

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 3 OF 4**

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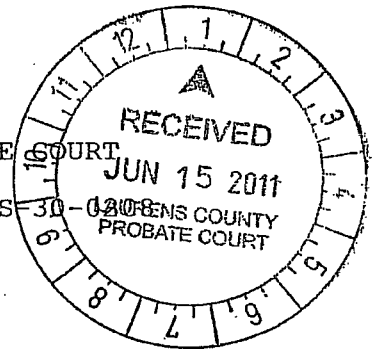
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

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



IN THE MATTER OF MARION M. KAY

PRELIMINARY RETURN TO MOTION TO REOPEN RECORD, ACCEPT ADDITIONAL EVIDENCE AND/OR TO ALTER OR AMEND JUDGMENT

This document is presented by counsel for Mary M. Moses and Martha M. Brown as a preliminary response to the Personal Representative's Rule 59 motion. The undersigned reserves the right to make a more complete response if the court agrees to consider the motion.

JK7
P-1
The PR's motion is an abuse of Rule 59. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481 (Ct. App. 1990). See also *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621 (Ct. App. 2009). "Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived." *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984) quoted in *Hickman v. Hickman*, 301 S.C. at 456.

The PR is improperly attempting to reargue his case and to introduce new issues and new evidence through a post-trial motion. This is not permitted. He waived his right to object to old evidence or to add new evidence and new arguments by not doing this during trial.

The PR has also waived his right to have his motion heard by filing a cross-appeal. There is no such thing as a partial appeal. Despite his attempt to reserve jurisdiction for the hearing of his motion, the PR has divested the Probate Court of jurisdiction to hear it by filing an appeal. (Out of an abundance of caution the undersigned with a full reservation of rights will await word from this court on its determination of the posture of the case before generating attorney fees on the appeal.)

Should the Court choose to hear the motion, the undersigned is entitled to a complete copy of the trial transcript, and one should also be filed with the court to avoid its selective use and as a matter of due process. The undersigned also reserves the right to submit a request for attorney fees and costs for post-trial work.

JR7
P.2

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June 15, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

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

IN THE MATTER OF MARION M. KAY

REVISED RETURN TO MOTION

This Return is presented by Defendants Mary M. Moses and Martha M. Brown in response to the Personal Representative's Motion to Re-Open Record, Accept Additional Evidence and/or Alter or Amend Judgment.

The legal context of the motion is first of all the public policy expressed in S.C. Code Section 62-1-308(d). This section says that an appeal to the circuit court "must be strictly on appeal and no new evidence may be presented." The PR is trying to circumvent that restriction and re-make the record in this case preparatory to an appeal through extensive additions. This case was tried over multiple days, and all parties had a full and fair opportunity to present any evidence they thought relevant to the Court's understanding of the issues. The PR has already had his bite at the apple, and he cannot use a Rule 59 motion to re-try his case and change what the appellate court will hear.

The undersigned also objects to the Court's consideration of any alleged transcript of the hearing in this case or of any other document which has not been provided in full to the undersigned. If the Court is provided with a complete transcript but I am not, this would be an ex parte communication.

The allowable scope of a Rule 59 motion is shown in *Hickman v. Hickman*, 301 S.C. 455, 393 S.E.2d 481 (Ct. App. 1990); *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009) and *Smallwood v. Smallwood*, 392 S.C. 574, 392 S.E.2d 574 (Ct. App. 2011). "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman*, 301 S.C. at 456 and *Gartside*, 383 S.C. at 43. "Issues which could have been presented to the court for consideration previously, but which were not, are waived." *Hickman*, 301 S.C. 455, 456, quoting *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984).

With that legal context in mind and with a full reservation of rights, the undersigned will consider the 24 page document the PR filed in support of his motion. My numbering will track his.

IA. The PR's Attorney Fees. The fallacy in the PR's position is an assumption that the Will and statutory authority give him unbridled discretion; this is not the case. The PR has a fiduciary duty to the Estate, which means that he cannot throw its money around and he cannot maximize his compensation to the detriment of the Estate. ("I am the Personal Representative of the Estate. Therefore my fiduciary duty and obligations are to the Estate." Next to last paragraph of Ex. C-11, Letter of the PR) The PR never presented anyone from Collins and Lacy to verify and explain their billing, and there is no requirement that the Court assume the role of a potted plant and passively receive whatever a party introduces. The Court rightfully did not give full weight to this dubious evidence (except as to admissions against interest),

especially since the billing was grossly excessive on its face. The PR also never gave a legal basis for the payment of his personal legal bills by the Estate.

IA(1). Testator's Intent. The PR is in the extraordinary position of arguing that the Testatrix's intent was the decimation of her Estate and the massive reduction of her bequests through unwarranted PR compensation. The will of the Testatrix is shown most clearly, not through the letters introduced by the PR, but by the fact that she had ample opportunity to effect the partition of the real estate and to clear any title defects by bringing an action to accomplish this while she was alive. The correspondence alluded to (dated 3½ years before her death) shows that she was aware of the issue, but she chose to do nothing about it. This above all else shows where her priorities lay.

The second issue is whether she would have approved the PR's ramming a particular property division down the throats of relatives and others with whom she was close. The PR argues that there could have been no property division without his having forced it, but this is fallacious. The heirs were quite capable of effecting their own division- with or without litigation- without his interference, and they would have been able to do it much more rationally and cheaply.

Again, the issue is not whether under any reading of the law or of the Will drafted by the PR he in the abstract had the power to bring a partition action. The question is whether, in light of his fiduciary duty to favor the Estate and its assets over his own

compensation, he was justified in launching contentious and expensive litigation instead of simply deeding the property to the heirs and letting them handle a final division. The PR's discretion was not unbounded.

IA(2). The Copeland Option. The Testatrix gave Charles Copeland an 8 month option to buy her entire interest in the subject farm, and time is of the essence in exercising options. *Faulkner v. Millar*, 319 S.C. 216, 460 S.E.2d 378 (1995). "[O]ption contracts are strictly construed in favor of the optionor and against the optionee. ... "An expired or unexercised option contract is essentially an unaccepted offer." *Alexander's Land Company v. M&M&K*, 390 S.C. 582, 595, 703 S.E.2d 207 (2010).

Contrary to the intent of the Testatrix as expressed in her Will, the PR converted this specific 8 month option to purchase into an indefinite option and gave Mr. Copeland the right to purchase less acreage than the Estate owned. This radical rewrite of the Will paralyzed distribution to the heirs and caused great dissension, which had the very predictable effect of increasing the PR's compensation.

The PR's claim that the partition was necessitated by the Copeland option (which was never exercised) fails as a matter of law. Code Section 62-3-910 makes clear that the PR could have deeded to Mr. Copeland the Estate's portion of the farm without the necessity of court action. Mr. Copeland (or any heir) could thereafter have filed his own partition action at his own expense if he so desired if he wanted partition badly enough.

IA(3). The PR's Failure to Settle the Estate with a Deed of Distribution. It needs to be pointed out that the PR in this case is a lawyer and should therefore be held to a higher standard. It was not ignorance which caused him to decimate the Estate with his fees; it was greed. The PR claims that the discretion given him overrides all else, including his fiduciary duty to the Estate and to its heirs. (See *Proctor v. Spires*, 381 S.C. 563, 673 S.E.2d 841 (Ct. App. 2001) and Code Section 62-3-703(a) as to the PR's fiduciary duty to the heirs.) This is not the law, and an acceptance of that principle would place a PR beyond the reach of Law, Equity and public policy and force the Court to accept whatever he chose to do.

The PR seems to argue that the only way a partition could have been accomplished was through his action. This is obviously not the case. The heirs at all times had the power to negotiate a solution or to file their own partition action, which would have been vastly cheaper than the path chosen by the PR.

The PR (for the first time?) raises the issue of third party title insurance. This is not a proper consideration for the PR. If the protections of Section 62-3-910 were insufficient for a potential buyer and he could not negotiate a solution with the heirs, he had other options to handle the matter.

The alleged liability of the PR is a bogus issue. If the PR were truly concerned about the small possibility of liability, he had only to execute a quitclaim deed (and ultimately he did) or to put recitals in the deed giving notice of any problems and reciting

that the grantee took subject to them. He could also ask the guidance of the Probate Court without the necessity of filing a separate action.

The undersigned objects to the attached affidavit of Teri K. Stomski (Ex. E), because it is improper to add new material to the record in the context of a Rule 59 motion. See *Spreeuw v. Barker*, 385 S.C. 45, 682 S.E.2d 843 (Ct. App. 2009). No excuse is given for the failure of the PR to call Ms. Stomski as a witness at trial, and my clients are being denied their due process right to cross-examine her. The undersigned further notes that the factual basis for the affidavit is "extensive conversations with Edward Sullivan", the PR. Nothing she has to say about the desirability of court action negates that a purchaser or an heir could be the one to bring the action, and nowhere does she address the cost to the Estate of forcing litigation versus the possible lessening of the sales price. Apparently in his "extensive conversations" with Ms. Stomski, Mr. Sullivan failed to inform her that he was seeking almost one third of the estate for himself and his helpers.

IA(5). The PR Unnecessarily Complicated the Estate. I will incorporate by reference what has already been said on this topic. To the extent that any liens against Mary Moses might have attached to the subject realty, the creditor would not have been able to collect against her without filing a partition action, which would have been without cost to the heirs.

Although the PR has been crowing about the price he got for the land, it needs to be noted that the purchaser was sent to him

by the very Mary Moses about whom he has complained. The fact that the purchaser was willing to pay the price he did despite all the title problems alleged by the PR, blows a very large hole in the PR's argument that clearing title and partition were essential before the property could be sold. The price the PR negotiated has to be offset against the high cost of his handling of the estate.

As to the PR's observation that he had to bring a partition action because some of the heirs did not want to be co-tenants, he fails to understand that his primary duty is to the Estate. If some of the heirs were dissatisfied with being co-tenants, they could negotiate with the other heirs, sell their shares or bring their own partition action- all of which would have been much cheaper and just as effective as the course chosen by the PR. In the end, none of the options was needed because Mary Moses found a buyer who was willing to purchase the property as is. The testimony of witness Paul Major that undivided fractional interests must be sold at a large discount is akin to the observation that bumblebees cannot fly because their mass is too great for the size of their wings. The buyer Mary Moses dropped into the PR's lap purchased the farm without any such discount, according to the PR.

IB(1). The PR's Complication of the Estate by Changing the Option Provision in the Will. Without stating any legal support, the PR (who after all is a lawyer) claims that the option period was tolled. This greatly complicated the settlement of the Estate. The PR could instead have informed Mr. Copeland that his option had expired but continued to negotiate a proposal with him to present

to the heirs for their approval. The PR's attempt to rewrite the Will instead created numerous problems and paralyzed settlement of the Estate while greatly increasing the PR's commissions.

IB(2). The PR's Abuse of his Power to Interpret the Will.

Let us first state the obvious: The PR has the power (within reason) to interpret the Will, not to rewrite it. The terms of the option given to Mr. Copeland are quite plain, but the PR chose to expand it hugely to the detriment of both the Estate and the heirs. The PR's attempt to claim that his power has no limits defies Law, Equity and common sense. His exercise of his power must be reasonable, especially when he is faced with a choice of benefitting himself or benefitting the Estate.

In ruling on this issue, the Court should take the opportunity to re-visit its holding that the PR's conduct was merely incompetence and not intentional bad faith. There is an extreme pattern in this case of the PR looting the Estate by performing huge quantities of unnecessary work, for which he paid himself \$ 93,775 (more than 18% of the Estate's value) without court approval and sought a total of 31% of the Estate's value for himself and his minions. He created work (and commissions for himself) by expanding the Copeland option, by spending huge amounts of time valuing the non-taxable estate's personal property to increase his commissions, by charging for work done before the Testatrix died and by filing a partition action contrary to the Will and to Code Section 62-3-703(a) instead of giving a deed of distribution (which would not have resulted in a PR fee).

He attempted to base his fee on the appraised value of the farm instead of its sales price (a difference of \$ 24,000). Then he gave a vague accounting to the heirs on the eve of what would have been his discharge when there was insufficient time to examine it in detail, and he tried to persuade them not to seek a hearing forcing him to justify his work and to disclose what he had paid himself and why. He was in a position to do all of this because he drafted a Will which gave him vast powers to deal with a trusting aged relative's property. He was clearly conscious of his wrongdoing and trying to conceal it by pressuring the heirs to sign a waiver and release approving his actions.

IIA. Determination of the PR's Compensation. The PR himself testified about the indefiniteness of his computation of his compensation and only later sought to justify his charges by applying the standards which apply to lawyers doing legal work, even though he claimed that other lawyers in his firm were doing the legal work. To the extent that he has been representing himself, he is not entitled to an attorney's fee. *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000).

The PR now takes the position that the Will's provision that he receive "reasonable" compensation means that he could charge anything he wanted, and the Court as a matter of law could not find what he grabbed to be excessive. Courts do not sit for the purpose of being passive accessories to a Personal Representative's fraud and violation of his fiduciary duty.

This was an estate which could easily have been settled with

a deed of distribution. Instead, at every turn the PR focused on what would benefit himself. His devotion was to complexity, controversy and compensation instead of to conciliation. He claims to have spent a jaw-dropping 468.6 hours of time (reduced after it became clear that the issue of his charges was headed to court) on the case plus 204.6 hours of paralegal time and many hours by Collins and Lacy lawyers, who were supposedly doing the legal work (for which they have received \$ 25,806.38), although the PR wants to be paid as a lawyer.

This is unreasonable on its face. The PR paid himself almost \$ 94,000 when he could have closed the Estate through the expenditure of no more than 20 hours of time at most. The Court should consider whether its award of 10% of the estate to Mr. Sullivan is excessive in light of the evidence at trial.

IIB(1). The PR's Hours Are Insufficiently Substantiated. The PR seems to believe that the Court is obligated to accept whatever he testifies to about his hours. This was not a complicated estate. There was minor personal property and one half interest in a family farm to be distributed. All the PR had to do was to give the heirs their personal property, which had been meticulously labeled by the Testatrix to show who would get each item, and sign a deed of distribution. This would have created far less expense for the Estate and ultimately benefitted the heirs more because it would have reduced their bequests less. Despite his egregious churning, the PR was granted \$ 51,300 in the Final Order and the Estate was ordered to pay for 204.6 hours of paralegal time after

the Court rightly questioned the necessity for it.

No one who prepared the Collins and Lacy invoices testified as to their accuracy or how they were computed, so the Court is justified in giving them less weight because of that. On their face, these bills show an extraordinary amount of unnecessary work.

IIB(2). The Attorney Fee Affidavits. The fallacy of the PR's position here is that he is entitled to whatever he puts in an affidavit. The Court was quite right to look at what he had to accomplish and what should have been necessary to accomplish that in the simplest and most efficient way. The Court certainly had no duty to rubber stamp the PR's churning. As to the undersigned's attorney fee affidavit, it contained sufficient information for the Court to determine a proper fee, and the PR cannot now be heard to complain that he needs more information. See the discussion *supra* about the scope of a Rule 59 motion.

IIC. PR Charges for Work Done Before the Testatrix Died and Before He Was Appointed Personal Representative. The PR has attempted to expand his compensation by hiding charges for non-PR work in his PR bill. As a lawyer he should have been familiar with Code Section 62-3-701: "The duties and powers of a personal representative commence upon his appointment." While there is a relate back provision, it is primarily for such time-sensitive tasks as dealing with the body, the funeral and burial arrangements and for essential work done by others. It is not an exception designed to swallow the rule, and it cannot apply to work which was done before there was an estate, i.e., before the Testatrix died.

It also cannot apply to excessive work which depleted instead of benefitted the Estate. Whether in a relative sense the Collins and Lacy charges could have been worse is irrelevant. The inquiry is whether in an absolute sense the charges were excessive, and they clearly were.

IID. Novel Issues. The Court was correct in finding that there were no novel issues confronting the PR. The Option to Purchase by its terms expired after eight months. The Right of First Refusal could have been dealt with by simply offering the land to the holder of the right and the claim to the 5 acres was simply a matter of reviewing the filed documents in light of the claimant's representations. None of this required hundreds of hours of PR time.

It appears that the Court omitted to rule on the claim for the 5 acres, so this needs to be dealt with. The Rule 59 motion has given the Court the authority to consider all aspects of this issue. The Court will want to consider the deed into the decedent, which states that it was for a property division, the plats and the testimony of Martha Brown about the parties' agreement.

IIE. The PR's Interim Accountings. Marion Kay died on May 3, 2007 and the PR was appointed about a month later with a statutory mandate to "proceed expeditiously with the settlement and distribution of a decedent's estate", S.C. Code Section 62-3-704. More than 3 years later the PR sent the heirs three interim accountings. The PR claims that this suspicious occurrence is of no moment because he was not required to give notice before that

time.

The PR's grouped release of the 3 accountings was not long before the hearing to close the estate. There was no overall summary, so a close reading by people who had no skill or experience with such documents was required to determine the fees he had paid himself. Since the PR chose to organize his reports on an annual basis, why did he not release them on an annual basis and thereby give the heirs ample time to digest them? See Code Section 62-3-1001 for the public policy of disclosure to the heirs without waiting 3 years.

IIF. The Significance of the Sales Price. The weight to be given any evidence is not a matter of law; it is a matter of judicial discretion. Here, the Court took into consideration that heir Mary Moses had dropped the purchaser into the PR's lap and that the PR had cost the Estate a great deal of money through unnecessary work by himself and others at his direction. Even at that the Court awarded him an exceedingly generous fee of two times the usual statutory maximum.

Post-trial, the PR for the first time alleged that he had relied on Rule 1.5 of the Rules of Professional Conduct in setting his fee, but this was not his testimony at trial and he also stated that other lawyers from his law firm were doing the Estate's legal work. He cannot improve his trial testimony with a post-trial affidavit, especially when he seeks to gloss over the huge amount of unnecessary work he charged the Estate for. His attempt to get a higher fee because he refrained from double dipping by charging

as a real estate broker as well as a PR and as a lawyer is indicative of his approach to professional ethics.

IIH. Large Payments by the PR to Himself Without Court Approval. The first rule for fees charged by a lawyer is that they must be reasonable. Rule 1.5, S.C. Rules of Professional Conduct. The Court rightly found that the PR's fees were wildly extravagant, and they eventually had to be approved by the Court when the Estate was closed. The PR could have saved everyone a lot of trouble by getting court approval for each of his draws, but that would have focused attention on how he was managing the estate and he obviously wanted to avoid that.

II I. The Court Should Rubber Stamp the PR's Exercise of His Discretion. Nowhere is the PR's arrogance on better display than here. He claims that it is improper for the Court to second-guess how he managed the estate without a showing of bad faith. While the undersigned is firmly convinced of the PR's bad faith and urges the Court to correct a contrary finding, the Court clearly has discretion to deal with PR misfeasance and incompetence not amounting to bad faith which deplete the Estate.

IIIA and B. Failure to Pay the PR Fees and Costs for Trial. First of all, the PR is not in a position to complain that he was underpaid, because he was awarded more than \$ 51,000. He complains that he was required to attend the hearing in this case, but he fails to note that it was his own egregious conduct which necessitated the hearing. Defending his activities which depleted the estate should not be an Estate expense. His claim for costs

and attorney fees is like a burglar wanting reimbursement from the homeowner for the cost of defending himself from conviction.

IIID. Whether Pleadings Were Required for the Hearing. The PR's belated assertion that he was not given sufficient notice of his misdeeds was waived. He could have moved for responsive pleadings or asked for more time to respond to issues at trial or sought discovery, but he did not. The Court correctly ruled that the PR could be examined on all aspects of the documents he filed to close the Estate without the necessity of formal pleadings. The bulk of the hearing time used by my clients was devoted to consideration of the invoices submitted by the PR, and the PR chose not to have anyone from his law firm present to assist him in elucidating these. There was also a 3 week gap between the first part of the hearing and the second, so the PR had plenty of time to adjust his defense.

IIIE. The Bodiford Bill. Without giving any factual or legal support, the PR claims that the Court erred in not paying the Clifton Bodiford bill. He has waived his right for the Court to consider this issue by providing no support for the Court to consider.

IIIF. The Value of the Estate. Here again the PR appears to be attempting to retry his case by adding new information. This is beyond the scope of a Rule 59 motion, and even if the new information were considered, it would not change the Court's ruling.

IVA and B. The PR's Refund of Unearned and Improper

Compensation. For the first time the PR claims that it did not occur to him that his attempt to grab almost a third of the Estate would be an issue. This strains credulity. He knew full well that the hearing was for the purpose of examining all aspects of his accounting. The Court clearly had the power *sua sponte* to correct a blatant injustice, and the PR waived his right to object by failing to object at trial to the scope of the hearing or to seek extra time so that more evidence could be presented. Instead, he agreed to the time limits for the presentation of evidence, and laches and estoppel bar his present objection. Even if the PR's complaint were timely, Code Section 62-3-721(a) was sufficiently complied with; the PR had his hearing. He petitioned the Court for approval of his work as PR, so the Court had jurisdiction to examine all aspects of that work and to disapprove as well as approve.

IVC. Reducing the PR's Compensation Would Unjustly Enrich the Heirs. The short answer to this allegation is that granting the PR's compensation request would unjustly impoverish the heirs. The PR has been generously compensated beyond what he has actually earned; he has no basis to complain.

IVD. * The Attorney Fee Affidavits. The PR in complaining about the Court's declining to receive his attorney fee affidavit fails to take into consideration that he did not present this document at trial and instead tried to get it into the record after the record was closed. At trial he testified that he basically pulled numbers out of the air for his fee, and he tried to undo the

damage post-trial by claiming for the first time that he was charging as a lawyer, even though he had testified that others in his law firm were doing the legal work. The PR's stealth filing of his attorney fee affidavit denies the objecting heirs the possibility of cross-examination.

IVE and F. Gripes About My Fee. My Attorney Fee Affidavit shows that I worked on this case a substantial amount of time, and the Court with good reason found that this time was necessary. The PR dumped a great deal of material on the heirs not long before the hearing, so a huge amount of work had to be done in a short time to determine the nature and validity of his charges. It took a subpoena for the undersigned to get the Collins and Lacy invoices, and the delay in receiving these documents complicated his evaluation of them. The exhibits at trial show that the undersigned put in a great deal of effort to analyze what the PR had done, and the Estate benefitted handsomely from that. The PR was not charging as a lawyer and therefore was claiming payment at a lower rate. Much of his work was ministerial matters like handing out personal property and driving to and from the area where the Estate was located. As to charges for work related to the PR's partition/declaratory judgment action, this obviously dealt with Estate assets and was a proper subject for my attention.

IVG. None of the Heirs Challenged the PR's Plans to Partition the Land. The undersigned does not understand how the PR can assert this after the undersigned filed a motion to dismiss the partition action in Common Pleas and the PR consented. Before

that, heirs Moses and Brown made quite plain at a contentious meeting with the PR and other heirs in Newberry that they disapproved of the PR's partition plans. The entire history of the case at bar shows that Ms. Moses and Ms. Brown opposed the partition scheme of the PR. Nothing about the PR's partition efforts increased the sales price of the land or otherwise benefitted the Estate. Quite apart from a lack of factual support, the affirmative defenses of estoppel and ratification have no place in this case because they were not pled.

IVH. Not Giving the PR Everything He Asked for Is Punitive. This argument sounds like it was made by a petulant teenager. The PR received twice the basic statutory rate of compensation, despite not having earned it. Being given more than \$ 51,000 is hardly a sign of judicial enmity. The fact that the refund ordered by the Court was discretionary rather than mandatory is of no moment, because there is abundant factual support in the record for the judge's ruling on the refund.

V. The Motion for Removal. Given that the motion was not granted, the PR has nothing to complain of. The Court was wise to protect the Estate from further depredation by the PR in response to the motion and thereby probably saved all parties further litigation and unnecessary attorney fees.

VI. More Gripes about My Attorney's Fee. The work of the undersigned on this matter began in January of 2008, only half a year later than the PR began work. I had to work assiduously in a short time to analyze a mass of documentation supplied by the PR.

It is of no importance that some of this time pre-dates the Petition for Settlement, because that work anticipated the Petition and was necessary to contest it. The result was that the PR's misdeeds were exposed, and the Estate saved far more than the fee awarded to me. The Estate also received far more from my work than it did from the PR's churning. As to the 0.6 hour charge for the Motion to Replace PR, this was the most effective and cheapest way to get at the issue, and it resulted in increased protection for the Estate.

VIIA. Questions about the PR's Claimed Costs of Litigation.

The Court correctly included in its analysis the unnecessary costs of the unnecessary partition action. As the Court found, all the PR had to do was to give the heirs a deed of distribution. The Estate was clearly non-taxable, so there was no need for appraisal fees. The Tax Assessor's valuation would have been quite adequate for the real estate.

The PR is estopped to complain about the fact that Ms. Brown and Ms. Moses requested a hearing, because he is the one who gave them notice of their right to request one. The outcome shows that they were wise to make the request. Had the PR performed his duties competently and honestly, no hearing would have been necessary and therefore no expert witness fees and court reporter fees would have been necessary.

VIIB. I Should Not be Paid Under the Common Fund Doctrine.

An argument made without support is deemed abandoned, and there is abundant support in the record for the Court's holding.

VIIC. The Hearing Dates. At last something we can agree on! I consent to correction of the scrivener's error on the date. I also point out that having almost three weeks between the hearing dates gave the PR ample time to deal with those matters as to which he claims he had insufficient notice.

VIII. The PR's Request to Add to the Record. This argument is made without support and must be deemed abandoned. Adding to the record is inappropriate for a Rule 59 motion. As previously stated, the Stomski affidavit is based on what the PR told the affiant, it comes too late and it denies the Defendants their right of cross-examination. The time summary was never introduced into evidence, and no one who prepared it was ever produced to verify and explain it. The evidence of subsequent time is irrelevant, because the Court has previously held that there is no basis for the PR to receive costs and attorney fees and because the PR's motion did not seek additional costs and attorney fees.

The undersigned objects to the use of a portion of the trial transcript. If the Court decides that it can receive some part of the trial transcript, the PR should be required to provide a complete copy of it to the undersigned and to the Court to avoid unfair and misleading selective quotation and ex parte communication.

CONCLUSION

The record cannot be expanded at this late stage, and the Personal Representative is entitled to no more than the exceedingly

generous award granted by the Final Order. The Court should instead reconsider whether that generosity in the payment of PR expenses and compensation is justified and whether the evidence supports the finding that Mr. Sullivan carried out his duties in good faith. The Court will need to make a ruling on the 5 acres due Martha Brown.

Finally, the Mary Moses and Martha Brown are entitled to be reimbursed for their attorney fees incurred in fighting this motion, as their efforts are what has prevented even more loss of Estate assets. *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008). The heirs are also entitled to post-judgment interest from the Personal Representative, who continues to put his well being above theirs.

COX & FERGUSON
Attorneys for Defendants Brown and Moses

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John R. Ferguson
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(864) 984-2126

December 28, 2011

16 SCD 2d—102

16 SCD 2d—103

JUDGMENT ¶294

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(B) PARTIES.

Library references

C.J.S. Judgments § 27 et seq.

¶243. Judgment for or against person not a party.

—S.C.App. 2007. Judgment creditor was not a party to foreclosure action, and thus, trial court could not bind judgment creditor to the judgment in foreclosure action. —Green Tree Servicing, LLC v. Adams, 654 S.E.2d 100, 375 S.C. 583.

(C) CONFORMITY TO PROCESS, PLEADINGS, PROOFS, AND VERDICT OR FINDINGS.

Library references

C.J.S. Judgments § 46 et seq.

¶248. — In general.

—S.C.App. 2005. A judgment must conform to the pleadings, and be in accordance with the theory of action upon which the case was tried. —Anderson v. Buonforte, 617 S.E.2d 750, 365 S.C. 482, rehearing denied, and certiorari denied.

¶250. — Grounds of action or defense.

—S.C.App. 2004. It is an error of law for a court to decide a case on a ground not before it. —City of North Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 360 S.C. 225.

—S.C.App. 1992. It is error of law for court to decide case on ground not before it. —Griffin v. Capital Cash, 423 S.E.2d 143, 310 S.C. 288.

¶252(1). In general.

—S.C.App. 2001. Ordinarily, a party may not receive relief not contemplated in his pleadings. —Heins v. Heins, 543 S.E.2d 224, 344 S.C. 146.

—S.C.App. 2000. A party may not ordinarily receive relief not contemplated in the pleadings. —Wilson v. Walker, 532 S.E.2d 19, 340 S.C. 531.

¶253(1). In general.

—S.C.App. 1992. Trial court was not required to set aside \$12,000 jury verdict for alleged defects in repairs performed by remodeling contractor, even though complaint alleged cost of repair was \$10,000, where expert witness had estimated cost at between \$12,000 and \$15,000 to repair defects. —Perry v. Smalls, 417 S.E.2d 611, 308 S.C. 259.

(D) ARREST OF JUDGMENT.

Library references

C.J.S. Judgments § 87 et seq.

¶263(8). Defects cured by verdict or findings.

—S.C.App. 1842. Where an action of assumption is brought in the name of husband and wife jointly, and the declaration alleges the promise to have been made jointly, without stating what interest the wife had, or any reason is shown why she should have been joined, it is such a defect as cannot be cured by the verdict, and which is fatal upon a motion in arrest of judgment. —Chitty, Pl. 20; 2 Wm. Bl. 1236; 2 Caines' Rep. 221; 2 Bur. 170. —Craig v. Smith, 2 McMul. 279.

VII. ENTRY, RECORD, AND DOCKETING.

Library references

C.J.S. Judgments § 106 et seq.

† This Case was not selected for publication in the National Reporter System

¶276. Proceedings for entry.

—S.C.App. 2004. Any notice in writing which would convey to a losing party that judgment has been entered is sufficient to give notice of entry of judgment. —Appellate Court Rule 203. —Upchurch v. Upchurch, 597 S.E.2d 819, 359 S.C. 254, rehearing denied, and certiorari granted, affirmed in part, reversed in part 624 S.E.2d 643, 367 S.C. 16.

VIII. AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT.

Research Notes

See Wright, Federal Practice and Procedure: Criminal.

Library references

C.J.S. Judgments § 236 et seq.

¶294. Nature and scope of remedy.

—S.C.App. 2009. A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. —Rules Civ.Proc., Rule 59. —Porch v. Bayshore Concrete Products/South Carolina, Inc., 686 S.E.2d 689, 386 S.C. 13, rehearing denied.

—S.C.App. 2008. A party cannot use a motion to alter or amend a judgment to present an issue to the court that could have been raised prior to judgment but was not so raised. —Rules Civ.Proc., Rule 59(e). —South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349, rehearing denied, and certiorari granted.

A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. —Rules Civ.Proc., Rule 59(e). —Id.

—S.C.App. 2008. Generally a party cannot use a motion to alter or amend a judgment to present an issue that could have been raised prior to judgment but was not. —Brailsford v. Brailsford, 669 S.E.2d 342, 380 S.C. 443.

—S.C.App. 2008. A party cannot use a motion to reconsider, alter, or amend a judgment to present an issue for review that could have been raised prior to the judgment but was not. —RRR, Inc. v. Toggas, 662 S.E.2d 438, 378 S.C. 174, rehearing denied, certiorari granted, affirmed 674 S.E.2d 170, 381 S.C. 490.

—S.C.App. 2005. A party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not. —Tallent v. South Carolina Dept. of Transp., 609 S.E.2d 544, 363 S.C. 160, rehearing denied, and certiorari granted, reversed. —Hardin v. South Carolina Dept. of Transp., 641 S.E.2d 437, 371 S.C. 598, rehearing denied.

—S.C.App. 2002. While a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment. —Rules Civ.Proc., Rule 60. —Ex parte South Carolina Dept. of Revenue, 566 S.E.2d 196, 350 S.C. 404.

—S.C.App. 1997. Issue normally may not be raised for first time in motion for new trial or amendment of judgment if it could have been raised previously. —Rules Civ.Proc., Rule 59. —McCormick v. England, 494 S.E.2d 431, 328 S.C. 627, rehearing denied.

—S.C.App. 1995. Party cannot use motion to alter or amend judgment to present to trial court

321 S.C. 38 467 S.E.2d 128 (1995)

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January ²⁰~~18~~, 2012

VIA Federal Express
The Honorable Donald B. Hocker
Associate Probate Judge
235 West Laurens Street
PO Box 972
Laurens, SC 29360

RE: Marion M. Kay Estate
2007-ES-30-208

Dear Judge Hocker:

At the January 11, 2012 hearing in the above-referenced matter, you graciously granted a 10 day period to offer for your consideration the Personal Representative's redacted daily timesheets as additional evidence to substantiate his time in this matter. You also allowed us this time to offer my firm's invoice reflecting our recent charges. Enclosed please find a packet of timesheets as well as our invoice.

In our Rule 59 motion, we requested that the Court allow us to provide "time sheets supporting entries on law firm invoices, to the extent time sheets continue to exist and as deemed necessary by the Court". The daily timesheets included herewith are for the months beginning October 2007 and ending August 2010. To date, the timesheets for May 2007 through September 2007 have not been located. These daily timesheets are offered to substantiate the time reflected on law firm invoices that have been admitted into evidence (Plaintiff's Exhibit D). A review of those invoices indicates the extent to which the hours worked by the Personal Representative as reflected in these daily timesheets was actually provided to the Estate without charge.

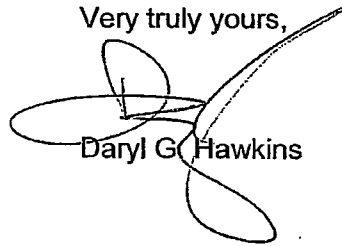
The enclosed timesheets have been redacted so as to protect the confidentiality of work performed for other clients. In an effort to save costs (as well as paper), we have cut and pasted the dates and related time entries so that more than one day may appear on a single page. We have, however, included as the first page of the packet a complete copy of a redacted timesheet to provide an example of how each daily timesheet generally appears.

By copy hereof, we are simultaneously providing this information to Mr. Ferguson as well. We will gladly answer any questions you may have. Thank you for your consideration in this matter.

Page 2 of 2
January 18, 2012

20

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Daryl G. Hawkins

DGH: shn

cc: John R. Ferguson, Esquire

Law Office of Daryl G. Hawkins, LLC

Invoice submitted to:
Edward D. Sullivan, PR of Estate of Marion Kay

1331 Elmwood Avenue
Suite 305-B
Columbia SC 29201

1331 Elmwood Avenue, Suite 305
Post Office Box 11906
Columbia, SC 29211
Federal Tax ID No. 22-3965038

(803) 733-3531

January 18, 2012

In Re: Estate of Marion Kay - DGH File No. 10-050B

Invoice # 10300

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/6/2011 DGH Review motion filed by JFerguson	0.40 350.00/hr	140.00
5/2/2011 DGH Correspondence to Judge Hocker	1.20 350.00/hr	420.00
5/4/2011 DGH Conference with ESullivan on correspondence re court order and issues anticipated for Rule 59 motion	0.40 350.00/hr	140.00
6/5/2011 DGH Draft Rule 59 motion	1.00 350.00/hr	350.00
6/6/2011 DGH Review, revise and finalize Rule 59 motion	1.80 350.00/hr	630.00
6/13/2011 DGH Review cross-appeal and motion to remand	0.40 350.00/hr	140.00
6/15/2011 DGH Review letter from Judge Hocker and reply; telephone conference with JFerguson; email to court	0.40 350.00/hr	140.00
6/21/2011 PSP Telephone conference with Judge Hocker's office to schedule conference call; email; call to JFerguson	0.40 90.00/hr	36.00
DGH Review incoming letter from JFerguson	0.10 350.00/hr	35.00
6/29/2011 DGH Prepare motions	2.00 350.00/hr	700.00
DGH Prepare consent order	0.60 350.00/hr	210.00

Edward D. Sullivan, PR of Estate of Marion Kay

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
7/8/2011 PSP Prepare letter to Judge Eugene Griffith	0.20 90.00/hr	18.00
7/20/2011 DGH EMail to Judge Hocker	0.20 350.00/hr	70.00
DGH EMail to ESullivan; letter to Chief Judge	0.50 350.00/hr	175.00
1/8/2012 DGH Conference with ESullivan; prepare for hearing	1.20 350.00/hr	420.00
1/10/2012 CEU Research in preparation for Attorney Hawkins' attendance at hearing in Laurens on 01/11/2012	1.10 200.00/hr	220.00
DGH Prepare for hearing	6.00 350.00/hr	2,100.00
1/11/2012 DGH Travel to/from Laurens for hearing (3.0); attend hearing (2.5)	5.50 350.00/hr	1,925.00
For professional services rendered	23.40	\$7,869.00

Additional Charges :

	<u>Qty/Price</u>	
6/6/2011 Postage	1 28.24	28.24
6/13/2011 Ck# 1487 - Laurens County Clerk of Court - Filing Fee	1 150.00	150.00
Postage	1 1.28	1.28
6/14/2011 Postage	1 2.20	2.20
6/29/2011 Ck# 1494 - Laurens County Clerk of Court - Filing Fee	1 25.00	25.00
8/25/2011 Ck# 61409 - FedEx	1 17.54	17.54
Total additional charges		\$224.26
Total amount of this bill		\$8,093.26

Edward D. Sullivan, PR of Estate of Marion Kay

Page 3

Amount

Balance due

\$8,093.26

DGH = Daryl G. Hawkins, Senior Attorney
CEU = Charles E. Usry, Associate Attorney
PSP = Pamela S. Pierce, Paralegal

5

Edward D. Sullivan
Timesheet
(EDS)
486

Date: 11/27/00

Page 2 of 3

Date Entered: _____

Entered By: _____

File	L	A	Time	Description
~~1147-100~~	~~610~~	~~A101~~	~~1.00~~	~~Conference with~~
				~~11/27/00~~
				~~11/27/00~~
				~~11/27/00~~
				~~11/27/00~~
1147-100	L110	A101	4.00	Conference of Mrs. Copeland;
				Review of Item in
				Safe Deposit Deposit
				Box; Meeting with Mr. Hanvey;
				Travel from Dan Glavin
				Lanham;
			1.20	~~11/27/00~~

Date: <u>10/11/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page ____ of ____ Date Entered: <u>10-16-07</u> Entered By: <u>myt</u>

File	L	A	Time	Description

1147-100	L190	A108	.90	Page 7 Petition for Extension;
				TL w/ Court; 02 w/ Staff;

Date: <u>10/12/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: _____ Entered By: _____

1147-100	L190	A108	.40	02 w/ CPA re: tax return;
				TL w/ State re: 1099;

Date: <u>10/12/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>2</u> Date Entered: _____ Entered By: _____

1147-100	L190	A108	.10	Correspondence;

Date: <u>10/10/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>2</u>
		Date Entered: <u>10-10-07</u> Entered By: _____

File	L	A	Time	Description
1147-100	L190	A104	.30	Review & create of T4
				Return;
1147-100	L190	A108	.30	TL of New York;

Date: <u>10/16/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>3</u>
		Date Entered: _____ Entered By: _____

1147-100	L110	A105	.10	02 of staff re: survey;

Date: <u>10/18/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of _____ Date Entered: <u>10.30.07</u> Entered By: <u>(Bri)</u>

File	L	A	Time	Description
1147- 100	Kay	L170	A108	.20 R & R of correspondence;
				Pay for CPA review;

Date: <u>10/18/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of _____ Date Entered: _____ Entered By: _____

1147 100	Kay State	L110	A108	.30 TC w/ FSA;
				R & R of correspondence from
				FSA;

Date: <u>10/22/07</u> ~~10/22/07~~	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>4</u> Date Entered: <u>10-31-07</u> Entered By: <u>njl</u>

File	L	A	Time	Description
1147-100	1147-100 167	L110	A108	.20 R & R7 Gregory's firm
				Lander G. FSA Committee;

Date: <u>10/29/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>10-31-07</u> Entered By: <u>njl</u>

1147-100	1147-100 167	L190	A101	.50 TC w/ Mr. Wyeland;
				TC w/ Mr. Boatright re: Planning;

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1147-100	1147-100 167	L120	A101	.20 Planning & Approval;

Date: <u>11/1/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>12-3-07</u> Entered By: <u>myl</u>

File	L	A	Time	Description
1147-100	L110	A101	5.00	Travel to/from Lawrence; Meeting with Mr. Wilson re: Sandy, other; visit site;

Date: <u>11/8/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>✓</u> of <u>2</u> Date Entered: _____ Entered By: _____

1147-100

File	L	A	Time	Description
Kay	L170	A108	.10	Concurrence; ^{Send} Payment to Lawyer

Date: <u>11/8/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>✓</u> of <u>2</u>
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11-
100

File	L	A	Time	Description
Key	L130	A108	.10	Conferences; ^{Send} payment to Harvey

Date: <u>11/27/00</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>3</u>
		Date Entered: _____ Entered By: _____

1147-100	L110	A101	4.00 ~~2.00~~	Conference of Mr. Copeland;
				Review of Item in
				Safe Deposit Deposit
				Box; Meeting with Mr. Harvey;
				Travel from Da Costa Lanier;

Date: <u>12/5/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>12.17.04</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
1147-100	L110	A101	9.00	Travel to/from Lawrence;
				Visit with; TC of Mr. Henderson re appearance;

Date: <u>12/6/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u> Date Entered: <u>12-17-07</u> Entered By: <u>njl</u>

~~1147-100~~	~~L110~~	~~A105~~	~~.30~~	~~OL w/ paralegal re: LG Family Services;~~

Date: <u>12/7/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>3</u> Date Entered: <u>12/7/07</u> Entered By: <u>nyl</u>

File	L	A	Time	Description
1147-100	L110	A105	.20	02 w/ paralegal
				re: inventory & agreement

Date: <u>12/19/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of ____ Date Entered: _____ Entered By: _____

1147-100	L110	A108	.10	Correspondence to Mr. Barrett

Date: <u>12/11/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>12-17-07</u> Entered By: <u>raj</u>

File	L	A	Time	Description
1147-100	L110	A101	.50	Correspondence re:
				LC from Kevin;
				OC w/ staff re appearance; Court filing;

Date: <u>12/18/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u> Date Entered: <u>01-02-08</u> Entered By: <u>Bre</u>

1147-100	L150	A111	3.80	Travel to/from 2 courts;
				Visit site; TC of appearance;

Date: <u>12/2/07</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>2</u> Date Entered: <u>1-2-08</u> Entered By: <u>nyl</u>

File	L	A	Time	Description
1147-100	L110	A105	.20	OC w/ Hoffre; Approver;

Date: <u>1/2/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>3</u> Date Entered: _____ Entered By: _____

1147-100	L110	A108	.40	Mch Deposit; TC w/ Timber
				dealer;

Date: <u>11/8/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u>
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File	L	A	Time	Description
1147-100	6120	1101	5.00	Visit site; TC in w/
				insurance light; travel;

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1147-100	6110	1104	30	RR of Longwood re:
				Approved.

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File	L	A	Time	Description

<u>1147-101</u>	<u>6210</u> <u>4120</u>	<u>A105</u>	<u>.20</u>	<u>correspondence; R & R</u>
				<u>l-mad correspondence;</u>

NC

Date: <u>1/21/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>02-01-08</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
<u>1147-102</u>	<u>6120</u>	<u>A101</u>	<u>.30</u>	<u>correspondence;</u>

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1147-100	C120	A101	1.10	Visit site; Wineyarder re: appraisal;

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1147-100	C120	A104	.50	RR & Appraisal Report;

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File	L	A	Time	Description
1147-100		A108	.50	TC w/ Mr. Harston re:
				appraiser; TC w/ Mr. Helton;
				TC w/ Mr. Harston; Review of
				Proposed;

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1147-100	6120	A104	1.4	Correspondence; Review of
				Officer; Review of Jewelry
				Appraisal;
	20			

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File	L	A	Time	Description
1147-100			1.20	Correspondence;
1147	6120	A108	~~1.20~~	TL of CPA re Appraisal;
				Re Correspondence; 02
				of Staff re Appraisal;
				TL of Mrs. Moser re Appraisal;
				TL of Mr. Major re Appraisal;

Date: <u>2/21/08</u>		Edward D. Sullivan Timesheet (EDS) 486		Page <u>1</u> of <u>2</u> Date Entered: <u>02.25.08</u> Entered By: <u>Bre</u>	
<u>1147-100</u>	<u>6120</u>	<u>A108</u>	<u>.20</u>	<u>T2 w/ appraiser;</u>	

Date: <u>2/22/08</u>		Edward D. Sullivan Timesheet (EDS) 486		Page <u>3</u> of <u>3</u> Date Entered: _____ Entered By: _____	

File	L	A	Time	Description
<u>1147-100</u>	<u>6120</u>	<u>A101</u>	<u>.20</u>	<u>T2 w/ appraiser;</u>

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1147-100				
✓ Key	2120	A104	1.20	02 of approval;
				Time: 0.50;
				Correspondence;

Date: <u>2/26/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>4</u> of <u>4</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
✓ Key 1147-100	2120	A104	.50	TC of for Hunter re approval;
				then, correspondence

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1200	1147-100	6120	A108	.30	Receipt / message from Johnny Wilson; Follow-up on appeal;

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File	L	A	Time	Description
✓ 1147-100	6120	A108	.30	TL w/ Mr. Hester;
✓	6120	A108	.10	TL w/ Mr. Wilson;

Date: <u>3/6/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u> </u> Date Entered: <u> </u> Entered By: <u> </u>

1147-100	L120	A108	2.80	Travel to Lansing;
				Meeting w/ Mr. Wilson;
				Mr. Ron Hunter;

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File	L	A	Time	Description
1147-100	L110	A105	.30	02 w/ paralegal re: ~~marker~~

MARKER

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1147- 100	~~Key~~	L120	A101	1.90	TL w/ Bleeping;
					02 w/ Pandol at various Bleeping;

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File	L	A	Time	Description
1147-100				
Key	L120	A104	1.00	TL w/ Bleeping;
/				Series of Bleeping;

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<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A101</u>	<u>.20</u>	<u>correspondence re:</u> <u>tax returns; TC's;</u>	

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A101</u> <u>A100</u>	<u>1.30</u>	<u>TC w/ Mr. M^{rs} Klein;</u> <u>Planning; correspondence;</u>

Date: <u>3/26/08</u>		Edward D. Sullivan Timesheet (EDS) 486		Page <u>2</u> of <u>2</u> Date Entered: <u>4.1-08</u> Entered By: <u>myl</u>
File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>6120</u>	<u>A101</u>	<u>1.30</u>	<u>02 y/stop;</u> <u>conversations;</u> <u>TEL/A. Wilson;</u>

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>6120</u>	<u>A108</u>	<u>.10</u>	<u>RRR/Conversations;</u>

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1147-104 Kay	L120	A108	.10	Correspondence;

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File	L	A	Time	Description
1147-104	L110	A108	.20	MC TL - Mr. Brown re: Appraisal meeting;

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File	L	A	Time	Description
1147-100 Kang	-L120	A101	1.20	Receipt of Message from Attempt to read message, Surveillance/Planning;

left message

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File	L	A	Time	Description
1147-100	6120	A 108	3.20	Meeting with
				Lawyer; Meeting with
				Appraiser; Meeting
				Retrieve item from
				Safe Deposit Box; meeting
				with Mr. Copeland, Mr. Copeland;

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File	L	A	Time	Description
✓ 1147-100	6120	A101	1.10	Preparation for Meeting;
				Review of Docs; T2's
				with consultants;
				T2 w: Tax Return;

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	(EDS)	Entered By: <u>Bru</u>
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File	L	A	Time	Description
✓ 1147-100	6120	A108	4.50	Preparation for Meeting;
				02 w/ Mr. Mosey, Ms.
				Brown; T2 w/ Mr. Hester;

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<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A108</u>	<u>.20</u>	<u>PRR 7 Unrecorded; Unrec'd</u>	

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<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>1.10</u>	<u>02 w/Staff; TC w/ Mr. Moore;</u>	

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File	L	A	Time	Description
<u>1147-10</u> <u>Kay</u>	<u>C120</u>	<u>A108</u>	<u>1.60</u>	<u>TL w/ Mr. Hard;</u>
				<u>TL w/ Mr. Rev Hunter;</u>
				<u>Planning; TL w/ Council;</u>

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File	L	A	Time	Description
<u>1147-10</u> <u>Kay</u>	<u>C120</u>	<u>A108</u>	<u>.40</u>	<u>TL w/ Mr. More;</u> <u>Consequence;</u>

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1147-100	L120	A107	1.50	OC w/ An. McElreath
				re: Jones; Preparation for
				Meeting;

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1147-100 Key	L120	A107	.60	T2 w/ Robert J. Miller; Research;

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1147-100 Key	420	A102	1.4	TL w/ Ms. Callan re:
				sale of real estate;
				re: [unclear]

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File	L	A	Time	Description
~~1147-100~~ Key	~~420~~	~~A102~~	~~1.4~~	~~TL w/ Ms. Callan re:~~
1147-100 Key	LHO	A101	1.20	TL w/ Park re: status; RPA 7 correspondence; DL w/ Park re: [unclear], accounting; TL w/ Mr. Mayo;

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1147-100 Key	L120	A101	1.20	Planning;

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File	L	A	Time	Description
1147-100	L110	A104	.30	Review of Past info re:
				new account;

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File	L	A	Time	Description
<u>1147-100</u>				
<u>Key</u>	<u>6120</u>	<u>A107</u>	<u>2.10</u>	<u>Conferencing w/ Mr. Collier re:</u> <u>title issue; TC w/ Ms. Bunn;</u>

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File	L	A	Time	Description
<u>1147-100</u>				
<u>Key</u>	<u>6120</u>	<u>A108</u>	<u>1.2</u>	<u>Meeting</u> <u>OC w/ Mr. Ireland;</u>
				<u>Visit to;</u> <u>TC w/ Rev. Hunter;</u>
				<u>TC w/ Ms. Moran;</u>

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File	L	A	Time	Description
1147-100	L120	A101	.70	Review of Teller issues;
				Planning;

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File	L	A	Time	Description
1147-100 - Kay	L110	A101	3.50	TL of Mr. Myers;
				TL of Mr. Brown;
				OC of Mr. Nelson;
				Review of Davis; Conf of Mr. Scher;
				Conf of Mr. Zeller;

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1147-100				
Key	L12	A107	2.50	02 of Mrs. Collins;
				little room, Review of
				Photo, little room, etc;
				02 of Mrs. Baker

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1147-100				
Key	L12	A107	1.20	RTF of Gregory; RE;
				Planning: Review of Books;

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1147-100	L120	A108	.20	TL of Mr. Head;
Kay				

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1147-100	L120	A108	.10	Correspondence;
Kay				

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File	L	A	Time	Description
1147-100	L120	A108	.20	Correspondence;
Kay				

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File	L	A	Time	Description
1147-100 Kary	L120	A101	1.80	Confer with Counsel; Planning;

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Kary L120	1147-100 L120	A101	3.40	Review & Review of Inventory Appraisal; TC 1 Probate Court; TC w/ Mr. Bedford; TC w/Mr. Brown; Planning;

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1147-100				
May, 2008	6120	A104	3.20	Review of Inventory &
				Apparatus; Correspondence;
				Review of Minutes;
				02's of Paralegal;

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1147-100				
Kay	L120	A101	1.50	T2 w/ Probate Court;
				02 w/ paralegal;
				Receipt of memo from May Moser
				Planning;

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File	L	A	Time	Description
1147-100				
Kay	L120	A105	.40	02 w/ Probate Court;
				issuance, present;

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File	L	A	Time	Description
1147-100				
<i>Kay</i> <i>John</i>	L120	A108	2.10	TL w/ Mr. Moore; TL w/ Per Hurst; Planning; attempt to reach supervisor; TL w/ Mr. Wilson;

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File	L	A	Time	Description
1147-100				
<i>Kay</i> <i>John</i>	L110	A107	2.20	Planning; 02 w/ Mr. Daves.
				re: the same,

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File	L	A	Time	Description
1147-100 H114	L110	A109 ~~A108~~	1.80	Meet w/ Person of Interest; check;
1147-100	L110	A104	1.20	visit & suggest Key premise;

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1147-100	L110	A101	.20	Attempt to read Mr. Person;

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File	L	A	Time	Description
<u>1147-100</u>				
<u>Kay</u> <u>Plot</u>	<u>L120</u>	<u>A101</u>	<u>.90</u>	<u>Planning;</u>

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File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A101</u>	<u>.30</u>	<u>Planning;</u>
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>.30</u>	<u>TLO/Planning;</u>

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File	L	A	Time	Description
1147-100				
Kay Entab	L120	A108	.50	TL w/ beneficiary; Planning;

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File	L	A	Time	Description
1147-100	L120	A108	.50	Review & Revision of Filter
				Motion for Extension; Correspondence;

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File	L	A	Time	Description
1147-100				
<i>Roy</i> <i>Letter</i>	L120	A107	.20	<i>Burney</i> TL w/ Mr. Burney;

Date: <u>6/14/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u> Date Entered: <u>06.30.08</u> Entered By: <u>Bro</u>

File	L	A	Time	Description
1147-100	L120	A105	.20	Correspondence;
1147-100	L120	A105	.20	Correspondence;

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File	L	A	Time	Description
1147-100	6120	A108	.40	TL with Mr. Hunter
				re: Hester;

Date: <u>6/30/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u>
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File	L	A	Time	Description
~~Smith~~				~~Base - 1000~~
1147-100 ~~Kay, P. Hester~~	6120	A105	.20	Concordance;

Date: <u>7/7/08</u>	Edward D. Sullivan	Page <u>1</u> of <u>2</u>
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File	L	A	Time	Description
<u>1/6/08</u>	<u>L12</u>	<u>A101</u>	<u>1.90</u>	<u>TL v/ Mr. Tardant;</u>
				<u>TL v/ Appraiser;</u>

Date: <u>7/15/08</u>	Edward D. Sullivan	Page <u>1</u> of <u>3</u>
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<u>1147-100</u>				
<u>Kay/Ed</u>	<u>L11</u>	<u>A104</u>	<u>.10</u>	<u>Rev of correspondence re:</u>
				<u>tax assessment;</u>

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File	L	A	Time	Description
1147-12 Key	L120	A101	.50	Key to 120; 02 w/ stoppage; personal effects

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File	L	A	Time	Description
1147-100 Key	L120	A108	.20	Correspondence;

Date: <u>7/21/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>08.01.08</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
1147-100			1.20	Preparation of Subpoena; Boulin
Kay Estate	L12	A108	.70	TC w/ Mr. Brown; Planning re: Personal Affairs;

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File	L	A	Time	Description
1147-100	L92	A101	1.30	Preparation for Mtg of Mr. Perry;

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1147-100				
Ken L.H.	L/D	A108	4.50	Travel to/from Lawrence;
				OL / Mr. Conrad, Mr.
				Review re: Personal effects;
				Review of judgment;
				Review of Probate Filing;

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File	L	A	Time	Description
1147-100				
Ken	L/D	A108	.20	correspondence;

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File	L	A	Time	Description
<u>1147-10</u>	<u>L12</u>	<u>A128</u>	<u>1.20</u>	<u>02 -/ Hoff re: correspondence.</u>
				<u>to Receipts of personal</u>
				<u>effects; correspondence;</u>

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<u>1147-10</u>	<u>L12</u>	<u>A128</u>	<u>.30</u>	<u>correspondence</u>
<u>MKey</u>				

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File	L	A	Time	Description	
1142100	Kay				
	2 tabs	L120	A108	.30	GL re; Letter Request,
					Receipt; or w/ paralegal;

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1147100	Kay	L120	A101	2.00	Preparation for Meeting;

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1147-100				
Kay Estab	LIL	A108	8.80	Travel to Newberg/Laurance;
				Meeting with Mr. Kay,
				Mr. Moran, Aggrarian,
				others; OC w/ Palmcoke Park;
				visit property; meet w/ prospective buyer; meet with Mr. Applehead;

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File	L	A	Time	Description
1147-100 Kay Estab	LIL	A105	.30	Receipt of Message; OC in with Staff w: meeting with Lewis;

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~~1147-100~~ ~~100~~	L120	A108	.40	TZ w/ Mr. White;
				Rt of Correspondence;

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File	L	A	Time	Description
1147-100	L120	A108	.30	Tel/Mr. Wilson;
				2007 Memo for
				Rev Hunter;

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File	L	A	Time	Description
1147-100	L110	A107	.10	Correspondence;

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File	L	A	Time	Description
147-100				
Key	6120	A108	1.20	Review of tax info;
				02 w/ Mr. Roddy w/
				Tax return, other;
				Review of license policy;
				Part of premium;

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File: 1147-100L	A	Time	Description
leg stat	LN	A 108 .20	Rec'd / Memo from Mr. Magin;
			TL w/ Mr. Magin;

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<u>1147-100</u>	<u>LN</u>	<u>1:104</u>	<u>.90</u>	<u>RR1 correspondence,</u>
				<u>Proposed submission;</u>

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File	L	A	Time	Description
1147-100	L120	A104	.30	R & R of Income Tax Return;
1147-100	L120	A108	.40	TLO/Mr. Veloz re:
				proposed division; correspondence;

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1147-100				
Key	L120	A105	.30	R & R of correspondence
				O.L. of Stoff re: Release;

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File	L	A	Time	Description
1147-100 <i>Kay</i>				
	<i>LIC</i>	<i>A108</i>	<i>2.40</i>	<i>TC's w/ Appraiser;</i>
				<i>TC's w/ Mr. Wilson;</i>
				<i>Rev</i> <i>TC's w/ Mr. Heston;</i>
				<i>TC's w/ Mr. Heston;</i>
				<i>TC's w/ Mr. Brown;</i>
				<i>TC's w/ Mr. Moore;</i>
				<i>Review of Report;</i>
				<i>Planning;</i>

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File	L	A	Time	Description
1147-100 Key;	L12	A108	.50	correspondence;
1147-100 Key;	L12	A111	2.00	~~NC~~ ~~Planning; correspondence;~~ ~~NC~~ Planning; correspondence; ~~NC~~
1147-100 Key	L12	A108	.20	~~NC~~ ~~Attempt the road bridge design;~~ Left message; ~~NC~~

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File	L	A	Time	Description
1147-100				NC
Plan	L120	A108	1.40	Concurrence re;
				Property Division;
				Planning; Review of Sketches;

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File	L	A	Time	Description
1147-100				
M.A.	L120	A104	.30	Review & Execution of
				Est. Top of Section;

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File	L	A	Time	Description
<u>1147-100</u> <u>Key Estate</u>	<u>L12</u>	<u>A101</u>	<u>.30</u>	<u>Planning;</u>

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File	L	A	Time	Description
<u>1147-100</u> <u>Key</u>	<u>L12</u>	<u>A105</u> <u>A104</u>	<u>.10</u>	<u>correspondence</u>

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File	L	A	Time	Description
1147-100				
Exhibit 1	6/12	8/109	.40	Conveyance;
Miss M. Key				Travel to Laramie; TC's w/ Mr.
				Rosen; Inspection of Premises;

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File	L	A	Time	Description
1147-100				
Key Exhibit	6/12	8/104	1.00	TC w/ Laramie Agreements
				officer, Expector 7 Agreements;

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A107</u>	<u>.10</u>	<u>Rt M of Correspondence</u>

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A108</u>	<u>.20</u>	<u>attempt to reach supervisor;</u> <u>left message;</u>

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File	T	A	Time	Description

1147-100				
Key	U12	A108	.50	TL w/ action plan;
				TL w/ comment;
				correspondence w/ Mr. Buffington

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1147-100				
Key	U12	A108	.40	PL & PL correspondence;
				Review proposed
				Division;

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1147-100				
Key	L120	A106	.40	Correspondence;

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File	L	A	Time	Description
Key	L120	A106	.30	Correspondence;

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File	L	A	Time	Description	
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A101</u>	<u>2.00</u>	<u>Planning</u>	<u>WC</u>

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File	L	A	Time	Description	
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A104</u>	<u>.60</u>	<u>Receipt & Review of Correspondence</u>	<u>WC</u>
				<u>Correspondence; Review of</u>	

Exemptions Receipt, Release, & Waiver;

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1147-100					PL
Kay	U120	A101	.50	TL v/ Hanyels	
				Planning, R&R, Construction	

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1147-100					PL
Kay	L110	A101	.40	Inspector / Planning	

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File	L	A	Time	Description	
1147- 101	Kay	L120	A101	2.00	02 of Mr. McCoy; Planning, NE

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File	L	A	Time	Description
1147-101	L120	A101	5.00	Preparation for meeting, travel to/from Bol;
				Other work 02 of Jack
				Proffitt;

1147-100	L120	A108	2.30	Project Review;	NE
				Meeting w/ Mr. Malan;	

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File	L	A	Time	Description
1147-100 <i>Hay, Latta</i>	L10	A108	.50	TCU/ Mr. Brown
				Conference, Hay, Planning;
1128-100				R1A1 correspondence;

NC

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File	L	A	Time	Description
1147-100 <i>Hay, Latta</i>	L10	A108	.40	correspondence; TCU/ Mr. Brown;

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File	L	A	Time	Description
1147-101	Kay	6120	11-08	.20 TL of Mr. Howie; Planning; Home

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1147-101		6120	11-08	.40 Correspondence;

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File	L	A	Time	Description
1147-100 ~~448~~	6120	11-08	.70	OL of Mr. Howie; <u>PC</u>

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File	L	A	Time	Description
1147-101 <u>myl</u>	6120	A108	.20	RRP correspondence

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File	L	A	Time	Description
1147-101 <u>myl</u>	6190	A107	.50	TLU/Mr. Cox; correspondence
				020/Mr. McLaughlin v. Plaintiff

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File	L	A	Time	Description
1147-101	6120	A105	.20	RRP correspondence re: Heston

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File	L	A	Time	Description
1114- 100	Kay	CIL	A101	40 R & R consequence; 02 v/assist;

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File	L	A	Time	Description
1147-100 Kay	CIL	A18	10	R & R / consequence; consequence.

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File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.20</u>	<u>02 of pleadings re:</u>
				<u>Agmt for Extension;</u>

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File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>1.20</u>	<u>Correspondence; 02 of</u>
				<u>Associate v; pleading;</u>
				<u>Review & Revision of Complaint;</u>

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File	L	A	Time	Description
1147-100 <i>Key State</i>	<i>L12</i>	<i>A108</i>	<i>.30</i>	<i>Telephone Conference</i>
				<i>re: Property;</i>

WC

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File	L	A	Time	Description
1147-101	<i>L210</i>	<i>A103</i>	<i>.40</i>	<i>Reporter's Complaint;</i>

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File	L	A	Time	Description
1147-101 <i>Key State</i>	L210	A103	1.20	Preparation of Complaint;
1147-100	L210	A104	.10	R & R of Under Brackets
				Extension;

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1147-101	L210 ~~L210~~	A103 ~~B~~	1.00	Prep of Complaint;

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File	L	A	Time	Description
<u>1147-101</u>	<u>L 120</u>	<u>A101</u>	<u>.20</u>	<u>Correspondence</u>
	<u>L 210</u>	<u>A103</u>	<u>.20</u>	<u>Page of Pleading</u>

Date: <u>12/22/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>3</u> Date Entered: <u>12.31.08</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.10</u>	<u>PT 12 mid correspondence</u>

NC

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File	L	A	Time	Description
~~H47-121~~	L120	A105	.80	R+R w/ e-mail correspondence;
				e-mail correspondence;
				~~Preparation~~ Preparation of Consent;

22

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File	L	A	Time	Description
<u>1147-101</u>	<u>2120</u>	<u>A102</u>	<u>1.30</u>	<u>02 w/ B accounts re;</u>
				<u>rights of first appeal;</u>
				<u>review of case law;</u>
<u>1147-101</u>	<u>2240</u>	<u>A103</u>	<u>.90</u>	<u>Review of summary &</u>
				<u>complaint;</u>

Date: <u>12/30/08</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u>
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File	L	A	Time	Description
1147-101	L210	A103	1.40	H&A 72-mail correspondence; ~~Re~~ Review of Plaintiff Complaint; Review of Answer & Complaint; Re: a/ Mr. Proffers re: Pleadings; ~~Re: a/ Mr.~~
1147-101	L190	A102	2.00	Resand-pr: Right of First Refusal;

NC

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File	L	A	Time	Description	
1147-100					
~~1147-100~~	L120	A104	.20	Review of Kay H. Hsu;	NC
1147-101					
~~1147-101~~	L120	A105	.40	Re Rf e-mail re;	NC
				Complaint; correspondence.	

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File	L	A	Time	Description
<u>1147-101</u> <u>9/10</u>	<u>C12</u>	<u>A105</u>	<u>.30</u>	<u>Correspondence re:</u>
				<u>sting of lawsuit, service</u>

Date: <u>1/5/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u>
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File	L	A	Time	Description
<u>1147-100</u>	<u>C110</u> <u>2120</u>	<u>A108</u>	<u>.30</u>	<u>R & R of correspondence;</u>
				<u>correspondence;</u>

Date: <u>1/7/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u> Date Entered: <u>02.02.09</u> Entered By: <u>Bru</u>

File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>.10</u>	<u>Att A 7 e-mail correspondence</u>
				<u>re: tax. doc</u>

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<u>1147-101</u>				
<u>Very Late</u>	<u>L120</u>	<u>A104</u>	<u>.40</u>	<u>Att A 9 e-mail correspondence,</u>
				<u>documents,</u>

NE

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File	L	A	Time	Description
1147-101 <i>Key</i>	212	A105	.20	Reply e-mail regarding
				re: <i>planning</i>

NC

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1147-100 <i>Key</i>	2110	A111	.60	preparation & mailing of
				property taxes;

NC

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File	L	A	Time	Description	
1147-100 Kay <u>th</u>	L110	A108	.30	Tel w/ Barbara re deposition;	NC

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File	L	A	Time	Description	
1147-101 Kay <u>th</u>	L120	A108	.10	Att of e-mail correspondence re: Review of Proden	NC

Date: <u>1/19/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>7</u>
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File	L	A	Time	Description
<u>1147-100</u>	<u>U120</u>	<u>A 108</u>	<u>.20</u>	<u>Kt 17 e-mail correspondence</u>
				<u>v: Sub p Property; can</u>

(W)

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File	L	A	Time	Description
<u>1147-100</u>	<u>U120</u>	<u>A 108</u>	<u>.20</u>	<u>Kt 17 e-mail correspondence</u>
				<u>v: Sub p Property; can</u>

(W)

Date: <u>1/24/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>02.02.09</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
~~1147-100~~ 1/24/09	1120	A115	.30	At Rt & mail correspondence
				re: Kevin Plumeri;

Date: <u>1/27/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>3</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
~~1147-100~~ 1/27/09	1147-100 1190	A108	.30	TL w/ Port Hand
				re: Motor;

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~~1147-100~~ 1/28/09	1120	A108	.30	TL w/ Frat m's main;

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1147-101 Kam	L120	A105	.20	HR of 2 mail correspondence	(PC)
Date: 1/30/09	Edward D. Sullivan Timesheet (EDS) 486			Page <u>2</u> of <u>3</u> Date Entered: _____ Entered By: _____	

File	L	A	Time	Description
1147-101 Kam	L120	A105	.40	2 mail correspondence
				re: Advice of Process

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File	L	A	Time	Description
1147-101 Van. Prob	L120	A105	.10	HR of 2 mail correspondence

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File	L	A	Time	Description	
~~1147-100~~ 1147-100 lay/sth	L120	A105	.40	convergence) R & R convergence	(PL)

Date: <u>2/3/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>4</u> Date Entered: _____ Entered By: _____

~~1147-100~~ 1147-100 lay/sth	L120	A105	.20	R & R convergence	(NC)

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		Date Entered: <u>03.02.09</u> Entered By: <u>Pauline Parker</u>

File	L	A	Time	Description
<u>1147-100</u>				
<u>1/amp, ltr</u>	<u>612</u>	<u>A104</u>	<u>1.00</u>	<u>Rt of correspondence,</u>
				<u>Ch for to Dennis;</u>

(P)

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File	L	A	Time	Description
<u>1147-100</u>				
<u>1/amp, ltr</u>	<u>612</u>	<u>A105</u>	<u>.60</u>	<u>Rt of correspondence;</u>
				<u>correspondence;</u>

(P)

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<u>1147-111</u> <u>1/2</u>	<u>420</u>	<u>8108</u>	<u>.90</u>	<u>correspondence;</u> <u>TC w/ Mr. Arnold;</u>	<u>(NC)</u>

Date: <u>2/9/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>2</u>
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File	L	A	Time	Description
<u>1147-111</u> <u>1/2</u>	<u>6120</u>	<u>8101</u>	<u>.50</u>	<u>correspondence; R & R of</u>
				<u>e-mail; R & R of</u>
				<u>correspondence;</u>

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File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>.10</u>	<u>RR / correspondence</u>

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File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A108</u>	<u>.60</u>	<u>RR 2-mail correspondence</u>
				<u>TR / Mr. Arnold (Presbyterian</u>
				<u>Home)</u>

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File	L	A	Time	Description
1147-100				
Kay L. H.	L120	A105	.60	02 with Mr. Griffith
				re: Pleading, strategy;
				Review of Motion to Dismiss;

(NC)

Date: <u>2/19/09</u>	Edward D. Sullivan	Page <u>1</u> of <u>2</u>
	Timesheet	Date Entered: <u>3/1/09</u>
	(EDS)	Entered By: <u>ELH</u>
	486	

File	L	A	Time	Description
1147-100				
Kay L. H.	L120	A103	.90	Revisitation of Amended Complaint;
				Correspondence;

(NC)

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File	L	A	Time	Description
1147-101 <i>Kay/Edith</i>	C10	A103	2.20	Correspondence to Mr. Ferguson, Registrar of Gendered Complaint; Review of Mother to Dennis;

Date: <u>2/24/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u> Date Entered: <u>3/1/09</u> Entered By: <u>PPB</u>

File	L	A	Time	Description
1147-101 <i>Kay/Edith</i>	C10	A105	.50	RR of correspondence; Correspondence;

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File	L	A	Time	Description
<u>1147-101</u> <u>Kay B. Hite</u>	<u>L120</u>	<u>A107</u>	<u>.90</u>	<u>Correspondence; TL</u>
				<u>with Mr. Buffette re:</u>
				<u>Amended Complaint;</u>

(NC)

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File	L	A	Time	Description
<u>1147-101</u> <u>Kay</u>	<u>L210</u>	<u>A103</u>	<u>2.50</u>	<u>Correspondence re: Amended</u>
				<u>Complaint; copy of Amended Complaint;</u>
				<u>copy of ~~the~~ Hightower's version;</u>

(NC)

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File	L	A	Time	Description
<u>1147-101</u> <u>Key</u>				
	<u>6210</u>	<u>A103</u>	<u>1.50</u>	<u>Review of Commander's correspondence</u>

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<u>1147-101</u> <u>Key</u> <u>Letter</u>	<u>6120</u>	<u>A105</u>	<u>.30</u>	<u>Correspondence</u> <u>RR7 Correspondence</u>	<u>NC</u>

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File	L	A	Time	Description
✓ 1147-101	4120	A108	.30	overmount

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File	L	A	Time	Description
✓ 1147-101	L210			
✓ Key State	L120	A104	1.00	Rsr of answer to Comradet
				Complaint & Counter-claim;

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File	L	A	Time	Description
✓ 1147-100				
✓ 411	L120	A108	.50	TL of Mr. Mehta re: Variation; NE
				Follow correspondence
				Research;

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File	L	A	Time	Description	
✓ 1147-101 Key, 5/10/06	L120	A105	.20	Correspondence; RSP of	NC
				Correspondence;	

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✓ 1147-101	L120	A105	.10	RSP/Correspondence;	NC

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File	L	A	Time	Description
1147-101	L120	A105	.10	R+R7 correspondence; WC

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File	L	A	Time	Description
1147-101	L120	A105	.50	Correspondence; Planning; WC

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File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.20</u>	<u>Atty Correspondence</u>

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		Date Entered: <u>5-14-09</u> Entered By: <u>✓</u>

File	L	A	Time	Description
<u>1147-101</u>	<u>Kay/Ste</u>	<u>L310</u>	<u>A103</u>	<u>.90 Preparation of Responses to Discovery</u>

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File	L	A	Time	Description
1147-17	U20	A101	1.50	Correspondence re;
				discovery. Planning;

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File	L	A	Time	Description
✓ 1147	U20	A107 ~~A101~~	.40	RR7 correspondence
				for Jack Griffith,
				correspondence from
				Mr. Ferguson;
				correspondence;

Date: <u>5/19/09</u>				Edward D. Sullivan Timesheet (EDS) 486		Page <u>1</u> of <u>1</u> Date Entered: <u>06.01.09</u> Entered By: <u>Bre</u>	
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.90</u>	<u>TC - Mr. Griffith re:</u>		<u>NC</u>	
				<u>interrogation; OC - Paralegal;</u>			
				<u>Pen of Person;</u>			

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File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.20</u>	<u>Mr P / Correspondence</u>

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1147-101 ✓

File	L	A	Time	Description
<u>Rem / stb</u>	<u>L310</u>	<u>A103</u>	<u>2.60</u>	<u>RR of correspondence</u>
				<u>Preparation of Response</u>
				<u>to District Request;</u>
				<u>Preparation of Discovery;</u>

NC

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1147-101 ✓

<u>Rem / stb</u>	<u>L310</u>	<u>A103</u>	<u>1.90</u>	<u>TL of Mr. Griffith;</u>
				<u>Preparation of Response</u>
				<u>to Discovery; correspondence;</u>

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File	L	A	Time	Description
1147-101	Ken Plot:	420	A107	.30 R & R 1 correspondence; correspondence;

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File	L	A	Time	Description
1147-101	420	A107	.20	R & R 1 correspondence
				for Mr. Ferguson;

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File	L	A	Time	Description
1147-101 Ken Plot	L 210	A103	.80	R & R 1 M. St. & Photo;

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File	L	A	Time	Description
✓ 1147-101	L120	A108	.10	attempt to reach Penny Arnold, left message;

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File	L	A	Time	Description
✓ 1147-101 1600	L120	A107	.60	congratulate Mr. Ferguson

W.C.

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✓ 1147-101	612	A105	.10	R & R of correspondence for	NC
				Jack Griffith re. letter to	
				Ferguson;	

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File	L	A	Time	Description	
✓ 1147-100					
✓ 169/100	612	A108	.10	R & R of correspondence re;	NC
				account;	

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File	L	A	Time	Description	
✓ 1147-111	L120	A108	.30	RR7 correspondence	NC
				for Mr. Arnold;	
				correspondence;	
				TC of Mr. Arnold;	

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File	L	A	Time	Description	
✓ 1147-111	L120	A105	.10	RR7 correspondence	NC
				for Mr. Polanski;	
				discovery;	

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File	L	A	Time	Description
<u>1147-100</u> <u>H47-100</u>	<u>L120</u>	<u>A105</u>	<u>.20</u>	<u>convergence to Mr.</u>
				<u>Griffith, R & J convergence</u>
				<u>for Mr. Griffith;</u>

NC

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File	L	A	Time	Description
<u>1147-100</u> <u>Kaylita</u>	<u>L120</u>	<u>A105</u>	<u>.10</u>	<u>R & J Griffith convergence;</u>

NC

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File	L	A	Time	Description
<u>1147-100</u>				
<u>Kay</u> <u>Estelle</u>	<u>L120</u>	<u>A107</u>	<u>.30</u>	<u>coordination re:</u>
				<u>production of documents;</u>

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File	L	A	Time	Description
<u>1147-100</u>				
<u>Kay Estelle</u>	<u>L120</u>	<u>A108</u>	<u>.50</u>	<u>Attempt to reach last mile</u>
				<u>TLN / Mr. Martin; TLN re:</u>
				<u>planning / meeting; correspondence.</u>

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>L120</u>	<u>A105</u>	<u>.10</u>	<u>Asst. w/rywonder</u>
				<u>re. Jones meeting</u>
				<u>with Mrs. Milane</u>

NC

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay</u>	<u>L310</u>	<u>A103</u>	<u>.90</u>	<u>By By Preparation</u>
				<u>by the court. Response to</u>
				<u>Prison; Prison</u>
				<u>Love and love.</u>

NC

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File	L	A	Time	Description
WFT-101	L110	A108	4.20	Travel to/from Lavery, SL; NC
				meet w/ Mr. Kilan, Mr.
				Driffett; ~~Project note~~
				to

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File	L	A	Time	Description
<u>1147-100</u>	<u>L110</u> ~~L100~~	<u>A109</u>	<u>.40</u>	<u>downed</u> <u>inspect site, downed tree;</u>
<u>1147-101</u>	<u>L120</u> <u>L112</u>	<u>A105</u>	<u>.80</u>	<u>Provide co-counsel w/</u> <u>four</u> <u>"town" of acreage, site</u> <u>subject of litigation;</u>

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File	L	A	Time	Description
<u>1147-100</u> <u>Kay Pate</u>	<u>L110</u> ~~L120~~	<u>A108</u>	<u>.20</u>	<u>re: tree cleanup;</u>

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File	L	A	Time	Description	
<u>1147-100</u>	<u>L120</u>	<u>A104</u>	<u>.50</u>	<u>FL v. crop payment;</u>	<u>NC</u>
				<u>Review Contract;</u>	

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File	L	A	Time	Description	
<u>1147-100</u>	<u>Kay</u>	<u>L120</u>	<u>A108</u>	<u>1.50 Review of FSA contract.</u>	<u>NC</u>
				<u>FL v US Dept of Agriculture</u>	
				<u>02 v US Dept of</u>	
				<u>Agriculture; R&A of correspondence</u>	

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File	L	A	Time	Description	
1147-100	L120	A108	.10	T2 w/ US Agriculture	NC
				re: Extension;	

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File	L	A	Time	Description	
1147-100 Hwy	L120	A108	.20	R & R / Correspondence;	NC
				Correspondence:	

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	(EDS) 486	Entered By: _____

File	L	A	Time	Description
1147-101 Kay	U120	A105	.20	Rest of correspondence re: <i>from J. Giffert</i> <i>durians</i> NC

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File	L	A	Time	Description
1147-100 Kay, Kabb	U120	A108	.10	Rest of correspondence re: removal of trees/debris; NC

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File	L	A	Time	Description
<u>1147-101</u> <u>Kay</u>	<u>UIC</u>	<u>A105</u>	<u>.10</u>	<u>RR1 correspondence</u>

(NC)

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File	L	A	Time	Description
<u>1147-101</u> <u>Kay</u>	<u>UIC</u>	<u>A105</u>	<u>.10</u>	<u>RR1 correspondence for</u>
				<u>Mr. Buffett re: closing;</u>

(NC)

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File	L	A	Time	Description
✓ 1147-100 Hwy	612	A107	.10	R&R proposed correspondence to John Ferguson;

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File	L	A	Time	Description
✓ 1147-100 Hwy	612	A108	.50	R&R off correspondence; TC N/A. Copied to: other; R&R Ferguson e-mail;
✓ 1147-100	612	A108	.10	R&R of correspondence w: truck.

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File	L	A	Time	Description
✓ 1147-100	L120	A108	.10	R&R - Wages
				re: trees

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File	L	A	Time	Description
✓ 1147-100	L120	A108	.40	TR in re: lot clean-up, NC
				Wages

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File	L	A	Time	Description
✓ 1147-101	6120	A105	.10	RFP of correspondence from Mr. Griffith re: denominator

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File	L	A	Time	Description
✓ 1147-100	6120	A104	.30	RFP document;

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File	L	A	Time	Description	
1147-101 M/Kay	112	A108	.40	T2 of Bat Hand;	NC

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✓ 1147-101	110 LA	A108	.20	T2 of Mr. Copeland v. option to purchase; @	(NC)

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File	L	A	Time	Description
✓ <u>1147-100</u> <u>Kay/Stone</u>	<u>U/L</u> <u>LLH</u>	<u>A107</u>	<u>.20</u>	<u>R & R of proposed correspondence</u> NC
				<u>to Mr. Ferguson; Review of</u>
				<u>Letter;</u>

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File	L	A	Time	Description
✓ <u>Kay</u>	<u>U/L</u>	<u>A104</u>	<u>.20</u>	<u>R & R of correspondence</u> NC
<u>1147-100</u>				<u>to John Ferguson;</u>
✓ <u>Kay</u>	<u>U/L</u>	<u>A101</u>	<u>.50</u>	<u>Preparation for Trip to</u> NC
<u>1147-100</u>				<u>Camden &: Trees, other</u>

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File	L	A	Time	Description
✓ 1147-101	L120	A108	4.50	Travel to / from 2 areas;
				rest of tree removed
				crew; rest of Mr.
				copland re. Optor;
				Preparation of contract;
				Preparation of waiver;

(N2)

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File	L	A	Time	Description

✓ 1147-101	L120	A107	.20	RRP work order
				for Mr. Ferguson re:
				deposition;

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✓ 1147-102	L120	A108	.60	TL'net w/ US Ag Dept
				re: Program; RRP
				contracts; speaker of contract;

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File	L	A	Time	Description
1147-101 Key Entry	C120	A103	1.80	02' in of parakeet w. (MC)
				deeds, affidavit of
				Charles G. Gellard; Series 7
				Monsters;

Date: <u>8/24/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>13</u> of <u>13</u>
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File	L	A	Time	Description
1147-100 Key Entry	C120	A103	.40	Page 7 Page

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File	L	A	Time	Description
~~4727-1~~ Key 11500	U12	A107 A106	.10	PT 7 Wrenyondene
				to Mr. Ferguson

✓ 1147-101 Key	U12	A15	.10	PT 7 Wrenyondene	NC
				for Ms. Bolero v.	
				Concord:	

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File	L	A	Time	Description
/ Kay	UW	A101 A106	.10	Pr R J Ferguson correspondence
/ Kay	UW	A107 A106	.10	Pr R J Ferguson
				correspondence to Mr. Ferguson

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File	L	A	Time	Description
/ Kay	UW	A108	.20	Pr R J Ferguson TL of Mr. Ferguson
				re: Mr. Copeland

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File	L	A	Time	Description

AP 1147-101	L120	A15	.10	RRP correspondence for Mrs. Salento re. John John Ferguson letter;

NC

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File	L	A	Time	Description

1147-101 Way State	L120	A15	.10	RRP correspondence re. insurance;

NC

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File	L	A	Time	Description
1147-101 Veg	L120	A110	4.40	attempt to shoot Mr. England - ~~off~~ message; preparation for tonight NC
				Lantern; Have plot
				approved by County;
				Record plot of 323 + acre; Travel to/from Lantern;

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File	L	A	Time	Description
✓ 1147-100 Kay	L120	A108	.40	Rowland TL w/ Mr. Miller
				re: Sale of Property; TL w/ Mr. Weatherford re: Sale of property.

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File	L	A	Time	Description
1147-100 Kay/Estelle	L120	A103	.30	Review & Reate contract with AS Dept of Agriculture; TL w/ Mr. Johnson re: documents

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File	L	A	Time	Description
1147-100	L110	A103	.30	Preparation of analysis for
				2008 Estate Income Tax Return;

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File	L	A	Time	Description
1147-101 /Kay/	L120	A105	.10	RR / carryover if for
				Mr. Buffitt; carryover
				to Mr. Buffitt;

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File	L	A	Time	Description
1147-101	6120	A108	.30	KEP of correspondence from Mr. J. Bowland Milan re: division of property; TCL/ Mr. Milan re: sale;

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File	L	A	Time	Description
1147-101 /Katy	6120	A105	.20	correspondence; ROR of correspondence from Mr. Guffe;

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File	L	A	Time	Description
✓ 1147-101	L110 6620	A108	.10	R & R of congressional office
				Rowland M. Lerner re:
				representation, office

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File	L	A	Time	Description
1147-101	L120	A105	.10	R & R of congressional
				for Mr. Griffin;

Date: <u>11/5/09</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>5</u>
		Date Entered: <u>12/1/09</u> Entered By: <u>Law</u>

File	L	A	Time	Description
1147-101	L120	A155	.20	RTA7 correspondence from Mr. Griffith re. Portland M. Lane proposed;

(NC)

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File	L	A	Time	Description
1147-101	L120	A155	.20	Correspondence to Mr. Griffith

(NC)

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File	L	A	Time	Description
1147-101	L120	A108	.10	congression to Mr. Milas

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File	L	A	Time	Description
1147-111	L120	A108	.10	R & R 7 congressional for
				Mr. Milas
1147-110	L120	A108	.20	congression to Mr. Milas
				re. proposed term;

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File	L	A	Time	Description
1147-1-1			.10	Receipt of correspondence
				from Mr. Guffolt;

1/14/10	1147-100	L120	A108	.10	Correspondence to Mr. Milan
					re: proposed probation;

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File	L	A	Time	Description
1147-100	L120	A108	.10	Correspondence to Mr. Howard wc
				Milan;

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File	L	A	Time	Description
1147-100	L120	A101	.90	Visit & unjust probation; wc

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File	L	A	Time	Description
1147-101	6120	A105	.40	RR7 Wagonkin
				v. Porter;

NC
FB

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File	L	A	Time	Description
1147-101	6120	A105	.20	RR7 Wagonkin
				from Mr. Griffith;
	4120	A103	.30	Review of Summary of Porter;
~~1147-101~~	6120	A105	.20	TC w/ Mr. Griffith et al.
				trial preparation;

NC

NC

NC

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File	L	A	Time	Description
1147-100	L120	A108	.60	to Defendant Correspondence re:
				Porter det;

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File	L	A	Time	Description
1147-101 / 104	L120	A105	.10	Att of Correspondence
				re. docket;

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File	L	A	Time	Description	
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>1.40</u>	<u>correspondence to</u>	<u>NC</u>
				<u>Benjamin;</u>	

Date: <u>3/2/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u> Date Entered: <u>4/1</u> Entered By: <u>MMH</u>

File	L	A	Time	Description
<u>1147-101</u>	<u>L120</u>	<u>A105</u>	<u>.20</u>	<u>RtR correspondence for</u>
				<u>Jack Bruffette re. Benjamin</u>
				<u>letter;</u>

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File	L	A	Time	Description
✓ 1147-10	L120	A105	.10	R & R of correspondence for J. Buffalo re. testimony;

✓ 1147-11	L120	A105	.20	correspondence; R & R of correspondence for Mr. Buffalo re. trial strategy

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File	L	A	Time	Description
✓ 1147-101	L120	A105	.10	R & R of correspondence for Mr. Buffalo re: testimony;

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File	L	A	Time	Description
✓ 1147-101	L120	A103	.90	Preparation of counter-affidavit
✓ 1147-101	L120	A105	.10	Re: RFP of correspondence
				for Mr. Sullivan re: review
				of contract;

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File	L	A	Time	Description
✓ 1147-101	L120	A108	.20	Correspondence to Mr. Mata

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File	L	A	Time	Description
✓ 1147-101	C120	A107	.10	for correspondence for Mr. Byns;

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File	L	A	Time	Description
✓ 1147- ¹⁰¹ ~~702~~	C120	A107	.20	Correspondence to Mr. Ferguson re: settlement, mediation;

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File	L	A	Time	Description
1147-100	L120	A107	.10	Correspondence to Mr. Bergin re: office;

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File	L	A	Time	Description
1147-101	<u>Key & Photo</u>	L120	A107	.40 Correspondence to Mr. Bergin;

Date: <u>3/29/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u>
		Date Entered: <u>3/31</u>
		Entered By: <u>DMH</u>

File	L	A	Time	Description
1147-101	Kan	U20	A105	10 RPT of correspondence re. summary terms of court;
	Enter			

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File	L	A	Time	Description
✓ 1147-101	U20	A107	10	RPT of correspondence to J. Ferguson

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File	L	A	Time	Description
✓ 1147-101	L12	A107	.20	to John Ferguson R & R correspondence re: mediation;
✓ 1147-100 ~~1147-101~~	L12	A107	.10	Correspondence to Jim Bryan re. status of negotiations;

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File	L	A	Time	Description
1147-101	L12	A107	.12	Correspondence to Mr. Griffin re. mediation; R & R correspondence from mediation;

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			Date Entered: <u> </u>
			Entered By: <u> </u>

File	L	A	Time	Description
1147-101 APP	LIW	A107	.10	correspondence to
				Mr. Gifford re. mediation;

Date: <u>4/8/10</u>	Edward D. Sullivan Timesheet (EDS) 486		Page <u>2</u> of <u>4</u>
			Date Entered: <u> </u>
			Entered By: <u> </u>

File	L	A	Time	Description
1147-101	LIW	A108	.10	Re: a7 correspondence
				from Mr. John Ferguson
				Re: Mr. Sullivan,

Date: <u>4/9/10</u>	Edward D. Sullivan	Page <u>1</u> of <u>1</u>
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	(EDS)	Entered By: <u>RC</u>
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File	L	A	Time	Description
1147-100	L120	A101	2.10	Travel to Zaremb; Roundabout visit site; TC w/ Mr. Molan re: contract of job, offer

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	(EDS)	Entered By: <u>RC</u>
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File	L	A	Time	Description
1147-100	L120	A108	.10	TC w/ Mr. Wham re: property;

RC

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File	L	A	Time	Description
1147-100	612	A105	.20	Correspondence to/from

Mr. Buffett re: Milan

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File	L	A	Time	Description
~~1147-100~~	~~612~~	~~A107~~	~~.10~~	~~Correspondence to~~
				Jim Boyan re: Milan
				Interest;

(nc)

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File	L	A	Time	Description
<u>1147-100</u> <u>100</u>			<u>.10</u>	<u>RR7 correspondence</u>
				<u>for Mr. Milani</u>

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File	L	A	Time	Description
<u>1147-100</u>	<u>CLL</u>	<u>RR7</u>	<u>.10</u>	<u>RR7 correspondence for</u>
				<u>Mr. Began</u>

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File	L	A	Time	Description
1147-100	L120	A108	1.20	02 of Mr. Hand re: proposed (PC) sol; TC of Mr. Hand, Mr. Biffett re: strategy, fees,
1147-101	L120	A108	.30	02 of Mr. Hand re: litigation issue. TC of Mr. Biffett re: Hand re: fees, strategy;
1147-100	L120	A105	.10	Noting correspondence from Mr. Biffett re: sol;
1147-100	L120	A106	.10	Correspondence to Jim Papa (PC) re: contract;

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File	L	A	Time	Description
<u>1147-101</u>	<u>6120</u>	<u>A1-5</u>	<u>.10</u>	<u>Conjunction to Mr.</u>
				<u>Buffett re: Mila</u>
				<u>offer;</u>

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File	L	A	Time	Description
<u>1147-100</u>	<u>6120</u>	<u>A1-8</u>	<u>.20</u>	<u>TLA/Mr. Heard re: offer;</u> (NC)
<u>1147-100</u>	<u>6120</u>	<u>A1-2</u>	<u>.40</u>	<u>TLA/Mr. Hunter re:</u> (NC)
				<u>Mila offer, other comm;</u>

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File	L	A	Time	Description
1147-101 H11	C120	A103	.80	Revision of Contract;
				Correspondence to Jim
				Byron re: Contract;

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File	L	A	Time	Description
1147-101	C120	A105	.10	R & R / Correspondence from
				Mr. Griffith
				Mr. Griffith re: medication;

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File	L	A	Time	Description
<u>H47-10D</u>	<u>L12</u>	<u>A105</u>	<u>.1</u>	<u>congratulate to</u>
				<u>Mr. Griffith re.</u>
				<u>prepared role, strategy;</u>

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File	L	A	Time	Description
<u>H47-17</u>	<u>L12</u>	<u>A105</u>	<u>.2</u>	<u>R47 congratulations</u>
				<u>for Mr. Griffith</u>
				<u>re: mediation;</u>

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File	L	A	Time	Description
1147-101	612	A105	.10	R & R / correspondence
				for Mr. Ruffolo re -
				mediator;

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File	L	A	Time	Description
1147-100	612	A108	.40	R & R / correspondence from (Wc)
				Mr. Malarj correspondence
				to Mr. Malarj

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File	L	A	Time	Description
✓ 1147-100	L120	A108	.20	Conveyance to Ma.
				M. Lane v. Agreement;
				Prop 7 Conveyance
				v. Agreement;

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File	L	A	Time	Description
✓ 1147-101	L120	A103	.40	Revision 7th Contract;

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File	L	A	Time	Description
1147-100	L12	A108	.20	Weyandua to Mr. Minter,
				Mr. Bryan: contractor

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File	L	A	Time	Description
1147-101	L12	A105	.10	A127 Weyandua
				from Mr. Griffith v.
				sale of property

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File	L	A	Time	Description
1147-111			.10	RCR correspondence
				from Mr. Griffith
				to Judge John Ferguson
				re. mediation

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File	L	A	Time	Description
1147-101	May 4th	C120	A104	.20 Review of Executed contracts;

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File	L	A	Time	Description
1147-100	L120	A108	.10	Correspondence to

Mr. Mila re: contracts

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File	L	A	Time	Description
1147-101	L120	A115	.10	Correspondence to Mr.

Griffith re: mediation

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File	L	A	Time	Description
<u>1147-121</u>	<u>6120</u>	<u>A108</u> <u>A</u>	<u>.10</u>	<u>RRR correspondence for</u>
				<u>Mr. Arnold (Ree Presbyterian Home)</u>
				<u>re. contract;</u>
<u>1147-121</u>	<u>6120</u>	<u>A108</u> <u>~~B~~</u>	<u>.10</u> <u>~~.08~~</u>	<u>TLW/ Mr. Arnold re: contract;</u>

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1147-111	L120	A1.7	.20	Correspondence to Mr. Nola, Mr. Payan re. contract;
1147-111	L120	A1.8	.20	Correspondence to Mr. Arnold re. contract;

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File	L	A	Time	Description
1147-111	L120	A1.8	.20	TL of Mr. Copeland re: contract.

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File	L	A	Time	Description
<u>1147-101</u> <u>42</u>	<u>412</u>	<u>413</u>	<u>.10</u>	correspondence to Mr. Griffith (PC)
				re: mediation, update, offer

<u>1147-101</u>	<u>412</u>	<u>417</u>	<u>.10</u>	RTM correspondence from <u>from</u>
				RTM Mr. Bryan re:
				contract, closing, then;

<u>1147-111</u>	<u>412</u>	<u>418</u>	<u>.10</u>	RTM correspondence from <u>(PC)</u> Mr. Malen W. Barnett Barnett money;

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File	L	A	Time	Description
1147-10f	L12	A108	.50	Conveyance to Beneficiaries
				Contract, pleadings;
1147-10p	L12	A104	.20	RR7 executed contract,
				Execution of contract;

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File	L	A	Time	Description
1147-10i	L12	A105	.10	RR7 conveyance for
				Mr. Buffett vs. Little
				At Mr. Lyndall;

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File	L	A	Time	Description
<u>1147-104</u>	<u>U120</u>	<u>A108</u>	<u>.40</u>	<u>12-1/2 hr. Hand at:</u>
				<u>Dwight Costa, other;</u>

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File	L	A	Time	Description
<u>1147-101</u>	<u>U120</u>	<u>A105</u>	<u>.10</u>	<u>RRR correspondence for</u>
<u>Kay</u>				<u>Mr. Griffith re: state,</u>
				<u>clerk;</u>

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File	L	A	Time	Description
~~1147-17~~	L12	A13	2.10 ~~2.05~~	Preparation of petition for Appraisal; Preparation of Answer & Counter;
~~1147-17~~	L12	A15	.20	OL of Mr. Griffith re: strategy;
~~1147-101~~	L12	A17	.10	TL of Mr. Bryan re: interview, closing, petition, other;

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File	L	A	Time	Description
<u>1147-101</u>	<u>6120</u>	<u>4103</u>	<u>.20</u>	<u>Preparation of Petition;</u>

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File	L	A	Time	Description
<u>1147-101</u>			<u>.10</u>	<u>Correspondence to Mr.</u>
				<u>Bryan R. Johnson;</u>

<u>1147-101</u>	<u>6120</u>	<u>4108</u>	<u>.10</u>	<u>RR7 correspondence for</u>
				<u>Mr. Nolan re: Clingott;</u>

1147-11	L12	A108	:10	Correspondence to Mr.
				Milax re: <i>John</i>
				approval of contract
				by Charles,

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File	L	A	Time	Description
1 1147-100	L12	A107	:30	Correspondence to Mr.
				Dryan re: closing date,
				other,
1147-100	L12	A101	:40	Research re: petition, other;
				Planning;

Date: <u>5/25/10</u> <u>1147-108</u> <u>Tre</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>6</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-108</u>	<u>L12</u>	<u>A108</u>	<u>.10</u>	<u>Tre / Proct. Court</u>
				<u>v. Petitioner, etc.</u>

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File	L	A	Time	Description
<u>1147-108</u>	<u>L120</u>	<u>A107</u>	<u>.20</u>	<u>Correspondence to Mr.</u>
				<u>Bryan re: original</u>
				<u>contract;</u>

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File	L	A	Time	Description
1147-101	C12	A105	.10	on Tel of Mr. Sullivan
				re. closing, other.

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File	L	A	Time	Description
1147-101	C120	A108	.20	Tel of Mr. Heard re
				Petition; Planning;

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File	L	A	Time	Description
~~1147-101~~ ~~1147-104~~	112	A105	.20	Correspondence to Mr. Griffith re. issue, strategy

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File	L	A	Time	Description
1147-101	L120	A108	. 10	concordance to Per Hunter v. Potato, Rejoinder;
1147-101	L120	A108	. 10	concordance to Mr. Arnold re. pleading;

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1147-101	L12	A107	.40	Preparation of answers,	(NC)
				Pleadings	

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File	L	A	Time	Description	
1147-101	L12	A107	.40	TL w/ Mr. Furtner, Presbytery	(NC)
				Attorney, re. Church	
				Corporate action, resolution;	
1147-101	L12	A108	.40	TL w/ Mr. Blackmon re.	(NC)
				Corporate note;	

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File	L	A	Time	Description
~~1147-101~~	~~C120~~	~~A103~~	~~.50~~	~~Answer and Preparation of Consent;~~
~~1147-101~~	~~C120~~	~~A108~~	~~.20~~	~~Asst of correspondence for Mr. Plachman re: 'Cemetery Fund' issue;~~

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(NC)

A

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File	L	A	Time	Description
<u>1147-101</u>	<u>L12</u>	<u>A105</u>	<u>.20</u>	<u>Correspondence to/from</u>
				<u>Mr. Goffette re.</u>
				<u>power of sale, probate</u>
				<u>consent to sale, other;</u>

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File	L	A	Time	Description
<u>1147-101</u>	<u>L12</u>	<u>A103</u>	<u>.20</u>	<u>Preparation of Consents to</u>
				<u>sale & Waiver of Hearing;</u>

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File	L	A	Time	Description
<u>1147-100</u>	<u>L10</u>	<u>A103</u>	<u>1.00</u>	<u>Preparation & Review of</u>
				<u>Consent to Adm;</u>
<u>1147-100</u>	<u>L120</u>	<u>A107</u>	<u>.20</u>	<u>Correspondence to/from</u>
				<u>Mrs. Stonishi re: Consent to</u>

Adm;

(pc)

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File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A103</u>	<u>.30</u>	<u>Revision / Correction</u>

PR * (ravel to James to meet with Bart, Chapp;
Bryant / etc, tools -

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File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A105</u>	<u>.10</u>	<u>Correspondence to Mr. Ruffalo</u> <u>NC</u> <u>v. Corsetti;</u>

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File	L	A	Time	Description
1147-120	6120	A108	.10	R&M correspondence from Pastor Presbyter Church;

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File	L	A	Time	Description
<u>1147-100</u>	<u>L100</u>	<u>A108</u>	<u>.10</u>	<u>correspondence to</u>
				<u>Histor Church re. Consent;</u>
<u>1147-100</u>	<u>L100</u>	<u>A108</u>	<u>.10</u>	<u>correspondence to Mr. Miller</u>
				<u>re. Consent;</u>
<u>1147-100</u>	<u>L100</u>	<u>A108</u>	<u>.10</u>	<u>part correspondence for</u>
				<u>Mr. Miller re. closing;</u>

(NE)

(NE)

Date: <u>6/8/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>7</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description	
/ 1147-100	L120	A108	.30	^{2-nd} R. R. Longwood for Linton Church re: Court;	(WC)
/					
1147-100	L120	A103	.30	Review of Court;	(WC)

Date: <u>6/9/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>07.01.10</u> Entered By: <u>Bre</u>

File	L	A	Time	Description	
<u>1147-100</u>	<u>CLW</u>	<u>4.08</u>	<u>.20</u>	<u>R117 estimate for Sandra</u>	<u>(nc)</u>
				<u>in & out re. Eganquest;</u>	
				<u>correspondence to Mrs. McNeil;</u>	
<u>1147-100</u>	<u>CLW</u>	<u>4.18</u>	<u>.10</u>	<u>R117 correspondence for</u>	<u>(nc)</u>
				<u>Ronald Miller re. Eganquest;</u>	

Date: <u>6/14/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>8</u> of <u>9</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description	
✓ 1147-101	612	A103	.20	Review of Vlt Mala	(WC)
				Consent;	
✓ 1147-101	612	A108	.20	RR1 correspondence for	(WC)
				Mr Ferguson re: Consent;	

Date: <u>6/14/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>9</u> of <u>9</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description	
✓ 1147-100	612	A108	.20	correspondence to Ms.	(WC)
				McNair re: Shop	
				Agreement.	

Date: 6/15/12

Edward D. Sullivan
Timesheet
(EDS)
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Page 3 of 5

Date Entered: _____

Entered By: _____

File	L	A	Time	Description
<u>1147-11</u>	<u>L12</u>	<u>4113</u>	<u>.20</u>	<u>Review of Prob Home</u>
				<u>Consent;</u>
<u>1147-11</u>	<u>L12</u>	<u>4118</u>	<u>.20</u>	<u>Consent to/for Prob Home of</u>

82 r. Consent,

Date: <u>6/16/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>4</u> Date Entered: <u>6.20.10</u> Entered By: <u>Bre</u>

File	L	A	Time	Description	
✓ 1147-100	L12	4118	.10	TCL / probate court re.	12
				exterior, contract;	
1147-101	L12	4118	.10	conveyance to Mrs.	
				Carmel re. Presbyterian	
				Home of North Carolina;	

Date: <u>6/16/10</u> <u>6/16/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>4</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-10D	L100	A108	.20	TCN/Mr. Heard re:
				password efforts,
				other issues

Date: <u>6/16/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>4</u> of <u>4</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-10D	L100	A108	.20	As R7 copy provided from
				Ms. Arnold re. Consent.

(pc)

Date: <u>6/22/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>3</u> Date Entered: <u>06.29.10</u> Entered By: <u>(Br)</u>

File	L	A	Time	Description
1147-101	CLW	A125	.20	Correspondence to Mr. Appellate
				re: Brown & Moore Const.;
				Re: 17 Corroborate Correspondence
				for Mr. Appellate re.
				Const.;

6/22/12

Edward D. Sullivan
Timesheet
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Page 2 of 3

Date Entered: _____

Entered By: _____

File	L	A	Time	Description
1147-11	C100	A108	.10	Correspondence to
				Mr. Arnold re. Preblythe House
				Consent;
1147-11	C100	A108	.10	Army Brown & Winer
				Consent;

(NC)

(NC)

6/22/12

Edward D. Sullivan
Timesheet
(EDS)
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Date Entered: _____

Entered By: _____

File	L	A	Time	Description
1147-11	C100	A108	.10	Correspondence to Court re
				petition;

(NC)

Date: <u>6/28/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>06.29.10</u> Entered By: <u>Br.</u>

File	L	A	Time	Description
1147- ~~100~~	212	A105	.10	correspondence to
				stopper. Presbyterian Home
				Convent; R & P correspondence
				from stopper;

Date: <u>6/24/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>4</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147- ~~100~~	L120	A108	.30	correspondence to
				Under Fidgpe. Convent;

Date: <u>6/24/10</u>	Edward D. Sullivan	Page <u>3</u> of <u>34</u>
	Timesheet (EDS) 486	Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>.20</u>	<u>Unresponsive to power</u>
				<u>Ms. Straski re: Power</u>
				<u>hole, other;</u>
<u>1147-100</u>	<u>L120</u>	<u>A108</u>	<u>.10</u>	<u>Attempt to reach</u> <u>TE [initials] Ms. Cohen re: Power hole;</u>

(WC)

(WC)

Date: <u>6/25/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>2</u> Date Entered: <u>07.01.10</u> Entered By: <u>Bre</u>

File	L	A	Time	Description
<u>1147-100</u>	<u>L12</u>	<u>A107</u>	<u>.20</u>	<u>TLⁱⁿ/Mr. Stomchi re:</u>
<u>1147-100</u>	<u>L12</u>	<u>A108</u>	<u>.30</u>	<u>Row 1 sole, other;</u> <u>Mem 7</u> <u>Correspondence to Mr. Fridge;</u> <u>Constr, power prod;</u>
<u>1147-100</u>				

*travel to Lamer
re. Ray Lott - PR*

Date: <u>6/25/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>2</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description	
7147-101	L120	A107	.10	conveyance to Mr.	(w/c)
				Mr. Anita re: charging;	

Date: <u>6/26/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u>
		Date Entered: <u>07.01.10</u> Entered By: <u>(Bre)</u>

File	L	A	Time	Description	
7147-100	L120	A108	.10	Ar R7 conveyance for	(w/c)
				Mr. Anita re: charging;	

Date: <u>6/27/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u> Date Entered: <u>06.29.10</u> Entered By: <u>(Bee)</u>

File	L	A	Time	Description	
<u>1147-10</u>	<u>U20</u>	<u>8118</u>	<u>.10</u>	<u>Re: R. J. correspondence from</u>	<u>(NC)</u>
				<u>Mr. Miller re: closing</u>	
<u>1147-10</u>	<u>U20</u>	<u>8118</u>	<u>.10</u>	<u>correspondence to Mr. Miller</u>	<u>(NC)</u>
				<u>re: closing;</u>	

Date: <u>6/29/12</u>	Edward D. Sullivan	Page <u>2</u> of <u>3</u>
	Timesheet	Date Entered: _____
	(EDS)	Entered By: _____
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File	L	A	Time	Description
/ 1147-104	612	A107	.10	TL of Mr. Cohen, private
				cont, re: power of sale.
/ 1147-104	612	A105	.10	conveyance E/f from
				Mr. Buffett re: status of
				sale;

Date: <u>6/29/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>3</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-101	L120	A107	.10	Correspondence to Mr. Bryan
				re. closing;
1147-101	L120	A108	.10	Correspondence to Mr. Milan

(WC)

(WC)

re. closing;

Date: <u>6/30/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>4</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-101	L120	A108	.10	Correspondence to Mr.
				Milan re. closing;

Date: <u>7/6/10</u>	Edward D. Sullivan	Page <u>2</u> of <u>5</u>
	Timesheet (EDS) 486	Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-10</u>	<u>610</u>	<u>A108</u>	<u>.10</u>	<u>R&R / correspondence for</u>
				<u>Mr. Mula re: closing;</u>
<u>✓</u>	<u>610</u>	<u>A107</u>	<u>.10</u>	<u>R&R / correspondence for</u>
				<u>Mr. Sapp re: possession</u>
				<u>of premises</u>

(W2)

W2

Date: <u>7/6/10</u>	Edward D. Sullivan	Page <u>3</u> of <u>5</u>
	Timesheet (EDS) 486	Date Entered: _____ Entered By: _____

<u>1147-10</u>	<u>610</u>	<u>A104</u>	<u>.80</u>	<u>R&R / attach statement;</u>
				<u>Contract;</u>

(W2)

W2

Date: <u>7/8/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>7</u> of <u>7</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
/ 1147-100	L12	4107	.30	correspondence to Ma.
				Bryan re. doing;
✓	L12	4107	.20	Preparation for doing;
				TL'n of bank of re. wing
				instructions;

(ve)

(ve)

Date: <u>7/10/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>5</u> of <u>5</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-100</u>	<u>612</u>	<u>A107</u>	<u>1.00</u>	<u>Preparation of Deeds;</u>
				<u>Review of Title Work;</u>
<u>1147-100</u>	<u>612</u>	<u>A108</u>	<u>.10</u>	<u>Correspondence to Mr. Nolan</u>
				<u>re: closing, promising</u>

(pc)

Date: <u>7/15/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>5</u> Date Entered: <u>08.02.10</u> Entered By: <u>Bre</u>

<u>1147-100</u>	<u>612</u>	<u>A108</u>	<u>.20</u>	<u>Correspondence to Mr. Shadman;</u>
				<u>Keep e-mail correspondence</u>
				<u>from Mr. Shadman re:</u>
				<u>sale of property;</u>

(pc)

Date: <u>7/15/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>4</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-100	612	418	.10	correspondence to Mr. Blackman
				re. sub / property
				shorts

Date: <u>7/16/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>3</u>
		Date Entered: <u>08.02.10</u> Entered By: <u>LBre</u>

File	L	A	Time	Description
1147-10	612	4128	.10	Reply to correspondence from Mr. Malone re. page;

(MC)

Date: <u>7/16/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>3</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-10	612	4128	.10	Updated Reply to Mr. Malone re. page;

(MC)

Date: <u>7/14/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>3</u> of <u>3</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-101</u>	<u>6:00</u>	<u>4:15</u>	<u>- 30</u>	<u>Confer with Mr. Buffor</u> <u>Re: [unclear] [unclear] for</u>
				<u>Mr. Buffor re. [unclear]</u>
				<u>1 case;</u>

(nc)

Date: <u>7/19/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>4</u> of <u>6</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
<u>1147-101</u>	<u>6:00</u>	<u>4:15</u>	<u>.20</u>	<u>Re: [unclear] [unclear],</u> <u>docs for Mr. Bryan re.</u> <u>cloning;</u>

Date: <u>7/2/10</u>	Edward D. Sullivan	Page <u>2</u> of <u>2</u>
	Timesheet	Date Entered: _____
	(EDS)	Entered By: _____
	486	

File	L	A	Time	Description
1147-101	6120	4105	.10	RRJ correspondence for
				Mr. Riffett re: Domestic;

Date: <u>7/2/10</u>	Edward D. Sullivan	Page <u>1</u> of <u>3</u>
	Timesheet	Date Entered: <u>0802.10</u>
	(EDS)	Entered By: <u>Br</u>
	486	

File	L	A	Time	Description
1147-101	6120	4101	1.00	Planning re: Petition;
				RRJ correspondence for
				Mr. Riffett re: Petition,
				Case Domestic;

1147-111	L120	A114	.50	R&A of Hypothetical of proposed Dismissal, correspondence to Mr. Ferguson

(WC)

Date: <u>7/22/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>2</u> of <u>4</u>
		Date Entered: _____ Entered By: _____

File	L	A	Time	Description
1147-101	L120 4	A113	.80	Reparation & Review of Settlement & Release Agreement
1147-100	L120	A118	.20	Correspondence to Mr. Adams re: fees;
1147-100	L120	A115	.30	OLN a/ Staff re: fees;

Date: <u>7/26/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>3</u> Date Entered: <u>07.30.10</u> Entered By: <u>BR</u>

File	L	A	Time	Description
1147-11	LW	AP7	.20	1st 1st correspondence from Mr. Ferguson to his client re: Stop of Dismissal.

NC

Date: <u>7/28/12</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>7</u> of <u>7</u> Date Entered: _____ Entered By: _____

File	L	A	Time	Description
47- 100	~~RA~~ ~~RA~~	1120	A10.8	.10 Correspondence to Mr. Milgrom re: ~~Ray~~

Date: <u>8/3/12</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>7</u> Date Entered: <u>08.30.10</u> Entered By: <u>(Bre)</u>

File	L	A	Time	Description
~~1147-100~~	~~1120~~	~~A10.5~~	~~.20~~	~~RTA7 correspondence~~ ~~re: Negotiation / Dismissal~~

Date: <u>8/7/10</u>	Edward D. Sullivan Timesheet (EDS) 486	Page <u>1</u> of <u>1</u> Date Entered: <u>08.09.10</u> Entered By: <u>Bra</u>

File	L	A	Time	Description
1147-100 Kant	UL	K103	.50	Preparation of Inventory

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IN THE MATTER OF: MARION M. KAY

)
)
)
)
)

IN THE PROBATE COURT

ATTORNEY FEE AFFIDAVIT

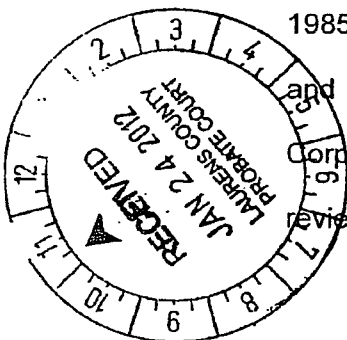
CASE NUMBER: 2007-ES-30-208

COPY

PERSONALLY APPEARED before me Daryl G. Hawkins, who, being duly sworn, says that:

1. I am the attorney for Edward D. Sullivan, PR of the Estate of Marion M. Kay in this case.
2. I am a member of the South Carolina Bar in good standing and have been continuously practicing law since 1983 predominantly involved in civil litigation and appellate practice.
3. I am requesting an award for attorneys' fees for the time necessarily devoted to the case with regard to the appeal of Mary Moses and Martha Brown, the Personal Representative's Post-Trial Motion; and Martha Brown's continuing claims relating to five (5) acres of real estate.
4. I have presented as a speaker at multiple Continuing Legal Education seminars and served in various civic and professional capacities since becoming a member of the South Carolina Bar including, but not necessarily limited to the following:

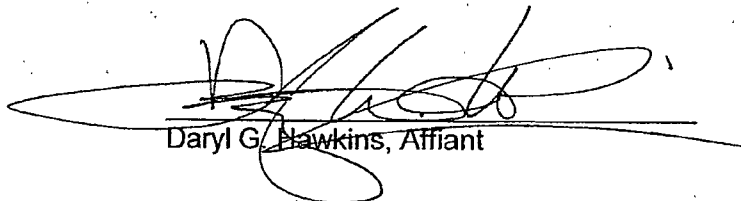
Law Clerk to Chief Justice C. Bruce Littlejohn, 1983-1984; Member, South Carolina Committee on Judicial Continuing Legal Education, 1985-1992; Member, Commission on Continuing Legal Education and Specialization, 1992-1996; Member, S.C. Secretary of State Corporation Blue Ribbon Committee, 1991-2002 (Committee to review and recommend revisions to SC Business Corporation Act).



Member, Board of Commissioners, South Carolina School for the Deaf, Blind and Multi-Handicapped, 1986-1987; Chairman, The Foundation for the Multi-Handicapped, Blind and Deaf of South Carolina, Inc., 1989; Member, Fourth Circuit Judicial Conference; Member, President, 2004-2005, John Belton O'Neal Inn of Court; Richland County Bar Association (President, 2007) and American Bar Association; South Carolina Bar (Member of the House of Delegates 2011 - _____).

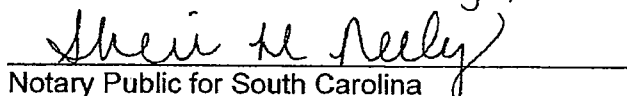
5. My customary standard hourly rate for litigation matters is \$350.00. Associate attorney hourly rate is \$200.00 and paralegal hourly rate is \$90.00.
6. I am submitting to the Court for consideration with this Affidavit, Invoice #10300 totaling \$8,093.26 which represents necessary fees and costs in this matter recoverable by the Personal Representative pursuant to SC Code Section § 62-3-720.

FURTHER Affiant sayeth not.


Daryl G. Hawkins, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME

this 23 day of January, 2012


Notary Public for South Carolina

My Commission Expires: 12-11-2018

Law Office of Daryl G. Hawkins, LLC

Invoice submitted to:
Edward D. Sullivan, PR of Estate of Marion Kay

1331 Elmwood Avenue
Suite 305-B
Columbia SC 29201

1331 Elmwood Avenue, Suite 30
Post Office Box 1190
Columbia, SC 2921
Federal Tax ID No. 22-396503

(803) 733-3531

January 18, 2012

In Re: Estate of Marion Kay - DGH File No. 10-050B

Invoice # 10300

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/6/2011 DGH Review motion filed by JFerguson	0.40 350.00/hr	140.00
5/2/2011 DGH Correspondence to Judge Hocker	1.20 350.00/hr	420.00
5/4/2011 DGH Conference with ESullivan on correspondence re court order and issues anticipated for Rule 59 motion	0.40 350.00/hr	140.00
6/5/2011 DGH Draft Rule 59 motion	1.00 350.00/hr	350.00
6/6/2011 DGH Review, revise and finalize Rule 59 motion	1.80 350.00/hr	630.00
6/13/2011 DGH Review cross-appeal and motion to remand	0.40 350.00/hr	140.00
6/15/2011 DGH Review letter from Judge Hocker and reply; telephone conference with JFerguson; email to court	0.40 350.00/hr	140.00
6/21/2011 PSP Telephone conference with Judge Hocker's office to schedule conference call; email; call to JFerguson	0.40 90.00/hr	36.00
DGH Review incoming letter from JFerguson	0.10 350.00/hr	35.00
6/29/2011 DGH Prepare motions	2.00 350.00/hr	700.00
DGH Prepare consent order	0.60 350.00/hr	210.00

Edward D. Sullivan, PR of Estate of Marion Kay

Page

	<u>Hrs/Rate</u>	<u>Amount</u>
7/8/2011 PSP Prepare letter to Judge Eugene Griffith	0.20 90.00/hr	18.0
7/20/2011 DGH EMail to Judge Hocker	0.20 350.00/hr	70.0
DGH EMail to ESullivan; letter to Chief Judge	0.50 350.00/hr	175.0
1/8/2012 DGH Conference with ESullivan; prepare for hearing	1.20 350.00/hr	420.0
1/10/2012 CEU Research in preparation for Attorney Hawkins' attendance at hearing in Laurens on 01/11/2012	1.10 200.00/hr	220.0
DGH Prepare for hearing	6.00 350.00/hr	2,100.0
1/11/2012 DGH Travel to/from Laurens for hearing (3.0); attend hearing (2.5)	5.50 350.00/hr	1,925.0
For professional services rendered	23.40	\$7,869.00
Additional Charges :		
	<u>Qty/Price</u>	
6/6/2011 Postage	1 28.24	28.24
6/13/2011 Ck# 1487 - Laurens County Clerk of Court - Filing Fee	1 150.00	150.00
Postage	1 1.28	1.28
6/14/2011 Postage	1 2.20	2.20
6/29/2011 Ck# 1494 - Laurens County Clerk of Court - Filing Fee	1 25.00	25.00
8/25/2011 Ck# 61409 - FedEx	1 17.54	17.54
Total additional charges		\$224.26
Total amount of this bill		\$8,093.26

Edward D. Sullivan, PR of Estate of Marion Kay

Page

Amount

Balance due

\$8,093.21

DGH = Daryl G. Hawkins, Senior Attorney
CEU = Charles E. Usry, Associate Attorney
PSP = Pamela S. Pierce, Paralegal

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
W. LANCASTER)
IN THE COURT OF COMMON PLEAS

2012 MAY -7 A I CASE NO. 2012-CP-30-258.

IN THE MATTER OF MARION M. KAY
LAURENS COUNTY
CLERK OF COURT

REVISID GROUNDS FOR APPEAL

Mary M. Moses and Martha M. Brown appeal the orders below (2007-ES-30-208) on the following grounds:

1. The Court below erred in giving the Personal Representative ten (10%) percent of the Marion M. Kay Estate as his fee after finding much of his work to have been unnecessary.
2. The Court below erred in finding that the Personal Representative acted in good faith in his billing in that the Court's own findings show that he consistently sacrificed the interests of the Estate to his own profit and charged excessive and unsubstantiated fees contrary to his fiduciary duty.
3. The Court below erred in finding that the Personal Representative was entitled to bill at a high rate because of his expertise in that he billed for expertise he did not use, because he hired others for most legal and all accounting matters.
4. The Court below erred in finding that the Personal Representative could bill at an enhanced rate because of his status as a licensed attorney when most of his legal work was for his own benefit and not that of the Estate.
5. The Court below erred in accepting the Collins and Lacey bills at face value when supporting evidence was lacking.

6. The Court below erred in accepting the Collins and Lacey bills at face value when the Estate did not benefit proportionately.

7. The Court below erred in not reducing the charges for paralegal time after finding much of it to be incomprehensible and of questionable necessity.

8. The Court below erred in finding that the Personal Representative had proven an entitlement to relief by a preponderance of the evidence when evidence abounded of his sacrificing the interests of the Estate to increase his fees.

9. The Court below erred in not requiring the Personal Representative to pay all the costs associated with the hearing personally in that the hearing would not have been necessary but for his misfeasance, malfeasance and breach of fiduciary duty.

10. The Court below erred in not awarding the undersigned an increased attorney's fee for extra work caused by the Personal Representative's post-trial motions because his work saved the Estate from further depletion by him.

11. The Court below erred in requiring Defendants Moses and Brown to pay any court costs, including those for court reporting services and copies of documents filed by the Personal Representative, in that they are the prevailing parties and should not have to share in the Personal Representative's expenses.

12. The Court erred in granting equitable relief to the Personal Representative, who did not come before the Court with Clean Hands.

JR7
P.2

13. The Court below erred in failing to require the Personal Representative to pay the Estate pre-judgment interest for the money he misappropriated.

14. The Court below erred in not requiring the Personal Representative to pay all the costs associated with the hearings, because the Personal Representative's misconduct necessitated the hearings to settle the Estate so he should bear all the expenses associated with them.

15. The Court below erred by failing to make a specific finding that the Personal Representative did not settle and distribute the Estate in accordance with the requirements of S.C. Code Section 62-3-703.

JA7
P.3
16. The Court below erred in failing to remove the PR immediately, because this increases the exposure of the Estate to his bad conduct.

17. The Court below erred in awarding total of \$ 25,806.38 to Collins and Lacey after finding that much of their work was unnecessary inasmuch as it was excessive and caused by the misconduct of the Personal Representative.

18. The Court below erred in finding that Appellants benefitted from the court reporting bills, inasmuch as the Personal Representative did not provide the heirs with a copy of the transcripts.

19. The Court below erred in failing to find wrongdoing when the Personal Representative by ex parte communication gave the judge evidence he did not supply to the undersigned, i.e., the hearing transcript.

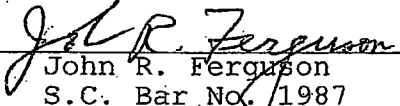
20. The Court below erred in considering evidence supplied to it ex parte.

21. The Court below erred in finding that the Common Fund Doctrine did not apply to the request of Appellants Moses and Brown for attorney fees for the post-trial motions in that preventing the further depletion of old assets is indistinguishable from generating new assets, inasmuch as in both cases there is a net benefit for the Estate.

JR7
P.4

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May 15, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

JOHN W. LANE IN THE COURT OF COMMON PLEAS
Eighth Judicial Circuit
2012 JUL 26 P 12:40

In the Matter of
Marion M. Kay

BRIEF OF APPELLANTS
MOSES AND BROWN
2012-CP-30-258
LAURENS COUNTY
CLERK OF COURT

This Brief is presented in support of the appeal of Mary M. Moses and Martha M. Brown. The Grounds referred to below are from the Revised Grounds for Appeal of Mary M. Moses and Martha M. Brown filed with the Court. The Appellants incorporate by reference their previously filed Summary of Position of Defendants Moses and Brown, Revised Return to Motion and Response to Personal Representative's Grounds for Appeal.

I. The Personal Representative was granted excessive compensation. (Grounds 1, 2, 3, 4, 8, 12, 13 and 15)

The PR failed to provide adequate proof of the 468.6 hours he claims and to prove the necessity of most of those hours (Para. #1 of Final Order). The PR failed to provide the Court below with a standard by which to judge his fee request. (Para. #8 and 13 of Final Order). At trial he testified that he did not use any particular standard and instead charged what he in his sole discretion felt was appropriate, a total of \$ 157,179 in fees and costs (P. 2 of Final Order and the attached Extracts from PR's Exhibit E). Instead of something objective like an hourly basis, he testified that he started off by deciding the fee he should wind up with "And I set...my draw against that target." (Garber Tr. 144/24; 174/8-12). He took as his starting point the maximum statutory compensation (Garber Tr. 174/12-18) and went up from there. After the record was closed, he attempted to patch the hole in his testimony by claiming that he was charging the Estate according to the standards applicable to attorneys; but at trial when the judge asked him whether he was charging as an attorney, he declined to affirm that and instead reverted to his vague "what I consider to be reasonable" standard. (See Garber trial Tr. 146/16-21.) The judge rightly rejected this belated attempt to re-cast his position (Order Disposing of Post-Trial Motions).

Although the usual maximum allowable for the PR is not more than 5%, S.C. Code Section 62-3-719, the judge below (who began the hearing by disclosing that he had known the PR socially for many years) without a sufficient factual basis decided to give the PR twice that amount. This is all the more incomprehensible because the learned judge found that much of the PR's work was unnecessary (Para. # 2, 3, 4, 13 of factual findings of Final Order). This unnecessary work formed the basis for the PR's request for grossly excessive compensation (Para. # 13 of Final Order). (It is worth noting that even the standards the PR now wants to apply require that the work performed be necessary.)

The PR was in fact churning, i.e., milking the Estate by claiming compensation for unnecessary hours. These hours were so excessive that they cannot have been incurred in good faith, and the judge, who said that he did not understand why much of the bill was incurred, nevertheless declined to find bad faith despite the absence of a factual basis for this (Para. #16 of Final Order). The Court below found wrongdoing when it delicately noted that the sale of the real estate was not necessary but that it generated proceeds for the PR (Final Order, Para. #4), when it found that the commissions sought by the PR were "clearly excessive" (Final Order, Para. #13) and when it found that the PR charged the Estate for work he did before the decedent died (Final Order, Para. #5). The Court also found that the PR claimed to have worked more hours than the evidence supported (Final Order, Para. #8) and that the bases he provided for his charges were not legitimate (Final Order, Para. #8). Though the Estate was non-taxable and most of the personalty of value was designated to go to particular people, the PR spent vast quantities of time and money valuing property to increase his commission, filed a partition action instead of signing a deed of distribution and vastly expanded the Copeland option, which resulted in litigation profitable to the PR. (See transcript of post-trial motion hearing, TR. 59/10-67/15.) What the Court should have found was Unclean Hands by a PR who was clearly more dedicated to his own gain than to the welfare of the Estate. See *In the Matter of Hanna*, 301 S.C. 310, 391 S.E.2d 728 (1990).

Despite declining to tell the judge that he was charging as a lawyer, the PR claimed that he was entitled to bill at a high rate because of his expertise. At the very least this would assume that he actually used whatever expertise he had. In this case the PR farmed the legal work out to his law firm and hired a CPA to handle the accounting work. He had his firm's para-legals do the administrative work, and the decedent had meticulously labeled to whom significant personalty was to go, so the PR did not have to decide that. How then did he use his expertise? The record does not tell us, so the judge's findings are without factual support. To the extent that the PR did do legal work, it was for his own benefit to protect his fee, and he cannot charge for representing himself. *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 454 (2000).

Although the Court below did require the PR to disgorge a significant amount of the money he paid himself from the Estate, it did not take note that the PR had had (and continues to have) the use of this money and is depriving the Estate of its benefit. This means that he is benefitting from the violation of his fiduciary duty. See generally *Ex Parte Wheeler v. Estate of Green*, 381 S.C.548, 673 S.E.2d 836 (Ct. App. 2009). As a court of Equity the judge should have awarded pre-judgment interest in accordance with S.C. Code Section 34-31-20. The Court below should also have made the PR himself pay for all the costs associated with the hearing which his malfeasance required, and this Court should make him pay for the costs of this appeal. See *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 873 (2007) and *Darby v. Furman Co., Inc.*, 334 S.C. 343, 513 S.E.2d 848 (1999).

II. Collins and Lacey was paid excessive compensation. (Grounds 5, 6, 7, 17)

In addition to the inflated fee he paid himself, the PR spread the Estate's wealth around to his law firm, Collins and Lacey. As the moving party, the PR was required to give the Court a sufficient basis to judge the Collins and Lacey billing, but he put no one on the stand to explain or verify those bills. All the Court had was unsubstantiated hearsay, and it found that to be incomprehensible as to the 204.6 hours of paralegal time supposedly expended during a period when nothing was contested (Para. # 17 of Final Order). At the very least the judge should have considered whether the Estate benefitted in proportion to the alleged expenditure of effort by Collins

and Lacey, but he did not. In spite of this, the Court awarded Collins and Lacey \$ 25,806.38 for mundane work on uncontested matters (Para. #17 of Final Order). There is insufficient factual support for this, and Collins and Lacey was both principal and agent for the PR, so it should be considered to have participated in his wrongdoing and Unclean Hands and therefore not be entitled to relief.

III. The Personal Representative should have borne all of the costs of the hearings his bad conduct made necessary. (Grounds 9, 11, 14, 18)

This Estate should have been able to have been settled the way most estates are settled: without a hearing and with the filing of a final accounting. The reason that a multi-day hearing was required was the PR's stealing from the Estate. While the Court below stopped short of this characterization, it did find that many of the PR's charges were "clearly excessive" (Para. #13 of Final Order) and required the PR to return a substantial amount of the money he had charged the Estate (Para. #14 of Final Order). This shows that the Appellants Moses and Brown were correct to call him to account, and they and the other heirs should not be made to pay any of the expenses associated with the hearing made necessary by the PR's wrongdoing and violation of his fiduciary duty.

This is particularly true in the case of the court reporting bills. Contrary to due process and the ethical rules, the PR made an ex parte communication with the judge below by giving him the trial transcript without providing a copy of it to the undersigned. The offense was compounded when the learned judge below found that somehow Ms. Moses and Ms. Brown benefitted from this ex parte communication and required that they pay half the PR's costs in obtaining the transcript (Order Disposing of Post-Trial Motions). To state the obvious, there would have been no hearing costs if there had been no hearing, and there would have been no hearing if the PR had not looted the Estate. It must also be noted that, contrary to the Order Disposing of Post-Trial Motions (P. 2, para. 3), the PR never gave the undersigned a copy of the trial transcript but has presented this Court with selected portions of it in his Exhibit E.

IV. The Court below should not have received or considered ex parte evidence. (Grounds 2, 19, 20)

At the hearing below the PR was caught in a number of legal and ethical shortcomings. He attempted to gain an advantage by giving the judge evidence which he did not share with opposing counsel, i.e., the trial transcripts. He provided to the undersigned only such brief portions of the transcripts as he felt to be helpful to his case. The undersigned properly objected to this (See counsel's argument on pp. 56/23-57/14 of the Garber post-trial motion transcript), but the judge received the transcript anyway, failed to make a finding of any wrongdoing, failed to ascertain whether the portion of the transcript he was given fairly and completely presented the relevant evidence and used this evidence in deciding that the PR was entitled to some relief (Order Disposing of Post-Trial Motions). This conduct is barred by Rule 3.5(a) and (b), SC Rules of Professional Conduct and by Canon 3(B)(7) of the Rules of Judicial Conduct and certainly should not be rewarded as happened below. See *In re Mendenhall*, 316 S.C. 196, 447 S.E.2d 858 (1994).

V. Counsel for Moses and Brown is entitled to an attorney's fee for all post-trial work, including this appeal. (Grounds 10, 21)

The Probate Court is a court of Equity and strives for a fair result, including the prevention of the PR's unjust enrichment by violating his fiduciary duty to the heirs. Although the court below found that the undersigned was entitled to compensation for the substantial amount of work he devoted to regaining the money the PR looted from the Estate under the Common Fund Doctrine (Para. #21 of Final Order), it made a distinction between the initial work to regain the money and the post-trial work to block the PR from undoing that gain (Order Disposing of Post-Trial Motions). This is not a valid distinction, and the original award was for preserving as well as protecting a common fund (Item # 4 of the conclusions of law in the Final Order). See *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008). There should be a remand to set the undersigned's fee.

The post-trial work was necessary to preserve the previous gains, and the Estate benefitted accordingly. The clients of the undersigned should therefore not bear the entire burden of the

attorney fees for work benefitting all the heirs. If the Estate is to bear this expense, then all the heirs should pay, but it would be most equitable for the PR himself to bear this expense out of his own pocket since it was only his continuing misconduct which necessitated the expense. This would also tend to inhibit his enthusiasm for continuing his frivolous appeal.

It is plain from the PR's filings that he is angry with the undersigned for calling him to accounts and forcing him to disgorge a portion of his ill-gotten gains. He wants to punish the undersigned and his clients by making them pay for successfully fighting his wrongdoing. This Court should not make itself a party to his revenge.

VI. The Court below should have removed the Personal Representative and appointed a replacement. (16)

While the Court below stopped short of finding an intentional breach of fiduciary duty despite abundant evidence to the contrary, it did find that the PR did a lot of things wrong which resulted in substantial and unjustified charges to the Estate (Para. #13 of Final Order). The undersigned asked that he be removed from office to take away further opportunity to do mischief. Because it considered the Estate almost at an end, the Court handled the matter by finding that the PR could wind up the estate but limited how much he could charge to do that (Item #6 of the conclusions of law in the Final Order). Predictably, the PR was outraged that his hand no longer fit in the cookie jar and is appealing that along with a slew of other unjustified grounds. Allowing the PR to continue serving gives him a continuing opportunity to prevent the closing of the Estate in the hope that he can extort a settlement from weary heirs, including his own church (Garber transcript of post-trial motion hearing, TR. 93/11-12). The Court should not allow this to happen. See *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 873 (2007).

CONCLUSION

The appeal of Mary M. Moses and Martha M. Brown must be upheld, as a matter of law, equity and ethical requirements; and the PR's appeal must be denied. The PR's depredations of the Estate must be brought to an end, and the case should be remanded to the Probate Court for relief consistent with the prayer herein, including statutory post-judgment interest and the costs of this appeal.

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July 26, 2012

EXTRACTS FROM THE PR'S EXHIBIT E

[Appellants Moses and Brown have not been provided with a copy of the complete Garber Transcript and are therefore reduced to calling the Court's attention to portions of what has been filed of the Edward Sullivan testimony. Appellants object to this selective presentation of evidence, which violates the Order Disposing of Post-Trial Motions's directive that the PR provide a copy of the transcript to opposing counsel.]

Q: And when you were charging as a Personal Representative, how did you make your charges?

A: I looked at the time I'd spent and the effort I'd put into it and the results that were obtained.

Q: So you were, as a Personal Representative... charging on an hourly basis?

A: No, I wasn't.

Q: Well what did that mean when you said you looked at the time you had into it to figure your charges?

A: I looked at what I thought was a reasonable fee. ...

Q: So you were charging on a time basis for your Personal Representative fee?

A: No. I had a-- I thought I knew what the bill-- what a fair and reasonable fee would be for this administration as we started down the road. And I set, I guess, my draw against that target.
(Garber Tr. 144/5-24)

Q: But you're telling the Court that you should be able to charge as an attorney for your Personal Representative work?

A: I'm telling the Court I should-- I'm entitled to a reasonable-- I'm asking the Court to award me additional reasonable compensation.... (Garber Tr. 146/16-21)

Q: Now, what method or formula or process did you go through when you took a draw?

A: Well, I looked at what the fee was going to be at the end of the day. When I started out... I first looked at the Statute and it said five percent, I looked at five percent of the Inventory and Appraisalment. ...I realized that, you know, you could apply for extra compensation, based on extraordinary services. (Garber Tr. 174/8-15, 16-18)

Q: All right. So it's not strictly an hourly basis?

A: No sir.

Q: Okay. It was not strictly a percentage basis?

A: No sir. (Garber Tr. 175/1-4)

Q: But it was definitely not an hourly basis or any kind of percentage basis?

A: No.... I was trying to be reasonable, but I wanted be fair to myself as well. (Garber Tr. 175/16-18, 19-20).

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM LAURENS COUNTY
Probate Court

Donald B. Hocker, Associate Probate Judge

Case No. 2012-CP-30-258

In the Matter of The Estate of Marion M. Kay
Probate Case No. 07-ES-30-208

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

LAURENS COUNTY
CLERK OF COURT
2012 MAY 14 A 9:08
LYNN W. LANCASTER

PERSONAL REPRESENTATIVE'S
GROUNDS FOR APPEAL

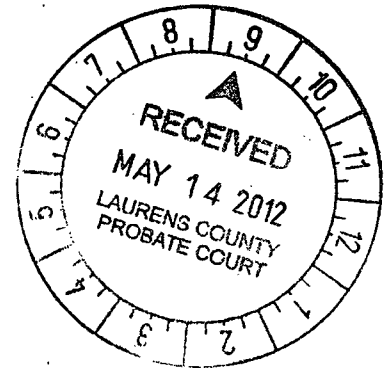
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THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM LAURENS COUNTY
Probate Court

Donald B. Hocker, Associate Probate Judge

Case No. 2012-CP-30-258



In the Matter of The Estate of Marion M. Kay
Probate Case No. 07-ES-30-208

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

PERSONAL REPRESENTATIVE'S
GROUNDS FOR APPEAL

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APPENDIX

Will of Marion Milam Kay	A
Time Entries of Personal Representative	B
Additional Time of Personal Representative	C
Calculation of Sales Price in Excess of Comparable Sales	D
Trial Transcript Excerpts	E
Letter of Robert Fuller	F
Affidavit of Teri K. Stomski	G

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IN THE MATTER OF MARION M. KAY

IN THE COURT OF COMMON PLEAS

Case Number 2007-ES-30-0208

**Personal Representative's
Grounds for Appeal**

Pursuant to South Carolina Code § 62-1-308 (a), the Personal Representative Edward D. Sullivan, hereby appeals the Order of the Laurens County Probate Court dated May 24, 2011, and received May 27, 2011, (the "Final Order") as well as the Order Disposing of Post-Trial Motions dated March 27, 2012 and received March 30, 2012, and hereby respectfully submits the following grounds for appeal:

GROUND FOR APPEAL

A. Probate Court Findings and Rulings Related to Reasonableness of PR Compensation

1. The probate court erred in failing to recognize and address the Personal Representative's discretion in making decisions related to the Estate.
 - a. The probate court erred in finding that the PR failed to provide a necessity for most of the time spent in administering the Estate because the will and law gave the PR discretion.
 - b. The probate court erred in ruling that the PR unnecessarily complicated the estate by insisting on filing a partition action because the PR to use used his authority under the will and probate code to make decisions he deemed to be in the best interests of the estate.
 - c. The probate court erred in ruling that 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 because the will and probate code empowered the PR to determine the testamentary intent of Ms. Kay and use his discretion.

- d. The probate court erred in ruling there was no necessity for a sale of the real estate because it was in the discretion of the PR and in the best interests of the estate to do so.
2. The probate court erred in finding that the PR failed to provide adequate proof for the hours claimed because the PR provided supporting documentation of his time to the court.
3. The probate court erred in finding that the PR failed to provide any legitimate basis for the fees claimed. Furthermore, the court erred in finding that the PR testified that he had no method or formula for determining the amount of the compensation other than by pulling a figure out of the air.
4. The probate court erred in ruling that the PR's excellent job in securing the sales price for the real estate does not justify the commission sought.
5. The probate court erred in finding that there were no novel issues regarding the real estate.
6. The probate court erred in finding that no explanation was offered to explain or excuse the PR's failure to provide interim accountings until the latter part of 2010.
7. The probate court erred in limiting the PR's compensation to 10% of the appraised value of the Estate.
- B. Probate Court Findings and Rulings Related to Reimbursement of PR for costs and expenses, including legal fees
 1. The Probate Court erred in disallowing PR's trial expenses, including attorney's fees and costs, as the probate code and the will provide for reimbursement of reasonable expenses.
- C. Probate Court Findings and Rulings Related to PR's Petition for Settlement
 1. The Probate Court erred in ordering the PR to refund commissions in excess of \$51,300.
- D. Probate Court Findings and Rulings Related to Award of Legal Fees to Counsel for Brown and Moses
 1. The Probate Court erred in awarding fees to Counsel for Brown and Moses.
- E. Probate Court Findings and Rulings Related to PR's Rule 59 motion

1. The Probate Court erred in denying the PR's Rule 59 Motion because the court's order is without evidentiary support and controlled by clear errors of law.

F. Other Grounds for Appeal

1. The Probate Court erred in finding the Personal Representative is limited to a fee of \$2500 to wind-up the Estate because the will provides for reasonable compensation.
2. The Probate Court erred in failing to admit the Affidavit of the Personal Representative into evidence and not ruling on the Personal Representative's Rule 59 motion to that effect.

QUESTIONS PRESENTED

- I. Did the probate court err in failing to recognize and address the Personal Representative's discretion in making decisions related to the Estate?
- II. Did the probate court err in failing to recognize the power and authority provided to the Personal Representative under the will to carry out his duties as he deemed proper in his discretion?
- III. Did the probate court err in failing to recognize the Personal Representative's method for determining reasonable compensation as provided by the will, including the application of factors such as time required, complexity of issues, litigation, sale of real estate, skills and experience, relationship with decedent, and results obtained?
- IV. Did the probate court err in failing to approve the Personal Representative's Petition for Settlement and Proposal for Distribution and ordering the Personal Representative to refund a substantial portion of his compensation?
- V. Did the probate court err in failing to approve the Personal Representative's request for additional compensation, legal fees and costs given the statutory authority and the provision under the will that the Personal Representative be paid reasonable compensation for services rendered and reimbursed for fees and costs?
- VI. Did the probate court err in awarding legal fees to counsel for beneficiaries Brown and Moses?

STATEMENT OF THE CASE

This action arises from the administration of the Estate of Marion M. Kay. Marion Milam Kay died on May 3, 2007 in Laurens County, South Carolina. At the time of her death, Ms. Kay owned a house and 10 acres of land as well as a one-half undivided interest in an adjoining 330 acre parcel (the "Farm"). The other one-half undivided interest was titled in the name of "The Heirs of W.H. Milam". The heirs of W.H. Milam consist of Martha M. Brown and Mary Leona M. Moses. The house and 6.238 acres (the "Homeplace") are separated from the remaining 3.762 acres (the "Lot") by a public roadway. Including Ms. Kay's personal property, her estate was valued at Five Hundred Thirteen Thousand Four Hundred Ninety-one and 33/100 (\$513,491.33) dollars (See Inventory and Appraisement).

Item IV of Ms. Kay's will provides as follows:

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely and forever, as follows:

One-fourth (1/4) interest to Lisbon Presbyterian Church, absolutely forever;

One-fourth (1/4) interest to Lisbon Presbyterian Church Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, (per stirpes), to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Presbyterian Home of South Carolina, Clinton, South Carolina.

(See Will attached as Appendix A; also included in record as Plaintiff Trial Exhibit B.)

The will also granted Charles P. Copeland, Ms. Kay's neighbor and close friend, an Option to Purchase Ms. Kay's estate in the Farm. Item XIV of the Will provides as follows:

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

(See Appendix A attached; Plaintiff Trial Exhibit B).

The will named Ms. Kay's attorney and life-long friend Edward D. Sullivan as Personal Representative (See Appendix C, Item V; Trial Exhibit B). The will essentially authorized and empowered the Personal Representative "by way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally" . . . "to exercise all the powers in the management of my estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative my seem best and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants power made, and with the necessity of a court order." (See will, Item VII, attached as Appendix A; Plaintiff Trial Exhibit B).

Mr. Sullivan is originally from Laurens, South Carolina. He is an attorney with more than 22 years of legal experience. In addition, Mr. Sullivan is a Certified Public Accountant with several years of experience in public accounting and as a Controller of

propane Gas Company. In addition to Bachelor of Arts in Accounting and Juris Doctor degrees, Mr. Sullivan has earned a Master of Accountancy degree and an LLM-Taxation degree. Mr. Sullivan is also a licensed real estate broker. Mr. Sullivan and Ms. Kay both attended Lisbon Presbyterian Church, a small church in Mountville, South Carolina. (Plaintiff Trial Exhibit A, 2/2/11 Transcript, Page 32, line 16 – Page 33, line 2).

In 2003, Ms. Kay retained Mr. Sullivan to divide the Farm. He corresponded with Brown and Moses to set up a meeting concerning the division and sharing of costs. (2/2/11 Transcript, Page 36, Line 17 – Page 38, Line 6, Plaintiff Trial Exhibit C-2). The co-tenants were unresponsive and the efforts to divide the Farm were discontinued at that time.

Ms. Moses and Ms. Brown were bitterly disappointed when they learned that they did not inherit Ms. Kay's interest in the Farm. They questioned Ms. Kay's ownership interest in the Farm and her right to leave the property to anyone but them. (2/2/11 Transcript, page 44, line 19 – page 45, line 21).

Mr. Sullivan understood that Ms. Kay intended that her real estate be sold and the proceeds distributed to the devisees. (2/2/11 Transcript, Page 125, lines 4 – 19). In addition to Ms. Kay's previous desire to divide the farm, the provision of the will referenced above refers to the "interest to be used to keep up the Milam-Kay plot." (Appendix C attached, Item IV; 2/21/11 Plaintiff Exhibit B). Mr. Sullivan did not believe a simple deed of distribution to the beneficiaries would carry out Ms. Kay's testamentary intent (The beneficiaries would be minority co-tenants of the Farm with Brown and Moses, responsible for property taxes and insurance, and subject to liability. Because of the lack of marketability of their respective interest in the property, the heirs would be

faced with filing a partition action or selling to Brown and Moses at a deep discount). Mr. Sullivan was also concerned about possible title issues. (2/21/12 Transcript, Page 118, line 21 – Page 123, line 22; Page 129, line 13 – Page 131, line 5).

At least three of the residuary beneficiaries, including Bart Heard, The Presbyterian Home of South Carolina, and Lisbon Presbyterian Church indicated a strong preference for their share of the estate assets to be cash rather than an interest in the real estate. (2/2/11 Transcript, Page 48, line 17 – 22).

With his knowledge of Ms. Kay's intent, the powers granted to him by the will, and the desire of the beneficiaries to receive cash rather than an undivided interest in real estate, Mr. Sullivan set out to divide the property so that he could sell the Estate's land and distribute cash to the beneficiaries. The division was very complicated and involved the following issues:

- a. In 1972, owners of the Farm granted to each other a "right of refusal" thereby creating a conflict with Copeland's Option to Purchase.
- b. Ms. Brown and Ms. Moses claimed they were entitled to approximately 5 acres of the Farm that had never been deeded to them.
- c. There were claims that Ms. Kay either did not have title and/or did not have the right to devise her interest to anyone other than the Heirs of W.H. Milam.

(Plaintiff Trial Exhibit C-1, Paragraph 10; 2/2/12 Transcript, Page 46, line 23 – page 47, line 24; page 38, line 18 – page 39, line 20).

Furthermore, Copeland desired to exercise his option by purchasing 46.85 acres that adjoined his property. He made a written offer of \$56,400 on April 16, 2008 (Plaintiff Trial Exhibits C-5, C-1, Paragraph 11). Later he agreed to pay \$1500 per acre, the appraised value. (Plaintiff Trial Exhibits C-1, Paragraph 11; C-11).

In an effort to sort out these claims, Mr. Sullivan obtained bids from surveyors and appraisers. Ultimately he hired a surveyor and an appraiser. The Farm appraised at

\$614,000 (Plaintiff Trial Exhibit C-6), the Estate's interest being \$307,000. The Homeplace appraised at \$64,000 (Plaintiff Trial Exhibit C-7) and the Lot appraised at \$20,000 (Plaintiff Trial Exhibit C-8).

Other issues that had to be dealt with included ensuring that the Personal Representative had the right to sell the property. To make this determination, the Mr. Sullivan researched the statutes, read and re-read the will, had many conversations with title insurance counsel and a real estate attorney. (Plaintiff Trial Exhibit C-1, Paragraph 15). Another issue was what action was required by church protocol to properly approve and consent to the sale of the real estate. Mr. Sullivan had several telephone conferences with Robert Fuller, and received and reviewed his "opinion" letter (Plaintiff Trial Exhibit C-1, Paragraph 16; Exhibit C-9).

It was discovered during this process that Mary Leona M. Moses had judgments against her. Mr. Sullivan personally looked at the records at the Laurens Courthouse. He was concerned how these judgments might affect the title to the property. (Trial Exhibit C-1, paragraph 17; 2/2/11 Transcript, Page 129, line 13 – Page 131, line 22).

In order to reach a resolution, Mr. Sullivan met several times with Charles Copeland and his wife, Patsy Copeland about Mr. Copeland's option. On Saturday evening, April 26, 2008, Mr. Sullivan met with the Lisbon Church Session to discuss a compromise proposal. (Plaintiff's Trial Exhibit C-1, Paragraphs 18 – 19).

On May 2, 2008, Mr. Sullivan submitted a written proposal to Ms. Brown, Ms. Moses, and Mr. Copeland in an attempt to resolve the issues (Plaintiff Trial Exhibit C-11). The proposal, subject to approval from the heirs and the probate court, was to convey 5 acres to Ms. Brown (as she claimed was hers) at no cost, convey 46.85 acres

to Mr. Copeland that adjoined his property, and sell the remainder to Ms. Moses and Ms. Brown at the appraised value. No response was received from Ms. Brown and Ms. Moses. (2/2/11 Trial Transcript Page 67, lines 14 – Page 69, line 10; Plaintiff's Trial Exhibit C-1, Paragraph 20).

In another attempt to reach a resolution, Mr. Sullivan arranged a meeting with representatives from Lisbon Presbyterian Church, Presbyterian Home of South Carolina, Mary Moses, Martha Brown, and Paul Major, appraiser. The meeting was held in Newberry, SC at Paul Major's office on July 31, 2008. Rev Hampton Hunter attended the meeting on behalf of the church. Penny Arnold attended the meeting on behalf of Presbyterian Home of SC. The purpose of the meeting was to discuss an equitable division of the property. Initially, Ms. Moses and Ms. Brown refused to discuss any proposal with Mr. Major and me as long as Rev. Hunter and Ms. Arnold were allowed to attend the meeting. Subsequently, the meeting was held and it was decided that Mr. Major would prepare a proposed division of the property and present a written proposal to the parties. (2/2/11 Trial Transcript, Page 69, Line 11 – Page 70, line 6; Plaintiff's Trial Exhibit C-1, Paragraph 21).

A proposal was ultimately prepared and presented to Ms. Moses and Ms. Brown. They retained counsel. No comment was ever received on the proposal, nor did Ms. Moses or Ms. Brown ever submit a counter-proposal on a division of the Farm. (Plaintiff Trial Exhibit C-1, Paragraph 22).

Having not made progress toward a resolution after approximately 20 months, Mr. Sullivan filed a partition and declaratory judgment action on or about January 1, 2009 in the Circuit Court. The purpose of the litigation was to determine the rights of the parties

arising out of Copeland's Option to Purchase, the Right of First Refusal and other claims made by Brown and Moses, clear the title to the property, and divide or sell the property so that Estate could be settled. (The Complaint was amended on March 4, 2009. See Plaintiff's Trial Exhibit C-12A). Mary Moses and Martha Brown filed a counterclaim asserting a right to the aforementioned 5 acres. (Trial Exhibit C-12B). The litigation ensued and the parties engaged in discovery. After approximately 15 months, a mediator was retained to mediate the dispute. (2/2/1 Trial Transcript, Page 70, line 3 – Page 72, line 2; Plaintiff's Trial Exhibit C-1, Paragraph 23).

Throughout this time period, Mr. Sullivan took phone calls from people who were interested in the property. Mr. Sullivan showed the Homeplace at least once to potential buyers. He also showed the Farm to a potential buyer. (Plaintiff's Trial Exhibit C-1, paragraph 24).

In the summer of 2009, Mr. Sullivan and Rowland W. Milam, a relative of Moses and Brown, began discussions about a possible purchase by Milam of the Estate's interest in Farm. The first offer received from Rowland Milam was forwarded to the beneficiaries on March 1, 2010. Milam offered \$48,000 for the Homeplace, \$4500 for the Lot and \$224,410 for the Estate's interest in the Farm, approximately 71% of the appraised value. The offer included terms requiring the Estate to give general warranty deeds and pay for a termite inspection and be responsible for repairs. (Plaintiff's Trial Exhibits C-1, Paragraph 26, C-13).

Two or three more rounds of negotiations with Rowland Milam followed. At some point during my negotiations with Rowland Milam, Copeland indicated he would release

his option to purchase if the Estate's undivided interest was sold to Rowland Milam. (Plaintiff's Trial Exhibit C-1, Paragraph 27 and 28).

On the eve of mediation of the ongoing litigation, Mr. Sullivan reached an agreement to sell Rowland Milam the Estate's $\frac{1}{2}$ undivided interest in the Farm, the Homeplace, and the Lot, subject to the necessary approval, if any, of the beneficiaries and the Probate Court. The sales price for the property was as follows: one-half undivided interest in Farm, \$292,500; Homeplace, \$57,000; and Lot, \$17,500. The Estate was not responsible for any repairs and the type of deed was "quit-claim". (Plaintiff's Trial Exhibit C-1, Paragraph 29).

Mr. Sullivan prepared three contracts which were signed and dated May 4, 2010. The total purchase price for the all of the Property was \$367,000, approximately 94% of the 2007/2008 appraised values. (Plaintiff's Trial Exhibits C-1, Paragraph 30, C - 14.)

Mr. Sullivan prepared and obtained the consent of all interested parties to close the sale of the property subject to the terms of the Contract. (Plaintiff's Trial Exhibits C-1, Paragraph 31, Exhibit C-15).

Mr. Sullivan prepared the deeds and attended the closing of the transactions in Laurens, South Carolina on July 9, 2010. (Plaintiff's Trial Exhibits C-1, Paragraph 32, C-16). Through the efforts of Mr. Sullivan, there was no sales commission. The net proceeds collected by the Estate were \$365,012.85. (See Settlement Statements, Exhibit C-16). Furthermore, the Estate was expressly relieved of any responsibility for roll-back taxes. (Plaintiff's Trial Exhibits C-1, Paragraph 32, C-16, Addendum to Settlement Statements). Despite the downturn in the economy and the stagnant real

estate market, the Estate realized almost 94% of the appraised value through the efforts of Mr. Sullivan, an "exceptional" result. (Plaintiff's Trial Exhibit C-1, Paragraph 30; Trial Transcript, Page 203, lines 6 – 24).

From September 1, 2010 until November 12, 2010, Mr. Sullivan made the final distribution of personal effects, met with beneficiaries, and sorted through the personal papers, pictures, books and remaining personal effects of Ms. Kay. (Plaintiff Trial Exhibit C-1, Paragraph 33).

Item V(3) of the Ms. Kay's will provides "For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses." (Appendix A attached; Plaintiff's Trial Exhibit B).

From Ms. Kay's death until August 31, 2010, the Mr. Sullivan was an employee ("Of Counsel") with Collins and Lacy, PC, attorneys. Mr. Sullivan retained his law firm to assist in the administration of the Estate. At Mr. Sullivan's request, the hourly rates for attorneys working on the matter were reduced from \$225 to \$145. Additionally, at Mr. Sullivan's request, the invoices were discounted/written down in an amount exceeding \$20,000. Furthermore, at Mr. Sullivan's request, the invoices reflect that Mr. Sullivan had 249.7 "no charge" hours so as to further reduce the fees to the Estate and to avoid any appearance of doubling billing by the Personal Representative. (2/2/11 Transcript, Page 61, line 19 – Page 65, line 12; Plaintiff's Trial Exhibit D. Also see Appendix B attached hereto setting forth the "no charge" hours listed in Trial Exhibit D). In addition, Mr. Sullivan worked an additional 216.10 hours in this matter in addition to the time

listed on the aforementioned invoices - a total of 468.80 hours. (See attached Appendix C.)

In order to determine a reasonable amount, Mr. Sullivan reviewed the statutory and case law on compensation of personal representatives, consulted with Alan Medlin, a professor at the University of South Carolina School of Law, teaching Trusts and Estates and a recognized authority in South Carolina on these issues. He also sought and relied on other counsel. (2/2/11 Trial Transcript, Page 144, line 5 – Page 146, line 9; Page 159, line 16 – line 24.)

Mr. Sullivan is an attorney with over 22 years in the practice of law. In addition, he is a Certified Public Accountant with 7 years of related accounting, tax and business experience. He also has a Master of Accountancy degree and an LL.M. – Taxation degree. He is also a licensed real estate broker. (Plaintiff Trial Exhibit A).

At an hourly rate of \$225 and based on 468.8 hours, the value of Mr. Sullivan's services rendered to the Estate through November 12, 2010 was \$104,805. Based on the time involved, the issues and complications of the Estate Administration, the litigation, the sale of the real estate (without retaining a real estate professional or paying a commission), his relationship with the client, his experience, knowledge and skills, and the results achieved, Mr. Sullivan determined that a reasonable fee for that three and one-half year period was \$93,775, an amount which was paid through periodic draws. 2/2/11 Transcript, Page 173, lines 10 – 23; Page 174, lines 8 – 25; Page 172, line 2 – Page 173, line 9; Page 144, line 5 – Page 146, line 9; Page 77, line 13 – Page 79, line 16.)

In addition, Mr. Sullivan is due a reasonable fee and reimbursement for reasonable expenses incurred since November 12, 2011. These fees include preparation of an Amended Proposal for Distribution, preparation for the hearing on the Petition for Settlement and reimbursement for legal fees and expert witness fees. (Page 146, lines 10 – 22; Plaintiff's Trial Exhibit C-18).

PROCEDURAL HISTORY

On November 12, 2010, after more than Three years and 6 Six months of estate administration, litigation, and the negotiation and closing on a sale of the Estate's interest in real estate, Mr. Sullivan filed a Petition for Settlement and a Proposal for Distribution. Counsel for Martha Brown and Mary Moses, each 1/10 residual beneficiaries and defendants in the aforementioned litigation wrote a letter to the Probate Court requesting a hearing. No pleadings were filed other than Mr. Sullivan's Petition for Settlement. A hearing was held on February 2, 2011 and continued on February 21, 2011. Mr. Sullivan testified as to the aforementioned administration of the Estate, the issues and complications of attempting to partition the property including the resistance of the co-tenants, Mr. Copeland's option, title issues, and the ensuing litigation and sale of the property. He also testified that he had spent approximately 450 hours the Estate, that he had determined a reasonable fee to \$93,775 based on the factors in determining reasonable fees for lawyers as well as Florida law, including time, novel issues, litigation, sale of real estate, and results.

Beneficiary Bart Heard, Ms. Kay's grandson, testified that land should have been divided before Ms. Kay's death and that he did not object to Mr. Sullivan's fees. (2/2/11 Transcript, Page 104, lines 12 – 16).

Penny Arnold, Director of Charitable Foundation and Church Relations with Beneficiary Presbyterian Home of South Carolina, testified that her position with the Presbyterian Home involved working with personal representatives of estates on a regular basis. She further testified that Mr. Sullivan kept her regularly informed through letters, emails or telephone conversations and that based on her experience the PR fees, that she had never been dissatisfied with him in his role as Personal Representative, and that the Presbyterian Home were really excited when they heard about the amount of the sale. She also testified that she was aware of the amount of the PR fees and had no objection to the fees requested for his services. (2/2/11 Transcript, Page 211, line 14 – Page 213, line 11; Page 215, lines 15 – 19; Page 216, lines 1 – 25) She further testified Presbyterian Home preferred that the real estate be sold so it could receive the proceeds since the Home didn't have the wherewithal financially to pay property taxes and keep the land. Further the proceeds would pay for resident aid for residents who had outlived their resources. (2/2/11 Transcript, Page 213, line 12 – Page 214, line 2). Finally, Ms. Arnold testified that based on her experience at a meeting with Brown and Moses to discuss division of the property, she reported the President of the Organization that she didn't believe there would be a short resolution of the issues in the Estate and that the Home may not ever receive any funds from the estate. (2/2/12 Transcript, Page 214, line 3 – Page 215, line 14).

John Wilson, a registered forester and licensed real estate appraiser, testified as to the very good results obtained by Mr. Sullivan based on comparable sales. (2/21/12 Transcript, page 183, line 12 – page 184, line 12; page 192, line 5 – page 193, line 15).

Paul Major, a forestry consultant and land appraiser, was qualified as an expert witness in the field of Real Estate Appraisal. 2/21/12 Transcript, page 199, line 14 – Page 202, line 16). He testified that \$292,500, the sales price obtained by Mr. Sullivan for the Estate's interest in the Farm, was an "exceptional price". (Transcript, Page 203, lines 10 –18).

Rowland Milam testified that Mr. Sullivan had contacted him about the possibility of selling the property. (2/21/11 Transcript, Page 8, lines 5 – Page 9, line 15; Page 14, lines 3 –12;) He also testified as to his recollection of facts and circumstances surrounding the negotiation and sale of the real estate.

The Probate Court essentially found that the PR (1) unnecessarily complicated the Estate and (2) failed to provide adequate proof for the hours claimed and necessity for the hours. The court ruled that a PR fee of \$51,300, about 10% of the estate value was reasonable and ordered Mr. Sullivan to refund to the Estate the amounts paid in excess of \$51,300. (Final Order, Page 4, Paragraph 14; Page 7, items a) and b)).

The Probate Court also ruled that Counsel for Brown and Moses was entitled to be paid \$19,860 by the Estate pursuant to the common fund doctrine. (Final Order, Page 5, Paragraph 21; Page 7, item e)).

Thereafter Mr. Sullivan filed a Rule 59 motion to alter or amend the judgment and/or reopen the record on the basis of that such motion be granted to prevent clear errors of law and/or prevent manifest injustice. (Rule 59 Motion to Re-Open Record, Accept Additional Evidence and/or to Alter or Amend Judgment.) Counsel for Brown and Moses simultaneously appealed and thereafter the Personal Representative cross-appealed in abundance of caution. These appeals were later dismissed so that the

Probate Court could entertain the PR's motion.) At a hearing on the motion, Counsel for Brown and Moses re-asserted their claim to an interest in five acres belonging to the Estate. The probate court ultimately denied the PR's motion. The probate court also denied Brown and Moses's claim. (Order Disposing of Post-Trial Motions). This appeal follows.

STANDARD OF REVIEW

An appeal from the probate court is governed by the provisions of the South Carolina Code. Golini v Bolton, 236 S.C. 333, 337, 482 S.E.2d 784, 786 (Ct.App. 1997) citing Howard v. Mutz, 315 S.C. 356, 424 SE. 2d 254 (1993). South Carolina Code Section 62-1-308 requires appeals from the probate court be to the circuit court. The Probate Code further instructs the circuit court to "hear and determine the appeal according to the rules of law." S.C. Code Ann. §62-1-308(d) (1976) "As used in this statute, the phrase 'according to the rules of law' means according to rules governing appeals". University of Southern California v Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct.App. 2005).

"The standard of review applicable to case originating the probate court depends upon whether the underlying cause of action is at law or in equity." Id. To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners below. Dean v. Kilgore, 313 S.C. 257, 258, 437 S.E.2d 154, 155 (Ct.App. 1993) If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Id. On the other hand, if the essential

nature of the cause of action is legal, the action to be taken by the circuit court is controlled by its determination of whether or not there is any evidence to support the factual findings of the court below."Id. In this case, Mr. Sullivan filed a Petition for Settlement as the Personal Representative seeking approval of the estate accountings, estate expenses, a proposal for distribution, and a certificate of discharge as Personal Representative. By letter to the court, counsel for Brown and Moses requested a hearing. No pleadings were before the court at the time of the hearing other than Mr. Sullivan's. After the hearing, Counsel for Brown and Moses filed a Petition to Remove the Personal Representative. The probate court denied this Petition without a hearing in its Final Order. Thus, the essential character of the matters before the court were matters of equity. Neither the Petition for Settlement, Proposal for Distribution, nor Petition for Removal would result in an enforceable money judgment. The essence of the action is equitable in nature as opposed to legal. Being an equity case, the circuit court reviews the record and makes findings based on view of the preponderance of the evidence. See (This citation is incorrect, the Pruitt case doesn't support the quote or cite Townes...

In any event, the Circuit Court, sitting as an appellate court, is free to decide questions of law – in this case the intent of Ms. Kay, the reasonableness of Mr. Sullivan's compensation as personal representative and right to reimbursement of legal fees and expenses, as well as the Probate Court's award of fees to counsel for Moses and Brown- with no particular deference to the lower court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

Furthermore, the interpretation of a statute is a question of law, which is reviewed de novo. Layman v State, 376 S.C. 434,,444 658 S.E.2d 320, 325 (2008).

LAW/ANALYSIS

“The paramount rule of will construction is to determine and give effect to the testator’s intent.” Holcombe-Burdette v. Bank of America,., 371 S.C 648, 655, 640 S.E.2d 480, 483 (Ct.App. 2000) citing S.C. Code Ann § 62-1-102 (b)(2) (1976), which provides “[t]he underlying purposes and policies of this Code are . . . to discover and make effective the intent of a decedent in the distribution of his property.” “A testator’s intention, as expressed in his will, governs the construction of it is not in conflict with law or public policy.” Id. at 656, 483. In construing the provisions of a will, every effort must be made to determine and carry out the intentions of the testator. Indeed, the rules of construction are subservient to the primary consideration of ascertaining what the testator meant by the terms used in the written instrument itself. Id.

“In determining the intent of the deceased, a court must always look first to the language of the will itself. The primary rule of ascertaining intent is that resort is first to be had to the instrument’s language, and if such is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument.” Id. at 656, 485.

South Carolina Code Section 62-3-719 sets forth in general compensation of personal representatives. However, subsection (c) provides that the provisions of the section do not apply in a case “where the will directs otherwise.” In this case, the will provides that the Personal Representative shall receive reasonable compensation for [his] services.

In determining "reasonable compensation," it is appropriate to consider the factors listed in Rule 1.5 of the South Carolina Rules of Professional Conduct, governing fees of lawyers. The rule provides that the factors to be considered in determining reasonable fees include:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The time involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

Rule 1.5, PRC, Rule 407, SCAR.

Due to circumstances beyond the Personal Representative's control and the complexity of the issues in this case, the estate administration has exceeded five (5) years. It has involved hundreds of hours, required much perseverance and legal skill to resolve the issues. Based solely on time spent in this matter, the value of the Personal Representative's time through November 12, 2010, far exceeds the amount of compensation paid.

In addition, the issues were novel and the questions involved were very difficult. In addition, to the "usual" duties and responsibilities such as gathering and distribution of personal effects and filing tax returns, the Personal Representative in this case dealt with the competing claims of various individuals for over three and one-half years. He was faced with a will that provided an "Option to Purchase" with co-tenants that claimed a "right of first refusal". In fact, the co-tenants challenged the very right of the decedent to leave her interest to anyone other than them. They also claimed that five acres or so that clearly were a part of the undivided tract should be deeded outright to them. The Personal Representative had the tract surveyed and appraised. He met with the co-tenants. He met with the appraiser and the co-tenants in an effort to reach an agreement on a division of the property. Finally, after 18 months, he was forced to file a partition action and a declaratory judgment action to divide the property and/or determine the rights of the parties. He consulted with a title attorney. He was faced with judgments filed against one of the co-tenants which could have affected title to the tract.

Furthermore, despite these obstacles, the Personal Representative obtained a tremendous result. He negotiated and sold the Estate's interest from \$147,480 to \$157,820 more than market price given the state of the real estate market and the discount for ownership of a partial interest. (See Appendix D attached).

By way of further analogy to legal fees, the South Carolina Supreme Court has held that under the state action statute a lodestar analysis is the proper method for determining an award of "reasonable" attorneys' fees. "A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case and is calculated by

multiplying a reasonable hourly rate by the reasonable time expended. Layman, 376 S.C. at 57. In this case, an hourly rate of \$225 for an attorney with Mr. Sullivan's exemplary credentials is reasonable. Given the complexities involved in partitioning the property and selling the real estate, 468.30 hours is also reasonable. (Mr. Sullivan worked three and one-half years to partition the property and sell the real estate, a period of approximately 175 work weeks or 875 work days. 468.30 hours spread over 875 work days is .53 hours or only about 30 minutes per day on average Mr. Sullivan devoted to the administration of the estate.) The lodestar calculation is therefore \$105,367.50. Using this lodestar calculation as a starting point for a reasonable enhancing the lodestar figure, though a multiplier is necessary to reflect the exceptional result. Id., holding that a multiplier of 1.25 was appropriate to arrive at a reasonable fee). In this case, using a multiplier of only 1.10 would yield a fee of \$115,904.25 or \$22,129.25 more than the paid to the Personal Representative.

In other jurisdictions, courts consider extraordinary service in determining "reasonable compensation". In Florida, for example, extraordinary services include litigation and the sale of real estate. §733.617 Fla. Stat (1973). In this case, the Personal Representative had to bring a lawsuit to resolve the issues and finally negotiated and sold real estate, which effectively ended the litigation and resolved the issues. In doing so, the Personal Representative provided extraordinary service to the Estate.

Lastly, Mr. Sullivan has in excess of 22 years practicing law, having been admitted to the South Carolina Bar in 1988. In addition, he is a Certified Public Accountant with several years of business, tax and accounting experience, and has a

Master of Accountancy degree and an LL.M.-Taxation degree. Mr. Sullivan is also a licensed real estate broker. His billing rate of \$225 per hour is reasonable, and his total compensation of \$93,775 through November 12, 2010, is reasonable.

GROUND'S FOR APPEAL

1. The probate court erred in failing to recognize and address the Personal Representative's discretion in making decisions related to the Estate.
 - a. The probate court erred in finding that the Personal Representative failed to provide a necessity for most of the time spent in administering the Estate because the will and law gave the Personal Representative discretion.

On the contrary, the evidence shows that the estate was complicated by competing claims to the real estate, including potential liens resulting from judgments against the heir Moses, and the pre-existing Right of First Refusal. The Court's Order seems to ignore, overlook or misapprehend the discretion given to the Personal Representative by both the will and statutory authority and would seem to prefer the interest of two heirs above the other four. The Court does not address how these issues would have been resolved through a deed of distribution. The Personal Representative successfully resolved these issues. Furthermore, in handling the estate as he did, the Personal Representative achieved, as the Court finds, an excellent result in the sales price. In fact, the Personal Representative "beat the market" by approximately \$147,460 to \$157,820. (See attached Testimony of Johnny Wilson, Page 190 line 25 – Page 191 line 23, and Paul Major, Page 204, lines 12 – 15. Also, see attached Appendix D - calculation of the result in selling interest in the 330 acres.) Additionally, beneficiaries Lisbon Presbyterian Church, the Presbyterian Home of South Carolina, Bart Heard, and Marla Orias would have been co-tenants - a result they did not want - paying real estate

taxes, bearing responsibility for accidents on the property, while Brown and Moses would have controlled the property (since Brown and Moses as the Heirs of W.H. Milam owned the other 50percent undivided interest, their combined interest, when including that under the will, would have totaled 60 percent). These beneficiaries would have been placed in the position of filing a partition action themselves, continuing with the expense and risks of co-tenancy or selling to Moses and Brown at conceivably heavily discounted prices. As testified to by Paul Major, qualified by the Court as an expert "in the field of real estate appraisals and in the field of real estate - -agent work" (see Transcript, p. 202, line 15 – p. 203, line 1), undivided fractional interests on property similar to the real property at issue in this case, has a diminution of value of 30 percent to 35 percent. See, Transcript p. 203, line 25 – p. 204, line 15).

This is a result that these beneficiaries did not want. See Testimony of Penny Arnold, Presbyterian Home of South Carolina, Transcript, Pages 213, Line 12 – Page 214, Line 2, attached as Appendix E. Also see letter dated April 21, 2008 from Robert Fuller, trial exhibit C-9, attached as Appendix F. There is no indication that they would have achieved the results obtained by the Personal Representative, even if they did not retain counsel.

- b. The probate court erred in ruling that the Personal Representative unnecessarily complicated the estate by insisting on filing a partition action because the Personal Representative used his authority under the will and probate code to make decisions he deemed to be in the best interests of the Estate.

The Probate Court erred in finding that the Personal Representative unnecessarily complicated the Estate by filing a partition action, that the Estate could have been settled by a deed of distribution, and that such would have been in

conformity with the will. Such a finding overlooks and ignores the subjective discretions given to the Personal Representative. One purpose of filing the partition action and the Declaratory Judgment action was to clear up title to the real estate and to determine the rights of the parties who had claims to the real estate. This was a bona fide purpose and completely within the powers of the Personal Representative as granted by the will and by statute. In fact, Item VII of the will empowers and authorizes the Personal Representative to "do all acts which he may deem proper or necessary to carry out of this my will". This language is perfectly plain and capable of legal construction. "In determining the intent of the deceased, a court must always look first to the language of the will itself." Holcombe-Burdette, 371 S.C. at 656. Thus, the will had the discretion as to take the action that he did. Furthermore, if the PR had deeded the property by Deed of Distribution, the title to the real property, in the opinion of the PR, would have been defective. The Court does not address the role of title insurance in real property transactions and did not consider the problems to be encountered by heirs who would have received a deed of distribution rather than a cash disbursement. During the administration of the Estate, the Personal Representative consulted with title counsel concerning these issues including insurability and marketability of title. (See Trial Exhibit C-1, Paragraph 15) Issues included (a) the competing right of "First Refusal" and "Option to Purchase," (b) the continuing dispute [predating the decedent's death] as to the real property, (c) the refusal of Charles Copeland who had the "Option to Purchase" to consent to the sale (until well after the initiation of the lawsuit and the execution of a contract), (d) the dispute as to the approximately five (5) acre tract, (e)

the outstanding interests of the heirs of W.H. Milam, and (f) the competing interests of a Church and other non-profit in the real property per the decedent's will.

The will provides an Option to Purchase to Ms. Kay's neighbor Charles Copeland. It also provides for a residuary share of the Estate to go to "The Lisbon Cemetery fund, the interest to be used (Emphasis added. See attached Will, Trial Exhibit B, Item IV). In addition, prior to her death, Ms. Kay retained the Personal Representative to seek partition of the property. At Ms. Kay's request, the PR wrote letters to co-tenants Brown and Moses seeking to have the real property divided. (See Trial Exhibit C-2). All of this supports Personal Representative's 's discretionary determination that the real estate was to be sold and the net proceeds distributed to beneficiaries.

- c. The probate court erred in ruling that 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 because the will and probate code empowered the PR to determine the testamentary intent of Ms. Kay and use his discretion.

The PR testified that he believed the option was tolled so that it would be meaningful in that Mr. Copeland who had the option to purchase and who desired to exercise it, had no desire to take ownership of an undivided interest in the real estate. See attached Testimony of Edward D. Sullivan, Transcript, Page 157, Lines 18 – 24. In deciding how to handle the distribution of the Estate it was within the PR's discretion to hold the opinion that a greater value to the Estate would be accomplished by working with Copeland in a manner to sell him property. The will gave the Personal Representative broad powers to contract with respect with Ms. Kay's property and the PR dealt the with option granted to Mr. Copeland in such a way as to satisfy his claim against the real

estate. See Will of Marion M. Kay attached as Appendix A. (Trial Exhibit B, Item VII). Ultimately, Mr. Copeland consented to the sale releasing his claim and clearing the title. See Trial Exhibit C-15.

The will gives the Personal Representative broad powers and discretion to settle the Estate. See Appendix A attached, Item VII; Trial Exhibit B. There is no evidence that the PR abused or acted outside of the powers granted under the will. South Carolina Code Sections 62-3-704 and 62-3-1001 require the personal representative to meet certain deadlines, subject to extensions of time as may be granted. The Personal Representative complied with all deadlines, as extended, that were imposed by the Code, the Court, and/or probate administration.

- d. The Probate Court erred in ruling there was no necessity for a sale of the real estate because it was in the discretion of the Personal Representative and in the best interests of the Estate to do so.

Contrary to the Court's ruling, the sale of the real estate was necessary to carry out the intentions of Ms. Kay and attempt to clear title defects. South Carolina Code Section 62-1-102(b)(2) and subsection (b)(3) provide the underlying purposes and policies of the Code are to discover and make effective the intent of the decedent in the distribution of [her] property, and to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to successors. The will and other evidence, including letters from Ms. Kay before she passed away prove, that the testator intended for the real property to be sold and/or that the PR had a reasonable belief that such was the intent of Ms. Kay. The PR was in fact Ms. Kay's counsel for years prior to her death, had prepared the will, and had first-hand knowledge of Ms. Kay's intentions. The PR's actions were designed to carry out her

intentions to sell the real property and make distribution to the heirs, as required by law.

S.C. Code Ann. § 62-2-601 (1976)

Furthermore, Ms. Kay's will expressly provides "Powers for Personal Representative". See Appendix A, Item VII, Trial Exhibit B. The powers are exhaustive and after providing a comprehensive list of powers which are described in the will as being "[b]y way of illustration and not of limitation and in addition to any inherent, implied, or statutory powers granted to Personal Representative generally, . . ." This provision regarding powers concludes with " . . . and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order." This provision not only gives extremely broad powers to the Personal Representative but expressly grants the Personal Representative the discretion to use these powers as he "may deem just and proper." This language is perfectly plain and capable of legal construction.

Thus, the Personal Representative was granted the authority to make decisions, subjectively, not objectively. The Court's Order overlooks or misapprehended the subjective discretion granted in that the Court's Order makes no such reference. Clearly, the PR had the discretion to file the partition action and to take all other action he deemed just and proper, in his subjective discretion, to carry out his job as the Personal Representative. (As a further illustration provided to the Personal Representative by Ms. Kay's will, Item IX grants the Personal Representative discretion in reference to tax matters and elections; Item VIII provides that the Personal Representative shall act as trustee for beneficiaries under age 21 and provides that the

Personal Representative "shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative" (emphasis added). The probate code does not restrict these powers and expressly defers to the will. See S.C. Code Ann. §62-3-715 (1976). The Personal Representative's compensation should not be reduced because others may have done something differently, if they had been given the same subjective discretionary powers – especially given the outstanding result obtained by the Personal Representative for the Estate.

While some practitioners mistakenly believe that Section 62-3-910, subsections (A) and (B), protect all parties to the transaction against the claims or interests of others, though a close reading of the statute clearly shows that it does not. Subsection (A) protects only the *purchaser*; Subsection (B) was added in 2000 to provide protection to a *purchaser for value* from the personal representative and squarely places any liability on the personal representative. Neither Section 62-3-910, subsection (A) or (B) would prevent a title company from having to defend a purchaser in an action by the estate should an heir, devisee or third party challenge the purchaser's clear title. A deed of distribution would not resolve these outstanding title defects. A deed of distribution is not an instrument of conveyance, so it cannot convey the interests of outstanding heirs. Further, it cannot resolve the disputes among the beneficiaries nor the competing rights and options. To use a Deed of Distribution would merely distribute uninsurable and unmarketable real property plagued with title defects. It might be simple but it would not be a solution here.

Furthermore, the Court did not take into consideration that there is a risk to the personal representative, per Section 62-3-910, in executing a deed of distribution or

exercising its "power of sale". In this situation, there were ongoing disputes as to the real property of Ms. Kay. This statute only protects the purchaser and specifically places all liability on the personal representative. When you couple the fact that the disputes and competing interests were numerous in this Estate with the fact that there is no protection for the personal representative who has to distribute or convey the property, it was prudent, and at least discretionary, to seek approval of the court. This is especially true when considering that the Legislature saw fit to set forth just such a procedure under Section 62-3-911: Partition for purpose of distribution.

Based on the title issues involved in the Estate, the risk in insuring over these issues and the liability of the personal representative, the only prudent action to take with regard to the sale of the real property was to have all parties consent to the sale and/or to have the court's approval through a final order of a court of competent jurisdiction. This is the only safe option that would make the title insurable and marketable and thus the procedure chosen by the PR in his discretion. A mere deed of distribution or sale by the personal representative without court approval would leave the title issues unaddressed, thereby leaving a cloud on the title to the Estate's real property.

The Personal Representative used his discretion and powers provided by the will and by law as well as his understanding of testator's intent to sell the property. The PR reasonably relied on counsel in administering the Estate. See Trial Exhibit C-1, particularly paragraph 15.

2. The probate court erred in finding that the PR failed to provide adequate proof for the hours claimed because the PR provided supporting documentation to the court.

Contrary to the court's ruling, the evidence supports that the Personal Representative worked more than 468 hours on the Estate. The Collins and Lacy Invoices reflect some of the services provided and the number of hours that the Personal Representative worked for the estate. 249.7 of these hours were "no charged" by the law firm. See Trial Exhibit D, August 17, 2010 invoice, 173.3 hours plus August 16, 2010 invoice, 76.4 hours. These "no-charge" hours are also set forth in Appendix B attached.

On the day before the hearing, the Personal Representative provided to the Probate Court and opposing counsel an affidavit with supporting exhibits stating clearly the actions taken by the Personal Representative to probate the estate and the time dedicated by the Personal Representative to the various tasks. Included in this affidavit was Exhibit E reflecting 216.10 hours of time spent on the Estate in addition to the 249.7 listed above. These hours were referenced in response by the Personal Representative to questions by the Court. See Appendix E attaching Transcript, Page 172, Line 15 – Page 173, Line 9. See aforementioned "Exhibit E" attached as Appendix C. It should be noted that the Court awarded opposing counsel legal fees simply on the basis of an affidavit which is neither as detailed nor complete as that offered by the Personal Representative. In addition, the Personal Representative testified in detail for several hours about the actions he had taken, why he had taken the actions, the time taken to complete, and the results achieved. Furthermore, for the sake of comparison, the Court has awarded \$51,300 to the PR for his services over three and one-half years while it awards \$19,800 to opposing counsel who was involved for three or four months.

Further, the Court did not seem to recognize the entries on the Collins & Lacy bills as documenting time of the Personal Representative on administration of various aspects of the Estate. Attached hereto is Appendix C is documentation of time recorded by the Personal Representative on other matters related to the Estate. This was an Exhibit to the Affidavit of the Personal Representative submitted but not accepted by the Court prior to the hearing. The Court should consider the documentation of the PR's time in Appendix C and in the Collins & Lacy bills as substantiating the time spent on behalf of the Estate.

During direct examination by the probate court about his time, the Personal Representative made references to time reflected in Appendix C as the time spent in addition to that listed as "no charge" on invoices. Trial Transcript, Page 172, line 2 – Page 172, line 9). The Court did not inquire further. It is error for the Court to find the Personal Representative's time is unsubstantiated.

3. The probate court erred in finding that the PR failed to provide any legitimate basis for the fees claimed. Furthermore, the court erred in finding that the PR testified that he had no method or formula for determining the amount of the compensation other than by pulling a figure out of the air.

The Probate Court erred in finding that the Personal Representative determined his compensation by "pulling a number out of the air" and had no method for determining compensation. (Final Order, Page 3, Paragraph 8). Furthermore, the Court makes a manifest error of law in finding the commissions sought by the Personal Representative are clearly excessive, and the Personal Representative failed to provide the Court with an alternative proposal for valuing his services. (Final Order, Page 4, Paragraph 13). The Will provides that the Personal Representative is to receive reasonable compensation. (See Appendix A, Item V (3); Trial Exhibit B). The

Personal Representative determined the amount of his compensation by considering the time required, the effort spent, the complexity of the matter, novel issues, and results obtained. The Personal Representative further testified that he took the factors from the Rules of Conduct for Lawyers. In addition, the Personal Representative looked at a Florida statute governing compensation for reasonable compensation of Personal Representatives. See Testimony of Edward D. Sullivan, Transcript, Page 144, line 5 – Page 146, line 9 attached as Appendix E. These factors are similar to the Rule for Fees for lawyers in South Carolina but include litigation and the sale of real property. This estate administration included routine matters dealing with personal effects, but more importantly, both litigation and the sale of real property. The Personal Representative testified that he had more than 450 hours. See attached Testimony of Edward D. Sullivan, Transcript, Page 172, Lines 2 – 9. The actual hours accounted for are 468.8. The PR's billing rate until September 1, 2010 was \$225 an hour. Extending the hours times the billing rate equals \$105,480. Based solely on hours, the compensation paid to the PR's is approximately \$11,700 less than that calculated under this formula. The Court makes reference to "four draws". Final Order, Page 3, paragraph 8. The Personal Representative testified that he received draws over the course of three and one-half years in several periodic installments, typically \$2000 to \$2500. (Trial Transcript, Page 175, Line 11). The Court, when asking the Personal Representative a question at the hearing stated, "Assuming 4 draws . . ." The four draws as referenced in the Order is factually incorrect. (Trial transcript, Page 173, Lines 10 – 25).

4. The probate court erred in ruling that the PR's excellent job in securing the sales price for the real estate does not justify the commission sought.

While result is not the only factor in determining reasonable fee, it should be given great weight. The result obtained by the Personal Representative was in fact outstanding and exceeded the market by \$147,000 or more. It appears, however, this fact, was given very little, if any, weight by the Court.

5. The probate court erred in finding that there were no novel issues regarding the real estate.

The Probate Court erred in determining there were no novel issues in the administration of this Estate. The PR was confronted with competing interests of an Option to Purchase, a Right of First Refusal, and a claim to five acres by certain beneficiaries. See Appendix A (Will, Item XIV; Trial Exhibit B); and Plaintiffs Exhibit C-4. The PR was advised that the Right of First Refusal may be void by the Rule Against Perpetuities. (Trial Transcript 39, lines 7 – 20). These issues, if not novel, certainly added to the complexity of settling the Estate in such a manner as to clear title to the real estate and to distribute sales proceeds to the beneficiaries.

6. The probate court erred in finding that no explanation was offered to explain or excuse the Personal Representative's failure to provide interim accountings until the latter part of 2010.

Contrary to the court's finding, an explanation was in fact provided to the Court. The probate code does not require interim accountings and this was explained by the Personal Representative at the hearing. See Appendix E attached, Trial Transcript, Page 154, line 22 – Page 155, Line 10. See South Carolina Code Section 62-3-704. Accordingly, there was no "failure." Furthermore, no interim accounting was requested by anyone. See attached Transcript, Page 154- line 22 – 155, line 10.

There was no failure or wrongdoing on the part of the Personal Representative and no excuse necessary because the law does not require interim accountings and because no one ever asked. Additionally, the Personal Representative complied with all requirements of the probate code, and there is no evidence that the Personal Representative ever missed any deadlines imposed by the probate code or probate administration. The Personal Representative in fact complied with all deadlines imposed for filing accountings and other estate documents with the probate court. Interim accountings were chosen to be utilized and filed in that format rather than one final accounting because the Personal Representative organized the information year by year and it seemed appropriate to show the accountings on an annual basis.

7. The probate court erred in limiting the PR's compensation to 10% of the appraised value of the Estate.

The Probate Court erred in limiting the Personal Representative's compensation to 10% of the Estate. The Court references South Carolina Code Section 62-3-719, which provides that, unless otherwise approved by the probate court for extraordinary services, a personal representative shall receive compensation not to exceed five percent of the personal property of the probate estate plus the sales proceeds of real property. However, South Carolina Code Section 62-3-719, subsection(c) provides that the provisions of this Section do not apply . . . where the will otherwise directs. In this case Item V(3) of the will provides "For [his] services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses. (See attached Will, Appendix A, page 3; Trial Exhibit B). In determining reasonable compensation, the Personal Representative relied on Rule 1.5 of the Rules of Professional Conduct

governing fees for lawyers, which lists the following factors (in addition to being a CPA, the Personal Representative is an attorney licensed to practice in South Carolina):

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The time involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

The Personal Representative also used by analogy what courts in other jurisdictions consider to be extraordinary service in determining "reasonable compensation". In Florida, for example, extraordinary services include litigation and the sale of real estate. §733.617 Fla. Stat (1973). In this case, the Personal Representative had to bring a lawsuit to resolve the issues and finally negotiated and sold real estate, achieving an outstanding result, which effectively ended the litigation and resolved the issues. In doing so, the Personal Representative provided extraordinary service to the Estate. Contrary to the Court's finding that the Personal Representative "pulled an amount out of the air," the Personal Representative weighed all of the foregoing factors to determine reasonable compensation for his services as

provided by the will. See attached Appendix E, Trial Transcript, including, Pages 144, Line 19 – Page 146, line 9; Page 174, lines 8 - 25. The Court apparently relying on section (a) overlooked the time dedicated to the administration of the estate by the Personal Representative for three and one-half years as well as the results achieved by the PR as well as the other factors listed above.

Another factor for consideration is the relationship with the client. In this case, the Personal Representative belonged to the same small church as Ms. Kay and had represented her for nearly ten years at the time of her death. The Court uses a ten percent compromise without explanation for arrival at this amount. Based on time alone, the fee would be more than \$105,000. The Court reduces this amount by more than half. Furthermore, the Court does not seem to give much weight, if any, to the outstanding result obtained by the Personal Representative, in not only resolving issues such as clouds on title, but “beating the market” by \$147,460 to \$157,820 (See attached Appendix D - Calculation). The Court erred in apparently overlooking that legal fees were discounted by more than \$20,000 at PR's request (Trial Exhibit D) and apparently gives that fact little, if any, weight. The Court also does not seem to give consideration to the Personal Representative's sale of the real estate without incurring a real estate commission of \$36,700 (10% of \$367,000). (The Personal Representative is also a licensed real estate broker and showed the real property to two potential purchasers.) (Plaintiff's Trial Exhibits A and C-1, Paragraph 34 Item n).

B. Findings and Rulings Related to the Personal Representative's Petition for Settlement

1. The Probate Court erred in disallowing Personal Representative's trial expenses, including attorney's fees and costs, as the will provides for reimbursement of reasonable expenses.

The Probate Court erred in denying fees and reimbursement of costs to the Personal Representative for preparation for and attendance on the petition for settlement as this is in direct contravention of the provisions of the will. A hearing on the PR's Petition for Settlement was requested by 2 interested persons. As such, the PR was required to be there and be prepared to present his Petition for Settlement.

Furthermore, the Probate Court erred in disallowing PR's trial expenses as the will provides for reimbursement of reasonable expenses. See attached Will, Trial Exhibit B, Item V(3). The Personal Representative did not have an alternative. Once the hearing was requested it necessitated both his appearance and preparation for the appearance.

The will provides for reimbursement of reasonable expenses. Counsel for the Personal Representative at a hearing requested by two heirs on the Petition for Settlement should be included as reasonable – particularly the expert witness fees of Real Estate Appraiser, Paul Major. At the hearing, when the Personal Representative sought to introduce evidence on appraisal, Counsel for Brown and Moses insisted that he be allowed to question Mr. Major about Mr. Major's real estate appraisal. See Appendix E attached, Trial Transcript P. 55, Line 3 – Page 58, Line 18.

The Probate Court erred in that there was no pleading or formal request for hearing filed in response to the ' "Petition for Settlement". Counsel for Brown and Moses simply requested a hearing. As such the Personal Representative and the interested parties were not aware of the issues to be presented at the hearing other than the allegation that Personal Representative " made the simple complicated". In fact, no interested parties were provided with any pleading or hearing notice other than the petition for

settlement. As such, the interested parties were not given proper notice of the issues to be addressed at the hearing to the extent the hearing was used to determine the propriety of the Personal Representative's efforts to divide and sell the property, file a declaratory judgment action, and the efforts and reasonableness of purpose of such efforts to clear title to the property.

The difference between the Supplemental Inventory and the calculation in Paragraph 11 of the Order is that the Court overlooks in its calculation the amount of deed stamps and pro-rata share of real estate property taxes on the closing statement totaling \$1987.19. In other words, the Court uses the net proceeds whereas the Supplemental inventory is not reduced by these expenses. The real estate proceeds were actually \$367,000. This gross amount is reflected in the Supplemental Inventory rather than the net amount of \$365,012.

C. Findings and Rulings Related to Refund of PR Compensation

1. The Probate Court erred in ordering the PR to refund commissions in excess of \$51,300.

Moses and Brown did not follow the proper procedure for filing for refunds as provided by South Carolina Code Section 62-3-721 (a). This section requires notice to all interested persons and a petition of an interested person. No pleadings were filed. Their allegations consisted of the Personal Representative "made the simple complicated." Accordingly, the Personal Representative was denied due process rights to reasonable notice and an opportunity to be heard on the issues that were raised. Additional testimony and other evidence could have and would have been presented, including the testimony of title counsel Teri Stomski, if proper procedures had been

followed for purposes of requesting a refund. See Affidavit of Teri K. Stomski attached as Appendix G.

The Probate Court erred in ordering the Personal Representative to refund commissions in excess of \$51,300. In addition to failing to consider all of the factors supporting a reasonable fee of \$93,775 or more in this Estate, there has been no proper request for a refund by any interested party as required by law. South Carolina Code Section 62-3-721 provides the procedure for requesting a refund, including that a petition be filed with the Court. There is no petition before the court other than the Petition for Settlement (There is a Motion for Removal which also does not comply with the legal requirements. See Section V below.) Furthermore, in response to the Petition for Settlement, counsel for Brown and Moses wrote a brief letter to the Court requesting a hearing. In doing so, Counsel failed to list the issues to be addressed at the hearing requested. The only "notice" the Personal Representative had about the issues to be raised by Brown and Moses is that the Personal Representative "made the simple complicated." As a result, the Personal Representative prudently retained counsel and marshaled evidence. Necessary and reasonable expenses were incurred.

The ruling by the Probate Court requiring the refund of monies by the Personal Representative to the Estate would unjustly enrich the Estate beneficiaries who benefitted from the services of the Personal Representative.

The Probate Court erred in accepting an affidavit of counsel for Brown and Moses in support of his requested fees but refusing to accept the Personal Representative's affidavit resulting in manifest injustice and unfairness.

The Probate Court erred in accepting a statement of counsel for Brown and Moses in support of his requested fees without investigation as compared to the scrutiny of the Personal Representative's compensation resulting in manifest injustice and unfairness. For example, several time entries on the statement of counsel for Brown and Moses pre-date the Petition for Settlement and are for services rendered related to the partition/declaratory judgment action filed in December 2008.

The Probate Court erred in awarding fees to counsel for Brown and Moses and ordering the PR to refund a substantial portion of his fee because in doing so the disparity between the awards to counsel for Brown and Moses and the Personal Representative is manifestly unjust given the respective length of engagements, efforts, and results of their services.

Brown and Moses, as well as all other beneficiaries were aware of the Personal Representative's actions and desire to divide and sell the real estate for years, yet no one, including Brown and Moses who were represented by counsel, ever asserted any challenge to the Personal Representative's actions in probate court. Furthermore, all benefitted from the PR's efforts (including Moses and Brown who, according to Ms. Brown, had been promised the approximately 5 acres which she ought from the Estate by the buyer of the real property, Rowland Milam). Accordingly, any position taken against the amount of the Personal Representative's fees based solely on his actions (which resulted in an excellent sales price as found by the Court) are waived and precluded by the doctrines of estoppel and ratification.

In light of the foregoing and all other facts and circumstances of this matter, the ruling by the Court requiring the refund of monies by Mr. Sullivan is punitive. Section

62-3-721 provides that the court may require refunds. Accordingly, refunds are not mandatory assuming, for the sake of argument, that the compensation was excessive.

D. Findings and Rulings Related to Award of Legal Fees to Counsel for Brown and Moses

1. The Probate Court erred in awarding fees to Counsel for Brown and Moses.

The common fund doctrine allows a court in its equitable jurisdiction to award reasonable attorney's fees to a party who, at his own expense, successfully maintain a suit for the creation, recovery, preservation, or increase of a common fund or common property. Layman, 368 SC at 452.. However, because the personal representative compensation was reasonable in this case, The Common Fund Doctrine is not applicable because there is no common fund.

Furthermore, Brown and Moses have not maintained a suit for the creation, recovery, preservation or increase of a common fund or common property. By letter to the probate court, they requested a hearing on the Petition for Settlement. While the probate code provides for actions for the disgorgement of fees or expenses by the filing of a petition, Brown and Moses did not do so.

Additionally, the Common Fund Doctrine provides for fees for those whose efforts are made for the benefit an entire group or class. In this case, Moses and Brown are motivated by their self-interest as evidenced by their ongoing pursuit of their claim for five acres from the Estate.

Counsel for Brown and Moses submitted an invoice that goes back to January 2008. In fact, the charges appear to include 18.30 hours (\$3660) that pre-date the Petition for Settlement and are not related to the Petition for Settlement or the request

for hearing in this matter. Furthermore, it appears from a review of the invoice that Counsel for Brown and Moses also included in his charges at least .60 hours (4/4/11 – 4/5/11 entries) or \$120 for time related to preparation of a “Motion to replace Personal Representative”, clearly an inappropriate charge.

It is inequitable and unjust for the Probate Court to award counsel for Brown and Moses \$19,800 for his representation in this proceeding which he requested in December 2010 while Mr. Sullivan has worked for the Estate since May 2007 and achieved an excellent result and would receive only \$51,300 under the Court’s ruling.

E. Probate Court Findings and Rulings Related to PR’s Rule 59 motion

1. The Probate Court erred in denying the Personal Representative’s Rule 59 Motion because the court’s order is without evidentiary support and controlled by clear errors of law.

“The denial of a motion for a new trial is with the trial judges’ discretion and will not be reversed on appeal absent an abuse of discretion.” Waring v Johnson, 341 S.C., 248,256, 533 S.E.2d 906, 910 (Ct.App. 2000). However, “the exercise of that discretion must be in accord with sound legal principles and practice.” Harrington v. Nicholson, 182 S.C. 38, 41, 188 S.E. 372, 373 (1936). “An abuse of discretion arises when the trial court was controlled by an error of law or when the order is without evidentiary support.” Miller v Miller, 375 S.C. 443, 452, 652 S.E.2d 754, 759 (Ct.App. 2007) (quoting Townsend v . Townsend, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (CtApp. 2003).

The trial court’s order is without evidentiary support in that Mr. Sullivan’s time devoted to the Estate was substantiated by his testimony, the time entries included on Trial Exhibit D, and “Exhibit E” which was referenced by Mr. Sullivan in response to the court’s direct examination but inadvertently omitted from admission into the record. In

order to prevent manifest injustice, the trial court should have taken into consideration the time reflected in Exhibits D and E, as well as the time sheets which were submitted to the Court. The court should have also considered the Affidavit of Teri K. Stomski who advised Mr. Sullivan during the administration about title issues surrounding the Estate's property and the need to clear title by filing the partition action. See G attached.

The trial court also abused its discretion because it was controlled by errors of law in its misinterpretation and misapplication of South Carolina Code Section 62-1-102 pertaining to discovering and making effective the intent of decedent, South Carolina Code Section 62-3-719, pertaining to compensation of personal representatives and South Carolina Code Section 62-3-720 pertaining to reimbursement of personal representatives for expenses as well as the express provisions of Ms. Kay's will providing for reasonable compensation and reimbursement for reasonable expenses. Accordingly, the trial court should have taken into account the errors cited by the Personal Representative's Rule 59 Motion, considered the additional evidence, approved the Petition for Settlement, approved the Personal Representative's request for compensation for additional services as well as reimbursement for legal fees and costs.

CONCLUSION

Under the terms of Ms. Kay's will, the Personal Representative is to be paid a reasonable fee and reimbursed for reasonable expenses. In this case, there was an enormous amount of time and effort expended over the three and one-half years of the Estate administration. The value of his services based solely on his time exceeded the

amount he has been paid. In addition, the Personal Representative dealt with the novel issues of competing and conflicting "rights of first refusal" and "option to purchase". He was forced to litigate to seek a resolution. He also negotiated and sold a one-half interest in a 330-acre tract of land and a house and 10 acres of land. In doing so, he achieved an excellent result and increased the value of the Estate above market value ranging from \$77,000 to \$108,000. Accordingly, the Personal Representative has rendered extraordinary service in this case and the amounts paid through November 12, 2010 are reasonable. Additionally, the Personal Representative is entitled to compensation for the services rendered since November 12, 2010, and to be reimbursed for "reasonable expenses" as provided by Ms. Kay's will (and as provided by South Carolina Code Section 62-3-715 (16) and (19)), including legal fees and expenses and expert witness fees.

Based on the foregoing, the Personal Representative respectfully requests this Court to reverse and modify the ruling of the probate court so as to:

1. Allow reasonable compensation as provided under the will in the amount of \$93,775 through November 12, 2010 based on the aforementioned factors, including time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the time involved and the results obtained; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the Personal Representative; and the sale of real estate and involvement in litigation;

2. Allow the time entries of the Personal Representative outside of those included on the Collins and Lacy invoices as reflected in the attached Appendix C per his responses to the Court at the hearing;
3. Allow additional time sheets supporting entries time on law as deemed necessary by the Court;
4. Allow testimony or the attached affidavit of title counsel, Teri Stomski, Esquire;
5. Allow additional reasonable fees and expenses including, but not limited to, attendance at the hearing(s) on the Petition for Settlement;
6. Disallow or reduce award of legal fees to Counsel for Brown and Moses; and
7. Such further relief as the Court may deem just and proper.

Respectfully submitted,

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May 11, 2012

APPENDIX A

1147-100

LAST WILL
OF
MARION M. KAY

Edward D. Sullivan
SULLIVAN LAW FIRM, PC
PO BOX 11714
COLUMBIA, South Carolina 29211

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MARION M. KAY

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LAST WILL AND TESTAMENT
OF
MARION M. KAY

Introductory Clause. I, Marion M. Kay, a resident of and domiciled in the County of Laurens and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

Direction to Pay Debts. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's

Last Will and Testament of Marion M. Kay Page 1

qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my Personal Representative, who shall distribute my personal and household effects to my family and friends as (s)he shall deem appropriate. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM IV

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely forever, as follows:

One-fourth (1/4) interest to Lisbon Presbyterian Church, absolutely forever;

One-fourth (1/4) interest to Lisbon Presbyterian Church Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, *per stirpes, M.M.K. cert* to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, *per stirpes, M.M.K. cert* to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown, *per stirpes, M.M.K. cert* to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses, *per stirpes, M.M.K. cert* to be hers absolutely forever; and

One-tenth (1/10) interest to the Presbyterian Home of South Carolina, Clinton, South Carolina.

ITEM V

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) Naming an Individual Personal Representative. I hereby nominate, constitute, and appoint as Personal Representative of this my Last Will and Testament Edward D. Sullivan and direct that he shall serve without bond.

(2) Naming Individual Successor or Substitute Personal Representative. If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be Joann Ball. *m.m.k. ps*

(3) Fee Schedule for Individual Personal Representative. For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM VI

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VII

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and

Last Will and Testament of Marion M. Kay Page 3

*3 of 7
m.m.k.
ces
ps*

deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VIII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM IX

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

estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM X

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XII

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

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m. 2k.
m. ccs
ps

ITEM XIII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIV

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

Testimonium, Attestation and Self-Proving Affidavit. I, Marion M. Kay, the Testatrix, sign my name to this instrument this 30th day of October, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Marion M. Kay
Marion M. Kay

We, Charlene C. Stroud and Pam Simpson, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Charlene C. Stroud
(Witness)
Pam Simpson
(Witness)

The State of South Carolina

County of Laurens

Subscribed, sworn to, and acknowledged before me by Marion M. Kay, the
Testatrix, and subscribed and sworn to before me by Charlene C. Stroud and
Ram Simpson, witnesses, this 30 day of October, 1997.

Ram Simpson (Seal)
Notary Public for South Carolina

My Commission Expires: 12-18-2005

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M. M. K.
C.C.
R.S.

APPENDIX BTime Entries of
Personal Representative

File 1147-100 (see pages following)	Timekeeper Summary (pg 13)	173.30 hrs.
File 1147-101 (See following pages)	Timekeeper Summary (pg 7)	<u>76.40</u> hrs
	Total	249.70

249.70 Hours Per Above
216.10 Hours Per Appendix C

465.80 Total PR Hours

Time Entries of
Personal Representative
File 1147-100

12/05/07	EDS	(NO CHARGE) Travel to and from Laurens; visit site, telephone conversation with Mr. Henderson regarding appraisal.	9.00 hrs	\$0.00
12/06/07	EDS	(NO CHARGE) Office conferences with paralegal regarding LC Farm Service.	0.30 hrs	\$0.00
12/09/07	EDS	(NO CHARGE) Correspondence regarding Mr. Garrett.	0.10 hrs	\$0.00
12/11/07	EDS	(NO CHARGE) Correspondence regarding LC Farm Service; office conference regarding appraisal; court	0.60 hrs	\$0.00
12/18/07	EDS	(NO CHARGE) Travel to and from Laurens; visit site; telephone conference with appraiser.	3.80 hrs	\$0.00
12/20/07	EDS	(NO CHARGE) Office conferences with staff regarding appraisal.	0.20 hrs	\$0.00
01/02/08	EDS	(NO CHARGE) Make deposit; Telephone conference with timber dealer.	0.40 hrs	\$0.00
01/04/08	EDS	(NO CHARGE) Office consultation with Mr. Larry Nelson regarding security cameras.	0.10 hrs	\$0.00
01/04/08	EDS	(NO CHARGE) Correspondence; telephone conference with Mrs. Curry.	0.40 hrs	\$0.00
01/08/08	EDS	(NO CHARGE) Visit site; telephone conference with insurance agent; travel.	5.00 hrs	\$0.00
01/09/08	EDS	(NO CHARGE) Receipt and review of correspondence regarding appraisal	0.30 hrs	\$0.00
01/11/08	EDS	(NO CHARGE) Correspondence regarding appraisal.	1.20 hrs	\$0.00
01/15/08	EDS	(NO CHARGE) Telephone conference with appraisers; planning; receipt and review of correspondence.	1.00 hrs	\$0.00
01/17/08	EDS	(NO CHARGE) Receipt and review of correspondence regarding appraisal.	0.50 hrs	\$0.00
01/21/08	EDS	(NO CHARGE) Correspondence.	0.30 hrs	\$0.00
01/23/08	EDS	(NO CHARGE) Visit site; correspondence regarding appraisal.	1.10 hrs	\$0.00
01/25/08	EDS	(NO CHARGE) Correspondence; telephone conference with Mr. Wilson.	0.50 hrs	\$0.00
01/29/08	EDS	(NO CHARGE) Receipt and review of appraisal proposal.	0.50 hrs	\$0.00
01/31/08	EDS	(NO CHARGE) Telephone call with Mr. Harriston regarding appraiser; telephone conference with Mr. Helms; telephone conference with Mr. Harris; review of proposal.	0.50 hrs	\$0.00
02/01/08	EDS	(NO CHARGE) Correspondence; review of motion; review of jewelry appraisal.	1.40 hrs	\$0.00
02/05/08	EDS	(NO CHARGE) Correspondence; telephone conversation with CPA regarding appraisal; correspondence; office conference with staff regarding appraisal; telephone call with Ms. Moses regarding appraisal; telephone call with Mr. Major regarding appraisal.	1.20 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

02/07/08	EDS	(NO CHARGE) Receipt and review of correspondence; review of plats.	1.10 hrs	\$0.00
02/21/08	EDS	(NO CHARGE) Telephone conference with appraiser.	0.20 hrs	\$0.00
02/22/08	EDS	(NO CHARGE) Telephone conference with appraiser.	0.20 hrs	\$0.00
02/25/08	EDS	(NO CHARGE) Office conference with appraiser; telephone call regarding option; correspondence.	1.20 hrs	\$0.00
02/26/08	EDS	(NO CHARGE) Telephone conference with Rev. Hunter regarding appraisal; other; correspondence.	0.50 hrs	\$0.00
02/27/08	EDS	(NO CHARGE) Receipt of message from Johnny Wilson; follow-up on appraisal.	0.30 hrs	\$0.00
03/03/08	EDS	(NO CHARGE) Telephone conference with Mr. Hunter.	0.30 hrs	\$0.00
03/03/08	EDS	(NO CHARGE) Telephone conference with Mr. Wilson.	0.10 hrs	\$0.00
03/06/08	EDS	(NO CHARGE) Travel to Laurens; meeting with Mr. Wilson and Rev. Hunter.	2.80 hrs	\$0.00
03/17/08	EDS	(NO CHARGE) Two office conferences with paralegal regarding MARKER.	0.30 hrs	\$0.00
03/19/08	EDS	(NO CHARGE) Several telephone calls with Beneficiary; several office conferences with Paralegal regarding various; planning.	1.90 hrs	\$0.00
03/20/08	EDS	(NO CHARGE) Two telephone calls with beneficiary; review of appraisal.	1.00 hrs	\$0.00
03/24/08	EDS	(NO CHARGE) Correspondence regarding tax returns; several telephone calls regarding same.	0.20 hrs	\$0.00
03/24/08	EDS	Several office conferences with staff regarding correspondence; two telephone conferences with Mr. Wilson.	1.30 hrs	\$0.00
03/25/08	EDS	(NO CHARGE) Several (two) telephone conferences with Mr. McNair; planning; correspondence.	0.30 hrs	\$0.00
03/27/08	EDS	(NO CHARGE) Receipt and review of correspondence.	0.10 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

03/28/08	EDS	(NO CHARGE) Correspondence.	0.10 hrs	\$0.00
03/31/08	EDS	(NO CHARGE) Two telephone conferences with Ms. Brown regarding appraisal; meeting.	0.20 hrs	\$0.00
04/01/08	EDS	(NO CHARGE) Telephone conference with CPA regarding tax return.	0.20 hrs	\$0.00
04/07/08	EDS	(NO CHARGE) Receipt of message from surveyor; attempt to reach surveyor, left message; planning.	1.20 hrs	\$0.00
04/08/08	EDS	(NO CHARGE) Meeting with surveyor; meeting with appraiser; retrieve items from safe deposit box; meeting with Ms. Copeland, Mr. Copeland.	3.20 hrs	\$0.00
04/09/08	EDS	(NO CHARGE) Preparation for meeting; review of documents; Telephone conference with consultant; telephone conference regarding tax returns.	1.10 hrs	\$0.00
04/10/08	EDS	(NO CHARGE) Preparation for meeting; office conference with Ms. Moses, Ms. Brown; telephone conference with Mr. Hunter.	4.50 hrs	\$0.00
04/11/08	EDS	(NO CHARGE) Planning; telephone conference with Ms. Copeland.	0.80 hrs	\$0.00
04/14/08	EDS	(NO CHARGE) Office conference with staff; telephone conference with Mr. Moore.	1.10 hrs	\$0.00
04/15/08	EDS	(NO CHARGE) Telephone conference with Mr. Heard; Telephone conference with Rev. Hunter; planning; Telephone conference with counsel.	1.60 hrs	\$0.00
04/17/08	EDS	(NO CHARGE) Telephone conference with Ms. Moses; correspondence.	0.40 hrs	\$0.00
04/17/08	EDS	(NO CHARGE) Office conference with Ms. McElvee	1.50 hrs	\$0.00
04/21/08	EDS	(NO CHARGE) Telephone conference with Ms. Callen regarding sale of real estate; research.	1.40 hrs	\$0.00
04/22/08	EDS	(NO CHARGE) Telephone conference with bank regarding status; Receipt and review of correspondence; Office conference with paralegal regarding coins, accounting; Telephone conference with Mr. Major.	1.20 hrs	\$0.00
04/22/08	EDS	(NO CHARGE) Planning.	1.20 hrs	\$0.00
04/22/08	EDS	(NO CHARGE) File review.	0.10 hrs	\$0.00
04/23/08	EDS	(NO CHARGE) Review of bank information regarding new account.	0.30 hrs	\$0.00
04/23/08	EDS	(NO CHARGE) Review of title issues; planning.	0.70 hrs	\$0.00
04/25/08	EDS	(NO CHARGE) Correspondence with Ms. Callen regarding title issues; Telephone conference with Ms. Brown.	2.10 hrs	\$0.00
04/26/08	EDS	(NO CHARGE) Meeting with Ms. Copeland; visit site; telephone conference with Rev. Hunter; telephone conference with Ms. Moses.	1.20 hrs	\$0.00
04/28/08	EDS	(NO CHARGE) Telephone conference with Ms. Moses; Telephone conference with Ms. Brown; office conference with Mr. Larry Nelson; review of documents; conference with Ms. Baker; conference with Mr. Callen.	3.50 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

04/29/08	EDS	(NO CHARGE) Office conference with Ms. Callen regarding title issues; title documents; other; office conference with Ms. Vickie Baker.	2.50 hrs	\$0.00
04/30/08	EDS	(NO CHARGE) Receipt and review of correspondence; planning regarding division of real estate.	1.20 hrs	\$0.00
05/01/08	EDS	(NO CHARGE) Telephone conference with Mr. Heard.	0.20 hrs	\$0.00
05/05/08	EDS	(NO CHARGE) Correspondence.	0.10 hrs	\$0.00
05/06/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00
05/07/08	EDS	(NO CHARGE) Correspondence with counsel; planning.	1.80 hrs	\$0.00
05/08/08	EDS	(NO CHARGE) Receipt and review of inventory and appraisal; Telephone conference with Probate Court; Telephone conference with Mr. Bodiford; Telephone conference with Ms. Brown; planning.	3.40 hrs	\$0.00
05/09/08	EDS	(NO CHARGE) Review of inventory and appraisal; correspondence; review of documents; office conference with paralegal.	3.20 hrs	\$0.00
05/12/08	EDS	(NO CHARGE) Telephone conference with Probate Court; office conference with paralegal; Receipt of message from Mary Moses; planning.	1.50 hrs	\$0.00
05/13/08	EDS	(NO CHARGE) Office conference with law clerk regarding issues, research.	0.40 hrs	\$0.00
05/13/08	EDS	(NO CHARGE) Telephone conference with Ms. Moses; Telephone conference with Rev. Hunter; planning; attempt to reach appraiser; Telephone conference with Mr. Wilson.	2.10 hrs	\$0.00
05/14/08	EDS	(NO CHARGE) Planning; office conference with Mr. Daves regarding title issues.	2.20 hrs	\$0.00
05/20/08	EDS	(NO CHARGE) Telephone conference with Rev. Hunter; Receipt and review of correspondence; planning.	0.80 hrs	\$0.00
05/23/08	EDS	(NO CHARGE) Meet with Session of Lisbon Church.	1.80 hrs	\$0.00
05/23/08	EDS	(NO CHARGE) Visit and inspect Kay premises.	1.20 hrs	\$0.00
05/28/08	EDS	(NO CHARGE) Attempt to reach Ms. Brown.	0.10 hrs	\$0.00
06/03/08	EDS	(NO CHARGE) Planning.	0.90 hrs	\$0.00
06/04/08	EDS	(NO CHARGE) Planning.	0.30 hrs	\$0.00
06/04/08	EDS	(NO CHARGE) Telephone conference with beneficiary.	0.30 hrs	\$0.00
06/05/08	EDS	(NO CHARGE) Telephone conference with beneficiary; planning.	0.50 hrs	\$0.00
06/12/08	EDS	(NO CHARGE) Review and revision of Motion for Extension; correspondence.	0.50 hrs	\$0.00
06/13/08	EDS	(NO CHARGE) Telephone conference with Mr. Burney.	0.20 hrs	\$0.00
06/14/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00
06/14/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00
06/25/08	EDS	(NO CHARGE) Telephone conference with Mr. Hunter regarding status.	0.40 hrs	\$0.00
06/26/08	EDS	(NO CHARGE) File review.	0.10 hrs	\$0.00
06/30/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

07/03/08	EDS	(NO CHARGE) Receipt and review of correspondence; correspondence.	0.20 hrs	\$0.00
07/07/08	EDS	(NO CHARGE) Telephone conference with Mr. Talbert; Telephone conference with appraiser; correspondence.	1.90 hrs	\$0.00
07/15/08	EDS	(NO CHARGE) Receipt and review of correspondence regarding tax assessment.	0.10 hrs	\$0.00
07/16/08	EDS	(NO CHARGE) Receipt and review of correspondence, documents; office conference with staff regarding personal effects.	0.50 hrs	\$0.00
07/18/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00
07/21/08	EDS	(NO CHARGE) Telephone conference with Mr. Bower; planning regarding personal effects.	0.70 hrs	\$0.00
07/22/08	EDS	(NO CHARGE) Preparation for meeting with Mr. Rheney.	1.30 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

07/23/08	EDS	(NO CHARGE) Travel to and from Laurens; office conference with Ms. Copeland, Mr. Rheney regarding personal effects; review of judgment; review of Probate file.	4.90 hrs	\$0.00
07/24/08	EDS	(NO CHARGE) Correspondence.	0.20 hrs	\$0.00
07/24/08	EDS	(NO CHARGE) Office conference with staff regarding correspondence to recipients of personal effects; correspondence.	1.20 hrs	\$0.00
07/28/08	EDS	(NO CHARGE) Receipt and review of correspondence.	0.30 hrs	\$0.00
07/29/08	EDS	(NO CHARGE) Telephone call regarding bequests, recipients; office conference with paralegal.	0.30 hrs	\$0.00
07/30/08	EDS	(NO CHARGE) Preparation for meeting.	2.00 hrs	\$0.00
07/31/08	EDS	(NO CHARGE) Travel to and from Newberry/Laurens; meeting with Ms. Copeland, Mr. Moore, appraiser, others; office conference with Palmetto Bank; visit property; meet with prospective buyer; meet with Mr. Copeland.	8.80 hrs	\$0.00
08/01/08	EDS	(NO CHARGE) Receipt of message; office conferences with staff regarding meeting with heirs.	0.30 hrs	\$0.00
08/08/08	EDS	(NO CHARGE) Telephone conference with Mr. White; Receipt and review of correspondence.	0.40 hrs	\$0.00
08/11/08	EDS	(NO CHARGE) Telephone conference with Mr. Wilson; Receipt and review of message from Rev. Hunter.	0.30 hrs	\$0.00
08/12/08	EDS	(NO CHARGE) Correspondence.	0.10 hrs	\$0.00
08/12/08	EDS	(NO CHARGE) Review of file status.	0.10 hrs	\$0.00
08/27/08	EDS	(NO CHARGE) Review of tax information; office conference with Mr. Bodiford regarding tax returns; other; review of insurance policy; payment of premium.	1.20 hrs	\$0.00
08/28/08	EDS	(NO CHARGE) Receipt of message from Mr. Major; Telephone conference with Mr. Major.	0.20 hrs	\$0.00
09/02/08	EDS	(NO CHARGE) Receipt and review of Income Tax Return.	0.30 hrs	\$0.00
09/02/08	EDS	(NO CHARGE) Telephone conference with Mr. Wilson regarding proposed division; correspondence.	0.40 hrs	\$0.00
09/02/08	EDS	(NO CHARGE) Receipt and review of correspondence; proposed subdivision.	0.90 hrs	\$0.00
09/03/08	EDS	(NO CHARGE) Receipt and review of correspondence; office conference with staff regarding Release.	0.30 hrs	\$0.00
09/04/08	EDS	(NO CHARGE) Telephone conference with appraiser; Telephone conference with Mr. Wilson; Telephone conference with Rev. Hunter; Telephone conference with	2.40 hrs	\$0.00
09/11/08	EDS	(No Charge). Attempt to reach salvage dealer; left message.	0.20 hrs	\$0.00
09/11/08	EDS	(NO CHARGE) Correspondence.	0.50 hrs	\$0.00
09/11/08	EDS	(No Charge) Planning; correspondence.	2.00 hrs	\$0.00
09/12/08	EDS	(No Charge). Correspondence regarding property division; planning; review of sketches.	1.40 hrs	\$0.00
09/15/08	EDS	(NO CHARGE) Review and execution of Estate tax return.	0.30 hrs	\$0.00
09/17/08	EDS	(NO CHARGE) Planning.	0.30 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

09/21/08	EDS	(NO CHARGE) Correspondence.	0.10 hrs	\$0.00
09/23/08	EDS	(NO CHARGE) Correspondence; travel to Laurens; telephone calls with Mrs. Moses; inspection of premises.	0.40 hrs	\$0.00
09/24/08	EDS	(NO CHARGE) Telephone conference with Laurens Agricultural office; execution of application.	1.00 hrs	\$0.00
09/26/08	EDS	(NO CHARGE) Receipt and review of correspondence.	0.10 hrs	\$0.00
10/01/08	EDS	(NO CHARGE) File review.	0.10 hrs	\$0.00
10/07/08	EDS	(NO CHARGE) Attempt to reach appraiser; left message.	0.10 hrs	\$0.00
10/07/08	EDS	Telephone conference with auctioneer; Telephone conference with counsel; Correspondence with Mr. Griffith.	0.50 hrs	\$0.00
10/13/08	EDS	(NO CHARGE) Receipt and review of correspondence; review of proposed division.	0.40 hrs	\$0.00
10/14/08	EDS	(NO CHARGE) Correspondence.	0.40 hrs	\$0.00
10/15/08	EDS	(NO CHARGE) Correspondence.	0.30 hrs	\$0.00
10/16/08	EDS	(NO CHARGE) Planning.	2.00 hrs	\$0.00
10/20/08	EDS	(NO CHARGE) Receipt and review of correspondence; North Carolina correspondence; review of executed receipts, release and waiver.	0.60 hrs	\$0.00
10/21/08	EDS	(NO CHARGE) Telephone conference with Hampton Hunter; planning; Receipt and review of correspondence.	0.50 hrs	\$0.00
10/23/08	EDS	(NO CHARGE) Inspection of premises.	0.40 hrs	\$0.00
10/28/08	EDS	(NO CHARGE) Inspect premises; meeting with Ms. Milam.	2.30 hrs	\$0.00
10/29/08	EDS	(NO CHARGE) Telephone conference with Ms. Brown regarding conference, hay; planning; Receipt and review of correspondence.	0.50 hrs	\$0.00
10/30/08	EDS	(NO CHARGE) Correspondence; Telephone conference with Ms. Brown.	0.40 hrs	\$0.00
11/05/08	EDS	(NO CHARGE) Office conference with Mr. Howe.	0.70 hrs	\$0.00
11/12/08	EDS	Receipt and review of correspondence regarding Accounting.	0.20 hrs	\$0.00
11/17/08	EDS	(NO CHARGE) Receipt and review of correspondence; correspondence.	0.10 hrs	\$0.00
12/01/08	EDS	Office conference with paralegal regarding Request for Extension.	0.20 hrs	\$0.00
12/05/08	EDS	(NO CHARGE) Telephone conference regarding property.	0.30 hrs	\$0.00
12/31/08	EDS	(NO CHARGE) Review of Tax notice.	0.20 hrs	\$0.00
01/05/09	EDS	(NO CHARGE) Receipt and review of correspondence; correspondence.	0.30 hrs	\$0.00
01/07/09	EDS	(NO CHARGE) Receipt and review of e-mail correspondence regarding taxes.	0.10 hrs	\$0.00
01/12/09	EDS	(NO CHARGE) Preparations and mailing of property	0.60 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

01/13/09	EDS	(NO CHARGE) Telephone conference regarding depositions.	0.30 hrs	\$0.00
01/19/09	EDS	(NO CHARGE) Receipt and review of e-mail correspondence regarding sale of property.	0.20 hrs	\$0.00
01/27/09	EDS	(NO CHARGE) Telephone conference with Bart Heard	0.30 hrs	\$0.00
02/02/09	EDS	(NO CHARGE) Receipt and review of e-mail correspondence.	0.10 hrs	\$0.00
02/03/09	EDS	(NO CHARGE) Receipt and review of correspondence.	0.20 hrs	\$0.00
02/03/09	EDS	(NO CHARGE) Correspondence; Receipt and review of correspondence.	0.40 hrs	\$0.00
02/04/09	EDS	Receipt and review correspondence, Motion to Dismiss. [No charge]	1.00 hrs	\$0.00
02/05/09	EDS	Receipt and review correspondence; correspondence. [No charge]	0.60 hrs	\$0.00
02/11/09	EDS	(NO CHARGE) Receipt and review of correspondence.	0.10 hrs	\$0.00
02/19/09	EDS	Preparation of Amended Complaint, correspondence.	0.90 hrs	\$0.00
03/27/09	EDS	Telephone conference with counsel regarding various items; correspondence; research. [NO CHARGE]	0.50 hrs	\$0.00
06/11/09	EDS	[NO CHARGE] Receipt and review correspondence re account.	0.10 hrs	\$0.00
06/15/09	EDS	(NO CHARGE) Correspondence to Mr. Jack D. Griffeth; Receipt and review correspondence from Mr. Jack D. Griffeth.	0.20 hrs	\$0.00
06/16/09	EDS	(No Charge) Receipt and review of Griffith correspondence.	0.10 hrs	\$0.00
06/16/09	EDS	(No Charge) Correspondence regarding production of documents.	0.30 hrs	\$0.00
06/17/09	EDS	(No Charge) Receipt and review of correspondence regarding meeting with Mr. Milam.	0.10 hrs	\$0.00
06/17/09	EDS	(No Charge) Attempts to reach Rowland Milam; Telephone conference with Mr. Milan; telephone calls regarding planning of meeting; correspondence.	0.50 hrs	\$0.00
06/18/09	EDS	(NO CHARGE) Inspect site, downed trees.	0.40 hrs	\$0.00
06/26/09	EDS	(No Charge) Telephone call regarding crop payment; review of contract.	0.50 hrs	\$0.00
06/26/09	EDS	(NO CHARGE) Telephone call regarding tree clearing.	0.20 hrs	\$0.00
06/29/09	EDS	(No Charge) Review of FSA contract; Telephone conference with U.S. Department of Agriculture; office conference with U.S. Department of Agriculture; Receipt and review of correspondence.	1.50 hrs	\$0.00
06/30/09	EDS	[NO CHARGE] Telephone conference with US Agriculture re extension.	0.10 hrs	\$0.00
07/06/09	EDS	Receipt and review correspondence; correspondence. [NO CHARGE]	0.20 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

07/08/09	EDS	Receipt and review correspondence re removal of trees / storm debris. [NO CHARGE]	0.10 hrs	\$0.00
07/13/09	EDS	Receipt and review Ferguson correspondence; review of answer to interrogatories. [NO CHARGE]	0.20 hrs	\$0.00
07/15/09	EDS	Receipt and review correspondence; telephone conference with Ms. Copeland re option; Receipt and review Ferguson email. [NO CHARGE]	0.50 hrs	\$0.00
07/15/09	EDS	(NO CHARGE) Receipt and review correspondence.	0.10 hrs	\$0.00
07/16/09	EDS	(NO CHARGE) Receipt and review correspondence regarding trees.	0.10 hrs	\$0.00
07/20/09	EDS	Telephone conference re lot clean-up; correspondence. [NO CHARGE]	0.40 hrs	\$0.00
07/27/09	EDS	(NO CHARGE) Receipt and review documents.	0.30 hrs	\$0.00
08/10/09	EDS	Receipt and review proposed correspondence to Mr. Ferguson; revision of letter. [NO CHARGE]	0.20 hrs	\$0.00
08/11/09	EDS	[NO CHARGE] Receipt and review correspondence to John Ferguson.	0.20 hrs	\$0.00
08/11/09	EDS	[NO CHARGE] Preparation for trip to Laurens re trees, other.	0.50 hrs	\$0.00
08/13/09	EDS	(NO CHARGE) Attempt to reach Ag office - left message.	0.10 hrs	\$0.00
08/14/09	EDS	Telephone conferences with US Department of Agriculture re program; Receipt and review contracts; execution of contract. [NO CHARGE]	0.60 hrs	\$0.00
08/21/09	EDS	[NO CHARGE] Review of documents; preparation of deed; telephone conference re Copeland option.	1.60 hrs	\$0.00
09/29/09	EDS	[NO CHARGE] Telephone conference with Mr. Rowland Milam regarding sale of property; telephone conference with Mr. Weatherford regarding sale of property.	0.40 hrs	\$0.00
10/12/09	EDS	(NO CHARGE) Preparation of analysis for 2008 Estate Income Tax Return.	0.30 hrs	\$0.00
11/09/09	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding proposed terms.	0.20 hrs	\$0.00
01/06/10	EDS	NO CHARGE - Office conference with paralegal regarding status.	0.20 hrs	\$0.00
01/08/10	EDS	NO CHARGE - Receive and review correspondence from Mr. Milam regarding purchase of property.	0.10 hrs	\$0.00
01/13/10	EDS	(NO CHARGE) Telephone call with Mr. Milam regarding proposed purchase of property.	0.10 hrs	\$0.00
01/14/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding	0.10 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

		proposed purchase.		
02/11/10	EDS	NO CHARGE - Correspondence to Mr. Rowland Milam.	0.10 hrs	\$0.00
02/12/10	EDS	NO CHARGE - Visit and inspect homeplace.	0.90 hrs	\$0.00
02/19/10	EDS	NO CHARGE Correspondence to beneficiaries regarding roster date.	0.60 hrs	\$0.00
02/23/10	EDS	Telephone conference with Mr. Bryan re: Contract; Receipt and review of Contract. [No charge]	0.90 hrs	\$0.00
02/23/10	EDS	(NO CHARGE) Telephone conference with Mr. Heard re: Contract.	0.10 hrs	\$0.00
02/24/10	EDS	Receipt and review of correspondence from Mr. Heard re: Offer. [No charge]	0.10 hrs	\$0.00
02/24/10	EDS	Receipt and review of correspondence from Mr. Griffith re: Offer. [No charge]	0.10 hrs	\$0.00
02/25/10	EDS	Telephone conference with Reverend Hunter re: offering strategy. [No charge]	0.00 hrs	\$0.00
02/25/10	EDS	Correspondence to P. Milam; receipt and review of correspondence from Mr. Milam. [No charge]	0.00 hrs	\$0.00
03/01/10	EDS	No Charge. Correspondence to beneficiaries.	1.40 hrs	\$0.00
03/15/10	EDS	(NO CHARGE) Receipt and review correspondence from Jim Bryan.	0.10 hrs	\$0.00
03/23/10	EDS	(NO CHARGE) Correspondence to Mr. Bryan regarding offer.	0.10 hrs	\$0.00
03/31/10	EDS	(NO CHARGE) Correspondence to Jim Bryan regarding status of negotiations.	0.10 hrs	\$0.00
04/09/10	EDS	(NO CHARGE) Travel to Laurens; visit site, telephone call with Rowland Milam regarding contract and offer.	2.10 hrs	\$0.00
04/12/10	EDS	NO CHARGE - Telephone call with Mr. Wham regarding property.	0.10 hrs	\$0.00
04/12/10	EDS	(NO CHARGE) Correspondence to/from Mr. Griffith regarding Milam offer.	0.20 hrs	\$0.00
04/13/10	EDS	No Charge. Correspondence to Jim Bryan regarding Milam contract.	0.10 hrs	\$0.00
04/14/10	EDS	No Charge. Office conference with Mr. Heard regarding proposed sale; Telephone conference with Mr. Heard, Mr. Griffith regarding strategy, fees.	1.20 hrs	\$0.00
04/14/10	EDS	(NO CHARGE) Office conference with Mr. Heard regarding litigation issues, Telephone conference with Mr. Griffith regarding Heard regarding fees, strategy.	0.30 hrs	\$0.00
04/14/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Griffith regarding sale.	0.10 hrs	\$0.00
04/14/10	EDS	No Charge. Correspondence to Jim Bryan regarding	0.10 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

		contracts.		
04/14/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Milam.	0.10 hrs	\$0.00
04/14/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Bryan.	0.10 hrs	\$0.00
04/15/10	EDS	No Charge. Telephone conference with Mr. Heard regarding offer.	0.20 hrs	\$0.00
04/15/10	EDS	No Charge. Telephone conference with Mr. Hunter regarding Milan offer, other issues.	0.40 hrs	\$0.00
04/16/10	EDS	(NO CHARGE) Revision of contracts; correspondence to Jim Bryan regarding contracts.	0.80 hrs	\$0.00
04/20/10	EDS	(NO CHARGE) Correspondence to Mr. Griffeth regarding mediation.	0.10 hrs	\$0.00
04/21/10	EDS	No charge. Correspondence to Mr. Jack D. Griffeth regarding proposed sale, strategy.	0.10 hrs	\$0.00
04/23/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Milam regarding offer; correspondence to Mr. Milam.	0.20 hrs	\$0.00
04/26/10	EDS	(NO CHARGE) Telephone conference with Rowland Milam regarding negotiations, purchase price, review of contract.	0.40 hrs	\$0.00
04/26/10	EDS	No Charge. Receipt and review of correspondence from Mr. Milan; to correspondence Mr. Milan.	0.40 hrs	\$0.00
04/26/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding Agreement; Receipt and review of correspondence regarding Agreement.	0.20 hrs	\$0.00
04/29/10	EDS	(NO CHARGE) Drafted correspondence to Mr. Milam and Mr. Bryan regarding contracts.	0.20 hrs	\$0.00
05/04/10	EDS	No charge. Correspondence to Mr. Milam regarding contract.	0.10 hrs	\$0.00
05/10/10	EDS	No Charge. Telephone call with Ms. Copeland regarding contract.	0.20 hrs	\$0.00
05/12/10	EDS	(NO CHARGE) Receipt and review executed contracts; execution of contracts.	0.20 hrs	\$0.00
05/25/10	EDS	(NO CHARGE) Correspondence to Mr. Bryan regarding closing date; other.	0.30 hrs	\$0.00
05/25/10	EDS	(NO CHARGE) Research regarding petition, other; planning.	0.40 hrs	\$0.00
06/03/10	EDS	No Charge. Preparation and review of Consents of Sale.	1.00 hrs	\$0.00
06/03/10	EDS	(NO CHARGE) Correspondence to/from Ms. Stomski regarding consent to sale.	0.20 hrs	\$0.00
06/04/10	EDS	(NO CHARGE) Revision of consents.	0.30 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

06/07/10	EDS	(NO CHARGE) Receipt and review if correspondence from Lisbon Presbyterian Church,	0.10 hrs	\$0.00
06/07/10	EDS	No Charge. Correspondence to Lisbon Church regarding consents.	0.10 hrs	\$0.00
06/07/10	EDS	No Charge. Correspondence to Mr. Milam regarding consents.	0.10 hrs	\$0.00
06/07/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Milam regarding closing.	0.10 hrs	\$0.00
06/08/10	EDS	No Charge. Receipt and review of e-mail correspondence from Lisbon Church regarding consent.	0.30 hrs	\$0.00
06/08/10	EDS	No Charge. Review of consents.	0.30 hrs	\$0.00
06/09/10	EDS	No Charge. Receipt and review e-mails from Sandra McNair regarding equipment; correspondence to Ms. McNair.	0.20 hrs	\$0.00
06/09/10	EDS	No Charge. Receipt and review of correspondence from Rowland Milam regarding equipment.	0.10 hrs	\$0.00
06/09/10	EDS	No Charge. Telephone conference with Mr. Milam regarding equipment, closing.	0.10 hrs	\$0.00
06/14/10	EDS	No Charge. Correspondence to Ms. McNair regarding shop equipment.	0.20 hrs	\$0.00
06/16/10	EDS	No Charge. Telephone conference with Probate Court regarding extension, consents.	0.10 hrs	\$0.00
06/16/10	EDS	(NO CHARGE) Correspondence to Ms. Arnold regarding Presbyterian Home of South Carolina.	0.10 hrs	\$0.00
06/16/10	EDS	(NO CHARGE) Telephone conference with Mr. Heard regarding personal effects, other issues.	0.20 hrs	\$0.00
06/16/10	EDS	No Charge. Receipt and review of correspondence from Ms. Arnold regarding consent.	0.20 hrs	\$0.00
06/22/10	EDS	No Charge. Correspondence to court regarding extension.	0.10 hrs	\$0.00
06/23/10	EDS	No Charge. Correspondence to staff regarding Presbyterian Home consent; Receipt and review of correspondence from staff.	0.10 hrs	\$0.00
06/24/10	EDS	No Charge. Correspondence to/from Ms. Stomski regarding Power of Sale, other.	0.20 hrs	\$0.00
06/24/10	EDS	No Charge. Attempt to reach Mr. Coker regarding Power of Sale.	0.10 hrs	\$0.00
06/25/10	EDS	No Charge. Telephone conference with Mr. Stomski regarding power of sale, other.	0.20 hrs	\$0.00
06/25/10	EDS	No Charge. Review of correspondence to Judge Fridy regarding consents, power of sale.	0.30 hrs	\$0.00
06/26/10	EDS	No Charge. Receipt and review of correspondence from Mr. Milam regarding closing.	0.10 hrs	\$0.00
06/27/10	EDS	No Charge. Receipt and review correspondence from Mr. Milam regarding closing.	0.10 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-100

06/27/10	EDS	No Charge. Correspondence to Mr. Milam regarding closing.	0.10 hrs	\$0.00
07/06/10	EDS	No Charge. Receipt and review of correspondence from Mr. Miles regarding closing.	0.10 hrs	\$0.00
07/06/10	EDS	No Charge. Receipt and review of correspondence from Mr. Bryan regarding possession of premises.	0.10 hrs	\$0.00
07/06/10	EDS	No Charge. Settlement Statement, contracts.	0.80 hrs	\$0.00
07/06/10	EDS	No Charge. Preparation of deeds; review of title work.	1.00 hrs	\$0.00
07/06/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding closing, premises.	0.10 hrs	\$0.00
07/08/10	EDS	No Charge. Correspondence to Mr. Bryan regarding closing.	0.30 hrs	\$0.00
07/08/10	EDS	No Charge. Preparation for closing; Telephone conference with bank regarding wiring instructions.	0.20 hrs	\$0.00
07/15/10	EDS	No Charge. Correspondence to Mr. Blackmon; Receipt and review of email correspondence from Mr. Blackmon regarding sale of property.	0.20 hrs	\$0.00
07/15/10	EDS	No charge. Correspondence to Ms. Blackmon regarding sale of property.	0.10 hrs	\$0.00
07/16/10	EDS	No Charge. Receipt and review of executed settlement statement.	0.10 hrs	\$0.00
07/16/10	EDS	No Charge. Receipt and review of correspondence from Mr. Milam regarding keys.	0.10 hrs	\$0.00
07/19/10	EDS	(NO CHARGE) Receipt and review of correspondence, documents from Mr. Bryan regarding closing.	0.20 hrs	\$0.00
07/22/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding keys.	0.20 hrs	\$0.00
07/22/10	EDS	(NO CHARGE) Office conference with staff regarding keys.	0.30 hrs	\$0.00
07/27/10	EDS	No Charge. Office conference with Mr. Hamlin regarding closing of Estate.	0.50 hrs	\$0.00
07/28/10	EDS	No Charge. Correspondence to Mr. Milam regarding	0.10 hrs	\$0.00

TIMEKEEPER SUMMARY

Sullivan, Edward D.	OF COUNSEL	173.30 hrs	0.00 /hr	\$0.00

Time Entries of
Personal Representative
File 1147-101

10/27/08	EDS	No charge. Office conference with Mr. Jonny McCoy; planning.	2.00 hrs	\$0.00
10/28/08	EDS	(NO CHARGE) Preparation for meeting; travel to and from Greenville; meeting with Mr. Jack Griffeth	5.00 hrs	\$0.00
12/03/08	EDS	No Charge. Correspondence to Mr. Hunter regarding update.	0.20 hrs	\$0.00
12/05/08	EDS	(NO CHARGE) Correspondence; office conference with associate regarding pleadings; Review and revision of Complaint.	1.20 hrs	\$0.00
12/09/08	EDS	(NO CHARGE) Preparation of Complaint.	0.40 hrs	\$0.00
12/10/08	EDS	(NO CHARGE) Preparation of Complaint.	1.20 hrs	\$0.00
12/12/08	EDS	(NO CHARGE) Preparation of Complaint.	1.00 hrs	\$0.00
12/22/08	EDS	No Charge. Receipt and review of e-mail correspondence.	0.10 hrs	\$0.00
12/24/08	EDS	No Charge. Receipt and review of e-mail correspondence; e-mail correspondence; preparation of Complaint.	0.80 hrs	\$0.00
12/29/08	EDS	No Charge. Office conference with associate regarding right of first refusal; review of case law.	1.30 hrs	\$0.00
12/29/08	EDS	(NO CHARGE) Review of Summons and Complaint.	0.90 hrs	\$0.00
12/30/08	EDS	(NO CHARGE) Receipt and review of e-mail correspondence; review of revised Complaint; review of Summons and Complaint; telephone calls with Mr. Jack D. Griffeth regarding pleadings.	1.90 hrs	\$0.00
12/30/08	EDS	No Charge. Research regarding Rights of First Refusal.	2.00 hrs	\$0.00
12/31/08	EDS	No Charge. Receipt and review of e-mail regarding Complaint; correspondence.	0.40 hrs	\$0.00
01/02/09	EDS	No Charge. Correspondence regarding filing of lawsuit, service of process.	0.30 hrs	\$0.00
01/09/09	EDS	No Charge. Receipt and review of e-mail correspondence; documents.	0.40 hrs	\$0.00
01/12/09	EDS	No Charge. Receipt and review of e-mail correspondence regarding pleadings.	0.20 hrs	\$0.00
01/15/09	EDS	No Charge. Correspondence; Receipt and review of e-mail correspondence.	0.20 hrs	\$0.00
01/19/09	EDS	No Charge. Receipt and review of e-mail correspondence regarding service of process.	0.10 hrs	\$0.00
01/20/09	EDS	No Charge. Receipt and review of e-mail correspondence regarding service of process.	0.30 hrs	\$0.00
01/29/09	EDS	No Charge. Receipt and review of e-mail correspondence.	0.20 hrs	\$0.00
01/30/09	EDS	No Charge. E-mail correspondence regarding Service of Process.	0.40 hrs	\$0.00
02/06/09	EDS	No Charge. Correspondence; Telephone conference.	0.30 hrs	\$0.00
02/09/09	EDS	No Charge. Correspondence; Receipt and review of e-mail.	0.50 hrs	\$0.00
02/11/09	EDS	No Charge. Receipt and review of e-mail correspondence; Telephone conference with Mr. Arnold (Presbyterian Home).	0.60 hrs	\$0.00
02/12/09	EDS	No Charge. review of Reply; research regarding powers of personal representative.	3.50 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-101

02/20/09	EDS	No Charge. Correspondence to Mr. Ferguson; preparation of Amended Complaint; review of Motion to Dismiss.	2.20 hrs	\$0.00
02/24/09	EDS	Receipt and review of correspondence; correspondence.	0.50 hrs	\$0.00
02/27/09	EDS	No Charge. Correspondence; Telephone conference with Mr. Griffith regarding Amended Complaint.	0.90 hrs	\$0.00
03/02/09	EDS	No Charge. Correspondence regarding Amended Complaint; preparation of Amended Complaint; preparation of highlighted version.	2.50 hrs	\$0.00
03/03/09	EDS	(NO CHARGE) Revision of Amended Complaint.	1.50 hrs	\$0.00
03/05/09	EDS	(NO CHARGE) Receipt and review correspondence.	0.30 hrs	\$0.00
03/12/09	EDS	(NO CHARGE) Correspondence.	0.30 hrs	\$0.00
03/24/09	EDS	(NO CHARGE) Receipt and review answer to Amended Complaint and counterclaim.	1.00 hrs	\$0.00
04/21/09	EDS	No charge. Preparation of Reply to Counterclaim.	2.40 hrs	\$0.00
04/22/09	EDS	(NO CHARGE) Review of reply; Receipt and review correspondence.	1.50 hrs	\$0.00
04/27/09	EDS	No charge. Receipt and review of correspondence.	0.10 hrs	\$0.00
05/05/09	EDS	(No Charge) Correspondence; planning.	0.50 hrs	\$0.00
05/12/09	EDS	(No Charge) Correspondence regarding discovery; planning.	1.50 hrs	\$0.00
05/13/09	EDS	Receipt and review correspondence from Jack Griffith; correspondence from Mr. Ferguson; correspondence. [NO CHARGE]	0.40 hrs	\$0.00
05/19/09	EDS	(No Charge) Telephone conference with Mr. Griffith regarding interrogatories; office conference with paralegal; preparation of responses.	0.90 hrs	\$0.00
05/21/09	EDS	Receipt and review of correspondence.	0.20 hrs	\$29.00
05/22/09	EDS	(NO CHARGE) Receipt and review correspondence; preparation of response to discovery request; preparation of discovery.	2.60 hrs	\$0.00
05/22/09	EDS	(NO CHARGE) Telephone conference with Mr. Griffith; preparation of responses to discovery; correspondence.	1.90 hrs	\$0.00
05/26/09	EDS	(NO CHARGE) Receipt and review of correspondence; correspondence.	0.30 hrs	\$0.00
05/26/09	EDS	(No Charge) Receipt and review of correspondence from Mr. Ferguson	0.20 hrs	\$0.00
05/27/09	EDS	(No Charge) Receipt and review of Motion to Strike.	0.80 hrs	\$0.00
06/04/09	EDS	(NO CHARGE) Correspondence to Mr. Ferguson.	0.60 hrs	\$0.00
06/05/09	EDS	(NO CHARGE) Receipt and review correspondence from Jack Griffith regarding letter to Ferguson.	0.10 hrs	\$0.00
06/12/09	EDS	(NO CHARGE) Receipt and review correspondence from Ms. Arnold; correspondence; telephone conference with Ms. Arnold.	0.30 hrs	\$0.00
06/15/09	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Ferguson	0.10 hrs	\$0.00
06/17/09	EDS	(No Charge) Preparation of Supplemental Response to Discovery; Review of correspondence.	0.90 hrs	\$0.00
06/18/09	EDS	(No Charge) Travel to and from Laurens, South Carolina; meet with Mr. Milan, Mr. Griffith.	4.20 hrs	\$0.00
06/18/09	EDS	(NO CHARGE) Provide co-counsel with "tour" of acreage, site site of litigation.	0.80 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-101

07/08/09	EDS	[NO CHARGE] Receipt and review correspondence from Mr. Jack D. Griffeth regarding discovery.	0.20 hrs	\$0.00
07/09/09	EDS	Revise correspondence. [NO CHARGE]	0.10 hrs	\$0.00
07/14/09	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Griffeth regarding discovery.	0.10 hrs	\$0.00
07/21/09	EDS	Receipt and review correspondence from Mr. Jack D. Griffeth re deposition. [NO CHARGE]	0.10 hrs	\$0.00
07/28/09	EDS	Telephone conference with Bart Heard. [NO CHARGE]	0.40 hrs	\$0.00
08/03/09	EDS	[NO CHARGE] Telephone conference with Mr. Copeland re option to purchase.	0.20 hrs	\$0.00
08/11/09	EDS	[NO CHARGE] Office conference with paralegal re deeds, affidavit of Charles Copeland; review of documents.	0.80 hrs	\$0.00
08/12/09	EDS	Travel to/from Laurens; meet with tree removal crew; meet with Mr. Copeland re option; preparation of contract; preparation of waiver. [NO CHARGE]	4.50 hrs	\$0.00
08/13/09	EDS	Receipt and review correspondence from Mr. Ferguson re deposition. [NO CHARGE]	0.20 hrs	\$0.00
09/02/09	EDS	Receipt and review correspondence from Barbara Galerno re Copeland. [NO CHARGE]	0.10 hrs	\$0.00
09/02/09	EDS	(NO CHARGE) Receipt and review correspondence to Mr. Ferguson.	0.10 hrs	\$0.00
09/02/09	EDS	(NO CHARGE) Receipt and review Ferguson correspondence.	0.10 hrs	\$0.00
09/02/09	EDS	(NO CHARGE) Receipt and review Barbara Galerno correspondence to Mr. Ferguson.	0.10 hrs	\$0.00
09/02/09	EDS	(NO CHARGE) Telephone conference with Barbara Galerno regarding Mr. Copeland.	0.20 hrs	\$0.00
09/03/09	EDS	[NO CHARGE] Receipt and review correspondence from Barbara Galerno re John Ferguson letter.	0.10 hrs	\$0.00
09/17/09	EDS	Attempt to reach Mr. Copeland - left message; preparation for trip to Laurens; have plat approved by county; record plat of 323+ acres; travel to/from Laurens. [NO CHARGE]	4.40 hrs	\$0.00
10/15/09	EDS	(NO CHARGE) Receive and review correspondence from Mr. Griffeth; correspondence to Mr. Griffeth.	0.10 hrs	\$0.00
10/19/09	EDS	(NO CHARGE) Receipt and review of correspondence from Rowland Milam regarding division of property; Telephone conference with Mr. Milam regarding sale.	0.30 hrs	\$0.00
10/26/09	EDS	(NO CHARGE) Correspondence; Receipt and review of correspondence from Mr. Griffith.	0.20 hrs	\$0.00
11/02/09	EDS	(NO CHARGE) Receipt and review correspondence from Rowland Milam regarding representation, other.	0.10 hrs	\$0.00
11/05/09	EDS	Receive and review of correspondence from Mr. Griffith regarding Rowland Milam proposal. (NO CHARGE)	0.20 hrs	\$0.00
11/06/09	EDS	(NO CHARGE) Correspondence to Mr. Milam.	0.10 hrs	\$0.00
11/09/09	EDS	(NO CHARGE) Receive and review correspondence from Mr. Milam.	0.10 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-101

12/16/09	EDS	No Charge. Receipt of correspondence from Mr. Jack D. Griffeth.	0.10 hrs	\$0.00
02/11/10	EDS	NO CHARGE - Receive and review correspondence from Mr. Griffith; correspondence to Mr. Griffith.	0.30 hrs	\$0.00
02/16/10	EDS	NO CHARGE Receive and review correspondence regarding roster.	0.40 hrs	\$0.00
02/17/10	EDS	NO CHARGE Receive and review correspondence from Mr. Griffith.	0.20 hrs	\$0.00
02/17/10	EDS	NO CHARGE Review summary of position.	0.30 hrs	\$0.00
02/17/10	EDS	NO CHARGE Telephone call with Mr. Griffith regarding trial preparation.	0.20 hrs	\$0.00
03/01/10	EDS	(NO CHARGE) Receipt and review of correspondence regarding docket.	0.10 hrs	\$0.00
03/02/10	EDS	(NO CHARGE) Receipt and review correspondence from Jack Griffeth regarding beneficiary letter.	0.20 hrs	\$0.00
03/03/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Griffith regarding continuance.	0.10 hrs	\$0.00
03/03/10	EDS	(NO CHARGE) Correspondence; Receipt and review correspondence from Mr. Jack D. Griffeth regarding trial strategy.	0.20 hrs	\$0.00
03/03/10	EDS	(NO CHARGE) Receipt and review correspondence to J. Ferguson.	0.10 hrs	\$0.00
03/16/10	EDS	(NO CHARGE) Preparation of counteroffer.	0.90 hrs	\$0.00
03/16/10	EDS	[NO CHARGE] Receipt and review correspondence from Mr. Spearman regarding review of contract.	0.10 hrs	\$0.00
03/16/10	EDS	(NO CHARGE) Correspondence to Mr. Milam.	0.20 hrs	\$0.00
03/17/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Bryan.	0.10 hrs	\$0.00
03/24/10	EDS	No Charge. Correspondence to Mr. Ferguson.	0.40 hrs	\$0.00
03/29/10	EDS	(NO CHARGE) Receipt and review correspondence regarding Summer term of court.	0.10 hrs	\$0.00
03/31/10	EDS	(NO CHARGE) Receipt and review correspondence to John Ferguson regarding mediation.	0.20 hrs	\$0.00
04/07/10	EDS	(NO CHARGE) Correspondence to Mr. Griffith regarding mediation.	0.10 hrs	\$0.00
04/07/10	EDS	(NO CHARGE) Correspondence to Mr. Griffith regarding mediation; Receipt and review of correspondence from mediation.	0.10 hrs	\$0.00
04/08/10	EDS	No Charge. Receipt and review of correspondence from John Ferguson to Mr. Jack D. Griffeth.	0.10 hrs	\$0.00
04/14/10	EDS	(NO CHARGE) Correspondence to Mr. Griffith regarding Milam offer.	0.10 hrs	\$0.00
04/20/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Griffith regarding mediation.	0.10 hrs	\$0.00
04/20/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Griffith to Mr. Ferguson regarding mediation.	0.10 hrs	\$0.00
04/21/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Jack D. Griffeth regarding mediation.	0.10 hrs	\$0.00
04/22/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Jack D. Griffeth regarding mediation.	0.20 hrs	\$0.00

Time Entries of
Personal Representative
File 1147-101

04/22/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Jack D. Griffeth regarding mediation.	0.10 hrs	\$0.00
04/23/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Griffeth to J. Ferguson regarding mediation.	0.10 hrs	\$0.00
04/27/10	EDS	(NO CHARGE) Review of contract.	0.40 hrs	\$0.00
04/30/10	EDS	No Charge. Receipt and review of correspondence from Mr. Jack D. Griffeth regarding sale of property.	0.10 hrs	\$0.00
05/01/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Griffith to John Ferguson regarding mediation.	0.10 hrs	\$0.00
05/04/10	EDS	(NO CHARGE) Review of executed contract.	0.20 hrs	\$0.00
05/04/10	EDS	(NO CHARGE) Correspondence to Mr. Jack D. Griffeth regarding mediation.	0.10 hrs	\$0.00
05/04/10	EDS	No Charge. Receipt and review of correspondence regarding contracts.	0.10 hrs	\$0.00
05/07/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Jack D. Griffeth regarding mediation.	0.10 hrs	\$0.00
05/07/10	EDS	(NO CHARGE) Receipt and review of correspondence from Ms. Arnold (Presbyterian Home) regarding contract.	0.10 hrs	\$0.00
05/07/10	EDS	(NO CHARGE) Telephone conference with Ms. Arnold regarding contract.	0.10 hrs	\$0.00
05/07/10	EDS	(NO CHARGE) Correspondence to Mr. Milam, Mr. Bryan regarding contract.	0.20 hrs	\$0.00
05/07/10	EDS	(NO CHARGE) Correspondence to Ms. Arnold regarding contract.	0.20 hrs	\$0.00
05/10/10	EDS	No Charge. Correspondence to Mr. Jack D. Griffeth regarding mediation, update, other.	0.10 hrs	\$0.00
05/10/10	EDS	(NO CHARGE) Receipt and review correspondence from Mr. Bryan regarding contracts, closing, other.	0.10 hrs	\$0.00
05/10/10	EDS	No Charge. Receipt and review of correspondence from Mr. Milam regarding earnest money.	0.10 hrs	\$0.00
05/11/10	EDS	No charge. Receipt and review of correspondence from Mr. Milam regarding earnest money.	0.10 hrs	\$0.00
05/12/10	EDS	(NO CHARGE) Correspondence to beneficiaries regarding contracts and pleadings.	0.50 hrs	\$0.00
05/13/10	EDS	No charge. Receipt and review of correspondence from Mr. Jack D. Griffeth regarding letter to Mr. Copeland.	0.10 hrs	\$0.00
05/13/10	EDS	No charge. Telephone conference with Mr. Heard regarding survey costs, other.	0.40 hrs	\$0.00
05/13/10	EDS	(NO CHARGE) Correspondence to Ms. Copeland regarding option; hearing.	0.50 hrs	\$0.00

Time Entries of
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05/22/10	EDS	No charge. Receipt and review of correspondence from Mr. Jack D. Griffeth regarding status; closing.	0.10 hrs.	\$0.00
05/24/10	EDS	(NO CHARGE) Preparation of Petition for Approval; preparation of Answer & Consent.	2.10 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Office conference with Mr. Jack D. Griffeth regarding strategy.	0.20 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Correspondence to Mr. Bryan regarding extension.	0.10 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding approval of contract by church.	0.10 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Receipt and review of correspondence from Mr. Milam regarding closing date.	0.10 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Mr. Bryan regarding extension, closing, petition, other.	0.10 hrs	\$0.00
05/24/10	EDS	(NO CHARGE) Preparation of Petition.	0.20 hrs	\$0.00
05/25/10	EDS	(NO CHARGE) Telephone conference with Probate Court regarding petition, other.	0.10 hrs	\$0.00
05/26/10	EDS	(NO CHARGE) Correspondence to Mr. Bryan regarding original contracts.	0.20 hrs	\$0.00
05/26/10	EDS	(NO CHARGE) Telephone conference with Mr. Jack D. Griffeth regarding closing, other.	0.10 hrs	\$0.00
05/27/10	EDS	(NO CHARGE) Telephone conference with Mr. Heard regarding petition; planning.	0.20 hrs	\$0.00
05/28/10	EDS	(NO CHARGE) Correspondence to Mr. Jack D. Griffeth regarding issues, strategy.	0.20 hrs	\$0.00
06/01/10	EDS	(NO CHARGE) Correspondence to Rev. Hunter regarding Petition, Responses.	0.10 hrs	\$0.00
06/01/10	EDS	(NO CHARGE) Correspondence to Ms. Arnold regarding pleading.	0.10 hrs	\$0.00
06/02/10	EDS	No Charge. Preparation of Answer, pleadings.	0.40 hrs	\$0.00
06/02/10	EDS	No Charge. Telephone conference with Mr. Fulmen, Presbytery attorney, regarding church corporate action.	0.40 hrs	\$0.00
06/02/10	EDS	No Charge. Telephone conference with Ms. Blackmon regarding corporate vote.	0.40 hrs	\$0.00
06/02/10	EDS	No Charge. Preparation of Answer and Consent.	0.50 hrs	\$0.00
06/02/10	EDS	No Charge. Receipt and review of correspondence from Ms. Blackmon regarding "Cemetery Fund" issue.	0.20 hrs	\$0.00
06/03/10	EDS	No Charge. Correspondence to/from Mr. Jack D. Griffeth regarding power of sale, consent to sale, other.	0.20 hrs	\$0.00
06/03/10	EDS	(NO CHARGE) Preparation of Consents to Sale and Waiver of Hearing.	0.20 hrs	\$0.00
06/05/10	EDS	No Charge. Correspondence to Mr. Jack D. Griffeth regarding consents.	0.10 hrs	\$0.00
06/14/10	EDS	No Charge. Revision of WH Milam consents.	0.20 hrs	\$0.00
06/14/10	EDS	No Charge. Receipt and review of correspondence from Mr. Ferguson regarding consents.	0.20 hrs	\$0.00

Time Entries of
Personal Representative
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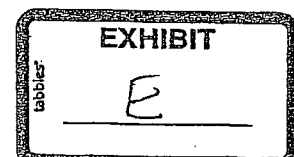
06/15/10	EDS	(NO CHARGE) Review of Presbyterian Home consent.	0.20 hrs	\$0.00
06/15/10	EDS	(NO CHARGE) Correspondence to/from Presbyterian Home of South Carolina regarding consent.	0.20 hrs	\$0.00
06/22/10	EDS	No Charge. Correspondence to Ms. Spearman regarding Brown and Moses consents; Revise of correspondence from Ms. Spearman regarding consents.	0.20 hrs	\$0.00
06/22/10	EDS	No Charge. Correspondence to Mr. Arnold regarding Presbyterian Home consent.	0.10 hrs	\$0.00
06/22/10	EDS	No Charge. Receipt and review of Brown and Moses consents.	0.10 hrs	\$0.00
06/24/10	EDS	No Charge. Correspondence to Judge Fridy regarding consents.	0.30 hrs	\$0.00
06/25/10	EDS	No Charge. Correspondence to Mr. Bryan regarding closing.	0.10 hrs	\$0.00
06/29/10	EDS	No Charge. Correspondence to Mr. Bryan regarding closing.	0.10 hrs	\$0.00
06/29/10	EDS	No Charge. Correspondence to Mr. Milam regarding closing.	0.10 hrs	\$0.00
06/29/10	EDS	No Charge. Telephone conference with Ms. Coker, probate court, regarding power of sale.	0.10 hrs	\$0.00
06/29/10	EDS	No Charge. Conference to/from Mr. Jack D. Griffeth regarding status of sale.	0.10 hrs	\$0.00
06/30/10	EDS	(NO CHARGE) Correspondence to Mr. Milam regarding	0.10 hrs	\$0.00
07/16/10	EDS	No Charge. Correspondence to Mr. Jack D. Griffeth; Receipt and review of correspondence from Mr. Jack D. Griffeth regarding settlement of case.	0.30 hrs	\$0.00
07/20/10	EDS	No Charge. Receipt and review of correspondence from Mr. Jack D. Griffeth regarding dismissal.	0.10 hrs	\$0.00
07/21/10	EDS	No Charge. Planning regarding settlement; Receipt and review of from correspondence Mr. Jack D. Griffeth regarding settlement, case dismissal.	1.00 hrs	\$0.00
07/21/10	EDS	No Charge. Receipt and review of proposed Stipulation of Dismissal, correspondence to Mr. Ferguson.	0.50 hrs	\$0.00
07/22/10	EDS	(NO CHARGE) Preparation and review of Settlement and Release Agreement.	0.80 hrs	\$0.00
07/26/10	EDS	No Charge. Receipt and review of correspondence from Mr. Ferguson to his clients regarding Stipulation of Dismissal.	0.20 hrs	\$0.00

TIMEKEEPER SUMMARY

Sullivan, Edward D.	OF COUNSEL	76.40 hrs	0.00 /hr	\$0.00

APPENDIX C

5/2007	Travel to/from Clinton, SC; Clean out apartment	8.00
2/2008	Travel to/from Mountville, SC; Make Repairs to House As Required by Insurance Company	4.50
4/2008	Travel to/from Mountville, SC; Show Property/Meet with Beneficiaries	6.00
4/2008	Travel to/from Mountville, SC; Attend Session Meeting	1.00
10/2009	Travel to/from Mountville, SC; Show Property to Potential Buyer	5.00
6/4/10	Travel to/from Mountville, SC; Take Chuck Copeland to Attorney's office- Execute Docs- Meet with Beneficiaries Re: Personal Effects	8.00
7/1/10- 7/8/10	Preparation for Closing; Review Closing Statement, Documents; Telephone Conferences with Buyer's Counsel	8.00
7/3/10	Travel to Laurens, SC; Meet with Probate Court;	4.00
7/7/10	Travel to/from Mountville, SC; Meet with Yard Crew; Sort through Personal Effects; Meeting re: Valuation of Effects;	10.00
7/9/10	Travel to Laurens, SC- Office Conference with Buyer Counsel; Attend Closing;	6.00
7/22/10	Correspondence to Rowland Milam;	.20
7/23/10	Office Conference with Mr. Hanlin re: PR compensation	1.00



7/31/10	Travel to/from Mountville, SC; Meet with Beneficiaries; Distribute Effects from Outbuilding	8.00
9/2010	Telephone Conferences with Mr. Garrett (2 @ .20)	.40
9/2010	Telephone Conferences with Dry Cleaner; Drop off/Pick up Antique Dress	1.20
9/22/10	Travel to/from Laurens, SC; Take Antique Graduation Dresses to Director of Museum; Sort Through Files; Sort Thru Personal Effects, Papers; Deliver Cloth, Books, Vacuum Cleaner, Clothes, Hats, Other Personal Items to Laurens Hospice Thrift Store;	8.00
9/28/10	Travel to/from Mountville, SC; Sort thru Personal Effects, Papers;	8.00
9/29/10	Travel to/from Mountville, SC; Sort through Personal Effects, Books;	6.00
10/8/10	Travel to/from Mountville, SC; Final Cleanout of House and Outbuilding;	6.00
10/8/10	Delivery of Pots, Pans, Journal to Lisbon Presbyterian Church (Elaine Hunter)	.50
1/2008- 12/2009	Various Telephone Conferences with Interested Buyers	1.00
6/2007 - 4/2010	Various Telephone Conferences, Meetings with Rev Hunter	6.00
10/2009 - 5/2010	Various Negotiations with Buyers/Buyer Counsel	6.00
5/2007 - 7/2010	Various Inspections of Property	20.50

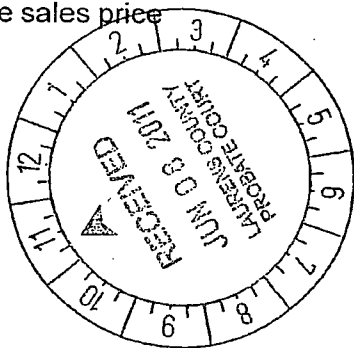
5/2007 - 7/2010	Various Telephone Conferences with Consultant Johnnie Wilson	1.00
10/14/10	Preparation of Supplemental Inventory and Appraisement	2.00
9/1/10 - 11/12/10	Preparation of Interim Accountings (4 @ 12)	48.00
11/12/10	Preparation of Petition for Settlement	2.00
6/2010	Preparation of Consent and Releases	2.00
1/2008 - 6/2010	Various Telephone Conferences with Title Attorney;	2.00
2007	Various Telephone Conferences with Beneficiaries	2.00
2010	Various Telephone Conferences with Beneficiaries	2.00
9/2010- 11/2010	Office Conferences/Telephone Conferences with CPA re: Tax Matters	2.00
9/2010	Telephone Conferences with Beneficiary re: Advance	.60
2008- 2010	Various Telephone Conferences with Mr. Medlin re: PR compensation	1.00
9/1/10 - 10/31/10	Estate Administration - Pay Bills, Deposit Refund Checks, TC's re: Transfer of Utility accounts; TC's with Banks re: Refunds; Telephone Company With Insurance Companies;	2.00
2008 - 2010	Research re: PR Compensation	6.00
9/21/10	Receipt and Review of Receipt from Rowland Milam;	.10
9/21/10	Telephone Conferences with Insurance Company Re: Coverage, Refund;	.50

9/29/10	Correspondence to Probate Court re: Receipts	.10
9/30/10	Correspondence to Mr. Heard re: Receipts;	.20
10/3/10	Travel to/from Mountville; Delivery of Letter Opener, Spoons, Other to Ms. Moses; Visit site; Sort Personal Effects;	3.50
10/8/10	Office Conference with Mr. Heard re: Receipt, Estate Administration;	.20
10/8/10	Preparation of Receipts;	.80
10/14/10	Correspondence to Probate Court re: Receipts;	.20
10/15/10	Correspondence to Probate Court;	.20
10/15/10	Correspondence to Beneficiaries;	.20
10/18/10	Correspondence to Probate Court re: Bank Statements;	.20
10/20/10	Receipt of PRTC Refund; Deposit Refund;	---
10/22/10	Correspondence to Probate Court;	.20
10/22/10	Correspondence to Beneficiaries;	.20
11/1/10	Correspondence to Probate Court;	.20
11/1/10	Correspondence to Beneficiaries;	.20
11/8/10	Telephone Conference with Ms. Moses Re: Collins and Lacy Invoices, Estate; Telephone Conference with Mr. Heard Re: Estate, Settlement Agreement;	.30
11/9/10	Preparation of Settlement Agreement;	2.50
11/12/10	Correspondence to Probate Court;	.20
11/12/10	Correspondence to Beneficiaries;	.20
	Total	216.10

APPENDIX D

Calculation of Result Obtained by Personal Representative in Selling the Estates' ½ interest in 330 Acres

Sales Price per Acre \$ 1,629
 Comparable sales price (1,112) per Wilson testimony,
 Transcript p. 191, line 1-15
 \$ 517
 ÷ 2 to account for ½ undivided interest
 258
 X 330 Acres
 \$ 85,300 Gross amount above comparables
 before consideration of Market Discount
 due to undivided interest per Wilson
 testimony



Sales Price \$ 292,500
 (85,300) Calculation above
 \$ 207,200 Market Value
 30% Market Discount per Major testimony, Transcript p. 204, Line 15
 \$ 62,160 30% Market Discount

Sales Price \$ 292,500
 (85,300) Calculation above
 \$ 207,200 Market Value
 35% Market Discount per Major testimony, Transcript p. 204, Line 15
 \$ 72,520 35% Market Discount

Discounted Market Value with 30% Discount	Discounted Market Value with 35% Discount
\$ 207,200 Market Value (62,160) 30% Market Discount \$145,040 Discounted Market Value	\$207,200 Market Value (72,520) 35% Market Discount \$134,680 Discounted Market Value

Excess of Sales Price above Discounted Market Value (30% Discount)	Excess of Sales Price above Discounted Market Value (35% Discount)
\$292,500 Sales Price (145,040) 30% Discounted Market Value <u>\$ 147,460</u>	\$292,500 Sales Price (134,680) 35% Discounted Market Value <u>\$ 157,820</u>

The price obtained by the PR exceeded the market by approximately \$147,460 - \$157,820 despite the downturn in real estate sales and the worst economic recession since 1933.

APPENDIX E

IN THE MATTER OF: MARION M. KAY

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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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Transcript P. 55, Line 3 -- Page 57, Line 17.
Transcript P. 57, Line 18-23.

IN THE MATTER OF: MARION M. KAY

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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

IN THE MATTER OF: MARION M. KAY

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

IN THE MATTER OF: MARION M. KAY

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,

IN THE MATTER OF: MARION M. KAY

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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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Transcript, including, Pages 144,
Line 19 - Page 146, line 9; Page 174, lines 8 - 25

Testimony of Edward D. Sullivan,
Transcript Page 144, line 5 - Page 146, line 9

Record on Appeal Page 1308

IN THE MATTER OF: MARION M. KAY

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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

IN THE MATTER OF: MARION M. KAY

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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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Transcript P. 148, Line 17 - P. 149, Line 8

IN THE MATTER OF: MARION M. KAY

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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.

IN THE MATTER OF: MARION M. KAY

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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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Transcript, Page 154, line 22 -- Page 155, Line 10

IN THE MATTER OF: MARION M. KAY

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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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Testimony of Edward D. Sullivan
Transcript P. 157, Lines 18-24

IN THE MATTER OF: MARION M. KAY

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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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IN THE MATTER OF: MARION M. KAY

Page 173

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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Transcript, Page 173, Lines 10 - 25

IN THE MATTER OF: MARION M. KAY

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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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Page 174, lines 8 - 25

IN THE MATTER OF: MARION M. KAY

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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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Transcript, Page 175, Line 11

IN THE MATTER OF: MARION M. KAY

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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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Testimony of Johnny Wilson
P. 190, Line 25 - P. 191, Line 23

IN THE MATTER OF: MARION M. KAY

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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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Testimony of Paul Major
P. 204, Lines 12-15

IN THE MATTER OF: MARION M. KAY

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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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803-256-

Testimony of Penny Arnold, Presbyterian Home of SC,
Transcript, Pages 213, Line 12 - Page 214, Line 2

IN THE MATTER OF: MARION M. KAY

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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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APPENDIX F

ROBERT F. FULLER
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P.O. Box 441
COLUMBIA, SC 29202

April 21, 2008

Mr. Neely Blackmon
Clerk of Session
Lisbon Presbyterian Church
P.O. Box 1071
Laurens, SC 29360

RE: ESTATE PROPERTY, MS. MARION M. KAY, DECEASED

Dear Mr. Blackmon:

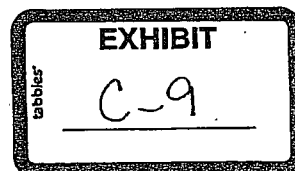
This will respond to Reverend Hunter's April 16, 2008, correspondence with regards to the church's interest in the referenced estate. I have spoken directly with attorney Edward D. Sullivan, as Personal Representative of the estate.

It is my understanding that Lisbon Presbyterian Church, (Lisbon) is one of several designated devisees of Ms. Kay's residuary estate under the decedent's Will. Further, the residuary estate includes both real estate and personalty property interests.

Under South Carolina law, legal title to real estate vests in a named devisee under Will immediately upon the death of the decedent. An estate Deed of Distribution does not pass title but acknowledges that the estate itself does not claim a title interest in the subject property. [If a given estate does not have sufficient personalty assets to satisfy the estate's legal obligations, then the real estate may become subject of estate claims to satisfy those obligations under direction of the Probate Court.]

Under the circumstances of the Kay estate as I understand them, an interest in the legal title to residuary real estate vested in Lisbon (and others) at the time of Ms. Kay's death. The specific interests are designated by Will as proportional shares of the undivided whole.

Under the polity of the Presbyterian Church (U.S.A.), a sale of real estate interest owned by the church would require approval by a majority vote of the congregation at a duly called meeting of the congregation. "Legal title" represents ownership of real estate, whether derived by deed or testamentary succession; therefore, disposition of such interest is a congregational prerogative.



FILE NO. 1147-100

APR 22 2008

REC'D EDS/WAB/PRK b.
COLLINS & LACY

R. F. FULLER
INUED

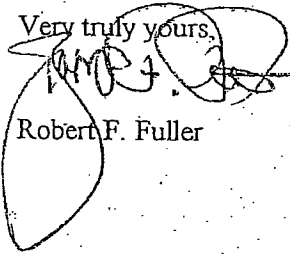
Mr. Neely Blackmon
April 21, 2008
Page Two

Rev. Hunter's letter indicates "the Lisbon congregation's hope is that the property in Marion's estate will be sold at the appraised value and the congregation will receive the cash value of the congregation's portion." If that is, in fact, the congregational position, it can be established by a congregational vote to authorize and enable the Personal Representative to pursue that objective. The approval "in principle" would satisfy the Book of Order requirement and should be sufficient to satisfy any future concerns with respect to cloud upon the real estate title to potential buyers-owners. The congregational action should be memorialized by a written resolution and be reflected in the official Minutes of the Congregational Meeting.

The stated objective is to realize the value of Ms. Kay's generosity for the benefit of the church. The language of the enabling resolution should be specific enough to give authority to the Personal Representative to accomplish a reasonable sale without undue ~~limitations or restrictions.~~ ["Appraised value" is someone's opinion about the value of a particular property. It may or may not represent an attainable "sale-purchase price"; therefore, some flexibility or latitude with regards to final terms of sale may need to be discretionary with the Personal Representative.]

As indicated above, I have discussed this matter with Mr. Sullivan and I am by copy of this correspondence confirming to him my opinion regarding Lisbon's status in the matter pursuant to Presbyterian polity in conjunction with South Carolina law. This opinion is advisory to Lisbon. I am counsel to Trinity Presbytery and am not engaged as attorney for Lisbon with respect to the church's establishing or effecting its claims upon the Kay estate. I am also providing a copy of this letter opinion to Dr. Alan Arnold, as General Presbyter of Trinity Presbytery.

Very truly yours,


Robert F. Fuller

REF/ff

cc: The Rev. M. Hampton Hunter III
Edward D. Sullivan, Esquire
The Rev. Dr. Alan Arnold

APPENDIX G

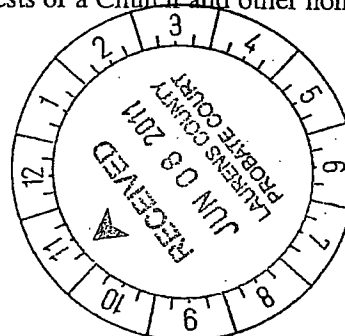
STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

AFFIDAVIT

Personally appeared before me, TERI K. STOMSKI, ESQUIRE, who being duly sworn
 states:

I have been the South Carolina State Counsel for Investors Title Insurance Company, a publicly traded national title insurance underwriter, for approximately five (5) years. In this position, I deal with and evaluate real estate title defect risk on a daily basis. I have practiced in South Carolina since November 1992, concentrating in real estate transactions, curative work and litigation and am a frequent guest lecturer at the University of South Carolina School of Law and for the South Carolina Bar on real estate and title insurance matters.

I am familiar with the administration of the Estate of Marion M. Kay through my extensive conversations with Edward Sullivan, Esquire, a title agent with Investors Title and the Personal Representative of the Estate, and reviews of the title issues on property in the Estate, all of which began in approximately April 2008. Mr. Sullivan and I discussed the issues with insurability and marketability of the real property based on certain defects on title, including but not limited to (1) the competing right of "First Refusal" and "Option to Purchase," (2) the continuing dispute [pre-dating the decedent's death] as to the real property, (3) the refusal of the neighbor with the "Option to Purchase" to consent to the sale (until after the initiation of the lawsuit), (4) the dispute as to the approximate five (5) acre tract, (5) the outstanding interests of the heirs of W.H. Milam, and (6) the competing interests of a Church and other non-profits in the real property per the decedent's will.



1

I explained to Mr. Sullivan that while some practitioners believe that S.C. Code Section 62-3-910 (A) and (B) protect all parties to the transaction against the claims or interests of others, a close reading of the statute clearly shows that it does not. Subsection (A) protects only the *purchaser* and Subsection (B) was added in 2000 to provide protection to a *purchaser for value* from the personal representative and squarely places any liability on the personal representative. We discussed the reality of the Law School library's shelves being replete with case law where even the term "purchaser for value" has been debated and litigated, despite being defined by statute, and that statutory protection does not mean there is no risk - in much the same way that tax deeds are not insurable or marketable despite Section 12-51-160's plain language that a tax deed is "prima facie evidence of good title in the holder...."

While it can be difficult to determine whether title is insurable, it is even harder to determine whether it is marketable and that has been the subject of debate for centuries and is up to a court of law to ultimately determine. As for insurable title, I explained to Mr. Sullivan that it is not prudent for a title insurance company to agree to insure over the potential defects referenced herein because to do so would be "buying" a future title claim, since there were outstanding interests, existing disputes and competing interests of record. Neither Section 62-3-910 (A) or (B) would prevent the title company from having to defend in an action the purchaser from the estate if an heir, devisee or third party challenged the purchaser's clear title. Even though the title company might ultimately win a lawsuit by citing Section 62-3-910, the expense of litigating such an issue would far exceed any title premium received and might possibly cost more than the actual value of the property. Further, I am aware of no reported cases testing the protections of Section 62-3-910, which could further increase the costs of defending since it would be a case of first impression. Therefore, for a title company to insure over these issues, it

would be necessary and appropriate to seek approval of a court of competent jurisdiction, as a final order would satisfy title underwriting requirements.

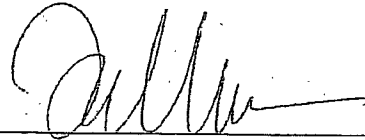
We also discussed that some practitioners might choose only to use a Deed of Distribution but a deed of distribution would not resolve these outstanding title defects. A deed of distribution is not an instrument of conveyance, so it cannot convey the interests of outstanding heirs. Further, it cannot resolve the disputes among the beneficiaries nor the competing rights and options. To use a Deed of Distribution would merely distribute uninsurable and unmarketable real property plagued with title defects. It might be simple but it would not be a solution here.

I also discussed with Mr. Sullivan that in addition to the risk to the title company is the risk to the personal representative, per Section 62-3-910, in executing a deed of distribution or exercising its "power of sale" in a situation where disputes as to the real property of the decedent have been ongoing for almost ten (10) years. This statute only purports to protect the purchaser and specifically puts all liability on the personal representative. When you couple the fact that the disputes and competing interests were numerous in this Estate with the fact that there is no protection for the personal representative who has to distribute or convey the property, I told Mr. Sullivan that my opinion was he should seek approval of the court - especially considering that the Legislature saw fit to set forth just such a procedure under Section 62-3-911: Partition for purpose of distribution.

Based on the complex title issues involved in the Estate, the high degree of title risk in insuring over these issues, the ongoing disputes of the devisees and the liability of the personal representative, it is my opinion that the only prudent action to take with regard to the sale of the real property was to have all parties consent to the sale and to have the court's approval through

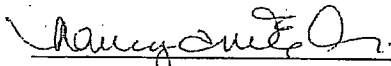

3

a final order of a court of competent jurisdiction. This is the only option that would make the title insurable and marketable. A mere deed of distribution or sale by the personal representative without court approval would leave the title issues unaddressed, thereby leaving a cloud on the title to the Estate's real property.



Teri K. Stomski, Esquire

Sworn to and subscribed the
2 day of June, 2011.



Notary Public for South Carolina

My Commission Expires: ~~MY COMMISSION EXPIRES~~
FEBRUARY 27, 2015



STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
In the Matter of Marion M. Kay

LYNN W. LANCASTER
2012 MAY 25 3 25
LAURENS COUNTY
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
2011-CP-30-208
RESPONSE TO PERSONAL
REPRESENTATIVE'S GROUNDS
FOR APPEAL

In reviewing the Personal Representative's Grounds for Appeal, one is struck by its breath-taking arrogance. The PR repeatedly asserts that the Court has no right to judge his actions, because he alone is the judge of their reasonableness. Over and over he cites the broad powers he gave himself in the Will he drafted and says that the Court has to accept his exercise of those powers. It matters not that he looted the Estate, because he gave himself permission to do it. And if he gave himself permission to do it using powers he induced the Testatrix to grant him, she must be deemed to agree with what he did- even if it results in the decimation of her assets.

Under Rule 1.8(c) of the Rules of Professional Conduct, a lawyer is commanded to avoid conflicts of interest when he draws documents. Here, the PR persuaded an aged relative to sign a Will giving him substantial powers to handle her Estate and then used those powers to enrich himself to the detriment of the Estate, contrary to his fiduciary duty. And he wants the Court to reward him for refraining from charging a real estate broker's commission in addition to his PR's commission for selling the Estate's real estate.

The PR's activities in this case present a classic example of churning, i.e., engaging in excessive and unnecessary work to drive up compensation. The trial judge rightly found that Mr. Sullivan needlessly complicated the Estate with unnecessary work, and he therefore reduced his compensation (though not enough).

All the PR had to do was to sign a deed of distribution so that he could close the Estate. The PR tells us he did not do that out of tender concern for the heirs, who would then have had to reach an agreement with one another or file their own partition action. The fact that they could

have done this at a small fraction of the cost he charged is of no moment to him. Although he goes into great detail about why a partition was necessary, he avoids addressing why the heirs could not have done this themselves without his extraordinarily expensive assistance.

He claims that he had to file a partition action because of a myriad of novel issues, but as the judge below found, these were neither novel nor difficult to resolve. Well before there was any conflict, he told Martha Brown that his fee would consume the Estate's \$ 60,000 in stocks. What he accomplished by filing the partition action was setting himself up to receive a large commission, something which would not have happened if he had simply filed a deed of distribution instead of dragging out the Estate for five years, paying himself \$ 93,775 and demanding almost \$ 13,500 more. See S.C. Code Section 62-3-719(a).

His first excuse pertains to the option to purchase given in the Will to Charles Copeland. Mr. Copeland did indeed receive an option to purchase, but it was an option to purchase the entirety of what the Estate owned (a part interest in the farm) and it expired after eight months (Item XIV of the Will). "An expired or unexercised option contract is essentially an unaccepted offer." *Alexander's Land Company v. M&M&K*, 390 S.C. 582, 595, 703 S.E.2d 207 (2010).

Time is of the essence in exercising options, *Faulkner v. Millar*, 319 S.C. 216, 460 S.E.2d 378 (1995); and options are strictly construed in favor of the optionor and against the optionee, *Alexander's Land Company*, 390 S.C. 582, 703 S.E.2d 207 (2010). Mr. Copeland did not attempt to exercise his option during the time set by the Will, so it expired and should not have been a factor. The only reason it became a factor was the PR's decision to re-write the Will and ignore the intent of the Testatrix by converting the temporary option to buy a portion of the Estate into an unlimited right to buy an undivided interest in a partitioned portion of the farm, contrary to S.C. Code Section 62-3-703, to maximize his chance to get a large PR commission. With regard to Copeland, the PR sought partition to solve a problem he himself created, and he even invited Mr. Copeland to sue the Estate to prevent the sale of the farm to Rowland Milam (Defendant's Ex. 1) to create even more work and compensation for himself.

Another reason to partition cited by the PR was Moses and Brown's right of first refusal. This does not prevent a deed of distribution, and there was never any indication that they intended to exercise their right. Such a right is easily disposed of by simply offering the land to them with a deadline for response, or the heirs could have filed their own partition action.

A third reason given was the right of Martha Brown to a 5 acre parcel. As the PR admits, Ms. Brown took no measures to enforce that right until the PR forced the matter into court. Throughout all of his excuses, the PR ignores his fiduciary duty to the Estate as a brake on his own selfish discretion and greed. See *Proctor v. Spires*, 381 S.C. 563, 673 S.E.2d 841 (Ct. App. 2001) and S.C. Code Section 62-3-703(a).

The history of the PR's service to the Estate is one of his consistently placing his own interests above those of the Estate. He habitually made the simple complicated so that he could justify his huge charges for himself and his cronies. This included vast quantities (204.6 hours) of paralegal time, which mystified the judge below, to value every item in the estate, no matter how small. He had the power as PR just to set the value himself, but he never exercised his powers in a way which would have simplified things and reduced his commissions. The larger the value of the Estate, the greater his commission for distributing it (S.C. Code Section 63-3-719(a)); so he hired his own firm's paralegals at great cost to the Estate to pump up its value. Since most of the personal property was designated by the Testatrix for particular recipients and the Estate was plainly not taxable, there was no benefit to the Estate from this valuation effort.

Not only does the PR want to be paid for wasted work, he wants extra payment for expertise he did not use. He points out his academic qualifications, but the record shows that he did not use them. When there were legal matters to be handled, he had his cronies at Collins and Lacey handle them. When there were accounting matters to be handled, he hired a CPA to handle them. When there was cataloging of personalty to be handled, he had Collins and Lacey paralegals handle it. His contribution was to stir up litigation by ambushing Ms. Brown and Ms. Moses in Newberry at what they had been told would be a private meeting, by insisting that the

partition boundaries be those he dictated and by suggesting to Charles Copeland that he could sue the Estate to block the sale to Rowland Milam and enforce his expired option.

If Eddie Sullivan chose to work at McDonalds, he could not charge more for a burger because he has a law degree. The same principle applies to his demand for PR payment. The factors used by lawyers to bill for legal work are irrelevant to his billing for non-legal PR work. This is particularly true when he did not present these factors at the hearing and wants to raise them after the record is closed.

The PR claims he was obligated to bring an action to clear title to carry out the Testatrix's intent. This claim has no validity. The PR introduced letters suggesting that the Testatrix wanted the property partitioned, but these were written 3 ½ years before she died. She made no attempt to follow through with this even though the PR says that he was representing her then, so it obviously was not a priority for her.

Likewise, the PR's sudden discovery of a need to clear title has no merit. All the PR had to do was to file a quitclaim deed of distribution. He cannot claim that the title would have been unmarketable as it was, because the purchaser Ms. Moses sent to him accepted a quitclaim deed. Even if an action to clear title had been necessary, there is no reason that the heirs could not have done it themselves. Speculation about what a third party title company might do if he had issued a warranty deed has no relevance to the actual issues of the case.

The PR complains that the Court below did not take his mammoth charges at face value and grant him a total of \$ 157,179 in fees and costs. This is like a burglar demanding that the homeowner pay the cost of his defense once he is apprehended. Had the PR performed his duties competently and honestly, no hearing would have been necessary and therefore he would not have been burdened with expenses for an attorney, expert witnesses and other trial costs. The trial judge had the opportunity to view the witnesses and to judge their credibility, and his findings should not be overturned on appeal. The undersigned testified about his own charges and presented sufficient documentation. Unlike the PR's claim, which even included a charge

for work before the Testatrix had died (Plaintiff's Ex. D), the Court found nothing out of the ordinary about his billing.

The PR complains that the trial judge found that he pulled his numbers out of the air, but this is essentially what the PR told the judge when he asked for the basis for the charges:

The Court: All right. So it's not strictly an hourly basis?

Mr. Sullivan: No, sir.

The Court: Okay. It was not strictly on a percentage basis?

Mr. Sullivan: No, sir.

The Court: But it definitely was not an hourly basis or any kind of percentage basis?

Mr. Sullivan: No.... (Trial Transcript, p. 175/1-4, 16-17)

The PR went on to explain that he charged what he in his sole discretion considered to be fair, not just to the Estate, but also to himself. (Trial Transcript, 175/18-20). Nowhere does he claim that he used the factors lawyers use for billing.

The failure to provide interim accountings throws additional light on how the PR ran the Estate. The PR now claims that he had no duty to file these accountings, so the question arises why he filed three annual accountings with no summary at one time at the end of his service as PR. The first thing to be noticed is that he suddenly became interested in filing 3 years worth of interim accountings when he knew he would have to justify himself at a hearing. Until that time he was quite content to keep the heirs in the dark about what he was doing and his multiple draws. To make it harder for those heirs to realize what he had done, he released a mass of information not long before the hearing in the hope that they would not be able to digest it in time. His calculation proved to be correct as to Bart Heard and Presbyterian Home, who just wanted to get things over with. Lisbon Presbyterian Church did demand more information about his charges, but he ignored them.

To his horror, the PR discovered that heirs Mary Moses and Martha Brown hired an attorney to review what he had done. Because the records were extensive and the PR was not eager to spell out his malfeasance, it took a great deal of effort for their counsel to unravel what Mr. Sullivan had done. To get revenge for the exposure of his misdeeds, the PR now demands that the undersigned not be paid for his efforts, which brought substantial benefit to the Estate.

To accomplish this, he advances the ridiculous argument that work before the filing of a request for a hearing does not count, even if it was ultimately essential for the hearing. The judge below was not so easily fooled.

When put to the necessity of specifying exactly what part of the undersigned's charges were unjustified, the PR is left complaining that the Court should have imposed an arbitrary starting point of the filing of the hearing request and that I should not have been granted payment for the 0.6 hours spent on a motion to have the PR relieved. Although the judge ultimately did not grant that motion, he recognized the validity of the arguments behind it by limiting what the PR could charge to wind up the Estate.

Having no shame, the PR not only does not express any regret for his looting of the Estate, he wants the Estate to pay for it as well! Almost all of the hearing below was consumed with exploring the many ways in which the PR had looted the Estate, but the PR says that the Estate benefitted from his attempt to avoid responsibility for what he had done so the Estate should pay for his attorney fees and costs. The able judge below quite rightly rejected this invitation to become an accomplice to the PR's dishonesty.

As to the expenses, there was nothing the expert witnesses, including Paul Major (who was paid \$ 5000 for his pre-trial services), contributed to the settlement of the Estate. They were present for the sole purpose of vindicating the PR. The PR's desperation to conceal this fact is shown by his complaint that Ms. Moses and Ms. Brown did not allow him to introduce a hearsay report but instead insisted on their due process right to confront his witness.

The PR belatedly complains that Ms. Brown and Ms. Moses filed no formal pleading to request a hearing. This ignores the fact that it was the PR's request for discharge which triggered the hearing, and the record will show that the PR informed Ms. Moses and Ms. Brown in his Notice of Right to Demand Hearing that the only thing required to have a hearing was a letter requesting it. The PR did not request any formal pleadings or ask the undersigned for clarifications and cannot now be heard to complain about their absence. The proceeding was for

him to justify his service as PR, and most of it was consumed with an analysis of the documents he himself filed. The parts of the order he complains of now are almost entirely based upon his own documents and the light they shed on his betrayal of the heirs to pursue his own gain. It is also true that there was a one day delay between the first part of the trial and its completion, and the PR did not request any additional time at the close of the case to present further evidence. The PR was not prejudiced in his unsuccessful attempt to justify his abuse of his office by the degree of notice he received.

The PR grabbed over 18 % of the Estate for himself without court approval and sought to boost that to 31 %, but the judge reduced his commissions to 10% (double the amount set forth in S.C. Code Section 62-3-719). Like a burglar not content with getting out the window with the television because he left the jewelry behind, the PR is asking this Court to let him back through the window to grab more. There is no basis to award the PR the \$ 42,475 previously ordered to be returned to the Estate plus an additional award of \$ 13,447 for looting above and beyond the call of duty.

The PR belatedly attempts to raise the unpled affirmative defenses of waiver, estoppel, ratification and unjust enrichment. Not only are these defense procedurally barred, they also are lacking any rational basis. The whole purpose of requesting a final hearing was to examine what the PR had done with his Unclean Hands, so there is no basis for equitable intervention, especially where the PR was careful to keep the heirs in the dark until shortly before the hearing.

The PR's outrages did not end with the case below. As during the Rule 59 motion, he is now attempting to circumvent the restriction that appeals are on the record (S.C. Code Section 62-1-308(d)) by sneaking in several documents not part of the record below as attachments. The undersigned objects most strongly to this tactic and asks the Court herein to follow the law by ignoring these documents. The undersigned also notes that some of the documents are from alleged experts whose only source of information was what the PR told them. As a lawyer, the PR well knew how he could predetermine the outcome of their opinions by careful selection of

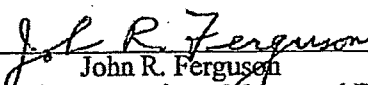
the facts he gave them.

CONCLUSION

The appeal of the Personal Representative has no merit and must be rejected. The history of this case shows an extreme pattern of wrongdoing by the PR. He created work (and huge commissions for himself) by expanding the Copeland option, by spending huge amounts of time valuing the Estate's personal property to increase his commissions, by charging for work done before the Testatrix died and by filing a partition action contrary to the Will and S.C. Code Section 62-3-703(3) instead of giving a deed of distribution (which would not have resulted in a PR fee).

He attempted to give a vague accounting to the heirs on the eve of what would have been his discharge when there was insufficient time to examine it in detail, and he tried to persuade them not to seek a hearing forcing him to justify his work and to disclose what he paid himself and why. He was in a position to do this because he drafted a Will which gave him vast powers to deal with a trusting aged relative's property. He showed clear consciousness of his wrongdoing by pressuring the heirs to sign a waiver and release approving his actions.

To discourage further attempts by the PR to justify himself and obscure his misdeeds, the court should file an order explaining in detail why his appeal was denied. The cross-appeal of Appellants Moses and Brown should be upheld.


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May 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
Eighth Judicial Circuit

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In the Matter of
Marion M. Kay

BRIEF OF APPELLANTS
MOSES AND BROWN
2012-CP-30-258
LAURENS COUNTY
CLERK OF COURT

This Brief is presented in support of the appeal of Mary M. Moses and Martha M. Brown. The Grounds referred to below are from the Revised Grounds for Appeal of Mary M. Moses and Martha M. Brown filed with the Court. The Appellants incorporate by reference their previously filed Summary of Position of Defendants Moses and Brown, Revised Return to Motion and Response to Personal Representative's Grounds for Appeal.

I. The Personal Representative was granted excessive compensation. (Grounds 1, 2, 3, 4, 8, 12, 13 and 15)

The PR failed to provide adequate proof of the 468.6 hours he claims and to prove the necessity of most of those hours (Para. #1 of Final Order). The PR failed to provide the Court below with a standard by which to judge his fee request. (Para. #8 and 13 of Final Order). At trial he testified that he did not use any particular standard and instead charged what he in his sole discretion felt was appropriate, a total of \$ 157,179 in fees and costs (P. 2 of Final Order and the attached Extracts from PR's Exhibit E). Instead of something objective like an hourly basis, he testified that he started off by deciding the fee he should wind up with "And I set...my draw against that target." (Garber Tr. 144/24; 174/8-12). He took as his starting point the maximum statutory compensation (Garber Tr. 174/12-18) and went up from there. After the record was closed, he attempted to patch the hole in his testimony by claiming that he was charging the Estate according to the standards applicable to attorneys; but at trial when the judge asked him whether he was charging as an attorney, he declined to affirm that and instead reverted to his vague "what I consider to be reasonable" standard. (See Garber trial Tr. 146/16-21.) The judge rightly rejected this belated attempt to re-cast his position (Order Disposing of Post-Trial Motions).

Although the usual maximum allowable for the PR is not more than 5%, S.C. Code Section 62-3-719, the judge below (who began the hearing by disclosing that he had known the PR socially for many years) without a sufficient factual basis decided to give the PR twice that amount. This is all the more incomprehensible because the learned judge found that much of the PR's work was unnecessary (Para. # 2, 3, 4, 13 of factual findings of Final Order). This unnecessary work formed the basis for the PR's request for grossly excessive compensation (Para. # 13 of Final Order). (It is worth noting that even the standards the PR now wants to apply require that the work performed be necessary.)

The PR was in fact churning, i.e., milking the Estate by claiming compensation for unnecessary hours. These hours were so excessive that they cannot have been incurred in good faith, and the judge, who said that he did not understand why much of the bill was incurred, nevertheless declined to find bad faith despite the absence of a factual basis for this (Para. #16 of Final Order). The Court below found wrongdoing when it delicately noted that the sale of the real estate was not necessary but that it generated proceeds for the PR (Final Order, Para. #4), when it found that the commissions sought by the PR were "clearly excessive" (Final Order, Para. #13) and when it found that the PR charged the Estate for work he did before the decedent died (Final Order, Para. #5). The Court also found that the PR claimed to have worked more hours than the evidence supported (Final Order, Para. #8) and that the bases he provided for his charges were not legitimate (Final Order, Para. #8). Though the Estate was non-taxable and most of the personalty of value was designated to go to particular people, the PR spent vast quantities of time and money valuing property to increase his commission, filed a partition action instead of signing a deed of distribution and vastly expanded the Copeland option, which resulted in litigation profitable to the PR. (See transcript of post-trial motion hearing, TR. 59/10-67/15.) What the Court should have found was Unclean Hands by a PR who was clearly more dedicated to his own gain than to the welfare of the Estate. See *In the Matter of Hanna*, 301 S.C. 310, 391 S.E.2d 728 (1990).

Despite declining to tell the judge that he was charging as a lawyer, the PR claimed that he was entitled to bill at a high rate because of his expertise. At the very least this would assume that he actually used whatever expertise he had. In this case the PR farmed the legal work out to his law firm and hired a CPA to handle the accounting work. He had his firm's para-legals do the administrative work, and the decedent had meticulously labeled to whom significant personalty was to go, so the PR did not have to decide that. How then did he use his expertise? The record does not tell us, so the judge's findings are without factual support. To the extent that the PR did do legal work, it was for his own benefit to protect his fee, and he cannot charge for representing himself. *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 454 (2000).

Although the Court below did require the PR to disgorge a significant amount of the money he paid himself from the Estate, it did not take note that the PR had had (and continues to have) the use of this money and is depriving the Estate of its benefit. This means that he is benefitting from the violation of his fiduciary duty. See generally *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). As a court of Equity the judge should have awarded pre-judgment interest in accordance with S.C. Code Section 34-31-20. The Court below should also have made the PR himself pay for all the costs associated with the hearing which his malfeasance required, and this Court should make him pay for the costs of this appeal. See *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 873 (2007) and *Darby v. Furman Co., Inc.*, 334 S.C. 343, 513 S.E.2d 848 (1999).

II. Collins and Lacey was paid excessive compensation. (Grounds 5, 6, 7, 17)

In addition to the inflated fee he paid himself, the PR spread the Estate's wealth around to his law firm, Collins and Lacey. As the moving party, the PR was required to give the Court a sufficient basis to judge the Collins and Lacey billing, but he put no one on the stand to explain or verify those bills. All the Court had was unsubstantiated hearsay, and it found that to be incomprehensible as to the 204.6 hours of paralegal time supposedly expended during a period when nothing was contested (Para. # 17 of Final Order). At the very least the judge should have considered whether the Estate benefitted in proportion to the alleged expenditure of effort by Collins

and Lacey, but he did not. In spite of this, the Court awarded Collins and Lacey \$ 25,806.38 for mundane work on uncontested matters (Para. #17 of Final Order). There is insufficient factual support for this, and Collins and Lacey was both principal and agent for the PR, so it should be considered to have participated in his wrongdoing and Unclean Hands and therefore not be entitled to relief.

III. The Personal Representative should have borne all of the costs of the hearings his bad conduct made necessary. (Grounds 9, 11, 14, 18)

This Estate should have been able to have been settled the way most estates are settled: without a hearing and with the filing of a final accounting. The reason that a multi-day hearing was required was the PR's stealing from the Estate. While the Court below stopped short of this characterization, it did find that many of the PR's charges were "clearly excessive" (Para. #13 of Final Order) and required the PR to return a substantial amount of the money he had charged the Estate (Para. #14 of Final Order). This shows that the Appellants Moses and Brown were correct to call him to account, and they and the other heirs should not be made to pay any of the expenses associated with the hearing made necessary by the PR's wrongdoing and violation of his fiduciary duty.

This is particularly true in the case of the court reporting bills. Contrary to due process and the ethical rules, the PR made an ex parte communication with the judge below by giving him the trial transcript without providing a copy of it to the undersigned. The offense was compounded when the learned judge below found that somehow Ms. Moses and Ms. Brown benefitted from this ex parte communication and required that they pay half the PR's costs in obtaining the transcript (Order Disposing of Post-Trial Motions). To state the obvious, there would have been no hearing costs if there had been no hearing, and there would have been no hearing if the PR had not looted the Estate. It must also be noted that, contrary to the Order Disposing of Post-Trial Motions (P. 2, para. 3), the PR never gave the undersigned a copy of the trial transcript but has presented this Court with selected portions of it in his Exhibit E.

IV. The Court below should not have received or considered ex parte evidence. (Grounds 2, 19, 20)

At the hearing below the PR was caught in a number of legal and ethical shortcomings. He attempted to gain an advantage by giving the judge evidence which he did not share with opposing counsel, i.e., the trial transcripts. He provided to the undersigned only such brief portions of the transcripts as he felt to be helpful to his case. The undersigned properly objected to this (See counsel's argument on pp. 56/23-57/14 of the Garber post-trial motion transcript), but the judge received the transcript anyway, failed to make a finding of any wrongdoing, failed to ascertain whether the portion of the transcript he was given fairly and completely presented the relevant evidence and used this evidence in deciding that the PR was entitled to some relief (Order Disposing of Post-Trial Motions). This conduct is barred by Rule 3.5(a) and (b), SC Rules of Professional Conduct and by Canon 3(B)(7) of the Rules of Judicial Conduct and certainly should not be rewarded as happened below. See *In re Mendenhall*, 316 S.C. 196, 447 S.E.2d 858 (1994).

V. Counsel for Moses and Brown is entitled to an attorney's fee for all post-trial work, including this appeal. (Grounds 10, 21)

The Probate Court is a court of Equity and strives for a fair result, including the prevention of the PR's unjust enrichment by violating his fiduciary duty to the heirs. Although the court below found that the undersigned was entitled to compensation for the substantial amount of work he devoted to regaining the money the PR looted from the Estate under the Common Fund Doctrine (Para. #21 of Final Order), it made a distinction between the initial work to regain the money and the post-trial work to block the PR from undoing that gain (Order Disposing of Post-Trial Motions). This is not a valid distinction, and the original award was for preserving as well as protecting a common fund (Item # 4 of the conclusions of law in the Final Order). See *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008). There should be a remand to set the undersigned's fee.

The post-trial work was necessary to preserve the previous gains, and the Estate benefitted accordingly. The clients of the undersigned should therefore not bear the entire burden of the

attorney fees for work benefitting all the heirs. If the Estate is to bear this expense, then all the heirs should pay, but it would be most equitable for the PR himself to bear this expense out of his own pocket since it was only his continuing misconduct which necessitated the expense. This would also tend to inhibit his enthusiasm for continuing his frivolous appeal.

It is plain from the PR's filings that he is angry with the undersigned for calling him to accounts and forcing him to disgorge a portion of his ill-gotten gains. He wants to punish the undersigned and his clients by making them pay for successfully fighting his wrongdoing. This Court should not make itself a party to his revenge.

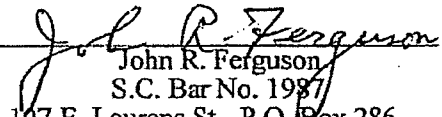
VI. The Court below should have removed the Personal Representative and appointed a replacement. (16)

While the Court below stopped short of finding an intentional breach of fiduciary duty despite abundant evidence to the contrary, it did find that the PR did a lot of things wrong which resulted in substantial and unjustified charges to the Estate (Para. #13 of Final Order). The undersigned asked that he be removed from office to take away further opportunity to do mischief. Because it considered the Estate almost at an end, the Court handled the matter by finding that the PR could wind up the estate but limited how much he could charge to do that (Item #6 of the conclusions of law in the Final Order). Predictably, the PR was outraged that his hand no longer fit in the cookie jar and is appealing that along with a slew of other unjustified grounds. Allowing the PR to continue serving gives him a continuing opportunity to prevent the closing of the Estate in the hope that he can extort a settlement from weary heirs, including his own church (Garber transcript of post-trial motion hearing, TR. 93/11-12). The Court should not allow this to happen. See *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 873 (2007).

CONCLUSION

The appeal of Mary M. Moses and Martha M. Brown must be upheld, as a matter of law, equity and ethical requirements; and the PR's appeal must be denied. The PR's depredations of the Estate must be brought to an end, and the case should be remanded to the Probate Court for relief consistent with the prayer herein, including statutory post-judgment interest and the costs of this appeal.

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(864) 984-2126

July 26, 2012

EXTRACTS FROM THE PR'S EXHIBIT E

[Appellants Moses and Brown have not been provided with a copy of the complete Garber Transcript and are therefore reduced to calling the Court's attention to portions of what has been filed of the Edward Sullivan testimony. Appellants object to this selective presentation of evidence, which violates the Order Disposing of Post-Trial Motions's directive that the PR provide a copy of the transcript to opposing counsel.]

Q: And when you were charging as a Personal Representative, how did you make your charges?

A: I looked at the time I'd spent and the effort I'd put into it and the results that were obtained.

Q: So you were, as a Personal Representative... charging on an hourly basis?

A: No, I wasn't.

Q: Well what did that mean when you said you looked at the time you had into it to figure your charges?

A: I looked at what I thought was a reasonable fee. ...

Q: So you were charging on a time basis for your Personal Representative fee?

A: No. I had a-- I thought I knew what the bill-- what a fair and reasonable fee would be for this administration as we started down the road. And I set, I guess, my draw against that target.
(Garber Tr. 144/5-24)

Q: But you're telling the Court that you should be able to charge as an attorney for your Personal Representative work?

A: I'm telling the Court I should-- I'm entitled to a reasonable-- I'm asking the Court to award me additional reasonable compensation.... (Garber Tr. 146/16-21)

Q: Now, what method or formula or process did you go through when you took a draw?

A: Well, I looked at what the fee was going to be at the end of the day. When I started out... I first looked at the Statute and it said five percent, I looked at five percent of the Inventory and Appraisalment. ...I realized that, you know, you could apply for extra compensation, based on extraordinary services. (Garber Tr. 174/8-15, 16-18)

Q: All right. So it's not strictly an hourly basis?

A: No sir.

Q: Okay. It was not strictly a percentage basis?

A: No sir. (Garber Tr. 175/1-4)

Q: But it was definitely not an hourly basis or any kind of percentage basis?

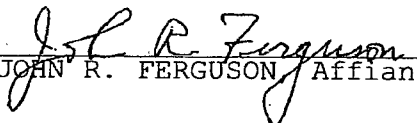
A: No.... I was trying to be reasonable, but I wanted be fair to myself as well. (Garber Tr. 175/16-18, 19-20)

STATE OF SOUTH CAROLINA
 COUNTY OF LAURENS
 LYNN W. LANCASTER
)
 2012-CP-30-258
 ATTORNEY FEE AFFIDAVIT

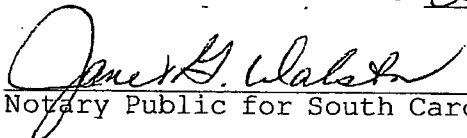
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 LAURENS COUNTY

PERSONALLY APPEARED before me John R. Ferguson, who, being duly sworn, says that he is the attorney for Mary Moses and Martha Brown in this case, who are requesting an attorney's fee award. Among the factors which the Affiant considers relevant to the Court's consideration of this matter are the following:

1. Nature, extent and difficulty of services rendered: Defense of baseless Motion to Dismiss filed in violation of Rule 11 by file review, checking file at Probate Court, legal research and drafting of responsive documents
2. Time necessarily devoted to the case: 2.5 hours to date with motion hearing and order preparation time to be added
3. Professional standing of counsel: Member of S.C. Bar in good standing and in practice since 1975, author of legal reference work and numerous supplements, listed in Who's Who in American Law (11th ed.)
4. Ability of client to pay fee and parties' respective financial conditions: The PR is well able to pay for the costs of the meritless motion he filed.
5. Beneficial results accomplished: In the Court's discretion, but there is no factual basis for the Moveant's motion.
6. Customary legal fees for similar services: \$ 250 per hour
7. Other relevant matters: It would have been a simple thing the PR to check either with the Probate Court or with the undersigned to determine whether his allegation of failure to file had a factual basis. He did not check with the undersigned and he apparently did not bother to check with the Probate Court either. As a result, a lot of attorney time and court time has been wasted. It would be grossly unjust and inequitable to force Ms. Moses and Ms. Brown to pay for this violation of Rule 11, SCRPC.


 JOHN R. FERGUSON Affiant

SWORN TO before me this 20 day of February, 2013.


 Notary Public for South Carolina

(SEAL)

My Commission Expires: 5/03/2017

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE MATTER OF MARION M. KAY

IN THE COURT OF COMMON PLEAS

Case Number 2012-CP-30-258

**Personal Representative's
Response to Brief of
Appellants Moses and Brown**

Personal Representative Edward D. Sullivan (the "PR") respectfully submits this Response to Brief of Appellants Moses and Brown.

STATEMENT OF ISSUES ON APPEAL

1. Did the probate court err in finding that the amount of compensation paid to the Personal Representative was not reasonable?
2. Did the probate court err in awarding counsel for Brown and Moses \$19,860 as an attorney fee pursuant to the "common fund doctrine"?

STATEMENT OF THE CASE

The salient facts of this case are set forth in the PR's Grounds for Appeal and incorporated herein by reference. (See Personal Representatives Grounds for Appeal beginning at page 5.) The procedural history of the case through May 11, 2012 is also set forth in the PR's Grounds for Appeal and is incorporated herein by reference (See Personal Representative's Grounds for Appeal beginning at page 15.) On September 9, 2012, the PR moved to dismiss the appeal of Brown and Moses. This motion was denied by Order dated February 21, 2013.

Thereafter the PR entered into agreements to settle the Estate with The Presbyterian Home of South Carolina, Bart Heard, and Marla Orias, together having a 30% interest in the residuary estate. The beneficiaries of the residuary estate are:

The Presbyterian Home of South Carolina – 10%;

Bart Heard – 10%
Marla Orias – 10%
Lisbon Presbyterian Church – 25%
Lisbon Presbyterian Church Cemetery Fund- 25%
Martha Brown – 10%
Mary Leona Moses – 10%

The Estate remains unsettled as to the other beneficiaries; however, a proposal remains under consideration by the Church for itself and the Cemetery Fund. Based on these settlements, the PR filed a Petition to Distribute Estate Proceeds on July 8, 2013. (See **Exhibit A** attached).

STANDARD OF REVIEW

The standard of review is set forth in the PR's Grounds for Appeal (beginning at page 18) and is incorporated herein by reference.

ARGUMENT

- I. The provisions of SC Code Section 62-3-719 do not set the compensation for the PR since the Item V (3) of the Last Will and Testament provides that "the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses." The PR's compensation of \$93,775 for services over 3 years and 9 months, is reasonable given the time, issues, extraordinary service provided, and the results obtained.

Moses and Brown rely upon SC Code Section 62-3-619 for the proposition that the statute limits the PR's compensation to "not more than 5%". Such reliance is misplaced. Section (c) of SC Code Section 62-3-619 provides "[t]he provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984" (emphasis added). The will expressly provides for "reasonable compensation for the services

rendered." Since the will "otherwise directs" that the personal representative shall receiveable "reasonable compensation" for the services rendered (as opposed to a statutory limit of five percent), Section 62-3-619 is not applicable.

Moses and Brown mislead the Court is stating that the PR charged a "total of \$157,179 in fees and costs". See Brief of Appellant at Page 1. Through November 15, 2011, the PR charged \$93,775 as compensation based on the time involved, the issues presented, the partition action, the sale of the real estate, and the results obtained. (The fee is about 18% of the appraised value of the Estate). The costs incurred for legal fees paid to Collins and Lacy, the appraisal fee paid to Paul Major, and consulting fees paid to Wilson Forestry were incurred during the administration of the Estate. South Carolina Code Section 62-3-715 (16) specifically provides that the PR may properly "pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the Estate". Section 62-3-715 (19) provides the PR may properly "employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon the recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary". The PR employed Collins and Lacy to assist with administration. (The PR was employed by Collins and Lacy but was not a partner.) The PR sought additional compensation for preparation and attending the hearing requested by Brown and Moses, his legal fees for attorney Daryl Hawkins, witness fees for Major and Company, and Wilson

Forestry, and court reporter fees. These expenses are reimbursable per the provisions of the will (as set forth above) and SC Code Section 62-3-720 which provides "[i]f any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful nor not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred."

In determining reasonable compensation, the PR, an attorney, looked to the factors of Rule 1.5 of the South Carolina Rules of Professional Conduct. (See Personal Representative's Grounds for Appeal at page 21.) In addition, the PR looked to other jurisdictions for elements of "reasonable compensation" for a PR. In his testimony, the PR made reference to the law of Florida. (See Personal Representative's Grounds for Appeal at page 34). Section 733.617 Fla. Stat (1973) provides that courts should consider "extraordinary service" in determining "reasonable compensation" including litigation and sale of real estate. In pursuing a partition of the real estate as well as consummating the sale of the real estate at a significant price, the PR provided extraordinary services to the Estate. See Grounds for Appeal at Page 23).

Moses and Brown allege that the PR "was in fact churning". See, Brief of Appellant Brown and Moses at page 2. "Churning" as defined by Blacks "occurs when a broker, exercising control over the volume and frequency of trades, abuses his customer's confidence for personal gain by initiating transactions that are excessive in view of the character of account and the customer's objectives as expressed to the broker." (See, Black's Law Dictionary

1979, at p. 220) Moses and Brown are wrong in many respects. The PR did not increase the volume or frequency of "trades"; the land was only sold once, which occurred subsequent to a valid initiation of a partition action. Not only did the PR feel the testatrix intended the property to be sold (rather than deeded "as is"), he was asked by 4 of the beneficiaries representing seventy (70%) per cent of the residual interests to liquidate the estate so that they would receive cash rather than an undivided interest in real estate. The allegations of Brown and Moses that the PR acted in bad faith are simply false. Beneficiary Bart Heard and Penny Arnold of The Presbyterian Home of South Carolina testified in defense of the PR's actions as well as his amount of compensation for over three years and nine months of service as \$93,775. (See Personal Representative's Grounds for Appeal at page 15, 16 and 25.)

II. South Carolina Code Section 62-3-911 specifically empowers the PR (as well as the beneficiaries) to petition for a partition of the real estate and, in addition to the will and intent of the testatrix, supports his actions to divide and sell the Estate's interest in the real estate.

South Carolina Code Section 62-3-911 provides:

When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in kind if it can be fairly and equitably portioned in kind. If not subject to fair and equitable partition in kind, the court shall direct the personal representative to sell the property and distribute the proceeds. (Emphasis added)

In addition to the last will and testament and the PR's understanding of the intent of the testatrix to sell the real estate, the foregoing code provision clearly supports the

PR's actions in seeking partition of the real estate. (The action filed also included a cause of action for declaratory judgment.) Not only did the PR understand the testatrix intended to sell the real estate and distribute the sales proceeds, he was also asked by beneficiary Bart Heard and representatives of The Presbyterian Home of South Carolina, Lisbon Presbyterian Church and Lisbon Presbyterian Church Cemetery Fund to divide and sell the real estate. (The Church in fact assisted in the selection of an appraiser and a surveyor.)

III. The ongoing claim of Brown and Moses against the Estate for 5 acres has further necessitated the PR to devote time and effort to for this Estate.

Moses and Brown conveniently omit that, in addition to resisting a partition of the real estate during the administration of the Estate thereby causing the Estate to incur extra expense, they have continued to require the time and efforts of the PR in contesting their claim to 5 acres of the Estate. When the PR filed the partition and declaratory judgment actions, Brown and Moses took the opportunity to file a counter-claim against the Estate for an interest in 5 acres. After the Estate's interest in the real estate was sold (with the consent of all interested parties), the parties released all claims and the litigation including the partition action and the counter-claim of Moses and Brown was dismissed with prejudice. (See, Stipulation of Dismissal with Prejudice, Case No. 2009-CP-30-4, filed August 5, 2010.) Despite this settlement, Brown and Moses have continued to attempt to re-litigate their claim against the Estate regarding the 5 acres (see transcript of January 11, 2012 hearing attached as **Exhibit B**, page 67, line 16 – page 73, line 9). The PR has successfully defended against their ongoing claim, which for purposes of this appeal at least, appears to be finally concluded.

Nevertheless, while certain other beneficiaries have long ago indicated their approval of the PR's fees and actions, Brown and Moses have continued to assert claims against the Estate (long ago dismissed) under the guise of protesting the PR's compensation. The ongoing efforts in contesting the claims of Brown and Moses are further justification for the PR's compensation.

IV. The PR actively used his skills and experience to administer the Estate and obtain an outstanding result for the beneficiaries.

Contrary to the contention of Brown and Moses, the PR used his skills and experience as an attorney and Certified Public Accountant to administer the Estate and obtain a result whereby the testator's intent was carried out, the interests of the beneficiaries were protected, the real estate was sold at an outstanding price, and proceeds were generated for distribution to the beneficiaries. The record includes time entries for the PR reflecting the actions taken and extensive time expended including administering the Estate, meeting with beneficiaries, meeting with professionals, drafting of pleadings, research, preparation of accountings, defeating the claims against the Estate of Brown and Moses, and obtaining favorable results for the beneficiaries.

V. Prejudgment interest does not apply.

South Carolina Code Section 34-31-20 does not require an award of pre-judgment interest. Additionally, Brown and Moses did not request pre-judgment interest at the hearing. Furthermore, Brown and Moses did not file any pleading as provided by the Probate Code citing any relief to which they felt entitled. The issue has not been timely raised and additionally fails because it was not included in any pleading properly before the Court as part of a prayer for relief. See, South Carolina Code Section 62-3-721.

VI. The Probate Code (and the Last Will and Testament) provides for reimbursement of expenses incurred by the Personal Representative.

Contrary to the contention of Brown and Moses, the Personal Representative should not be required to pay for the expenses of the hearing and in fact is entitled to be reimbursed for his expenses incurred – especially in light of the Probate Court's finding that the PR has not acted in bad faith.

VII. The fees paid to Collins and Lacy were proper.

SC Probate Code Section 62-3-715 (10) provides for the employment of professionals by the Personal Representative. The PR requested and received substantial discounts from Collins and Lacy. The Collins and Lacy invoices were presented to the Probate Court and approved. The “mundane work on uncontested matters” referenced by Brown and Moses was not “mundane” at all. In addition to administering a complex estate, there was a sale of an undivided interest in real estate with claims against it arising out of an option to purchase in the last will and testament and a right of first refusal held by Brown and Moses. Likewise, the work performed by Collins and Lacy (and the PR) was not “uncontested” since Brown and Moses contested the division of the real estate from beginning to end and in fact filed a counterclaim against the Estate for 5 acres of the Real Estate. See also, Section III. The work performed by Collins and Lacy was necessary in the discretion of the PR and beneficial in obtaining the favorable results.

VIII. Trial transcripts are not ex parte evidence and were properly considered by the Court.

Counsel for Brown and Moses had the same access to trial transcripts as did the PR. If Brown and Moses wanted the transcripts, they only had to contact the court reporter – as did the PR. Charges of the PR being “caught in a number of legal and ethical shortcomings” for “ex parte evidence” are not only inflammatory but baseless and inexplicable.

IX. There is no to recovery of legal fees by Brown and Moses (or their counsel) since they fail to meet the requirements of the common doctrine.

Generally, legal fees must be provided by statute or contract. An exception to this rule, is the “common fund doctrine”. Whereby statutes or contracts may allow “fee shifting” from one party to another, the “common fund doctrine” provides for “fee spreading” in certain circumstances. *Layman v. The State of South Carolina and The South Carolina Retirement System*, 376 S.C. 434, 451, 658 S.E. 2d 320, 330 (S.C. 2008) In this case, however, the common fund doctrine does not apply since, in pursuing a claim against the Estate for 5 acres (See Section III above), the interests of Brown and Moses are directly opposed to the other beneficiaries. Not only are the fees incurred during the appeal not recoverable from the Estate or the PR, neither are fees recoverable for fees incurred related to the underlying hearing. See Personal Representative’s Grounds for Appeal, page 43 and 44.

Had Brown and Moses been granted the relief they sought related to five (5) acres of land, the remainder of the Estate would have been diminished by the value of the acreage. Accordingly, Brown and Moses did not seek a benefit for all beneficiaries. Their goal was divided over the PR’s compensation and their purely personal interests

in 5 acres. Counsel for Brown and Moses was primarily interested in benefiting his clients' interests. The common fund doctrine cannot apply to their personal claims.

Lastly, the Probate Court awarded \$19,860 as fees to counsel for Brown and Moses for 2 ½ months of service. For three years and 9 months of service, the Probate Court awarded the PR \$51,300. This is inequitable and erroneous.

Assuming arguendo that a fee should be awarded under the common fund doctrine, the fee must be reasonable and proportional to the "common fund" created. The attorney fee of \$19,860 is nearly 52% of the common fund. This is unreasonable.

The court ordered Brown and Moses to pay one-half of the court reporter fees, to-date one-half of the costs being \$1,459. (See Order Disposing of Post-Trial Motions dated March 27, 2012 at page 2.) The common fund, after legal fees and the costs to be absorbed by Brown and Moses is calculated as follows:

Refund required by the Probate court	\$39,975	(\$42,475 - \$2,500)
Ct Rptr Costs due from Brown & Moses	<u>1,459</u>	
Net	\$38,516	100.00%
Attorney Fee	<u>19,860</u>	<u>51.56</u>
Net Available for Distribution	\$18,656	48.44%

The distribution would be as follows:

Counsel for Brown and Moses	\$19,860	51.56%
Brown (10%)	1,282	3.33
Moses (10%)	1,282	3.33
Heard (10%)	2,011	5.22
Orias (10%)	2,011	5.22
Presbyterian Home of SC (10%)	2,011	5.22
Lisbon Presb. Ch (25%)	5,030	13.06
Lisbon Presb. Ch. Cemetery Fund	<u>5,029</u>	<u>13.06</u>
Total	\$38,516	100.00%

Of the common fund, counsel for Brown and Moses would receive nearly 4 times more than the two 25% beneficiaries. He would receive more than 15.50 times the amount each of his clients would receive.

On the other hand, the PR was paid about 18.2 % of the total estate (not including the earnings of the Estate). The Order of the probate court reduces the compensation to 10%. Brown and Moses contend the PR was overpaid and seek further reduction— yet they contend their counsel is entitled to compensation beyond that awarded already.

Accordingly, the award of an attorney fee to counsel for Brown and Moses is improper because their interests were in opposition to those of the other beneficiaries and inequitable, and the decision of the probate court awarding this fee should be reversed.

CONCLUSION

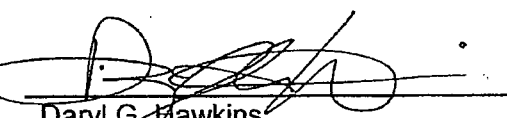
Based on the foregoing discussion and analysis, the PR respectfully requests this Court to reverse and modify the ruling of the Probate Court so as to:

1. Allow reasonable compensation as provided under the will in the amount of \$93,775 through November 12, 2010 based on the aforementioned factors, including time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the services properly; the time involved and the results obtained; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the Personal Representative; and the sale of real estate and involvement in litigation;

2. Allow the time entries of the PR outside of those included on the Collins and Lacy invoices as reflected in the Appendix C of the Personal Representative's Grounds for Appeal per his responses to the Court at the hearing;
3. Allow additional time sheets supporting entries on law firm invoices as deemed necessary and appropriate by the Court;
4. Allow testimony or the affidavit of title counsel, Teri Stomski, Esquire;
5. Allow additional reasonable fees and expenses including, but not limited to, attendance at the hearing(s) on the Petition for Settlement;
6. Disallow or reduce the award of legal fees to Counsel for Brown and Moses;
7. Deny and dismiss the appeal of Brown and Moses; and
8. Such further relief as the Court may deem just and proper.

[Signature Page to Follow]

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: 

Daryl G. Hawkins
SC Bar No. 2844

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Columbia, South Carolina 29211
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July 12, 2013

Attorney for the Personal Representative

Other Counsel of Record:

John R. Ferguson, Esquire
Cox & Ferguson
PO Box 286
Laurens, SC. 29360

Exhibit A

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
 COUNTY OF LAURENS)
) **PETITION TO**
) **DISTRIBUTE ESTATE PROCEEDS**

IN THE MATTER OF: MARION M.) CASE NUMBER: 2007-ES-30-00208
 KAY)

The Personal Representative Edward D. Sullivan ("PR") hereby petitions this Honorable Court for an Order authorizing the distribution of the Estate Proceeds in accordance with the attached Proposal for Distribution (**Exhibit A**). This petition is made on the following grounds:

1. South Carolina Code Section 62-3-715 (8) authorizes estate personal representatives to satisfy and settle claims and distribute the estate as provided in the Code.
2. Marion M. Kay passed away on May 4, 2007. The Last Will and Testament of Marion M. Kay (**Exhibit B**) lists the following as residuary beneficiaries of the Estate:

One-fourth (1/4) interest to Lisbon Presbyterian Church, absolutely forever;

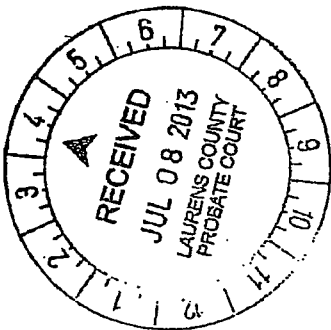
One-fourth (1/4) interest to Lisbon Presbyterian Church Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, (per stirpes), to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses (per stirpes), to be hers absolutely forever;



One-tenth (1/10) interest to Presbyterian Home of South Carolina, Clinton, South Carolina;

3. As of June 30, 2013, the cash balance per bank is \$298,569.13. (Exhibit C.) There are no outstanding checks or deposits in transit. As of April 30, 2013, the Estate had Two Hundred Ninety-eight Thousand Three Hundred Sixty-nine and 62/100 (\$298,369.62) dollars. From May 1, 2013 to June 30, 2013, the Estate earned \$199.51 in interest income. Interim accountings 1, 2, 3, 4 and 5 from May 4, 2007 through April 30, 2013 have been filed with the court and provided to the beneficiaries (See Interim Accounting 5 included in Exhibit C).
4. Pursuant to this court's Order dated May 24, 2011 (Exhibit D), the Estate has a claim against the Personal Representative for "excessive commissions" in the amount of Forty-two Thousand Four Hundred Seventy-five (\$42,475) dollars. (The Order allows a reduction of \$2500 in this amount if the Personal Representative wraps up the Estate.) The Estate owes a claim as provided by the Order in the amount of Nineteen Thousand Eight Hundred Sixty (\$19,860) dollars as an "attorney fee pursuant to the common fund doctrine" to John R. Ferguson, counsel for Brown and Moses. This Order as well as the Court's Order dated March 27, 2012 (Exhibit E) relating to post-trial motions have been appealed by the Personal Representative and Brown and Moses (the "Appeals"). However, Beneficiaries Bart Heard, Marla Orias and Presbyterian Home of South Carolina, together owning thirty per cent (30%) of the residual interests of the Estate, have entered into agreements with the Personal Representative (as reflected in Exhibits F-1, F-2, and F-3 respectively) whereby those respective beneficiaries and the Personal Representative have agreed to settle and release each other from any and all claims arising out of the Estate, rendering the outcome of such Appeals moot as it relates to those parties. Beneficiaries Lisbon Presbyterian Church and Lisbon Presbyterian Church Cemetery Fund, having an additional fifty (50%) per cent residual interest, have been presented with similar proposals for settlement

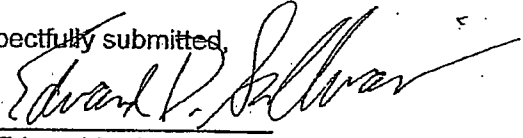
and, upon information and belief, those proposals remain under consideration by the Church.

5. Except for the aforementioned contingent claim and the ongoing claims against the Estate by the Personal Representative as included in the Appeals, all other claims of the Estate have been paid and the period for filing claims has expired. In an effort to further wind up the Estate, the Personal requests the Court's approval of the distribution of the estate proceeds.
6. Upon approval of this Petition, the Personal Representative agrees to file or cause to be filed, at his expense, the ongoing estate income tax returns as needed.
7. Accordingly, the approval of this Petition by the Court will allow all estate proceeds to be distributed equitably in accordance with the Last Will and Testament of Marion M. Kay, as well as ensure that the interests of all parties, including those continuing to be directly affected by the ongoing Appeals, be protected.

Based on the foregoing, the Personal Representative respectfully requests that this Court issue an Order approving the Proposal for Distribution as reflected in **Exhibit A** and for such further relief as the Court may deem just and proper.

Respectfully submitted,

By:


Edward D. Sullivan
Personal Representative

July 8, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF: LAURENS

IN THE MATTER OF: MARION M. KAY

IN THE PROBATE COURT

PROPOSAL FOR DISTRIBUTION

CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan

Name and Address of Distributee	Amount or Item
Lisbon Presbyterian Church (25%) c/o Charles Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858	\$77,642.29
Lisbon Presbyterian Church Cemetery Fund (25%) c/o Charles Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858	77,642.29
Bart Heard (10% less \$12,000 advances) c/o Geroqe R. McElveen, III Esq. 2229 Bull Street Columbia, SC 296201	19,056.91
Marla Orias (10%) 206 Adair St. Laurens, SC 29360	31,056.91
Presbyterian Home of South Carolina (10%) c/o Kathy Ligon 2817 Ashland Road Columbia, SC 29210	31,056.91
Martha Brown (10%) c/o John R. Ferguson, Esq. Cox and Ferguson PO Box 286 Laurens, SC 29360-0286	31,056.91**
Mary Leona Moses (10%) c/o John R. Ferguson, Esq. Cox and Ferguson PO Box 286 Laurens, SC 29360-0286	31,056.91**
TOTAL	\$298,569.13
** subject to setoff for court reporter fees per court order dated March 27, 2012	

EXHIBIT B

LAST WILL
OF
MARION M. KAY

Edward D. Sullivan
SULLIVAN LAW FIRM, PC
PO BOX 11714
COLUMBIA, South Carolina 29211

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OF
MARION M. KAY

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LAST WILL AND TESTAMENT
OF
MARION M. KAY

Introductory Clause. I, Marion M. Kay, a resident of and domiciled in the County of Laurens and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

Direction to Pay Debts. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's

Last Will and Testament of Marion M. Kay Page 1

1 of 7
M. M. Kay
ccw
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qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my Personal Representative, who shall distribute my personal and household effects to my family and friends as (s)he shall deem appropriate.. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM IV

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely forever, as follows:

One-fourth (1/4) interest to Lisbon Presbyterian Church, absolutely forever;

One-fourth (1/4) interest to Lisbon Presbyterian Church Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, *per stirpes, M.M.K. C.C.S.* to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, *per stirpes, M.M.K. C.C.S.* to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown, *per stirpes, M.M.K. C.C.S.* to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses, *per stirpes, M.M.K. C.C.S.* to be hers absolutely forever; and

One-tenth (1/10) interest to the Presbyterian Home of South Carolina, Clinton, South Carolina.

2 of 7
M.M.K.
C.C.S.
per

ITEM V

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) Naming an Individual Personal Representative. I hereby nominate, constitute, and appoint as Personal Representative of this my Last Will and Testament Edward D. Sullivan and direct that he shall serve without bond.

(2) Naming Individual Successor or Substitute Personal Representative. If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be Joann Ball. *M. M. Ka*

(3) Fee Schedule for Individual Personal Representative. For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM VI

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VII

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and

Last Will and Testament of Marion M. Ka Page 3

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M. M. Ka
ccs ps*

deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VIII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM IX

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

4 of 7
M. K.
M. K.
PS

estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM X

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XII

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

5 of 7
M.M.K.
ccs
ps

ITEM XIII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIV

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

Testimonium, Attestation and Self-Proving Affidavit. I, Marion M. Kay, the Testatrix, sign my name to this instrument this 30th day of October, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Marion M. Kay
Marion M. Kay

We, Charlene C. Stroud and Pam Simpson, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Charlene C. Stroud
(Witness)
Pam Simpson
(Witness)

The State of South Carolina

County of Laurens

Subscribed, sworn to, and acknowledged before me by Marion M. Kay, the
Testatrix, and subscribed and sworn to before me by Charlene C. Stroud and
Ram Simpson, witnesses; this 30 day of October, 1997.

Ram Simpson (Seal)
Notary Public for South Carolina

My Commission Expires: 12-18-2005

Last Will and Testament of Marion M. Kay Page 7

7 of 7
M. M. K.
ced
R

357-658-980-6 PAGE

XXH1831DPCSTM

06301303576589806

Statement of Account

Last statement: May 31, 2013
 This statement: June 30, 2013
 Total days in statement period: 30
 357-658-980-6 031 831
 Page 1 of 2

ESTATE OF MARION M KAY
 EDWARD D. SULLIVAN, PR
 PO BOX 11714
 COLUMBIA SC 29211-1714

Direct inquiries to: 0
 800-708-5687

EXHIBIT C

Summary of Account Balance

Account	Number	Ending Balance
Advantage Money Market	357-658-980-6	\$298,569.13

Advantage Money Market	Account Number 357-658-980-6

Beginning balance	298,470.99	
Deposits/Credits	98.14	
Withdrawals/Debits	0.00	
Ending balance	298,569.13	Average collected balance 298,470.00

Deposits/Other Credits

Date	Transaction Type	Reference Number	Description	Amount
06-30	Interest Credit	0000000000000000		98.14

Balance Summary

Date	Amount	Date	Amount	Date	Amount
05-31	298,470.99	06-30	298,569.13		

357-658-980-6 PAGE

XXH1831DPCSTM

06301303576589806

June 30, 2013
357-658-980-6
ESTATE OF MARION H KAY
Page 2 of 2

Overdraft/Return Item Fees

	Total for this period	Total year-to-date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00

357-658-980-6 PAGE

XXH1831DPCSTM

05311303576589806

Statement of Account

Last statement: April 30, 2013
 This statement: May 31, 2013
 Total days in statement period: 31
 357-658-980-6 031 831
 Page 1 of 2

ESTATE OF MARION M KAY
 EDWARD D. SULLIVAN, PR
 PO BOX 11714
 COLUMBIA SC 29211-1714

Direct inquiries to: 0
 800-708-5687

Summary of Account Balance

Account	Number	Ending Balance
Advantage Money Market	357-658-980-6	\$298,470.99

Advantage Money Market Account Number 357-658-980-6

Beginning balance	298,369.62	
Deposits/Credits	101.37	
Withdrawals/Debits	0.00	
Ending balance	298,470.99	Average collected balance 298,329.00

Deposits/Other Credits

Date	Transaction Type	Reference Number	Description	Amount
05-31	Interest Credit	0000000000000000		101.37

Balance Summary

Date	Amount	Date	Amount	Date	Amount
04-30	298,369.62	05-31	298,470.99		

357-658-980-6 PAGE

XXH1831DPCSTM

05311303576589806

May 31, 2013
357-658-980-6
ESTATE OF MARION H KAY
Page 2 of 2

Overdraft/Return Item Fees

	Total for this period	Total year-to-date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00

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

IN THE PROBATE COURT

ACCOUNTING

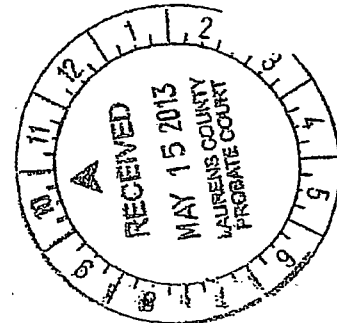
CASE NUMBER: 2007ES3000208

☐ FINAL
☒ INTERIM # 5

The undersigned Personal Representative(s) submits this accounting, which covers the period from November 13, 2010 through April 30, 2013.

The documentation on the reverse side of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance	<u>\$315,981.82</u>
Plus: Receipts	<u>10,038.66</u>
Subtotal	<u>326,020.48</u>
Less: Disbursements	<u>27,650.86</u>
Ending Balance	<u>(4) \$298,369.62</u>



The Personal Representative declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 14th day of
 May 20, 2013

Sherrilyn M. Neely
 Notary Public for South Carolina
 My Commission Expires: 12-11-2018

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): _____

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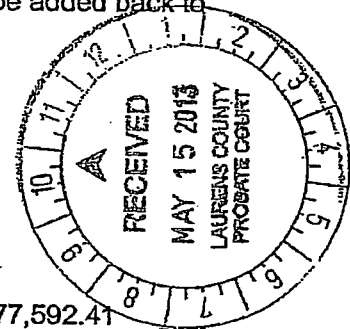
STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF LAURENS	)	ACCOUNTING
	)	
IN THE MATTER OF: MARION M. KAY	)	CASE NUMBER: 2007-ES-30-00208

INTERIM # 5

FOOTNOTES

- (1) Legal fees and witness fees paid by the Estate on behalf of Personal Representative prior to Court Order disallowing these expenses. The fees have been refunded to the Estate by the Personal Representative pending appeal of the Court Order.
- (2) Court Orders require the Personal Representative and Martha Brown and Mary Moses to each reimburse the Estate for one-half of the court reporter fees. These Orders are under appeal.
- (3) At Beneficiary Bart Heard's request, the Estate advanced six thousand (\$6,000) dollars against his interest in the Estate for family medical hardship reasons. The payment was made on November 8, 2013.
- (4) Advances totaling Twelve Thousand (\$12,000) dollars must be added back to determine the distributable estate as follows.

Ending Cash Balance	\$298,369.62
Advances	12,000.00
Total Distributable Estate	\$310,369.62

Pro Forma Distribution Based on April 30, 2013 Balance above*

Lisbon Presbyterian Church (25%)	\$77,592.41
Lisbon Presbyterian Church Cemetery Fund (25%)	77,592.41
Presbyterian Home of South Carolina (10%)	31,036.96
Martha Brown (10%)	31,036.96**
Mary Moses (10%)	31,036.96**
Marla Orias (10%)	31,036.96
Bart Heard (10% less \$12,000 advances)	<u>19,036.96</u>
Total	\$310,369.62*

* subject to court approval

**subject to setoff for share of court reporter fees

STATE OF SOUTH CAROLINA

COUNTY OF: LAURENS

IN THE MATTER OF: MARION MILAM KAY

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2007ES3000208

On the day and date below, I mailed or delivered the following document, Interim Accounting #5

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

Bart Heard
 c/o George R. McElveen, III, Esquire
 McElveen and McElveen
 2229 Bull Street
 Columbia, SC 29201

Marla Orias
 206 Adair Place
 Laurens, SC 29360

Lisbon Presbyterian Church
 c/o Charles Blackmon, Clerk of Session
 3771 Hwy 56 S
 Clinton, SC 29325-6858

Lisbon Presbyterian Church Cemetery Fund
 c/o Charles Blackmon, Clerk of Session
 3771 Hwy 56 S
 Clinton, SC 29325-6858

Presbyterian Home of South Carolina
 c/o Kathy Ligon
 2817 Ashland Road
 Columbia, SC 29210

Mary Leona Moses and Martha Milam Brown
 c/o John R. Ferguson, Esquire
 Cox & Ferguson
 PO Box 286
 Laurens, SC 29360-0286

SWORN to before me this 14th day of
 May, 20 13

Sherril Be Neely
 Notary Public for South Carolina
 My Commission Expires: 12-11-2018

Signature: *Kimberly Harbison*
 Name: Kimberly Harbison, Legal Assistant
 Address: Law Office of Daryl G. Hawkins, LLC
PO Box 11906, Columbia, SC 29211
 Telephone (O): 803.733.3531
 (H): 803.606.6996 Daryl Hawkins Cell
 E-mail: kharbison@dghlaw.net

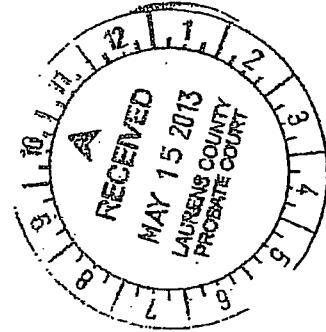


EXHIBIT D

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, EsquireDaryl G. Hawkins, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty W. Sledge
Clerk of Court

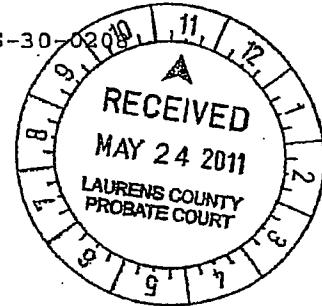
COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

IN THE PROBATE COURT

Case No. 2007-ES-30-02

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;

A handwritten signature in black ink, appearing to be "H. D. Sullivan".

- 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
DBD

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 ^{Automatic} justify the relief requested. DAN

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

#4
JBS

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.

#5
DJA

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

HC
DBW

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

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

EXHIBIT E**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. Hockler
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

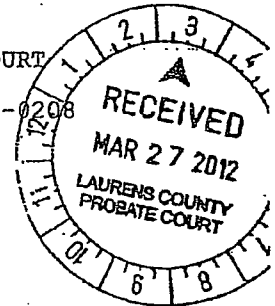
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Donna W. Hockler
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

A handwritten signature, possibly "D. McElveen III", written in dark ink.

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

EXHIBIT F-1

TELEPHONE
803-451-2775

EDWARD D. SULLIVAN
ATTORNEY AT LAW
Post Office Box 11714
1331 Elmwood Avenue • Suite 305 (29201)
Columbia, South Carolina 29211-1714
esullivan@esullivanlaw.com

FACSIMILE
803-451-2770

April 3, 2013

VIA HAND-DELIVERY

George McElveen
2229 Bull Street
Columbia, SC 29201

RE: Estate of Marion M. Kay

Dear George:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate.

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard.) The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (\$315,981.82 plus \$6,000.00 less \$13,306.80). Mr. Heard's interest (10%) would have been \$30,867.50 (less a \$6,000 previous advance - \$24,867.50).

As of February 2013, the estate has received \$4,815.67 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1695.96 witness fee; legal fees \$3331.00, \$2917.10 court reporter fees, additional \$400 in professional accounting fees, and a \$6000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63

As I recall, Mr. Heard did not oppose the accounting, proposed distribution, and settlement of the Estate based on the November 2010 amounts. It is my understanding based on my conversation with you that Mr. Heard continues to be in agreement with the settlement of the Estate provided his interest is not diminished by the ongoing litigation to which he has been, and continues to be, opposed.

I am writing to propose a resolution in which Mr. Heard's interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued.) In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.96.

April 3, 2013
Page 2 of 2

2. I will pay directly to Mr. Heard \$331.71 (\$40 plus \$ 291.71 [\$40 being 10% of the \$400 accounting fees incurred by Mr. Heard in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291.71 being 10% of the \$2917.10 court reporter costs]).
3. I will execute and deliver a release and hold harmless agreement to Mr. Heard releasing him from any further claim against his interest in the Estate for compensation as Personal Representative, other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against his interest in the Estate for reimbursement for "reasonable expenses" as indicated by Ms. Kay's will, other than that previously received and reported in November 2010.
4. Mr. Heard will execute a release and hold harmless agreement releasing me from any further obligation to him directly and indirectly, by way of his interest in the Estate, arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse when and if approved. I will also file the final tax return at my expense and wind up the Estate.

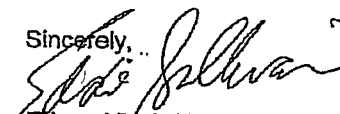
The effect of the foregoing is to put Mr. Heard's interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Mr. Heard's gross share of the distributable estate is estimated to be \$31,309.06. Allowing for the \$12,000 in previous advances, his net distribution is estimated to be \$19,309.06. Cliff Bodiford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

\$ 19,349.06

If you agree in principle, please ask Mr. Heard to sign below and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

I agree:

Edward Bart Heard
~~Bart Edward Heard~~
Edward Bart Heard

National Brand 45-612 Eye-Ease
45-213 2-Pack
Made in USA

Letter of Martin A. King
Recalculation of Distributable - with Selling Price

Prepared By
Approved By

	1	2	3	4	5
2013					
1	Bel @ Feb 28, 2013	29314863			
2	ES Reimbursement	1592696			
3	ADVANCE - HONOR	1200000			
4	TOTAL Distributable	31017359			
5					
6	10% - Honor Share	3101736			
7	Net Advance	1200000			
8	Amnt to be dist	1901736			
9					
10	2010				
11	Balanc @ Nov 2010	31598158			
12	Net Legal & Court Fees	1330680			
13		30267478			
14	Add Back - Honor Advance	600000			
15		30867478			
16	Interest - Nov 10 - Feb 13	481567			
17		31349045			
18					
19	10% Honor Share	3134904			
20	Net Advance	1200000			
21		1934904			
22					
23					
24					
25	* Diff in 1000's in				
26	and fees approved				
27	in 2010 - 201000				
28	actually paid -				
29	\$400 diff x 102.5	400			
30					
31	plus 10% of 291710 diff	29171			
32		32171			
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 National Brand
 45-813 Eye-Ease®
 45-313 E-Peck
 Made in USA

Estimate of Maria M. Key
Analysis of Detention Costs - v/ Bellwether
2/28/13

Prepared By	Initials	Date
Approved By		

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Cost @ Nov 2010

325,981.82

Nov 2010 Legend Dist

113,268.80

322,675.02

Interact Docum - 11/11 - 2/12

45,156.97

Witness Fee

16,959.96

16,959.96

Legal Fee

33,310.00

33,310.00

Court Reporter

29,171.00

50,269.96

Additional Dist & Fee

14,000.00

Advances to H&M

16,000.00

Bol @ 2/28/13

293,146.63

Bol @ 2/28/13

293,146.63

Reimburse from P&B

50,269.96

Advances to H&M

12,000.00

Total Dist Costs

310,172.59

EXHIBIT F-2

EDWARD D. SULLIVAN
ATTORNEY AT LAW

Post Office Box 11714
1331 Elmwood Avenue • Suite 305 (29201)
Columbia, South Carolina 29211-1714

esullivan@esullivanlaw.com

April 4, 2013

Via email: marlaonias@charter.net

Ms. Marla Onias
206 Adair Place
Laurens, South Carolina 29350

RE: Estate of Marion M. Kay

Dear Marla:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate and reach a settlement with you (and others).

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard). The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (\$315,981.82 plus \$6,000.00 less \$13,306.80). Your interest (10%) would have been \$30,867.50.

As of February 2013, the estate has received \$4,815.87 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1,695.98 witness fee, legal fees \$3,331.00, \$2917.10 court reporter fees, additional \$400 in professional accounting fees, and a \$6000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63.

I am writing to propose a resolution in which your interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued). In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.98.
2. I will pay directly to you \$331,771 (\$40 plus \$291,771 (\$40 being 10% of the \$400 accounting fees incurred by the Estate in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291,771 being 10% of the \$2917.10 court reporter costs)).

April 4, 2013
Page 2 of 2

3. I will execute and deliver a release and hold harmless agreement to you releasing you from any further claim against its interest in the Estate for compensation as Personal Representative other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against its interest in the Estate for reimbursement for reasonable expenses as indicated by Ms. Kay's will other than that previously received and reported in November 2010.
4. In exchange, you will execute a release, indemnity and hold harmless agreement releasing me from any further obligation to it directly and indirectly by way of its interest in the Estate arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse it and when approved, I will also file the final tax returns at my expense and wind up the Estate.

The effect of the foregoing is to put your interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Your gross share of the distributable estate is estimated to be \$31,349.06. Cliff Bodford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

If you agree in principle, please sign below, scan and return to esullivan@esullivanlaw.com and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

I agree



Maria Orlas

Date: 4/1/13



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45-313 2-Pencil
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State of Maria A. Kay
Analysis of Probation Assets - v. Sullivan
2/28/13

Prepared By	Initials	Date
Approved By		

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Cost @ Nov 2010
Nov 2010 Payroll Dist

32598182

(1330680)

32267502

Unpaid Income - 11/11 - 2/12

180567

Witness Fee

(169596)

169596

Legal Fee

(533100)

333100

Expert Reporter

(291310)

502696

Additional Cost Fee

(40000)

Advances to Plaintiff

(600000)

Bal @ 2/28/13

29314663

Bal @ 2/28/13

29314663

Reimbursement from PG

502696

Advances to Plaintiff

1200000

Total Debt Assets

31017355

National Brand

45-613

Eyo-Ease

45-313

2-Pack

Made in USA

Letter of Maria M. May
Reconciliation of Deductible Asset - with Patricia Lat
2/28/13

Prepared By	Initials	Date
Approved By		

	1	2	3	4	5
2013					
1	Bal @ Feb 28, 2013	293,146.63			
2	ES Reimbursement	5,926.96			
3	ADVANCES - HERRON	12,400.00			
4	Total Deductible	311,473.59			
5					
6	10% - Maria May	31,147.36			
7					
8				31,017.36	
9				* 38,171	not deductible
10	2010			313,490.7	
11	Balance @ Nov 2010	315,981.88			
12	Peri Legal & Acct Fees	13,305.80			
13		302,676.08			
14	Add Back - HERRON ADVANCE	6,000.00			
15		308,676.08			
16	Interest - Nov 10 - Feb 13	4,815.67			
17		313,491.75			
18					
19	10% Note to Maria May	31,349.18			
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23					
24					
25	* Diff in 1000 in				
26	Acct fees approved				
27	in 2010 - \$1500				
28	actually paid -				
29	\$1500 diff x 102.5	1,537.50			
30					
31	plus 10% of 2917.10 diff	2,917.10			
32		31,349.18			
33					
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EXHIBIT F-3

TELEPHONE
803-451-2775

EDWARD D. SULLIVAN
ATTORNEY AT LAW
Post Office Box 11714
1331 Elmwood Avenue • Suite 305 (29201)
Columbia, South Carolina 29211-1714
esullivan@esullivanlaw.com

FACSIMILE
803-451-2770

April 3, 2013

Via email angela.smith@preshomesc.org
Presbyterian Home of South Carolina
c/o Ms. Angela Smith
2817 Ashland Road
Columbia, SC 29210

RE: Estate of Marion M. Kay

Dear Ms. Smith:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate and reach a settlement with Presbyterian Home of South Carolina (and others).

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard.) The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (\$315,981.82 plus \$6,000.00 less \$13,306.80). Presbyterian Home's interest (10%) would have been \$30,867.50).

As of February 2013, the estate has received \$4,815.67 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1695.96 witness fee; legal fees \$3331.00, \$2917.10 court reporter fees, additional \$400 in professional accounting fees, and a \$6000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63

As I recall, Presbyterian Home did not oppose the accounting, proposed distribution, and settlement of the Estate based on the November 2010 amounts. It is my understanding based on my conversation with you that Presbyterian Home continues to be in agreement with the settlement of the Estate based on those amounts.

I am writing to propose a resolution in which Presbyterian Home's interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued.) In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.96.

April 3, 2013
Page 2 of 3

2. I will pay directly to Presbyterian Home \$331.71 (\$40 plus \$ 291.71 [\$40 being 10% of the \$400 accounting fees incurred by Presbyterian Home in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291.71 being 10% of the \$2917.10 court reporter costs]).
3. I will execute and deliver a release and hold harmless agreement to Presbyterian Home releasing it from any further claim against its interest in the Estate for compensation as Personal Representative, other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against its interest in the Estate for reimbursement for "reasonable expenses" as indicated by Ms. Kay's will, other than that previously received and reported in November 2010.
4. Presbyterian Home will execute a release, indemnity and hold harmless agreement releasing me from any further obligation to it directly and indirectly, by way of his interest in the Estate, arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse when and if approved. I will also file the final tax return at my expense and wind up the Estate.

The effect of the foregoing is to put Presbyterian Home's interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Presbyterian Home's gross share of the distributable estate is estimated to be \$31,309.06. Cliff Bodiford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

If you agree in principle, please sign below and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

April 3, 2013
Page 3 of 3

We agree:

Presbyterian Home of South Carolina

By: Kathleen R. Rison
Its: President & CEO

Date: 04.05.13

National Brand

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45-313 2-Pack
Made in USA

State of Maria A. Ray
Analysis of Distributable Assets - v. Public Law
 2/28/13

Prepared By	Initials	Date
Approved By		

		1	2	3	4	5
1	Cash @ Nov 2010	315,981.82				
2	Nov 2010 Legend Dist	113,306.82				
3		202,675.02				
4	Interest Income - 11/10 - 2/13	4,515.67				
5	Witness Fee	1,695.96			1,695.96	
6	Legal Fees	5,331.00			5,331.00	
7	Court Reporter	2,917.12			5,026.96	
8	Additional Court's Fee	4,000.00				
9	Advances to H&A	6,000.00				
10	Bal @ 2/28/13	293,146.63				
11						
12						
13						
14						
15	Bal @ 2/28/13	293,146.63				
16	Reimbursement from H&A	5,026.96				
17	Advances to H&A	12,000.00				
18	Total Dist Assets	310,173.59				
19						
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National Brand		45-812 Eye-Base®	45-312 2-Peck	Made in UBA	Prepared By		Inmate		De
<i>John J. Mann M. King</i> <i>Reconciliation of Distributable Cost - with Rollins Pat</i> <i>2/25/13</i>									
2013									
1	Bal @ Feb 28, 2013	29314463							
2	ES Reimbursements	1582698							
3	ADVANCES - Hecard	1240000							
4	Total Distributable	31817359							
5									
6	10% - Prestylenia Home	3181736							
7									
8									
9									
10	2010								
11	Bal @ Nov 2010	31598158							
12	Ken Legal & Court Fees	1320682							
13		30267562							
14	Add Bank - Hecard Advances	6000000							
15		30867562							
16	Interest - Nov 20 - Feb 13	481567							
17		31349069							
18									
19	10% Home to Prestylenia Home	3134907							
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25	* Diff in 1000 is								
26	cost per approved								
27	in 2010 - \$1000								
28	actually paid -								
29	\$400 diff x 102.5	400							
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31	plus 10% of 291710 diff	29171							
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IN THE MATTER OF: MARION M. KAY

Page 67

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

GARBER REPORTING SERVICE
803-256-4500

IN THE MATTER OF: MARION M. KAY

Page 68

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

GARBER REPORTING SERVICE
803-256-4500

IN THE MATTER OF: MARION M. KAY

Page 69

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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