Garber was at
20 eight what? 25? 75? What was that?

21 MR. SULLIVAN: \$875 was the appearance.

22 THE COURT: 875.

23 MR. SULLIVAN: Yes.

24 (PR Exhibit Numbers 4 and 5 were marked for
25 identification purposes.)

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1 THE COURT: Okay. Mr. Hawkins.

2 MR. HAWKINS: Thank you, Your Honor. Within the

3 Motion for Reconsideration, as I made some

4 comments to the Court about our belief that the

5 statute on fees and expenses for prosecuting or

6 defending any proceeding, we think should be

7 reimbursed as to Code Section 62-3-720. The

8 Court considered and denied the expert witness

9 fees for Mr. Major and Mr. Wilton. But that

10 would be part of our request of the Court to

11 reconsider whether or not portions of those fees

12 should be. Because as we understood the Court's

13 ruling initially, it was that none of those --

14 none of the fees or costs or expenses of the PR

15 to have the hearing came within the Court's

16 interpretation of that statute because the

17 hearing was largely to fight about his

18 commissions. So we -- I want to make sure that's

19 clear that we're asking that -- for that relief

20 as well. That those expert witness fees be paid.

21 And I think with that, Your Honor, the last issue

22 that I would believe and want to address, and

23 again, relying on the matters that we

24 specifically raised in the Motion itself, that

25 we're not abandoning any of those issues, is the

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1 transcript of the two hearings. And we contacted
2 the Court Reporter Services who advised us that
3 their belief is if Ms. Moses and Ms. Brown want a
4 copy of the transcripts --

5 MR. FERGUSON: Objection to the hearsay that he's
6 attempting to introduce into the record.

7 MR. HAWKINS: It's not in the nature of hearsay; it's
8 just a position of the legal argument, Your
9 Honor. Who owns those transcripts? Who has the
10 right to have them? We're advised we don't have
11 a right to give somebody else a copy of them.

12 THE COURT: Right.

13 MR. HAWKINS: And that's been my experience in 28
14 years or so of practicing law. Court Reporters
15 take depositions. They appear in hearings. They
16 are wherever they are. If the litigants want
17 copies of their transcript, you're supposed to go
18 to them and get them from them. That's how they
19 make their living. That's their livelihood. And
20 if we give it to them, then we're breaching that
21 claim and relationship that Court Reporters have
22 that, you know, they create transcripts and if
23 people want copies of them, they're supposed to
24 buy it from them.

25 THE COURT: Okay. So the dispute with respect to the

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1 transcripts is exactly what?

2 MR. HAWKINS: Well, Mr. Ferguson can explain it. Our
3 belief is, he thinks that we should run off a
4 copy and give him for free a copy of the
5 transcripts of the hearings. And that's my
6 understanding of his position.

7 THE COURT: Okay. All right. Okay. All right.
8 Anything else -- and I'll be glad to give you a
9 little rebuttal time. But as far as your main
10 argument, is that it?

11 MR. HAWKINS: Yes sir, Your Honor. Again reserving,
12 you know --

13 THE COURT: Right.

14 MR. HAWKINS: -- anything I didn't address.

15 THE COURT: Right. But that's addressed in your
16 Motion and certainly will be considered. One
17 second, Mr. Ferguson. Okay, Mr. Ferguson, we'll
18 be glad to hear from you, sir.

19 OPENING - MR. FERGUSON:

20 MR. FERGUSON: Okay. Let me elucidate on the
21 transcript issue first.

22 THE COURT: Okay.

23 MR. FERGUSON: The rule is that if an attorney is
24 going to give a Judge something for him to
25 consider at a Motion hearing, he has to give a

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1 copy to opposing counsel. Now whether he runs it
2 off himself, he gets it from the Court Reporter,
3 you know, that's a side issue that really doesn't
4 make any difference. I do note that Daryl ran
5 off some pages and has handed them up to -- he
6 attached them to his Motion. I doubt that he got
7 those from the Court Reporter so that sort of
8 undercuts his argument that it's impossible to
9 run off your own copies. But the fact is that
10 both ethically and from a due process standpoint,
11 if you're going to give a Judge something you
12 have to give a copy to opposing counsel and it's
13 no answer to say, Go fish, go get your own copy
14 of whatever it is. That's just not the law. Now
15 then. There's a saying among lawyers that you
16 try every case three times; the first, the way
17 you intended to try it; second, the way you did,
18 try it; and third, when you're back at your
19 office saying, Darn, I wish I had done this. We
20 would never get anywhere in the law if you were
21 continually retrying cases because the attorney
22 decided there was something else that he needed
23 to do. You don't get do-overs in the law.
24 Assuming for the sake of argument the Court has
25 the power to reopen the record; there has been no

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1 substantial reason presented to the Court to
2 exercise its discretion in that fashion. It
3 would cause a new hearing with new testimony.
4 You obviously can't put in an Affidavit as
5 evidence so he would have to put Ms. Stomski on
6 the stand. We would have to prepare for her. We
7 would have to have other witnesses. And so this
8 is a can of worms that he proposes to open. It's
9 not just a matter of putting a few papers more
10 into the file; it's a matter of cranking up the
11 hearing again. And he says that's not going to
12 prejudice anybody but it's going to delay the
13 distribution to the beneficiaries which everybody
14 wants, and it's also going to increase the
15 attorney's fees and costs in this case, which are
16 already high enough. So, we would be prejudiced
17 by that. We oppose it. As to the Sullivan
18 Affidavit that he wants to put in, that's not
19 going to change the Court's ruling, I don't
20 believe. The Court -- looking at everything that
21 he had done and they have said that he testified
22 on some of these matters that he didn't put
23 papers on the record on so, Your Honor, had some
24 sense of what he was doing in the Estate. And,
25 Your Honor, wound up giving him ten percent of

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1 the Estate which was exceedingly generous. I
2 can't imagine that, Your Honor, upon receiving
3 further paperwork to bolster what he had
4 testified to before would give him more than the
5 ten percent he has already received. With regard
6 to Ms. Stomski, the Affidavit, as I said in my
7 Return is based on what the PR told her. So her
8 conclusions cannot be very far from what the
9 position of the PR is because that's all the
10 information she had. To the extent she said that
11 a partition action would be a good thing, that
12 does not foreclose the possibility of someone
13 else bringing a partition action. Which
14 certainly could have done -- been done a whole
15 lot more cheaply and easily than having the PR do
16 it. The PR claims that he was doing this not for
17 the substantial payment that he received by
18 stirring up all this litigation, but rather out
19 of concern for what the Testatrix wanted. Well,
20 as the record shows, the Testatrix had a couple
21 of years before her death when these issues were
22 raised and she didn't bring a partition action
23 herself, so it seems unlikely that this was one
24 of her priorities. As to the idea that the PR
25 under the Will can do all acts and he has great

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1 discretion, it's worth noting first of all that
2 the PR himself wrote this Will that gave himself
3 all these powers. And then proceeded to use
4 these powers in a way that substantially
5 benefitted himself and did not bring a benefit to
6 the Estate. There was a statement that trying to
7 make a difference -- a distinction between people
8 who claim under the Residuary clause of the Will
9 and people who had a direct bequest under the
10 Will, that's just not a valid distinction. The
11 law is that real property descends immediately
12 upon the death of the Testatrix. And to whom it
13 descends is determined by the Will. It doesn't
14 make any difference whether it's under the
15 Residuary clause or whether it's a direct
16 bequest. With regard to the five acres that I
17 mentioned that the Court hadn't ruled on, we're
18 not asking for five particular acres. We're
19 asking for an adjustment in what Mary -- what
20 Martha Brown would receive. And in that regard,
21 I would point out that you've got, from the legal
22 standpoint, you've got two issues here. One is,
23 does this Court have jurisdiction over the case?
24 And clearly it does because of the Motion to
25 Alter or Amend. The second question is a due

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1 process question of Notice to the opposing side
2 about an issue that's going to be raised at the
3 hearing. And our Return to Motion took care of
4 that. I would like for the Court to take a look
5 at Heinz versus Heinz. Because in that case the
6 Court clearly said that an issue that is raised
7 in a Reply to a Motion is something that the
8 Court can consider to determine what issues are
9 before the Court. I have another case here
10 Winters versus Fiddie, and although this was a
11 different subsection of Rule 59, it says that,
12 After giving the parties Notice and opportunity
13 to be heard on the matter, the Court may grant a
14 Motion for a new trial timely served for a reason
15 not stated in the Motion. So from the standpoint
16 of the jurisdictional argument, we are -- the
17 Court can entertain these issues. Because it has
18 jurisdiction by virtue of the post trial Motion
19 and then the Return gave Notice of these extra
20 issues that we wish to be considered. On the
21 subject of Mr. Copeland and his option. He
22 never, never, attempted to exercise the option
23 that was granted to him under the Will; which was
24 the right to purchase what the Testatrix owned.
25 And that right had an eight month time period

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1 during which he could exercise it. He never
2 wanted to exercise that. He always wanted to say
3 I want -- I don't want to buy her entire
4 interest; I want some lesser part of it. So it
5 took a rewriting of the Will for there even to be
6 an issue about this option. And that's what the
7 Personal Representative did. The PR says it's
8 the fault of the beneficiaries that he filed the
9 Partition action but if he was trying to benefit
10 the beneficiaries he wouldn't have spent the huge
11 amount of time that he did on this Estate with
12 creating so many issues. The beneficiaries
13 themselves could easily have filed their own
14 Partition action. Partition was in no way
15 dependent on the PR himself making it happen.
16 His focus for himself and in the employment of
17 his attorney was to benefit himself and not the
18 Estate. He's already -- Your Honor has already
19 granted him \$51,000. There is no way that that
20 is insufficient compensation for what he did.
21 With regard to the common fund, there is a
22 benefit to everybody as the results that you look
23 at to see if there -- to the extent to which the
24 common fund can apply and it clearly does in this
25 case. With regard to when I entered the case, he

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1 is saying that only when this particular phase of
2 the Estate began counts. But in fact the PR
3 filed his Partition action at the end of 2008 and
4 I filed my Motion to Dismiss in that action in
5 February of '09. So there was a lot going on
6 with the Estate. And eventually that action was
7 dismissed and I think that the entire Estate,
8 that the beneficiaries benefitted from that
9 because it was just one less thing that the PR
10 was able to charge for. What we have here is the
11 PR trying to have a second bite of the apple.
12 The intent of 62 1308(d) is -- because I think we
13 all realize that what they're trying to do is to
14 give themselves a better record for Appeal. And
15 that's the -- the intent of the statute is that
16 what happened in the lower Court is what you
17 ought to be appealing on and you shouldn't be
18 tacking on other things. And this idea of using
19 Rule 59 to create new issues like the -- his
20 talking now about things that are in my Affidavit
21 for attorney's fees; he raising new issues about
22 what was in that Affidavit and that's just not
23 proper in a Rule 59 Motion. It's important to
24 remember that the PR in this case is an attorney.
25 And in one of his letters, which came in as

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1 Exhibit C11 he said, quote, "I am the Personal
2 Representative of the Estate; therefore, my
3 fiduciary duty and obligations are to the
4 Estate." Close quote. And he was correct in
5 that. But that's not the way he handled the
6 Estate. He consistently maximized the benefit to
7 himself at the expense of the Estate. He spent a
8 huge amount of money and time valuing personal
9 property for an Estate that was not taxable and
10 that gave no benefit to the Estate but did
11 increase his commissions. He refused to give a
12 Deed of Distribution to the heirs; which would
13 not have produced a commission. And instead,
14 insisted on a contested Partition action. He
15 hired his own law firm to provide legal services
16 for the litigation he stirred up. He increased
17 his fees by a huge amount of unnecessary work.
18 He in essence rewrote the Testatrix's Option to
19 Chuck Copeland to insure that the Estate could
20 not be settled quickly and easily; which again
21 increased his compensation. He charged for work
22 he performed even before there was an Estate.
23 Before he could arguably say this was Personal
24 Representative work. He took advantage of the
25 powers that he gave himself in the Will he

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1 drafted for a trusting relative to loot the
2 Estate. And he attempted to hide his looting of
3 the Estate by dropping a vast quantity of
4 material on the heirs more than three years after
5 his appointment and not long before he sought to
6 be discharged. And it was only after we
7 Subpoenaed the Collins and Lacy charge sheets
8 that it became clear exactly what he was up to
9 and it took a great deal of time to go through
10 those. We maintain that the Court erred in
11 finding that the PR acted in good faith because
12 of all those things that I have listed. Because
13 the record in this case shows that his good faith
14 is not even a close question. He took an Estate,
15 which the Court found could have been settled
16 quickly and easily and cheaply, and turned
17 himself all the way into paying himself \$93,775
18 and then had the nerve to come into Court and
19 demand \$13,500 more. Of course the Court didn't
20 let him take that whole amount but that's what he
21 was asking for. In addition to that, he approved
22 payment to his law firm of almost \$26,000;
23 including 205 hours of paralegal time which this
24 Court said was incomprehensible. I certainly
25 agree with that. A Partition action in Laurens

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1 County, if the heirs had brought it, would have
2 cost about maybe \$5,000. The heirs could have
3 handled this on their own much more cheaply and
4 efficiently but instead the PR blundered about
5 for almost 470 hours for this uncomplicated
6 Estate to boost his compensation. At trial the
7 PR in essence said that he pulled numbers out of
8 the air for him compensation and charged what he
9 thought he deserved. Post trial he's tried to
10 undo the damage from his testimony by claiming
11 that he used the fee factors that lawyers use;
12 even though he testified that other members of
13 his law firm were doing the legal work and he
14 hired other people to do the tax work. So all
15 this expertise he had really didn't come into
16 play. Most of the work he was charging for,
17 which was unnecessary to begin with, was simply
18 scut work which did not require any expertise.
19 And to the extent he was representing himself as
20 a lawyer, he's not entitled to compensation.
21 Having looted the Estate, the PR is demanding
22 payment of his attorney's fees in defending
23 himself. If he had not violated his fiduciary
24 duty to the Estate, he would not have had this
25 expense and the Estate would not be forced to

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1 subsidize his malfeasance. He is likewise not
2 entitled to avoid returning to the Estate at
3 least some of the money he took to pay himself
4 for unnecessary work. The PR has not been
5 underpaid. He has been overpaid and the Court
6 should reduce his fee to an amount which clearly
7 reflects the benefit he conferred upon the Estate
8 which would not exceed the 500 -- the five
9 percent statutory cap in light of the huge extra
10 expenses that's he caused the Estate. Even in
11 the absence of a finding of bad faith the Court
12 implicitly found that the PR committed
13 misfeasance and was incompetent in the way he
14 administered the Estate. This cannot be a basis
15 for increased compensation. I've already dealt
16 with the five acres. Again, we're not asking for
17 a specific five acres. We want the property sold
18 to Rowland Milam but Ms. Brown is entitled to
19 some adjustment in what she receives from the
20 Estate to take care of that.

21 THE COURT: Well that was one of my questions. Help
22 me out. I don't remember or have any
23 recollection of a five acres issue. So tell me
24 about this five acres.

25 MR. FERGUSON: Okay. There were -- all these people

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1 who owned the real property are related.

2 THE COURT: Right.

3 MR. FERGUSON: There was at one point a property swap
4 and one of the people -- was it Marion Kay?

5 MS. BROWN: No. Mildred.

6 MR. FERGUSON: One of the -- one of the people --

7 MS. BROWN: The widows. The widows.

8 MR. FERGUSON: One of the widows. One of the relative
9 who owned part of the property asked for and
10 received five acres as part of a land swap or an
11 Agreement. And there's a -- the deed into her is
12 in the record and it shows that this was sort of
13 a Partition. You can look at the deed. And in
14 exchange Ms. Brown was to receive a like amount
15 of the land. And she never received that. So
16 she asked the PR about receiving that and he was
17 not amenable to giving her what she was due. So
18 that was part of what we were claiming at the
19 hearing.

20 THE COURT: She was due a five acre piece under the
21 Will or -- I mean, how would she do this?

22 MR. FERGUSON: No. This was -- this was an -- this
23 predated the Will. This was just an Agreement
24 that the people who owned the property had at
25 that point to -- so that -- there was one person

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1 who wanted five acres out of this undivided
2 parcel. So five acres were cut off for her.
3 They were separated out and deeded to her as part
4 of this Agreement. And then at some point
5 subsequent Ms. Brown was supposed to receive a
6 like amount of land and she never did.

7 THE COURT: All right. This was an Agreement reached
8 after Ms. Kay died?

9 MR. FERGUSON: No. This was --

10 THE COURT: All right. So --

11 MR. FERGUSON: -- before.

12 THE COURT: All right. So how --

13 MR. FERGUSON: If you look in the record for --

14 THE COURT: I'm just -- it shows my ignorance but, I
15 mean, how -- what authority or jurisdiction do I
16 have over an Agreement that was entered into by
17 whomever prior to the death of the Decedent?
18 Now, I guess if it was an Agreement that was
19 reached with the Decedent possibly I could get
20 involved in that. But I'm just -- I'm confused.
21 Put it that way.

22 MR. FERGUSON: Okay. As I understand it, up stream
23 from Ms. Kay, there were some brothers who died,
24 and ten acres were set aside for each of them.
25 And the two people that we're dealing with were

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1 the heirs of one of the brothers. So you had
2 this ten acres. And one got her share. The home
3 place, it was. And the other, Ms. Brown, never
4 got her share.

5 THE COURT: Okay. Was there any evidence at trial on
6 this?

7 MR. FERGUSON: Yes, sir. If you look at the deed for
8 one thing into the woman who got her five acres,
9 and you look at the Consideration, and it shows
10 that it's a partition.

11 THE COURT: Okay. So there was --

12 MR. FERGUSON: And there was testimony by Ms. Brown.

13 THE COURT: And there was testimony and the evidence
14 presented on this five acre issue and basically
15 you're saying that, for whatever reason, the
16 Court omitted dealing with it?

17 MR. FERGUSON: Yes, sir.

18 THE COURT: In its final decision?

19 MR. FERGUSON: Yes, sir.

20 THE COURT: Mr. Hawkins, do you acknowledge that there
21 was -- you may not agree to what they're
22 requesting, but do you acknowledge that there was
23 some evidence, some testimony, some evidence
24 about her, Ms. Brown's desire to receive a five
25 acre tract?

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1 MR. HAWKINS: The context of that, Your Honor, was the
2 whole -- goes back to why the PR filed a clear
3 title action. Is this five acre claim that pre-
4 dates the Will; it's not mentioned in the Will.
5 It probably had statute limitations. It's got
6 all kinds of bugs and wiggles on it and that's
7 the context that we brought it up in the thing to
8 say, Weren't you contending you're entitled to
9 five acres of land? Wasn't that a reason why a
10 clear title action needed to be filed?

11 THE COURT: Okay.

12 MR. HAWKINS: So the only testimony I recall about it
13 is that. I do not believe there is a word of any
14 request for relief at the Petition for Settlement
15 hearing of what I'm hearing now. And I'm still
16 not even hearing -- well how much money do they
17 want? Whatever I - there's zero evidence on
18 this, that I'm aware of, that there is any
19 entitlement to Ms. Brown of anything.

20 THE COURT: Okay.

21 MR. FERGUSON: Your Honor, I think aside from looking
22 at the evidence in the hearing, I would ask you
23 to take judicial notice of the pleadings in the
24 action that was brought by Mr. Sullivan for
25 Partition, which is 2009-CP-30-004; and that was

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1 the first time we raised the issue of this land.
2 And again, we did raise it at the hearing as
3 well.

4 MR. HAWKINS: I add, Your Honor, that another thing
5 Ms. Brown testified to at the hearing was that
6 this consent of the sale to go to Rowland Milam,
7 I'm happy to hear that they say they're in favor
8 of it because it already happened. And that sale
9 has taken place and that money was deposited in
10 the bank, and she testified that Mr. Milam was
11 going to deed her five acres of land. And I
12 think that this issue is not properly before the
13 Court. Has not been properly procedurally
14 raised. There is no pleading I've ever seen that
15 asked the Court to change what any of the heirs
16 are going to receive and to adjust Ms. Brown's
17 receipt by any measurement. And I'm not even
18 hearing it now. I'm not hearing anybody tell
19 you, Judge, what she ought to get is an extra
20 \$50,000. Or \$5,000. Or \$5. I just think it's
21 utterly procedurally inappropriate.

22 THE COURT: Well, what I want to do is I'm going --
23 I'll go back through the testimony. One thing I
24 really was very careful of, I wanted to make sure
25 that I addressed each issue. And certainly there

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1 is a disagreement whether I addressed it
2 correctly or not in making my decision. But I
3 did really was very careful to make sure that I
4 ruled on each issue and I just don't recall this
5 five acres being an issue. However, I'll go back
6 through my notes, I'll go back through the
7 testimony and I'll deal with it. I just don't
8 remember that ever being something that I had to
9 make a decision on.

10 MR. FERGUSON: But the final thing, Your Honor, is we
11 are requesting an attorney's fee award for this
12 hearing. The PR is persisting in his attempt to
13 deplete the Estate by claiming thousands of --
14 tens of thousands of dollars for himself and for
15 -- also for his attorney. But it's no more
16 proper now than it was when the Court looked at
17 this before. He has, Your Honor, found that this
18 case could have been settled quite simply by just
19 doing a Deed of Distribution and handing out the
20 personal property, which the evidence showed had
21 been carefully labeled by the Testatrix as to who
22 was to get what. But instead, the PR has
23 expended over 400 hours and he's asking for more
24 time on -- more payment on top of that. So we
25 are the chief impediment to his further depleting

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1 the Estate and we feel that we are entitled under
2 the common fund doctrine for further payment
3 because we are benefitting the Estate.

4 THE COURT: Okay. I'm going to go ahead and have your
5 Fee Affidavit marked, Mr. Ferguson, as
6 Defendant's Exhibit 1.

7 COURT REPORTER: Defendant's or Plaintiff's?

8 THE COURT: Beneficiary will be fine.

9 (Beneficiary Exhibit Number 1 was marked for
10 identification purposes.)

11 MR. FERGUSON: Your Honor, we haven't asked the two
12 others who have appeared; the attorney for Bart
13 Heard and then the church, if they have anything
14 to say.

15 THE COURT: Right. And I intended to ask them that
16 after -- I wanted to make sure I heard completely
17 from you two guys before I give them an
18 opportunity to tell me anything they want to.
19 Anything in rebuttal, Mr. Hawkins?

20 OPENING - MR. FERGUSON:

21 MR. HAWKINS: Yes, Your Honor. Several items. A lot
22 of things were stated for which there's no
23 evidence in the record to support the contention.
24 Let's talk about first this issue of whether or
25 not any relief can be sought by Brown and Moses

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1 on the Plaintiff's Motion for Reconsideration.
2 And the two cases were given to the Court. The
3 first one was Heinz -v- Heinz, a Family Court
4 action. At best, this case dicta says that
5 neither the Movant nor the husband in his Reply
6 brought a particular issue before the Court.
7 It's the only reference to a Reply ever having
8 anything to do with new issues. It gets nothing
9 more than dicta in this opinion. It is not the
10 law of South Carolina. It then goes on to say
11 that what the Court is puzzling over -- and this
12 is only two pages out of the opinion, by the way,
13 I don't really know what the rest of it might
14 have to say, but we've only been presented with
15 two pages. But the rest of what it talks about
16 is whether or not the Court, on its own
17 initiative, can make a decision to grant a new
18 trial on matters that were not raised in the
19 Motion for Reconsideration. And that's what this
20 opinion is for. That's what it holds for, is
21 whether or not -- I'm familiar with that part of
22 the opinion. That it holds for a proposition
23 that a trial judge, who's hearing a Rule 59
24 Motion, can they on their own initiative sua
25 sponte determine to grant a new trial on some

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1 matter that wasn't brought before in the Motion.
2 And that's what it holds for. It does not hold
3 for the proposition that a party who is
4 responding to somebody else's Motion for a new
5 trial has an ability to seek relief of their own.
6 It doesn't hold for that; it doesn't say that.
7 The closest it comes is to say that neither party
8 raised it in the pleadings they put in front of
9 the Court. The Winters -v- Fiddie case is a,
10 again, a question about whether or not a new
11 trial can be granted. This is not on the
12 volition of the Trial Court on its own, but if a
13 party files a Motion for a new trial. And then
14 at that hearing on the Motion for a new trial
15 they raise another reason why they should get a
16 new trial that's not in their Motion; can you
17 grant that? And it doesn't say that the party
18 who didn't file a Motion for a new trial can now
19 come in and raise issues and do whatever. The
20 issue in that case is whether the moving party,
21 by having done so, did they preserve jurisdiction
22 of the Court to grant them additional relief?
23 Neither of these cases holds for a proposition
24 that a Respondent to someone's Rule 59 Motion has
25 themselves therefore somehow preserved

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1 jurisdiction of the Court for some issue that
2 they want to have raised. Neither case says
3 that, nor is there any other case I'm aware of in
4 South Carolina that holds for that proposition.
5 So I would say that that's wrong. In terms of
6 prejudice that they have argued if you allow new
7 evidence, whether it was Ms. -- well, Ms. Stomski
8 is what was specifically addressed by Mr.
9 Ferguson. And the only two issues of prejudice
10 that he raised are, one, that it would delay some
11 ultimate conclusion of this matter. And that
12 two, they might incur additional attorney's fees
13 and costs. In every single Motion that's ever
14 been filed in any Court in the State of South
15 Carolina where something extra is now going to
16 happen, those same two issues exist. Now there's
17 going to be some further delay and now somebody's
18 going to have to expend a little bit more money
19 to be involved in the case. And our Courts have
20 routinely said, That's not prejudice. Show me
21 something that prejudices the merits of your
22 claim, not a delay for the Court to figure out
23 what's justice and what's the right way to handle
24 the claim. And not that you might then incur
25 some additional attorney's fees. It doesn't

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1 qualify as prejudice. So we're back on that
2 notion too; what is the just thing to have
3 happen so that the Court issues an Order on all
4 of the relevant facts that you ought to take into
5 consideration. And, you know, I've made those
6 arguments earlier as to why I think these two
7 matters ought to be considered. I think the same
8 could be said for the various bills that we've
9 submitted that we're asking the Court to
10 consider. He mentions that had the Personal
11 Representative in attempting to deal with the
12 wishes and desires of other beneficiaries under
13 the Estate that we were raised to him, for
14 example the church, originally told him they
15 didn't want cash. Then they had a lawyer, Mr.
16 Fuller, you may recall some of that testimony or
17 not, that conveyed to Mr. Sullivan, there was
18 some correspondence about it, that they didn't
19 want to take land, that land is a pain. You
20 know, land requires the things we've talked
21 about. You then got to pay taxes on it. You've
22 got worry about liability for it and so forth.
23 They wanted -- and later, we admit later, much
24 later, that the church seemed to change its
25 position on that. And said they wanted peace.

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1 They don't want this fight to go on because it is
2 a small church and it's not a lot of people. And
3 all this land is family and people are related
4 either by long-term friendships or blood
5 relative. Mr. Ferguson says that they,
6 theoretically, meaning the other Beneficiaries,
7 had there been a Deed of Distribution -- well,
8 they could have brought a partition action. And
9 they could have done it more easily and less
10 expensively. Well let's talk about what the
11 Court's heard before. Bart Heard's a police
12 officer and he's got a ten percent interest in
13 whatever comes out of here. How rational and
14 reasonable is it that Bart Heard would have then
15 gone out, hired a lawyer and filed the partition
16 action so that he could convert this property
17 into cash where he could get his share? And I
18 submit that that's ridiculous for Mr. Ferguson to
19 sit here and try to argue to you with a straight
20 face that these other heirs could have come in
21 and had a partition action and done it more
22 easily. Mr. Sullivan knew Ms. Kay. He knew her
23 for years and years. He had been her lawyer and
24 there was no one in a better position to know
25 what she desired to see happen and how she wanted

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1 her chosen beneficiaries to be after all this was
2 over with. And he determined in his discretion
3 that that wasn't in those people's best -- that
4 wasn't what she wanted for them. She didn't want
5 a Bart Heard to have to go out and hire a lawyer
6 to try to fight these folks over stri- -- when
7 they have never, ever agreed to a Distribution
8 with anybody. A partition. It hasn't happened.
9 Briefly on the common fund doctrine. You know,
10 we're still sitting here right now listening to
11 some kind of an argument about this five acres of
12 land. It is confusing to everybody. It was
13 always confusing to Mr. Sullivan. Where are you
14 getting this claim from? And it was not
15 articulated to you moments ago when you asked,
16 Well, explain to me where the five acres interest
17 comes from. And you hear this, Well, there were
18 some brothers and they were going to do this
19 other thing and I think there's a deed. And
20 that's all you ever get. You never get a clear
21 cogent argument about where are the pieces of
22 evidence that support this claim? But they make
23 the claim. And they've never given up the claim
24 and, you know, here we are in January of 2012
25 still not abandoning that claim. And I argue to

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1 you that that is the best evidence there is in
2 this case, that Mr. Sullivan was doing the right
3 thing when he exercised his discretion to try to
4 bring a partition and turn it into cash, cause it
5 was never going to go away. Despite that this
6 claim's been around for like 30 years, according
7 to them. How could it even survive a statute of
8 limitations argument. But all that as it be,
9 somebody needed to clean it up and he tried to do
10 it. The results -- I guess the last thing I want
11 to talk about is the arguments about, How do you
12 determine what's a fair commission or not? Where
13 do you compute that? And there's an allegation
14 that somehow after the hearing for the first time
15 Mr. Sullivan has tried to make some claim about
16 an analogy to attorney's fees. And they don't --
17 I don't think that's what he's saying, however,
18 that it's an analogy. That's what we say. He
19 says he's trying to get paid for attorney's fees.
20 And he's cited cases in his Brief about a person
21 who does legal work for themselves can't get
22 attorney's fees. It's mis-perceived throughout,
23 and even now, if that's his belief, is if what
24 we're asking for for Mr. Sullivan is an award of
25 attorney's fees for work he did as a lawyer.

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1 That's not what we've ever tried to argue. And
2 it's not what Mr. Sullivan testified to when he
3 was on the stand. What he talked about was, when
4 it came time to determine what's a reasonable and
5 fair commission. What is it that I should
6 receive for being the Personal Representative?
7 There is no South Carolina case that tells us.
8 If there was, we wouldn't be here. We'd all be
9 looking at that case and saying here's the case
10 in South Carolina that defines -- here's the
11 mathematical formula that you follow to determine
12 what a Personal Representative's commissions
13 ought to be. There is no such case. There is no
14 statute that tells us that. So -- unless, you
15 know, you don't have a Will that addresses it and
16 then we have a statute that tells you five
17 percent but even then it talks about in special
18 circumstances you might get more and so forth.
19 What Mr. Sullivan has testified to, what we have
20 tried to advocate on his behalf throughout, is
21 that when it came time to determine what is a
22 reasonable compensation for the time and the
23 effort, he tried to look at all the things he
24 could find. He looked at South Carolina law. He
25 talked to other lawyers who were thought of as

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1 having expertise in the area of Estate and
2 Probate. He talked to Professor Allen Medlin at
3 the University of South Carolina who teaches that
4 course and has a respected reputation among the
5 Bar for having knowledge in the area. He talked
6 to Mr. Massey out of Greenville. He looked at
7 statutes from other states to see how's it dealt
8 with in other states. Because our statute wasn't
9 clear. And he found some references in a Florida
10 statute that talked about an actual formula you
11 could look at. Based on all of those things he
12 then tried to look at, in addition, what are the
13 factors that courts look at when they decide to
14 make an award of attorney's fees? And he only
15 looked at it for purposes of an analogy. And
16 when we were here before in front of the Court,
17 that's what I asked him that on the stand; you're
18 not saying this is it, you're saying here's a way
19 to look at it. And that's what we say today.
20 It's just a way to look at it. It's to take
21 those factors that are considered when a Court
22 looks at attorney's fees and say, what are the
23 things we look at? Well how long did the
24 relationship go on? Here it's a long time. What
25 was the result that was obtained? And here I

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1 think the Court recognized in his Order it was a
2 great result on the sales price on the land. And
3 we've talked about all those factors in the
4 Brief. But what I'm trying to make clear is, Mr.
5 Sullivan has never said I should be paid as a
6 lawyer for all of my hours at my normal hourly
7 rate. But that seems to be the argument of Brown
8 and Moses, that that's somehow what he's saying
9 is that he should be paid an attorney's fee for
10 all of his time in the case and I want to make
11 clear that's not what he's ever asked for. It's
12 not what we've attempted to advocate on his
13 behalf. The final item would be this Application
14 for Attorney's Fees, or however we would term
15 that. There are -- I guess I'd want to perhaps
16 examine Mr. Ferguson on his Application. We
17 didn't do that before. The prior time he says
18 that we've raised some late objection to his
19 prior request for attorney's fees. But you may
20 recall that request came just like this one does,
21 at the end of all the hearing. And, you know, we
22 looked at it to see what was there and we had
23 issues with it and when the Court issues its
24 Order we raised those issues. I don't want to
25 get burned twice in the same way. If I'm

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1 supposed to take some action on it when it gets
2 handed to me, then I want to take that action on
3 it. I'm happy to examine him on it now. There's
4 time in here that he spent fooling around with
5 the Appeal and, you know, Your Honor, we had a
6 phone conversation with you, Mr. Ferguson and I,
7 at some point after that and you said, Well, the
8 Appeal wasn't timely filed so we're doing
9 whatever and I disagreed with you.

10 THE COURT: Well I think -- I think you guys corrected
11 me though; did you not?

12 MR. HAWKINS: Well I --

13 THE COURT: I made that statement.

14 MR. HAWKINS: You know what, I disagreed with you and
15 so -- both of us did.

16 THE COURT: Right.

17 MR. HAWKINS: And I --

18 THE COURT: Right. Both of you indicated your
19 disagreement with that statement.

20 MR. HAWKINS: And then I went and researched it. I
21 said, You know, why did he say that? And in fact
22 there was a case on point clear that it wasn't
23 timely. And Mr. Ferguson fought that tooth and
24 nail. And he filed Memorandums and all the rest
25 of that and now he wants to get paid for all that

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1 time that he spent on what I would say was a
2 frivolous Appeal.

3 THE COURT: I will allow you, Mr. Hawkins, to examine
4 Mr. Ferguson on his Fee Affidavit. I'll allow
5 that. But let's get through all the argument --

6 MR. HAWKINS: Okay.

7 THE COURT: -- and everything.

8 MR. HAWKINS: Okay. Well, and we would like to -- I
9 would like -- I mean, normally here's what I have
10 understood, believed, in matters where people
11 have sought attorney's fees in relationship to a
12 hearing. Is that the you let the hearing
13 conclude and if there's a prevailing party, then
14 that's when you submit your request. If you're
15 the prevailing party that's when you submit a
16 Request that says, I'd like to have my attorney's
17 fees paid and here's what they are, and then the
18 other party has an opportunity to delve into
19 that. Usually if there's some issue about it, we
20 talk about it with the other lawyers and we come
21 to an agreement, and on rare occasions somebody
22 gets deposed about it. But I've seen that
23 happen. That's certainly occurred. And I'm
24 happy to consider that here, but -- or I'm happy
25 to go forward..

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1 THE COURT: Well, bottom line, if you're wanting to --
2 and I think if you have a desire to cross-examine
3 Mr. Ferguson on his Fee Affidavit, then it needs
4 to be done now as opposed to --

5 MR. HAWKINS: Seems convenient. I agree.

6 THE COURT: Right. Right.

7 MR. HAWKINS: I agree.

8 THE COURT: Anything else in rebuttal?

9 MR. HAWKINS: Well, the last thing, because we need to
10 get it -- I don't want it to get left and not
11 decided, is the issue about the transcript of
12 record that we've offered and filed with the
13 Court. I would like for -- and you don't have to
14 direct us right now, but I would like for the
15 Court to issue a ruling on whether or not we are
16 to provide this opposing party with a copy of
17 those transcripts.

18 THE COURT: All right.

19 MR. HAWKINS: And we'll abide by whatever the Court
20 instructs us to do. But my belief is that the Court
21 Reporter's created them, it's their work product, and
22 if somebody wants a copy of it the appropriate thing
23 for them to do is to acquire it from the Court
24 Reporter. The purpose of the transcript is that in
25 order for this -- any of these matters to be reviewed

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1 on Appeal, a record has to be created. That's what
2 the, you know, the rule says if the Court doesn't have
3 its own Court Reporter, then any party that wants to
4 preserve that record has to bring their own Court
5 Reporter. So we did it because that's what the
6 Court's rules require, that is you want to have a
7 record, you have to bring the Court Reporter. So we
8 did that. And we believe at the end of the day that
9 transcript doesn't belong to us, it belongs to the
10 Court. And so I think it's appropriate that the Court
11 determine who's entitled to copies of it and how is it
12 that they should acquire them.

13 THE COURT: Okay. Thank you very much.

14 MR. FERGUSON: Very briefly. With regard to the law, and I
15 think it's clear from those cases that I handed up
16 that the Court is not limited to those grounds that
17 are in the Motion. With regard to the evidence that
18 they have presented -- if you can call it evidence,
19 about what other people might testify to. It's worth
20 noting that the only source of information those
21 people had on which to base their opinions was what
22 Mr. Sullivan was telling them. With regard to the
23 discretion of the Personal Representative, it was the
24 Personal Representative who brought this matter before
25 the Court asking for approval of his exercise of his

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1 discretion. So clearly it's the job of this Court to
2 review how he exercised his discretion and not merely
3 rubber stamp it saying that he wrote a Will, that he
4 gave himself vast powers so therefore anything he did
5 is okay. Finally with regard to the transcript. The
6 issue is whether you can have an ex parte
7 communication with a Judge. Whether you can give a
8 Judge something in support of your Motion without
9 giving a copy to opposing counsel. Now he's tried to
10 make a side issue of, Oh, I couldn't run off a copy
11 myself. Well, he can get a copy from the Court
12 Reporter. It's not as if it's impossible for him to
13 come up with a copy. And like I said before, he has
14 made some copies on his own which he attached to his
15 Motion. So that is where I'm coming from on that.

16 THE COURT: Thank you very much. Now, Mr. McElveen, you've
17 sat through about two hours of hearing these fine
18 lawyers providing me with all sorts of work to do. Is
19 there anything you would like to tell the Court?

20 MR. MCELVEEN: Your Honor, I'd just like to state briefly
21 Mr. Heard's considerations in this matter. From the
22 beginning he's just been interested in getting this
23 resolved. He's been very quiet and patient and hasn't
24 bothered anybody about this. It was for that reason
25 that he thought, in all honesty to the Court, he

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1 thought that the PR fees were somewhat high. But he
2 elected not to oppose those. And he's not doing that
3 now. At this point we have no objection to the Court
4 reopening this matter and reconsidering any issue, and
5 that goes for both sides. The five acre issue, the
6 acre -- the issues that have been presented by Mr.
7 Hawkins. We feel like that is the best vehicle to get
8 this thing resolved as early as possible is for all
9 the sides to feel like they have had their full
10 consideration, their full day in Court, and all of
11 their issues addressed. Your Honor, Mr. Heard was not
12 offended by the Quiet Title and the partition action
13 or the -- that was brought as Mr. Hawkins has said.
14 He did not relish a minority interest in this property
15 that had -- apparently had title property as well. It
16 would have been fairly awkward for him to have had to
17 deal with that. And I think I should tell the Court
18 that. Basically, Your Honor, Mr. Heard just wants to
19 see this over with. I know that your ability to move
20 it along is as limited as mine is. But we thank you
21 for your consideration and that's what he'd like you
22 to know. Thank you.

23 THE COURT: Okay. Thank you very much, sir. Now the
24 gentleman from the church, if you would stand and give
25 me your name and the name of the church. I should

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1 know that, but it's escaped me right now.

2 MR. BLACKMON: Thank you, Your Honor. And I appreciate the
3 opportunity to speak. My name is Charles Blackmon.
4 I'm the husband of the former clerk that has appeared
5 in this Court before in this matter.

6 MR. HAWKINS: Your Honor, I don't want to be rude to Mr.
7 Blackmon but I believe South Carolina Law is clear
8 that where an entity is involved, if they want to take
9 a position or present something in a Courtroom they
10 have to be represented by counsel. And to have a non-
11 attorney attempt to represent an entity is practicing
12 law without a license. I don't have any clue what Mr.
13 Blackmon might be about to say. He may say something
14 very helpful to me. He may say something helpful to
15 them. He may say something that doesn't help or hurt
16 anybody. But we don't think that a non-lawyer should
17 be allowed to speak on behalf of an entity --

18 THE COURT: Right.

19 MR. HAWKINS: -- in the proceeding.

20 THE COURT: Right. And Mr. Hawkins, your point is well
21 taken. More than likely is absolutely correct.
22 However, I'm going to give this -- he's sat through
23 this, so I'm going to give him an opportunity to tell
24 me what he wants to tell me. And I do need to swear
25 him in. And -- but if he says something that either

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1 one of you feels like is just really bad for your
2 side, make that objection and I'll probably strike it
3 from the record and not even consider it if you feel
4 like that. Raise your right hand please, sir.

5

6 CHARLES BLACKMON, being duly sworn and cautioned
7 to speak the truth, the whole truth and nothing but the
8 truth, testifies as follows:

9

EXAMINATION

10 BY MR. ???:

11 THE COURT: Thank you. Put your hand down. Now of course
12 what I have to limit you to is whatever position that
13 you may have on behalf of the church with respect to
14 the specific matters that have been addressed by these
15 lawyers in so far as the ruling that I made some time
16 ago in the case. I'm really not giving you an
17 opportunity to just kind of completely open the door
18 wide and tell me anything you want to tell me. So if
19 there's anything specifically related to what these
20 lawyers have discussed with the Court, then I'll be
21 glad to hear from you.

22 MR. BLACKMON: Thank you, Your Honor. And I certainly
23 wouldn't want to abuse the opportunity to speak. I
24 don't think anything I have to say is controversial.
25 I would echo the former statement that I think the

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1 church desires that this be settled as promptly and as
2 soon as possible. It's already been a divisive issue
3 to our church. And I guess I have two points to make
4 with you, if I can?

5 THE COURT: Sure.

6 MR. BLACKMON: If I'm permitted. One is, I hope you
7 understand the complexity that we have faced. And
8 also the lack of our participation in any of these
9 events. We were Subpoenaed to these events in the
10 past. But the complexity is that Mary Moses is a
11 member of our congregation. Eddie Sullivan is a
12 member of our congregation. Eddie's mother sits on
13 our Session. Ms. Copeland that stood to gain from,
14 you know, Eddie's distribution of property sits on our
15 Session now. So our conversations about these matters
16 are strained. And it has caused a strain in our
17 relationships as well as we try to carry out the
18 responsibilities of a Session to safeguard gifts and
19 benevolences. And that's our only intent and I'm here
20 today only to gather information. The only second
21 point I'd like to make if I'm permitted and not
22 stopped is that the only thing I've heard today that
23 caused me a little concern is that there's a
24 possibility that the PR may have received some
25 direction that the church wished to vest itself of the

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1 property early on but that was not a possible point to
2 be made legally. The Minister had no right to do
3 that.

4 MR. HAWKINS: Your Honor, I think he's getting into legal
5 argument at this point as to what can or can't be
6 properly done.

7 THE COURT: Let him finish and then I'll give you an
8 opportunity.

9 MR. FERGUSON: I would like to make a point. I think
10 subsequent to the South Carolina Supreme Court's
11 statement that corporations can't represent themselves
12 that the Legislature passed a statute that allows some
13 limited representation. I wasn't aware that this
14 issue was going to come up so I haven't checked it.

15 THE COURT: Okay. All right. Go ahead, sir.

16 MR. BLACKMON: Okay. I'll just end in saying that the
17 Constitution of Presbyterian Church USA says that
18 titled property and real property cannot be
19 transferred without a vote of the congregation. So no
20 body of elders, Session, Minister, should have
21 indicated that early on. And I don't know if that's a
22 -- it might be a moot point.

23 THE COURT: Right.

24 MR. BLACKMON: It might even be in Mr. Sullivan's favor --

25 THE COURT: Right.

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1 MR. BLACKMON: -- to say that. But I'm just saying that
2 legally we could not act and that's why we weren't as
3 active in the process until there was a proposal put
4 before the congregation to vote, and it did,
5 unanimously to transfer the property to Rowland Milam.

6 THE COURT: Okay. All right. Very good, sir. Thank you
7 very much.

8 MR. BLACKMON: We appreciate your decision.

9 THE COURT: Okay. All right. Either attorney want to make
10 any objection and request that any of what this
11 gentleman said be stricken from the record.

12 MR. FERGUSON: No, sir.

13 MR. HAWKINS: No, Your Honor.

14 THE COURT: Mr. McElveen?

15 MR. MCELVEEN: No, Your Honor.

16 THE COURT: Okay. Let me just ask one question before we
17 conclude this. And I do have one case that, Mr.
18 Hawkins, you have provided to me on this issue of
19 reopening the record. And I would just have to guess
20 that there's probably not a lot of case law on the
21 issue of reopening records. I'm just trying to figure
22 out what the standard is. I realize that this case
23 says that need to look at whether or not prejudice has
24 -- would result if the record was reopened. But it
25 seems like to me there needs to be some other

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1 standards or criteria that the Court could look at in
2 determining whether or not to reopen the record. I
3 know that I heard a case several years ago where I, on
4 my own Motion, reopened the record and that went on
5 appeal. But the Court never really -- never really --
6 it just said the Court has discretion to reopen the
7 record period. It didn't really help me any. So I'm
8 must wondering if you guys have come across anything?
9 Do we kind of look at it as something akin to a Rule
10 60 on after discovered evidence or -- I mean, have you
11 come across anything that could help me here?

12 MR. HAWKINS: Your Honor, I probably saw a dozen cases or
13 so, I didn't read them all. But they all had the same
14 keynote that says the Trial Court is granted great
15 latitude.

16 THE COURT: Yeah. Yeah. Thanks --

17 MR. HAWKINS: But that's about all they say.

18 THE COURT: I know.

19 MR. HAWKINS: So maybe you say since the Courts have not
20 told us any greater --

21 THE COURT: Yeah.

22 MR. HAWKINS: -- issue, then I would say that certainly,
23 you know, one factor would be, is the information
24 relevant?

25 THE COURT: Right.

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1 MR. HAWKINS: You know, if it wasn't relevant then I --

2 THE COURT: Sure.

3 MR. HAWKINS: -- think that that would be inappropriate and
4 we feel like these matters are relevant.

5 THE COURT: Okay. All right. Okay..

6 MR. FERGUSON: I was just going to say there's obviously a
7 preference in the system for leaving cases as they are
8 and not recycling them and rehearing them and
9 reopening them. So in order to overcome that
10 preference, I think that there would need to be
11 something which would -- you would say it would offend
12 your sense of justice if the case were not reopened.
13 Which needs to be, I think, a higher standard of,
14 yeah, maybe I could reopen it.

15 THE COURT: All right. Well, again, I appreciate your hard
16 work. Both you lawyers have worked extremely hard on
17 behalf of your clients and the Court appreciates that
18 very, very much. And I'm going to get back into this
19 and look at it and come up with a decision as promptly
20 as I possibly can come up with one. And I will notify
21 the lawyers of that.

22 MR. FERGUSON: Thank you, Your Honor.

23 MR. HAWKINS: We have, I guess, the attorney's fee matter.

24 THE COURT: Oh, that's right. Mr. Ferguson, Mr. Hawkins
25 does have the right to cross-examine you. I'm sure he

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1 will be as kind with you as he possibly can be. If
2 you'll raise your right hand.

3 JOHN R. FERGUSON, ESQUIRE, being duly sworn and
4 cautioned to speak the truth, the whole truth and nothing
5 but the truth, testifies as follows:

6 THE COURT: Have a seat. Your witness.

7 MR. HAWKINS: Mr. Ferguson, let me ask you. Do you have a
8 copy of the --

9 MR. FERGUSON: I do.

10 MR. HAWKINS: -- of the -- what did we call it? We called
11 it a Revised Attorney Fee Affidavit. On the first
12 item on the actual time entry. May 3rd, 2011. What -
13 - it says -- what does LF mean so I'll understand --

14 MR. FERGUSON: Letter from.

15 MR. HAWKINS: Letter from. And LT is a letter to?

16 MR. FERGUSON: Yes, sir.

17 MR. HAWKINS: TF? The next item down says TF?

18 MR. FERGUSON: Telephone from.

19 MR. HAWKINS: Telephone from. All right. So ET? Email
20 to?

21 MR. FERGUSON: Email to. Uh-huh (affirmative response.)

22 MR. HAWKINS: ET would be an email to and EF would be an
23 email from?

24 MR. FERGUSON: Yes, sir.

25 MR. HAWKINS: All right. The couple items that you have on

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1 here that deal with Appeal, you agree that the Appeal
2 was not in fact timely filed?

3 MR. FERGUSON: There's no charge for the Appeal. You'll
4 see that those are in parenthesis and they're not part
5 of the total.

6 MR. HAWKINS: So at the end of the day only the numbers to
7 the right --

8 MR. FERGUSON: That's correct.

9 MR. HAWKINS: -- are part of it? I appreciate that. Thank
10 you very much. Do you feel that the time that you
11 spent what you say on Return to the Motion, I see
12 where you have several days in a row: December 12, 13,
13 14 and the 28th.

14 MR. FERGUSON: Yes, sir.

15 MR. HAWKINS: Adds up to roughly 12 hours or so. Something
16 in that general area?

17 MR. FERGUSON: It took a lot of time to go through your
18 Motion, which was 24 pages worth and to look at the
19 record and do some legal research and think about it
20 and decide how to approach it.

21 MR. HAWKINS: And that was an equally reasonable time to
22 have prepared the Motion?

23 MR. FERGUSON: I'm not able to speak to the amount of time
24 that you took to prepare the Motion. But I'm sure you
25 worked hard on it.

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1 MR. HAWKINS: Can you tell us what the subject matters were
2 of the communications with Ms. Brown?

3 MR. FERGUSON: No. That would be attorney/client
4 privilege. It related to this hearing that we're
5 dealing with.

6 MR. HAWKINS: And by subject matter, it's more in the
7 nature of advising her, This is the time and the place
8 or --

9 MR. FERGUSON: Well, I don't believe I can get into the
10 substance of the communication.

11 MR. HAWKINS: All right. When you talk about work on the
12 Return in those entries of December 12th to the 8/28,
13 thereabouts, I see there's research at a high number.
14 Would that include research?

15 MR. FERGUSON: I'm sure there, at points, there was some
16 research that was going on; yes.

17 MR. HAWKINS: And you estimated two hours for the hearing
18 today?

19 MR. FERGUSON: Yeah. That's what you had scheduled it for.

20 MR. HAWKINS: I don't have any other questions.

21 MR. FERGUSON: Okay.

22 THE COURT: Mr. Ferguson, let me just -- so what you have
23 got in parenthesis you're not requesting compensation
24 for that --

25 MR. FERGUSON: Yes. That is correct, Your Honor. I'm not.

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1 THE COURT: Okay. And I can see maybe because some of it's
2 related to the Appeal but why are you not requesting
3 compensation for research on the Return? Was that
4 Return on the Appeal or Return on this Motion?

5 MR. FERGUSON: There was a Motion to Dismiss the Appeal.

6 THE COURT: Okay.

7 MR. FERGUSON: I think there was another aspect to --

8 THE COURT: Okay. So that Return is Appeal Return and not
9 Return for this?

10 MR. FERGUSON: It was not related to this particular --

11 THE COURT: Okay. I got you.

12 MR. FERGUSON: -- hearing today.

13 THE COURT: Thank you very much. You can step down.

14 MR. FERGUSON: I would note that we've gone about a half an
15 hour over the estimated time for the hearing.

16 THE COURT: So noted. Okay gentlemen, anything else we
17 need on the record before we adjourn for the day?

18 MR. HAWKINS: Your Honor, I would like to request that we
19 be allowed to submit to you -- and I understand you --
20 you've earlier ruled that the Statute allows recovery
21 of expenses and this hearing doesn't apply. But we
22 would like the opportunity to present to the Court a
23 Affidavit of Attorney's Fee time for this hearing.

24 THE COURT: Okay. All right. I will allow you to present
25 that and that will certainly be considered. And I

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1 guess Mr. Ferguson then, if he so desired, would have
2 the right to reconvene and cross-examine you if that
3 were the --

4 MR. HAWKINS: Absolutely.

5 THE COURT: -- if that were his desire. And try to get it
6 to me say within ten days.

7 MR. HAWKINS: Thank you. I'm flying out tomorrow morning
8 and be --

9 THE COURT: You need more time?

10 MR. HAWKINS: -- gone for four days. But I think ten days
11 is fine.

12 THE COURT: Ten days okay?

13 MR. HAWKINS: Yes sir, Your Honor.

14 THE COURT: All right. And lastly. What about the -- and
15 I hope when the gentleman came in with two boxes that
16 the intent was not to hand to me two boxes of Mr.
17 Sullivan's time records.

18 MR. HAWKINS: Your Honor, I think what we'd ask is can we
19 get a copy for you and just forward you the -- and
20 we'll certainly serve them obviously also on Mr.
21 Ferguson the particular --

22 THE COURT: Yeah. Let me just make sure that --

23 MR. HAWKINS: Because they do need redacting and I don't
24 think we can do that here.

25 THE COURT: That would be the time records while Mr.

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1 Sullivan was employed at Collins and Lacy that are in
2 those boxes?

3 MR. HAWKINS: That's correct, Your Honor.

4 THE COURT: All right. Okay. Yeah. That'll be fine.

5 Just within ten days submit those to the Court and --

6 MR. FERGUSON: I would like for the record to state my
7 objection to adding that to the record.

8 THE COURT: Right. Was that not, and again, I'd have to go
9 back through your Motion to reopen the record, was
10 those records not a part of what you were --

11 MR. HAWKINS: They were. They're mentioned in --

12 THE COURT: They were just not attached to the Motion as
13 you've done with some of the other stuff?

14 MR. HAWKINS: That's correct, Your Honor, they were not
15 attached but they were referenced.

16 THE COURT: All right. Okay. All right. So I'm going to
17 go ahead and allow that. So my notes will indicate
18 that within ten days Mr. Hawkins' Fee Affidavit for
19 this matter will be submitted along with the time
20 records that need to be redacted in some fashion to be
21 also submitted with certainly copies to Mr. Ferguson.
22 Okay gentlemen. Thank you very much for your hard
23 work. And this hearing is adjourned.

24 *****

25 (The hearing was adjourned at 12:28 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, SONYA K. GRICE, COURT REPORTER AND NOTARY PUBLIC IN
4 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
5 CERTIFY THAT I REPORTED THE FOREGOING PROBATE HEARING, ON
6 THE 11th DAY OF JANUARY, 2012, THAT THE FOREGOING 103 PAGES
7 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE SAID
8 HEARING.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO DARYL G.
15 HAWKINS, LLC, LAW OFFICES OF DARYL G. HAWKINS, LLC, 1331
16 ELMWOOD AVENUE, SUITE 305, COLUMBIA, SOUTH CAROLINA, WHO
17 WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE
18 RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL
19 OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY
20 ISSUE. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
21 THIS 20TH DAY OF JUNE, 2012.

22
23
24 _____
25 SONYA K. GRICE, COURT REPORTER
MY COMMISSION EXPIRES 6/15/2015