THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, Circuit Judge

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S.C. Supreme Court

Unpublished Opinion No.: 2011-UP-517 (S.C. Ct. App. filed Nov. 29, 2011)

Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean, and JL McLean Properties, LLC..... Petitioners,

v.

James B. Drennan, III as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr. As Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, Wachovia Bank National Association as Personal Representative of the Estate of Elizabeth P. Pence, Wachovia Bank National Association as Trustee of the Elizabeth P. Pence Trust, Marlboro Academy, Inc., Charles P. Thompson, Jr., Cheri (Cheryl) Brown Thompson, Money to Go, LLC, James J. Pence, Jr., as Personal Representative of the Estate of Stephen Pence, and Harry R. Easterling, Jr..... Respondents.

AMENDED APPENDIX

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Honorable Diane S. Goodstein, Circuit Judge

Case No.: 2006-CP-38-1523

Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean, and JL McLean Properties, LLC..... Appellants,

v.

James B. Drennan, III as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr. As Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, Wachovia Bank National Association as Personal Representative of the Estate of Elizabeth P. Pence, Wachovia Bank National Association as Trustee of the Elizabeth P. Pence Trust, Marlboro Academy, Inc., Charles P. Thompson, Jr., Cheri (Cheryl) Brown Thompson, Money to Go, LLC, James J. Pence, Jr., as Personal Representative of the Estate of Stephen Pence, and Harry R. Easterling, Jr.....Respondents.

RECORD ON APPEAL

Volume 2 of 4

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STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean, and JL McLean Properties, LLC, Plaintiffs, vs. James B. Drennan, III, as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr., as Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, Wachovia Bank, National Association, as Personal Representative of the Estate of Elizabeth P. Pence Trustee, Marlboro Academy, Inc., Charles P. Thompson, Cheri Brown Thompson, Money To Go, LLC, James J. Pence, Jr. as Personal Representative of the Estate of Stephen Pence, and Harry R. Easterling, Jr., Defendants.	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT 2006-CP-38-1523 DEPOSITION OF **WILLIAM N. MCLEAN**

Deposition of William N. McLean, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 10:00 a.m., Monday, October 8th, 2007, at Turner, Padget, Graham & Laney, 1901 Main Street, Suite 1700, Columbia, South Carolina.

COPY

Appearances

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Appearances Continued

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Reported By:	Barbara P. Scott, CVR
Also Present:	James B. Drennan, III, Esquire

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Exhibits

Marked as Deposition Exhibit Number One;
Deposition of William N. McLean; copy of Order Approving Compromise and Settlement; two pages 33

Marked as Deposition Exhibit Number Two;
Deposition of William N. McLean; copy of Compromise and Settlement Agreement; eight pages 34

Marked as Deposition Exhibit Number Three;
Deposition of William N. McLean; copy of letter dated September 27, 2002; one page 62

Marked as Deposition Exhibit Number Four;
Deposition of William N. McLean; copy of letter dated October 21, 2002; two pages 63

Marked as Deposition Exhibit Number Five;
Deposition of William N. McLean; copy of Complaint; nineteen pages 73

Marked as Deposition Exhibit Number Six;
Deposition of William N. McLean; copy of real estate list values; two pages 121

Marked as Deposition Exhibit Number Seven;
Deposition of William N. McLean; copy of Quitclaim Deed; six pages 126

Marked as Deposition Exhibit Number Eight;
Deposition of William N. McLean; Waiver of Right to Serve as Trustee; one page 129

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

William N. McLean, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: William N. McLean.

Examination

By Mr. Henrikson:

Q What does the N stand for?

A Norris.

Q Okay. Mr. McLean, my name is Matt Henrikson. I represent Jim Drennan as one of the defendants sued in a lawsuit brought by you and some family members. I'm going to ask you some questions today about what knowledge you may have regarding the substance of this lawsuit and in particular what you claim Mr. Drennan did wrong. I'm required by the state of South Carolina rules of court to tell you that now that you've been sworn, if you have

any questions about anything that I ask or anything that any of these other attorneys ask, you need to direct those questions to the inquiring attorney as opposed to your own attorney. Do you understand that?

A Yes, I do.

Q Okay. Now, we can take a break anytime you want. You just tell me I want a break, and we'll stop, and we'll get back on track when you're ready, but if we take a break, you're not allowed to discuss your testimony, past or future, with anybody, including your lawyer. If you do, that operates as a waiver of the attorney-client privilege to that extent, and we can question you when we get back. Do you understand that?

A Yes, I do.

Q All right. Now, have you ever given a deposition before?

A Not that I recall.

Q Okay. Well, as you know, you've been sworn. Do you understand that to be the same oath that you would take if this case was tried in court?

A Yes, I do.

Q And you understand that oath obligates you to answer all questions that you are given -- that you

are asked today completely and truthfully?
A Yes, I do.
Q All right. And you understand that there are consequences for not doing so?
A Yes, I do.
Q All right. Because you've never given a deposition before, as you know, the court reporter is taking down everything that's being said, and, so, in order to make a clean record, if you could wait until I finish the question before you start your answer, even if you know what my question is going to be. She just can't type two people talking at once. And I will do my very best to wait until I think you've completed your answer before I start the next question. The other thing is, because she's taking everything down, it's important that you answer verbally as opposed to nodding or shaking your head or saying uh-huh or uh-uh, which would be difficult for her to interpret. If I ask you a question that you think you may not completely understand, please ask me to repeat it, rephrase it or explain it. Will you do that?
A Yes, I will.
Q And by the same token, if you say something to me that I think I don't completely understand, I'll

ask you to repeat it, rephrase it or explain it.

What is your date of birth?

A December 19th, 1967.

Q And that makes you how old today?

A Thirty-nine.

Q And what is your current residence address?

A It's 851 Hampton Creek Way, Columbia, South Carolina.

Q And who, if anyone, lives with you at that address?

A My wife, Nicole, and my children, Riley and Benson.

Q Do you have any children eighteen or older?

A No, I don't.

Q Okay. How long have you lived at that address?

A Approximately three and a half years, I believe.

Q And how long have you lived in -- Is that in Richland County or in Lexington County?

A In Richland County.

Q How long have you lived in Richland County?

A Twelve years, approximately.

Q And tell me a little bit about your educational background. Where did you -- Where did you graduate from high school?

A Wade Hampton Academy in Orangeburg, South Carolina.

Q What year was that?

A That was '86.

Q And how about college?
A I got my BS in 1990 from Clemson, and then I got my master's in '92 from Clemson.
Q And what is the master's in?
A It was an MBA.
Q Okay. And tell me, then, about your -- Well, any other formal education?
A That's it.
Q All right. Tell me about your work history. Who are you employed by now?
A MortgageIT, which is a subsidiary of Deutsche Bank.
Q How long have you worked there?
A Just under two years.
Q And what do you do?
A Project manager.
Q And just tell me what a project manager does at MortgageIT.
A Various corporate-level projects that get pushed up, just see them through from beginning to end. Example of that is where we start a relationship with a new servicer, subservicer, for mortgage loans, residential mortgage loans, and then I service their report.
Q And how long -- You've been there less than two years?

A Yes.
Q All right. Where did you work prior, immediately prior to that?
A Homeowners Mortgage.
Q Where is that company located?
A It's here in Columbia.
Q How long were you there?
A Two or three years. I'm not sure. I can't remember the dates, when I started --
Q What did you do for them?
A I was their corporate operations manager.
Q And what did you do on a day-to-day basis?
A Worked on pushing various IT solutions. Working on various IT solutions for our business.
Q And where did you work prior to that?
A I worked for Washington Mutual.
Q And how long did you work for them?
A It was -- Well, Washington Mutual purchased Fleet Mortgage, so combined, between the two, I worked there from 1994 until 2003, I believe it was.
Q So, you were with Fleet Mortgage, and at some point Washington Mutual bought Fleet Mortgage?
A That's correct.
Q And then -- So, you just sort of kept the same job, had a different employer?

A Yeah.
Q All right. So, that brings us back down to 1994, and you got your master's in 1992. What did you do between those two?
A I worked -- I did a little bit of work for my father. I was living in -- back in Orangeburg at that time.
Q Where was Fleet Mortgage and Washington Mutual located during the time you worked for them?
A Fleet Mortgage was based here, out of Columbia.
Q So, you've been in the Columbia area since '94?
A That's correct.
Q And prior to '94, you were -- Well, between '92 and '94, you were in Orangeburg working for your father?
A Yeah. I was just doing some work for him, trying to find the right -- yeah, the right job.
Q Okay. What sort of work were you doing for your father?
A Just working some -- Just reviewing some things for him from a personal real estate standpoint.
Q All right. And what's your father's name?
A Norman.
Q Okay. Have you ever been a defendant in a lawsuit before?

A No.
Q Have you ever been a plaintiff in a lawsuit before?
A No. I mean, -- Let me qualify the answers. I don't know. I don't think it would actually be considered -- It was just -- filed insurance with auto claims, but nothing actually where I went to court or did a deposition or anything like that.
Q And what county would that have been in?
A It would've been an auto claim in Orangeburg County for an accident there, and then I was responsible for an accident here in Richland at one time, and, I mean, that was settled through the auto insurance claim. So, nothing ever went to court. There was no actual lawsuit filed on either side.
Q Okay. What year, approximately, do you think the Orangeburg claim would have been?
A '92 maybe.
Q And what year, approximately, do you think the Richland claim against you would have been?
A Late '90s.
Q Have you ever been arrested for any reason?
A Yes, I have.
Q How many times?
A Twice, I believe.
Q When was the first time?

A In college.
Q So, it would've been between '86 and '90?
A Yes.
Q In Pickens County or somewhere else?
A Yes. Yeah, it would -- Yeah, it would've been Pickens County.
Q Okay. And what was the charge?
A I got charged with scalping tickets.
Q So, like breach of the peace or something, or some special charge for that?
A Yeah. It was basically a ticket. I mean, it was like the uniform traffic ticket or whatever.
Q Okay. What was the disposition of that?
A I just paid a fine, --
Q Okay. And how about the next time --
A -- 50- -- 50-dollar fine.
Q I'm sorry. Is that all it is? I'm going to start scalping more. When was your next arrest?
A I got arrested in '90 I think.
Q Would that also have been in Pickens County or in Orangeburg?
A Pickens.
Q And what was the charge there?
A I don't remember the exact charges.
Q What was the approximate charge?

A We had -- A friend of mine had taken something from an apartment that -- next to him, and, so, we were charged with that, and then the disposition was PTI.
Q And did you plead guilty to anything?
A Yeah.
Q You just entered PTI?
A That's correct.
Q And was that like a burglary charge or --
A Yeah. It was like -- Yeah. It was basically just kind of a prank, but --
Q Okay. What would've been the -- How much was involved? What was taken?
A It was a duffle bag.
Q What was in it?
A It actually ended up being a -- some type of -- like, I guess, a DNR agent's bag. So, it had his -- his work stuff in it.
Q You said that Norman M. McLean was your father?
A That's correct.
Q And who is James N. McLean?
A He's my brother.
Q And how old is he?
A He is forty.
Q Where does he live?

A He lives in Orangeburg.
Q And who is Marie McLean-Choi?
A That's my sister.
Q All right. And how old is she?
A She is, I believe, forty-five.
Q And where does she live?
A Orangeburg.
Q And who is Robert L. McLean?
A He is my brother.
Q And how old is he?
A He is thirty-six I believe.
Q And where does he live?
A In Anderson.
Q What is JL McLean Properties, LLC?
A It's a family LLC that we --
Q And who all -- I'm sorry. Are you through with your answer?
A Yeah. It's a family LLC, and we're all partners.
Q All of the --
A The siblings.
Q All of the siblings?
A Right.
Q All right. And, so, you, James, Marie and Robert are -- Are y'all the sole owners of JL McLean Properties, LLC?

A Yes.
Q Okay. And when was that LLC established?
A I couldn't tell you.
Q Can you give me your best approximation?
A I really couldn't tell you because we have several different LLCs.
Q And what are the other LLCs that you and your family members have?
A We have Vandalay, LLC.
Q The same owners?
A Yes.
Q And when was that established?
A I don't know the year.
Q Is that a South Carolina LLC?
A Yes, it is.
Q And is the other one a South Carolina LLC, as well?
A Yes, it is.
Q All right. And what is -- Other than maybe importing and exporting, what does Vandalay, LLC do?
A Real estate holding.
Q Any others? Any other LLCs that any member of the family owns?
A McLean Family Land.
Q McLean Family Land?

A Uh-huh.
Q Okay. And when was that established?
A Last year I think.
Q So, in 2006?
A Yeah, I think so.
Q Okay. And same principals?
A Yes.
Q Any other LLCs?
A No.
Q Any other corporate entities or anything involving any of the plaintiffs in this case?
A McLean Properties.
Q That's different than JL McLean Properties?
A Yes, it is.
Q And what -- when was that LLC formed?
A It's not a -- It's a --
Q Okay.
A I believe it's -- It either an S corp or C corp.
Q And when was that established?
A I don't know.
Q More than five years ago, or --
A Yeah, more than five years.
Q Was JL McLean Properties, LLC formed for any particular purpose?
A It was just to hold -- to hold property.

Q What is it, and why is it a plaintiff in this lawsuit?
A Because that was at the direction of our attorney.
Q Aside from anything that your attorney may have said, -- You know, I don't want to ask you -- I don't want you to tell me anything that your attorney -- any attorney may have told you, but do you have -- or any attorney representing you may have told you, but can you tell me if there's any factual relationship between JL McLean Properties, LLC and the substance of this lawsuit?
A JL McLean Properties is part of the land in question, has been -- has a quitclaim deed for JL McLean Properties for one of the parcels of land.
Q Which parcel?
A I believe it to be a piece that is the -- involved in the life estate.
Q Cannon Bridge Road?
A Cannon Bridge Road, yes.
Q Is that a quitclaim deed that your father gave benefitting --
A I believe that was originally quitclaimed to us individually, and then he quitclaimed it to an LLC.
Q Okay. Did you form the LLC in order to quitclaim the property to that LLC?

A Yeah. That's what we -- Yeah. Basically, we -- Quitclaimed to us, and then we wanted to put it in an LLC. So, that was the preferred way of --

Q Okay. So, if the quitclaim was in approximately 2001, the corporation or the -- that LLC would've been formed --

A Yeah.

Q -- sometime shortly thereafter?

A Yeah. We didn't do it 'til later.

Q Several years, or --

A I'm not sure. Yeah.

Q Do any of the LLCs, in your opinion, have any interest in or relationship to the substance or the subject matter of this lawsuit?

A Could you repeat the question?

Q Sure. That was an inartfully-phrased question. I apologize. The other LLCs that you described to me in the McLean Properties, -- Is that an Inc.?

A McLean Properties is, yes.

Q Okay. Of those three entities, do you believe that any of those entities have any interest in any of the subject matter of this lawsuit? And by interest, I mean -- You explained that JL McLean Properties, LLC has some interest in the Cannon Bridge Road property, which is one of the claims in

this lawsuit. And, so, is there similarly any kind of relationship between any of the other three LLCs in this -- the subject matter of this lawsuit?

A Not that I can think of.

Q Okay. Now, tell me who Norman McLean's grandfather was -- father was.

A Father. It was James McLean.

Q And who are James McLean's brothers and sisters?

A I don't know.

Q You don't know? Do you know any of them?

A I know my dad's brothers and sisters. I do not know my grandfather's brother and sisters. I think I had an Uncle Wil, but they were all much older, so I don't --

Q Who were your father's brothers and sisters?

A One was Elizabeth, his sister, and then his brother was Lennon.

Q Any others?

A No.

Q Now, it was represented to me by your attorney that of all of the individual plaintiffs, that you are the one who had the most factual knowledge about the subject matter of the lawsuit. Do you agree with that or disagree with that?

A I agree with that.

Q Tell me what you believe to be the -- Let's try to establish what the scope of the lawsuit is. What are you -- What are the plaintiffs claiming in terms of scope of recovery? What is it that you believe you should have that you don't have now?
A We believe that we should own outright both the Cannon Bridge Road property as well as the property that's located off Highway 21.
Q Is that the Caw Caw Swamp?
A Yes.
Q Is there anything else that the plaintiffs claim or are claiming as the subject matter of this lawsuit?
A Any damages associated with not having this --
Q Sure.
A -- property, but nothing -- no, no other -- no other properties.
Q Okay. And you said that you believe that you should -- that the family, I guess, should own -- and when I say family, I mean your family, the McLean family -- should own all of these pieces of property outright. Is that correct?
A Correct.
Q Now, tell me, if you would, what your understanding is of how these two pieces of property -- It might be better if we just started with one at a time.

Tell me what your understanding is of the Cannon Bridge Road property and, from the furthest point back that you have knowledge of, its ownership, and trace for me, if you will, how that property changed hands to where we are today, and then I'm going to ask you where it should have conveyed to your family. Do you understand the question? It's kind of a --

A Yeah.

Q Okay.

A You just want kind of a history of it.

Q Sure. And we're talking right now about the Cannon Bridge Road property.

A Okay. That was the property that was -- my grandmother and my Uncle Lennon lived at before that. That's where my grandfather lived. My grandfather was deceased before I was born.

Q That was Jim McLean?

A James.

Q James McLean?

A Yeah. James McLean, my grandfather, deceased before I was born. So, I always knew growing up my grandmother and my uncle lived on that property.

Q What was your grandmother's name?

A Sophronia.

Q Okay. And your Uncle Leonard?
A Lennon.
Q Lennon? Oh.
A L-e-n-n-o-n.
Q Okay. So, you grew up understanding that to be your grandmother's property and your uncle's property?
A I knew at some point that it was -- that my grandmother had that property and then somehow my uncle had a life interest.
Q And when your uncle got the life interest, who had the remainder?
A The remainder was my father and my aunt.
Q Your Aunt Elizabeth?
A Yes.
Q Okay. And that was -- The life estate was granted to your Uncle Lennon from your grandmother?
A I believe from my grandfather in his --
Q Grandfather?
A -- in his will, I believe is how it worked.
Q Okay. And then -- And, so, your grandfather's will gave the remainder interest, if your uncle died without issue, as I understand it, --
A That's right.
Q -- to your father and then to Elizabeth, --

A Yes.
Q -- your aunt?
A Yes.
Q Okay. And then tell me, if you will, from that point forward how you understand the property conveyed. What happened to the property from that point forward?
A From that point forward, --
Q We know that your father quitclaimed in 2001 the property to you and your siblings, right?
A Whatever year that was, yeah.
Q And that would've been, I guess, his undivided one-half interest, the remainder?
A Well, it would've been everything.
Q Everything, because Lennon died?
A Yeah. It would've been -- Yeah. It would've been everything. I don't recall right off the top of my head when Lennon's death occurred. I believe it was after that when my dad was going ahead and -- any interest that he had, he was going ahead and conveying, regardless of at what point Lennon died, whatever interest my dad had to convey, whether or not it would've been percent -- a hundred percent, --

Mr. Payne: Could you speak up just a

little bit? I'm sorry.

The Deponent: Okay.

Q Of the total interest in the Cannon Bridge Road property, do you believe that your father had more than half at any point? I'm trying to understand your answer.

A His interest would've been half of the remainder interest. My aunt's would've been the other half, --

Q Okay.

A -- to when -- whatever she did with that other half would control, you know, what happened to that other half. So, at that point in time, what you're asking about, you know, she was still alive, so --

Q Okay.

A I believe she was still alive in 2000 when that deed was transferred. I really can't remember the exact dates without looking at --

Q Sure. All right. So, at least the one-half of it that belonged to your father was quitclaimed to you and your siblings, and then y'all transferred that into JL McLean Properties, LLC?

A Yes, at the point --

Q And that's who owns that part of it now?

A Owns that part of it and the part that's -- Yeah.

Owns the whole thing.

Q And explain that to me. Tell me how one-half of it that was -- belonged to your aunt, how -- tell me how that should get to you.

A Well, my aunt, in the documentation that we were presented upon -- you know, back in 2002 I believe it was, I was asked to sign a document releasing me as backup trustee for a trust that Mr. Brogdon was -- and that property -- all Orangeburg real property I believe was how it was phrased -- was to go to the McLeans, the McLean family, and I believe is also how it's referred.

Q All right. So, let me ask you this. So, there's the -- we'll call it the Brogdon trust. Is that -- Would that be a fair description of the trust that you're talking about, a trust that was created by Mr. Brogdon?

A Yeah. I believe so.

Q All right. And it was -- the trust had some property that belonged to your Aunt Elizabeth at the time?

A It belonged to either to my aunt or to a trust that she had.

Q Okay. And are you aware of what is required legally for real property to be placed into a

trust?

A From my understanding, it needs to be deeded, just like anything else.

Q Okay. Have you ever seen a deed that deeds any part of the Cannon Bridge Road property into the Brogdon trust?

A I have not seen that deed.

Q Okay. Are you aware that that deed exists anywhere?

A I'm not aware that that deed exists. It's my opinion that it should exist or it should have existed.

Q So, if the Brogdon trust was created -- And I assume at some point you were made or you were appointed or somehow you became the -- a backup trustee, or how would you describe that? You were the --

A I was --

Q -- co-trustee or --

A I was listed as, I believe, backup trustee in case something happened to Mr. Brodgon. I did not know I was actually listed as backup trustee until after my aunt's death.

Q Okay. And what year was that, if you remember?

A I was first notified, I think, I believe, in 2002

by someone representing Mr. Brogdon.

Q Okay. So, you didn't realize that you were backup trustee until after your aunt's death?

A Yeah. Yeah.

Q Okay. Tell me how you learned that you were backup trustee.

A I got a phone call, I believe from Munford Scott's office, indicating that there was a -- a will had been -- my aunt's will or estate, something, had been contested and they wanted me to -- as part of a settlement, they wanted me to sign a -- some sort of release or something indicating that I gave up my right as backup trustee.

Q And did you sign that?

A Yes, I did.

Q And who actually gave you that document to sign?

A I believe Munford Scott sent it to me.

Q And at that time, did you have any questions, like what am I trustee of or --

A My only question was, I asked -- you know, just verified that -- you know, once I got the document, that -- that was the only thing I was signing, just release as backup trustee, it had nothing to do with rights to property, etcetera, that would be coming our way.

Q And what were you told in that regard?
A That it had nothing to do with that, that it would be -- it was just strictly releasing -- removing myself from being obligated to being the backup trustee.
Q Did you have any discussions with Mr. Brogdon at that time regarding the nature of the trust?
A Not that I recall.
Q All right. What, if anything, did you learn about the scope of the trust or the purpose of the trust or the -- anything like that regarding the trust?
A I had gotten the faxed copy of -- a partial faxed copy of the settlement, and, again, that was a settlement for contesting by my cousin, Elizabeth, against -- I guess in a lawsuit that was brought against Brogdon as trustee, Coker and Clemson, and from there, it, you know, reconfirmed or readdressed the fact the Orangeburg property was to be set aside as a gift to the McLean family, Norman McLean's family.
Q And all it says, it only refers to the property as the, quote, Orangeburg real property. Is that correct? Is that your --
A Without looking at the document, I mean, yeah, it's -- my recollection is that's what it said, and it

may even say McLean -- say McLean family.

Q And was there some Orangeburg real estate that actually made it to the McLean family through that trust?

A There was -- Late last year or early this year, we finally had a piece of property that was deeded over to us.

Q And how would you describe that property?

A I would call that property -- It would be described as Orangeburg real property and part of the overall McLean family land. It was, more specifically, Gramling --

Q Gramling Place?

A -- Gramling Place.

Q And is that approximately over 200 acres of timberland?

A The timer was -- The timber's cut.

Q Timber cut?

A It's mostly farmland. There is some timber, a little bit of timber remaining, but it's mostly -- mostly farmland, and I believe it's closer to over 300 acres.

Mr. Moore: Can you speak up a little bit?

The Deponent: Yeah. Sorry.

Mr. Moore: I'm sorry. It's just kind of -- You're fading.

Q And when you say that the Gramling Place property was deeded to you, from whom was it deeded?

A I believe it came from Brogdon as trustee.

Q Okay. And actually to whom was it deeded?

A It was deeded to, I believe, myself and my siblings, and then we subsequently deeded that to McLean Family Land, LLC.

Q That's the incorporation or the incorporated --

A No. It's in the LLC. It's McLean Family Land, I believe, is where that property is.

Q Is that the only asset of that LLC?

A Yeah. Other than, you know, bank accounts, yeah.

Q Okay. And let me ask you this. What -- Does Vandalay own any assets in real property?

A Yes.

Q And what property does Vandalay own?

A Vandalay owns a restaurant on -- owns the building -- on 601, Highway 601.

Q Any others?

A And owns a restaurant building on the corner of Highway 301 and -- I believe that's Broughton Street.

Q I'm sorry. What street?

A I believe Broughton Street.
Q What's the name of the restaurant at 601?
A Fatz Café leases that building.
Q And how about the other one at 301 and Broughton?
A Sub Station II.
Q What does McLean Properties, Inc. own, if anything?
A Owns timberland.
Q In what county?
A Orangeburg. I believe that's timberland and farmland.
Q How many acres? Is that one tract?
A I think that everything is owned in that same tract. It's split with -- The highway splits it. Actually, it may all just be on that one side it looks like.
Q Does that piece have a snappy name like the other ones?
A No.
Q Okay. Approximately how many acres is that?
A To my recollection, it's 168 maybe.
Q Just sort of out of curiosity, how did that -- Did that property travel to McLean Properties, Inc. through any trust or relatives?
A That property is basically part of my parents' land that's been subsequently incorporated and shares

interest transferred over to siblings.

Q All right. So, when you were first notified that you were the backup trustee of the Brogdon trust, that would've been approximately the same time that you got a copy of the settlement?

A Yeah. I got a partial copy of a draft that was actually faxed to me while I was on a business trip, and someone from the office called me indicating that it looked like something personal had come over the fax machine. So, I had them put it in my office. When I got back from the business trip was the first chance -- opportunity I had to see it, and the fax pages had run together, kind of come out on legal paper as opposed to -- Some things had kind of -- pages had kind of gotten jumbled up.

Q Let me show you this, which purports to be an Order Approving Compromise and Settlement and then a Compromise and Settlement Agreement, and ask if you recognize those documents. While you're looking, we'll just mark the first one Number One, and we'll mark the second one Number Two.

Marked as Deposition Exhibit Number One; Deposition of William N. McLean; copy of Order Approving

Compromise and Settlement; two pages.

Marked as Deposition Exhibit Number Two; Deposition of William N. McLean; copy of Compromise and Settlement Agreement; eight pages.

A They have --

Q Let's wait until the court reporter marks them.

A Based on the fact that these are signed documents, I never saw any signed documents with regard to the settlement until -- within the context of the current litigation that we have.

Q When in proximity to or -- Strike that. The date of the court approval is, or appears to be, February 26, 2002, if you'll look on the second page. Does that seem to be right?

A This one?

Q Right.

A Yeah. February 26, 2002.

Q And what is the date of Exhibit Two. You can look on the last page and see it.

A This blank day of January 2002.

Q Okay. When in proximity to those dates do you think you may have gotten a copy of the draft settlement, which you think was unsigned?

A Early 2002.
Q Do you still have that document that was faxed to you?
A I do not have it. If it's still around, it's either been turned over to my attorney or to a sibling.
Q And from whom was that faxed, if you remember?
A I believe Munford Scott, but I cannot be a hundred percent sure.
Q Now, at that time, did you have any knowledge of there being a trust or any contest involving -- legal contest involving the trust?
A Again, until I received a phone call from -- I believe it was either Munford or Brogdon himself -- I believe it was Munford -- indicating that they -- you know, they wanted me to sign something being removed as backup trustee. That was, I believe, my first knowledge of any, you know, litigation and contesting going on.
Q Was your father living at that time?
A Yes.
Q Did he have any knowledge of the trust or the litigation involving the trust?
A I called my father about it. Other than that, I'm not sure what knowledge he would've had.

Q Well, did he tell you anything that you didn't already know from the facts that you got?

A The only thing that I really asked him was with regard to -- you know, basically, you know, indicating that they were asking me to remove my name as backup trustee. I didn't know -- indicated I didn't know that I had been listed as backup trustee, and just bear in mind that, you know, my signing it has -- really has no bearing on any of the property -- property transfers or anything.

Q When you read whatever form of Exhibit Two you got, -- And Exhibit Two is the Settlement Agreement. I think you said you got a draft of the Settlement Agreement that was not signed. Is that --

A That's correct. It was a draft.

Q And what was your understanding of what the effect of that settlement would be as it impacted your family?

A That it would've, you know, basically validated that the Orangeburg property would be coming to us.

Q And in the draft document that you read, did it describe in detail what the Orangeburg property was?

A Not to my knowledge. There was no, you know, specifics as far as what -- you know, as far as

what you would normally see as far as a definition in a legal document.

Q Okay. Would you think that it would make sense that the settlement, if it referred to, quote, the Orangeburg property, that it would be referring to the Orangeburg property that was actually in the trust?

Mr. Alexander: Object to the form.

Q You can still answer.

A Re-ask the question.

Q Sure. Do you believe that it would make sense if the Settlement Agreement refers to, quote, the Orangeburg property, end quote, that that phrase, the Orangeburg property, would refer to real estate located in Orangeburg County which was actually a part of the trust?

Mr. Alexander: Object to the form.

Q Does that clarify it at all?

A Yeah. I understand what you're asking. To me, it would include all Orangeburg property that should be in the trust.

Q That should be in the trust?

A Yeah.

Q Now, if anything were to come to the McLean family from the trust, that would be just a gift or

windfall, wouldn't it?

Mr. Alexander: Object to the form.

A It would, in my opinion, you know, be keeping the Orangeburg property in the family, which would've been -- you know, I believe would be an intent of why it was listed as such to begin with.

Q I appreciate the answer, but it's not really responsive to the question. I guess the question would be -- You know, when I say the McLean family, I guess I'm talking about the plaintiffs in this case. You didn't do anything to earn that; it was just going to be essentially a gift? If you got any property from the trust, it was just a gift, wasn't it?

A It would have essentially been a gift from my aunt or, you know, her wishes that we got the property, that it remained in the McLean family.

Q And aside from whatever your aunt's wishes may or may not have been, I guess the point is, is that the McLean family didn't pay any consideration for it; you were just going to be getting something --

A Right. We were not buying it. We were not purchasing the property.

Q Right. Okay. Now, how do you determine -- or -- I can do this much better. Strike that. How would

you describe what property, quote, should, unquote, have been put into the trust? And I say it that way because that was how you phrased your answer to me. So, tell me why you think some property -- some Orangeburg real property should have been in the trust and some Orangeburg real property should not have been in the trust.

A I believe --

Mr. Alexander: I'll object to the form of that one, too.

Mr. Henrikson: I would if I were you.

A Using the word Orangeburg real property to me refers to anything located in Orangeburg County, as previously indicated. So, whether that's one parcel, two parcels, eight parcels, ten parcels, as long as it was located in Orangeburg County, then that would've been -- should've been in the trust and should've been deeded to us.

Q All right. Just so that I understand what you're saying, you're saying that not only should you have gotten the Orangeburg real property that was in the trust, -- And we've already established that in order to get into a trust, a piece of real property has to be deeded to a trust, correct? Is that your understanding?

A I'm not -- I'm not the attorney. You are.
Q Well, it doesn't matter what I am or what you are. My question is, is that your understanding?
A That is my understanding.
Q Okay. And, so, you're saying now that not only should your family have gotten all of the Orangeburg real property in the trust, but that -- are you saying that you should get all of the Orangeburg real property owned by your aunt at that time?
A All of the Orangeburg -- All of the Orangeburg real property that was owned by my aunt should have come to us, yes.
Q Okay. And why do you think that all of the Orangeburg property owned by your aunt should have gone into the trust?
A Let me -- Let me clarify. I don't -- I'm not aware of any Orangeburg property that my aunt owns that was not originally McLean family property. If she owned, you know, property outside, then perhaps, but all of the McLean family property and the Orangeburg property should've been in the trust and it should've come to us.
Q Okay. Let me try this a different way. All right. Do you agree that whether it was McLean property or

whatever, at some point when your aunt owned it, it was hers to do with what she wanted to if she owned it? Is that correct?

A That is correct.

Q Okay. And are there any documents or is there any evidence that you have that would indicate your aunt's intent to put all of the real property in Orangeburg County that she owned into the trust?

A I'm not familiar with that document -- with the document in question in that regard.

Q I'm not suggesting there is any. I'm just asking you why do you assume that your aunt would have had the intent to place all of the real property that she owned in Orangeburg County into this trust?

A I've had, you know, conversations, past conversations, with my father that led me to believe that that was the case.

Q And what has your father told you that led you to believe that that was the case?

A That the Orangeburg property, you know, was -- that my aunt intended for the Orangeburg property to go to myself and my siblings.

Q And when did you have that conversation with your father?

A Years ago. I don't recall when.

Q In the last ten years?
A Yes. I would say the last ten years, yes.
Q In the last five years?
A Five years, 2002. Probably -- Probably -- Probably longer -- Probably longer than five years. Probably between five and ten, but, you know, there have been subsequent conversations with him in the last five, as well, in the context of litigation.
Q Are you aware of any litigation between your Aunt Elizabeth and any member of your family regarding partition of property in Orangeburg County?
A I believe that my father had partitioned or asked the court to partition the Caw Caw property at some point.
Q And that involved the prosecution and defense of litigation in order to have that done?
A I don't know.
Q Okay. You're not aware -- You haven't seen any pleadings from that action or --
A I may have read something at the time, but I don't remember or recall how it went down really.
Q Okay. Do you know if it was done by agreement, or was there some sort of hearing or trial and decision by a court?

A I think the -- I think it was -- I think the court handled the partitioning of the property. I think they, you know, got appraisers or whatever, and whether those were court-appointed or whether the parties agreed to it, I'm not sure.

Q Okay. And did you get the impression that that was an amicable thing between your father and your Aunt Elizabeth, or not?

A I think that -- I really don't have an impression either way as far as whether it was amicable. I think that the reasoning for my aunt's decision may have had to do with -- may have had something to do with tax purposes or something.

Q Other than your father telling you at some point in the last ten years that he thought your aunt wanted to I guess give the Orangeburg property to the McLean family, are you aware of any other documents or evidence or anything else that would suggest that?

A I believe that the documentation that -- the trust and the Compromise and Settlement validate that the Orangeburg property was to come to us.

Q And, again, to be clear, let me give you this to look at. Can you -- I think that's Exhibit Two that I'm handing you. Does that appear to be as

you have seen it -- Since you originally saw the draft, does that appear to be a copy of the final Settlement Agreement?

A Well, this document is signed, but seal date is not completed. There's no -- There's nothing here that says the judge approved it in this particular document. You may have something that refers back to this, but --

Q Okay. If we assumed that that is a true copy of the Settlement Agreement, -- And I think that may have actually been attached to your Complaint. In any event, if that is true, does it say anywhere in there -- does it specify what tracts of Orangeburg real estate is referred to by the phrase, quote, Orangeburg real property?

A I don't see anywhere where it lists property tracts. It appears to be just the phrase Orangeburg real property, Orangeburg County property.

Mr. Henrikson: We've been about an hour. We'll take a short break, if you don't mind, and we'll come right back.

[Off the record at 11:00 a.m.; back on the record at 11:11 a.m.]

Mr. Henrikson: I want to go back to the second -- to Exhibit Two, and I was reliably informed during the break that we did not have page two to the exhibit, and Mr. James has given me the page two from the Complaint exhibit, and I would just like you and Mr. Alexander to look at that and see if we can agree to fit that into Exhibit Two.

Mr. Alexander: Fine with me.

The Deponent: Yeah. I don't have a problem with it.

Mr. Henrikson: Okay. What I'd like to do, then, is ask the court reporter to remove the staple, insert page two, and re-staple it, and that will be Exhibit Two.

Examination Continues

By Mr. Henrikson:

Q Now, referring again back to Exhibit Two, I'd asked you some question about the exhibit. Have you had a chance to review page two?

A Yes.

Q And would your review of page two, now that it has been added to Exhibit Two, -- would that change in any way any of your answers previously given to me regarding that exhibit?

A I believe the questions were regarding to the specifics concerning property, and it does not change my response in regard to that, that the only reference that I see is to Orangeburg County real property, --

Q Okay.

A -- which, again, you know, by my definition includes what we believe to be all the Orangeburg County real property.

Q Now, we sort of went down and you traced for me your understanding of the -- I guess chain of title for the Cannon Bridge Road property, and I'd like to go back and do the same thing with the Caw Caw Swamp property. If you can just tell me as far back as you remember it being owned by somebody and then how the title proceeded the way it did, and I will similarly ask you why you think that that property should be given to you at this point.

A My recollection of that property doesn't go as far back from the standpoint of there's no homestead on that property. I'm not sure what point in my life that I realized that my father owned that property with his siblings. I remember at some point going over there and helping them clear some roads, or something to that effect. So, that was my first

knowledge of that property. And then I was aware that sometime -- I don't know if it was late '80s or early '90s -- that my father was looking to -- the timber had matured, and he wanted to, you know, -- you know, trade the property so that we -- so that a timber company could harvest the timber or sell the timber, and there was a number of different task considerations that had be considered, and -- because I believe that property was just jointly held. You know, it required -- I believe my -- I believe it was held with my aunt and my Uncle Lennon, that it would require, you know, all three of them to act together and -- in order to accomplish that.

Q Okay. And, so, your father filed the partition action what appears to be sometime in 1994?

A That sounds about right. Yeah.

Q Okay. And as a result of that partition, your understanding is some element of that tract was specifically deeded to your Aunt Elizabeth?

A That's my understanding.

Q And then another part was deeded to your father, and then another part was somehow set aside or --

A To my -- Yeah, to my uncle's trust or whatever, yeah, whatever.

Q Not to put words in your mouth, but the -- your theory that the Cannon Bridge Road property should have been in the trust and subsequently some portion of it to come to you, would that be the same theory that you have for the Caw Caw Swamp property?

A I -- Yes, both the Cannon Bridge Road and the Caw Caw would fall in that same Orangeburg County real property as did the property that was -- has been deeded to us recently.

Q And with the Caw Caw Swamp property, are you aware of the existence of any kind of documents or any writings or anything else which would suggest your aunt's intent to include the Caw Caw Swamp property in the trust?

A The -- My response would be the same as the Cannon Bridge Road. You know, other than the trust documents that I've seen that say Orangeburg County real property, and, beyond that, just, you know, conversation with my father regarding my aunt's intent to, you know, have the Orangeburg County real property come back to his children.

Q And similarly then, you have never seen a deed to the Caw Caw Swamp property from your aunt to the trust?

A No. I have not seen a deed with that, and if there was a deed, then it would've been just seen within the course of this litigation, but I don't believe there was one.
Q Have you seen a deed from the Gramling Place property to the trust?
A In the context of this litigation, I believe -- I believe that was -- I believe I had seen that.
Q If there was a deed -- Well, let me ask you this. Do you have any explanation why there -- why you believe that your aunt intended to convey all of her Orangeburg property to the trust if there is a deed to the Gramling Place property but there is no deed for either of the other two properties to the trust?
A Again, the reference to Orangeburg County real property and -- The Orangeburg County real property is not limited to the Gramling property or the Caw Caw property or the Cannon Bridge Road property. It's all-inclusive.
Q And you have no other evidence than that, --
A Um, --
Q -- that what your father told you --
A Right.
Q -- within the last ten years?

A Mm-hmm.
Q Okay.
A That's right.
Q Okay. I just want to make sure I'm not missing anything. Okay. Now, in this -- in this case, you have sued James Drennan as personal representative of the estate of Elizabeth McLean Pence, and let me ask you why you have sued him.
A Because it's from my recollection of reviewing the documents he transferred some of that property that belonged to us to some other parties incorrectly.
Q Let me ask you this. Your knowledge of the basis of -- Well, let me ask you this. Your knowledge of the facts which form the basis for your suing Mr. Drennan, is that solely limited to documents that you have reviewed in the course of this litigation?
A It's based off the initial documents that I saw and the original conversations with my father that the property should be in our hands, and once we started seeing documentation that Mr. Drennan did file, you know, where the property was being deeded elsewhere incorrectly, is what alerted us to --
Q Okay.
A -- of an issue.

Q All right. Now, is it your understanding that property that had actually been transferred to the trust would be subject to the Settlement Agreement, which is Exhibit Two, and disposed of pursuant to that -- pursuant to that Settlement Agreement and the terms of the trust?

A My understanding was it was, you know, being called Orangeburg real property, that that was what was part of what should be in the trust and, therefore, what was part of what was compromised on, and I further considered that validated by the fact that in the contesting that my cousin did, she did not name myself or siblings as a defendant to contest the fact that the Orangeburg real property was going to come to us.

Q And I appreciate the answer. The question really was -- is did you have the understanding that the property that was in the trust was going to be subject to disposition according to Exhibit Two and the terms of the trust?

My -- Yes, my understanding was that, based off the -- the Compromise and Settlement, that all the Orangeburg property would be distributed via that Compromise and Settlement.

Q Okay. I mean, based on your understanding, if I --

if I just said you know what, I just want all of my family's property to go to Bill McLean, that wouldn't transfer that property to you, would it?

A No, it would not.

Q Okay. If there are no deeds of the Caw Caw Swamp property to the trust and there are no deeds of the Cannon Bridge Road property to the trust, would you agree that whether it should've been or not, that that property was not trust property?

A I believe that the trustee should have made it part of the trust property and executed the deeds that would make it such.

Q Okay. And I appreciate your answer, but the question really is would you agree or do you disagree that if there are no deeds actually transferring those two parcels to the trust, wouldn't you agree that those two parcels are not part of the trust, whether or not they should've been, but would you agree that because there are no deeds to the trust, then the property is not actually part of the trust?

A I would agree -- I would agree in theory, yeah, that that's -- that that's accurate.

Q Okay. Then I'll go the next step for you. Who do you believe should have made sure, in your opinion,

that the -- if those two parcels were supposed to be in the trust, who should have created whatever documentation there was or -- to make sure that they were in the trust?

A I believe that Mr. Brogdon should've created the deed to place it in the trust, and then I subsequently believe that anybody who was, you know, knowingly a part of -- a part of the Compromise and Settlement should've known that those properties should've been part of the trust; if they had not already been deeded, they should've done so in the course of --

Q Now, who created the trust?

A I don't -- I don't recall as to the creation of the trust.

Q Let me ask you this. Why do you think somebody who was not part of the creation of the trust should have known or believed that some other property should have been in the trust?

Mr. Alexander: Object to the form.

Q You can still answer.

A Repeat it.

Q Sure. Your testimony was that you think that the -- that Mr. Brogdon should have put the pieces of property in the trust and that anybody else later

on who knowingly participated in the settlement should have or would have had some obligation to put that property in the trust. I'm trying to figure out how you get to that point. Why do you think that anyone who participated in the settlement should -- would have that obligation?

A Because they would have had access to the documents to -- if they were doing a title search, etcetera to realize there was a -- an issue there.

Q Well, if they had done a title search, wouldn't they have found out that the Caw Caw Swamp property and the Cannon Bridge property were, in fact, not deeded to the trust?

A I think they would have -- should've realized that there was a Compromise and Settlement, that there was an original trust showing that the McLean family land and Orangeburg real property was to come to the McLeans, and that should have raised a red flag.

Q Well, have you seen the actual trust document itself?

A I believe in the -- I believe in the course of litigation I have.

Q Okay. And does the trust document in any way refer to the Cannon Bridge Road property?

A I -- I mean, I can't speak to that without seeing the document.
Q Okay. Tell me, then, what you believe Mr. Drennan did wrong.
A I believe he was personal representative in some sort that ended up creating a deed for the property that was rightfully ours, and he deeded that property over as part of, I believe, my cousin's trust or my cousin's estate or whatever, that he filed it, had that, and I think that he, you know, initially put it in there knowingly -- knowing that it was or should've been in the RE deeded to us along with the other piece of property.
Q And tell me why you think Jim Drennan should have known that this property was supposed to be in the trust.
A Because he was -- he knew that that -- he should've known that that was Orangeburg County real property, and that he was the one that had worked out -- worked on, I believe, -- was involved in some of the settlement issues, and he should've had knowledge of the fact that it said Orangeburg County real property in that -- in that document.
Q Okay. So, let me just make sure I understand. Your testimony is that Mr. Drennan, reading the

words Orangeburg real property in the Settlement Agreement, that that obligated him to make sure that all of Mrs. Pence's real estate holdings in Orangeburg County were put in the trust. Is that your testimony?

A Yes, that he should've realized that when he's preparing a deed for Orangeburg, you know, real property, that it should've raised a red flag to him that that property -- as part of the trust and subsequent settlement, that that property should have come to myself and my siblings.

Q Okay. And if he had -- And if -- Prior to selling that property or transferring that property to somebody else, if he had done a title search, he would have found what do you think?

A I don't think he -- From a title search, it depends on, you know, who was doing his title work what he would've found, but, again, he already should've had prior knowledge that the Orangeburg County real property, as was listed in the Settlement Agreement and was listed in the initial trust, I believe is also how it was referred, that that, again, was to come to us.

Q Does that complete your answer?

A Yeah.

Q Do you have any other theories or evidences as to what Mr. Drennan did wrong?
A I mean, that's -- that's the gist of it. I mean, it's just -- the multiple transfers that have taken place.
Q And Mr. Drennan never owned that property, did he?
A Mr. Drennan, no, to my knowledge, he never had anything with actual ownership. He was -- served as, you know, representative for various, you know, either estates or trusts or etcetera or -- I believe my cousin and initially maybe my -- even my aunt's, he had transferred part of that estate as trustee.
Q So, all he really did was -- was -- I mean, it was your cousin who transferred the property, wasn't it? I mean, she owned it by title?
A Yeah. He -- You know, without -- You know, without reviewing the documents, he may at some point does -- had to transfer something as representative of the estate. He may have done so. Did Mr. Drennan own the property personally for his own use? No, not to my knowledge.
Q I mean, is what you're saying is that, you know, he transferred the property? I just want to make it clear, he represented either an estate or an

individual who owned the property, and I think I've got your agreement that the -- the RMC office in Orangeburg County would have indicated that the property belonged to that individual or that estate. Am I correct with that?

A Mr. Drennan, again, should've had knowledge, based off the Settlement Agreement, etcetera, that Orangeburg County real property should've come to us, and --

Q Well, I'll try to -- I'll throw the ball again and see if you can get it. My understanding -- and I think I have an agreement from you -- is that the RMC office, the people who record deeds, -- And if you want to go find out title to a property, that's where you go, right, and you look at a chain of title. The chain of title in Orangeburg County would have revealed that at the time those properties were conveyed that you're complaining of, that they were either owned by your cousin or by your cousin's estate.

Mr. Alexander: Object to the form.

Q And it's really kind of a low-flying duck because we all know what the record says. I just want to know if you have some other evidence.

A You know, the deeds that exist are the deeds that -

- that exist. It doesn't make the deeds right. Doesn't make them valid.

Q Anything else you think Mr. Drennan did wrong?

A Again, I think he had -- I think he had knowledge beyond just the -- to some degree -- but nothing that I can think of outside just -- just reviewing some of the documents during the course of -- course of this litigation.

Q Okay. And Mr. Drennan never represented your father, did he?

A Not to my knowledge.

Q He's never represented you?

A No.

Q He never represented any of your siblings or any of your LLCs?

A Not to my knowledge, no.

Q Who is Jay Jackson?

A He's, I believe, an attorney in Orangeburg.

Q What involvement, if any, are you aware of that Jay Jackson has in this matter?

A Other than in the context of this litigation, I wasn't aware that he was involved.

Q Okay. And when did he get involved? Do you know any of that?

A No. I'm not sure.

Q Did Mr. Jackson ever represent any members of your family with respect to the trust property issue?
A Not myself, personally. I can't speak to anyone else.
Q Do you know whether or not he represented your father, for instance?
A On this matter, I can't -- I can't speak to that.
Q How about your brother?
A I can't answer for him.
Q Have you talked to your brother, James N. McLean, -- have you talked to your brother about this at all?
A Yes. We've had conversations about it.
Q Do you know why Mr. Jackson would have copied a letter to your brother regarding this litigation?
A I do not.
Q You've not talked to your brother about that in particular?
A I have talked to him about the letter, but I do not know why.
Q I'm sorry. Can you repeat --
A I talked to him about the letter. I do not know why.
Q You talked to him about the letter. You don't know why you talked to him about the letter?

A No. I don't know why he would have been copied.
Q Oh. Okay. Tell me about your conversation with your brother about the letter.
A Basically, in the course of this litigation, you know, I alerted him to the fact that his name was on a document and basically just asked him if he had ever seen that document before.
Q And what did he say?
A He said he had not.
Q Did you ever talk to Mr. Jackson about it?
A No, I have not.
Q When you read the -- whatever form of the Settlement Agreement that you read in -- you described as, earlier, 2002, is it fair to say that at that time you had an expectation that all of your aunt's Orangeburg real estate was going to, pursuant to that document, come to you -- or -- I'm sorry -- come to your family?
A Yes. All the Orangeburg real property, yes.
Q Okay. And we've discussed at length why you thought that, but let me ask you what you did in response to getting that knowledge and having that expectation formed. Tell me what you did in response to that.
A My understanding was that the property would, you

know, eventually transfer, but that there was -- you know, I knew that my aunt's estate was quite complicated, and then matters were complicated even further by the subsequent deaths that occurred.

Q And do you --

A So, I expected a long, drawn-out --

Q Can you give me a time line of the deaths as they occurred?

A Don't know the years. I know my aunt's death preceded my cousin's death, and that preceded her husband's death, and then somewhere in there my uncle also passed away.

Q So, you've read Mr. Jackson's letter I presume?

A I've seen it, yes.

Q Okay. Do you recall what it says, in essence? And there are a couple of letters, actually.

A No. I don't recall off the top of my head what all -- what it said.

Mr. Henrikson: (to the court reporter) Is that mine?

The Court Reporter: Yes, sir.

Marked as Deposition Exhibit Number Three; Deposition of William N. McLean; copy of letter dated September 27, 2002; one page.

Marked as Deposition Exhibit Number Four; Deposition of William N. McLean; copy of letter dated October 21, 2002; two pages.

Q Let me show you what is Exhibit Number Three and ask if you recognize that letter.

Mr. Moore: What's that --

Mr. Henrikson: September 27, 2002.

Mr. Moore: Thank you.

A I don't -- I don't recall seeing that letter. I don't think that's the same one that I was talking about.

Q All right. Maybe it's this one there. I'll show you Exhibit Four and see if you recognize that one.

A Only -- I've seen it only as part of documents presented in the course of this litigation.

Q Is Exhibit Four what you asked your brother, Jim, about?

A Yes, it is.

Q And he disclaimed any knowledge of getting the letter or any knowledge of the letter or anything like that?

A That is correct.

Q Did you ask him if Mr. Jackson had represented him?

A Yes, I believe I did.

Q And how did he respond?
A He said not on this matter.
Q Do you know -- In Exhibit Number Three, the second paragraph reads, "I have been asked by Jim McLean, who is the son of Norman McLean, to review a number of documents that he provided me, which includes the Elizabeth Pence trust agreement prepared by attorney J. Munford Scott." Do you know why James Jackson would have represented to Mr. Drennan that he was acting on behalf of your brother?

Mr. Alexander: Are you on a different letter?

Mr. Henrikson: Well, I referred to that as the December -- as the September --

Mr. Alexander: You took it back from him, so --

Mr. Henrikson: I did? Okay.

Q Read the second paragraph of Exhibit Three, and tell me if you know any reason why Mr. Jackson would have said those things if they weren't true.
A No, I can't -- I can't -- You know, I can't answer for Mr. Jackson.
Q Okay. If we accept Exhibit Three and Exhibit Four as being accurate and correct, would you agree that your family was on notice as early as October of

2002 that there was an issue about whether or not the Cannon Bridge property and the Caw Caw Swamp property were part of the trust?

Mr. Alexander: Object to the form.

A I would disagree that we were on notice when I had no knowledge of this.

Q Now, I'm not asking about you specifically.

A I can't answer for --

Q Just let me -- Let me finish the question. If, in fact, Mr. Jackson was getting that information on behalf of your brother, and if he reported the information to your brother, would you agree that your family was on notice in -- at least by October of 2002 that there was an issue regarding those two pieces of property being in the trust?

A No. The key word being if. I mean, you're talking --

Q Yeah, hypothetical.

A -- a hypothetical.

Q Absolutely.

A So, a hypothetical, yes.

Mr. Henrikson: Okay. I might have some other questions at some point, but I'm going to pass you along now to other counsel who may have some. We're not quite at an hour. If

you want to take a short break, we can.

Mr. Ward Davis: Why don't we take five minutes.

Mr. Henrikson: Okay.

[Off the record at 11:47 a.m.; back on the record at 11:55 a.m.]

Examination

By Mr. Ward Davis:

Q Mr. McLean, my name is Ward Davis, and I represent Wachovia Bank in this litigation, and you understand that Wachovia has been sued, correct?

A That is correct.

Q Why has Wachovia been sued in this matter?

A The Wachovia is a party to deeds that we believe to be invalid through representative of various parties.

Q What do you mean Wachovia is party to invalid deeds?

A As trustee.

Q And those are the deeds cited and set forth in the Complaint?

A Yes. Those would be the ones considered in the -- in the Complaint, deeds associated with Caw Caw Creek as well as Cannon Bridge Road.

Q Caw Caw Swamp. What else did Wachovia do wrong?
A That's pretty much the involvement in what we believe to be some invalid -- invalid transfers.
Q So, the only bases for your claim against Wachovia are the transfers set forth in the Complaint?
A And damage -- you know, any damage caused by those invalid transfers.
Q Have you put a value on the damage that you're claiming in this case?
A I don't believe that we've quantified that at this point.
Q Have you had any appraisals done on the property to try to get some idea of how much you're seeking in this case?
A We have not done any appraisals, recent appraisals, on those -- on those properties.
Q Have you considered and discussed the extent to which the trust property would have to be revalued and redistributed if you were to prevail in this case?
A One of our concerns is the -- would be any -- Because of the way things would have to be essentially undone, if that increased any tax liability that we would not have faced previously, that would be a concern.

Q Okay. Getting back to Wachovia for a moment, one of the allegations in the Complaint is that Wachovia knowingly transferred property that it knew it should not be transferring -- Do you agree that's part of your allegation in your Complaint?

A Yes.

Q What's the basis for your allegations about what Wachovia knew?

A Basically that, you know, Wachovia had access to the same documents -- as part of the various estate representations that existed that the Orangeburg real property, you know, should have come -- should've been deeded over to McLean children.

Q And to try not to reinvent the wheel, if I were to ask you the same line of questioning that you previously answered about Mr. Drennan and his knowledge of the documents, would your answers be essentially the same?

A Yes.

Q Have you ever spoken with anyone from Wachovia about this matter?

A I don't recall I've ever had any conversations with anybody, any employees at Wachovia, about this matter.

Q Have you -- Other than -- Strike that. Have you

ever seen any documents reflecting any knowledge that Wachovia had that they should not be transferring the property that they transferred?

A I don't -- I don't recall anything prior to seeing the documentation in -- that was presented in the course of litigation.

Q Do you have any reason to believe that Wachovia acted in bad faith in transferring the property?

A I believe that Wachovia should've been knowledgeable of the fact that the property should've already been transferred to -- to the McLean children.

Q I understand that, but my question, Mr. McLean, is do you have any evidence that Wachovia acted in bad faith? There's a big difference between should've known, knew and did it anyway.

A The documents that exist are the documents that exist. I mean, there are some demur documents involved. There's -- were a number of documents turned over as part of the litigation. There could be documentation, you know, within that -- you know, within those documents that -- that would point to that.

Q But other than the documents you've already testified to and referred to, be they the

Settlement Agreement, what may or may not have been in any title searches, you haven't seen any documents that --

A Can I see the four exhibits that we have? Don't we have four at this point?

Q Sure. They're right here. My question is, you haven't seen any documents that essentially admit on behalf of Wachovia that they knew they shouldn't be transferring that property, have you?

A I believe at the point in time that -- the point in time of the Compromise and Settlement, Wachovia was listed as the successor trustee. When my name was removed, also at that time, I believe that Wachovia would've been privy to documentation.

Q And I understand that that's your position, Mr. McLean, but what I'm asking is, have you seen any document in which Wachovia acknowledges that they had knowledge that they should not be transferring the property, because you've alleged that they knowingly transferred the property even though they knew they should not be transferring the property, and that's different from saying they should have known.

A In my opinion, those two, in this particular case, are the same thing. Again, Wachovia had a document

that basically said the Orangeburg real property, you know, was to come to McLean children, so --

Q What document is that?

A The Compromise and Settlement lists Wachovia as a designated -- should become unable or unwilling -- It's in section six, that if Brogdon should be unable or unwilling to serve as trustee, Wachovia Bank or any other duly designated -- So, in my opinion, -- You know, it's my belief that Wachovia had knowledge at that point.

Q Based on --

A It's my belief.

Q Based on the Compromise and Settlement Agreement?

A Right.

Q Any other document that you say should have given Wachovia that knowledge other than the Compromise and Settlement Agreement?

A That's the only document that I'm aware of out of the documentation that's been provided here.

Q What about aside from the documentation provided here? Are you aware of any others?

A Again, there could be something in the documentation that had been presented as part of this litigation.

Q There could be, but are you aware of any?

A I'm not aware of any without combing through every document that exists.
Q Have you done that yet?
A I have scanned most -- what discovery that Wachovia had sent over.
Q Wachovia's production in this case?
A Yeah.
Q Okay. But at the time you filed the Complaint or this Complaint was filed on your behalf, --
A At that time, no.
Q One of the claims against Wachovia and Mr. Drennan is a breach of contract claim. What's the contract on which that claim is based?
A You know, I'm -- The contract -- Could you repeat the question, please.
Q There's -- I mean, you're aware that one of the claims against Wachovia is a breach of contract claim, correct? Are you aware of that?
A I'm aware, but I haven't read the actual -- you know, the lawsuit.
Q You haven't read the Complaint?
A I have read the Complaint. It's just I didn't read it, like, yesterday, so without looking at the exact, you know, verbiage right now, right in front of me, I'm not going to be able to answer --

Q I'll hand you a clean copy of the Complaint.
A Thank you.
Q We need to mark it as an exhibit.
A So, which -- Where are you --
Q It's page 17 of the Complaint.
A Okay.

Marked as Deposition Exhibit Number Five; Deposition of William N. McLean; copy of Complaint; nineteen pages.

Q Do you see the breach of contract claim that starts with paragraph 79?
A Yes.
Q And paragraph 80 says, "The Settlement Agreement from the trust litigation constitutes a valid and binding contract." Do you see that?
A (Nods head.)
Q Let me just go ahead and ask you a question.
A Okay. Just go ahead.
Q Is the Settlement Agreement referred to in paragraph 80 the same Settlement Agreement that we've marked today as Exhibit Two, which is right here?
A Without reading the first 78 pages, I believe that to be the case, yes.

Q Okay. Who do you -- As a plaintiff in this lawsuit and, in fact, the plaintiff who apparently knows the most about the facts of this case, who do you contend are the parties to the contract?

A Repeat your question.

Q Who do you contend are the parties to the contract under which you've filed a breach of contract claim in this lawsuit?

A Parties to the contract --

Q Yes, sir.

A -- would be the parties to the Compromise and Settlement, --

Q Are those the parties --

A -- which would be --

Q -- that signed it?

A Yeah, which would be the parties that signed it, and then, you know, from my standpoint, I would also include Wachovia as the -- listed as the successor trustee.

The Court Reporter: I need you to speak up, Mr. McLean.

The Deponent: Okay.

Q So, your basis that Wachovia was a part of that contract is their role as successor trustee?

A That is correct, as Wachovia became trustee of the

Elizabeth P. Pence trust.

Q Do you have any evidence that Wachovia was part of the negotiation or drafting of that contract?

A I wasn't present for the drafting, so I wouldn't know. I have no knowledge who was involved.

Q Do you have any evidence or knowledge that Wachovia was part of the preparation of what we've referred to today as the Brogdon trust?

A I don't have any knowledge of the drafting process there, so --

Q Another claim that you have filed against Wachovia along with Mr. Drennan and Mr. Brogdon is breach of fiduciary duty. If you want to refer to it, it's on page 16 of the Complaint. Were you aware that breach of fiduciary duty claim was included in this lawsuit?

A Yes, I was aware previously, you know, when going over the Complaint with my attorney.

Q What's the factual basis for filing a breach of fiduciary duty claim against Wachovia on your behalf?

A Which paragraph are you looking at?

Q I guess paragraph 69 through 74. I wasn't referring to a specific paragraph.

A Okay.

Q The question was, what's the basis for filing a breach of fiduciary duty claim against Wachovia?

A Because Wachovia was the personal representative of the estate of Elizabeth P. Pence, --

Q And that's the --

A -- and, as such, --

Q Sorry. Go ahead. Sorry.

A -- as trustee of Elizabeth P. Pence trust, that there was -- the transfers involved with regard to that, that there was some breach of duty, breach of fiduciary duty.

Q Is there any other basis for you claiming that there was a fiduciary duty owed to you by Wachovia Bank?

A To my knowledge, -- To my knowledge, no.

Mr. Ward Davis: I think that's all I have right now.

Examination

By Mr. James:

Q Mr. McLean, I'm Jay James. I represent Marlboro Academy, which was a beneficiary under the will and trust agreement of your cousin, Elizabeth Pence Pence. Did you become aware that your cousin, Elizabeth Pence, died at or soon after the time that she did die?

A Yes, sir.
Q Did you attend her funeral?
A I don't recall.
Q And you were aware approximately at the time that she died that she had died? I believe she died in August of 2002.
A Yes, sir. At some point I became aware that she had passed away.
Q And her mother, who was your aunt, died before she did?
A Yes, sir.
Q And did you become aware that she had died at or shortly after the time that she died?
A Yes, sir. I went to the funeral.
Q You went to her funeral?
A Yes, sir.
Q Did your aunt breach any contractual duty to you and the other members of your family?
A My aunt did not; however, the estate and its personal representative.
Q You allege that her personal representative breached the duty?
A The estate did. So, the personal representative --
Q And what duty did the personal representative breach of her estate?

A To properly transfer the property, the Orangeburg County real property.
Q And that duty would have arisen how?
A It was, you know, in as part of the trust that existed. It was, again, referenced in the Compromise and Settlement that we've been discussing.
Q She had a duty under the trust, what do you mean? Your aunt didn't transfer the property to the trust.
A And I believe I indicated that that's the estate. I didn't -- I don't believe I indicated my aunt. I believe I said the estate and the personal representative had a responsibility.
Q That arose how and when?
A I think at the time of her, you know, -- the property, all the property, should have been in the RE deeded to the trust at the time -- the point that we -- You know, at the time we had knowledge of the documentation of the Compromise and Settlement, at that point, all that should've already been taken care of. I can't speak to, you know, a specific day or specific time period when that should've occurred without looking back through all the documentation.

Q Would any duties have arisen other than the Settlement Agreement -- other than by reason of the Settlement Agreement?
A As far as I -- As far as the documentation I'm aware of, I'm not sure. I mean, I can't really speak to that.
Q What duty did your cousin, Elizabeth Pence Pence, breach?
A I believe that she -- As far as her estate goes, you know, again, there was transfers that happened as part of her estate that were handled by the various representatives that were, again, invalid transfers as far as the Orangeburg real property goes.
Q Was she under any -- She was alive at the time the Settlement Agreement was consummated; is that right?
A Yes. I believe that to be -- I believe that to be so, based on the dates of the --
Q Do you think she owed any duties to your family at that time?
A I believe that, again, as being party to that Compromise and Settlement, just as the other parties that were involved, that the Orangeburg real property was to come to us. I believe that it

was -- anything that was performed outside of that by any of the individuals or representatives or, you know, the estates of those -- of those folks that, you know, it should've been -- I believe, yeah, there was responsibility to make sure that the property transferred properly.

Q Is the answer to the question that she was or was not under a contractual duty to your family before she died?

A I can't speak to the letter of the law as far as contractual -- you know, contractual duty, and, again, without, you know, reviewing all the documentation within the -- that existed at that point in time.

Q You have testified that Mr. Scott faxed you a copy of the Settlement Agreement at the time that he faxed you the document whereby you declined the appointment as backup trustee.

A Yes.

Q Does the copy that Mr. Scott faxed you -- does it still exist?

A I'm not sure if it does or not.

Q Did you give it to Mr. Alexander?

A If it does, it's in documentation that I've handed over to my attorney or documentation that I'd

handed over to one of my siblings.
Q Would it be fair to say that you had an opportunity at the time that you signed the waiver of your right to be backup trustee to become aware of the Settlement Agreement and its content?
A I became aware of the context -- contents of the draft agreement, in which case I looked to make sure there was no -- again, as I indicated earlier, there was nothing in there that I was waiving any rights to as far as any kind of a property transfer, and, in fact, that the draft copy I saw validated that the Orangeburg County real property was to come to the McLean children.
Q Did you share the copy of that agreement with other members of your family?
A I don't recall. Not at that point in time. Since then, -- Since then, they have seen copies of the actual -- in the context of litigation, the actual final Compromise and Settlement. Again, the draft, what was faxed over, it's either -- I have either transferred -- handed it over to my attorney or to one of my siblings, so one of them could have seen it at that time.
Q Is your father still living?
A Yes, he is.

Q Is he mentally competent?
A Yes. I would consider him mentally competent. I'm not a doctor.
Q He is -- would be competent, in your opinion? Did you say competent or incompetent?
A Competent. Yes.
Q What business was he in?
A He's been in a number of different businesses in the course of his life, but he's retired now.
Q What businesses was he in?
A He was primarily self-employed. He has -- He farmed. He owned a service station, owned a construction -- swamp construction company, building, like, agricultural, like, buildings and things like that, and then he was involved in --
Q What business --
A -- real estate --
Q Go ahead. I'm sorry. I thought you were through.
A -- and real estate, and then toward the end of his career where he was in real estate.
Q What business is your brother, James N. McLean, in?
A He is an assessor for --
Q He's a what?
A I believe he's -- I'm not sure of his exact job, but he works for the County of Orangeburg.

Q In the tax assessor's office?
A It's in the -- yeah, in the assessor's office.
Q Does your sister, Marie, -- is she employed?
A Yes, sir.
Q And what is her employment?
A She works for Blue Cross Blue Shield or one of their subsidiary companies here in Columbia.
Q In what capacity?
A I believe she's -- She's recently, like within the past year, kind of switched what she was doing there. I believe what she's doing now is more working for -- doing auditing or something like that, compliance-type --
Q And Robert McLean is another brother?
A Yes.
Q And what does he do?
A He works for the County of Anderson. He also --
Q What does he do for them?
A He -- Appraisal -- You know, tax assessor's office, whatever he's called.
Q You said that you were aware that the estate proceedings of your aunt were complex; is that correct?
A Yes.
Q And what was the basis of your belief?

A I knew that there was a number of properties that they owned, that it probably was further complicated by the relatively short time -- It was just a few years from her husband's death, my uncle's death, and it was quite a, you know, significant estate to administer. I knew from just general knowledge of how, you know, some of that stuff can get drawn out with -- I wasn't expecting, you know, any kind of quick disposition on any of it.

Q Do you know if anyone in your family monitored the administration of that estate, which I believe was in Orangeburg County?

A To my knowledge, I'm not sure, you know, how that was -- I wasn't sure -- I'm not sure how that was monitored. I, personally, did not monitor it. In fact, I didn't realize it was done in Orangeburg County. I was thinking it was done in Marlboro County.

Q I believe I did misspeak that.

A Okay.

Q It was in Marlboro.

A Okay.

Q Do you know if your family received copies of the will and other probate documents?

A I don't recall. I don't recall other than in the course of this litigation seeing -- seeing those documents. I can't speak to anybody else.
Q What attorney has your family consulted about either your aunt's estate or your cousin's estate?
A I have contacted -- The first contact that I believe I made was with Kathleen Palinski, was her name. This would've been 2004.
Q How do you spell her last name?
A I believe it's P- -- maybe P-a-l-i-n-s-k-i.
Q And where is she from?
A She was located here in Columbia.
Q And when did you contact her?
A I believe that was 2004, I believe.
Q Any other attorneys, other than Mr. Alexander, obviously?
A Kathleen left private practice, and she had to go to -- went to work for another firm that represented -- had dealings with Wachovia, so she could no longer handle my case, so she referred us to -- I can't remember the gentleman's name. Anyway, he looked at the case, was prepared to file --

Mr. Alexander: (to the deponent) Whoa. Whoa. Whoa. Don't say anything --

The Deponent: Okay.

Mr. Alexander: -- that other lawyers have told you.

The Deponent: Okay.

A We spoke to another attorney, and he could not represent us either based off he could not get permission from Wachovia to represent us because he had done some dealings with them. And then from there, we went to David. It's hard to find somebody that doesn't -- hasn't represented Wachovia.

Q Ms. Palinski, was she associated with Gerald Jowers?

A Yes. She actually -- She -- Her -- What she had planned to do was she was going to handle --

Mr. Alexander: (to the deponent) Don't --

The Deponent: Okay.

Mr. Alexander: -- say what she told you --

The Deponent: Okay.

Mr. Alexander: -- she was going to do.

The Deponent: Okay.

A Jowers was a -- considered a real estate title expert and was consulted as part of the process

with Palinski.
Q Did you ever have a conversation with Munford Scott?
A Yeah. I believe it was Munford that called me back in 2002 regarding the removal of --
Q Do you recall the substance of that conversation?
A Basically, it was just in order to get the Compromise and Settlement done based on my cousin contesting my aunt's estate, that they needed me to sign a, you know, waiver or what have you, you know, removing my name as backup trustee.
Q Did you make any notes about that conversation?
A No, I did not.
Q Did you consult a lawyer concerning the documents that he sent you or the conversation that he had with you?
A I don't recall contacting an attorney. The documents were rather brief. I did contact my dad and sent it to him, and perhaps he, you know, made contact, but I'm not -- I'm not sure.
Q How long did you have the document before you signed it and returned it?
A That I'm not sure of because, again, I did think -- I don't remember if I actually got a hard copy in the mail or whether I was asked just to sign --

because it just required my signature -- whether I was to return a faxed copy. If it was a faxed copy, then, you know, -- Again, I was out of town. I know I was out of town on business when the fax first came in. So, I would say that probably within, you know, a couple weeks or -- at the most that I probably had signed and returned it.

Q Did you have any conversation with your cousin, Elizabeth Pence, about it?

A No. I don't recall having any conversations with her regarding it.

Q Did you and he -- Did you and she have any personal contact over the years?

A I had not had contact with her in some time.

Q Do you have any reason to think that the settlement document that Mr. Scott sent to you is not the same document that is -- that is the final agreement?

A No. I don't have any -- I don't have reason to believe that it's different, but I have no way of -- currently, I don't have a way of really validating, you know, that -- that the signed documents -- I didn't see a signed copy of the Compromise and Settlement 'til many years later.

Q Did he send you also a copy of the trust agreement that appointed you as backup trustee?

A I don't recall.

Mr. James: That's all I've got.

Mr. Randy Davis: I've got a few questions.

Examination

By Mr. Randy Davis:

Q Mr. McLean, my name is --

Mr. James: (to Mr. Randy Davis) Do you want to come down here?

Q Mr. McLean, my name is Randy Davis. I represent the defendant, Money To Go, LLC. They were conveyed 120 acres in July of 2004, which was, I think, part of a 174-acre tract that was owned by Ms. Pence. Have you ever physically been on that piece of property?

A This is the Caw Caw?

Q Yes, sir.

A Yes, I have.

Q When was that, generally, time frame?

A Hmm.

Q Before or after your -- I guess it would be your aunt -- was conveying that property as part of the partition action?

A I'd say before.

Q Before?

A Yeah.
Q Are any improvements on the property?
A I don't know.
Q Does your family have any special sentimental value as to that particular tract, the tract 2-A?
A I, personally, -- Personally, that tract in particular, I don't have any personal attachment to, but I believe that one of my siblings -- one or two of my siblings may.
Q All right. Is it just raw land, dirt and trees?
A I don't know if the -- Originally, back before it was partitioned, it was all timber, or probably 90 percent timber, that was -- I believe the timber at that time was probably like 35 years old or 40 years old. You know, my -- my dad -- After it was partitioned, my dad traded his portion, I believe, so that would've been cut. I believe that my uncle's portion was eventually cut to support his financial well-being, and I believe that subsequently they -- my aunt's portion may have been -- may have been cut and -- as part of some timber rights and disbursed, but I'm not -- I'm not sure.
Q Okay. Being in the Caw Caw Swamp -- Caw Caw Swamp area, is part of this property swampland or

wetland, or do you know?
A I'm not sure.
Q Don't know?
A Mm-mm.
Q Did you or any of your family members have any contact with anyone who is an owner in Money To Go, LLC before they were conveyed the subject property?
A I, personally, did not. I'm, personally, unfamiliar with who that party is. I believe Dentney is their name, individual name.
Q Yes. The -- A Mr. A. Dewall, D-e-w-a-l-l, Waters.
A Okay. I don't know him personally. I don't believe I've had a -- any reason to have any conversations with him.
Q One last question about the property itself. I think you indicated earlier that your family -- you and your family had not done any appraisal of the -- what we'll call the Caw Caw property. Is that correct?
A I said recent -- recently.
Q Okay. Have you had one done in the past?
A Well, I think there would've been one done as part of the partitioning. There would've had to have been one done back whenever --
Q At that -- At that --

A -- at that point in time. Beyond that, I think that there was probably done for my uncle's piece that we wouldn't have had anything to do with, as far as when they were looking to maybe cut timber or sell that or wherever, whatever, they were doing that.

Q Except for those two possibilities, you don't know of any other appraisals of the subject property?

A I don't recall it.

Q Do you have a personal opinion about the value of that particular tract, 2-A, which is 120 acres?

A You know, without doing appraisal, I can't speak to particular value. I thought that the value that was, you know, paid for the property by Money To Go seemed to be within reason.

Q Okay. Do you have any knowledge yourself, or your brothers and sisters, that Money To Go had any actual knowledge of your claim to this property?

A Again, there may have been some responsibility there from the attorney, you know, title work, etcetera, some research possibly, that, you know, there could've been some knowledge there, but I can't speak to whether there was actual knowledge.

Q And you say the attorney. You mean -- Which attorney are we talking about, now?

A I guess the attorneys that would've been handling the closing for --

Q For Money To Go, LLC?

A Mm-hmm.

Q But outside that, you don't have any evidence of any actual knowledge that Money To Go, LLC knew of the claim by your family?

A I do not.

Mr. Randy Davis: Okay. Thank you, sir.

Mr. Moore: Let me finish up Caw Caw Swamp, if we can.

Examination

By Mr. Moore:

Q Mr. McLean, my name is Cliff Moore. I represent Charles P. Thompson and Cheri Brown Thompson. Do you know the Thompsons?

A I know the -- I know -- I don't know Mr. Thompson personally, though I probably met him when I was a kid through my parents knowing Mr. Thompson.

Q Okay. What about Ms. Thompson?

A I'm not familiar with her.

Q Any of your siblings have a relationship?

A You know, they may.

Q Have you ever talked with the Thompsons?

A Again, not -- Maybe when I was a kid.

Q Nothing --
A I know he owns a pharmacy in town. So, you know, -
- Nothing recently?
A No.
Q You've not talked to them about this litigation?
A I have not, no.
Q Okay. Are you alleging in this litigation that they've done anything wrong?
A Again, possible knowledge there of the attorneys, by the attorneys, and the title work and all like that, but --
Q You've made reference to the title work a couple of times in your testimony, and talked about red flags. What do you know about title work, you, personally?
A You know, I don't -- You know, I can't say specifically I know a ton about what the process -- you know, what links -- I mean, I've worked in the -- worked in the mortgage business for -- obviously, for a long time, as I indicated earlier, but my areas of expertise don't really reach back to the actual title work.
Q You said you knew a ton or didn't know a ton?
A I didn't know a ton about the actual process an

attorney goes through as far as researching, other than going to the courthouse and --

Q But you did testify that someone doing title work in Orangeburg County should have seen the settlement and that should have gone up as a red flag?

A That -- That was my -- Yeah. I believe that that would be documentation that would normally be researched along with the deeds and everything else if there was wills, if you're talking about an estate, etcetera, that there would've been possibly some wills and settlement and etcetera, then that would be my belief.

Q So, there could possibly be, or were there? Which one is it?

A I mean, I believe there -- I believe there were because I believe they should've been -- I believe they should've been looked at.

Q Okay. Has anyone ever -- Do you know if anyone has done title work on your behalf in Orangeburg County for the Caw Caw Swamp property?

A Other than in the context of this litigation, no.

Q Has any been done in the context of this litigation?

A I believe -- My attorney, I believe, had some

title work done to --

Q Have you seen that title work?

A I have not reviewed it, no.

Q Okay. Were there any red flags that you know of in that title work?

A I don't remember specifically because of -- you know, property transferred, you know, several times there. You know, I would have to see the -- specifically, you know, the Thompson transfer to see what possibly would've --

Q Do you know whether or not there are any red flags, as you call them, in the Orangeburg County title work that relates to the Caw Caw Swamp property, whether it be the Thompsons or Money To Go or whoever?

A It seems like there was a red flag in one of the documents that I reviewed in the course of this litigation, and that was basically where -- where one of the attorney firms in Orangeburg had looked at something and they -- from a title insurance standpoint, they had made some disqualifications as far as what they would -- to what level -- there may be some -- possibly some references to checking probate.

Q Okay. Where was the red flag? I'm not

understanding the document you're describing for me because you said title insurance. What did you see that was the actual document that had the red flag?

A I believe in the -- It was -- I think there was a letter or a -- You know, again, on the title, it would appear, was something referencing -- referencing the fact that this was subject to -- or denied -- you know, was excluding anything that may be in probate for one of the estates.

Q So, the reference, the red flag, was the probated estate or what would appear in the records of the probated estate?

A Yes.

Q So, the red flag did not reference the Settlement Agreement in Marlboro County?

A No. The title that I saw, or the letters, you know, revolving around the title that I saw didn't actually reference the settlement itself, I do not believe.

Q Okay. Well, how do you jump from the probate of an estate over to the settlement of a case in Marlboro County?

A I believe if they would've -- I believe that if the paper trail would have been followed, that the discovery process would have led to the Compromise

and Settlement.
Q What paperwork should have been followed?
A You know, again, I'm not -- I'm not an attorney. So, it would just -- From a reasonable standpoint, I would expect that -- you know, that if there was something there to suggest to look over, you know, from a will and probate standpoint, that that action would've been carried out and researched to its fullest, and wherever that, you know, would've led, it would've led.
Q And please understand, I only want your knowledge and your opinion.
A Sure.
Q That's what you're here testifying as to today.
A Sure.
Q So, don't excuse yourself.
A Right.
Q That's what I want to know. So, you're saying you saw an instrument that referred to a probate, and then whoever was searching the title should have gone back and looked at that probate estate, and you're thinking that probate estate made reference to a settlement in Marlboro County?
A I'm thinking that if that document would've been followed, that, yeah, somebody may would have

discovered something there in the process.
Q What if when you went to the probate estate in Orangeburg County and didn't find any reference to any settlement, --
A I'm not sure if it was Orangeburg County. I believe that it was actually in Marlboro County.
Q Okay. But do you know anything about an ancillary administration that was filed in Orangeburg County?
A I don't know, no. No. I wouldn't probably know the definition of --
Q You don't know anything about the probate process and how it works?
A No. I'm not familiar with it. No, not really.
Q The document that you referred to that you said had the reference in it to the estate, do you have a copy of that?
A Like I said, I believe I saw it in the course of litigation, so it would've been provided by the defense in some -- in some manner.
Q And going back, you also said you had some documents and you either gave them to your attorneys or to your siblings. Every document that you gave to your siblings, did you also give it to your attorney?
A No. I'm not sure how much I can answer with regard

to attorney-client stuff, but I -- when we were going through the process of changing attorneys when Kathleen Palinski could no longer represent us, during that process, you know, it was too much of a burden on me, personally, to be following up with this, so I transferred a number of things to one of my siblings and, you know, basically, you know, got it off my desk, and from there I'm not sure what -- you know, what transpired.

Q Okay. So, you don't know whether or not your lawyer, your current lawyer, has the documents that you gave to your siblings?

A That's correct. I can't answer that.

Q Have you given your lawyer all the documents that you had?

A Yes. Any other documentation -- At that time, I don't believe I had any other documents once I made that transfer, and that was prior to our attorney, so I don't -- You know, there was no other documents that I know of that I actually shared with my attorney, directly from me to him.

Q So, the one red flag document that you've identified so far is either with your attorney or with a sibling?

A That, actually, --is actually on -- a computer-

generated document. It was an image. I believe that was -- I believe where I'm recalling the document is from the documents provided by Wachovia on a CD.

Q Any other red flag documents that you would think would appear in the title work that you know of?

A Not that I can think of off the top of my head. And, again, I don't think I've seen all the title work documents, but just on what I have seen, --

Q When Mr. Davis asked you some questions about the other half of the Caw Caw Swamp property, you said you'd seen the deed transferring the title to the property to Money To Go. Have you also seen the copy of the deed transferring the property to the Thompsons?

A Physically seeing the deed, again, in the course of litigation, I think I've seen it.

Q Do you think that deed represents a fair value for the property?

A As I recall, yeah, the amount seemed to be in line with what Orangeburg property would go for in that area.

Q All right. This is my summary of something I think you said earlier, so if I'm saying it wrong, you tell me.

A Okay.
Q But it seems like your claim kind of has a genesis in the idea that these three tracts that you've identified were, quote, unquote, McLean family property. Is that right?
A Yes. That's correct.
Q All right. Who is the common owner, the ancestor of yours, that defines McLean family property?
A My grandfather.
Q All right. And his name?
A Was James.
Q All right. Did James McLean own any other property other than these three tracts?
A Yes. What property, one that was transferred, I'm not sure, but he was in the timber business, so, obviously, bought and sold various tracts over time.
Q Okay. So, that's not McLean family property as you've defined --
A I don't recall off the top of my head what that would be, what would've been left when he would've disposed of everything else and what would've actually still been left in the family -- within the family.
Q Tell me the process that you went through in

defining these three tracts as the McLean family property.

A Well, it was the Orangeburg -- It was referenced to the Orangeburg County real property.

Q So, James McLean didn't own any other property in Orangeburg County that you know of?

A At various times I believe he did, but at what times those properties were disposed of, we -- You know, I believe that other properties had already been disposed of either, you know, by transfer to my father and his siblings and possibly sold at some time, or they no longer were -- To my knowledge, I can't think of another piece of property that would've been under -- still under the umbrella of the family.

Q Were there any other properties, other than the three that you know of, that were transferred to your father or his siblings?

A It seems like -- Seems like when I was young, there may have been a property or something to do with a property over around Branchville, South Carolina.

Q And who did that go to?

A There again, I think it was a -- to all three siblings, I think, equally, but I'm not -- I'm not

100 percent sure about that.
Q So, that's not McLean family property?
A Well, I think that property was disposed of.
Q By?
A While all three siblings were alive. I think all -- I believe -- That's what I recollect.
Q So, the process that you went through, this is the only property that you thought that was remaining after --
A Those are the only -- Yeah, those are the only three properties that I -- you know, that we -- I mean, if there -- if there were other properties, we would consider that, you know, the basis for those, as well, but -- if they were in Orangeburg County, but I don't have knowledge of others. The Caw Caw, the Gramling Place and the Cannon Bridge Road properties were the only thing that I really had knowledge of.
Q And where did you get that knowledge from?
A Just over time, just being part of the family.
Q Have you done any research to determine whether or not there's any other Orangeburg County property that might be considered McLean family property?
A I have not. I have not.

Mr. Moore: Thank you.

The Deponent: Sure.

Mr. Easterling: If I may, I'll ask a few questions.

The Court Reporter: Mr. Easterling, I'm having trouble understanding him because he's trailing off. Can I ask you to come down here? I hate to do that --

Mr. Easterling: Yes, ma'am.

The Court Reporter: -- to you.

Mr. Easterling: Be glad to.

Mr. Moore: You can take my seat, sir.

[Off the record briefly at 12:53 p.m.]

Examination

By Mr. Easterling:

Q Again, I'm Harry Easterling, Sr. I represent the defendants, James J. Pence, Jr., as personal representative of the estate of Stephen Pence, and Harry R. Easterling, Jr. I have a few questions for you. Mr. McLean, have you ever seen the trust instrument by which the properties in dispute were placed in the trust?

A Are you referring to the actual Brogdon trust document?

Q Yes, sir.

A I believe I have seen that as part of litigation, and I'm not sure if I saw it prior -- prior to that.
Q All right, sir. The trust instrument placing property in the trust does not include any description of the Cannon Bridge Road property or the Caw Caw Swamp property, does it?
A It says Orangeburg real property.
Q Is Orangeburg real property defined?
A There is no -- To my knowledge, there wasn't a definition section in that -- in that document.
Q All right, sir. And, again, there's no precise description of Cannon Bridge Road property or Caw Caw Swamp property in the trust instrument, is there?
A Without reviewing the document, you know, without having the document in front of me, I can't say 100 percent, but I don't believe so.
Q You don't believe so?
A Mm-mm.
Q All right, sir. Was there any consideration paid by your family, your father and your siblings, for a possible transfer to a trust for their benefit?
A We did not pay any -- No, we did not pay any money to have property transferred to it, to the trust.

No. I don't -- I guess I don't understand the question.

Q All right. There was no contractual arrangement by your family with your aunt for a transfer of certain property in Orangeburg County to trust for the benefit of your family, was there?

A I'm not -- I'm not aware of any written contract or I don't have knowledge of a verbal contract with myself or -- You know, that would be just -- I can only speak for myself in that regard.

Q All right, sir. At the time this trust was created, Brogdon trust, Elizabeth McLean Pence had a daughter, did she not?

A Elizabeth McLean Pence, being my aunt, had a daughter, yes.

Q All right, sir. And the daughter would have been her next of kin, would she not?

A Yes. At the time of my aunt's death, yes, because my uncle was already deceased, but my -- obviously, you know, there's -- that would have been her -- that would've been her only child. You know, obviously, her -- at that time, both my dad and uncle were still living, as well.

Q All right, sir. And in the records which you have examined in Orangeburg County, state whether or not

you had found any transfer from Elizabeth McLean Pence to a trustee describing a transfer to the trustee of the Cannon Bridge Road property and the Caw Caw Swamp property.

A I haven't seen -- I haven't seen a deed that my aunt had done that would transfer the property. Again, I haven't seen all the title work -- I mean I haven't seen all -- you know, all the documentation, but I don't recall seeing anything.

Q In the absence of a transfer of the Cannon Bridge Road property and the Caw Caw Swamp property by Elizabeth McLean Pence to a trustee, there can be no effective transfer of that property to a trustee, can there?

Mr. Alexander: Object to the form.

Q Answer the question.

A I believe that -- I believe that there were -- I believe that the property should have been transferred. I believe there -- My belief is there was intent there for all the property to transfer and that's why it was listed as such, as Orangeburg County real property, and I believe that there was the fact that -- eventually that one of the properties did, in fact, transfer correctly, albeit five years, six years later, or however long

it was, that there was no reason to believe that the other two properties shouldn't have followed the same path.

Q All right, sir. There's a basic premise in the law that a transfer of real estate, to be effected, must be in writing. State whether or not you've seen any instrument in writing that effectively describes the Cannon Bridge Road property and the Caw Caw Swamp property.

A Again, you know, Orangeburg County real property is, you know, the basis of what we believe is all, you know, parcels involved. I believe otherwise that it would specifically have indicated that it was only to be the Gramling property that was transferred.

Q All right, sir. But you've seen no instrument or record in Orangeburg County to reflect a transfer of those properties to a trustee, have you?

A Well, they, I believe, were transferred to a trustee. It was just the wrong trustees.

Mr. Easterling: I have nothing further. Thank you.

Mr. Payne: Where are the exhibits?

Mr. Henrikson: I gave the originals to the court reporter.

Mr. Payne: Oh. You did? Okay.

Examination

By Mr. Payne:

Q Hey, Mr. McLean. I'm Jeff Payne. I'm here today on behalf of Mr. Jimmy Brogdon. A few questions for you.

Mr. Payne: First of all, before we forget, I'd sent out some discovery and did not get any responses back. I'm going to need to leave the deposition open today for him -- and I believe others have not had their discovery answered either -- in case the red flag documents and these other things show up. Is that agreed?

Mr. Alexander: If that's what you need to do.

Mr. Payne: Okay. Let's see here. Did you -- Is the Complaint an exhibit?

Mr. Ward Davis: Yeah. It's been marked.

Mr. Payne: Okay.

Mr. Alexander: Is that Number Five?

Mr. Ward Davis: Yeah. That'll be Number Five.

Q Let me show you what we have marked now as Exhibit Five, which is the Complaint in the action, and I

don't know if -- Have you ever seen that document?
A Yes. I believe it's the action that we filed.
Q And did you review it before it was filed in this case?
A Yes, I did.
Q Okay. Now, as to Mr. Brogdon, what is the basis of you claiming fourth cause of action there, page 16?
A I believe that Brogdon breached his duty based off the fact that he did not transfer the two properties that we're discussing today, Cannon Bridge Road and Caw Caw Swamp properties, to us in the manner it should've been.
Q Now, he didn't -- he didn't put them in the trust? Is that what you're saying?
A I guess from the documents that I had reviewed, you know, it was our understanding that they -- it was my understanding that they would have been in the trust, in the Brogdon trust, and Brogdon should have transferred it, those properties, at the same time that he transferred the Gramling property, which I believe he did earlier this year or late last year. Can't remember the exact date.
Q Do you have any evidence that Mr. Brogdon at the time the Brogdon trust was created knew about the Caw Caw Swamp property?

A I believe -- It's my personal belief that he had knowledge, you know, what -- because he was my aunt's representative, and I think that there was probably documentation in discovery that would've led -- and then, also, -- Probably those would be the two things. I don't know. I can't speak for Mr. Brogdon, but I think he should've known, considering he was the trustee and the -- I believe originally the personal -- I believe the personal representative of the estate, as well.

Q Well, let's be a little more specific. The trust for your aunt was created in May of 1999. Does that sound about right?

A Yes, if that's what the document says.

Q And I think one of the earlier questions to you is had you ever seen the trust.

A I don't recall -- Other than in the context of this litigation, I don't recall whether I saw it or not.

Q But the trust was created while she was alive -- your aunt was alive, is that correct?

A That was my understanding based off the --

Q And just to be specific, you're saying Mr. Brogdon should have transferred that property into this -- the Brogdon trust because he knew about her affairs

and things like that?
A I believe based off the fact that the documents that indicate Orangeburg County real property that that was Orangeburg County real property. I don't think we can deny that Caw Caw and -- Caw Caw Swamp property and Cannon Bridge Road property are both in Orangeburg County.
Q Do you know of anything specifically, whether it's a document or if anybody ever told you that before Ms. Pence, your aunt, died, that Mr. Brogdon knew about Caw Caw Swamp property or the Cannon Bridge Road property?
A I, personally, cannot say, you know, he knew about them. You know, like I said, I believe he -- I believe that he did, but I cannot speak for Mr. Brogdon knowing to -- knowing to something or not knowing to something.
Q But you just believe based on a hunch? Is that --
A It's -- I think there's enough there, that Mr. Brogdon being, again, personal representative, to my knowledge was my aunt's -- I believe performed certified public accountant work for my aunt, I would certainly hope that he would've had knowledge of what she owned, what she didn't own, etcetera.
Q Just -- But it's a -- It's a gut feeling, but you

have no basis whatsoever --

A I think he should've. I think he should've; therefore, I think that he did.

Q Well, how do you know she told him not to put it in there?

A Like I said, I had --

Mr. Alexander: Object to the form of that.

A You know, like I said, Orangeburg -- You know, Brogdon was involved in the documents that said -- indicated McLean family land, the document that said Orangeburg County real property. You know, I think there is -- I believe I've seen discovery documents that possibly allude to Mr. Brogdon's knowledge, but without having -- you know, looking at those documents right now, I can't speak to a particular document.

Q All right. In paragraph 71, just so I'm clear here, it says, "Defendant Brogdon breached his fiduciary duty by failing to timely transfer the Cannon Bridge Road property and the Caw Caw Swamp property into the Elizabeth McLean Pence Trust." Okay. So, that was before her death something that he should have done. Is that what you're saying there?

A Yeah. It should've -- It should've been transferred in.
Q Into the trust?
A Into the trust, yeah.
Q All right. The second part there, it says he breached his fiduciary duty, and then you go on down to the third line, "...by mismanaging the trust property." What do you mean by that?
A We failed to receive any information -- Won't say any information. Let me -- We failed to receive any kind of detailed account of information regarding property in the trust that normally would be -- that, you know, I would have expectations to receive, you know, when somebody is a beneficiary of trust property.
Q All right. Have you seen the accountings that he did provide you?
A I did not see any kind of accountings that he provided, I don't believe, until the transfer of the family property, which, again, I believe occurred either earlier this year or late last year. I can't remember the date on that.
Q And what has he done to mismanage the trust property besides not send you an accounting.
A Well, he basically -- There again, the deeds, you

know, that -- reflect there should've been, you know, deeds for the property into the trust if they didn't already exist, and there should've been deeds outgoing, you know, to us on the other side of that, and that just didn't happen.

Q Anything else you can think of that he's mismanaged besides not deeding you some property?

A Again, without having, you know, accounting -- full accounting records all along, I can't speak to -- I can't say that that's -- you know, it would be all-inclusive.

Q Have you looked at the ones he did send you?

A I believe that there are -- I believe that documentation that I have seen from that was -- was very brief, so I can't say as to whether I'd seen all the documentation.

Q What else do you need to see?

A You know, like I said, I don't know what all exists other than, you know, from discovery standpoint. I had seen the -- I, you know, had seen the information that came over from Wachovia, but I don't believe I'd seen any information in the discovery process that came over from -- from Brogdon.

Q Well, after you reviewed the accounting that you

did look at, did you see anything on it that was incorrect?

A I don't recall. I'd have to re- -- you know, re-look at either the accounting again -- It was -- It seemed awful brief for what I would have expected.

Q Besides receipts and disbursements, what else did you expect to see?

A Well, I'm curious as to why, you know, we didn't receive at least some kind of annual statements versus -- you know, if not, you know, quarterly or semiannual statements because there was money -- there was a -- on one of the properties, the one that has since been transferred, there was a house on that property where there was money coming in and expenses going out, and there was also farm and all, etcetera.

Q So, he sent you the itemization of what came in and what came out through that inventory, and now that you've seen that, -- I know you might have gotten it when you wanted it, but is there anything on there that -- that's incorrect?

A I would have to re-review the documents.

Q Did you ever make a request to see additional support for any of the entries that were on the

accounting that he sent you?

A I believe that we had already started the litigation of this prior to receiving -- prior to receiving that. So, I've not had any direct contact with Mr. Brogdon.

Q All right. It also says he breached his fiduciary duty "by failing to protect the trust beneficiaries by preventing the invalid transfers of the plaintiffs' property." All right. So, explain that, if you would, for me.

A Well, there's -- You know, obviously, there is initial transfer that was invalid, and then there were subsequent transfers that were invalid, and we believe that, you know, his error, you know, caused -- perpetuated that whole chain of, you know, those deeds really. It's kind of -- I mean, you know, at any time, he could have stepped in -- From our standpoint, as the trustee he should've stepped in and corrected any mistakes that he had made. He never did that.

Q What could he do, or correct what mistake?

A The fact that the property was transferred but was not transferred correctly in the first place.

Q Into the trust?

A The Orangeburg County real property did not go

where it needed to in order to end up --
Q Well, how can he correct that once she's dead? Think he can just deed property after she's dead into the trust?
A Well, he had a responsibility to, you know, deed it when he deeded the Gramling property. He, obviously, was able to find the time to do such with the one piece of property but for some reason failed or neglected to do that for the other two properties, which were all part of Orangeburg County property that was in the -- you know, referenced in the settlement and referenced in the McLean family property that was in trust.
Q Do you think he did it on purpose?
A I can't answer that. It's a question for him.
Q I'm asking you. Did you think he did?
A I don't -- can't -- I don't really have an opinion on whether he did it on purpose or not because I don't know Mr. Brogdon well enough to -- you know, to have an opinion one way or the other whether he would purposely do anything or whether it was just oversight, neglect. All I know is it didn't happen the way it was supposed to happen.
Q Supposed to happen according to who?
A According to the documents that the trust -- the

McLean family property or however it's listed, and Orangeburg -- it says Orangeburg County property in the -- in the settlement.

Q What did y'all get out of this trust? What did you and your brothers and sisters get?

A As I've indicated, we received a piece of property. One of the three pieces of property that we should've gotten, we received earlier -- either earlier this year or late last year. I can't -- Again, I can't remember the date.

Q Is that the 300-acre tract of land?

A Yeah. I believe it's something like 300 acres.

Q All right. What's that worth?

A I have no idea without doing an appraisal.

Q You don't have any idea what it's worth?

A No.

Q You've got two tax assessors in your family, and y'all don't have an idea what you think it's worth?

A I'm not going to guess on what an estimate would be on what it's worth without -- I have two -- You're right, I have two tax assessors in the family, and they would say let's do an appraisal first before we start throwing out estimates.

Q All right. Then Exhibit B and C I don't think were attached to the Settlement Agreement, but have you

ever seen -- It's been marked as Exhibit Two, but have you ever seen Exhibit B?

Mr. Alexander: Why don't you make that an exhibit to the deposition.

Mr. Ward Davis: Yeah. Yeah.

Marked as Deposition Exhibit Number Six; Deposition of William N. McLean; copy of real estate list values; two pages.

A Yeah. It looks familiar. It looks like something that I've seen before.

Q I'll represent to you -- that was Exhibit B -- that it was a part of Exhibit Two. It was not attached when I was flipping through it. The parcel 17 that you and your brothers and sisters received, or the one listed as 17, is that the one that y'all received, page two of Exhibit B -- I mean Exhibit Six?

A Yeah, parcel 17. That looks to be the case.

Q All right. 1.5 million dollars was the value at the date of death of your aunt. Is that a pretty good representation of what it was worth then?

A I have no idea. I don't know who came up with that number or did an appraisal.

Q Okay. I mean, you have -- you agreed with the

earlier transactions that went out to some of the other folks. Do you think that's a good number?

A I have no idea because this -- you know, that's a different, you know, piece of property. I don't -- You know, I --

Q But no doubt that y'all received something from this settlement valued in excess of over a million dollars, didn't you?

A Well, we weren't parties -- we weren't parties to the settlement, so we weren't, you know, parties identified in the -- in the trust, and the settlement just pointed out that Orangeburg County real property was to go to us. You know, looking right here, even the document you're trying to -- you know, you're showing to me has Caw Caw parcels listed on it.

Q I'm talking about the one you did receive right now, but -- The reason I ask this question is, do you know who signed the trust on behalf of your aunt to get all this taken care of so you and your brothers and sisters could get over a million dollars worth of real estate? Do you know who did it?

A I don't understand the -- your --

Q Do you know who signed the trust agreement on

behalf of Ms. Pence back in 1999?
A Do you have --
Q Look at the last page of it.
A Do we need to mark it?
Q I think it has some writing on it --
A Do we need to mark that? I don't think we have that in the --
Q Hold on a second. I've got some writing on this one. Let me ask it this way because I've got too much written all over that, but are you aware that Mr. Brogdon actually signed with a power of attorney to create this trust?
A It seems like I recall -- recall seeing that document somewhere.
Q So, do you think he would have intentionally omitted the transfer of something to the trust after signing the trust with a power of attorney to create the thing in the first place?
A Again, I cannot speak to Mr. Brogdon's character because I do not know him personally, but, you know, I'm looking here at the -- at the Exhibit B that you just provided as referenced in the Compromise and Settlement. Is that for the exhibit? Is that the Exhibit B here, because it says the trust real properties and their values are

set forth in Exhibit B. Well, that tells me that that --

Q All right. What's this --

A -- should be in the trust.

Q What's the date of the Settlement Agreement that you're reading from?

A The date's blank. It's -- The day is blank, but it's January 2002.

Q Okay. When did your aunt die?

A She died in -- sometime, I believe, in '99, I think it was.

Q Okay. So, don't you think maybe between those two periods of time that the Caw Caw property might've been discovered, to why it's now on Exhibit B?

A Yeah. So, why didn't he -- Yeah. He didn't transfer it. Why didn't he transfer it? I can't answer to why he didn't.

Q I'm just asking you whether you thought that he knew prior to the date of your aunt --

A I can't --

Q -- and he intentionally avoided deeding any property into this trust that he knew about.

A I can't speak to what Mr. Brogdon --

Q I know. I'm asking you for evidence, what people said or documents in front of you, and that's all

I'm trying to gather from all that. Now, when Mr. Munford Scott faxed to you the Settlement Agreement, which is Exhibit -- What's the exhibit number on the Settlement Agreement?

A This is Two.

Q Exhibit Two. Was Exhibit Six a part of what he faxed to you?

A I do not recall.

Q How about Exhibit C to the agreement, which was your waiver of your right to serve as the trustee? Was that part of what he faxed to you?

A Yeah. I got this, I think, -- As I recall, I got this as a stand-alone initially.

Q And then the agreement?

A And then I got something after that, but I'm not sure. It was like a draft of the agreement. As I indicated earlier, it was faxed to me when I was -- I believe I was on a business trip and the pages were run together. It was all screwed up.

Q All right. As to the breach of fiduciary duty cause of action, other than what you and I have talked about, is there any other way that Mr. Brogdon breached a fiduciary duty that he owed to you?

A Again, just -- just in the way that the property

should have been conveyed, and it was not properly conveyed.

Mr. Payne: Mark this.

Marked as Deposition Exhibit Number Seven; Deposition of William N. McLean; copy of Quitclaim Deed; six pages.

Q Now, as to the Cannon Bridge Road property, I want to show you what we've marked as Exhibit Seven. First of all, is that the Cannon Bridge Road property that's described on Exhibit Seven?

Mr. Henrikson: Jeff, -- I'm sorry -- were Exhibits B and C to the agreement collectively Exhibit Six to this deposition?

Mr. Payne: No. Just B.

Mr. Henrikson: Okay.

A Yeah. I believe that -- It looks to be it. It looks to be it. I believe -- There's a reference to Cannon Bridge Road property.

Q And this is the property that you and your siblings transferred into JL McLean Properties, LLC? Is that where y'all -- what y'all did with this one?

A Yeah. Well, -- Yeah. All interest, which -- the entire property. I believe we did a quitclaim for interest --

Q What's the basis for what y'all put in the different LLCs? Why did this one go in the one called JL McLean --

A We have different -- different properties, and we typically put them in -- I mean, we have, like, three or four -- three LLCs and a corporation. We just typically, you know, all our -- you know, everything into one LLC.

Q And what's being done with the Cannon Bridge Road property now?

A There is -- It's being farmed. I believe the house is vacant.

Q Now, when your father quitclaim deeded this Cannon Bridge Road property to you and your siblings back in August 2001, were you aware that he had done that?

A Yeah. I was aware that he has -- that he had done this.

Q And had he ever discussed with you this remainder interest that he was holding in this property?

A Yeah. At some point I was knowledgeable that there was -- that he had a remainder interest in Cannon Bridge Road.

Q Now, was that before he quitclaim deeded it to you that you knew about it?

A Yeah. Basically, I think it like -- I think it was on the --

Q And how long ago?

A I don't know if it was either growing up or early '90s or somewhere, you know, prior to.

Q Well, what did he discuss with you about it, that someday he was going to give it to you, or --

A No. It really didn't have anything to do with the transfer from him to us. It had to do with my knowledge of that he had a -- had a remainder interest when my uncle passed away.

Q When did you first get the full copy of the Settlement Agreement with the exhibits on it?

A Signed copy?

Q I mean, it doesn't have to be signed or not. You said you weren't sure if what Munford Scott sent you had Exhibit B, which is Exhibit Six, to it. I'm just wondering, when did you first get it?

A Other than the fact -- I got -- Like I said, I think that -- I think some of that may have come over in that fax that was sent -- sent in 2002, but I can't be -- I'm not certain.

Q And is that the first time you learned about the litigation between your cousin and the trust?

A Yes. That was when he actually -- I believe --

The first contact, I believe he called, and then that -- subsequently sent the -- sent that over.

Mr. Payne: Let's mark that, too, if you would.

A That's the Waiver of Trustee?

Q Yeah.

Marked as Deposition Exhibit Number Eight; Deposition of William N. McLean; Waiver of Right to Serve as Trustee; one page.

Q Just so we're clear, Exhibit Eight was the -- is the Waiver, and I think you said Mr. Scott sent that to you separately. So, Exhibit Eight --

A Yeah. I believe -- Yeah, I want to say that this came across by itself initially, I think after a phone -- after a phone call, and then he sent this later, and I think -- I want to say that I was actually in the office when I received this, and then after I had a chance to look at it, I think I'd asked for some of the other documentation that was referenced, and that was -- may have been -- I was out of town, I believe, and it came over, and, like I say, the fax was -- fax was jumbled and a draft of this signed copy --

Q Well, after you signed Exhibit Eight, what steps

did you take to obtain further information about the whole settlement or any of it?

A Like I say, I think I saw similar documents, either a draft -- It was either a draft of the settlement or maybe pieces of the -- pieces of the trust in that faxed documentation. It was enough to make me realize that the Orangeburg County property was headed to us and it didn't have anything -- me signing this document had no bearing on the fact that I was compromising to any settlement.

Q So, you would have had that information prior -- You would have had -- You would have known that Caw Caw Swamp property was going to you and your siblings prior to signing Exhibit Eight?

A Like I said, I don't know at what point this came up because I don't know what all documentation came with that fax, whether it was -- whether it was this referencing the Orangeburg County -- This was an exhibit to that initially? Is that correct?

Q Tell us the numbers that you're pointing at. I'm sorry.

A Six was a exhibit to Two?

Q Yes.

A You know, I don't know -- I don't know what pages -- and, again, it wasn't a final -- wasn't a final

copy, but I would've known that it was enough that it included reference to the Orangeburg being -- the Orangeburg real property -- Orangeburg County real property handed to Norman McLean per stirpes -- to the issue of Norman McLean.

Q Well, when you signed Exhibit Eight, you thought that Caw Caw Swamp property was coming to you --

A Correct.

Q -- based on whatever documents you had seen prior to that time?

A Correct.

Q Well, you and your siblings?

A Yeah. Whatever -- Yeah. Yeah.

Q And then you went and talked to your dad about it -- Well, you talked to your dad before you signed it?

A I talked to him before I signed it just, you know, to see if he had ever seen anything like this before, and I didn't know -- I didn't even know that I was listed as backup trustee, as a successor trustee.

Q After you signed Exhibit Eight, did you do anything further to obtain the final signed copy or any other kind of documentation without the trust litigation?

A No. From -- No, not -- not -- not immediately because, again, my -- at that time, my cousin was still alive, and I knew that there was -- again, that the whole tax -- the whole thing was quite convoluted, and she subsequently passed away, I think later that same year, which, you know, again, complicated -- you know, dragged things out further, and then we were in the process of having -- by the time 2003 rolled around, I think like late August of 2002, I remember my wife was pregnant with our first child, so, you know, I wasn't really involved in trying to track down anything at that point.

Q Did you -- After you signed Exhibit Eight, did you consult with a -- any kind of, like, financial advisors or anybody to sort of help you with -- plan for what you were going to receive from the trust?

A I have a degree in financial management. I have an MBA. You know, from a management of, you know, asset standpoint, I don't depend that much on outside --

Q Or attorney? Did you consult with an attorney? I know you sent it to your dad; he looked at it. Did you send it to an attorney --

A I don't --
Q -- to look at it?
A I don't recall sending it to any attorney.
Q Or contacting an attorney after the settlement was approved to sort of evaluate what you were to receive from the trust?
A No. I don't think I ever -- I don't think I did that until we realized that some of the property was starting to be deeded -- deeded away. It triggered myself contacting -- inquiring about representation here in Columbia, and I was -- went to Kathleen.
Q Did your father have knowledge of the litigation that was going on between your cousin and your aunt's estate?
A I don't think he -- As I recall, -- I'm not 100 percent sure. I don't thing he had knowledge until -- until I faxed this down to him. Until I showed him, never talked to him about it.

Mr. Payne: Okay. That's all I have.

Mr. Henrikson: I just have one or two follow-up. I think I can do it from here.

The Deponent: Okay.

Re-examination

By Mr. Henrikson:

Q With respect to the Complaint, you've alleged that the defendant, Brogdon, failed to timely transfer the Cannon Bridge Road property and the Caw Caw Swamp property into the trust. Can we agree, then, that the -- that the property was not -- Whether it should have been or not is another issue. Can we agree that the property was not in the trust?

A I have -- I have not seen a deed -- I have not seen a deed to that trust.

Q So, I mean, do you agree with me that the property was not placed in the trust?

A It means I haven't seen a deed to the trust.

Q Are you going to not answer the question?

A No. No. I've answered the question. I think that's a sufficient answer.

Q All right. Do you have any -- Well, I disagree with that, but do you have any evidence that the -- that the property was actually transferred into the trust?

A Repeat the question.

Q Do you have any evidence that the property was actually transferred into the trust?

A No, I do not.

Q Okay. And, again, you're accusing Mr. Brogdon of not doing it, so I'm assuming that you agree that

it wasn't done?
A Again, I --
Q Same answer?
A Yeah. Again, I haven't seen any documentation on it --
Q All right. Now, do you -- You don't criticize Mr. Drennan for anything regarding the creation of the trust, do you?
A Again, nobody's added the trust to the -- the exhibits yet. I would have to look back at the trust document to -- I would have to look at the trust itself to --
Q Well, whether you'd look at it or not, as you sit here today, you don't have any criticisms of Mr. Drennan with respect to how the trust was created, do you?
A Not -- Not that I -- Not that I can think of. Not that I can recall. The issue is more of -- with regard to Mr. Drennan, more with the -- coming into play with the Compromise and Settlement and his knowledge of -- of that property and the fact that it said Orangeburg real property.
Q Okay. And just so I can make sure that I understand what you're saying in this case, and that is you believe that Mr. Drennan, when he saw

the words Orangeburg real property, that you believe that it was incumbent on him to interpret that as all of Mrs. Pence's Orangeburg real property rather than to interpret it as all of Mrs. Pence's real property which was actually transferred into the trust. Is that what you're saying?

A Yeah. I think it was incumbent on him to -- to know that based off of the -- you know, some of the exhibits provided, some of the documentation that we -- that came up in discovery, I believe, that there was -- you know, that Mr. Drennan even may have thought that those properties were -- were in that trust -- in the Orangeburg -- so, he obviously would have assumed that they would -- were included in the verbiage Orangeburg County real property.

Q You think that if he thought a piece of property was -- Let me ask you this. We already established sort of that if you think a piece of property is in a trust, that doesn't make it so, right? Do you agree with that?

A Yeah.

Q Okay. And if there was -- Well, let me ask you this. So, then, if the property was not actually placed in the trust, then you think it was

incumbent on Mr. Drennan to assume that it was --

Mr. Alexander: Object to the form.

Q -- just because of the words Orangeburg real property in the language?

Mr. Alexander: Object to the form.

A I think that Mr. Drennan had knowledge of the property, knowledge that it was referencing Orangeburg County real property. I think Mr. Drennan, at that point the settlement was reached, obviously had probably seen and had examined the trust which would be -- also referenced McLean family, that -- that, yes, he should've realized and had a responsibility to make sure that the property was transferred accordingly.

Q Now, do you think Mr. Drennan had the ability to change the terms of the trust in some way?

A I don't know if Mr. Drennan -- You know, as I recall, he didn't, I think, develop the trust, so he wouldn't have an opportunity to change the trust, but he would -- he was party to the Compromise and Settlement, and, being party -- you know, being a party to that, should have known that Orangeburg County real property would have gone to McLean children.

Q And you're telling me that it is unreasonable to

interpret the words in the Settlement Agreement all Orangeburg real property to mean all Orangeburg real property actually in the trust? You think that's unreasonable?

A Again, it's like, you know, one of the properties in question here is even listed on the Exhibit Six, which I'm told is part of the Compromise.

Q I tell you what, why don't you answer the question, and then you can explain it any way you like. Do you think it's unreasonable to interpret that phrase to mean all real property that's actually in the trust? Yes or no? And then you can explain it any way you like.

A I think it's -- I think it's -- You know, it's either unreasonable or negligent to -- you know, to think that it could mean anything but --

Q Anything all?

A Anything but all Orangeburg, you know, --

Q The sharings outside of the trust, too?

A Yes.

Q That's your testimony?

A That's -- Yes.

Mr. Henrikson: Okay. Thank you. I don't have anything else.

Mr. Alexander: Anybody else?

Mr. Ward Davis: I have a couple of follow-ups that should be quick that follow this line of questioning.

Re-examination

By Mr. Ward Davis:

Q Do you think it was unreasonable for Mr. Drennan or Wachovia to make these transfers about which you've complained in your Complaint after receiving a letter, which has been marked as Exhibit Four, purporting to represent on behalf of the McLean family that they agreed that the property was not in the trust?

A I have never agreed that, and, again, I never saw the --

Q I didn't ask if you agreed to it. I asked if it was unreasonable for Mr. Drennan and/or Wachovia to transfer property after getting a copy of that letter which purported to say on behalf of the McLeans that they agree that the property was not in the trust?

A You know, I would've -- I would've thought that --

Q Mr. McLean, I'm having the same trouble that Mr. Henrikson had.

Mr. Alexander: Give him a chance to answer your question.

Mr. Davis: He can answer my question yes or no, and then he can explain it.

Mr. Alexander: He's trying to answer your question, and then you'll have a chance to re-ask it when he answers.

A The -- I would -- I would -- I would think that Mr. Drennan, in receipt of this letter, would want something signed from the parties involved saying that they didn't believe, and as regarding the letter, that, again, you know, it's not something that -- You know, I did not hire, you know, Jay Jackson, you know, to look into it or to write or what have you, so --

Q Is it your testimony that it was unreasonable for Mr. Drennan and Wachovia to take that letter to mean that the McLean family agreed, as it states, that the property was not in the trust?

A I think it is unreasonable because our signatures are nowhere on this document relinquishing any kind of rights that we have.

Q When did you say your child was born, 2002?

A I had a child born in 2003, April of 2003, and another in 2006.

Q Okay. During 2002, were you the sibling that was most involved with the disposition of all this

property?

A At that time, there was not -- other than early 2002, receiving that documentation, I did not receive any other documentation with regard to that property.

Q Did you ever have any conversations with your brother, your brother, Jim, or any of your other siblings in 2002 about possibly retaining counsel to advise you about the real estate issues?

A No. And I don't -- Well, I don't -- I do not recall having any such conversations to that effect.

Q Did you have any conversations with any of your siblings, or your father for that matter, about possibly purchasing the Caw Caw Swamp property or the Cannon Bridge Road property in 2002?

A I don't recall having any conversations with them regarding that either.

Q Okay. I believe your previous testimony about what your brother said about being represented by Jay Jackson was that Jay Jackson didn't represent him with regard to this matter. Was that your testimony?

A That was my understanding, from what my brother -- from what my brother told me.

Q Is it your understanding that your brother has been represented by Jay Jackson in other matters?
A I don't -- I don't know.
Q So, you don't know whether your brother has ever been represented by Jay Jackson?
A I don't know.
Q What about your father?
A I don't -- I don't -- I don't recall that. I think maybe my father could have been, but I don't recall. I don't -- I don't know.
Q Are you aware of anyone else in your family ever having been represented by Jay Jackson?
A My sister could've been at some time. She's in Orangeburg.
Q She could have been, but do you have any knowledge --
A I don't know.
Q -- of anything?
A I don't know.
Q That's all I have.
A And when I say represented, I do mean, you know, in any kind of litigation.
Q Well, no, in anything, in any legal --
A Well, I have no idea, then, in some property transfers that he has been -- if he wrote up a deed

for anything. I don't know.

Q Okay.

A I don't know. I mean, with the LLCs we have, then there could be something where he signed that he's the one that recorded the deed or something. I don't know.

Mr. James: One follow-up question.

Re-examination

By Mr. James:

Q Your family seems to have a fairly sophisticated group of people about real estate matters. Are you familiar with the procedures for filing claims against estates?

A I'm not that familiar with probate. As I indicated earlier, I don't -- You know, I know that there are, you know, certain steps that have to be taken. I don't -- I've never had to personally file any kind of claims or, you know, deal with -- fortunately, have to deal with a death of a family member where I was, you know, representative and have to get involved in that capacity.

Q But during the periods of times that your aunt's estate was being administered and your cousin's estate was being administered, you knew that your family might have certain rights, or you thought

your family had certain rights, with respect to property that was titled in their names?

A I thought that the documents were definitive, from my perspective, that it was the Orangeburg County real property, that that was -- that was all of the property, and then, again, as I indicated earlier, I knew it would be some time before anything would actually, you know, occur with regard to transfer, which is further evidenced by the fact that, you know, one of the pieces of property did not transfer to us until either late last year or early this year, which was, you know, essentially, you know, five years, you know, after my cousin's death, and, you know, eight years, or whatever, after my aunt's death.

Q But that was property that had been transferred by deed to the trust?

A Yeah, but, regardless, the -- you know, from our standpoint, all properties would've -- From my standpoint, all property was going to be transferred at the -- at the same -- same time, so I would expect, you know, if it took, you know, two years to transfer it all or whether it took, you know, five years, or however long it did, that -- you know, that all -- all three pieces would be

transferred. It wasn't 'til, I believe, two-thousand -- I believe it was 2004 when we noticed the transfers occurring between -- you know, some of the transfers of that property occurring in the newspaper that -- that I became alerted to what was going on, and that's when I did seek counsel, which would've been probably about -- you know, about two years after the initial --

Q The Settlement Agreement says -- if you want to look at it -- on page four, paragraph 5(a), middle of the page, last sentence, "All Orangeburg County, South Carolina real property which is owned by the trust shall be retained in trust by the trustee." What does that mean to you?

A It meant all the Orangeburg County real property which, you know, I -- had been listed in the trust, like, it was McLean family land, etcetera, that was all Orangeburg real property.

Q But is not that phrase, "All Orangeburg County, South Carolina real property," modified by the phrase, "which is owned by the trust"?

A I don't think so. I think it's Orangeburg -- all Orangeburg County real property.

Q Whether owned by the trust or not is your interpretation?

A It's all Orangeburg County real property. Separate accounting, section eight, I believe refers, "...the trust property will consist of the Orangeburg real -- Orangeburg real property...," which would be all property.

Mr. James: No further questions.

(Whereupon the deposition was adjourned at 1:58 p.m.)

(Deponent has waived reading and signing.)

State of South Carolina)
)
County of Richland)

Certificate

Be it known that the foregoing deposition of William N. McLean was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

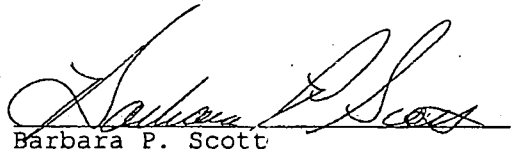
That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

The foregoing transcript of 146 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

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

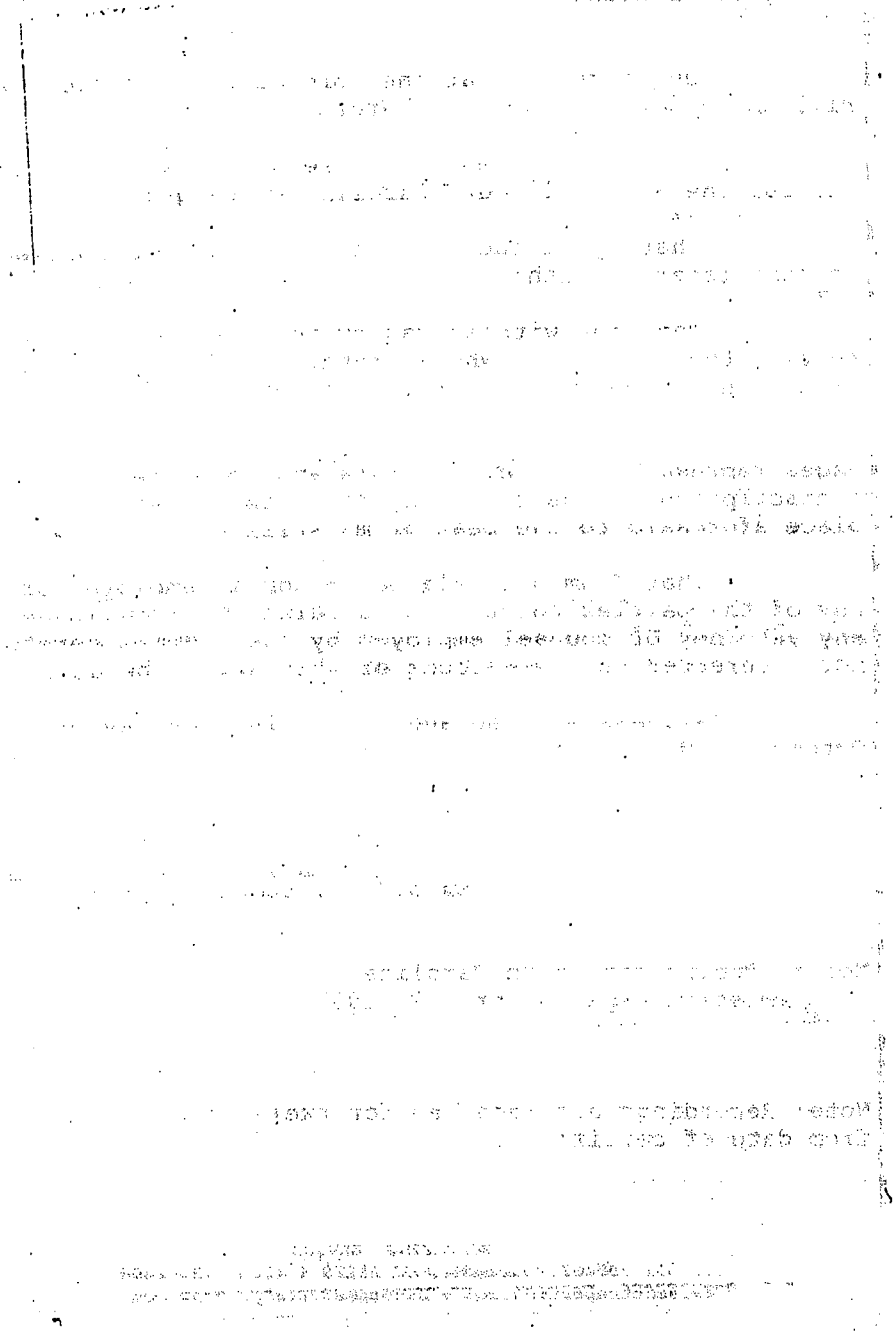
Witness my hand and seal this 18th day of October, 2007.



Barbara P. Scott

Notary Public for South Carolina
My commission expires April 9, 2017.

Note: Recordings are retained for twelve (12) months from date of certification.



STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

COURT OF COMMON PLEAS
CASE NO. 00-CP-34-354

Elizabeth P. Pence, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased,

Plaintiff,

vs.

James E. Brogden, Individually and as Trustee under Trust Agreement of Elizabeth M. Pence dated May 28, 1999 Coker College, and Clemson University,

Defendants

A CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

ORDER APPROVING COMPROMISE AND SETTLEMENT

This matter comes before this Court upon petition of the Plaintiff, Elizabeth P. Pence, requesting approval of a Compromise and Settlement Agreement between the parties in the above entitled matter. With a Summons and Petition filed in the Marlboro County, South Carolina Probate Court on October 19, 2000, Elizabeth P. Pence, also known and therein designated as Elizabeth McL. Pence ("Pence"), individually and as Personal Representative of the Estate of Elizabeth McLean Pence ("Decedent"), filed an action against James E. Brogden (hereinafter referred to as "Brogden" or as "Trustee"), Clemson University ("Clemson") and Coker College ("Coker"), Respondents, contesting the validity of a Trust Agreement established by Respondent Brogden on May 28, 1999 in the name of and on behalf of the Decedent (the "Pence Trust") pursuant to powers given to him in a Durable Power of Appointment signed by Elizabeth McLean Pence on July 30, 1998, to which said Pence Trust Brogden transferred assets belonging to the Decedent prior to her death.

FILED
CLERK OF COURT
MARLBORO COUNTY, S.C.
2001 FEB 15 P 3:35

This action was thereafter removed to this Court under the provisions of South Carolina Code §62-1-302.

The parties have now reached certain understandings and agreements in full settlement of all claims made or which might have been made by Pence in any way arising out of the death of the Decedent and/or the matters alleged in the Petition herein.

The Court finds that a good faith controversy exists as to the creation of the Pence Trust as exhibited by the filing of the above referenced petition in the Marlboro County Probate Court, and that the proposed compromise is in the best interest of all of the parties hereto.

EXHIBIT #1

The Court finds that the attached Compromise and Settlement Agreement is in good faith and that the effect of the Agreement is just and reasonable.

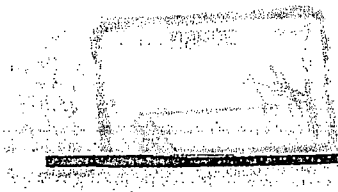
NOW, THEREFORE IT IS HEREBY ORDERED that the Agreement is approved and that the execution of such Agreement by all fiduciaries subject to this Court's jurisdiction is hereby ratified.

IN WITNESS WHEREOF, the parties set their hands and seals this ____ day of February, 2002.

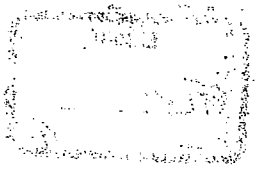
James E. Lockemy, Presiding
Judge, Fourth Judicial ~~Circuit~~

February 26, 2002.

Bennettsville, SC



2



STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

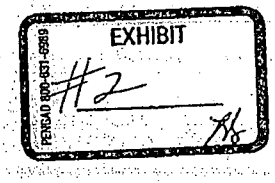
COMPROMISE AND
SETTLEMENT AGREEMENT

WHEREAS, by Summons and Petition filed in the Marlboro County, South Carolina Probate Court on October 19, 2000, Elizabeth P. Pence, also known and therein designated as Elizabeth McL. Pence ("Pence"), individually and as Personal Representative of the Estate of Elizabeth McLean Pence ("Decedent"), filed an action against James E. Brogdon (hereafter referred to as "Brogdon" or as "Trustee"), Clemson University ("Clemson") and Coker College ("Coker"), Respondents, contesting the validity of a Trust Agreement established by Respondent Brogdon on May 28, 1999 in the name of and in behalf of the Decedent (the "Pence Trust") pursuant to powers given him in a Durable Power of Attorney signed by Elizabeth McLean Pence on July 30, 1998, to which said Trust Brogdon transferred assets belonging to the Decedent prior to her death; and

WHEREAS, said action was thereafter removed to the Court of Common Pleas for Marlboro County where it is now pending under Civil Action number 00-CP-34-354; and

WHEREAS, the parties have now reached certain understandings and agreements in full settlement of all claims made or which might have been made by Pence in any way arising out of the death of the Decedent and/or the matters alleged in the Petition herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, in consideration of the sum of One Dollar to each in hand paid by the others, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and agreements herein



contained, Pence, Brogdon, Clemson and Coker have agreed as follows, effective this __ day of January, 2002:

1. DISTRIBUTION FROM TRUST TO PENCE ESTATE. The parties have agreed that in order to resolve the disputes between them, Brogdon, as Trustee, will convey and distribute to Pence, as Personal Representative of the Decedent's Estate, Trust assets having a value equal to sixty (60%) percent of the value of all of the Trust assets, determined as provided below, and the remaining forty (40%) of the Trust assets will be retained by the Trustee, in trust, upon the terms, conditions, uses and trusts set forth in the Trust Agreement.

2. ASSIGNMENT BY PENCE. Upon approval of this Agreement by the Court pursuant to paragraph 11 below, if not sooner, Pence, in her individual capacity, will execute a revocable Trust Agreement in the form attached hereto, marked Exhibit "A" (the "Revocable Trust"). Pence is the sole beneficiary of the Decedent's Estate, and as such will ultimately receive all assets of the Estate, including the Trust assets to be distributed by the Trustee to Decedent's Estate pursuant to paragraph 1 above. In order to minimize probate costs and to expedite the transfer of the Trust assets to the Revocable Trust, Pence, individually and as Personal Representative, hereby authorizes and directs that the Trustee convey and distribute to the Trustees of said Revocable Trust for her use and benefit all property and interests in property which may be distributable to the Estate under this Agreement, and to that end she does hereby assign unto said Trustees the right to receive and receipt for all assets which may be due her in and by the terms of this Agreement.

3. VALUATION OF TRUST ASSETS. For purposes of this Agreement, the Trust

assets shall be valued as follows:

(a) All real property shall be valued at the same values reported for federal estate tax purposes in the Decedent's estate, excluding any timber thereon, which shall be separately valued as provided in subparagraph (c) below. The Trust real properties and their values are set forth in Exhibit "B" attached hereto.

(b) The remaining Trust assets, other than timber, shall be valued as of the close of business on the last day of the calendar month in which this Agreement is approved by the Court as provided below.

(c) The value of the timber on the Trust real property shall be deemed to be the sum of (i) the net proceeds received for such timber upon its sale pursuant to paragraph 4 below, after deducting from the sale proceeds the cost of reseeding and the costs and expenses of sale, plus (ii) the appraised value of any immature timber not cut, such appraised value to be established in the manner set forth in paragraph 4 below.

4. **SALE OF TIMBER.** Immediately after Court approval of this Agreement, all merchantable timber on the Trust real property shall be sold by the Trustee and, in the event that the Marlboro County real property is conveyed to her by the Trustee prior to selling the timber thereon, by Pence, and Pence and the Trustee shall select one or more Registered Foresters to assist in the harvesting of such timber and to appraise any timber not cut because not mature. Following the initial harvest of merchantable timber on the Orangeburg County real property, Trustee shall thereafter periodically harvest timber thereon in accordance with the recommendations of the Registered Forester who assists in the harvesting of the Orangeburg

timber.

5. TIME OF PAYMENT/DISTRIBUTION. All distributions and payments due Pence from the Trust shall be made as follows:

(a) Non-Timber Assets: As soon as is practicable, but not later than the 15th day of the calendar month following the month in which the Court approves this Agreement as provided in paragraph 11 below, the Trustee shall transfer and distribute to Pence assets of the Pence Trust having a value equal to sixty (60%) percent of the value of the Trust's assets, other than timber, valued as provided in paragraph 3 above. The assets to be distributed to Pence shall include the Marlboro County real property now owned by the Trust, at its value as shown on Exhibit "B". All Orangeburg County, South Carolina real property which is owned by the Trust shall be retained in trust by the Trustee.

(b) Timber: The Trustee shall pay Pence sixty (60%) percent of the net proceeds arising from the sale of the Trust's timber assets, as and when timber sales are made pursuant to paragraph 4 above. In the event that the Trustee conveys the Marlboro County real property to Pence prior to selling the timber thereon, Pence shall receive and shall account for the proceeds of such sale and shall remit to the Trustee forty (40%) percent of the net proceeds arising from the sale of such timber. Following the final timber sale, the amounts due each of the parties shall be reconciled, and if either has received less than the full amount of his or her prorata share of the timber sales, the other shall pay such deficit, plus interest at the rate of seven (7%) percent.

6. BROGDON AS TRUSTEE. Brogdon shall continue to serve as Trustee of the Trust for so long as he is able and willing to do so, and he shall be entitled to receive reasonable

compensation for his services as Trustee, in such amount as may be agreed to by and between Pence and Brogdon. Prior to the submission of this Agreement to the Court, William N. McLean, designated as a successor Co-Trustee in ARTICLE VII(1) of the Trust, will have executed a Waiver of Right to Serve, a copy of which is attached hereto, marked Exhibit "C", and in the event that Brogdon should become unable or unwilling to serve as Trustee, Wachovia Bank, or any duly designated successor corporate Trustee, shall serve as sole Trustee of the Trust.

7. CLOSING OF I E. PENCE ESTATE. Following approval of this Agreement by the Court, Brogdon, who is now serving as Personal Representative of the Estate of L. E. Pence in theMarlboro County Probate Court, shall take such steps as may be required in order to bring the administration of said estate to a close, and shall distribute any remaining assets to Pence, as Personal Representative of Decedent's estate.

8. SEPARATE ACCOUNTING FOR ORANGEBURG REALTY. Following the approval of this Agreement by the Court and the distributions to Pence as provided herein, the Trust property will consist of (a) the Orangeburg real property, including any timber not cut because not merchantable, and (b) other investments. In order to give effect to the intention of the Decedent, as expressed in ARTICLE VI(3) of the Trust, that the Orangeburg real property be distributed to the issue of the Settlor's brother (Norman M. McLean), per stirpes, in the event that Pence does not have children or other issue to receive final distribution of the Trust property, the Trustee will separately account for the Orangeburg real property, and any proceeds therefrom in the event of sale, so that in the event that Pence should leave no issue to receive final distribution of the Trust property in accordance with the terms of the Trust, such real property, as from time

to time constituted, including the proceeds therefrom should it or any part of it be sold, shall pass to the issue of the Decedent's said brother, and the remaining Trust property shall pass to Clemson and Coker in equal shares, as provided in said Trust.

9. TREATMENT OF ESTATE TAXES. (a) In the event that it is finally determined in the estate tax proceedings relating to the Decedent's estate that additional estate taxes are due by reason of her death, such additional taxes shall be borne by the parties as follows:

(i) any additional estate tax which may be due because of an increase in the fair market value of any asset of the Decedent's taxable estate which is to be retained in trust by the Trustee, including any interest due thereon, shall be paid in full by the Trust. Any additional estate tax which may be due to an increase in the fair market value of any other asset shall be paid in full by Pence, as Personal Representative of the Decedent's estate.

(ii) any additional estate tax, including interest, which may be due for any other reason shall be apportioned between the Trust and Decedent's estate, with the Trust bearing that proportion of such additional estate tax as the value of the Trust, after making all distributions due Pence hereunder, bears to the total value of the Decedent's taxable estate, as finally determined, and the estate bearing the remainder of such additional tax.

(b) In the event that the Decedent's estate should receive any refund of estate taxes paid, such refund shall be apportioned between the estate and the Pence Trust, each to receive a portion of such refund in proportion to its contribution towards payment of such estate taxes; provided, sixty (60%) percent of any refund to which the Pence Trust may receive shall be distributed to Pence as part of the distributions due her under paragraph 1 above.

10. MUTUAL RELEASES. Each of the parties does hereby release, relieve and forever discharge the others, and such others' heirs, successors and assigns, of and from any and all further liability for or on account of any and all claims heretofore made arising out of or in any way connected with the death of Decedent and the creation and administration of the Trust, and each party agrees to execute and deliver any and all additional releases or other instruments which may be reasonably necessary to accomplish the full and complete release of the others of and from all claims heretofore made or which could have been made by them, rising out of or in any way connected with the death of Decedent and the creation and administration of said Trust. Each of the parties shall be responsible for his or her own attorneys' fees.

11. COURT APPROVAL. This Agreement shall be subject to the approval of the Court of Common Pleas for Marlboro County pursuant to the provisions of South Carolina Code Section 62-3-1102. When this Agreement is submitted to the Court for approval, the proposed ratifying Order attached hereto, marked Exhibit "D", shall be submitted to the Court together with such testimony as may be needed by the Court to establish the reasonableness and finality of this Agreement.

12. EXECUTION IN COUNTERPARTS. Copies of this Agreement may be executed separately by the parties, and this Agreement shall be deemed to be fully executed and binding and effective for all purposes when each of the parties has signed a counterpart hereof. All such counterparts, taken together, shall constitute a single agreement.

13. BINDING EFFECT/AMENDMENT. This Agreement shall be binding upon and

shall inure to the benefit of the parties, their respective heirs, successors and assigns, and it may not be amended except by mutual agreement reduced to writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ___ day of January, 2002.

WITNESSES:

ELIZABETH P. PENCE, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased.

JAMES E. BROGDON, Individually and as Trustee under Trust Agreement of Elizabeth McLean Pence dated May 28, 1999

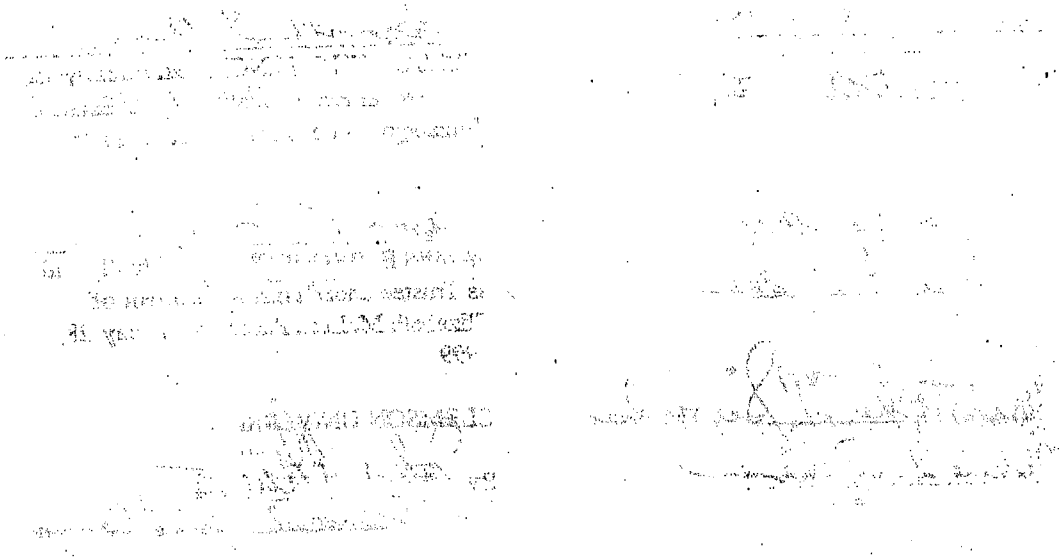
CLEMSON UNIVERSITY

By: _____
Its _____

COKER COLLEGE

By: _____
Its _____

3



YARBOROUGH, HUTTO & JACKSON
ATTORNEYS AT LAW
198 DOCKET STREET, N.E.
POST OFFICE BOX 2268
ORANGEBURG, SOUTH CAROLINA 29116-2268

F. HALL YARBOROUGH
RONALD E. HUTTO
JAMES B. JACKSON, JR.

TELEPHONE:
(803) 534-0626
(803) 534-0852
FAX:
(803) 536-2175

September 27, 2002

James B. Drennan, III, Esquire
Dennis, Shaw & Drennan, LLC
103 Lafayette Street
Spartanburg, S.C. 29304-0891

Re: Elizabeth M. Pence Estate

Dear Jim:

Pursuant to your request of August 30, 2002, I am enclosing a copy of the deed from O. Davie Burgdorf, Master-in-Equity for Orangeburg County to Elizabeth M. Pence which seems to convey the Caw Caw Swamp property to her and provides a legal description therein. It seems to me that the 120.11 acres and the lot shown as tract 2-A would be Caw Caw Swamp property. The remaining piece seems to me to be in Limestone Township which is probably a different piece of property. I trust that this will provide you the information you need to prepare the Deed of Distribution.

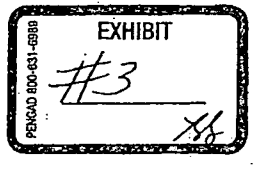
Additionally, I have been asked by Jim McLean, who is the son of Norman McLean, to review a number of documents that he provided me which includes the Elizabeth Pence Trust agreement prepared by attorney J. Munford Scott, Jr. dated May of 1999 and the Order Approving Compromise and Settlement with the attached Compromise and Settlement Agreement which was the result of a lawsuit filed in Marlboro in case number 00-CP-34-354. In reading the Compromised and Settlement agreement, which was approved by Judge Lockemy, in paragraph 8 entitled "Separate Accounting For Orangeburg Reality", its says that in the event that Elizabeth P. Pence dies without children that the intent was for the Orangeburg real property to be distributed to the issue of Norman M. McLean. Therefore, it appears to me on the face of this matter that since Ms. Pence died recently without children that the Order and Settlement Agreement would require that the Orangeburg property be distributed from her estate or from the trust or both to the children of Norman McLean. I would appreciate your letting me know your position in regards to that matter so that I can advise my clients appropriately.

With kind regards, I am

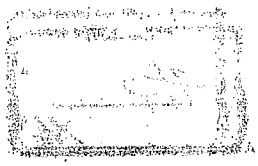
Sincerely,

JBJjr/ddb

James B. Jackson, Jr.



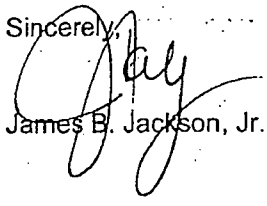
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information to the appropriate persons to determine whether or not they might be willing to sell these Orangeburg properties.

With kind regards, I am

Sincerely,



JBJjr/ddb

James B. Jackson, Jr.

cc: Jim McLean

5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	C.A. No.: 2006-CP-38-1523
Norman M. McLean; James N. McLean; Marie McLean-Choi; William N. McLean; Robert L. McLean; and JL McLean Properties, LLC,	)	
Plaintiffs,	)	**COMPLAINT**
vs./	)	(Jury Trial Demanded)
James B. Drennan, III, as Personal Representative of the Estate of Elizabeth McLean Pence; James E. Brogdon, Sr., as Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999; Wachovia Bank, National Association, as Personal Representative of the Estate of Elizabeth P. Pence; Wachovia Bank, National Association, as Trustee of the Elizabeth P. Pence Trust; Marlboro Academy, Inc.; Charles P. Thompson, Jr.; Cheri (Cheryl) Brown Thompson; Money To Go, LLC; James J. Pence, Jr. as Personal Representative of the Estate of Stephen Pence; and Harry R. Easterling, Jr.,	)	
Defendants.	)	

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
JAN 20 PM 12:08

The Plaintiffs above named, complaining of the Defendants herein, allege as follows:

1. Plaintiffs James N. McLean, Marie McLean-Choi, William N. McLean, and Robert L. McLean are the children of Plaintiff Norman M. McLean.

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

EXHIBIT #5
PENCAD 800-631-6989

2. Plaintiff Norman M. McLean is the son of James L. McLean, who died on May 25, 1955. James L. McLean and his wife, Sophronia McLean, had three children, Plaintiff Norman M. McLean, James L. McLean, Jr. (deceased), and Elizabeth McLean Pence (deceased).

3. Plaintiffs Norman M. McLean, James N. McLean, and Marie McLean-Choi are residents of Orangeburg County, South Carolina.

4. Plaintiff Robert L. McLean is a resident of Anderson County, South Carolina.

5. Plaintiff William N. McLean is a resident of Richland County, South Carolina.

6. James L. McLean, Jr. died on April 25, 2004, without issue.

7. Elizabeth McLean Pence died on October 3, 1999. Elizabeth McLean Pence was survived by one child, Elizabeth P. Pence, who died on August 26, 2002.

8. Elizabeth P. Pence died without issue, but was survived by her husband, Stephen Pence, who died in 2005.

9. Plaintiff JL McLean Properties, LLC, is a South Carolina Corporation with its principal place of business in Orangeburg County.

10. Defendant James B. Drennan, III ("Drennan") is a resident of Spartanburg County, South Carolina.

11. Defendant James E. Brogdon, Sr. ("Brogdon") is a resident of Marlboro County, South Carolina.

12. Defendant Wachovia Bank, National Association ("Wachovia") is a corporation organized under the laws of a state other than South Carolina with its principal place of business in North Carolina.

13. Defendant Marlboro Academy, Inc. ("Marlboro Academy") is a South Carolina corporation with its principal place of business in Marlboro County, South Carolina.

14. Defendants Charles P. Thompson, Jr. and Cheri (Cheryl) Brown Thompson (collectively, "Thompsons") are residents of Orangeburg County, South Carolina.

15. Defendant Money to Go, LLC, is a South Carolina corporation with its principal place of business in Orangeburg County, South Carolina.

16. Defendant James J. Pence, Jr. is the personal representative of the Estate of Stephen Pence, which is currently an open estate in New Hanover County, North Carolina.

17. Defendant Harry Easterling, Jr. ("Easterling") is a resident of Marlboro County, South Carolina.

18. As the real property at issue in this lawsuit is located in Orangeburg County, and the majority of the Plaintiffs, Defendants, and other witnesses are located in Orangeburg County, jurisdiction and venue are proper in this Court.

I. The McLean Family Land

19. During his lifetime, James L. McLean operated a timber business and acquired several large tracts of land in Orangeburg County.

20. Three of these tracts of land are known as the Gramling Place Property, the Cannon Bridge Road Property, and the Caw Caw Swamp Property.

A. Gramling Place Property

21. The Gramling Place Property is described as follows:

> All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orangeburg County, South Carolina, containing two hundred eight and five-tenths (208.5) acres, more or less, and bounded as follows: On the North

by lands of Huffman (lands formerly of M. W. Gramling and Atlantic Coast Line Railway); on the East by lands formerly of M. W. Gramling, now of McLean and lands of Mrs. Ella Till; on the South by lands of Mrs. Ella Till, lands of McLean, lands of Inabinet; lands now or formerly of Collier, and on the West by lands now or formerly of Collier, lands of L. E. Gramling and lands now or formerly of Allen.

ALSO:

All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orangeburg County, South Carolina, containing eleven and eight-tenths (11.8) acres, more or less, and bounded on the North by Mt. Lebanon Public Road which separates this tract from the tract hereinabove described; on the East by the tract hereinabove described; on the Southeast by lands of Mrs. Ella Till; and on the West by the tract hereinabove described.

ALSO:

All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orange Township, Orangeburg County, South Carolina, containing one hundred fifteen (115) acres, more or less, and bounded on the Northwest by the Atlantic Coast Line Railroad; on the East and Northeast by lands of Bull Swamp (Colored) Baptist Church, Little Bull Swamp Creek, the run of the Creek being the line, to the center of the Old Cameron or Mt. Lebanon Road, thence along the said Old Cameron or Mt. Lebanon Road to lands of Roy M. Gramling and Jack Gramling (formerly of McLean), thence along the East and Southeast by lands of the said Roy M. and Jack Gramling (formerly McLean); and on the Southwest by a County Road separating this tract from lands of Mrs. Ella Till and lands of Sophronia McLean.

Being the same property conveyed to Elizabeth McLean Pence by deed of Norman M. McLean dated May 16, 1959, recorded June 8, 1959, in the Office of the Clerk of Court for Orangeburg County, South Carolina in Deed Book 225 at Page 411.

22. The Gramling Place Property was acquired in four separate transactions. Sophronia E. McLean acquired 303 acres from Marion W. Gramling on June 16, 1945, by deed recorded at Book 135, Page 7 (with corrective deed recorded at Book 160, Page 310). Sophronia E. McLean acquired 11.8 acres from Herbert L. Till on July 13, 1945, by deed recorded at Book 135, Page 100. The children of James L. McLean acquired 248 acres by Master's deed on

November 13, 1947, recorded at Book 150, Page 92. The children of James L. McLean acquired 115 acres from Annie Z. Gramling, Laurie F. Gramling, and Ernest S. Gramling on October 27, 1953, by deed recorded at Book 184, Page 107.

23. On July 3, 1954, title to these four tracts of land was consolidated in Elizabeth O. McLean and Norman M. McLean. This deed is recorded at Book 195, Page 591.

24. On May 16, 1959, Norman M. McLean conveyed his half interest in the 303 acre tract (which had been reduced to 208.5 acres), the 11.8 acre tract, and the 115 acre tract to Elizabeth McLean Pence, by deed recorded at Book 225, Page 411.

25. On May 28, 1999, Elizabeth McLean Pence conveyed these three tracts to the trust administered by Brogdon. This deed is recorded at Book 761, Page 209.

26. On August 16, 2006, Brogdon conveyed these tracts from the trust to Marie McLean-Choi, James N. McLean, William N. McLean, and Robert L. McLean by deed recorded at Book 1165, Page 19.

B. Cannon Bridge Road

27. The Cannon Bridge Road Property, containing a total of 736.1 acres, is described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being in Zion Township, Orangeburg County, South Carolina, containing two hundred twenty-six and 6/10ths (226.6) acres, more or less, bounded as follows: On the North by lands of Willie W. Murphy and lands formerly belonging to the estate of D. Lewis, on the East by North Edisto River and lands of Mrs. Mary M. Jeffcoat, on the South by lands of Mrs. Mary M. Jeffcoat, on the West by lands now or formerly of the estate of D. Lewis, being all of my interest in that certain tract of land containing two hundred forty-six (246) acres, more or less, conveyed to James L. McLean as trustee by R. L. McLeod and James L. McLean by their deed dated the 7th day of January, 1931, and recorded in the Office of the Clerk of Court for Orangeburg County, South Carolina, in Deed Book 89, at page 219;

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, State of South Carolina, containing one hundred twenty-two (122) acres, more or less, and bounded as follows: On the North and Northeast by that certain tract of land containing one hundred twenty-five (125) acres this day conveyed to James L. McLean, Jr., on the East by the Cannon Bridge Public Road, and on the South by lands formerly of McLeod and McLean Lumber Company, Thomas Brickle, John Brickle and Mrs. S. Riley, and on the Northwest by the right of way of the Atlantic Coast Line Railroad Company;

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, South Carolina, containing sixty-seven (67) acres, more or less, bounded as follows: On the North and West by lands now or formerly of the estate of Minerva Jeffcoat, on the South by lands of John Simpson and lands of the estate of Elijah Hughes and on the East by lands now or formerly of J. M. Brickle; being all of my right, title and interest in that certain tract of land containing one hundred (100) acres, more or less, conveyed to James L. McLean as Trustee by Flora C. Miller by her deed dated the 28th day of January, 1941, and recorded in the Office of the Clerk of Court for Orangeburg County in Deed Book 106, page 527;

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, State of South Carolina, containing one hundred forty-three (143) acres, more or less, bounded on the North by lands of James L. McLean, on the East by North Edisto River on the South by lands of the estate of J. B. Brickle and lands of James L. McLean, on the West by lands of James L. McLean; the same being the northern portion of Tract B on plat made by Styles R. Mellichamp, Surveyor, dated November 29, 1901, of the lands of Mrs. M. M. Jeffcoat and Miss N. C. Joyner; this tract includes a small portion of Tract A on said plat that was conveyed to Zadie E. Brickle by Mrs. Bert Jennings;

ALSO, All that certain piece, parcel or tract of land, situate, lying and bing in Zion Township, County and State aforesaid, containing five and 5/10ths (5.5) acres, more or less, and bounded on the North by lands of James L. McLean, on the East by lands of James L. McLean, on the South by lands now or formerly of Zadie E. Brickle and on the West by lands of James L. McLean; said tract of land being the southern portion of Tract B shown on a plat made by Styles R. Mellichamp, Surveyor, dated November 19, 1901, of the lands of Mrs. M. M. Jeffcoat and Miss N. C. Joyner; this tract of the tract last above described being the same lands conveyed to James L. McLean as Trustee by Zadie E. Brickle by her deed dated October 7, 1936, and recorded in the Office of the Clerk of Court for Orangeburg County in Deed Book 99, at page 329;

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, County and State aforesaid, containing forty-seven (47) acres, more or less, bounded on the North by lands now or formerly of Zadie E. Brickle, the run of the branch being the line, on the East and South by lands of James L. McLean, Trustee, formerly of Flora C. Ayers, on the West by lands of James L. McLean, Trustee, more fully described on a plat made by S. D. Moss, Surveyor, dated October 14, 1935, the said plat being added to a plat of McLeod and McLean recorded in the Office of the Clerk of Court for Orangeburg County, in Plat Book 6, at page 22, being the same land conveyed by Zadie E. Brickle to James L. McLean, Trustee, by her deed dated October 18, 1935, and recorded in the Office of the Clerk of Court for Orangeburg County in Deed Book 94, at page 303.

All that certain tract or parcel of land, situate, lying and being in School District No. 5, Zion Township, Orangeburg County, South Carolina, containing one hundred and twenty-five acres (125) bounded as follows: on the East by lands of Central Electric Power Cooperative, Inc., lands of Suburban Farm Service Co., and Cannon Bridge Public Road, on the South and Southwest by other lands of grantors, on the Northwest and North by Atlantic Coast Line Railroad Company and Charlie Thomas.

28. James L. McLean acquired the Cannon Bridge Road Property in four separate transactions from January 7, 1931, to January 28, 1941.

29. On July 3 1954, James L. McLean, Sophronia McLean, Elizabeth McLean Pence, and Norman M. McLean deeded 125 acres of the Cannon Bridge Road Property in fee simple to James L. McLean, Jr. (hereinafter, the "125 Acre Tract"). This deed is recorded at Book 195, Page 588, in the Register of Mesne Conveyances in Orangeburg County.

30. On July 7, 1954, James L. McLean, Sophronia McLean, Elizabeth McLean Pence, James L. McLean, Jr., and Norman M. McLean deeded the remaining acreage of the Cannon Bridge Road Property to James L. McLean, Jr. for life (hereinafter, the "Cannon Bridge Road Property"). This deed is recorded at Book 195, Page 595, in the Register of Mesne Conveyances

in Orangeburg County. This deed provides that the remainder shall go to James L. McLean, Jr.'s issue, and if none exists, then to Elizabeth McLean Pence and Norman M. McLean in fee.

31. On August 9, 2001, by quitclaim deed, Norman M. McLean conveyed his interest in the Cannon Bridge Road Property to his four children. This deed is recorded at Book 883, Page 253, in the Register of Mesne Conveyances in Orangeburg County.

32. On December 23, 2004, by quitclaim deed, Marie McLean-Chol, James N. McLean, William N. McLean, and Robert L. McLean conveyed their interest in the Cannon Bridge Road Property to JL McLean Properties, LLC.

C. The Caw Caw Swamp Property

33. Originally consisting of 524.63 acres, James L. McLean acquired the Caw Caw Swamp Property in two transactions. He acquired the first from Kate Bennett by deed dated January 31, 1931, and recorded at Book 90, Page 81, in the Register of Mesne Conveyances in Orangeburg County. He acquired the second from Margaret R. Gressette by deed dated February 25, 1946, and recorded at Book 138, Page 19, in the Register of Mesne Conveyances in Orangeburg County.

34. At the time of his death, James L. McLean by will devised the Caw Caw Swamp Property in equal shares to Elizabeth McLean Pence, Norman M. McLean, and James Lennon McLean, Jr., as tenants in common.

35. On May 13, 1994, Norman M. McLean filed a partition action in Orangeburg County, seeking division of the Caw Caw Swamp Property between himself and his two siblings. The suit was captioned Norman M. McLean v. Elizabeth McLean Pence, and Elizabeth McLean

Pence, individually and as Conservators for James Lennon McLean, and Barney Houser for James Lennon McLean, a person mentally incapacitated, CA No. 94-CP-38-318.

36. On September 2, 1994, the Honorable O. Davie Burgdof, Master-in-Equity for Orangeburg County, ordered the property partitioned.

37. On September 14, 1994, Judge Burgdof issued deeds to Elizabeth McLean Pence, Norman M. McLean, and James Lennon McLean. These deeds are recorded, respectively, at Book 608, Pages 351, 355, and 359, in the Register of Mesne Conveyances in Orangeburg County.

38. The tracts deeded to Elizabeth McLean Pence, hereinafter referred to as the "Caw Caw Swamp Property," containing a total of 174.91 acres is described as follows:

> ALL that certain piece, parcel or tract of land, situate, lying and being in School District 5 (outside) Limestone Township, Orangeburg County, South Carolina, containing 174.91 acres, being more fully and clearly shown and delineated as Tracts 2-A and 2-B on a plat of 569.52 acres surveyed for Norman McLean, et al., by Richard L. Stroman, RLS, of Edisto Surveyors, Inc., dated December 1, 1993, and filed in the Office of the RMC for Orangeburg County in Plat Book 70L, at Page 437, said Tract 2-A being allotted to Elizabeth McLean Pence and bounded and measuring as follows:
>
> TRACT 2-A
> On the NORTHWEST by Tract 1, allotted to James Lennon McLean, and measuring thereon a total of 3,456.88 feet; on the EAST by the run of Caw Caw Swamp and measuring thereon a total of 2,342.66 feet; on the SOUTHEAST by Tract 3 on said plat, being allotted to Norman M. McLean, and measuring theron a total of 3,797.6 feet; and on the WEST by Tract 5 on said plat, property of Norman M. McLean, and measuring thereon 1,126.52 feet. ALSO:
>
> TRACT 2-B
> ALL that certain piece, parcel or tract of land, situate, lying and being in School District 5 (outside) Limestone Township, Orangeburg County, South Carolina, containing 54.80 acres, and being more fully and clearly shown and delineated on the plat hereinabove referred to as Tract 2-B. Said tract being allotted to Elizabeth McLean Pence and being bounded and measuring as follows: On the NORTH by

Tract 1, said tract being allotted to James Lennon McLean, and measuring thereon 2,096.86 feet; on the EAST by Tract 5 on said plat, property of Norman M. McLean, and measuring thereon 1,039.45 feet; on the SOUTH by Tract 3 on said plat, being allotted to Norman M. McLean, and measuring thereon 1,902.74 feet; and on the WEST by property of Carolyn F. Jackson and measuring thereon 1,364.05 feet.

II. The Trust Litigation

39. On July 30, 1998, Elizabeth McLean Pence gave Brogdon a durable Power of Attorney.

40. On May 28, 1999, under the powers granted to him by the durable power of attorney, Brogdon established the Trust of Elizabeth McLean Pence. This trust provided that if prior to final distribution of the trust, Elizabeth P. Pence and all of her issue were deceased, the "McLEAN family land in Orangeburg County, S.C." was to be distributed to "issue of the Settlor's brother."

41. After her mother's death, on October 19, 2000, Elizabeth P. Pence brought a lawsuit in Marlboro County, captioned Elizabeth P. Pence, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased v. James E. Brogdon, Individually and as Trustee under Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, Coker College, and Clemson University, CA No. 00-CP-34-354 (hereinafter the "Trust Litigation"). In the Trust Litigation, Elizabeth P. Pence contested the validity of the trust established by Brogdon.

42. In the Trust Litigation, Elizabeth P. Pence was represented by Drennan. Brogdon and the trust were represented by Munford Scott.

43. On February 26, 2002, the parties to the Trust Litigation settled all of their claims and the settlement was confirmed by order of the Honorable James E. Lockemy.

44. The settlement agreement which ended the Trust Litigation provided as follows:

> [T]he Trust property will consist of (a) the Orangeburg real property, including any timber not cut because not merchantable, and (b) other investments. In order to give effect to the intention of the Decedent, as expressed in ARTICLE VI(3) of the Trust, ***that the Orangeburg real property be distributed to the issue of the Settlor's brother (Norman M. McLean)***, per stirpes, in the event that Pence does not have children or other issue to receive final distribution of the Trust property, the Trustee will separately account for the Orangeburg real property, and any proceeds therefrom in the event of sale, ***so that in the event that Pence should leave no issue to receive final distribution of the Trust property in accordance with the terms of the Trust, such real property***, as from time to time constituted, including the proceeds therefrom should it or any part of it be sold, ***shall pass to the issue of the Decedent's said brother***, and the remaining Trust property shall pass to Clemson and Coker in equal shares, as provided in said Trust.

Compromise and Settlement Agreement, pages 5-6, at paragraph 8 (emphasis added). The Compromise and Settlement Agreement is attached as Exhibit 1 to the Complaint.

45. At the time of the settlement, the Gramling Property had already been deeded into the trust. Exhibit B of the settlement lists the Gramling Property and Caw Caw Swamp Property as part of the trust estate.

46. Drennan's signature appears on the Compromise and Settlement Agreement as a witness to the signature of Elizabeth P. Pence.

47. Pursuant to the terms of the Trust, the intent of Elizabeth McLean Pence, and the Compromise and Settlement Agreement, the Gramling Property, Cannon Bridge Road Property, and the Caw Caw Swamp Property became part of the Trust.

48. Defendants Wachovia, Drennan, and Brogdon knew that the properties were part of the Trust and therefore became the rightful property of Plaintiffs.

III. Invalid Purported Transfers of the McLean Family Land

49. Drennan was the Personal Representative of the Estate of Elizabeth McLean Pence. Wachovia was the Personal Representative for the Estate of Elizabeth P. Pence and also the trustee for the trust of Elizabeth P. Pence. Drennan represented Wachovia in these capacities.

50. On October 13, 2004, Drennan, as Personal Representative of the Estate of Elizabeth McLean Pence, executed a purported deed of distribution for "½ interest in remainder" in the Cannon Bridge Road Property from her estate to Wachovia Bank, as Personal Representative of the Estate of Elizabeth P. Pence. This deed is recorded at Book 1066, Page 34, in the Register of Mesne Conveyances in Orangeburg County. This transfer is invalid.

51. On the same day, October 13, 2004, Wachovia Bank, as Personal Representative of the Estate of Elizabeth P. Pence, executed a purported deed of distribution for "1/3 interest in remainder" in the Cannon Bridge Road Property from her estate to Wachovia Bank, as Trustee of the Estate of Elizabeth P. Pence and "1/6 interest in remainder" to Stephen Pence. This deed is recorded at Book 1066, Page 38, in the Register of Mesne Conveyances in Orangeburg County. Thereafter, Stephen Pence conveyed a 1/12 interest to Harry Easterling, Jr. These transfers are invalid.

52. Twelve days later, on October 25, 2004, Wachovia Bank, as trustee of Elizabeth P. Pence, purported to transfer a "1/3 interest in remainder" in the Cannon Bridge Road Property to Marlboro Academy. This deed is recorded at Book 1066, Page 42, in the Register of Mesne Conveyances in Orangeburg County. This deed shows that the conveyance was made for only nominal consideration. This transfer is invalid.

53. On July 23, 2004, Wachovia, as Personal Representative of the Estate of Elizabeth P. Pence, purported to deed Tract 2-A of the Caw Caw Swamp Property to Money to Go, LLC. This deed is recorded at Book 1050, Page 319, in the Register of Mesne Conveyances in Orangeburg County. This transfer is invalid.

54. On July 23, 2004, Wachovia, as Personal Representative of the Estate of Elizabeth P. Pence, purported to deed Tract 2-B of the Caw Caw Swamp Property to the Thompsons. This deed is recorded at Book 1050, Page 304, in the Register of Mesne Conveyances in Orangeburg County. This deed bears a stamp stating that it was prepared by Drennan. This transfer is invalid.

55. On July 15, 2004, Marlboro Academy purported to deed Tract 2-B of the Caw Caw Swamp Property to the Thompsons. This deed is recorded at Book 1050, Page 308, in the Register of Mesne Conveyances in Orangeburg County and states that Marlboro Academy "has or may have an interest" in the property. This deed bears a stamp stating that it was prepared by Drennan. This transfer is invalid.

56. On July 15, 2004, Marlboro Academy purported to deed Tract 2-A of the Caw Caw Swamp Property to Money to Go, LLC. This deed is recorded at Book 1050, Page 316, in the Register of Mesne Conveyances in Orangeburg County and states that Marlboro Academy

"has or may have an interest" in the property. This deed bears a stamp stating that it was prepared by Drennan. This transfer is invalid.

57. On July 21, 2004, Stephen Pence purported to deed Tract 2-B of the Caw Caw Swamp Property to the Thompsons. This deed is recorded at Book 1050, Page 310, in the Register of Mesne Conveyances in Orangeburg County. This transfer is invalid.

FOR A FIRST CAUSE OF ACTION
(Action to Quiet Title - Thompsons and Money to Go, LLC)

58. The allegations of Paragraphs 1 through 57 hereof are realleged and incorporated herein by reference.

59. Upon information and belief, Plaintiffs James N. McLean, Marie McLean-Choi, William N. McLean, and Robert L. McLean hold beneficial title to the Caw Caw Swamp Property which is vacant.

60. Upon information and belief, the Thompsons and Money To Go, LLC, have or may claim an interest in the Caw Caw Swamp Property.

61. That the Plaintiffs are informed and believe that they are entitled to an order quieting title to the Caw Caw Swamp Property and determining and declaring the deeds to the Thompsons and Money To Go, LLC to be null and void and confirming title to the Plaintiffs.

FOR A SECOND CAUSE OF ACTION
(Action to Quiet Title - Marlboro Academy, James J. Pence, Jr., as Personal Representative of the Estate of Stephen Pence, and Easterling)

62. The allegations of Paragraphs 1 through 61 hereof are realleged and incorporated herein by reference.

63. Upon information and belief, Plaintiffs James N. McLean, Marie McLean-Choi, William N. McLean, and Robert L. McLean, and/or JL McLean Properties, LLC hold beneficial title to the Cannon Bridge Road Property which is vacant.

64. Upon information and belief, Defendants Marlboro Academy, James J. Pence, Jr. as Personal Representative of the Estate of Stephen Pence, and Easterling have or may claim an interest in the Cannon Bridge Road Property.

65. That the Plaintiffs are informed and believe that they are entitled to an order quieting title to the properties and determining and declaring the deeds to Defendants Marlboro Academy; Stephen Pence, and Easterling to be null and void and confirming title to the Plaintiffs.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

66. The allegations of Paragraphs 1 through 65 hereof are realleged and incorporated herein by reference.

67. The Plaintiffs ask for an Order from the Court declaring the transfers of the above-referenced property to the Defendants null and void and that all such transfers be set aside.

68. The Plaintiffs ask for an Order from the Court requiring Defendants to execute quitclaim deeds for any alleged interest in the property to the Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty - Drennan, Brogdon, Wachovia)

69. The allegations of Paragraphs 1 through 68 hereof are realleged and incorporated herein by reference.

70. Defendants Drennan, as Personal Representative of the Estate of Elizabeth McLean Pence, Brogdon, as Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, and Wachovia, as Personal Representative of the Estate of Elizabeth P. Pence, and Wachovia, as Trustee of the Elizabeth P. Pence Trust owed Plaintiffs a fiduciary duty.

71. Defendant Brogdon breached his fiduciary duty by failing to timely transfer the Cannon Bridge Road Property and the Caw Caw Swamp Property into the Elizabeth McLean Pence Trust, by mismanaging the trust property, and by failing to protect the trust beneficiaries' interests by preventing the invalid transfers of Plaintiffs' property.

72. Defendants Drennan and Wachovia breached their fiduciary duties to the Plaintiffs by knowingly transferring property which they knew rightfully belonged to Plaintiffs to Defendants Money to Go, LLC, Stephen Pence, Marlboro Academy, and the Thompsons.

73. Defendants Brogdon, Drennan, and Wachovia's actions have proximately caused damages to Plaintiffs.

74. Plaintiffs are entitled to recover their actual, consequential, and punitive damages as well as attorneys' fees from Defendants Brogdon, Drennan, and Wachovia.

FOR A FIFTH CAUSE OF ACTION
(Accounting - Brogdon)

75. The allegations of Paragraphs 1 through 74 hereof are realleged and incorporated herein by reference.

76. Plaintiffs hereby request a full and total accounting of the Elizabeth McLean Pence Trust to be completed and performed according to generally accepted accounting principals.

77. Upon completion of the accounting, Plaintiffs are informed and believe that they are entitled to an Order of this Court requiring the return of any and all income and property which should have been distributed to them under the terms of the Trust and has not been distributed.

78. Further, to the extent that property and/or funds are found to have been converted, misappropriated, or misapplied, Plaintiffs are entitled to a judgment against Defendant Brogdon in an amount equal to said funds and/or property.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract - Drennan, Wachovia)

79. The allegations of Paragraphs 1 through 78 hereof are realleged and incorporated herein by reference.

80. The settlement agreement from the Trust Litigation constitutes a valid and binding contract on behalf of the trust's beneficiaries and Defendants Drennan, the Estate of Elizabeth P. Pence, and Wachovia as Trustee of the Elizabeth P. Pence Trust.

81. Defendants Drennan, Wachovia, as Personal Representative of the Estate of Elizabeth P. Pence, and Wachovia as Trustee of the Elizabeth P. Pence Trust breached this contract by transferring Plaintiffs' property to Defendants Money to Go, LLC, Marlboro Academy, Stephen Pence, and the Thompsons.

82. Defendants' actions have proximately caused Plaintiffs damages resulting from this breach.

83. Plaintiffs are entitled to recover their actual and consequential damages as well as attorneys' fees from Defendants.

FOR A SEVENTH CAUSE OF ACTION
(Constructive Trust)

84. The allegations of Paragraphs 1 through 83 hereof are realleged and incorporated herein by reference.

85. Because of Defendants' breaches of fiduciary duty, the Court should declare a constructive trust over the Cannon Bridge Road Property and the Caw Caw Swamp Property in favor of Plaintiffs.

86. The evidence showing a breach of fiduciary duty is clear and convincing and a constructive trust is necessary because it would be inequitable to allow the Cannon Bridge Road Property and the Caw Caw Swamp Property to be retained by those Defendants who purport to hold legal title to such property.

FOR AN EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

87. The allegations of Paragraphs 1 through 86 hereof are realleged and incorporated herein by reference.

88. Defendants have been unjustly enriched in that they have sold or are in possession of property that rightly belongs to the Plaintiffs.

89. Plaintiffs are entitled to recover the Cannon Bridge Road Property and the Caw Caw Swamp Property or the value thereof, plus attorneys fees and costs of this action.

WHEREFORE, the Plaintiffs pray that this Court:

(a) Declare the deeds to Charles P. Thompson, Jr. and Cheri (Cheryl) Brown Thompson, Marlboro Academy, Harry Easterling, Jr., the Estate of Elizabeth P. Pence, Wachovia as Trustee of the Elizabeth P. Pence Trust, and Money To Go, LLC to be null and void and confirm title to the above-referenced properties in the names of Plaintiffs James N. McLean, Marie McLean-Choi, William N. McLean, and Robert L. McLean;

(b) In the alternative, a judgment against Defendants for the value of the property wrongly transferred, and for attorneys' fees and the costs of this action;

(c) Such other and further relief as may be just and proper.

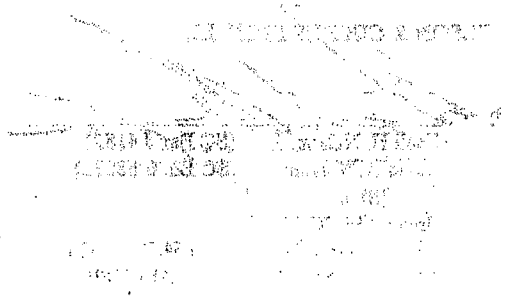
NELSON & CULBERTSON, LLC

By: _____

Cecil H. Nelson, Jr. (SC Bar # 4182)
David Alexander (SC Bar # 68632)
Post Office Box 2384
Greenville, SC 29602
864/232-3766 Fax 864/235-1420
ATTORNEYS FOR THE PLAINTIFFS

Greenville, South Carolina
December 19, 2006

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REAL ESTATE OF ELIZABETH M. PENCE TRUST
VALUED AS OF DATE OF DEATH

Parcel 1. 50 acres off Highway S35-122 (Bradley Road), Marlboro County, SC. Tax map 22-01-02-14.	27,000.00
Parcel 2. 61.28 acres on both sides of Academy Rd. Marlboro County, SC, near Bennettsville. Tax map 22-01-02-15.	36,000.00
Parcel 3. 186.32 acres on both sides of Academy Rd., Marlboro County, SC, near Bennettsville. Tax map 22-01-02-27.	127,000.00
Parcel 4. 47.7 acres on dirt road, Marlboro County, SC. Tax map 22-01-02-26.	20,000.00
Parcel 5. 135.7 acres on both sides of Academy Road, Marlboro County, SC, near Bennettsville. Tax map 22-01-02-28.	121,000.00
Parcel 6. 178.53 acres on Pence Rd., Marlboro County, SC. Tax map 22-01-02-29.	110,000.00
Parcel 7. 28.3 acres on Beverly Creek Rd., Marlboro County, SC. Tax map 22-01-02-30.	19,000.00
Parcel 8.65.82 acres, both sides of Academy Rd., Marlboro County, SC. Tax map 28-00-02-19.	69,000.00
Parcel 9. 64 acres off Academy Rd, on field road. Tax map 28-00-02-23.	36,000.00
Parcel 10. 13.9 acres in SW corner of Academy Rd. and Hwy S35-22 (Bennettsville Firetower Rd.) Tax map 28-00-02-37.	28,000.00
Parcel 11. 20.75 acres fronting on Hwy. S35-22 (Bennettsville Firetower Rd.) Tax map 28-00-02-39.	31,000.00
Parcel 12. 123.1 acres on both sides of S35-48 (East Main Street Extension) 3 miles northeast of Bennettsville, Marlboro County, SC. Tax map 28-00-02-50.	76,000.00

EXHIBIT #6

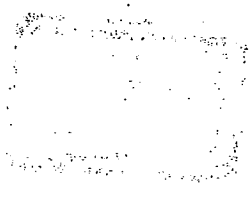
Exhibit "B"

REAL ESTATE OF ELIZABETH M. PENCE TRUST
VALUED AS OF DATE OF DEATH

Parcel 13. 44 acres off Hwy S35-22 (Bennettsville Firetower Rd.). Access by dirt road known as Manship Rd. Tax map 29-00-01-14.	27,000.00
Parcel 14. Residence and 87 acres on Academy Road, Marlboro County, SC. Tax map 28-00-02-20.	329,000.00
Parcel 15. 54.8 acres, more or less off Highway 21 near Caw Caw Swamp, having no road frontage, Orangeburg County, SC.	27,500.00
Parcel 16. 120.11 acres, more or less, off Highway 21, near Caw Caw Swamp, Orangeburg County, SC, having no road frontage.	60,000.00
Parcel 17. 307.99 acres on Highway 33 at Interstate Highway I-26, Orangeburg County, SC.	1,540,000.00
TOTAL	2,683,500.00

Exhibit "B"

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Rob Middleton, Davis, Atty
P.O. Box 487
Darlington, S.C. 29532-0487

2001 AUG 16 PM 2 28 2001 13907
REGIS ORANGEBU.. CO., S.C. DEEDS

STATE OF SOUTH CAROLINA) THIS INSTRUMENT PREPARED WITHOUT
) ABSTRACT VERIFICATION OR
COUNTY OF ORANGEBURG) TITLE EXAMINATION

EXEMPT

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that I, Norman M. McLean (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Five ($5.00) Dollars, love and affection to the Grantor paid by my children, Marie McLean Choi, James N. McLean, William N. McLean, and Robert L. McLean (hereinafter referred to as the "Grantees"), in the State aforesaid, the receipt of which is hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the Grantees, their Heirs and Assigns, all my interest in and to the following described real property, reserving, however, unto myself and my assigns, for and during my natural lifetime, all rights, easements and privileges necessary or convenient for and to the harvesting and removal of merchantable trees and timber on said property, including, but not limited to, the right to enter and leave said property for the purpose of cutting and removing said trees and timber, and to do all things necessary upon the lands in removing and cutting said trees and timber (all such reserved rights, easements and privileges being hereinafter referred to as the "Timber Rights"):

All that certain piece, parcel or lot of land, situate, lying and being in Zion Township, Orangeburg County, South Carolina, containing two hundred twenty-six and 6/10ths (226.6) acres, more or less, bounded as follows: On the North by lands now or formerly of Willie W. Murphy and lands formerly belonging to the estate of D. Lewis, on the East by North Edisto River and lands now or formerly of Mrs. Mary M. Jeffcoat, on the South by lands now or formerly of Mrs. Mary M. Jeffcoat, on the West by lands now or formerly of the estate of D. Lewis.

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, State of South Carolina, containing one hundred twenty-two (122) acres, more or less, and bounded as follows: On the North and Northeast by that certain tract of land containing one hundred twenty-five (125) acres now or formerly of James L. McLean, Jr., on the East by the Cannon Bridge Public Road; on the South by lands formerly of McLeod and McLean Lumber Company, Thomas Brickle, John Brickle and Mrs. S. Riley, and on the Northwest by the right of way of the Atlantic Coast Line Railroad Company.

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, South Carolina, containing sixty-seven (67) acres, more or less, bounded as follows: On the North and West by lands now or formerly of the estate of Minerva Jeffcoat, on the South by lands now or formerly of John Simpson and lands now or formerly of the estate of Elijah Hughes, and on the East by lands now or formerly of J. M. Brickle.

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OFFICE OF ASSESSOR
0154 SHEET 00 BLOCK 01 PARCEL 001
AUGUST 2001
COUNTY MARION K. LLOYD, COUNTY ASSESSOR

EXHIBIT #7

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ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, Orangeburg County, State of South Carolina, containing one hundred forty-three (143) acres, more or less, bounded on the North by lands now or formerly of James L. McLean, on the East by North Edisto River, on the South by lands now or formerly of the estate of J. B. Brickle and lands now or formerly of James L. McLean, on the West by lands now or formerly of James L. Mclean; the same being the northern portion of Tract B on plat made by Styles R. Mellichamp, Surveyor, dated November 29, 1901, of the lands of Mrs. M. M. Jeffcoat and Miss N. C. Joyner; this tract includes a small portion of Tract A on said plat that was conveyed to Zadie E. Brickle by Mrs. Bert Jennings.

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, County and State aforesaid, containing five and 5/10ths (5.5) acres, more or less, and bounded on the North by lands now or formerly of James L. McLean, on the East by lands now or formerly of James L. McLean, on the South by lands now or formerly of Zadie E. Brickle and on the West by lands now or formerly of James L. McLean; said tract of land being the southern portion of Tract B shown on a plat made by Styles R. Mellichamp, Surveyor, dated november 29, 1901, of the lands of Mrs. M. M. Jeffcoat and Miss N. C. Joyner.

ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Zion Township, County and State aforesaid, containing forty-seven (47) acres, more or less, bounded on the North by lands now or formerly of Zadie E. Brickle, the run of the branch being the line, on the East and South by lands now or formerly of James L. McLean, Trustee, formerly of Flora C. Ayers, on the West by lands now or formerly of James L. McLean, Trustee, more fully described on a plat made by S. D. Moss, Surveyor, dated October 14, 1935, the said plat being added to a plat of McLeod and McLean recorded in the Office of Register of Deeds for Orangeburg County, in Plat Book 6, at page 22.

DERIVATION: Being a portion of that property conveyed to Grantor by deed of James L. McLean, et. al. dated 7/3/54, and recorded 6/24/55 in Deed Book 195, Page 595, in the Office of the Register of Deeds for Orangeburg County, SC.

TMS#: Portion of 015700 01001 - #0230670

GRANTEES' ADDRESS: 3578 St. Matthews Rd.
Orangeburg, SC 29118

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TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantees, their Heirs and Assigns forever, so that neither the said Grantor nor his Heirs, nor any other person or persons claiming under him or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever, reserving, however, unto the Grantor and his assigns, for and during his natural lifetime, all said Timber Rights set forth herein.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his Hand and Seal this 9th day of August in the year of our Lord Two Thousand One, and in the two hundred and twenty-sixth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Norman M. McLean

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Lexington)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor, Norman M. McLean, sign, seal and as his act and deed deliver the within Quit-Claim Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

(Witness)

SWORN to before me this 9th day of August 2001.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 4/15/2015

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STATE OF SOUTH CAROLINA)
COUNTY OF Marlboro)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at VARIOUS PARCELS, MARLBORO COUNTY, SC bearing [illegible] County Tax Map Number PART OF 077-00-01-001 000, was transferred by [illegible] to MARK MEYER CHEVROLET, INC. on 8/9/01.

3. Check one of the following: The deed is

(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ✓ exempt from the deed recording fee because (See Information section of affidavit): EXEMPT B. (1): VALUE LESS THAN $100.
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes_____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: _____

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY FOR GRANTEE.

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9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

JOHN F. FISHER ESQ.
Print or Type Name Here

SWORN to before me this 13th day of August 2001.

Notary Public for S.C.
My Commission Expires: 2-25-2007.

Recorded this 16 day of August 20 01 in Deed Book 883 at Page 253

REGISTER OF DEEDS
ORANGEBURG CO., S.C.

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitutes a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitutes a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

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8

STATE OF SOUTH CAROLINA)
) WAIVER OF RIGHT TO SERVE AS TRUSTEE
COUNTY OF MARLBORO)

WHEREAS, Elizabeth M. Pence, a resident of Marlboro County, South Carolina, acting through her attorney-in-fact, James E. Brogdon, established a certain Trust Agreement on the 28th day of May, 1999, naming James E. Brogdon as the initial Trustee; and

WHEREAS, Elizabeth M. Pence thereafter died on October 3, 1999; and

WHEREAS, ARTICLE VII(1) of said Trust Agreement provides that, in the event that James E. Brogdon should become unable or unwilling to serve as Trustee, Wachovia Bank and William N. McLean are to serve as successor Trustees; and

WHEREAS, William N. M Lean wishes to make known his intention not to serve as a successor Trustee in the event that James E. Brogdon should become unable or unwilling to serve as Trustee.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that William N. McLean does hereby now and forever WAIVE THE RIGHT TO SERVE AS A SUCCESSOR TRUSTEE under the Elizabeth M. Pence Trust Agreement dated May 28, 1999.

SIGNED at 12:00pm, 1333 Main St. Columbia, SC this 25th day February, 2002.

WITNESSES:

William N. McLean

Exhibit "C"

EXHIBIT #8

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) C/A No.: 2006-CP-38-1523

Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean and JL McLean Properties, LLC,

Plaintiffs,

v.

James B. Drennan, III, as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr., as Trustee of the Trust Agreement of Elizabeth McLean Pence, dated May 28, 1999; Wachovia Bank, National Association, as Personal Representative of the Estate of Elizabeth P. Pence, Wachovia Bank, National Association, as Trustee of the Elizabeth P. Pence Trust, Marlboro Academy, Inc., Charles P. Thompson, Money To Go, LLC, James J. Pence, Jr, as Personal Representative of the Estate of Stephen Pence and Harry R. Eastlerling, Jr.,

Defendants.

COPY

DEPOSITION OF

JAMES E. BROGDON, SR.

****

Monday, November 19, 2007
10:28 a.m. - 12:40 p.m.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

The deposition of JAMES E. BROGDON, SR., was taken on behalf of the Plaintiffs at the law offices of Nexsen, Pruet, 1901 Main Street, 17th Floor, Columbia, South Carolina, on the 19th day of November 2007 before Diane M. Hendricks, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

APPEARANCES:

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Attorney for the Defendant, Marlboro Academy

Also Present: James B. Drennan, III, Esquire

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature Sheet attached at page 97.

(Plaintiffs' Exhibits Numbered One through Seven were pre-marked for identification purposes.)

JAMES E. BROGDON, SR., having been duly sworn, deposed and testified as follows:

MR. BROGDON - EXAMINATION BY MR. ALEXANDER:

Q: Good morning Mr. Brogdon.

A: Good morning.

Q: We met a little bit ago. My name is David Alexander. I'm an attorney in Greenville with the firm Culbertson and Alexander. And I represent the plaintiffs in this matter. Have you ever had your deposition taken before?

A: It's been some years.

Q: Okay. I'm going to lay out some of the ground rules of a deposition for you just to refresh your memory a little bit. The first thing this is, is this is not a marathon. If you get tired or want to take a break or need another glass of water, please just speak up. We can take a break any time you want. The second thing is, is the court reporter has to take down verbal responses. That means yeses and noes. In normal conversation you and I would say uh-huh and uh-uh and nod our heads, but today we can't do that, so she can take that

down. Do you understand that?

A: Yes.

Q: I'm gonna ask you some bad questions, questions that are very poorly worded. If you don't understand a question I ask, please ask me to repeat it or to rephrase it, okay?

A: Okay.

Q: If you answer a question that I ask, I'm just gonna assume that you understood the question, if you think that's fair. Let's see. Once the deposition begins, you can't talk to your lawyer about the substance of your testimony during the breaks. You can talk to him about the weather or sports or anything else, but you can't talk about the deposition itself. That's about all of the ground rules. Do you understand all that?

A: I think so.

Q: Okay. I've got some other questions I need to ask you. Please don't be offended by any of these. I ask everybody in depositions I take these. Are you on medication that would inhibit your ability to give true and accurate testimony today?

A: No.

Q: Is today a day as good a day as any other to take your deposition?
A: Yeah.
Q: Have you ever been convicted of any crimes?
A: No.
Q: Have you ever been arrested for anything?
A: No.
Q: Let's see. Do you hold any business or professional licenses?
A: Pardon?
Q: Do you have any business licenses or professional licenses?
A: Yes.
Q: Name those for me.
A: Certified public accountant.
Q: Okay. How long have you been a CPA?
A: Since 1952.
Q: Where did you grow up originally?
A: In Sumter.
Q: Did you go to high school in Sumter?
A: Uh-huh. Graduated from high school.
Q: Which high school did you graduate from?
A: Edmonds High School. But it -- it was later Edmonds. At that time it was Sumter -- it was Boys' Sumter High.

Q: Okay.
A: We were segregated.
Q: Okay. Did you go to college? I assume you did if you're a CPA. Where did you go to school?
A: Presbyterian before service and University of South Carolina after service.
Q: What branch of the service were you in?
A: Infantry.
Q: Did you have any more schooling after USC?
A: No.
Q: What was your degree? What major?
A: Accounting.
Q: Did you go into -- immediately into the accounting practice after graduating from USC?
A: No.
Q: What did you do after you graduated?
A: I taught Presbyterian Junior College in Maxton. I taught accounting and related business subjects.
Q: Okay. About how long did you do that?
A: A year.
Q: Okay. Has most of your professional life been spent in accounting in Marlboro County?
A: Right.
Q: When did you get to Marlboro County?

A: January 1st, 1954.
Q: What took you to Marlboro County?
A: Pardon?
Q: What took you to Marlboro County?
A: I was employed by a firm in Laurinberg and we decided to open an office in South Carolina, and since I had a South Carolina certificate.
Q: From Orangeburg, South Carolina?
A: From Laurinberg.
Q: Oh. From Laurinberg. What is the current name of your firm?
A: Lundin and Brogdon, CPAs.
Q: How long has it been constituted like that?
A: Since 1953.
Q: Okay. That's some admirable stability there. Who is Mr. Lundin?
A: He's deceased.
Q: Okay.
A: Many years ago.
Q: Okay. Do you have any other partners in that firm?
A: I have a minor partner.
Q: What is his or her name?
A: I seldom see him. I don't know. I'll think of it shortly.

Q: That's fine. Does he work in the same office with you?
A: No, no.
Q: Where is he?
A: He works in Myrtle Beach, Conway.
Q: Okay. Is your office in Bennettsville?
A: In Bennettsville.
Q: So you lived continuously in Bennettsville from 1953 to today?
A: Yeah.
Q: Do you have any family in Orangeburg County, South Carolina?
A: No.
Q: What about your -- are you married?
A: Widowed.
Q: Did your wife's family, did any of them come from Orangeburg County?
A: No.
Q: You know this litigation's about Elizabeth McLean Pence's trust and the assets of that trust?
A: Yes.
Q: Other than dealing with Ms. Pence's trust, have you ever been involved in any litigation before?

A: Not as a defendant, no.
Q: How about as a plaintiff?
A: No. Most of my experience has been representing clients in embezzlement cases, not that type of -- embezzlement cases.
Q: Embezzlement cases. I think you said earlier that you had given a deposition before?
A: Somewhere. I don't know.
Q: Was that in connection with an embezzlement case?
A: No.
Q: Do you remember what it was in connection with?
A: No.
Q: Did you give any depositions related to any of the Elizabeth McLean Pence matters?
A: No.
Q: Other than embezzlement cases, what other types of focuses do you have in your business?
A: I don't know that I -- I was involved in any other type.
Q: Was it -- did you have a general accounting practice --
A: Right.
Q: -- as well?
A: Uh-huh.

Q: So if, for example, a small business man came to you and said, "I need somebody to do my books, file my taxes," he'd come to you?

A: Well, we performed audits in government units, and this is where we had problems with the embezzlement.

Q: In the government units?

A: Yeah.

Q: All right. Would the government agency be your client --

A: Yes.

Q: -- in those cases?

A: Yeah.

Q: Okay.

A: City or county or --

Q: So Bennettsville for example. Would that be --

A: Yeah. I'm not -- we were not involved with Bennettsville.

Q: Marlboro County. Did you represent them?

A: At one point, yes.

Q: What about involvement in estate planning?

A: We worked with it -- with a client. We retained an attorney to handle the legal work.

Q: Okay.

A: We worked only with the allocation of taxes.

Q: Okay. Were there -- are there any attorneys that you work with, any estate planning attorneys that you work with more often than others?
A: I don't know if there are.
Q: Okay.
A: Because the attorneys that are involved are the clients' -- attorneys for our clients.
Q: But do you frequently have contact with the attorneys?
A: Yeah.
Q: In determining what estate planning measures and tax consequences might be?
A: Uh-huh.
Q: Have you been involved in -- well, for example, the Elizabeth McLean Pence Trust. Before you were involved in that, if I think I understand it, you were the personal representative for Mr. Pence's estate. Is that correct?
A: Yes.
Q: Had you ever served as a personal representative in an estate before that?
A: Just a friendship matter as well as a client matter.
Q: Had you ever served as a personal

representative before Mr. Pence's estate?
A: Uh-huh.
Q: About how many times would you say?
A: Maybe two or three.
Q: Okay.
A: Family mostly.
Q: Not necessarily in a business capacity?
A: No.
Q: How about as trustee for other trusts of some kind? Was this the first time you'd ever been a trustee?
A: The first time.
Q: How did you know Mr. Pence?
A: I actually knew his sister and the family before I knew Mr. Pence. And this would probably have dated back to 1949 or 1950. And I met Mr. Pence after we moved -- after we moved to Bennettsville.
Q: How did you -- do you remember how you met him?
A: I really don't remember how I met him.
Q: Okay. Were you social acquaintances or friends before you were involved -- well, I don't know. Were you involved in any business together?
A: I probably met him and started preparing his tax work about the same time, which would have

been in the early '50s or mid '50s rather.
Q: Were you his accountant from the '50s on until his death?
A: Right.
Q: Did you do his personal taxes?
A: Uh-huh.
Q: What was Mr. Pence's business?
A: He was a farmer.
Q: Did he have business tax returns as well that you prepared for him?
A: Pardon?
Q: Did you prepare his business' tax returns?
A: Well, the --
Q: Or any --
A: The business tax returns were prepared as a personal tax return.
Q: Did you get to know his wife Elizabeth McLean Pence?
A: Yes, I did.
Q: Did you get to meet her about the same time that you met Mr. Pence?
A: No. They were not married.
Q: Okay. When did you first meet --
A: She lived in -- where did she live? She lived in Columbia and I think we -- I probably -- we

probably met her -- met her before they were married. And then they were married and she moved to Bennettsville. And we continued to know her.

Q: Okay. Was this -- was your relationship with them, I mean, was it more substantial than the standard business acquaintanceship?

A: Pardon?

Q: Was it a more substantial, personal relationship --

A: Friends, close friends.

Q: See each other for dinner and --

A: Yeah.

Q: -- have each other over at each other's house?

A: Well, visiting. We didn't do a lot of eating together.

Q: Okay. Did your kids play together?

A: Play cards, bridge and that sort of thing.

Q: About when would you say -- how long did you know Mrs. Pence? How long were they married? Do you remember?

A: They were probably married in the late '50s.

Q: Did you go to the wedding?

A: No.

Q: All right. Did Mr. and Mrs. Pence file joint

tax returns?
A: Yes.
Q: Did you prepare those?
A: Right.
Q: Are you on any community boards or any community service groups in Marlboro County?
A: Pardon me?
Q: Do you belong to any community boards or --
A: Not anymore.
Q: Which one did you belong to?
A: Jaycees, Rotary Club, Presbyterian church and then various organizations at one time or other.
Q: Right.
A: Different groups.
Q: How about Marlboro Academy? Have you ever done any work for them?
A: Yes.
Q: And so -- as an accountant?
A: Uh-huh.
Q: Have you ever served as a member of their board or any --
A: No.
Q: In any capacity?
A: No.

Q: Is your only connection with them serving as their accountant?
A: Right.
Q: Have you ever done any work for Wachovia?
A: No.
Q: How about Charles and Cheryl Thompson, another defendant in this case. Have you ever --
A: No.
Q: -- done any work for them? How about Dewall Waters? Have you ever done any work for him?
A: No.
Q: Okay. How about Mr. Easterling? Have you ever done any work for him?
A: No.
Q: Okay. How about Harry Easterling, Sr.? Have you ever done any work for him?
A: Yeah.
Q: Tell me what kind of work you've done for him.
A: His personal return.
Q: Have you ever done his business returns?
A: That's a part of his personal. Yes, we have.
Q: Okay. Do you have a social relationship with Mr. Easterling?
A: Pardon?
Q: Do you have a social relationship as well with

Mr. Easterling?
A: Hmm?
Q: Do you have a social relationship? Are you friends, other than --
A: Yeah. Friends.
Q: Okay. I mean, do you see each other outside of business?
A: I see very few people outside of business.
Q: Okay. How about in the past?
A: Occasionally we would, yes.
Q: But not as close a relationship as with the Pences?
A: Oh, no.
Q: Okay. How did you first come to know Munford Scott?
A: I can't tell you who the client was, but we had a client retained Mr. Scott for preparation of wills and that sort of thing. This is how I became acquainted with him.
Q: How long ago would that have been?
A: Probably in the '60s -- or '70s.
Q: Would you say you've done a good bit of work since the '70s with Mr. Scott?
A: Periodically. We had a client who retained Mr. Scott and yes, we were working.

Q: Did Mr. Scott represent Mr. or Mrs. Pence?
A: He represented Mrs. Pence through me.
Q: Did you introduce him and Mrs. Pence?
A: Yes, I did.
Q: Tell me how that came about.
A: It was -- Mrs. Pence wanted to prepare power of attorney to me. And Mr. Scott prepared it.
Q: Did you suggest Mr. Scott as the person to prepare that?
A: I probably did.
Q: Do you know why you would have suggested Mr. Scott?
A: Well, I -- he was practiced -- he had the experience in the area that that was in.
Q: Did he practice in Florence at the time?
A: Yeah, yes.
Q: Any reason you used a Florence lawyer as opposed to somebody in Marlboro County?
A: At that time we did not have anyone who specialized in estate work.
Q: This was after Mr. Pence's death. Is that correct?
A: That's correct.
Q: Can you describe to me a little bit more about what Mrs. Pence's wishes were or what she was

trying to accomplish when she came to you for that durable power of attorney?

A: She wanted to not go through the formality of the things she wanted to do with it, and trying to make up her mind as to what she wants to do with it.

Q: Which formalities are you talking about?

A: Well, such as the -- having the power of attorney and having to be prepared, her trustees prepared and that sort of thing.

Q: So if I understand your answer right, then that means she wanted you to handle all of that for her?

A: Yes.

Q: And is that what she told you before the power of attorney was prepared?

A: Pardon?

Q: Is that what she told you before the power of attorney --

A: Yes.

Q: -- was prepared? She wanted you to handle all of her affairs?

A: That's correct.

Q: How was her health at that time?

A: It was -- at that time it was pretty good. She

was aging and later started going downhill. But at that time she was out and going on her own, driving anywhere she wanted to and visiting where she wanted to.

Q: Mr. and Mrs. Pence were fairly well to do --

A: Pardon?

Q: They were fairly well to do, I guess?

A: They could be considered that.

Q: Was she -- how much -- do you have any sense of how much Mrs. Pence was involved in management of their financial affairs before Mr. Pence's death?

A: I don't really have a handle on her involvement.

Q: Did Mr. Pence come to you for routine financial advice or financial planning?

A: No.

Q: Did he do that all himself, do you know?

A: No.

Q: Well, do you know what -- did Mrs. Pence, when she came to you for the power of attorney, did she have any specific objectives in mind as to what to do with her assets?

A: Her objective was to protect the assets and provide for -- transfer of income for life to

her daughter.
Q: And her daughter goes by Liz Pence. Is that correct?
A: Pardon?
Q: Does her daughter go by Liz Pence?
A: Well, they had some nicknames. She was known as Elizabeth.
Q: Okay. There's been a lot of confusion regarding the names in this case as far as Elizabeth Pence and Liz Pence.
A: Right.
Q: For argument's sake, in this one, we'll call her Liz Pence and call Elizabeth McLean Pence Elizabeth, if that suits you.
A: Okay.
Q: I guess growing up with them you knew Liz Pence since she was a baby. Is that fair to say?
A: Pardon?
Q: Did you know Liz Pence from the time she was an infant?
A: Right.
Q: What can you tell me about Liz Pence?
A: I mean, what are you asking me to tell you about Liz Pence?
Q: Well, did she work?

A: No.
Q: Was she married?
A: No. Well, yes, she was. After her mother's death.
Q: Was that Stephen Pence?
A: Right.
Q: Were they related?
A: I understand they possibly were.
Q: Okay. Did your -- did Elizabeth McLean Pence, did she know Mr. Stephen Pence?
MR. PAYNE: Call her Lib. That's --
MR. ALEXANDER: Lib?
MR. PAYNE: He knows the mama as Lib.
MR. ALEXANDER: Okay.
MR. PAYNE: He calls her Elizabeth? I think he's getting confused.
A: At home the mother's known as Lib.
Q: Okay.
A: And the daughter was known as Elizabeth.
Q: Okay.
A: I have to switch back and forth with you.
Q: Okay. We'll get on the same page.
A: Okay.
Q: Lib and Elizabeth.
A: All right.

Q: Did Lib know Stephen Pence?
A: I don't know.
Q: Did she know of her daughter's relationship with him?
A: I don't know.
Q: Why didn't Lib just leave all of her assets directly to her daughter?
A: She was -- she eventually decided that she wanted to have the assets controlled -- the -- the daughter was to receive the income for life, and if necessary to invade principal. And then the -- as the trust said, half would go to Coker College and half to go to Clemson College. Those are the colleges that she and her husband wished for it to go to.
Q: Do you know why she wanted to do that?
A: Just -- I think -- I don't know; I don't know.
Q: Did Lib and Elizabeth get along?
A: I don't think that Lib saw Elizabeth in the last several years before she died.
Q: Do you know why that was?
A: I don't know.
Q: Where did Elizabeth live those several years before Lib died?
A: The last year was in Orangeburg.

Q: Did she live in Marlboro County before that?
A: No. She lived in Spartanburg.
Q: Do you know -- I mean, do you know if Elizabeth was employed?
A: I don't think so.
Q: Do you know what she was doing in Spartanburg?
A: Pardon?
Q: Do you know what she was doing in Spartanburg?
A: I really don't. I think at one time I understood she was doing some charity-type work, charitable organization. It was a contribution-type. She was not being paid for it, as far as I know.
Q: Did Lib give Elizabeth money to live on?
A: Yes.
Q: Did she do that even in those last years when they didn't see each other?
A: Gifts had been made to Elizabeth prior to her father's death, over the years. She had assets in her own right.
Q: What about during those years before her death? Do you know if Lib gave Elizabeth any money?
A: I don't know.
Q: Did Lib ever express to you any concerns about Elizabeth's ability to manage her own financial

affairs?
A: That was the reason she was controlling -- controlling the assets.
Q: What were some of those concerns?
A: I could not tell you what was in her mind.
Q: Did she ever tell you any of the reasons why she wanted to do that?
A: Not to my recollection.
Q: Did you ever hear anything in the community, any rumors or speculation about that?
A: Other than Elizabeth's lifestyle and, you know -- I don't know what it was.
Q: What did you hear about Elizabeth's lifestyle?
A: Well, she had mental problems and then she had physical problems.
Q: What kind of mental problems did she have?
A: I don't know. I couldn't put a name to it.
Q: Do you remember what the people in the community said about her mental problems?
A: No.
Q: What about her physical problems? Do you know?
A: I don't know.
Q: Do you know what people in the community might have said?
A: No.

Q: Okay. Did you have any contact with Elizabeth during those last years of Mrs. -- of Lib's life?
A: I saw her one time. I just -- I think it was the day before or the day after her mother passed away.
Q: Do you remember anything about that meeting?
A: No.
Q: Do you know whether or not Lib communicated to Elizabeth her plans to leave her assets to Clemson and Coker?
A: I'm not aware that she did.
Q: Did she tell you she was -- did she ever -- did Lib ever tell you she was not gonna tell Elizabeth about her plans?
A: No.
Q: It looks like Lib gave you power of attorney in 1998. Does that sound about right?
A: That's about right.
Q: All right.
A: Ninety-eight or '99.
Q: I'll give you Plaintiffs' Exhibit Number One. Do you recognize that document?
A: Yes, I do.
Q: What is that?

A: That's the trust agreement.
Q: Who drafted this?
A: Mr. Scott.
Q: Did Lib tell Mr. Scott or tell you that she wanted this drafted?
A: She did. She told me.
Q: Did she tell you this -- let me back up a second. Was this trust contemplated at the time of the durable power of attorney?
A: It was discussed. It was in discussion; it was -- all of this was in discussion even before the power of attorney.
Q: What date was this trust executed?
A: I don't see the date.
Q: It might be on the second page of that.
A: The 28th day of May 1999.
Q: If you flip to the third page from the back.
A: Uh-huh.
Q: One more. Let's flip one more page this way (indicating). There we go. Okay. That's your signature down there above the trustee?
A: Right.
Q: Did you sign it for Elizabeth McLean Pence?
A: I did.
Q: Was she there when you signed it?

A: Pardon?
Q: Was Elizabeth McLean Pence there when you signed this?
A: She was not.
Q: What was her health like at the time that this trust was executed?
A: Good.
Q: Okay. Were there -- did you have any questions about her competency, her mental competency?
A: I did not.
Q: Did you give her a copy of this trust?
A: Yes, I did.
Q: Did she discuss it and its contents with you before it was drawn up?
A: Yes.
Q: Did she tell --
A: It was drawn up in accordance to her request.
Q: So she told you how she wanted her property to be distributed?
A: That's correct.
Q: And you had it drawn up just like she said?
A: That's correct.
Q: Go over to -- let's see here. The page that has Article VII at the bottom.
A: Okay.

Q: There you are. All right. If you look at the paragraph right above Article VII, it says, "Gift to named person. McLean family land in Orangeburg, South Carolina." Do you see that paragraph?
A: I see that.
Q: What do you remember about her directions to you and to Mr. Scott about this disposition?
A: The only land that I was aware of and that she was referring to was the property that was known as the Grambling property, which was rented to -- which was rented.
Q: Okay. Did you know about the Grambling property before this trust was drawn up?
A: I probably did.
Q: How would you have come to find out that they owned this property?
A: The rent from this property was reported in their income tax return every year.
Q: What about the property taxes on that?
A: They were paid.
Q: Would that be a deduction on the income tax?
A: Yes, it would.
Q: All right. So really, any property they owned would be -- the property taxes for it would be

a deduction --

A: Right.

Q: -- on their property taxes. Okay. Did you know any of Lib's siblings?

A: No.

Q: Did you know her brothers?

A: No.

Q: Were you aware of any issues with her brother Lennon?

A: Her --

Q: Her brother Lennon McLean?

A: No. I don't -- I don't know.

Q: Do you know if Lib had any -- do you know what Lib's relationship was like with her bother Norman McLean?

A: As far as I know, it was friendly. I first met him when he -- when he and his wife came to visit Lib.

Q: Okay. Before this trust was established, there was a -- in the mid '90s I'll represent to you there were some -- there was a partition action on another piece of property in Orangeburg called the Caw Caw Swamp property. That would have been about 1994. Were you involved in that?

A: I was not even aware of it.
Q: Okay. Did -- did Lib express to you what her opinion of her nieces and nephews by Norman McLean? Did she ever express to you any opinions she had about them?
A: No.
Q: Was it her intention that this land, this McLean family land would be theirs if her daughter didn't have any issue?
A: That's correct.
Q: Did she tell you that?
A: Yes.
Q: Did it look like -- at this point how old would Elizabeth have been?
A: You mean when the trust was drawn?
Q: Yes, sir.
A: Probably close to 30, somewhere around 30.
Q: Okay.
A: Give or take a year or two.
Q: Okay. Her intention that this land should go to Norman McLean's children --
A: That's correct.
Q: -- did she say -- did she say specifically the Grambling land ought to go to them?
A: Well, that's right. That's what it's called

and that was the land we were talking about.
Q: Okay.
A: As far as I knew that was the only property that was owned in Orangeburg.
Q: Did she ever mention the Caw Caw land to you?
A: No.
Q: Do you think she knew she owned it?
A: Pardon?
Q: Do you think Lib knew that she owned it?
A: I have no idea.
Q: She had a good bit of property in Marlboro County too, didn't she?
A: Yes.
Q: Was this all farm land in Marlboro County?
A: Most of it was all farm land.
Q: Had her husband acquired this land?
A: Yes.
Q: Did she have a good grasp of what she owned in Marlboro County?
A: Pardon?
Q: Did she have a good grasp of all the properties and tracts that she owned in Marlboro --
A: Yes. She understood the property was there.
Q: Paid all her taxes on time?
A: Uh-huh.

Q: After you took over as durable power of attorney, were you -- how deeply involved in managing her day-to-day financial affairs were you?
A: I was not seriously involved in her day-to-day financing affairs until her -- you know, later.
Q: About when would that have been?
A: That would have been in the -- not very long before she passed away.
Q: Do you know what kind of illness she had?
A: She had physical problems and mental problems.
Q: What kind of mental problems did she have?
A: I think it would be defined as Alzheimer's.
Q: I'm still on the same page here on this exhibit. If you'll look down there, the last paragraph. It lists two successor trustees, Wachovia Bank and William N. McLean. Is that correct?
A: Uh-huh.
Q: Had you ever met William N. McLean?
A: No.
Q: Was it Lib's direction that he be a co-trustee?
A: Yes.
Q: Her direction that Wachovia would be a co-trustee?

A: Yes.
Q: Do you know why she selected Wachovia Bank?
A: Well, that was where she did her banking.
Q: Did she have a relationship with any trust officer or any particular banker at Wachovia?
A: Not that I'm aware of.
Q: Did she put you in touch with anybody at Wachovia to help with her financial affairs?
A: No. They did not help with her financial affairs.
Q: After her health failed, were you doing things like paying her utility bills?
A: Paying her bills, and she had sitters and paying her sitters and making sure that the sitters were there.
Q: And during that time did you have any contact with Elizabeth?
A: No.
Q: At the same time you were -- were you also the personal representative of Mr. Pence's estate?
A: Yes.
Q: What was the plan for the assets of Mr. Pence's estate?
A: They were to go to Mrs. Pence.
Q: Okay.

A: Lib.
Q: After Lib -- were any of these -- were any of Mr. Pence's properties gonna also be part of the trust?
A: Pardon?
Q: Were any of Mr. Pence's property, any of the property that would have gone into his estate, would they also be --
A: The property would have stayed within the trust.
Q: Okay.
MR. HENDERSON: I'm sorry. Can you say that one more time?
MR. ALEXANDER: He would like for you to repeat what you just said.
WITNESS: Ask the question again.
MR. ALEXANDER: Yes, sir. The property that was in Mr. L.E. Pence's estate, what was the plan for the property after it was --
WITNESS: All of the property that was in his estate went to Mrs. Pence and was then transferred to the trust.
MR. EASTERLING: Okay. Thank you. I just want to make sure I write it down right.
Q: Mr. Brogdon, I'm gonna give you Plaintiff's

Exhibit Number Two and let you take a look at that. Do you recognize that document?

A: Yes, I do.

Q: What is that?

A: This is a deed for real estate.

Q: For which real estate?

A: This is the real estate that was in Orangeburg County.

Q: Can you tell what date this was executed?

A: May the 28th of 1999.

Q: Is this deed from Mrs. Pence to the trust?

A: That's correct.

Q: All right. Did you sign this deed for her as her power of attorney?

A: I did.

Q: Was she there when you signed it?

A: No.

Q: It looks like this was executed on the -- on the same day as the trust document. Is that correct?

A: I think that's correct.

Q: Where was this document executed?

A: It was executed in Mr. Scott's office.

Q: Did you travel to Florence to sign all these?

A: I did.

Q: Did you sign any other documents while you were there that day?
A: I signed the other documents that were related to this.
Q: What other documents? Do you remember?
A: This document may have been mailed to me by Mr. Scott. No, I signed it in Florence.
Q: Okay.
A: Because his legal people witnessed it.
Q: Those are the witnesses there of people that worked for Mr. Scott?
A: That's correct.
Q: Did you sign any other deeds to the trust that day? Do you remember? I know it was a long time ago. If you don't remember, that's fine.
A: The only other deed I signed was some Marlboro County property, and I'm not sure whether it was the same date or a different date.
Q: All right. Did you sign multiple deeds for the Marlboro County property or just one?
A: I signed, I believe it was one with all the descriptions.
Q: So one deed attachment with all the legal descriptions after it?
A: I think that's what it was.

Q: How did you know or how did you come up with the list of property to be deeded into the trust?

A: Lib, after much consideration, said, "I want to transfer the property into the trust." She took me to her closet in her home and on a shelf in the closet was a metal box. She said, "Here are the deeds to the properties I want transferred."

Q: And in that box was the deed for the Grambling property?

A: No. It was not -- it was not there. We -- that was a separate deed. And I think that we had to -- she wanted to know about it or I asked her about it. And we had to find -- Mr. Scott had to get someone to get copies of the deed in order -- out of Orangeburg County, as I recall.

Q: Was it all Marlboro County deeds that were in that box in the closet?

A: I think so.

Q: So would that have been all deeds that Mr. Pence probably collected through the years?

A: That is correct.

Q: When you all went through that box, was -- did

-- was she expected to see the Grambling deed in there?

A: I don't know. I couldn't answer that question.

Q: Did she -- but she told you that there was another piece of property out there somewhere?

A: She would -- I was aware of the Orangeburg property, as I've told you.

Q: Okay.

A: Because of the rents and paying for the taxes every year.

Q: Okay.

A: And I was aware that it was property that she had.

Q: Would you also have been aware of the Caw Caw property at that time?

A: No.

Q: Well, who -- did she pay the property taxes on the Caw Caw property?

A: When the taxes were being paid, I did not see the tax receipts, I only saw the checks for the payment of taxes. So I have no way of knowing whether -- how the Caw Caw property was listed for taxes.

Q: Okay. Would you still have those records anywhere?

A: Do I still have those records?
Q: Yes, sir.
A: I have copies of tax returns.
Q: Okay. It would list on there property taxes by Mr. and Mrs. Pence?
A: It would only show -- it's a joint return. It would not indicate the payment.
Q: It would be one lump sum of all the property taxes they paid?
A: That is correct.
Q: Okay.
A: No. The returns would show the rent that was received and the taxes that were paid, on what's called a Schedule E.
Q: Would it list out the properties owned?
A: It would -- where the rental properties are listed.
Q: If they didn't rent it out, would it be listed?
A: No.
Q: Would it be listed anywhere else on their tax return?
A: No.
Q: You still have copies of those tax returns?
A: Yes, I do.
MR. ALEXANDER: Mr. Payne, would you get me those?

A: How many years are you talking about?
Q: I would guess from '96 forward.
A: That's a problem.
Q: Okay. Why is that a problem?
A: Because of storage, and it's stored away in three or four different locations.
Q: But they exist somewhere?
A: Yeah. They're somewhere.
Q: Okay.
MR. PAYNE: He'll find them. We'll charge you.
MR. ALEXANDER: We'll get them somewhere.
Q: What -- for the Marlboro County property and the Orangeburg County property that they were paying taxes for, tell me what documentation they would give you for that property tax for their tax returns.
A: A check that they give to the county.
Q: Okay. What about a paid tax receipt?
A: No. They had no reason -- they had the paid tax receipts, I'm sure. In later years I found out they did have them.
Q: Okay. But they never gave that to you?
A: I did not use the paid tax receipts.
Q: Okay. Who told Mr. Scott to find the deed for the Grambling property?

A: I probably did.
Q: Have you ever ordered a title search --
A: No.
Q: -- before?
A: No.
Q: You would just leave that up to Mr. Scott?
A: There was not a title search on this property.
Q: Okay. How did you -- why do you think -- I mean, do you think Mrs. Pence remembered that she owned this Caw Caw property at the time this trust was set up?
A: I have no idea.
Q: Do you know why she wouldn't have mentioned it to you?
A: No.
Q: Do you have any reason to believe that she wouldn't want this property treated like the other Orangeburg property?
A: Pardon?
Q: Do you have any reason to believe that she wouldn't want to treat the Caw Caw property just like the Grambling property?
A: She probably didn't -- she probably didn't remember that she owned the Caw Caw property separately from the property that was deeded.

Q: Was there any real estate that she owned anywhere that she did not want to go into the trust?
A: No.
Q: So every other parcel that she owned, she wanted it in the trust?
A: The first -- the only parcel that she owned, she owned her own Orangeburg property. That was hers.
Q: Okay.
A: The rest of the property, except for their own place, was in Mr. Pence's name and was transferred -- in fact, she -- the trust was funded by -- the property was transferred directly from Mr. Spence's estate to the trust, because it had not been transferred from his estate to Mrs. Pence.
Q: And as PR, were you the one --
A: Right.
Q: -- that accomplished all of that?
A: That's right.
Q: So going back to my question, as far as you knew, all of her real estate, whether she owned it separately or whether she got it from Mr. Pence, was supposed to be in the trust?

A: That's correct.
Q: So knowing that, I mean, is there any reason to believe that the Caw Caw property was not supposed to be in the trust?
A: I have no -- I had no knowledge of the Caw Caw property when the trust was formed and funded.
Q: Do you think that if you had known about the Caw Caw property at the time, that it would have made its way into the trust?
A: That would be Mrs. Pence's decision. I couldn't answer that.
Q: All right. Would you have asked her about it?
A: I didn't know about it.
Q: But if you had known, would you have asked her about it?
A: Yes. I would have.
Q: All right. Is there anything she ever said that would lead you to believe that she wouldn't treat it just like all the rest of her property?
A: I didn't understand your question.
Q: Sure. Is there any reason from anything that Mrs. -- that Lib might have said, that would lead you to believe that she would treat the Caw Caw property any differently than the

Grambling or her Marlboro property?
A: It was not ever discussed.
Q: That's not exactly my question. Is there -- is there anything, did she ever say, "Well, I've got maybe some property that I want to leave specifically for Liz"?
A: No. She didn't say that at all. As I understood it, the property that we knew about represented all the property.
Q: I got ya.
A: And that is what we were transferring.
Q: When she gave you instructions about putting the real estate in the trust, did she say, "I want Parcel A over here in Marlboro"? She said, "I want all my property in trust"?
A: Yes.
Q: Okay. Did you ever order a title search in Marlboro County to determine what property she had?
A: No.
Q: How about in Orangeburg County?
A: No.
Q: Do you know if Mr. Scott ever did that?
A: I don't know that there was a title search done, no.

Q: Okay. Were you aware of any litigation involving Lennon McLean's conservator of the right to cut some timber?
A: What?
Q: You know her brother Lennon McLean lived down there in Orangeburg?
A: Okay.
Q: And he had a conservator --
A: Right.
Q: There was some litigation concerning the right to cut some timber and sell it that his conservator brought. Were you involved in that?
A: No.
Q: Okay. How did you --
MR. ALEXANDER: I'll tell you what. Let's take a break. It's probably a good time for a break.
(Off the record from 11:19 a.m. until 11:27 a.m.)
Q: Mr. Brogdon, do you know if Munford Scott ever met Lib?
A: Yes.
Q: Were you there?
A: Yes.
Q: When was that?
A: It was sometime in -- probably in '99.

Q: Would that have been before the trust was drawn up?
A: Yes.
Q: Where was that meeting?
A: In my office.
Q: Do you know if they had any other meetings?
A: I don't recall any other meetings.
Q: Okay. What's your first contact with Jim Drennan?
A: He represented Elizabeth.
Q: Had you ever met him before that?
A: No.
Q: How did he first contact you in that representation of Elizabeth?
A: I don't remember.
Q: Okay.
A: We had some telephone calls, correspondence during that period of time.
Q: Okay. Did he ultimately bring a lawsuit on behalf of Elizabeth?
A: He did.
Q: Before that lawsuit was filed, was there -- did he ever express any of Elizabeth's concerns about the trustee?
A: No.

Q: Did you know that the lawsuit was gonna be filed before it was filed?
A: I don't recall that I knew it until it was filed.
Q: All right. What about, did you have any contact with Elizabeth after her mother died about the trust prior to speaking with Mr. Drennan?
A: No.
Q: So really, your first notice that they thought something was wrong with the trust was the lawsuit?
A: Right.
Q: Did Munford Scott represent you in that litigation?
A: He did.
Q: Did the trust pay for the defense?
A: Pardon?
Q: Did the trust pay Mr. Scott's fee?
A: Yes.
Q: How long did that lawsuit go on?
A: I don't recall.
Q: Did you ever go to any depositions? I know that you said you didn't have your deposition taken in the litigation --

A: No.
Q: -- but did you go to any depositions in that?
A: It was heard before a referee.
Q: Who was the referee that heard it?
A: I don't remember.
Q: Was there a trial of some kind before the referee?
A: There was.
Q: Where was the referee? Where was that?
A: It was in Marlboro County.
Q: Who all was present at this?
A: Lib and Mr. Drennan -- Elizabeth and Mr. Drennan. There was a representative from Clemson present, there was a representative from Coker College present. I don't remember anyone else at the time.
Q: Mr. Scott?
A: Mr Scott, of course.
Q: Do you know if there was a court reporter there like there is today?
A: It must have been, but I don't -- I can't tell you. I don't recall.
Q: Where in Bennettsville was this held?
A: In the courthouse.
Q: In the courthouse. Did the referee take

testimony?
A: Yes. When I say "referee," it actually -- it was before a circuit judge. I was using the wrong term.
Q: Was there a jury?
A: No.
Q: Did the judge render a verdict?
A: Yes.
Q: What was that verdict?
A: As to how the property -- the assets were ultimately divided.
Q: Did you all reach a settlement after that, after that verdict was rendered?
A: Well, that was -- the settlement was part of the verdict.
Q: All right. I'll give you Plaintiffs' Exhibit Four. Do you recognize that document?
MR. EASTERLING: Did we skip Three?
MR. ALEXANDER: Yep.
MR. HENDERSON: Is there a Three?
MR. ALEXANDER: We pre-marked them all.
A: Yes.
Q: What is that document?
A: This is the settlement agreement.
Q: All right. Before this -- what's the date on

this?
A: February 26th, 2002.
Q: Are you looking on the second page of that exhibit?
A: Yeah.
Q: It says, "James E. Lockemy, presiding judge." Is that the judge that you --
A: Yes.
Q: -- went before?
A: Yes.
Q: He's the one that took testimony?
A: Yes.
Q: Do you remember who all testified?
A: I did, Elizabeth did. I don't remember anybody else.
Q: All right. How soon after that was -- did you reach this settlement? After that, after you went before the judge and he took testimony?
A: It was not long. It was within that year.
Q: Okay. I'll give you Exhibit Five, Mr. Brogdon. Mr. Brogdon, this is a -- there's a whole bunch of documents in this exhibit here. If you look down on the bottom, it says "trustee" with a number on there.
A: Uh-huh.

Q: Do you see that?
A: Yes.
Q: Lawyers refer to those as Bates numbers. And so --
A: Pardon?
Q: Lawyers refer to those numbers as Bates numbers.
A: Bates. All right.
Q: And so when we talk about this exhibit, I'll just give you that number --
A: Okay.
Q: -- and that's how we'll find what page to go to.
Q: Okay.
MR. MOORE: Could you tell us the Bates numbers?
MR. ALEXANDER: We're at -- well, it's all mixed up. These are all from Mr. Brogdon's production, but I'll mention them as we go.
Q: During the course of that litigation, Mr. Brogdon, did you -- did you have contact with Mr. Drennan directly?
A: I may have had some contact by telephone or by correspondence.
Q: Do you know why you would have spoken with him directly as opposed to through your lawyer?

A: I can't tell you at the time.
Q: Were your dealings with Mr. Drennan friendly or contentious during the time the litigation was going on?
A: No.
Q: Were they contentious?
A: Were they contentious?
Q: Yes, sir.
A: No.
Q: Were they friendly?
A: Yes.
Q: All right. What were the -- what was the general contention, if you remember, of the lawsuit brought by Elizabeth?
A: It was basically that -- it was her mother was not competent to execute the agreement.
Q: Was she competent in your opinion?
A: I believe she was.
Q: What did the judge decide?
A: Well, this was an agreed settlement.
Q: Okay.
A: And the judge didn't decide either yea or nay.
Q: So you all settled before he could decide?
A: Right.
Q: Do you remember if there was any written

discovery? By that, I mean written questions that --

A: No, sir. I don't remember.

Q: Would Mr. Scott have all that stuff if such a thing existed?

A: If there were such, he would have it.

Q: What was the gist of the settlement?

A: The gist of the settlement was that the property in Marlboro County would go to Elizabeth. And the Orangeburg County property would go -- would be held in trust until Elizabeth's death, and then would go to the nieces and nephews of Mrs. Pence or the niece and nephews.

Q: The vast majority of the value of the real estate that Lib owned would have been in Marlboro County. Would that be correct?

A: Substantial value. Yes.

Q: Okay. So I, mean, is it a fair statement that the settlement was mostly in Elizabeth's favor?

A: Right.

Q: Why did you make the decision to settle it under those terms?

A: Well, as I said, it was an agreed settlement and she was going to get everything in

Marlboro. And this property in Orangeburg County, the Grambling property, would go to the nieces and nephews. And that was the basis of the settlement, plus the -- some of the -- a monetary settlement as well.

Q: Do you --

A: Roughly 60/40.

Q: Do you know how you arrived at that split?

A: I guess by negotiation.

Q: All right, fair enough. Why did you feel it necessary to give Elizabeth such a large amount of the trust's assets?

A: Well, the question -- I mean, it was a question of risk. Do we risk everything or nothing? And this was the decision that was made.

Q: Who all did you consult with before you made the decision to settle it on these terms?

A: Mr. Scott I'm sure. I don't remember who else at that time.

Q: What about Clemson University? Did you discuss the settlement with them?

A: Yes. We discussed with Clemson and with Coker.

Q: In this lawsuit would you consider yourself on the same side as Clemson and Coker?

A: Well, it's a question.

Q: Okay.
A: Yes. As a trustee, I had to represent the assets that would go to them.
Q: Okay.
A: So I was not -- it was not a question of whether I was on their side or not. I was carrying out the terms of the trust.
Q: So by the terms of the trust you were on their side?
A: Pardon?
Q: By the terms of the trust, then, you were on their side?
A: Right.
Q: Did the same thing hold true for the McLean children?
A: Pardon?
Q: Would the same thing then hold true for the McLean children, the nieces and nephews?
A: Yes.
Q: All right. Do you remember who you dealt with at Clemson during this litigation phase?
MR. PAYNE: We'll call this the trust litigation, if that suits you.
A: Who did I deal with at Clemson? It was -- I can tell you where he lives. He lives in -- he

lives right of Bishopville. He was a (inaudible) for Clemson. I can't think of his name. He retired from Clemson and moved back to Bishopville. His home is in Bishopville.

Q: Okay.

A: His wife is from Bishopville. If you have somebody from Bishopville, we can establish the name.

Q: Probably just about anybody from Bishopville would know them. How about from Coker? Do you remember who you dealt with from Coker?

A: No, I don't. I don't remember who I dealt with.

Q: How about with the McLean nieces and nephews? Did you consult with them during this litigation at all?

A: No.

Q: What about the time of the settlement? Did you consult with them?

A: No.

Q: Did you ever talk to William McLean?

A: No.

Q: What about Norman McLean? Did you ever talk to him?

A: I've talked with Norman.

Q: Tell me about your discussions with Norman.
A: Well, I mean, the discussion was not necessarily in terms of the trust. This was just a -- I met him when he came, when he would come to Bennettsville to visit his sister.
Q: All right. Did you have any discussions with Norman about the trust?
A: No.
Q: How did you first find out about the Caw Caw property?
A: I suspect that we found out about it when the information to prepare the deed for the Grambling tract was obtained.
Q: Okay. That would have been when you deeded the Grambling tract into the trust?
A: Right.
Q: So you knew about the existence of the Caw Caw property before the death of Lib?
A: Yes.
Q: Why didn't you deed the Caw Caw property into the trust?
A: We were in the process of deeding the property to the -- to the trust when Ms. Pence died.
Q: Okay. She died in October. Does that sound about right?

A: Right.
Q: And the Grambling property was deeded on May 28th the same time as the trust was established. Is that right?
A: Yes.
Q: So what was the delay in deeding the Caw Caw property?
A: Well, we had to identify the property. And this was done by Mr. Scott's office through an associate in Orangeburg, as I understand it. And then in the normal flow of paperwork, a deed would be prepared for me to sign it.
Q: Did you ever see this deed?
A: Did I ever see the deed?
Q: Yes, sir.
A: No.
Q: Do you know for a fact that it was prepared?
A: Right. It was -- I was to -- it was to be sent to me for signature.
Q: All right.
A: And that was when Ms. Pence died.
Q: Do you know what specifically had to be done to identify the property? Why --
A: Well, we had no legal description of it. We had to use -- go to the clerk of court's office

in Orangeburg and okay the property after tracking it down, to get the description.

Q: All right. Was Mr. Scott the one who told you about the existence of the Caw Caw property?

A: I could not answer that yes or no.

Q: Okay. Did the existence of the Caw Caw property come up in the terms of the -- in the trust litigation?

A: No.

Q: Look on Exhibit Four, if you would. That's the settlement of the trust litigation.

A: Okay.

Q: Do you know who drafted this? If you flip through the first page, this one. This document, it's the third page of Exhibit Four. It says, "Compromise and Settlement Agreement." Do you know who drafted that?

A: As to whether this was drafted, I think by the attorney that represented Elizabeth.

Q: It wasn't you that drafted it?

A: Pardon?

Q: It wasn't you that drafted it, was it?

A: No.

Q: Okay.

A: May I back up?

Q: Yes, sir.
A: The representative from Clemson was John Gentry. And the representative of Coker College, if you can read it --
Q: I sure can't read it.
MR. MOORE: Harriot Wilmeth probably.
MR. ALEXANDER: Okay.
Q: Is Mr. Gentry the fellow from Bishopville that you were talking about before?
A: Pardon?
Q: Is Mr. Gentry the fellow from Bishopville?
A: Yeah, right.
Q: Okay.
MR. ALEXANDER: Did you have something else you wanted to add?
MR. MOORE: No. I was waiting for you.
Q: Okay. Flip over one more page there. What are these last two pages of Exhibit Four? I guess the next to the last two pages. I'm sorry.
A: Okay.
Q: What are those?
A: This is the real estate prepared by Mr. Drennan.
Q: Do you know where he got this list of property from?

A: As far as I know, he did his own research on it.
Q: Did you ever provide him with a list of property that was in the trust?
A: I don't remember if we -- whether we did a listing of the property or whether he had copies of the deeds.
Q: Okay. If you'll look over on Exhibit Five, look about midway through to the bottom that says, "Trustee 82." This one. Do you want me to find it for you?
A: This is what we're looking for?
Q: "Trustee 82" is the page we're looking for.
A: Eighty-four. I must be close. Okay.
Q: One more back right here. Is that a letter from Jim Drennan to you?
A: Yes.
Q: Do you remember reading this letter or getting this letter?
A: Yes.
Q: What do you remember about the circumstances of this letter?
A: I don't know anything in particular about it.
Q: Look over to page "Trustee 83."
A: Okay.

Q: Do you remember seeing that?
A: Yes.
Q: Whose document is this? Who drafted this? What do you remember about it?
A: I may have drafted this.
Q: Okay.
MR. MOORE: What is it you all are looking at?
WITNESS: I don't know, because I don't recognize the title.
MR. ALEXANDER: It's a list of -- it says, "Elizabeth Pence Estate Assets." And it's got a list of a bunch of stuff on in.
MR. MOORE: Thank you.
A: Apparently, this was a copy that was furnished to me, because this is my handwriting and notations on the side.
Q: Okay. It looks like you're indicating here which property is in the trust and which is in the estate. Is that correct?
A: That's correct.
Q: Look at item number three under "Real Estate."
A: Okay.
Q: It says "307.99 acres, Highway 33, Orangeburg County."
A: That's correct.

Q: Is that the Grambling property?
A: That's correct.
Q: It looks like you noted that was in the trust.
A: That was in the trust. That's correct.
Q: Flip on down, going on down the page. It looks like it lists two tracts that are part of the Caw Caw property. Is that correct?
A: Yes.
Q: What does your notation beside those two say?
A: I marked it "estate," but they were not in the estate.
Q: Okay. Where were they?
A: They were in the -- they were not in the -- they were in the estate of Elizabeth Pence.
Q: By "Elizabeth Pence," you mean Elizabeth McLean Pence did?
A: Uh-huh.
Q: All right. So does your notation then mean that you thought they were in the estate of Elizabeth McLean Pence at that time?
MR. JAMES: Wait a minute. Which Pence are we on?
WITNESS: This is the one we're calling Lib.
Q: Yes, sir.
A: Okay. This is her estate.
Q: Okay.

A: And it was in her estate.
MR. JAMES: All right.
Q: Did you ever communicate or did you ever send this document back to Mr. Drennan?
A: Pardon?
Q: Did you ever send this document back to Mr. Drennan with the notations?
A: I don't know that I did; I don't know that I did. This was -- I just -- this was for my information.
Q: Well, was he asking you in his letter what was in the trust and what was in the estate?
A: At the time he asked me to look over this and if I thought it was complete, then I probably did. I went through and did this.
Q: Does that refresh your memory as to whether or not you sent him this back with your notations on it?
A: I don't remember if I did or didn't.
Q: Okay.
A: I don't think I did. I think I just told him that everything's all right.
Q: Okay. Did you ever tell him that the Caw Caw property was not part of the trust?
A: Well, I didn't have no reason to -- I didn't

know about the Caw Caw property when the trust was formed. It was put in the trust. That's the reason it's mark "estate".

Q: But did you ever tell Mr. Drennan that it was in the trust?

A: No.

Q: Did you ever tell him that it was not in the trust?

A: I don't know.

Q: Okay. But you would have never told him that it was?

A: No.

Q: Do you remember any other communications between you and Mr. Drennan whether written or oral as to whether or not the Caw Caw property was or was not in the trust?

A: No.

Q: Let's go back to the settlement agreement.

A: Okay.

Q: Go back to that list of all the property in the end of that.

A: Okay.

Q: Now, going from the bottom up, it looks like it lists the Grambling property. Is that right?

A: That's correct.

Q: And then it lists the Caw Caw property too?
A: That's correct.
Q: And --
A: That's an error. But it's listed.
Q: It is listed. Why is that an error?
A: Because the trust didn't own the property. It was never transferred to the trust.
Q: Do you know whose error that was?
MR. HENDERSON: Object to the form.
Q: You can still answer.
A: This was prepared by Mr. Drennan.
Q: Okay. But as far as you know, listing Caw Caw on here wasn't part of anything you told him?
A: No.
Q: What was your understanding of what was supposed to happen to the Caw Caw property as a result of this settlement?
A: As a result of the settlement?
Q: Yes, sir.
A: It would be owned by the estate.
Q: Okay. And why is that?
A: Because it was not in the trust.
Q: But it was supposed to be in the trust, right?
MR. DAVIS: Object to the form.
MR. HENDERSON: Object to the form.

A: The intent was to put it in the trust, yes.
Q: Okay.
A: It did not get in the trust.
Q: But that was Lib's intent?
A: Right.
Q: If you look on page five of the settlement agreement there, do you see paragraph eight there?
A: Pardon?
Q: Do you see paragraph eight?
A: Okay.
Q: The first sentence there, you kind of skip down to the third line. It says, "The trust property will consist of the Orangeburg real property including any timber not cut because not merchantable and other investments. In order to give the effect to the intention of the decedent, as expressed in Article VI(3) of the trust, the Orangeburg real property be distributed to the issue of the settlor's brother, Norman McLean, per stirpes." Do you remember looking that over at the time of the settlement?
A: I'm sure I did.
Q: What did that mean to you?

A: That we were talking about the Grambling property, which at that time was the only Orangeburg property I was aware of.
Q: Did you review this agreement before you signed it?
A: Pardon?
Q: Did you review this settlement agreement before you signed it?
A: Yeah.
Q: Do you know why you didn't -- did you ever bring to attention to anybody that the Caw Caw property shouldn't be listed on here?
A: No. I really didn't.
Q: Do you know why you didn't do that?
A: Probably when I read it, I -- see, I was not aware of anything called the Caw Caw property. And I just assumed that was a part of the big tract of the Grambling farm.
Q: Okay. Well, when you said, and correct me if I'm wrong. I think you said that before when Mr. Scott found out and did the research to locate the Grambling property, that he found out about the Caw Caw property.
A: I assume that's how we found out about it, yes.
Q: Did somebody tell you that it was all part of

the Grambling property at that time?

A: It was not discussed as a part of the Grambling property.

Q: All right. But was it discussed that -- I think you said there was a deed prepared to put it in, so it was discussed that there was a separate---

A: Yes.

Q: -- transaction that needed to happen?

A: Yes. But this was a subsequent transaction, not along with this.

Q: But at the time the settlement was entered into, you understood that that had not happened, that the Caw Caw tract had not been deeded into the trust?

A: At the time the settlement agreement was reached, I was not aware of the Caw Caw property.

Q: Okay. But the Grambling property got deeded in the trust before the lawsuit, though, right?

A: I guess it did, yes.

Q: So if you found out about the Caw Caw property at the time the Grambling property got into the trust, you would have known about the Caw Caw property at the time of the settlement. Isn't

that true?
A: It's very vague as to what I knew about that property. It's only after the fact that I knew it was called the Caw Caw property.
Q: Okay. But you're aware that there was a deed that you were supposed to sign for some Orangeburg property at the time of her death --
A: That's correct.
Q: -- correct?
A: It was prepared and was to be signed and would have been signed probably the following day.
Q: Okay. So when you saw this list of property on here, did you recognize that as the deed that you --
MR. PAYNE: I object to the form.
A: It was not -- it would not have been identified as the Caw Caw property on the deed.
Q: Did you let Mr. Drennan or Elizabeth or anybody know about this other Orangeburg property --
A: No.
Q: -- that had not been transferred?
A: No.
Q: Did anybody ever ask you about it?
A: No.
Q: Was it ever brought up at all?

A: No.
Q: So people just -- they just forgot about it?
A: Yeah.
Q: Do you remember any communications with Mr. Drennan after -- or Elizabeth after the settlement of the trust litigation regarding the Caw Caw property?
A: Did I have any -- repeat that.
Q: Sure, sure. One of the many bad questions that I'm sure I've asked you today. After the settlement of the trust litigation --
A: Right.
Q: -- after this document here.
A: Yeah.
Q: Do you remember having any conversations or any kind of communications with either Mr. Drennan or Elizabeth regarding the Caw Caw property?
A: No.
Q: Do you remember any discussions with either of them or with Mr. Scott regarding the listing of the Caw Caw property --
A: No.
Q: -- on that settlement agreement?
A: No.
Q: When was the next time you heard anything about

the Caw Caw property?
A: I heard about the property, and I don't know that it was called Caw Caw property after the deed was for the Grambling place was prepared.
Q: Okay.
A: I learned there was property, additional property in Orangeburg.
Q: And that was during the trust litigation. Is that right? Are you talking about the same that you deeded the Grambling property into the trust?
A: Right.
Q: After this trust litigation was done --
A: Okay.
Q: All right. Any other communications about the Caw Caw property?
A: No.
Q: Never heard anything more about it?
A: No.
Q: You didn't hear anything more about it until this lawsuit was filed?
A: That's right.
Q: Is that a fair statement?
A: That's right.
Q: Okay. How were the assets, the non-real

property assets of the trust --

A: Uh-huh.

Q: -- what were those? Were those some financial accounts?

A: There were stocks and bonds and certificates of deposit, bank accounts, that sort of thing.

Q: What was supposed to happen to those?

A: That were divided.

Q: Between --

A: The trust.

Q: -- Elizabeth and the trust?

A: The trust. Right.

Q: Was that part of the 60/40 split you were talking about?

A: Yes.

Q: Was that split decided -- did you all figure out how much money was gonna go to --

A: Right.

Q: -- one of the other before the settlement agreement was signed?

A: Yes. It was figured out.

Q: Do you remember ever knowing whether or not that amount changed after the settlement agreement?

MR. PAYNE: Object to the form.

A: It didn't change -- the amount did not -- the percentages didn't change.
Q: Did the amounts change?
A: There was one security that was bonds, which was maturing, which matured after the agreement, which was vaguely -- was discussed -- was noted in the agreement and it was divided 60/40. There was timber cut from the Orangeburg property and from Marlboro County property. Proceeds of that was divided 60/40. After the agreement it was signed but referenced in the agreement.
Q: I want to make sure I understand the 60/40 --
A: Okay.
Q: -- split. Was the 60/40 a split of all of the assets of the trust? Was it --
A: That was basically the split.
Q: Okay. So all the real estate, whether it be Marlboro County or Orangeburg County, was part -- that counts against the trust, 60?
A: That's correct.
Q: Okay. So whatever was left over was part of the 40?
A: Right.
Q: All right. Do you remember any conversation

with Mr. Drennan or Mr. Scott or anybody else about having to adjust the amount of that split, the 60/40 split because of the Caw Caw property?

A: No.

Q: I'm giving you Plaintiffs' Exhibit Six. Have you ever seen that document before, Mr. Brogdon?

A: Yes.

Q: Tell me what you know about this document.

A: Well, William N. McLean was to be a co-trustee with Wachovia. This was a -- I don't remember now why it was being filed, was done. Wachovia refused to serve.

Q: Did you want out of the job of trustee at this point?

A: No, not necessary.

Q: Okay. Do you know why Mr. McLean was asked to waive his right to serve as successor trustee?

A: At the moment I couldn't tell you. I don't have any recollection of why.

Q: I'll give you Plaintiffs' Exhibit Seven. This is something from Wachovia's discovery, Bates number Wachovia 3961 and 62. Have you ever seen that letter before, Mr. Brogdon?

A: I'm sure I did.
Q: Okay.
A: I'm sure I did.
Q: Well, tell me what you remember about the circumstances of this letter.
A: Well, this is where the settlement was worked out.
Q: Okay.
A: In dollars as 60/40.
Q: So this appears to be after the settlement agreement was signed. Would that be correct?
A: That's probably correct.
Q: Was there some other correspondence or document before the settlement agreement was signed that talked about the money part of the 60/40?
A: I think this was the general basis. And then the details were worked out afterwards.
Q: Okay.
MR. **ALEXANDER**: Can we go off the record for a second.

(Off the record.)

Q: After this -- after the settlement of the trust litigation, Mr. Brogdon, was there another dispute later on with Elizabeth's estate and Mr. Drennan?

A: Pardon?
Q: Was there another dispute with Mr. Drennan and Elizabeth's estate regarding the taxes?
A: Yes.
Q: Tell me about that.
A: The liquid part of the estate was in the trust.
Q: Okay.
A: And we paid -- issued checks and payment of part of the estate taxes.
Q: All right. What was the disagreement about?
A: Pardon?
Q: What was the disagreement about over the estate taxes?
A: I'm sorry?
Q: What was the disagreement with Mr. Drennan about over the estate taxes?
A: I didn't say it was a disagreement.
Q: Okay. Was there not a claim filed by the trust?
A: We requested a refund of funds that were advanced. Yes.
Q: Was that refund granted?
A: No.
Q: Tell me why not.
A: Based on discussions with Mr. Scott, it was

decided not to attempt to pursue it legally.
Q: Do you know how much that was for?
A: I don't remember.
Q: Do you remember what the final settlement of that estate tax issue was?
A: No funds were reimbursed for the trust.
Q: Did the trust pay anything to the estate?
A: The trust paid to the estate to pay estate taxes, yes.
Q: This was after the initial outlay for the estate taxes?
A: No. This was an initial -- this was an initial outlay.
Q: Okay. And Mr. Scott advised you to drop that claim?
A: That's correct.
Q: How far along did it get?
A: Other than possibly discussions.
Q: So not real far?
A: Not formally.
Q: All right. The property that was in the trust after the settlement, what -- tell me what all was done with that property. I think you said some timber was cut?
A: Timber was cut.

Q: Was that mostly in the Marlboro County property?
A: No. It was also in Orangeburg County property.
Q: What about after the timber was cut? What was done with that property?
A: What was what?
Q: What was done with the property after the timber was cut?
A: It was rented for farm land.
Q: What happened to the rents?
A: What happened to the rents?
Q: Yes, sir.
A: It was retained by the trust and ultimately was supposed -- was to be distributed to the heirs.
Q: Would that be Clemson and Coker?
A: No. That's the niece and nephews.
Q: Norman's children?
A: Right.
Q: Was anything to be given to Clemson and Coker after the settlement of the trust litigation?
A: Yeah. Once the trust had been settled. See, the trust has not been settled.
Q: Okay.
A: There would have been funds to Clemson and Coker, yes.

Q: Okay. So are Clemson and Coker still due some funds?
A: Yes.
Q: All right.
MR. ALEXANDER: Mark that.
(Plaintiffs' Exhibit Number Eight was marked for identification purposes.)
MR. PAYNE: This is which number?
MR. ALEXANDER: That is --
COURT REPORTER: Eight.
MR. ALEXANDER: Eight.
Q: I will give you Plaintiffs' Exhibit Eight.
A: Okay.
Q: Do you recognize this document?
A: Uh-huh.
Q: Tell me what this is.
A: This is where we're trying to settle the trust.
Q: Does this have a list of all the assets that are in the trust?
A: No.
Q: What is still in the trust?
A: What is still in the trust?
Q: Yes, sir.
A: The Grambling farm, money market accounts. A money market account and a checking account.

Q: Okay. What happened to the Marlboro County property? Was that staying in the trust?
A: All the Marlboro County property was removed from the trust in the settlement.
Q: It went to Ms. Pence?
A: To Elizabeth.
Q: The remaining -- how much money is in the money market, ballpark?
A: A hundred and eighty.
Q: A hundred and eighty thousand?
A: Uh-huh.
Q: How about in the checking account?
A: Ten or twelve thousand.
Q: Other than those two accounts, are there any other trust assets remaining?
A: No.
Q: Of that how much is due to Clemson and Coker? You can look at --
A: I can't tell you --
Q: -- the document.
A: I can't tell you because the figures have changed from this settlement.
Q: What has changed since then?
A: The amount that's remaining as to payments of the rents to the niece and nephews.

Q: So is the trust still collecting some rent?
A: No. They accepted the deed for the property, but they do not accept checks for the provision of rent.
Q: So that money is still in the trust?
A: Right.
Q: Has Clemson and Coker received their portion of the trust?
A: No.
Q: Is this lawsuit withholding that up?
A: That's correct.
Q: Are the trust assets paying the attorneys' fees in connection --
A: Yes.
Q: -- with this case?
A: Yes.
Q: Were you the personal representative to Mr. Pence's estate?
A: Yes.
Q: Did you receive a commission on that estate?
A: I think I charged a fee for just billing time.
Q: But you didn't take a percentage commission?
A: No. I didn't have a percentage commission.
Q: How are you compensated as trustee?
A: Originally, I was compensated using the same

method that Wachovia uses when it administers a trust. And after a time ran -- after I felt that the trust should have been settled and wasn't, I stopped charging fees.

Q: And what is the method by which you were compensated by trustee?

A: It's a percentage of the assets, and I've forgotten the percentages. But I used Wachovia's fee schedule to work it out.

Q: All right. We're looking at the last few pages of Exhibit Number Eight, which begins, "Pence Family Trust Checking Account."

A: Okay.

Q: There seems to be one page of investment accounts.

A: That's correct.

Q: Tell me what this list is, Mr. Brogdon.

A: This is a list of receipts and disbursements on September -- August the 26th of 2002 to September the 30th of 2006.

Q: Can you look at this and figure out what your commissions were or how you were compensated as trustee?

A: I can't tell you the percentage. I just --

Q: Okay.

A: I used a spread worksheet, did it like this (demonstrating).
Q: Okay. Well, I'm looking through here. It looks like there are several listings here of commissions paid to you.
A: Uh-huh.
Q: I see one in December 2002 of $62,000.
A: That's correct. That covered a period from June the 3rd of '99 until October 30th of '02.
Q: And then if you flip the page I see another one, January 14th, '04 of 23,000.
A: Uh-huh.
Q: It actually looks like all of it.
A: That's all. That's more than I felt the trust should be settled and I stopped doing it.
Q: Okay. So these were just two separate times you took a commission on it?
A: Pardon?
Q: These are just two separate times --
A: That's correct.
Q: -- you took a commission on it?
A: That's right.
Q: Did your commission have to be re-evaluated after the settlement of the trust litigation?
A: The commission was not -- was computed on the

assets that remained in the trust.
Q: Okay.
A: Not on the total value of all the assets.
Q: So in 2002, the December 17, 2002 commission, is that based on the post-settlement value of the trust?
A: That's correct.
Q: And then the same thing --
A: The same thing on both of them.
Q: On here it looks like -- go back over here on the same page. Stay with me for a minute. Are you there? If you look here, it looks like -- if you look at 10/24/02?
A: Uh-huh.
Q: It says "house rent." What's that?
A: That's rent that was on a little house on the Orangeburg farm that was rented for $72 a month.
Q: Is that the Grambling property?
A: It's on the Grambling property.
Q: So it must have been quite a palace, I imagine. Do you know who -- did anybody ever live in this house before the trust?
A: Yeah. Whoever was in there has been there for years.

Q: So it was a tenant --
A: Yeah.
Q: -- not a family member --
A: No.
Q: -- or a McLean?
A: It was a tenant.
Q: Was this all for the person that farmed the property?
A: Pardon?
Q: Did this person farm the property?
A: No.
Q: Do you remember who it was?
A: No, I don't. I don't remember the name.
Q: All right. Flip on down, it's the last entry under "December 17, '02." It says "farm rent."
A: That's correct.
Q: Is that for the Grambling property as well?
A: That's correct.
Q: Is that a yearly rent?
A: That's a yearly rent.
Q: Do you remember who rented it out for farming?
A: I haven't had any contact with these folks in several years now.
Q: It's okay. I know some of this is gonna test your memory.

A: He played quarterback for South Carolina.
Q: I'm sorry?
A: I said, he played quarterback for South Carolina. I can't think of his name.
Q: All right.
A: It was years ago.
Q: I see some other entries on here for house rent for $144.
A: The rent would come in at various times and if it came in and I -- it might come in, I might wait a month, two months or three months to deposit it.
Q: Okay. So it was just one house that was getting rented?
A: Just one house.
Q: All right.
A: I just didn't want to -- sometimes he would only pay -- he would pay two months at a time.
Q: Okay. Have you had any contact with any members of the McLean family since the settlement of this litigation, the trust litigation?
A: I may have had some contact by telephone.
Q: Do you remember which one of them you spoke to?
A: I think I spoke with one that works for

Orangeburg County in some capacity.
Q: Could that have been Jim McLean?
A: Pardon?
Q: Could that have been Jim McLean?
A: I don't remember the first name.
Q: Do you remember what you talked to him about?
A: I think we -- I think it was in connection with signing off on a right-of-way.
Q: Would this be for the Grambling property?
A: The Grambling property.
Q: Do you remember when this would have been?
A: No. I don't remember the date.
Q: Do you have any record of that conversation anywhere in your files?
A: I probably do.
Q: What kind of record would it be? Do you know?
A: I would assume that I have a copy of the easement.
Q: Okay. Is this a right-of-way for a utility?
A: Yes. Easement -- I think it was -- I really think it was for extending or widening of a country road adjacent to the property. And they took some -- they had to come into the property to get the width.
Q: When was Elizabeth Pence's estate closed in

relation to some of these other events? Was it before or after the trust litigation?

A: It was probably after Mrs. Pence's death.

Q: Do you remember any communications between you and Mr. Drennan or Elizabeth regarding the closure of Mr. Pence's estate?

A: No.

Q: Are you involved in any way with any litigation brought by Stephen Pence?

A: No.

Q: Have you had any contact with Stephen Pence?

A: No.

Q: Since the initiation of this litigation, have you had any contact with Mr. Drennan?

A: I don't think I've had any contact once the estate of Lib Pence was closed.

Q: Okay. How about Mr. Scott?

A: Have I had any contact with Mr. Scott?

Q: Yes.

A: Yes.

Q: He's not representing you in connection with this ligation, is he?

A: (No response.)

Q: Mr. Payne's your lawyer, right?

A: Yeah.

Q: But Mr. Scott is part of Mr. Payne's law firm, isn't he?
A: Right.
Q: Do you consider Mr. Scott to be your attorney?
A: I don't know how to answer that question.
MR. PAYNE: And we object to --
WITNESS: Pardon?
MR. PAYNE: Move on.
Q: Do you consider Mr. Scott to be the trust attorney still?
A: I would assume so.
Q: Okay. How long have you been Marlboro County's accountant -- Marlboro Academy's accountant?
A: Pardon?
Q: How long have you been Marlboro Academy's accountant?
A: Until about three years ago, from inception.
Q: From -- when was Marlboro Academy created?
A: When was it organized?
Q: Yes, sir.
A: Probably somewhere in the late '70s or early '80s.
Q: Did you have anything to do with setting it up?
A: I did the accounting. I had nothing to do with the organization, nor did I want any part of

it.

Q: Did you do the accounting for them since they were --

A: Right.

Q: Until three years ago?

A: Uh-huh.

Q: What happened three years ago?

A: They were expanding and they wanted a -- I had only been preparing their tax return, and they wanted an audit and I was not in a position to complete an audit within that time frame.

Q: Other than tax returns, did you do any other work for Marlboro Academy?

A: No.

Q: You didn't do any payroll or --

A: No.

Q: Who did you deal with at Marlboro Academy?

A: Well, when the academy was organized, the Pences were active in the organization. And Mrs. Pence for years did the recordkeeping until probably eight or nine years ago. And then from that point on, whoever was keeping the records of Marlboro Academy, and I don't have the names.

Q: So was Mrs. Pence your primary contact at

Marlboro Academy?
A: During that period of time, yes. During the time she was keeping the records.
Q: All right. What about after she stopped keeping the records? Who was your primarily contact for Marlboro Academy?
A: Whoever was keeping the books, bookkeeping.
Q: Do you remember who that was?
A: They had different every year, so they had different ones.
Q: Okay. Do you know -- do you know how Marlboro Academy is organized, as a board or --
A: It had a board, a governing board.
Q: Do you know anybody on the board?
A: I'm sure I do, but I don't remember now at the moment who is still on the board.
Q: From back when Mrs. Pence was more heavily involved with Marlboro Academy, do you remember any of your acquaintances or friends that were on the board?
A: Yeah.
Q: Who would those have been?
A: Well, Mr. Pence for one.
Q: (Nods head.)
A: That was sort of after -- had matured over

time. Gosh, I don't know. That's so many years back, I don't remember who else was -- who was on the board at that particular time.

Q: Yeah. If you're in Marlboro County and someone says, "Who is in charge over there at Marlboro Academy," who would they say is their one person they'd pick at the Academy?

A: I don't even know who's in charge of it now.

Q: What about back when you were more heavily involved with it?

A: In earlier years, I would probably say Mr. Pence.

Q: Okay.

A: He was a prime mover.

Q: Okay. Did you have any children?

A: Pardon?

Q: Did you have any children?

A: Yes.

Q: Did they go to Marlboro Academy?

A: No.

Q: Did Elizabeth go to Marlboro Academy?

A: Yes.

Q: Do you know whether or not she graduated?

A: As far as I know she did.

Q: Since the beginning of this litigation, have

you had any contacts with anybody from Clemson or Coker regarding this litigation?

A: I've had -- do you mean -- within the last 12 months, I've had contact or correspondence with Coker asking when the settlement is going to be effected and that sort of thing. And I had a telephone call from Mr. Gentry when he was still there, asking when it would be effective.

Q: Did Mr. Gentry retire from working at Clemson?

A: Yes. I can't think of the person that -- I can't think of the person -- I had some correspondence or phone calls from somebody else, but I don't remember the name.

Q: Okay.

MR. ALEXANDER: I think that's all I got.

MR. PAYNE: Nothing for me.

MR. HENDERSON: Can we take a short break?

(Off the record.)

MR. HENDERSON: I'm not going to have any questions.

MR. JAMES: I don't have any.

MR. MOORE: None for me.

MR. DAVIS: None for me.

(There being no further questions, the deposition concluded at 12:40 p.m.)

SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.

_____

JAMES E. BROGDON, SR.

Date: _____

Page	Line	Correction	Reason for Change

Re: McLean et al. vs. Drennen et al. 11-19-07

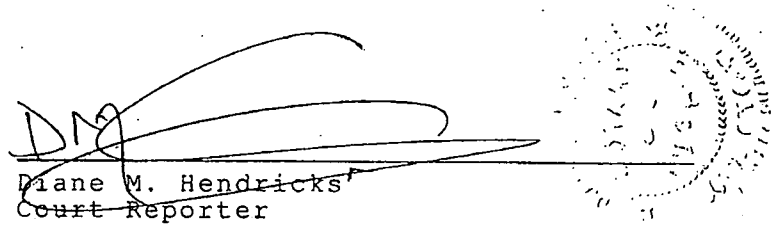
dh

CERTIFICATE

This is to certify that the deposition of JAMES E. BROGDON, SR., consisting of Ninety-Six (96) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

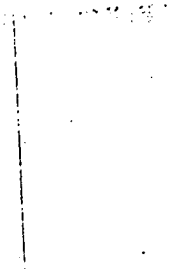
IN WITNESS WHEREOF I have hereunto set my hand and seal on December 12, 2007.



Diane M. Hendricks
Court Reporter

Notary Public for South Carolina
My Commission Expires: April 30, 2011

1



FILE COPY

TRUST AGREEMENT
OF
ELIZABETH M. PENCE

J. MUNFORD SCOTT, JR.
SCOTT & ASSOCIATES ATTORNEYS AT LAW
1807 Cherokee Road
Florence, South Carolina 29502



TRUST AGREEMENT

WHEREAS, ELIZABETH M. PENCE did appoint JAMES E. BROGDEN, SR., her Agent under that certain Durable Power of Attorney dated July 30, 1998, and

WHEREAS, said Power of Attorney did authorize, under Article I (12), said Agent to execute revocable or irrevocable trust agreements with such Trustees as the Agent should select and,

WHEREAS, the agent believes that the establishment of the revocable trust set out below is in the best interest of ELIZABETH M. PENCE,

KNOW ALL MEN BY THESE PRESENTS:

Introductory Clause. This Agreement made this 27 day of May, 1999, between ELIZABETH M. PENCE, hereinafter referred to as the Settlor and JAMES E. BROGDON, SR., hereinafter referred to as the individual trustee and also as the Trustee.

The Settlor has one living child: ELIZABETH P. PENCE.

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof. This property, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor and Settlor's Daughter During Settlor's Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

(3) In the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee may during the Settlor's lifetime, in addition to the payments of income and principal for the benefit of the Settlor, pay to or apply for the benefit of any one or more of the Settlor's daughter such sums from the net income and from the principal of this Trust in such shares and proportions as in the Trustee's sole discretion it shall determine to be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's daughter taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's daughter known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in his discretion he deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the PENCE Family Trust and any interest so paid shall be charged against the income thereof. If such share or trust

was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. The Trustee shall pay over to the personal representatives of the Settlor's estate all obligations of the United States Government held hereunder which may be redeemed at par in payment of federal estate taxes. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the PENCE Family Trust.

ARTICLE V

Creation of The PENCE Family Trust. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held, administered and distributed under the PENCE Family Trust as hereinafter set forth.

ARTICLE VI

The PENCE Family Trust Introductory Provision. The PENCE Family Trust shall be held, administered and distributed as follows:

(1) Provisions for ELIZABETH P. PENCE. If ELIZABETH P. PENCE ___ survives the Settlor, the PENCE Family Trust shall be distributed or retained in Trust as herein provided.

(a) Payment to ELIZABETH P. PENCE of All Income. If the Settlor's daughter, ELIZABETH P. PENCE, shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's daughter during her lifetime all the net income from the PENCE Family Trust in convenient installments but no less frequently than quarter-annually.

(b) Discretionary Payments of Principal for ELIZABETH P. PENCE. If the Settlor's daughter shall survive the Settlor, the Trustee may pay to or apply for the benefit of the Settlor's daughter during her lifetime, such sums from the principal of the PENCE Family Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's daughter, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's daughter known to the Trustee.

(c) Limited Withdrawal by ELIZABETH P. PENCE. When ELIZABETH P. PENCE has attained the age of Twenty-five (25) years there shall be paid to her during her lifetime from the principal of the PENCE Family Trust upon her written request

during the last month of each fiscal year of the Trust an amount not to exceed during the fiscal year the lesser of Five Thousand ($5,000.00) Dollars or Five (5%) per cent of the total value of the principal of the PENCE Family Trust on the last day of the fiscal year without reduction for the principal payment for the fiscal year. This right of withdrawal is noncumulative so that if she does not withdraw, during the fiscal year, the full amount to which she is entitled under this subparagraph, the right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

(d) Division Into Shares for Children of ELIZABETH P. PENCE. Upon the death of the survivor of ELIZABETH P. PENCE and the Settlor, the Trustee shall divide this Trust as then constituted into equal separate shares so as to provide One (1) share for each then living child of ELIZABETH P. PENCE and One (1) share for each deceased child of ELIZABETH P. PENCE who shall leave issue then living. Each share shall be distributed or retained in trust as hereinafter provided.

(e) Income and Discretionary Invasion of Principal for the Children of ELIZABETH P. PENCE. After division into shares for the children of ELIZABETH P. PENCE, all the net income from each share so provided for a living child of ELIZABETH P. PENCE shall be paid in convenient installments to or applied for the benefit of the child until complete distribution of the share as herein provided. In addition to income, the Trustee may pay to or apply for the benefit of the child such sums from the principal of his or her share as in his sole discretion shall be necessary or desirable from time to time for his or her medical care, education, support and maintenance in reasonable comfort, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the child known to the Trustee.

(f) Distribution of the Share of ELIZABETH P. PENCE's Child. After division into shares for ELIZABETH P. PENCE's children, when a child of ELIZABETH P. PENCE attains the age of Twenty-five (25) years, the Trustee shall distribute to the child one-third (1/3) of the principal of his or her share as then constituted; and when a child of ELIZABETH P. PENCE attains the age of Thirty (30) years, the Trustee shall distribute to the child one-half (1/2) of the principal of his or her share as then constituted; and when a child of ELIZABETH P. PENCE attains the age of Thirty-five (35) years, the Trustee shall distribute to the child the undistributed balance of his or her share. If a child of ELIZABETH P. PENCE has already attained age Twenty-five (25), age Thirty (30) or age Thirty-five (35) at the time this Trust is divided into separate shares, the Trustee shall, upon making the division, distribute to the child one-third (1/3), two-thirds (2/3) or all of his or her share respectively.

(g) Upon Death of ELIZABETH P. PENCE's Child to Issue of ELIZABETH PENCE 's Child. After division into shares for ELIZABETH P. PENCE's children, upon the death of a child of ELIZABETH P. PENCE prior to complete distribution of his or her share, the undistributed balance of the child's share shall be distributed per stirpes to his or her then living issue, or in default of such issue, per stirpes to ELIZABETH P. PENCE's then living issue.

(h) Distribution of the Share of a Deceased Child of ELIZABETH P. PENCE. Each share set aside, upon division into shares, for a deceased child of ELIZABETH P. PENCE who shall leave issue then living, shall be distributed per stirpes to such issue.

(2) Distribution if ELIZABETH P. PENCE is Deceased. If ELIZABETH P. PENCE shall not survive the Settlor but is survived by issue, the PENCE Family Trust shall be distributed or retained in Trust as herein provided.

(3) Outright Final Distribution if ELIZABETH P. PENCE and Issue Deceased. If at the time of the Settlor's death, or at any later time prior to final distribution hereunder, ELIZABETH P. PENCE and all her issue are deceased and no other disposition of the property is directed by this Trust, then and in that event the then remaining property of this Trust shall be paid over and distributed free of trust as follows:

Endowment Gift to Charity. Use of Income Designated. One-half (½) thereof to CLEMSON UNIVERSITY, located at Clemson, S.C., or its successors, to be added to its endowment fund with the income therefrom to be used under such rules and regulations as its governing board shall determine. This fund shall be known as the L. E. PENCE Scholarship Fund. In the event that this use becomes impracticable, then such gift may be used for such other uses and purposes as its governing board shall deem necessary and advisable.

Endowment Gift to Charity. Use of Income Designated. One-half (½) thereof to COKER COLLEGE, located at Hartsville, S.C., or its successors, to be added to its endowment fund with the income therefrom to be used under such rules and regulations as its governing board shall determine. This fund shall be known as the ELIZABETH M. PENCE Scholarship Fund. In the event that this use becomes impracticable, then such gift may be used for such other uses and purposes as its governing board shall deem necessary and advisable.

Gift to Named Person. McLEAN family land in Orangeburg County, S.C. thereof to issue of the Settlor's brother, in equal shares. If any of said issue shall predecease ELIZABETH P. PENCE, then to their issue, per stirpes.

ARTICLE VII

Trustee Succession. Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) Final Succession If Individual Trustee Cannot Act. If the Settlor's individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be WACHOVIA BANK and WILLIAM N. McLEAN as Co-Successor Trustees.

(2) Fee Schedule for Individual Trustee. For services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(3) Fee Schedule for Corporate Trustee. For its services as Trustee, the corporate Trustee shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

(4) Change in Corporate Fiduciary. Any corporate successor to the trust business of the corporate fiduciary designated herein or at any time acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

(5) Limitations on Trustees. No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, 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 Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in his fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in his own name as Trustee, in his own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as he shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for his own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(15) To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses;

provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(23) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(24) To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

(25) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(26) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(27) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(28) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(29) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the PENCE Family Trust, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in his discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence.

ARTICLE XI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share 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 as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIV

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may

apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XV

Definition of Children. For purposes of this Trust, "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.

ARTICLE XVI

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 the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "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 the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's 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 the Settlor's death.

ARTICLE XVII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XIX

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XX

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ARTICLE XXI

Perpetuities Savings Clause. Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than Twenty-one (21) years after the death of the last survivor of issue living on the date of the Settlor's death, when the Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

ELIZABETH M. PENCE, SETTLOR

JAMES E. BROGDON, SR.,
INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF Florence)

Personally appeared the undersigned witness and made oath that She saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Jennifer Swanbeck
Witness

Sworn to before me this

28th day of May, 1999.

Linda A. Pate
Notary Public for South Carolina

My Commission expires: 1-22-08

Trust Disk "O-P"
Pence-E.Trust

SCHEDULE "A"

List of Assets

WACHOVIA INVESTOR'S ACCOUNT # 330-02520-1-6

ELIZABETH M. PENCE, SETTLOR

JAMES E. BROGDON, SR.
INDIVIDUAL TRUSTEE

2

0209

P.O. Box 1105
Florence, SC 29502

TITLE NOT SEARCHED NOR CERTIFIED BY SCOTT & ASSOCIATES, P.A.

99-3539

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF ORANGEBURG)

WHEREAS, ELIZABETH M. PENCE did appoint JAMES E. BROGDEN, SR. as her Agent under that certain Durable Power of Attorney dated July 30, 1998, and

WHEREAS, said Power of Attorney did authorize, under Article I(12). the Agent to convey any and all assets of ELIZABETH M. PENCE to the Trustee of any revocable or irrevocable trust established for the benefit of the Settlor,

KNOW ALL MEN BY THESE PRESENTS, THAT I, ELIZABETH M. PENCE in consideration of One and 00/100 ($1.00) Dollar and other valuable consideration, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto JAMES E. BROGDEN, SR. as Trustee of the ELIZABETH M. PENCE Revocable Trust dated the 20 day of May, 1999, his successors and assigns forever, the following described property:

SEE ATTACHED

NC 6/21/99.

Grantee's(s') address: James E. Brogden, Sr.
Post Office Box 626
Bennettsville, SC 29512

99 JUN 3 PM 2:

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantees, and the grantees' heirs or successors and assigns, forever. And the grantor does hereby bind the grantor and the grantor's heirs, executors and administrators to warrant and forever defend all and singular said premises unto the grantees and the grantees' heirs or successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's hand and seal this 20th day of May, 1999.

SIGNED, sealed and delivered
in the presence of:

Jennifer Swartzwelder
Paula Pate

BK761PG0209

EXHIBIT 2
Deponent Brogden
Date 11/9/07 RptrDmh

07
0211

"EXHIBIT A"

Parcel One:

All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orangeburg County, South Carolina, containing two hundred eight and five-tenths (208.5) acres, more or less, and bounded as follows: On the North by lands of now or formerly of Huffman; on the East by lands now or formerly of McLean and lands of Mrs. Ella Till; on the South by lands now or formerly of Mrs. Ella Till, lands of McLean, lands of Inabinet, lands now or formerly of Collier; and on the West by lands now or formerly of Collier, lands of L.E. Crumling and lands now or formerly of Allen.

Parcel Two:

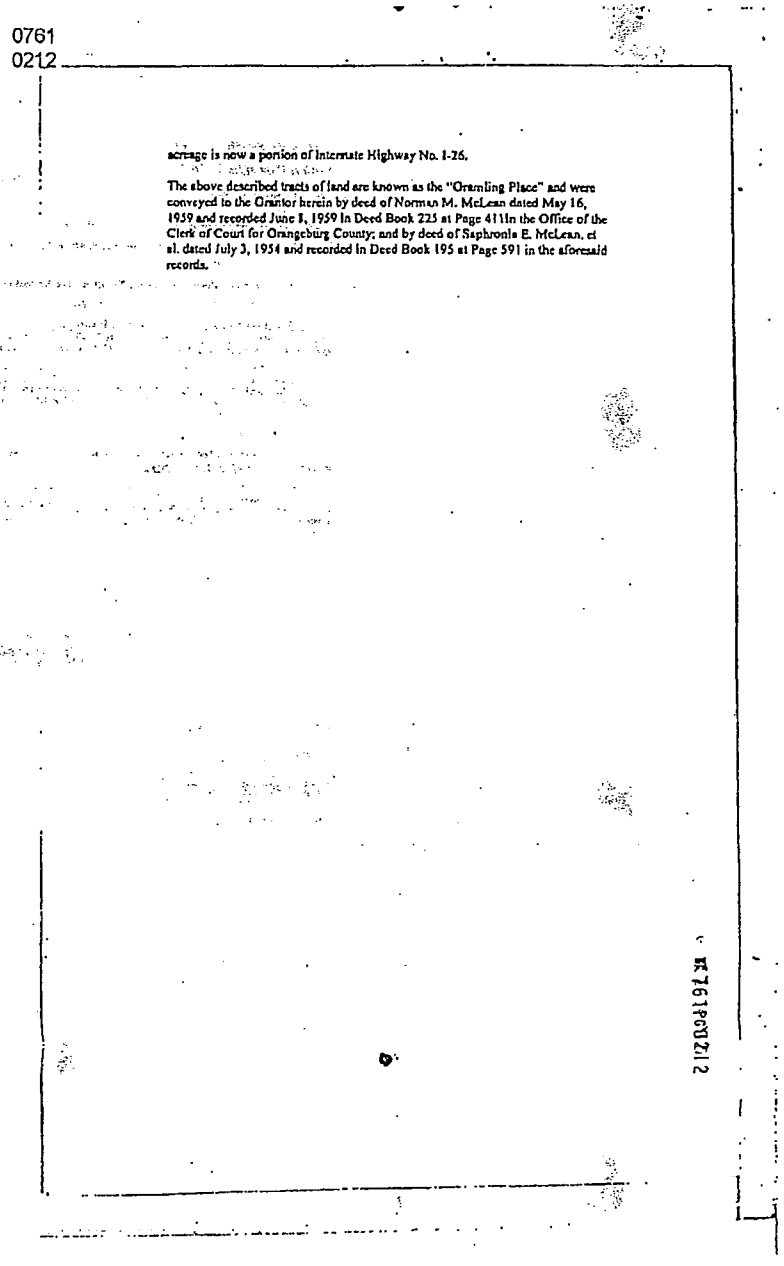
All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orangeburg County, South Carolina, containing eleven and eight-tenths (11.8) acres, more or less, and bounded on the North by Mt. Lebanon Public Road which separates this tract from the trat herein above described; on the East by the tract herein above described; on the Southeast by lands now or formerly of Mrs. Ella Till; and on the West by the tract hereinabove described.

Parcel Three:

All that certain piece, parcel or tract of land, situate, lying and being in School District No. 5, Orange Township, Orangeburg County, South Carolina, containing one hundred fifteen (115) acres, more or less, and bounded on the Northwest by the Atlantic Coast Line Railroad; on the East and Northeast by lands of Bull Swamp Baptist Church, Little Bull Swamp Creek, the run of the Creek being the line, to the center of the Old Cameron or Mt. Lebanon Road, thence along the said Old Cameron or Mt. Lebanon Road to lands now or formerly of Roy M. Cramling and Jack Crumling, thence along the East and Southeast by lands of the said Roy M. and Jack Cramling; and on the Southwest by a County Road separating this tract from lands now or formerly of Mrs. Ella Till and lands of Saphronia McLean.

IT IS UNDERSTOOD AND AGREED by and between the parties that the acreage set forth in the above entitled tracts has been diminished by approximately twenty-six and nine-tenths (26.9) acres which were conveyed to the S.C. State Highway Department by Norman M. McLean and Elizabeth M. Penoe and which

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acreage is now a portion of Interstate Highway No. I-26.
The above described tracts of land are known as the "Gramling Place" and were conveyed to the Grantor herein by deed of Norman M. McLean dated May 16, 1959 and recorded June 8, 1959 in Deed Book 225 at Page 411in the Office of the Clerk of Court for Orangeburg County; and by deed of Saphronia E. McLean, et al. dated July 3, 1954 and recorded in Deed Book 195 at Page 591 in the aforesaid records.
BK761PG0212

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF FLORENCE)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in Orangeburg County, South Carolina, bearing Orangeburg County Tax Map Number _____, and was transferred by Elizabeth M. Pence to James E. Brogden, Sr. as Trustee of the Elizabeth M. Pence Revocable Trust dated the 28th day of May, 1999 on May 28, 1999.

3. The deed is exempt from the deed recording fee because the deed is transferring realty in which the value of the realty, as defined in Code Section 2-24-30, (consideration paid or to be paid in money or money's worth) is equal to or less than one hundred dollars.

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantor.

5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

J. Mumford Scott
Responsible Person Connected with the Transaction.

J. Mumford Scott, Jr.
Print or Type Name Here.

SWORN to before me this 28th

day of May, 1999.

Pamela F. Swindell
Notary Public for South Carolina

My Commission Expires: 06-05-2008

E576 P502-13

0761
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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF FLORENCE)

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 28th day of May, 1999.

Lisa A. Pate

Jennifer L. Swartwelder
Notary Public For South Carolina
My Commission Expires: 08-05-2008

BK761PG0210

3

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF MARLBORO)

Elizabeth McL. Pence, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased,

Petitioner

Vs.

James E. Brogdon, Individually and as Trustee under Trust Agreement of Elizabeth M. Pence dated May 28, 1999, Coker College and Clemson University,

Respondents.

SUMMONS
Probate Court File #2000ES3400078
JURY TRIAL DEMANDED

TO the above-named Respondents in this action:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Petition on the Subscribers at their office at Spartanburg, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioners in this action will apply to the Court for the relief demanded in the Petition.

This 17 day of October, 2000.

James B. Drennan, III
PARKER, POE, ADAMS & BERNSTEIN, LLP
101 W. St. John Street, Suite 203
Spartanburg, South Carolina 29306
(864)591-2030
Attorney for Petitioner

EXHIBIT 3
Deponent Brogdon
Date 11/19/07 Plr. dmh
WWW.LEXPOBOOK.COM

CERTIFIED A TRUE COPY

P. Mark Heath

SBG:20475.1

P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF MARLBORO)

Elizabeth McL. Pence, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased,

Petitioner

Vs.

James E. Brogdon, Individually and as Trustee under Trust Agreement of Elizabeth M. Pence dated May 28, 1999, Coker College and Clemson University,

Respondents.

PETITION
Probate Court File #2000ES3400078
JURY TRIAL DEMANDED

Petitioner, complaining of Respondent, would show unto the Court that:

1. Petitioner is a resident of Marlboro County, South Carolina. Respondent James E. Brogdon (hereafter referred to as "Brogdon"), is also a resident of Marlboro County. On information and belief, Respondents Coker College and Clemson University are non-profit educational corporations whose principle businesses are conducted in Darlington County and in Pickens County, South Carolina, respectively.

2. Petitioner is the daughter of Elizabeth M. Pence (hereafter referred to as the "Decedent"), who died a resident of Marlboro County, South Carolina on October 3, 1999. Following the death of the Decedent, her Last Will and Testament dated the 3rd day of May, 1983 was duly admitted to

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P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

SBG:20206.1

probate by this Court and Petitioner was appointed Personal Representative of her estate, all as will appear by reference to Marlboro County Probate Court file number 2000ES3400078. A copy of the Decedent's Will, marked Exhibit "A", is attached hereto and incorporated herein by reference.

3. As will appear by reference to the Decedent's Will, the Decedent devised and bequeathed all of her property and estate to Petitioner in the event that her husband, L. E. Pence, should predecease her.

4. The Decedent's husband L. E. Pence did in fact predecease the Decedent, on October 22, 1997, and Petitioner is therefore the sole beneficiary under the Decedent's Will, and is entitled to all of the Decedent's estate which is governed by said Will.

5. On or about July 30, 1998 the Decedent executed a purported "Durable Power of Attorney" in and by which she conferred upon Respondent Brogdon broad powers to act for her as agent or attorney-in-fact, and generally to deal with her property for her benefit. A copy of said Power of Attorney is attached hereto, marked Exhibit "B" and incorporated herein by reference.

6. Article I of the Power of Attorney given by Decedent to Respondent Brogdon contained a provision authorizing Respondent Brogdon

> (12) to execute revocable or irrevocable trust agreements with such trustee or trustees as my Agent shall select, which trust may provide that income and principal may be paid to me, to some person for my benefit or applied for my benefit in such amounts as I or my Agent shall request or as the trustee or trustees shall determine, or such other beneficiary my Agent may designate, including my agent, and that on my death any remaining income and principal may be paid to my personal representative, or such other beneficiary my agent may designate, including my agent, and ...to deliver and convey any or all of my assets to the trustee or trustees thereof....

7. On or about the 28th day of May, 1999, Respondent Brogdon, in his capacity as Attorney-

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in-Fact for the Decedent, signed the Decedent's name to a purported "Trust Agreement" which he had prepared or caused his own attorneys or agents to prepare, thereby purporting to establish a trust agreement between the Decedent, as Settlor or creator of the Trust, and himself, as the Trustee. A copy of said Trust Agreement, marked Exhibit "C" is attached hereto and incorporated herein by reference.

8. Following his execution of the Trust Agreement, Respondent Brogdon, acting as Attorney-in-Fact for the Decedent, transferred to himself as Trustee substantial properties, belonging to the Decedent, consisting of real estate, stocks, bonds and assets due her from the estate of her late husband, all having a value, according to Petitioner's information and belief, in excess of Eight Million ($8,000,000.00) Dollars.

9. As will appear by reference to the Trust Agreement attached hereto, the Trust purportedly established by Respondent Brogdon in the name of the Decedent was for the lifetime benefit of the Decedent, and following her death the trust assets were to be retained in trust by him as Trustee for the lifetime benefit of the Petitioner, the Decedent's daughter, referred to therein as Elizabeth P. Pence, with income to be paid to her during her lifetime, together with such amounts from trust principal, if any, as Respondent Brogdon, as Trustee, determined to be necessary or advisable in his sole discretion. Following the death of Petitioner, said Trust provides that the trust is to continue for the benefit of Petitioner's children, if any, and is to be paid to her children at certain ages specified in said Trust Agreement.

10. Petitioner has no children or other issue, and said Trust Agreement provides that upon Petitioner's death, should she have no children or other issue, the then remaining trust property is to be

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distributed to Respondents Coker College and Clemson University, who are made parties Respondent because of their potential interest in the purported Trust.

11. To the extent of the substantial properties transferred to the purported Trust by Respondent Brogdon, the Trust Agreement serves as a testamentary disposition and a Will substitute, and it disposes of the Decedent's property at her death in a manner which conflicts with her valid Will, thereby nullifying the Decedent's Will by causing assets which would have been devised and bequeathed to Petitioner by the Decedent's Will to be retained in trust by Respondent Brogdon for Petitioner's lifetime and following her death to be distributed to persons selected by Respondent Brogdon, and not by either the Decedent or Petitioner.

12. Since the Decedent's death on October 3, 1999, Respondent Brogdon has failed and refused to deliver to Petitioner, as Personal Representative of the Estate of Elizabeth M. Pence, any part of the assets which he transferred to himself as Trustee.

FOR A FIRST CAUSE OF ACTION

13. All the foregoing allegations of this Petition, to the extent not inconsistent with this Cause of Action, are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein.

14. When the Decedent executed the purported Durable Power of Attorney, she was mentally incapacitated due to severe dementia arising out of Alzheimer's Disease and or Parkinson's Disease and she was so confused and disoriented that she was unable to understand the document by which she purportedly granted Respondent Brogdon a power of attorney.

15. At the time that the Decedent executed the purported Durable Power of Attorney, she was

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unable to conduct her own business affairs by reason of her mental disabilities and dementia, and she was thus incapable of granting Respondent Brogdon a power of attorney.

16. Because of the Decedent's mental disabilities and dementia, the Durable Power of Attorney dated July 30, 1998 is invalid and of no legal effect, and all acts taken by Respondent Brogdon as Attorney in Fact, including the establishment of the Revocable Trust Agreement dated May 28, 1999 and the transfer of Decedent's assets to himself as Trustee of said "Trust" are invalid and of no legal force and effect, and Petitioner is entitled to an Order of this Court declaring said Trust and all such transfers null and void and of no legal force and effect, and requiring Respondent Brogdon to forthwith deliver to Petitioner, as Personal Representative of the Estate of Elizabeth M. Pence, all assets, properties and interests in properties heretofore transferred by Respondent Brogdon to himself as Trustee.

FOR A SECOND CAUSE OF ACTION

17. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

18. Even if the Decedent had been mentally capable of executing the Durable Power of Attorney and giving a power of attorney to Respondent Brogdon, which Petitioner denies for the reasons set forth in the First Cause of Action hereinabove, paragraph (12) of Article I of said Durable Power of Attorney (in and by which the Decedent purportedly conferred upon Respondent Brogdon a power "to execute revocable or irrevocable trust agreements with such trustee or trustees as my Agent shall select, which trust may provide that income and principal may be paid to me, to some person for

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PO Box 455

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my benefit or applied for my benefit in such amounts as I or my Agent shall request or as the trustee or trustees shall determine, or such other beneficiary my Agent may designate, including my agent, and that on my death any remaining income and principal may be paid to my personal representative, or such other beneficiary my agent may designate, including my agent, and ...to deliver and convey any or all of my assets to the trustee or trustees thereof....") was and is invalid and of no force and effect for one or more of the following reasons or grounds:

(a) the power to establish trusts, and in connection therewith to transfer the principal's property to such trust and to determine the persons or entities who are to receive distributions of trust income and principal, is a power which is so personal in nature that it cannot be delegated by one person to another;

(b) the power to establish trusts, to transfer the principal's property to such trusts and to provide that the trust assets are to be distributed at the principal's death to persons who would not be entitled to take under the principal's valid Will, is equivalent to a power to make a will, which is a power so personal in nature that it cannot be delegated by one to another;

(c) that portion of the subject trust which provides for the disposition, distribution and ownership of the Decedent's assets following the Decedent's death constitutes a testamentary disposition of those assets, and the power to make testamentary dispositions is a power so personal in nature that it cannot be delegated to an agent or attorney in fact;

(d) that portion of the subject trust which provides for the disposition, distribution and ownership of the Decedent's assets following the Decedent's death is in conflict with Decedent's valid testamentary desires, as expressed in her valid Last Will and Testament, which has been duly admitted

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PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455

to probate by this Court, and represents an attempt to revoke the Decedent's valid Will, which is a power not given by Decedent to Respondent Brogdon in said Power of Attorney.

19. Petitioner is informed and believes that she is entitled to an Order of this Court declaring the Trust Agreement dated May 28, 1999, or at least so much thereof as provides for testamentary dispositions in conflict with Decedent's Will, to be null and void, and requiring Respondent Brogdon, as Trustee, to immediately deliver to Petitioner all of the assets now held by him as Trustee.

FOR A THIRD CAUSE OF ACTION

20. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

21. As of the date on which the Decedent executed and delivered the purported power of attorney to Respondent Brogdon, and for many years before that date, the Decedent was suffering from dementia and confusion arising from Alzheimer's' Disease and/or Parkinson's' Disease, and she was of such weakened mental capacity that she was totally unable to look after her own financial and business affairs.

22. As of the date on which the Decedent executed the purported power of attorney, she was of such weakened mental capacity and impaired judgment that she was unusually susceptible to the influence, direction and will of others, and she was easily influenced by others, particularly Respondent Brogdon

23. At the date on which the Decedent executed and delivered the purported power of attorney, and for some time prior thereto, Respondent Brogdon occupied a fiduciary and confidential

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PO Box 455

relationship to the Decedent, in that he had provided professional tax, business and accounting advice and services to Decedent and to Decedent's husband for many years, and the Decedent's reliance upon Brogdon, and her trust in him, increased significantly following the death of Decedent's husband L. E. Pence in October, 1997, when Brogdon assumed the additional role of personal representative of the estate of L. E. Pence, giving him substantial financial control and further influence over the Decedent. Petitioner is informed and believes that immediately prior to the execution of the purported power of attorney, the Decedent was so dependent upon and under the influence of Respondent Brogdon, that she was unable to resist doing whatever Respondent Brogdon instructed or advised her to do.

24. Due to the Decedent's weakened mental abilities and impaired judgment and Respondent Brogdon's influence over Decedent, Respondent Brogdon was able to and did in fact control the Decedent's decisions and conduct.

25. Respondent Brogdon took advantage of his confidential and fiduciary relationship with Decedent, and of the Decedent's weakened mental state and infirmities, and through importunity, demand, suggestion, persuasion, advice and means not entirely known to Petitioner, caused the Decedent to give him the power of attorney attached hereto, marked Exhibit "B", which not only conferred upon him total control over the Decedent's assets and income during her lifetime, but also delegated to him the power to utilize her assets to create a trust, upon such terms as he might determine, thereby enabling him to replace Decedent's will with his own.

26. The purported power of attorney and the trust established by Respondent Brogdon pursuant to the authorities contained in such power of attorney were not the result of the Decedent's

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PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

own free will, deliberate judgment, or conscious decision, but were instead the direct result of Respondent Brogdon's own desires and his influence and control over the Decedent and her affairs.

27. If not for the Decedent's weakened mental state and Respondent Brogdon's abuse of the confidential and fiduciary relationship which existed between him and the Decedent, the Decedent would not have executed the power of attorney and would not have authorized Brogdon to take total control over her assets and income, to establish a trust in her name and with her assets, and to establish as the beneficiaries of such trust persons and entities selected by him and not by her, including Respondents Coker College and Clemson University, neither of which, to Petitioner's knowledge, had ever been included as prospective beneficiaries under any testamentary instrument executed by Decedent or her late husband, L. E. Pence, and neither of which, to Petitioner's knowledge had ever been supported financially by Decedent or her late husband during their respective lifetimes.

28. Because of the undue influence exercised by Respondent Brogdon, as hereinabove set forth, the Power of Attorney dated July 30, 1998 and the Trust Agreement dated May 28, 1999 are both null and void, and should be declared by this Court to be null and void, and Respondent Brogdon should be ordered and required to deliver to Petitioner, as Personal Representative of the Decedent's estate, all assets in his possession as "Trustee".

FOR A FOURTH CAUSE OF ACTION

29. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

30. Even if the Decedent had been mentally capable of executing the Durable Power of

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PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

Attorney and giving a power of attorney to Respondent Brogdon, and even if the authority to establish a trust for the Decedent could have been lawfully given by the Decedent to Respondent Brogdon, all of which Petitioner denies for the reasons set forth hereinabove, said Durable Power of Attorney did not give said Respondent the authority to name himself as Trustee of any such trust.

31. By utilizing his status as attorney in fact to establish a trust in the name of the Decedent and naming himself as Trustee, Respondent Brogdon exceeded the authorities given him by said Power of Attorney.

32. Inasmuch as Respondent Brogdon had no right, power or authority to name himself as Trustee of the purported Trust Agreement, such Trust Agreement is null and void and should be declared by this Court to be null and void and of no legal effect, and Respondent Brogdon should be ordered and required to deliver to Petitioner, as Personal Representative of the Decedent's estate, all assets in his possession as "Trustee".

FOR A FIFTH CAUSE OF ACTION

33. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

34. Even if the Durable Power of Attorney dated July 30, 1998 were valid, which Petitioner denies for the reasons set forth hereinabove, Respondent Brogdon, as agent or attorney in fact for the Decedent, had a fiduciary relationship towards the Decedent, and a duty and obligation to act with the utmost good faith, honesty, integrity and loyalty with respect to the Decedent and to her affairs.

35. By establishing the purported Trust Agreement between the Decedent and himself as

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P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

Trustee, Respondent Brogdon utilized his status as attorney in fact to fabricate an agreement between himself and the Decedent and thereby to confer upon himself, as Trustee, substantial benefits, powers and privileges to which he was not entitled, and the Trust Agreement dated May 28, 1999 should be declared null and void by this Court for one or more of the following reasons:

(a) by establishing the purported trust in behalf of the Decedent, Respondent Brogdon effected an arrangement between himself and the Decedent under which he derived substantial benefits, power and control over the Decedent's property and affairs, and such transaction is invalid because it is a transaction between agent and principal;

(b) as agent or attorney in fact for the Decedent, Respondent Brogdon had a duty to act solely for the benefit of the Decedent and not for his own benefit, and in establishing the purported trust with himself as Trustee Respondent violated such duty and gratuitously conferred upon himself substantial benefits, including but not limited to a right to receive payment from the trust property for his services as Trustee;

(c) due to her mental incapacity at the time the Respondent established the purported trust in her name, the Decedent was unable to approve, consent to or understand the purported trust, or to appreciate the significance of the fact that it was a gratuitous transaction between herself, as principal, and Respondent Brogdon, as agent, under which her said agent derived substantial personal benefits;

(d) in establishing the subject trust between himself and the Decedent, Respondent Brogdon acted in two separate, distinct and opposite roles or characters, acting for himself and for his own benefit on the one hand, and purporting to act for the Decedent on the other, and such conduct

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P. Mark Heath
P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

constituted self-dealing on the part of Respondent Brogdon;

(e) in establishing the subject trust between himself and the Decedent, Respondent Brogdon obtained financial benefit out of a financial transaction with property which the Decedent had entrusted to him and to his management in his fiduciary capacity as agent or attorney in fact;

(f) Respondent Brogdon unjustly enriched himself by utilizing his status as agent or attorney in fact to establish the subject trust with himself as Trustee.

36. The purported trust agreement should be declared null and void, and of no legal effect by this Court because the establishment of such trust by Respondent Brogdon, as agent, constituted self-dealing and a conflict of interest, and such trust was established without adequate consideration and without the full knowledge, consent or approval of the Decedent, and Respondent Brogdon should therefore be ordered and required to deliver to Petitioner, as Personal Representative of the Decedent's estate, all assets in his possession as "Trustee".

FOR A SIXTH CAUSE OF ACTION

37. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

38. Even if the Decedent had been mentally competent to give Respondent the subject Power of Attorney, and even if that portion of the Power of Attorney which authorized the Respondent, as attorney in fact, to establish a trust in Decedent's name and to transfer Decedent's property thereto had been valid and effective, both of which are denied for the reasons set forth hereinabove, the Decedent was mentally incompetent as of May 28, 1999, the date on which the Respondent Brogdon established

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PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

the purported trust.

39. As of the date on which he established the purported trust in Decedent's name, Respondent Brogdon was aware of the provisions of Decedent's Will of May 3, 1983, and he knew that all of the Decedent's substantial property and estate would be devised and bequeathed to Petitioner upon Decedent's death according to said Will, but he nevertheless inserted in said trust provisions which took effect at the Decedent's death and thereby rendered the Decedent's Will a nullity, by disposing of her assets and properties in a manner different from that provided by Decedent in her own Will..

40. As of the date on which he established the purported trust in Decedent's name, Respondent Brogdon knew that the Decedent was mentally incompetent and that she would be unable to exercise the powers to revoke or amend said trust which were ostensibly reserved unto her, as "Settlor", and he knew and intended that the trust provisions which were to take effect upon and after the Decedent's death could not be changed by the Decedent, though they were in conflict with her own testamentary desires, as expressed in her Will.

41. As agent for an incapacitated principal, Respondent Brogdon had a duty to preserve the Decedent's own estate plan, and to take no action which would nullify the Decedent's testamentary desires as expressed in her said Last Will and Testament, but he ignored that duty and devised his own estate plan for the Decedent's property.

42. Because the provisions of the subject trust which purport to control the trust assets after the Decedent's death are in direct conflict with the Decedent's estate plan as expressed in her Will, those provisions of said trust should be declared null and void by this Court, and Respondent Brogdon

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PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

should be ordered to deliver to Petitioner, as Personal Representative, all assets now held by him as Trustee, so that they might be distributed in accordance with the Decedent's Will.

FOR A SEVENTH CAUSE OF ACTION

43. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

44. Following the death of her father on October 22, 1997, the Petitioner was the sole beneficiary under her mother's Will, and said Will was for all practical purposes irrevocable due to the Decedent's mental incapacity, as alleged hereinabove.

45. At the time he established the subject trust, Respondent Brogdon was well aware of the terms of the Decedent's Will, of the Decedent's mental incapacity and of Petitioner's beneficial rights and interest under said Will.

46. By establishing a trust containing dispositive provisions in conflict with the provisions of Decedent's Will and then transferring most of the Decedent's property to himself as Trustee, Respondent Brogdon intended to and did in fact intentionally deprive Petitioner of most of the inheritance she would otherwise have received upon her mother's death.

47. By establishing said trust and transferring most of the Decedent's property to himself as Trustee, Respondent Brogdon intentionally, willfully, maliciously and without justification interfered with Petitioner's rights under the Decedent's Will, and thereby deprived Petitioner of substantially all of the property and assets which would have passed to her under her mother's Will but for the actions of said Respondent, all to Petitioner's great damage and injury.

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P. Mark Heath
P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

48. Petitioner is informed and believes that she is entitled to, and she does hereby pray for, judgment against Respondent Brogdon for actual damages in an amount equal to the value of the assets which would have passed to her under her mother's said Will but for the wrongful and intentional acts of Respondent, together with punitive damages in such amount as may be determined by a jury.

FOR AN EIGHTH CAUSE OF ACTION

49. All the foregoing allegations of this Petition are hereby adopted for this Cause of Action and incorporated herein by reference as fully as if set forth verbatim herein, to the extent not inconsistent with this Cause of Action.

50. As agent or attorney in fact under the power of attorney dated July 30, 1998, Respondent Brogdon has a duty to render an accounting to Petitioner, as Personal Representative of the Decedent's estate, but he has failed to do so.

51. Petitioner is informed and believes that she is entitled to an Order of this Court requiring Respondent Brogdon to render a full accounting to Petitioner and to this Court of all his actions as attorney in fact for the Decedent.

FOR A NINTH CAUSE OF ACTION

52. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action hereinabove are hereby adopted for and incorporated into this Cause of Action, as fully as if set forth verbatim herein.

53. As Trustee under the Trust Agreement dated May 28, 1998, Respondent Brogdon had a duty to submit annual accountings to the Decedent and following the death of the Decedent to Petitioner, but he has failed to do so.

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P. Mark Heath
P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

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54. Petitioner is informed and believes that she is entitled to an Order of this Court requiring Respondent Brogdon to render a full accounting to Petitioner and to this Court of all his actions as Trustee of said Trust, including all receipts and disbursements of assets and income.

WHEREFORE, Petitioner prays for judgment against the Respondents as follows:

(a) That, for one or more of the reasons set forth hereinabove, the Durable Power of Attorney given by the Decedent to Respondent Brogdon on July30, 1998, and the purported Trust Agreement established by Respondent Brogdon on May 28, 1999 be declared to be null and void and of no legal effect and that Respondent Brogdon be required to forthwith deliver to Petitioner, as Personal Representative of the Estate of Elizabeth M. Pence, all of the assets and properties transferred by said Respondent to himself as Trustee, together with any and all increases therein, realized and unrealized, as well as any and all income, gains and appreciation which reasonably would and should reasonably have been realized thereon by a prudent person acting as Trustee and familiar with such matters;

(b) That Petitioner in her individual capacity be granted judgment upon the Seventh Cause of Action herein against Respondent Brogdon for such actual and punitive damages as may be determined by this Court and a jury to be due by reason of said Respondent's intentional interference with Petitioner's rights in her mother's estate and under her Will;

(c) That Respondent Brogdon be required to render a full accounting to Petitioner and to this Court in his capacities as attorney in fact and as Trustee, and that he be ordered to pay to Petitioner all sums found due upon such accountings, including but not limited to reimbursement of any and all sums received by him from the purported trust as Trustee fees or commissions, and any and all expenditures made by him from the trust estate for expenses incurred in connection with this action, including but not

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P. Mark Heath
P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

SBG:20206.1

limited to attorney's fees;

(d) For the costs of this action and such other and further relief as the Court may deem just and proper.

James B. Drennan, III
PARKER, POE, ADAMS & BERNSTEIN, LLP
101 W. St. John Street, Suite 203
Spartanburg, South Carolina 29306
(864)591-2030
Attorney for Petitioner

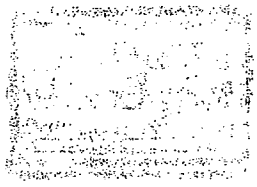
October 17, 2000

CERTIFIED A TRUE COPY

17 P. Mark Heath SBG:20206.1

P. MARK HEATH
PROBATE JUDGE FOR MARLBORO COUNTY
PO Box 455
Bennettsville, SC 29512

4



STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

Elizabeth P. Pence, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased,

Plaintiff,

vs.

James E. Brogden, Individually and as Trustee under Trust Agreement of Elizabeth M. Pence dated May 28, 1999 Coker College, and Clemson University,

Defendants

COURT OF COMMON PLEAS
CASE NO. 00-CP-34-354

A CERTIFIED
TRUE COPY
William B. Gunnels
CLERK OF COURT
MARLBORO COUNTY

ORDER APPROVING
COMPROMISE AND SETTLEMENT

This matter comes before this Court upon petition of the Plaintiff, Elizabeth P. Pence, requesting approval of a Compromise and Settlement Agreement between the parties in the above entitled matter. With a Summons and Petition filed in the Marlboro County, South Carolina Probate Court on October 19, 2000, Elizabeth P. Pence, also known and therein designated as Elizabeth McL. Pence ("Pence"), individually and as Personal Representative of the Estate of Elizabeth McLean Pence ("Decedent"), filed an action against James E. Brogden (hereinafter referred to as "Brogden" or as "Trustee"), Clemson University ("Clemson") and Coker College ("Coker"), Respondents, contesting the validity of a Trust Agreement established by Respondent Brogden on May 28, 1999 in the name of and on behalf of the Decedent (the "Pence Trust") pursuant to powers given to him in a Durable Power of Appointment signed by Elizabeth McLean Pence on July 30, 1998, to which said Pence Trust Brogden transferred assets belonging to the Decedent prior to her death.

FILED
2001 DEC 14 P 3:35
MARLBORO COUNTY CLERK OF COURT
BENNETTSVILLE, S.C.

This action was thereafter removed to this Court under the provisions of South Carolina Code §62-1-302.

The parties have now reached certain understandings and agreements in full settlement of all claims made or which might have been made by Pence in any way arising out of the death of the Decedent and/or the matters alleged in the Petition herein.

The Court finds that a good faith controversy exists as to the creation of the Pence Trust as exhibited by the filing of the above referenced petition in the Marlboro County Probate Court, and that the proposed compromise is in the best interest of all of the parties hereto.

EXHIBIT 4
Deponent Brogden
Date 11/19/07 Rptr. dmh
WWW.DEPOBOOK.COM

The Court finds that the attached Compromise and Settlement Agreement is in good faith and that the effect of the Agreement is just and reasonable.

NOW, THEREFORE IT IS HEREBY ORDERED that the Agreement is approved and that the execution of such Agreement by all fiduciaries subject to this Court's jurisdiction is hereby ratified.

IN WITNESS WHEREOF, the parties set their hands and seals this _____ day of February, 2002.

James E. Lockemy, Presiding
Judge, Fourth Judicial Circuit

February 26, 2002.

Bennettsville, SC

STATE OF SOUTH CAROLINA)
) COMPROMISE AND
COUNTY OF MARLBORO) SETTLEMENT AGREEMENT

WHEREAS, by Summons and Petition filed in the Marlboro County, South Carolina Probate Court on October 19, 2000, Elizabeth P. Pence, also known and therein designated as Elizabeth McL. Pence ("Pence"), individually and as Personal Representative of the Estate of Elizabeth McLean Pence ("Decedent"), filed an action against James E. Brogdon (hereafter referred to as "Brogdon" or as "Trustee"), Clemson University ("Clemson") and Coker College ("Coker"), Respondents, contesting the validity of a Trust Agreement established by Respondent Brogdon on May 28, 1999 in the name of and in behalf of the Decedent (the "Pence Trust") pursuant to powers given him in a Durable Power of Attorney signed by Elizabeth McLean Pence on July 30, 1998, to which said Trust Brogdon transferred assets belonging to the Decedent prior to her death; and

WHEREAS, said action was thereafter removed to the Court of Common Pleas for Marlboro County where it is now pending under Civil Action number 00-CP-34-354; and

WHEREAS, the parties have now reached certain understandings and agreements in full settlement of all claims made or which might have been made by Pence in any way arising out of the death of the Decedent and/or the matters alleged in the Petition herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, in consideration of the sum of One Dollar to each in hand paid by the others, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and agreements herein

contained, Pence, Brogdon, Clemson and Coker have agreed as follows, effective this __ day of January, 2002:

1. DISTRIBUTION FROM TRUST TO PENCE ESTATE. The parties have agreed that in order to resolve the disputes between them, Brogdon, as Trustee, will convey and distribute to Pence, as Personal Representative of the Decedent's Estate, Trust assets having a value equal to sixty (60%) percent of the value of all of the Trust assets, determined as provided below, and the remaining forty (40%) of the Trust assets will be retained by the Trustee, in trust, upon the terms, conditions, uses and trusts set forth in the Trust Agreement.

2. ASSIGNMENT BY PENCE. Upon approval of this Agreement by the Court pursuant to paragraph 11 below, if not sooner, Pence, in her individual capacity, will execute a revocable Trust Agreement in the form attached hereto, marked Exhibit "A" (the "Revocable Trust"). Pence is the sole beneficiary of the Decedent's Estate, and as such will ultimately receive all assets of the Estate, including the Trust assets to be distributed by the Trustee to Decedent's Estate pursuant to paragraph 1 above. In order to minimize probate costs and to expedite the transfer of the Trust assets to the Revocable Trust, Pence, individually and as Personal Representative, hereby authorizes and directs that the Trustee convey and distribute to the Trustees of said Revocable Trust for her use and benefit all property and interests in property which may be distributable to the Estate under this Agreement, and to that end she does hereby assign unto said Trustees the right to receive and receipt for all assets which may be due her in and by the terms of this Agreement.

3. VALUATION OF TRUST ASSETS. For purposes of this Agreement, the Trust

assets shall be valued as follows:

(a) All real property shall be valued at the same values reported for federal estate tax purposes in the Decedent's estate, excluding any timber thereon, which shall be separately valued as provided in subparagraph (c) below. The Trust real properties and their values are set forth in Exhibit "B" attached hereto.

(b) The remaining Trust assets, other than timber, shall be valued as of the close of business on the last day of the calendar month in which this Agreement is approved by the Court as provided below.

(c) The value of the timber on the Trust real property shall be deemed to be the sum of (i) the net proceeds received for such timber upon its sale pursuant to paragraph 4 below, after deducting from the sale proceeds the cost of reseeding and the costs and expenses of sale, plus (ii) the appraised value of any immature timber not cut, such appraised value to be established in the manner set forth in paragraph 4 below.

4. SALE OF TIMBER. Immediately after Court approval of this Agreement, all merchantable timber on the Trust real property shall be sold by the Trustee and, in the event that the Marlboro County real property is conveyed to her by the Trustee prior to selling the timber thereon, by Pence, and Pence and the Trustee shall select one or more Registered Foresters to assist in the harvesting of such timber and to appraise any timber not cut because not mature. Following the initial harvest of merchantable timber on the Orangeburg County real property, Trustee shall thereafter periodically harvest timber thereon in accordance with the recommendations of the Registered Forester who assists in the harvesting of the Orangeburg

timber.

5. TIME OF PAYMENT/DISTRIBUTION. All distributions and payments due Pence from the Trust shall be made as follows:

(a) Non-Timber Assets: As soon as is practicable, but not later than the 15th day of the calendar month following the month in which the Court approves this Agreement as provided in paragraph 11 below, the Trustee shall transfer and distribute to Pence assets of the Pence Trust having a value equal to sixty (60%) percent of the value of the Trust's assets, other than timber, valued as provided in paragraph 3 above. The assets to be distributed to Pence shall include the Marlboro County real property now owned by the Trust, at its value as shown on Exhibit "B". All Orangeburg County, South Carolina real property which is owned by the Trust shall be retained in trust by the Trustee.

(b) Timber: The Trustee shall pay Pence sixty (60%) percent of the net proceeds arising from the sale of the Trust's timber assets, as and when timber sales are made pursuant to paragraph 4 above. In the event that the Trustee conveys the Marlboro County real property to Pence prior to selling the timber thereon, Pence shall receive and shall account for the proceeds of such sale and shall remit to the Trustee forty (40%) percent of the net proceeds arising from the sale of such timber. Following the final timber sale, the amounts due each of the parties shall be reconciled, and if either has received less than the full amount of his or her prorata share of the timber sales, the other shall pay such deficit, plus interest at the rate of seven (7%) percent.

6. BROGDON AS TRUSTEE. Brogdon shall continue to serve as Trustee of the Trust for so long as he is able and willing to do so, and he shall be entitled to receive reasonable

compensation for his services as Trustee, in such amount as may be agreed to by and between Pence and Brogdon. Prior to the submission of this Agreement to the Court, William N. McLean, designated as a successor Co-Trustee in ARTICLE VII(1) of the Trust, will have executed a Waiver of Right to Serve, a copy of which is attached hereto, marked Exhibit "C", and in the event that Brogdon should become unable or unwilling to serve as Trustee, Wachovia Bank, or any duly designated successor corporate Trustee, shall serve as sole Trustee of the Trust.

7. CLOSING OF I E. PENCE ESTATE. Following approval of this Agreement by the Court, Brogdon, who is now serving as Personal Representative of the Estate of L. E. Pence in theMarlboro County Probate Court, shall take such steps as may be required in order to bring the administration of said estate to a close, and shall distribute any remaining assets to Pence, as Personal Representative of Decedent's estate.

8. SEPARATE ACCOUNTING FOR ORANGEBURG REALTY. Following the approval of this Agreement by the Court and the distributions to Pence as provided herein, the Trust property will consist of (a) the Orangeburg real property, including any timber not cut because not merchantable, and (b) other investments. In order to give effect to the intention of the Decedent, as expressed in ARTICLE VI(3) of the Trust, that the Orangeburg real property be distributed to the issue of the Settlor's brother (Norman M. McLean), per stirpes, in the event that Pence does not have children or other issue to receive final distribution of the Trust property, the Trustee will separately account for the Orangeburg real property, and any proceeds therefrom in the event of sale, so that in the event that Pence should leave no issue to receive final distribution of the Trust property in accordance with the terms of the Trust, such real property, as from time

to time constituted, including the proceeds therefrom should it or any part of it be sold, shall pass to the issue of the Decedent's said brother, and the remaining Trust property shall pass to Clemson and Coker in equal shares, as provided in said Trust.

9. TREATMENT OF ESTATE TAXES. (a) In the event that it is finally determined in the estate tax proceedings relating to the Decedent's estate that additional estate taxes are due by reason of her death, such additional taxes shall be borne by the parties as follows:

(i) any additional estate tax which may be due because of an increase in the fair market value of any asset of the Decedent's taxable estate which is to be retained in trust by the Trustee, including any interest due thereon, shall be paid in full by the Trust. Any additional estate tax which may be due to an increase in the fair market value of any other asset shall be paid in full by Pence, as Personal Representative of the Decedent's estate.

(ii) any additional estate tax, including interest, which may be due for any other reason shall be apportioned between the Trust and Decedent's estate, with the Trust bearing that proportion of such additional estate tax as the value of the Trust, after making all distributions due Pence hereunder, bears to the total value of the Decedent's taxable estate, as finally determined, and the estate bearing the remainder of such additional tax.

(b) In the event that the Decedent's estate should receive any refund of estate taxes paid, such refund shall be apportioned between the estate and the Pence Trust, each to receive a portion of such refund in proportion to its contribution towards payment of such estate taxes; provided, sixty (60%) percent of any refund to which the Pence Trust may receive shall be distributed to Pence as part of the distributions due her under paragraph 1 above.

10. MUTUAL RELEASES. Each of the parties does hereby release, relieve and forever discharge the others, and such others' heirs, successors and assigns, of and from any and all further liability for or on account of any and all claims heretofore made arising out of or in any way connected with the death of Decedent and the creation and administration of the Trust, and each party agrees to execute and deliver any and all additional releases or other instruments which may be reasonably necessary to accomplish the full and complete release of the others of and from all claims heretofore made or which could have been made by them, rising out of or in any way connected with the death of Decedent and the creation and administration of said Trust. Each of the parties shall be responsible for his or her own attorneys' fees.

11. COURT APPROVAL. This Agreement shall be subject to the approval of the Court of Common Pleas for Marlboro County pursuant to the provisions of South Carolina Code Section 62-3-1102. When this Agreement is submitted to the Court for approval, the proposed ratifying Order attached hereto, marked Exhibit "D", shall be submitted to the Court together with such testimony as may be needed by the Court to establish the reasonableness and finality of this Agreement.

12. EXECUTION IN COUNTERPARTS. Copies of this Agreement may be executed separately by the parties, and this Agreement shall be deemed to be fully executed and binding and effective for all purposes when each of the parties has signed a counterpart hereof. All such counterparts, taken together, shall constitute a single agreement.

13. BINDING EFFECT/AMENDMENT. This Agreement shall be binding upon and

shall inure to the benefit of the parties, their respective heirs, successors and assigns, and it may not be amended except by mutual agreement reduced to writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of January, 2002.

WITNESSES:

ELIZABETH P. PENCE, Individually and as Personal Representative of the Estate of Elizabeth McLean Pence, deceased.

JAMES E. BROGDON, Individually and as Trustee under Trust Agreement of Elizabeth McLean Pence dated May 28, 1999

CLEMSON UNIVERSITY

By: _____
Its Associate General Counsel

COKER COLLEGE

By: _____
Its General Counsel

REAL ESTATE OF ELIZABETH M. PENCE TRUST
VALUED AS OF DATE OF DEATH

Parcel 1. 50 acres off Highway S35-122 (Bradley Road), Marlboro County, SC. Tax map 22-01-02-14.	27,000.00
Parcel 2. 61.28 acres on both sides of Academy Rd. Marlboro County, SC, near Bennettsville. Tax map 22-01-02-15. .	36,000.00
Parcel 3. 186.32 acres on both sides of Academy Rd., Marlboro County, SC, near Bennettsville. Tax map 22-01-02-27.	127,000.00
Parcel 4. 47.7 acres on dirt road, Marlboro County, SC. Tax map 22-01-02-26. .	20,000.00
Parcel 5. 135.7 acres on both sides of Academy Road, Marlboro County, SC, near Bennettsville. Tax map 22-01-02-28.	121,000.00
Parcel 6. 178.53 acres on Pence Rd., Marlboro County, SC. Tax map 22-01-02-29.	110,000.00
Parcel 7. 28.3 acres on Beverly Creek Rd., Marlboro County, SC. Tax map 22-01-02-30.	19,000.00
Parcel 8.65.82 acres, both sides of Academy Rd., Marlboro County, SC. Tax map 28-00-02-19.	69,000.00
Parcel 9. 64 acres off Academy Rd, on field road. Tax map 28-00-02-23.	36,000.00
Parcel 10. 13.9 acres in SW corner of Academy Rd. and Hwy S35-22 (Bennettsville Firetower Rd.) Tax map 28-00-02-37.	28,000.00
Parcel 11. 20.75 acres fronting on Hwy. S35-22 (Bennettsville Firetower Rd.) Tax map 28-00-02-39.	31,000.00
Parcel 12. 123.1 acres on both sides of S35-48 (East Main Street Extension) 3 miles northeast of Bennettsville, Marlboro County, SC. Tax map 28-00-02-50.	76,000.00

Exhibit "B"

REAL ESTATE OF ELIZABETH M. PENCE TRUST
VALUED AS OF DATE OF DEATH

Parcel 13. 44 acres off Hwy S35-22 (Bennettsville Firetower Rd.). Access by dirt road known as Manship Rd. Tax map 29-00-01-14.	27,000.00
Parcel 14. Residence and 87 acres on Academy Road, Marlboro County, SC. Tax map 28-00-02-20.	329,000.00
Parcel 15. 54.8 acres, more or less off Highway 21 near Caw Caw Swamp, having no road frontage, Orangeburg County, SC.	27,500.00
Parcel 16. 120.11 acres, more or less, off Highway 21, near Caw Caw Swamp, Orangeburg County, SC, having no road frontage.	60,000.00
Parcel 17. 307.99 acres on Highway 33 at Interstate Highway I-26, Orangeburg County, SC.	1,540,000.00
TOTAL	2,683,500.00

Exhibit "B"

STATE OF SOUTH CAROLINA)
) WAIVER OF RIGHT TO SERVE AS TRUSTEE
COUNTY OF MARLBORO)

WHEREAS, Elizabeth M. Pence, a resident of Marlboro County, South Carolina, acting through her attorney-in-fact, James E. Brogdon, established a certain Trust Agreement on the 28th day of May, 1999, naming James E. Brogdon as the initial Trustee; and

WHEREAS, Elizabeth M. Pence thereafter died on October 3, 1999; and

WHEREAS, ARTICLE VII(1) of said Trust Agreement provides that, in the event that James E. Brogdon should become unable or unwilling to serve as Trustee, Wachovia Bank and William N. McLean are to serve as successor Trustees; and

WHEREAS, William N. McLean wishes to make known his intention not to serve as a successor Trustee in the event that James E. Brogdon should become unable or unwilling to serve as Trustee.

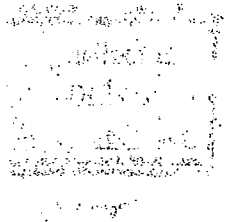
NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that William N. McLean does hereby now and forever WAIVE THE RIGHT TO SERVE AS A SUCCESSOR TRUSTEE under the Elizabeth M. Pence Trust Agreement dated May 28, 1999.

SIGNED at 12:00 pm, 1333 Main St, Columbia, SC this 25th day February, 2002.

WITNESSES:

William N. McLean

Exhibit "C"



PROBATE COURT

STATE OF SOUTH CAROLINA

COUNTY OF Marlboro

IN THE MATTER OF Elizabeth M. Pence

CASE NUMBER 2002ES3400078

Decedent's Date of Death (if known):
Decedent's Last Mailing Address:

STATEMENT OF CREDITOR'S CLAIM

Creditor: James E. Brogdon, Trustee of the Elizabeth M. Pence Trust
Address: P.O. Box 626
Bennettsville, SC 29512
Telephone: (843) 479-4422

Basis of claim: Reimbursement for estate taxes paid

Amount of claim: $2,381,628.51

Date claim will become due (if not already due): past due

Nature of uncertainty as to amount of claim and due date, if any:

Description of any security as to claim:

Signature:

Title: Trustee

Date: 9/17/03

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, and 62-3-806 on reverse.)

FILED
MARLBORO COUNTY
SOUTH CAROLINA
2003 SEP 18 AM 9:19
P. MARK HEATH
JUDGE OF PROBATE

Trustee
011

EXHIBIT
Deponent Brogdon
Date 11/9/07 Rptr. dm
WWW.DEPOBOOK.COM

James N. McLean
4005 Turkey Hill Ct.
Orangeburg, SC 29118
(803) 516-8059
jimmclean@mindspring.com

October 6, 2002

James E. Brogden, Sr.
PO Box 626
Bennettsville, SC 29512

Dear Mr. Brogden,

I have visited the Grambling property owned by the Elizabeth M. Pence Trust with Mr. Phalen of the SC Department of Transportation. My siblings and I agree with the granting of the Right-of-Way for the paving of Glenzell Rd. As beneficiaries of the trust, we believe this can only enhance the future value of this property.

If you have any other question, please do not hesitate to contact me.

Thanks for allowing us the input,

James N. Mclean

Trustee
012

LUNDIN AND BROGDON
CERTIFIED PUBLIC ACCOUNTANTS
212 East Market Street
Post Office Box 626
Bennettsville, South Carolina 29512
Phone (843) 479-4422
Fax (843) 479-4747

Gustaf C. Lundin (1952-1972)
James E. Brogdon
Thomas M. Carabo

Members of
American Institute of Certified Public Accountants
South Carolina Association of Certified Public Accountants

December 17, 2002

Mr. Freeman W. Coggin, Jr., Sr. V. P.
Wachovia Bank, N. A.
Trust and Investment Management
1426 Main Street, 16th Floor
Columbia, South Carolina 29226-9332

Re: Estate of L. E. Pence

Dear Freeman:

Scheduled below is the income that will be reported for the year 2002 from the estate of L. E. Pence.

Income to be reported to Elizabeth P. Pence

Non-taxable interest	62.
Dividends	3,924.
Taxable interest	3.
	3,989.

Income to be reported as "Income in Respect of a Decedent" - Estate of Elizabeth P. Pence

Non-taxable interest	44.
Dividends	2,806.
Taxable interest	2.
	2,852

Income to be reported to Elizabeth P. Pence Revocable Trust

Non-taxable Interest	54.
Dividends	3,234.
	3,288.

Trustee
021

Thank you for sending me the identification number on the trust and on the estate. I would appreciate it if you would give me the exact wording for each of these entities to be used on the tax return. If you have any questions concerning this please give me a call.

Sincerely,

James E. Brogdon
Certified Public Accountant

JEB/nkg

cc: Mr. Mack Cornett

Trustee
022

SCOTT & ASSOCIATES, P.C.
ATTORNEYS AT LAW
1807 CHEROKEE ROAD
P.O. DRAWER 6105
FLORENCE, SOUTH CAROLINA 29502

TELEPHONE
(843) 662-6204

TELECOPIER
(843) 662-1999

J. MUNFORD SCOTT, JR. (LL.M.)
CERTIFIED SPECIALIST IN TAXATION
CERTIFIED SPECIALIST IN ESTATE PLANNING

GLENN F. GIVENS (LL.M., MTAX)

JOHN M. SCOTT, III (LL.M.)

FILED

May 9, 2003

James B. Drennan, III, Esq.
Dennis, Shaw & Drennan, LLC
Post Office Box 891
Spartanburg, SC 29304-0891

Re: Elizabeth M. Pence Estate - Additional Taxes Owed
Our File #2303

Dear Mr. Drennan:

Thank you for providing us with a copy of the Notice from the Internal Revenue Service setting forth the additional taxes owed by the estate of Elizabeth M. Pence. After review of the IRS Notice, the Report of Estate Tax Examination Changes, a summary of the Final Inventory of the Pence Family Trust and your letters dated March 28, 2003 and December 13, 3002, we have calculated the amount of additional taxes owed by the Pence Family Trust.

According to our calculations, the Pence Family Trust owes $36,536.51 of the additional $203,150.92 that is due to the IRS. Consequently, the estate owes the remaining $166,614.41. The Trust's share of the overall additional tax liability shown above is 17.98%.

The Trust's share of the additional tax liability is based upon the language found in Section 9(a)(ii) of the Compromise and Settlement Agreement (the "Settlement Agreement"). According to Section 9(a)(ii) of the Settlement Agreement, the Trust is to bear "that proportion of such additional estate tax as the value of the Trust, after making all distributions due Pence hereunder, bears to the total value of the Decedent's taxable estate, as finally determined, and the estate bearing the remainder of such additional tax." After all distributions to Elizabeth's Trust were made, the final value of the assets in the Pence Family Trust was $1,714,300.68 (see attached summary of Final Inventory). According to the Report of Estate Tax Examination Changes, the final value of the taxable estate was determined to be $9,531,883.00. Therefore, the final value of the Trust after all distributions is 17.98% ($1,714,300.68/$9,531,883) and the Trust bears that percentage of the additional taxes owed.

$ 52,717.06
vs.
$ 105,713

Trustee
026

Using the same percentage, the Pence Family Trust's share of additional South Carolina tax liability is $16,180.55. This figure is based on the amount calculated to be owed as of November 22, 2002.

Moreover, according to Article IV of the Trust Agreement of Elizabeth M. Pence, the Trustee is granted the discretion as to whether or not to seek reimbursement for taxes paid by the trust on behalf of the estate. Due to the fact that the remainder beneficiaries of the Trust are charitable institutions for whom Mrs. Pence had specific plans, we are presently requesting on behalf of the Pence Family Trust that the estate reimburse it for a portion of the taxes previously paid by the trust. The Pence Family Trust is asking for reimbursement of those taxes that were properly attributable to the assets distributed to the estate. According to our calculations (attached hereto) the estate owes the Trust $2,381,628.51 for reimbursement of Federal and State taxes previously paid by the Trust, that were associated with the estate assets. As reflected in the attached calculations, this figure is based upon the value of assets that would have gone to the estate, pursuant to the Settlement Agreement, from the Pence Family Trust. Therefore, after adding that amount to the value of the estate's prior assets, the estate assets that would have been received by the estate comprised 63.68% of the taxable estate with the Trust making up the remaining 36.32%.

In light of the amount owed by the estate to the Pence Family Trust, we would propose that you offset that amount by the amount owed by the Trust for additional taxes. We would ask that payment of the remaining portion of the reimbursement be made to Mr. Brogdon as soon as feasible so that we may finalize the distributions for the charitable remaindermen.

If you have any questions or comments regarding our calculations, please do not hesitate to contact our office.

Very truly yours,

SCOTT & ASSOCIATES, P.C.

John M. Scott, III

JS/lap
Enclosures

Client Disk "P"
1700 -
Pence-Drennan-Ltr

Trustee
027

Elizabeth M. Pence Trust
Reimbursement of Taxes Calculations

Final Values

•	Estate of Elizabeth M. Pence (as reported and adjusted)	$2,163,851	1/
	+		
•	60% of Pence Family Trust	$5,193,237.60 ($8655,396 x .60)	2/
•	Gross Value Estate of Elizabeth M. Pence	$7,357,088.60	
	÷		
•	Taxable Estate	$9,531,883.00	3/
•	Estate's Share of Taxable Estate	63.68%	
	X		
•	Total Taxes	$4,437,000.00	4/
•	Estate's Share of Taxes	$2,825,398.51	
	-		
•	Previous Taxes Paid by Estate	$ 443,770.00	5/
	=		
	Reimbursement due from Estate	$2,381,628.51	

1/ See, Drennan Letter December 13, 2002 (re-computed for mathematical error).

2/ See, Drennan Letter December 13, 2002.

3/ See, IRS Report of Estate Tax Examinations Changes

4/ See, Drennan Letter December 13, 2002.

5/ See Drennan Letter December 13, 2002.

Trustee
028

LUNDIN AND BROGDON
CERTIFIED PUBLIC ACCOUNTANTS, P.A.
212 East Market Street Phone (843) 479-4422
Post Office Box 626 Fax (843) 479-4747
Bennettsville, South Carolina 29512

Gustaf C. Lundin (1952-1972)
James E. Brogdon
Larry D. Phillips, CPA of
Phillips & Associates, CPA's, LLC

Members of
American Institute of Certified Public Accountants
South Carolina Association of Certified Public Accountants

May 2, 2003

Mr. Munford Scott

Re: Pence Family Trust

Assets retained in the trust after the division to Elizabeth's trust.

Wachovia Investment Account

Cash	89 72
Mutual Funds	73,691 64
Tax-free funds	91,771 79
Sale of Bond for division 28,315 % of 24,562.50	1,054 87
Orangeburg real estate	1,540,000 00
Wachovia Bank checking account	1,792 66
	1,714,300 68

The net proceeds of the Orangeburg timber sale was	192,553 92
of which the trust retained 40%	77,021 59
The net proceeds of the Marlboro County timber sale was	95,693 00
of which the trust received 40%	38,277 20

If further information is needed, please advise.

Sincerely,

James E. Brogdon

JEB/nkg

Trustee
029

WACHOVIA

Wachovia Bank, N.A.
Trust and Investment Management
1426 Main Street, 16th Floor
Columbia, South Carolina 29226-9332

August 1, 2002

Mr. James E. Brogden, CPA
Box 626
Bennettsville, SC 29512

RE: Estate of L.E. Pence

Dear James:

Enclosed is a form prepared for your signature to enable the transfer of securities and cash held in the L.E. Pence Estate account with Wachovia Securities to Liz Pence's trust. Please sign the form and return it to me in the envelope provided and I will coordinate the transfer from Wachovia Securities.

I appreciate your assistance in this matter. Please call me at 1-888-251-7680 should you have any questions.

Sincerely,

Freeman W. Coggins, Jr.
Senior Vice President

Enclosure

Trustee
036

LUNDIN AND BROGDON
CERTIFIED PUBLIC ACCOUNTANTS
212 East Market Street Phone (843) 479-4422
Post Office Box 626 Fax (843) 479-4747
Bennettsville, South Carolina 29512

Gustaf C. Lundin (1952-1972)
James E. Brogdon
Thomas M. Carabo

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South Carolina Association of Certified Public Accountants

July 15, 2002

Mr. James B. Drennan, III
Dennis, Shaw & Drennan, LLC
P. O. Box 891
Spartanburg, S. C. 29304-0891

Re: Pence Matter

Dear Mr. Drennan,

Enclosed herewith you will find a check payable to Elizabeth in the amount of $1,990.05. This represents income received by the Pence Family Trust through June 30, 2002. I did not receive the investment statement until Saturday, therefore this check is somewhat late.

Also, I have just received your fax of July 15 and will wait until I hear from Freeman Coggins regarding the transfer of L. E. Pence estate assets.

I also will appreciate it if you will advise the Judge of Probate of Marlboro County that once the assets are transferred that you have no objection to his closing the estate and discharging me as personal representative.

I have contacted the forester in Orangeburg concerning the sale of timber. He has forwarded me a sales contract and I have requested by letter additional information concerning this. I will proceed as quickly as possible to consummate this sale.

If you have any questions about any of this please advise.

Sincerely,

James E. Brogdon

JEB/nkg
enc.

cc: Mr. J. Munford Scott

Trustee
037

DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

June 11, 2002

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.*
ANTHONY H. RANDALL, P.A.**
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
***ALSO ADMITTED IN NORTH CAROLINA

A. RAY DENNIS
OF COUNSEL

By Mail and Fax: (843) 662-1999
Jennifer Lisandrelli, Paralegal
Scott & Associates, P.C.
P.O. Drawer 6105
Florence, SC 29502

Re: Pence Trust

Dear Jennifer:

Elizabeth Pence has indicated that she wants the assets which Mr. Brogdon is going to distribute from the L. E. Pence Estate to be added to the trust which she established on February 1, 2002. In order to save time and to expedite the ultimate transfer of those assets to the trust, I propose to have Mrs. Pence's estate authorize and request the direct transfer of those assets to Liz as sole beneficiary of Mrs. Pence's estate. Then, I intend to have Liz request that the assets be distributed directly to the trust which she established on February 1.

I will enclose two (2) Requests for Direct Transfer, one of which is being made by Mrs. Pence's estate, and in which it is requested that the assets be distributed directly to Liz as sole beneficiary, and another by which Liz requests that the assets distributable to her be transferred directly to herself and Wachovia, as Trustees of her trust.

Please review these forms and let me know that they will work. After hearing from you to that effect, I will have them executed and will send them to you with instructions as the account to which the assets are to be transferred.

On another note, you suggested to me sometime ago that Mr. Brogdon thought that he might wait to sell the Orangeburg timber, so as to coordinate that

Trustee
044

sale with the sale of the timber on the property in Orangeburg County , which is not in his trust. I have now determined to my satisfaction that the Caw Caw swamp property is not in the trust of which Mr. Brogdon is Trustee, but I cannot say at this time that the Trustees of Liz' trust, to which that property is going to be conveyed will want or need to sell the timber on that property at this time Since it is not in Mr. Brogdon's trust, it is not subject to the Settlement Agreement provisions regarding sale of timber

I respectfully suggest that Mr. Brogdon go ahead now and arrange to sell the timber on the property which is in his trust.

With kindest regards

Sincerely yours,

James B Drennan, III

JBD,III/d
Enclosure:
CC: Mrs. Elizabeth M. Pence
Mr. Freeman W. Coggins, Jr. (803) 765-3230

Trustee
045

DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

March 27, 2002

R. RAY DENNIS*
OF COUNSEL

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.**
ANTHONY H. RANDALL, P.A.—
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
—ALSO ADMITTED IN NORTH CAROLINA

By Fax: (843)662-1999
Scott & Associates
P.O. Drawer 6105
Florence, SC 29502

Attention: Jennifer

Re: Pence Trust Matter

Dear Jennifer:

Utilizing the information which you gave me over the telephone late yesterday (to the effect that the $37,365 which Mr. Brogdon sent to me was taken from the Wachovia brokerage account assets shown on the February statement, and that he has a trust checking account with a balance of $1,792.66), I propose that the assets in Mr. Brogdon's name as trustee be distributed as per the attached worksheet. The method outlined there is the one which we previously suggested and you told me that Mr. Brogdon is agreeable to it.

The worksheet assumes that the bond which has to be sold will be sold for the value shown as of February 28th. If it in fact sells for less, then the proceeds should be divided in the same proportion as is shown on the worksheet (71.685% to Liz' trust, 28.315% to be retained by Mr. Brogdon.

Note, too, that the worksheet assumes that by dividing the assets in the manner indicated, we will be distributing all of the assets now held by Mr. Brogdon. If there have been any additional deposits or credits to the Wachovia brokerage account since February 28th, we will need to take those into account (perhaps by carrying out to Liz' trust any earnings on the bonds, and leaving in the Brogdon trust any earnings on the assets being retained by him). Please let me know if there have been any additional deposits or credits to the brokerage account.

I will have Wachovia Trust's Freeman Coggins contact Ron Chapman at Wachovia Securities to give his transfer instructions and will appreciate it if you will have Mr. Brogdon contact him (Chapman) and authorize him to follow Freeman's instructions.

Please call me when you know that Mr. Brogdon has given his authorization to Ron Chapman.

Trustee
052

With kindest personal regards,

Sincerely yours,

James B. Drennan, III

CC: Elizabeth Pence
CC: Freeman Coggins @ Fax #(803)765-3230

Trustee
053

DIVISION OF BROGDON TRUST ASSETS

	ASSETS
Marlboro realty	$1,056,000
Orangeburg realty	$1,540,000 (excluding Caw Caw Swamp)
Wachovia brokerage acct:	
mutual funds	$ 73,692
cash	$ 90
Wachovia tax-free	$ 91,772*
Bonds	$1,485,496
Checking account	$ 39,158**
Total	$4,286,208

60%= $2,571,725 due Liz Pence's trust
40%= $1,714,483 to be retained by Brogdon

*value at 2/28 less amount transferred to checking account ($37,365)
**value at 3/26 plus amount transferred from Wachovia tax-free ($37,365)

SATISFACTION OF AMOUNT DUE ELIZABETH PENCE

Amount due	$2,571,725
Amount paid to date	37,365
Marlboro realty	1,056,000
Bonds to Liz' trust	1,460,294*
Cash from bond proceeds	18,066**
Total	2,571,725

*this is all bonds except the SC Public Service bond listed at the bottom of page 6, top of page 7 of the Wachovia statement, at a value of $25,202.50.
**this supposes that the bond described at * above is sold for $25,202.50. The balance of the proceeds would be retained by Mr. Brogdon

ASSETS RETAINED BY MR. BROGDON

Amount due	$1,714,483
Orangeburg realty	$1,540,000
Mutual funds	73,692
Cash in Brokerage acct	90
Wachovia tax-free	91,772
Checking account	1,793
Cash from bond proceeds	7,136
Total	$1,714,483

Trustee
054

DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

August 2, 2002

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.**
ANTHONY H. RANDALL, P.A.***
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
*** ALSO ADMITTED IN NORTH CAROLINA

R. RAY DENNIS*
OF COUNSEL

James E. Brogdon, CPA
P.O. Box 626
Bennettsville, SC 29512

Re: Pence Matter

Dear Mr. Brogdon:

The proposed Sales Contract with Pritchard, Salley & Associates looks fine to us, and I would recommend that you go ahead with them.

I would also like to report to you that the Marlboro County timber sales have been completed and that the net proceeds, after deducting the forester's fees and reforestation costs, amount to $71,448.00.

The timber on two tracts was not sold for aesthetic reasons. The two tracts were the home tract (timber value estimated at $7,470.00 at the time of Mrs. Pence's death) and the 186.32 acre parcel which I believe is across from the residence (Block Map 22-01-02-27, estimated timber value of $3,100.00). I do not know what reforestation would have cost, had the timber on these parcels been cut.

I will send a copy of this letter to Munford Scott for the usual reasons, but also to solicit his advice as to whether you will want or expect to receive 40% of the amount which most likely would have been realized, net, had the timber on those two tracts been sold pursuant to the Settlement Agreement. Once we have a decision, your portion of the timber proceeds will be paid to you, as Trustee.

Freeman Coggins at Wachovia told me that he has had some discussions with you regarding the transfer of the L. E. Pence Estate assets over to Liz' trust. I have sent two (2) Receipts and Releases to Liz Pence for her to sign. One is to be signed by her in her individual capacity, and acknowledges receipt of the bequest her father made to her, and the other is by her as Personal Representative of her mother's estate and as a Co-Trustee of her trust. I will have Wachovia sign the second Receipt after Liz signs it.

As soon as Freeman Coggins tells me that he has received the transfer of assets from the L. E. Pence Estate, I will write the Probate Judge and will tell him that we have no objection to the closing of that estate. I can either send the Receipts to you or to the Court, whichever you prefer.

Trustee
061

With kindest personal regards,

Sincerely yours,

James B. Drennan, III

JBD,III/tl
CC: J. Munford Scott, Esq.
Mr. Wellon Hunter
Mr. Freeman W. Coggins, Jr.
Ms. Elizabeth P. Pence

LAW OFFICES OF
PARKER, POE, ADAMS & BERNSTEIN L.L.P.
101 WEST SAINT JOHN ST., SUITE 205
SPARTANBURG, SOUTH CAROLINA 29306
TELEPHONE 864-591-2020 FACSIMILE 864-591-2050

JAMES B. DRENNAN, III
OF COUNSEL

DIRECT DIAL
864-253-6104
JIMDRENNAN@PARKERPOE.COM
WWW.PARKERPOE.COM

DECEMBER 27, 2000

By Fax: (843) 479-4747
James E. Brogdon, CPA
212 E. Market Street
Bennettsville, SC 29512

Re: Estate of Elizabeth McL. Pence

Dear Mr. Brogdon:

I am in the process of finalizing the estate tax returns on the estate, which are due January 3rd, and I want to be sure that I report all of the assets and that I take whatever deductions are appropriate. I will need your help, as indicated below.

I will enclose a list of assets, some of which are in the Elizabeth Pence probate estate and some of which are in the name of the trust. Would you look the list over and let me know if it appears complete?

Also, would you let me know of any deductions which might be available? At the moment, I do not have any detail as to funeral expenses or debts which might have been paid soon after her death.

On the list of assets, I have valued the interest in the L. E. Pence estate by taking out the $600,000 which was due Liz. I have not deducted the personal representative commission which you indicated to me you were going to take. If you have taken a fee, would you let me know how much it was? If you have not taken the fee, please let me know how much it will be.

I will send a copy of this letter to Munford Scott, so that he will be aware of my contact with you.

Sincerely yours,

James B. Drennan, III

JBD,III/tl
CC: J. Munford Scott, Jr., Esq. - (843) 662-8133
Mrs. Stephen Pence

Trustee
082

00 11:23AM FPAB SPARTANBURG SC

I. ELIZABETH PENCE ESTATE ASSETS

Real Estate		
1.	3 ac./residence, Academy Road, Marlboro County, SC, Tax Map 28-0-2-20	205,000.00
	Timber on above	7,470.00
2.	2931.1 ac. south side of Academy Road, Marlboro County, SC, Tax Map 28-00-02-22	189,000.00
	Timber on above	4,140.00
3.	307.99 ac. Highway 33, Orangeburg County, SC	1,540,000.00
	Timber on above	211,054.00
Cash		
1.	Wachovia checking account	22,640.81
Stocks		
1.	353 shares Bank of America	19,696.30
Life Insurance		
1.	New York Life #75-026-847	18,023.00
Miscellaneous		
1.	Interest in L.E. Pence Estate	987,845.34
2.	Furniture jewelry	??

II. Pence Trust Assets

Real Estate		
1.	Fourteen tracts Marlboro County, per McLaurin	1,056,000.00
	Timber on above	105,100.00
2.	54.8 ac. near Caw Caw Swamp, Orangeburg County	27,500.00
3.	120.11 ac. near Caw Caw Swamp, Orangeburg Co.	60,000.00
4	Timber on Orangeburg County realty	616,393.00
Stocks/Bonds		220,100.00
1.	3,200 shs. Eli Lilly	38,465.00
2.	1,072,654 shs. First Union	80,146.00
3.	1,264 shs. Jefferson Pilot	72?,965.00
4.	9,244 shs. Wachovia	5,645.00
5.	156 shs. Footstar	20,970.00
6.	544 shs. CVS	5,738,426.00
7.	Bonds, per J. Brogdon	

Trustee 083

SBG:21096.1

LAW OFFICES OF
PARKER, POE, ADAMS & BERNSTEIN L.L.P.
101 WEST SAINT JOHN ST., SUITE 203
SPARTANBURG, SOUTH CAROLINA 29306
TELEPHONE 864-591-2000 FACSIMILE 864-591-2050

JAMES B. DRENNAN III
OF COUNSEL

DIRECT DIAL
864-253-6104
JIMDRENNAN@PARKERPOE.COM
WWW.PARKERPOE.COM

FEBRUARY 1, 2001

4747

Fax: (843) 479-4432
James F. Brogdon, CPA
Landin & Brogdon
212 E. Market Street
Bennettsville, SC 29512

Re: Estate of Elizabeth McL. Pence

Dear Mr. Brogdon:

In accordance with your request, I am going to enclose copies of Schedules F and G from the estate tax return, Forms 706, filed on the Estate of Elizabeth M. Pence, so that you might have the values of the stocks and bonds as of the alternate valuation date.

In looking through my file, I find that Liz Pence did sign an application for an employer identification number on her mother's estate, but I have not yet filed it with the IRS. I will do so and will let you know what the estate's employer identification number is as soon as I have it.

If you need anything else, please let me know.

Sincerely yours,

James B. Drennan, III

bd
Enclosures
CC: Mrs. Stephen Pence

Trustee
084

ALTERNATE VALUATION
L. E. Pence Estate as of 04/03/2000

ASSETS:		
3200 shares Eli Lilly & Co. @ 64.95 per share.		$207,200.00
3780.654 shares First Union Corp @ 37.96875 per share		143,547.00
1896 shares Jefferson Pilot @ 64.34375 per share		121,996.00
9244 shares Wachovia Corp @ 69.06 per share		638,413.00
156 shares Footstar @ 28.625 per share		4,466.00
1088 shares CVS, Inc. @ 38.375 per share		41,752.00
3814.312 shares Vanguard US Growth Fnd @45.21 per share		172,445.00
3356.097 shares Vanguard International Growth Fnd @23.52		78,935.00
6006.0625 shares Hatteras Income Securities, Inc. @12.3125		73,950.00
2646.257 shares Fidelity Trend @68.75 per share		181,930.00
364 shares Alliant Energy Corp @ 29.78125 per share		10,840.00
1 share Adamsville Fishing Club at sale price per agreement		1,000.00
115 shares Fortune Brands @25.4375		2,925.00
Cemetary lots, Oak Ridge Cemetary at sold price		2,000.00
1992 Mercedes automobile		8,500.00
1993 Oldsmobile Eighty-Eight auto		10,500.00
Wachovia Bank account		96,520.00
Total Value of Assets		$1,815,915.00
LESS LIABILITIES:		
Specific bequest due daughter, Elizabeth M. Pence under will	$600,000.00	
Personal Representative commissions due James Brogdon	52,704.00	652,704.00
Net Value of Estate, distributable to decedent Elizabeth M. Pence		1,163,211.00

Trustee
085

LUNDIN AND BROGDON
CERTIFIED PUBLIC ACCOUNTANTS
212 East Market Street Phone (843) 479-4422
Post Office Box 626 Fax (843) 479-4747
Bennettsville, South Carolina 29512

Gustaf C. Lundin (1952-1972)
James E. Brogdon
Thomas M. Carabo

Members of
American Institute of Certified Public Accountants
South Carolina Association of Certified Public Accountants

December 31, 2001

Mr. James B. Drennan, III
Dennis, Shaw & Drennan
P. O. Box 891
Spartanburg, S. C. 29304-0891

Re: Pence Family Trust

Dear Mr. Drennan:

Enclosed herewith you will find two checks as follows: One payable to the estate of Elizabeth M. Pence in the amount of $2,171.50. This represents a refund of Orangeburg County property taxes on a tract of land in Orangeburg County which is in the trust.

The second check payable to Elizabeth P. Pence in the amount of $47,394.03 represents the distribution of the 4th quarter income of the Pence Family Trust.

I am also enclosing an unopened dividend check from Bank of America payable to Elizabeth M. Pence. This is a dividend on stock that Mrs. Pence owned and which I previously have been mailing to Elizabeth. I have also requested that she change the address with Bank of America Corporation.

Should you have any questions concerning this please advise.

Sincerely,

James E. Brogdon
Certified Public Accountant

JEB/nkg
enc.

cc: Mr. H. Munford Scott

Trustee
106

DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

December 21, 2001

R. RAY DENNIS
OF COUNSEL

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.*
STEVEN B. FORD, P.A.**
ANTHONY H. RANDALL, P.A.***
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE, PLANNING, PROBATE & TRUST LAW
***CERTIFIED SPECIALIST IN TAXATION LAW
****ALSO ADMITTED IN NORTH CAROLINA

By Fax: (843) 662-1999
J. Munford Scott, Esq.
Scott & Associates
P.O. Drawer 6105
Florence, SC 29502

Re: Pence Estate

Dear Munford:

James Brogdon asked Liz Pence for copies of the paid tax receipts on the Orangeburg property and on some of the Bennettsville property, and I am going to enclose copies of those tax receipts herewith.

I called you yesterday and you were out, so I called Tom Rogers. I told him that Mr. Brogdon went to see Liz Pence day before yesterday and I think that his purpose was to try to arrange for the closing of Mr. Pence's estate. He gave Liz instructions about transferring assets from Mr. Pence's estate into Mrs. Pence's estate and told her to transfer the assets from Mrs. Pence's estate to herself before the year end.

Liz was somewhat overwhelmed by all of this information and asked me to ask Mr. Brogdon to send everything to me, so that I can help her see to it that whatever is necessary is done.

I will appreciate it if you will talk to Mr. Brogdon and send me whatever it is that he needs to have Liz Pence do or attend to before year end.

I also want to hear from you regarding settlement of the litigation. I assume that the trust language which I shared with you met your client's concerns.

With kindest personal regards,

Sincerely yours,

James B. Drennan, III

JBD,III/tl
Enclosures

1/1/01

Trustee
108

12/28DEC 21 '01 10:54AM DENNIS SHAW 914 2620234

#-ACRES #-LOT #-IMP

TRN-NBR DATE-PAID TELLER
1344995 09/07/2001 EHR 2000

RECEIPT DIS
59

REAL ESTATE

COLLECT FEE
OTHER AMT
TOTAL CURRENT
TOTAL DELQ
TOTAL TAX
AMOUNT REND
CHANGE

95.08

2,132
2,111.54
2,111.54

TAX RECEIPT

ORANGEBURG COUNTY TAX COLLECTOR

12/20:DEC 21 '01 10:54AM DENNIS SHAW ORANGEBURG COUNTY

RECEIPT 1722877 | DIS 59 | MAP-SHT-BLK-PAR-SUB 0208 00 04 001 000 0213 00 17 047 000 | *-ACRES 308 | *-LOT 1 | *-IRR 2 | TRN-NBR 1344795 | DATE-PAID 09/07/2001 | TELLER EHR 2000

PROPERTY ASSESSMENT

ACRES	LOTS	BUILDING	PERSONAL	=L TOTAL	X LEVY	=I TAXES	-HOMESTED
4370		1500		5870	X 316		

CAKERON RD

CK 0178

TAX RECEIPT

ORANGEBURG COUNTY TAX COLLECTOR

PENCE ELIZABETH M

2001 ACADEMY ROAD 29512
BENNETTSVILLE S C

COLLECT	35.0(
CO. TAX	1,857.8(
CITY TAX	278.4(
PENALTY	
TOTAL	2,171.5(

12/20/DEC 21 '01 10:50AM DENNIS SMITH ORANGEBURG COUNTY

RECEIPT DIS
89.

REAL ESTATE

COLLECT FEE
OTHER ANT.
TOTAL CURRENT
TOTAL DELQ
TOTAL TAX
AMOUNT REND
CHANGE

#-ACRES #-LOT #-INP

TRN-NBR DATE-PAID TELLER
1844988 09/07/2001 EHR 20.00

95.00
35
39
39 BK 0180

ORANGEBURG COUNTY TAX COLLECTOR

TAX RECEIPT

LUNDIN AND BROGDON
CERTIFIED PUBLIC ACCOUNTANTS
212 East Market Street
Post Office Box 626
Bennettsville, South Carolina 29512
Phone (843) 479-4422
Fax (843) 479-4747

Gustaf C. Lundin (1952-1972)
James E. Brogdon
Thomas M. Carabo

Members of
American Institute of Certified Public Accountants
South Carolina Association of Certified Public Accountants

December 20, 2001

Mr. James B. Drennan, III
Dennis, Shaw & Drennan, Attorneys at Law
P. O. Box 891
Spartanburg, S. C. 29304-0891

Re: Estate of Elizabeth M. Pence
and Elizabeth P. Pence

Dear Mr. Drinnan:

I contacted Elizabeth yesterday about distributing the income of the L. E. Pence estate to the estate of Elizabeth M. Pence so that she could deposit this and issue herself a check from the estate of Elizabeth M. Pence for this income as she did last year.

I also advised her that I was prepared to transfer the assets of the estate of L. E. Pence to the estate of Elizabeth M. Pence by transfer of an investment account with Wachovia Bank which has all of the assets except a small amount in a checking account, and have tentatively prepared through the bank to do this next week.

I also asked her to send me the Orangeburg County property tax notice on Tax Map 020-00-04-001-30 covering 308 acres. This is property that is rented, and was transferred by deed to the trust. I need this so that I can reimburse the estate for taxes for 2001 and determine the amount which is distributable to Elizabeth for fourth quarter income.

I am enclosing a check payable to the estate of Elizabeth M. Pence, referred to above, in the amount of $15,217.71. This is being done as I have been contacted by Mr. Scott's office and instructed that all future correspondence should clear through you.

Should there be any questions concerning this, please advise.

Sincerely,

James E. Brogdon
Certified Public Accountant

JEB/nkg
enc.
cc: Mr. J. Munford Scott

Trustee
113

PENCE FAMILY TRUST

CASH RECEIPTS AND DISBURSEMENTS

November 1, 2000 through October 31, 2001

Balance November 1, 2000			43,456 16
Receipts			
11/9/00	USDA	151 00	
11/24/01	Orangeburg house - rent	72 00	
12/5/00	Smith house rent	200 00	
12/14/00	Orangeburg Farm Rent	6,645 00	
12/14/00	Orangeburg house rent	72 00	
12/15/00	Transfer from Investment acct.	10,000 00	
1/4/01	Transfer from Investment acct.	5,000 00	
1/12/00	Smith house rent	200 00	
	Orangeburg house rent	72 00	
	Pasture rent	1,500 00	
2/6/01	Smith house rent - 2 months	400 00	
3/5/01	Smith house rent	200 00	
	Orangeburg house rent	72 00	
4/9/01	Transfer from Investment acct.	40,000 00	
4/10/01	Transfer from Investment acct.	5,000 00	
4/12/01	Orangeburg house rent - 2 months	144 00	
	Smith house rent	200 00	
5/31/01	Orangeburg house rent	72 00	
	Smith house rent	200 00	
7/3/01	Transfer from Investment acct.	10,000 00	
	Orangeburg rent - 2 months	144 00	
	Smith house rent	200 00	
8/13/01	Orangeburg house rent	72 00	
	Smith house rent	200 00	
8/31/01	Smith house rent	200 00	
9/26/01	Orangeburg rent	72 00	
	Smith house rent	200 00	
10/5/01	Transfer from Investment acct.	40,000 00	
10/23/01	Orangeburg house rent	72 00	
10/26/01	Smith house rent	200 00	
	Farm rent - Marlboro	37,748 24	
Total Receipts			159,308 24
			202,764 40

Trustee
114

PENCE FAMILY TRUST

CASH RECEIPTS AND DISBURSEMENTS

November 1, 2000 through October 31, 2001

Disbursements				
			6 00	
11/13/00	Analysis charge	#131	3,138 16	
12/13/00	Scott & Associates - legal	132	3,420 38	
12/14/00	Marlboro County - property tax	133	2,606 60	
	James E. Brogdon- commission on receipts	134	48,000 00	
12/18/00	Elizabeth P. Pence- distribution	135	1,857 86	
12/22/00	Estate of Elizabeth M. Pence- refund of Orangeburg County tax	136	164 19	
1/18/01	Scott & Associates - legal	137	150 00	
2/3/01	Arnette Septic Tank- Smith house	138	656 00	
3/2/01	S. C. Farm Bureau - dwelling	139	1,276 67	
	S. C. Farm Bureau - liability	140	1,514 76	
	Scott & Associates - legal	141	900 00	
4/9/01	Gene Arnette Septic Tank- Smith	142		
	void	143	30 00	
4/12/01	Farm Bureau - dues	144	41,271 39	
4/19/01	Elizabeth P. Pence- distribution	145	3,675 12	
	Scott & Associates - legal	146	491 15	
5/30/01	Scott & Associates	147	1,511 56	
6/7/01	Scott & Associates		303 00	
6/21/01	Safe deposit box rent	148	9,062 38	
7/3/01	Elizabeth P. Pence distribution	149	489 52	
9/18/01	Scott & Associates			
	Edwards Refrigeration - repair Smith house	150	200 00	
10/05/01	Elizabeth P. Pence - distribution	151	40,207 07	
10/15/01	Farm Bureau Insurance	152	85 00	
	Total Distribution			161,016 81
	Balance, October 31, 2001			41,747 59

Trustee
115

ESTATE OF L. E. PENCE

CASH RECEIPTS AND DISBURSEMENTS

November 1, 2000 through July 31, 2001

Disbursements

11/6/00	First Union Bank - copy of 1999 re-investment statement	#306	15 00
11/7/00	Wachovia Bank - First Union lost certificate	307	35 00
	U. S. Post Office - postage	308	2 98
12/14/00	James E. Brogdon - 1/3 of Executor's Comm.	309	24,559 95
	James E. Brogdon - Commission on Receipts	309	3,584 10
	Void	310	-
12/18/00	Estate of Elizabeth M. Pence - Distr.	311	55,000 00
4/12/01	U. S. Treasury - income tax	312	18,300 00
4/12/01	S. C. Department of Revenue	313	3,800 00
5/30/01	James E. Brogdon - Commission	314	26,494 57
6/4/01	Transfer to Investment Account	D/M	50,000 00
7/24/01	Elizabeth P. Pence, partial distribution	315	300,000 00
	Total Disbursements		481,791 60
	Balance, July 31, 2001		309,591 57

Note: An additional amount of $300,000.00 was transferred to Elizabeth P. Pence on August 15, 2001

PENCE FAMILY TRUST

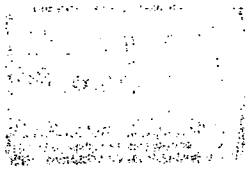
CASH RECEIPTS AND DISBURSEMENTS

December 12, 1999 through October 31, 2000

Disbursements

			46 25
10/22/99	Check order		
12/27/00	Treasurer- Marlboro County - taxes	101	4,100 62
	void	102	
	James E. Brogdon - commission	103	2,984 79
12/27/99	Estate of L. E. Pence - reimbursement for advance of income to Elizabeth	104	25,000 00
12/27/99	Elizabeth M. Pence - income	105	50,000 00
12/29/99	Treasurer of Orangeburg County	106	2,212 38
1/5/00	check order		10 00
2/29/00	Farm Bureau - insurance - residence & farm	107	2,129 03
3/14/00	Farm Bureau - Unbrella & General liability	108	839 00
	CCC - trash pickup	109	67 32
4/14/00	U. S. Treasury - for Elizabeth	110	11,200 00
	S. C. Dept. of Revenue - for Elizabeth	111	3,500 00
	N. C. Dept. of Revenue - for Elizabeth	112	850 00
5/10/00	Edwards Refrigeration - repair water heater	113	136 00
5/15/00	Elizabeth P. Pence - income	114	87,049 24
6/21/00	G. Wayne Smith - lightning damage to pump	115	314 70
	void	116	
	S. C. Dept. of Revenue - estate tax	117	837,720 00
	U. S. Treasury - estate tax	118	3,156,210 00
6/25/00	Safe deposit box rent		273 00
6/29/00	U. S. Post Office - to Mr. Drennan	119	11 75
	void	120	
6/30/00	Norman Caulder - repair cabin & barn	121	725 00
7/14/00	Scott & Associates - legal fee	122	2,081 63
7/14/00	Hamer Heating & Air - repair air cond.	123	328 17
7/17/00	Elizabeth P. Pence - 2nd qtr. income	124	80,812 28
7/28/00	Elizabeth P. Pence - reimbursement for storm damage	125	700 00
9/28/00	Elizabeth P. Pence- income distribution	126	80,000 00
	Forestland Services, Inc.- timber appraisal	127	800 00
10/13/00	Pee Dee Coastal Appraisals - land appraisal	128	2,000 00
	see page #1 - William Tatum	129	-
		130	3,131 29
	Total Disbursements		4,355,232 45
	Balance, October 31, 2000	Trustee 122	43,456 16

6



STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

WAIVER OF RIGHT TO SERVE AS TRUSTEE

WHEREAS, Elizabeth M. Pence, a resident of Marlboro County, South Carolina, acting through her attorney-in-fact, James E. Brogdon, established a certain Trust Agreement on the 28th day of May, 1999, naming James E. Brogdon as the initial Trustee; and

WHEREAS, Elizabeth M. Pence thereafter died on October 3, 1999; and

WHEREAS, ARTICLE VII(1) of said Trust Agreement provides that, in the event that James E. Brogdon should become unable or unwilling to serve as Trustee, Wachovia Bank and William N. McLean are to serve as successor Trustees; and

WHEREAS, William N. McLean wishes to make known his intention not to serve as a successor Trustee in the event that James E. Brogdon should become unable or unwilling to serve as Trustee.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that William N. McLean does hereby now and forever WAIVE THE RIGHT TO SERVE AS A SUCCESSOR TRUSTEE under the Elizabeth M. Pence Trust Agreement dated May 28, 1999.

SIGNED at _____ this ___ day _____, 2002.

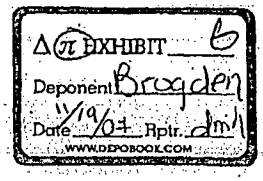
WITNESSES:

_____

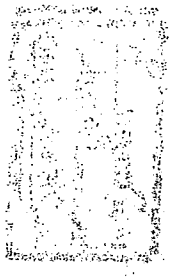
_____

_____
William N. McLean

Exhibit "C"



7



DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

March 21, 2002

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.**
ANTHONY H. RANDALL, P.A.***
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
***ALSO ADMITTED IN NORTH CAROLINA

R. RAY DENNIS
OF COUNSEL

By Fax: (843)662-1999
J. Munford Scott, Esq.
Scott & Associates
P.O. Drawer 6105
Florence, SC 29502

Re: Pence Trust Matter

Dear Munford:

Thank you for sending me the copies of the deed by which Mr. Brogdon conveyed the Marlboro County realty to Liz Pence's new trust and the February statement on the Wachovia investment account.

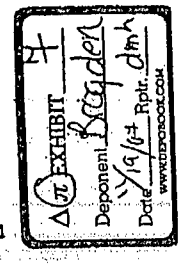
Assuming that the Caw Caw Swamp property in Orangeburg County is not an asset of the Brogdon trust (I am having an Orangeburg attorney verify this), the assets of the trust are as follows:

Marlboro County real estate	$1,056,000
Orangeburg County realty	$1,540,000
Investments	$1,688,414
Total	$4,284,414

Liz's trust is due sixty (60%) percent of this amount, which I calculate to be $2,570,648. This will consist of Marlboro County realty of $1,056,000 and cash and investments of $1,514,648. Mr. Brogdon will keep the Orangeburg realty and cash and investments of $173,766.

I talked to Freeman Coggins about this, and he suggests that Mr. Brogdon keep the mutual funds, valued at $73,692, plus enough of the cash to make up the difference ($100,074). The balance of the cash and all of the bonds would be transferred to Liz's trust. Mr. Brogdon would give his broker, Ron Chapman, an instruction to make a transfer of the cash and bonds in accordance with Wachovia Trust's instruction, and the transfer would be made.

Please note that the material you faxed to me yesterday included a copy of a letter from Mr. Brogdon to me, with which he is apparently sending me a check for Liz in the amount of $37,365, representing trust income for the year to date. If this check was drawn against the money market account balance which is shown on the brokerage statement, Mr. Brogdon would receive credit for



WACH03961

it towards the $1,514,648 which is due Liz's trust, but there would not be quite enough cash to cover the amount to be kept by him (reduction of the cash by this check would leave $91,861 of cash in the account, which is not enough to cover the $100,074 still due Brogdon after crediting the mutual funds to him). The shortfall would be $8,213, and Freeman suggests Mr. Brogdon might sell the $15,000 Richland County bond shown at the bottom of page 6/top of page 7 of the brokerage statement. He would then keep $8,213 and transmit the balance of the proceeds to Liz's new trust.

I assume that the only cash accounts and investments of the Brogdon trust are those shown in the Wachovia statement. If, however, the check being sent to me by Mr. Brogdon did not come from the money market account at Wachovia, or if it came out of interest which was credited to the account since February 28th, we would need to revisit these calculations.

I know you are busy, but I will appreciate it if you will call me right away if you have any questions about my suggestions. If you are in agreement with my suggestions, I will appreciate it if you will call Mr. Brogdon right away. You might then let me know whether the two of you are in agreement with these proposals.

If in talking to Mr. Brogdon you find that the income check comes from funds other than the money market balance shown on the Wachovia statement, please let me know, so that we might discuss it.

I look forward to talking to you as soon as possible today.

With kindest personal regards,

Sincerely yours,

James B. Drennan, III

CC: Elizabeth Pence
CC: Freeman Coggins @ Fax #(803)765-3230

8

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

COPY

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE

Lisa C. Russ

REPLY TO:
LRuss@TurnerPadget.com
Writer's Direct Dial: 843-656-4453
Direct Fax: 843-413-5800

December 28, 2006

Mr. David Alexander
Cecil H. Nelson, Jr., LLC
Post Office Box 2384
Greenville, SC 29602

Re: Elizabeth Pence Trust
Our File: 8077.101

Dear Mr. Alexander:

Enclosed please find a Proposal for Distribution ("Proposal") prepared by our office for final distribution of the revocable Trust Agreement of Elizabeth M. Pence. If you would, please forward the Proposal to your clients for review at your earliest opportunity. We have received the checks from Mr. Brogdon and are ready to make distribution of funds as soon as we have received the executed original of the Proposal back from your office.

Should you have any questions or require any additional information, please do not hesitate to contact our office. We look forward to hearing from you soon.

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Lisa C. Russ

Lisa C. Russ

/lr
Enclosure
cc: James E. Brogdon (w/enclosure)
J. Anthony Floyd (w/enclosure)

569185_1

EXHIBIT 8
Deponent Brogden
Date 11/19/07 Rptr. dmh
WWW.DEPOBOOK.COM

PROPOSAL FOR DISTRIBUTION

THIS PROPOSAL FOR DISTRIBUTION ("Proposal") is agreed upon and executed as of this 28th day of December 2006 by **Marie McLean-Chol, Robert Lennon McLean, James Norman McLean, William Norris McLean** (all of which shall hereinafter collectively be referred to as the "McLean Heirs") and **James E. Brogdon** (the "Trustee") as Trustee of the Trust Agreement of Elizabeth M. Pence dated May 28, 1999 (the "Trust").

WHEREAS, by Summons and Petition (the "Petition") filed in the Marlboro County, South Carolina Probate Court on October 19, 2000, Elizabeth P. Pence, also known and therein designated as Elizabeth McL. Pence ("Pence"), individually and as Personal Representative of the Estate of Elizabeth McLean Pence ("Decedent"), filed an action against Trustee, Clemson University ("Clemson") and Coker College ("Coker") contesting the validity of the Trust; and

WHEREAS, said action was thereafter removed to the Court of Common Pleas for Marlboro County under Civil Action No. 00-CP-34-354; and

WHEREAS, the parties reached certain understandings and agreements in full settlement of all claims made or which might have been made by Pence in any way arising out of the death of the Decedent and/or the matters alleged in the Petition, such understanding and agreements having been set out in that certain Compromise and Settlement Agreement dated January, 2002 (the "Settlement Agreement") and approved by Order of James E. Lockemy, Presiding Judge of the Fourth Judicial Circuit on February 26, 2002;

WHEREAS, Section 8 of the Settlement Agreement directed the Trustee to separately account for and distribute certain real property in Orangeburg County, South Carolina such that the Decedent's intent as set forth in Article VI, Section (3) of the Trust could be effected;

WHEREAS, Article VI, Section (3) of the Trust directs that McLean family land in Orangeburg County, South Carolina that was owned by the Trust was to be distributed to the "issue of the Settlor's brother, in equal shares[.]";

WHEREAS, pursuant to Section 8 of the Settlement Agreement and Article VI, Section (3) of the Trust, the balance of the Trust Assets remaining after the distributions described above would be distributed to Clemson University and Coker College in equal shares; and

WHEREAS, this Proposal sets forth the agreement of the McLean Heirs and the Trustee as to the manner in which the Trust Assets will be distributed in full satisfaction the McLean Heirs' rights and the Trustee's obligations under the Trust.

568554-1

NOW THEREFORE, for and in consideration of the payments described herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The McLean Heirs are all of the "issue of Settlor" referenced in the Trust which are entitled to distributions from the Trust.

2. The approximately 324 acre tract on or about Legendary Road and Hwy 33 in Orangeburg County, South Carolina bearing Orangeburg County Tax Map number 0208-00-04-001 represents all of the Orangeburg County, South Carolina real property owned by the Trust (the "Orangeburg Property").

3. By deeds dated August 21, 2006, the Orangeburg Property has been distributed by the Trust to the McLean Heirs in full satisfaction of their rights under Article VI, Section (3) of the Trust.

4. The parties hereto have all received and reviewed a copy of the final accounting of the Trust (the "Accounting") as prepared by the Trustee, a copy of which is attached hereto as Exhibit A.

5. The parties agree that the Trust account balances reflected in the Accounting represent the full value of the Trust assets and that Thirty Thousand Fifty Two and 68/100 ($30,052.68) of said Trust assets represents rent associated with the Orangeburg Property received by the McLean Heirs.

6. The Trust has paid a total of Six Thousand Seven Hundred Seventy Eight and 80/100 ($6,778.80) Dollars in real property taxes to the Orangeburg County Treasurer for taxes associated with the Orangeburg Property in tax years 2002-2005.

7. The parties agree that the McLean Heirs shall be distributed the following amounts from the Trust in full satisfaction of their rights under the Trust, such amounts representing their proportionate shares of the aforementioned rent less the real property taxes paid by the Trust:

a.	Mary McLean-Choi	$5,818.47
b.	Robert Lennon McLean	$5,818.47
c.	James Norman McLean	$5,818.47
d.	William Norris McLean	$5,818.47
	TOTAL:	**$23,273.88**[1]

8. Said distributions shall be made to the McLean Heirs on or before the close of business on December 29, 2006.

[1] $30,052.68 (rent) – $6,778.8 (taxes) = $23,273.88

9. Trustee shall prepare, execute and file any and all state and federl tax returns pertaining to the trust and all other documents or information necessary to terminate and close the Trust.

10. The McLean Heirs do hereby release, relinquish, and forever discharge the Trust and the Trustee from any and all claims, demands, suits, actions, and causes of action and liabilities of whatever kind or nature, now existing or which may hereafter accrue, whether known or unknown, in law or equity, that the McLean Heirs may have against the Trust or Trustee, arising directly or indirectly from and during the Trustee's administration of the Trust.

11. This Proposal may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Proposal as of this 28th day of December, 2006.

TRUST:

TRUST AGREEMENT OF
ELIZABETH M. PENCE

_____

James E. Brogdon, Trustee

MCLEAN HEIRS:

_____

Marie McLean-Choi

_____

Robert Lennon McLean

_____

James Norman McLean

_____

William Norris McLean

EXHIBIT A

Final Accounting

568554-1

PENCE FAMILY TRUST

CHECKING ACCOUNT – WACHOVIA BANK

CASH RECEIPTS AND DISBURSEMENTS

August 26, 2002 through September 30, 2006

			Receipts	Disbursements	Balance
Balance on deposit – 8/26/02					861 23
9/6/02	House Rent		72 00		
	Marlboro County Timber		38,277 20		
	Scott & Associates, P.C.	#166		1,182 50	
					43,027 93
9/9/02	Transfer from Investment Acct.		5,000 00		
10/24/02	House Rent		72 00		
	Orangeburg County Timber		223,427 00		
	Scott & Associates, P.C.	#167		3,301 60	
	Pritchard Salley & Assoc. (timber sale)	#168		13,805 62	
11/6/02	Wachovia Bank, Trustee- share of timber sale	#169		115,532 39	
11/7/02	Lundin & Brogdon (timber sale)	#170		27 00	133,860 32
12/17/02	James E. Brogdon- Commission 6/3/99-10/30/02	#172		62,125 00	
	Orangeburg County Treas. Property tax	#173		1,963 52	
	Wachovia Bank, Trustee Interest 3/1/02-11/1/02 S. C. Public service Bonds 71.685%	#174		19,322 93	
	Scott & Associates, P.C.	#175		121 49	
	House Rent		144 00		
	Farm Rent- Orangeburg		6,645 00		57,116 38
1/11/03	Scott & Associates, P. C.	#176		253 95	56,862 43
2/10/03	House Rent		144 00		57,006 43
3/24/03	Scott & Associates, P. C.	#177		1,483 07	55,523 36
4/07/03	House Rent		72 00		55,595 36
5/15/03	House Rent		144 00		
6/15/03	Scott & Associates, P. C.	#178		4,109 80	51,629 56
7/28/03	House Rent (Less $5.00 for stamps)		139 00		51,768 56

Continued #2

PENCE FAMILY TRUST

CHECKING ACCOUNT – WACHOVIA BANK

CASH RECEIPTS AND DISBURSEMENTS

August 26, 2002 through September 30, 2006

			Receipts	Disbursements	Balance
9/20/03	House Rent		144 00		
9/24/03	Scott & Associates, P. C.	#179		338 52	51,574 04
11/4/03	Transfer to Securities Acct.			27,782 57	
11/15/03	Scott & Associates, P. C.	#180		723 68	
11/24/03	House Rent		144 00		23,211 79
12/19/03	Orangeburg Farm Rent		6,717 00		
12/21/03	Treasurer, Orangeburg Co.	#181		1,570 33	28,358 46
12/31/03	Scott & Associates, P. C.	#182		254 38	28,104 08
1/14/04	James E. Brogdon-Commission 11/1/02 through 2/31/03	#183		23,341 00	
2/9/04	House Rent		72 00		
2/21/04	Scott & Associates, P. C.	#184		2,141 75	
2/23/04	House Rent		72 00		2,765 33
2/27/04	Elizabeth M. Pence Estate	#185		35,000 00	
4/1/04	Transfer from Investment Acct.		40,000 00		
4/9/04	Bank Service charges			16 17	
4/13/04	Scott & Associates, P.C.	#186		404 00	
4/20/04	House Rent		144 00		7,489 16
7/7/04	Scott & Associates, P.C.	#187		100 95	7,388 21
10/4/04	House Rent		360 00		
10/14/04	Scott & Associates, P. C.	#188		100 15	7,648 06
11/29/04	House Rent		144 00		
	Bank of America- Fractional share- replacement of check dated 12/20/00		197 68		7,989 74
12/20/04	Scott & Associates, P. C.	#189		156 39	
	House Rent		72 00		
	Orangeburg Farm Rent		6,645 00		14,550 35
	Treasurer of Orangeburg Co.	#190		1,617 09	
1/31/05	House Rent		72 00		13,005 26
2/14/05	House Rent		72 00		
2/24/05	Scott & Associates, P. C.	#191		761 53	12,315 73

Continued #3

PENCE FAMILY TRUST

CHECKING ACCOUNT – WACHOVIA BANK

CASH RECEIPTS AND DISBURSEMENTS

August 26, 2002 through September 30, 2006

			Receipts	Disbursements	Balance
					12,387 73
3/7/05	House Rent		72 00		12,459 73
4/27/05	House Rent		72 00		
6/17/05	House Rent		144 00		11,843 78
6/25/05	Scott & Associates, P. C.	#192		759 95	11,987 78
8/14/05	House Rent		144 00		12,059 78
9/29/05	House Rent		72 00		11,307 09
10/22/05	Scott & Associates, P. C.	#193		752 69	11,379 09
11/28/05	House Rent		72 00		
12/23/05	Treasurer, Orangeburg Co.	#194		1,627 86	9,740 73
12/27/05	Scott & Associates, P. C.	#195		10 50	16,529 73
1/8/06	Orangeburg Rent		6,789 00		16,432 37
3/9/06	Scott & Associates, P. C.	#196		97 36	
4/13/06	U. S. Treasury- federal income tax	#197		77 00	16,342 37
4/13/06	S. C. Dept. of Revenue S. C. income tax	#198		13 00	16,334 37
7/12/06	Bank Charge			8 00	
9/28/06	House Rent		400 00		
	Refund of bank charge		20 00		
	Scott & Associates, P. C.	#199		453 10	16,301 27

PENCE FAMILY TRUST

WACHOVIA SECURITIES- INVESTMENT ACCOUNT

CASH RECEIPTS AND DISBURSEMENTS

August 26, 2002 through September 29, 2006

		Receipts	Disbursements	Balance
Balance 8/26/02				91,831 02
9/4/02	Dividends	278 95		
9/4/02	Purchase Evergreen Funds		278 95	
9/9/02	Transfer to checking account		5,000 00	
9/30/02	Interest on Money Market Acct.	55 57		86,886 59
10/2/02	Dividends	229 31		
	Purchase Evergreen Fund		229 31	
10/30/02	Interest on Money Market Acct.	70 22		86,956 81
11/4/02	Dividend	254 80		
	Purchase Evergreen Fund		254 80	
11/8/02	S.C. St. Public Service Activity Bonds	25,029 85		
11/22/02	Long-Term Capital Fund Acct.	63 29		
11/22/02	Purchase Evergreen Fund		63 29	
11/29/02	Interest on Money Market	62 60		112,049 26
12/3/02	Dividends	252 63		
12/3/02	Purchase Evergreen Fund		252 63	
12/31/02	Interest on Money Market Acct.	46 74		112,096 00
1/3/03	Dividends	249 20		
1/3/03	Purchase Evergreen Fund		249 20	
1/31/03	Interest on Money Market Acct.	25 51		
1/31/03	Annual Fee to Investment Fund		85 00	112,036 51
2/4/03	Dividends	259 25		
	Purchase Evergreen Fund		259 25	
2/28/03	Interest on Money Market	28 12		112,064 63
3/4/03	Dividends	228 61		
	Purchase Evergreen Fund		228 61	
3/31/03	Interest on Money Market Acct.	29 83		112,094 46
4/2/03	Dividends	238 01		
	Purchase Evergreen Fund		238 01	
4/30/03	Interest- Money Market Acct.	36 01		
5/2/03	Dividends	239 74		
	Purchase Evergreen Fund		239 74	

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) C/A No.: 2006-CP-38-1523

Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean and JL McLean Properties, LLC,

Plaintiffs,

v.

James B. Drennan, III, as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr., as Trustee of the Trust Agreement of Elizabeth McLean Pence, dated May 28, 1999, Wachovia Bank, National Association, as Personal Representative of the Estate of Elizabeth P. Pence, Wachovia Bank, National Association, as Trustee of the Elizabeth P. Pence Trust, Marlboro Academy, Inc., Charles P. Thompson, Money To Go, LLC, James J. Pence, Jr, as Personal Representative of the Estate of Stephen Pence and Harry R. Eastlerling, Jr.,

Defendants.

COPY

DEPOSITION OF

JAMES B. JACKSON, JR., ESQUIRE

****

Monday, November 19, 2007
4:00 p.m. - 4:55 p.m.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

The deposition of JAMES B. JACKSON, JR., ESQUIRE, was taken on behalf of the Defendant, James B. Drennan, III, at the law offices of Nexsen, Pruet 1901 Main Street, 17th Floor, Columbia, South Carolina, on the 19th day of November 2007 before Diane M. Hendricks, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

APPEARANCES:

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Paulling & James, LLP
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Attorney for the Defendant, Marlboro Academy

Also Present: James B. Drennan, III, Esquire

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EXHIBITS

Defendant's Exhibit Number One 4
(Case Caption)
Defendant's Exhibit Number Two 4
(Correspondence from James B. Drennan, III, Esquire to James B. Jackson, Jr., Esquire dated 3/11/2002)
Defendant's Exhibit Number Three 4
(Correspondence from James B. Drennan, III, Esquire to James B. Jackson, Jr., Esquire dated 8/30/2002)
Defendant's Exhibit Number Four 4
(Correspondence from James B. Jackson, Jr., Esquire to James B. Drennan, III, Esquire dated 9/27/2002)
Defendant's Exhibit Number Five 4
(Correspondence from James B. Drennan, III, Esquire to James B. Jackson, Jr., Esquire dated 10/1/2002)
Defendant's Exhibit Number Six 4
(Correspondence from James B. Jackson, Jr., Esquire to James B. Drennan, III, Esquire dated 10/21/2002)
Defendant's Exhibit Number Seven 4
(Correspondence from James B. Jackson, Jr., Esquire to James B. Drennan, III, Esquire dated 1/17/2003)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

(Defendant's Exhibits Numbered One through Seven were pre-marked for identification purposes.)

JAMES B. JACKSON, JR., ESQUIRE, having been duly sworn, deposed and testified as follows:

MR. JACKSON - EXAMINATION BY MR. HENDERSON:

Q: Please state your full name for the record.

A: James Benjamin Jackson, Jr.

Q: Mr. Jackson, my name is Matt Henderson and I represent Jim Drennan in a lawsuit brought by Norman McLean, James McLean, Marie McLean-Choi, William McLean, Robert McLean and J.L. McLean Properties, LLC; and there are other defendants involved in the case. I want to show you what's been marked as Exhibit One and ask if you've had a chance to look at that.

A: I have.

Q: My understanding is you've been practicing law in South Carolina since 1980?

A: That's correct.

Q: And you currently are with Nester and Jackson in Sumter, South Carolina?

A: Santee, South Carolina.

Q: Santee.

A: Yes, sir. That's correct.

Q: I should have read that. And previously you

were with Yarborough, Hutto and Jackson in Orangeburg, South Carolina?

A: That's correct.

Q: Now, what we're here today about is just to ask you some questions regarding the creation, any knowledge that you may have about the creation of a trust, a settlement from some trust litigation involving some real property in Orangeburg, South Carolina. It has come to our attention from looking at some documents that you may or may not have represented Norman McLean, James McLean or any one or more of the plaintiffs in this lawsuit. My understanding is that counsel for all the plaintiffs in the lawsuit had signed Exhibit One, which would operate as a waiver of any real or imagined attorney-client privilege, which would attach to what I'm gonna ask you about today. I do not intend to ask you about any other involvement or transactions with any of the plaintiffs in this case, other than one question, which I'll just get out now. And that is, do you recall whether or not you or any member in any previous firm represented Norman McLean in the Caw Caw Swamp property

partition litigation, which apparently took place some time in the early mid '90s in Orangeburg County?

A: Yes.

Q: Did you represent Mr. McLean, or some member of your law firm?

A: It would have been Hall Yarborough and myself.

Q: Okay. Now, you and I have talked briefly about this by telephone and I just need to ask you. In the March to October 2002 time frame, did you represent any of the named plaintiffs in any matter related to Orangeburg County real property? And if you could just take a look at the names of the plaintiffs in this case on Exhibit One and tell me --

A: In regards to these matters, as I understand this litigation is about, the only person that I would have had any discussions with whatsoever about it would have been Norman McLean.

Q: Okay.

A: I have never talked to -- I know Jim McLean, James N. McLean. He's the tax assessor for Orangeburg County, he does an excellent job, by the way, as tax assessor for Orangeburg County.

Other than just general conversations, "Hi. How are you doing?" The only dealings I've ever had with Jim or with my clients who have problems with the tax assessor's office, I call him and he straightened it out for me.

Q: Okay.

A: He's always done that. I've never talked to him about this trust or any of the issues involving the Orangeburg County property. Marie McLean-Choi, I've represented in the past. I think it was a wreck case probably 10, 12 years ago. She was involved in an accident. I represented her in that. And to my knowledge, that's the only thing I've ever dealt with her on. Mr. Yarborough may have dealt with her or her husband previously. And then William N. McLean, Robert L. McLean, I don't know them at all. I've never -- again, I know their family, I know Norman, I know his wife, but I don't know William or Robert and I'm not sure who J.L. McLean Properties, LLC is either. To my knowledge I've never had any dealings with them.

Q: Do you recall any specific representation of Norman McLean involving the Caw Caw Swamp

property and its relationship to the Pence Trust or the Pence Trust litigation settlement?

A: You've shown me some letters I wrote, and they are what they are. In my mind, I was not representing Norman in anything, other than just talking with Mr. Drennan and exchanging some correspondence with Mr. Drennan, and I guess to that extent, I suppose I was representing Norman, but there was no litigation. You know, there wasn't any talk of litigation. We were just trying to set forth what Norman's position was, and Mr. Drennan responded with what his position was in regards to this property. And again, my knowledge of it came from Norman and it was very limited. You know, I do know there was a trust. I looked at James Brogdon, I remember that name as being the trustee. I spoke to Mr. Drennan on the telephone on a couple of occasions. Well, probably at least two or three. And I exchanged correspondence with him. And that was about the extent of my involvement. I also knew that the McLean children, which would be Jim and Marie the others, were having -- I was told that they were looking into that situation

and they were gonna deal with it, so I didn't have to deal with that. I assumed that Mr. Alexander was the person they were dealing with, but I didn't even know that at the time, and I can't make an assumption.

Q: Let me ask you this then. Let me show you what's been marked as Exhibit Number Two and just ask you if you recognize that letter, that document.

A: Yes.

Q: What is the date on that document?

A: March 11th, 2002.

Q: Can you just sort of paraphrase to me what you understand that letter to mean? And that is a letter to you from Mr. Drennan?

A: Yes.

Q: Okay.

A: He indicated that Mr. Yarborough had helped him obtain some appraisals for some property in Orangeburg County and he was trying to get copies of deeds.

Q: That was your partner at the time?

A: Mr. Yarborough, yes, was my partner at the time. I think Mr. Yarborough died in February of 2004. In March of two thousand -- I think

in 2001, he got hepatitis real bad, was actually put in a hospice program, but then he graduated from hospice. And if you knew Mr. Yarborough, you'd understand, he being one of the few people that could do that. He actually came back and practiced law for almost two years. I'm not sure if he was back yet in March of 2002, which is probably why Mr. Drennan was dealing with me.

Q: Okay. And in response to the -- what did you do in response to getting that letter if you recall?

A: I believe that I got the copies of the deeds that he wanted and sent them to him.

Q: Were you able to determine at that point whether or not the Caw Caw Swamp property had been transferred to the trust?

A: I would have had no idea.

Q: Okay.

A: No. I would have had no idea about that.

Q: Do you recall talking to Mr. Drennan by telephone on or about May 23rd, 2002 and advising him that the Caw Caw property had in fact not been included in the trust by deed?

A: I recall having at least two or three

conversations on the phone with Mr. Drennan. I can't tell you the dates, and I don't remember that conversation specifically, whether or not I told him. I think, again, I'm assuming I responded to this letter and I just don't recall.

Q: Do you recall telling Mr. Drennan by telephone at some time after March 11th, 2002 that Norman McLean was taking the position that the Caw Caw Swamp property was supposed to be in the trust?

A: Yes. I do remember that. In fact, if I can give you a sequence.

Q: Sure.

A: I talked to Mr. Drennan and told him that Norman felt like that property should not go in the trust, I think is the way it went. I can't remember what Norman's position was, but I told him what Norman's position was. He told me what he thought it ought to be, and at sometime after that I wrote him a letter, which I'm sure you have there, telling him again what Norman's position was. And --

Q: Let me show you Exhibit -- I don't want to cut you off, but let me show you Exhibit Number Four and ask if you can take a look at that and

if that's the letter you're referring to.

A: I don't think so.

Q: Okay.

A: Let me see all of them.

Q: Let me show you this October 1, 2002 letter to you from Mr. Drennan, and that's Exhibit Five. And then Exhibit Six might be the letter you're thinking about and that's the October 21, 2002 letter from you back to Mr. Drennan. And if you just want to take a few minutes and review all those letters, then we can resume, you can resume your answer.

A: Okay. Well, based on the dates in this Exhibit Four, it must be the letter I was thinking of. Because I knew that I had --

MR. MOORE: What's the date on Exhibit Four? I'm sorry.

WITNESS: September 27th, 2002.

A: Because again, what I remember happened, is he explained to me his position on the phone. I -- after I had explained what Norman's position was. I wrote him a letter thereafter, which apparently is this September 27th letter, again telling him what Norman's position was. And he wrote me back this letter of October

1st, which was fussing at me a little bit because I had -- he had already explained all this to me on the phone, and I really just had sort of forgotten it over those few months, a period of time. So again, he put his position in writing on October 1st --

Q: And that's Exhibit Five?

A: That's Exhibit Five.

Q: Okay.

A: And then apparently I responded again on Exhibit Six. So, I mean, that's basically the main gist of what I recall, is that he explained, Mr. Drennan explained his position on the matter to me on the phone. I wrote him back after I'd really forgotten what he told me, and then he wrote me back October 1st telling me this is the way he thought. He indicated that he was disappointed at comments I made in my letter.

Q: And --

A: And the reason was is because he'd already explained it to me on the phone and I had just forgotten what he had said.

Q: Just to sort of go over the letter of October 21, 2002 that you wrote to Mr. Drennan, you had

had a chance to discuss all of this with Norman McLean?

A: Yes. I'm sure I did.

Q: Okay. And I guess I'm curious as to -- paragraph two of the letter says, "I have discussed the matter with my clients." Do you know, were you referring to more than one person?

A: Well, going back to Exhibit Four, I see where I've been asked by Jim McLean to review some documents. I really don't remember being asked by Jim to do anything. I mean, I -- I don't recall ever talking to Jim McLean about this situation. In fact, I will tell you that I have not talked to Jim McLean, but that this letter indicated that he had sent me some documents and maybe he had. But I don't believe I ever talked with Jim about it. That I've discussed the matter with my clients, you know, I -- the only person I was dealing with was Norman McLean.

Q: Do you have copies of these letters yourself?

A: Probably somewhere.

Q: Where would they be? I guess what I'm really asking is, is there like a general Norman

McLean file or --

A: There's a bunch of Norman McLean files.

Q: Which one would these letters be in you think?

A: Probably in a general file or just a file that has his name on it. I did look it up, but I can't tell for you for sure, his -- either that or some Caw Caw file that we dealt with, you know, where we litigated in Orangeburg what to do about that.

Q: That was in the '94 time frame?

A: I think that litigation lasted a lot longer than that.

Q: It was resolved in 1994 maybe?

A: No. I think it --

Q: It started in 1994?

A: It started in 1994.

Q: And when do you think it was resolved?

A: Probably not until in the 2000s I would think.

Q: Okay.

A: We purposely delayed a lot of that, because we sold some property, we got enough money to deal with the -- Lennon McLean and support him. And we knew there were issues of, you know -- there were timber issues on that property based on the deed of Norman's father, which was done

back in the '50s. And there were issues about who got the money if they cut the timber. And we tried to avoid those issues by not going there, by selling other property and trying to support Lennon McLean in that way. And ultimately we were successful in doing that. Lennon died before we had to get anything.

Q: Okay.

A: But that case was pending and dealt with for many years, because every time they needed to sell another piece, we went -- we either worked out a deal or went back to court.

Q: Going back to paragraph two of Exhibit Six, your letter goes on and it says, "I have discussed the matter with my clients and they do accept the fact that the Caw Caw property and the Cannon Bridge Road property, in which Elizabeth had a remainder interest, were not put in the trust. Therefore," we except that -- "we accept," A-C-C-E-P-T, "that title to those properties passed through the wills of Elizabeth Pence, the mother, and Elizabeth Pence, the daughter. Therefore, the purpose of this letter is to simply assure you that we do accept and agree with the matters set forth in

the October 1 -- in your letter of October 1, 2002." Is it fair to say then that in this letter that you had had a chance to talk to Norman McLean and that he agreed with the position asserted by Mr. Drennan in his October 1 letter?

A: It would appear that way. I don't believe I would have sent that letter without talking to Norman. I know I wouldn't have.

Q: Okay.

A: I don't recall the actual conversation.

Q: Do you have any independent recollection of it or is it --

A: No.

Q: -- solely based on these letters that you're seeing?

A: Yeah.

Q: And you would agree that Exhibit Six is a true and genuine copy of the letter that you wrote?

A: Yes.

Q: And that appears to be your signature on page two --

A: Yeah.

Q: -- of the exhibit? Okay. Paragraph three of Exhibit Six goes on to essentially express an

interest on behalf of Mr. McLean. Again, you say "my clients." You think the only person you discussed this with was Norman McLean?

A: Yeah, that was just -- the fact there's an "s" on that, is a typo I suppose or something. Because there's no question in my mind. One thing I am sure of is that Norman was the only one I was dealing with.

Q: Okay.

A: Jim may have sent me some documents to look at.

Q: When you talked to Norman McLean about these issues, did you get the impression from any source, from anything that he said that he was speaking on behalf of the McLean family, of his children as well?

A: No.

Q: Are you aware that he executed a quitclaim deed sometime about a year prior to this, essentially giving all of his property to his children?

A: Yes.

Q: Okay.

A: He's told me about that. He's told me that he's turned it all over to his children. I don't remember whether -- I have no

recollection whether I did the deed or he did the deed. But he's told me on a number of occasions that he's turned the whole matter over to his children.

Q: Okay. Would it make sense then that if he had done that a year before this, and that he, himself, would not personally be expressing an interest in purchasing the Caw Caw property, but might be communicating that interest that his children had in purchasing the Caw Caw property?

A: Norman's interest in that was trying to keep everything in the family. That was the big thing to him. And he would -- even though his father divided a lot of it up back in the '50s, that there were things going on with his sister Elizabeth Pence that I, you know, probably had some very vague conversation about, that I don't recall. Ultimately he would have -- because he's the only one that had family. Lennon had no children. Ms. Pence, as I understand it, had a daughter named Elizabeth Pence who is now deceased, and she has no children. So Norman's interest is trying to keep the property in the family and the family

is now his children.

Q: Right.

A: So, yeah. He would have -- he could have very well expressed his own personal desire for that, and I think that's what it exhibited. I don't think he intended to, you know, speaking -- he was speaking of his desires for what he wanted.

Q: Okay.

A: If that makes sense.

Q: It would make more sense I guess if -- since he had already disgorged all of his property to his children, that he would not then go out and buy other property in his name, but may express an interest in his children getting that property. And I guess I'm asking you, is there --

A: You apparently don't deal with some of the people I deal with, okay? Some of the patriarchs of some of these families like Norman McLean, even though they've given it all to their children, that don't mean that they've given up their right to exercise control over it in their own mind. Norman would be that kind of person. You know, if he wanted

something done, he would expect his children to do it that way, even though he's conveyed it out to them. And I represent a lot of people like that. My father would be one. You know, just because he gives it to me, doesn't mean that he can't tell me what to do with it.

Q: Do you know why you copied Jim McLean with this letter, Exhibit Six?

A: I assume Norman asked me to.

Q: Okay.

A: Again, that's an assumption. I don't have an independent recollection of why I would have done that.

Q: When you would have spoken with Norman McLean about the issues raised in these letters, would you have something in person, by correspondence or do you recall?

A: I would have talked to him in person.

Q: Okay.

A: I mean, I might have sent him a letter, sent him a copy of that letter, and he would have come in and we would have spoken in the office. He's not very far from my old office, and he was regularly there.

Q: Is this something that you would have billed

him for individually, handling something like this or would you have just done it --

A: We would have just done it. We do enough other kind of work for Norman, that I'm sure I didn't bill him for this.

Q: Okay.

A: I mean, this was something I wouldn't have been involved in, and -- you know, other than the correspondence.

Q: Okay. Let me show you Exhibit Seven and as if you recognize that document.

A: It appears to be a letter I wrote.

Q: Okay. That's -- is that dated January of 2003?

A: January 17th, 2003. Yes, sir.

Q: Is that sort of a reiteration of your October 21, 2002 letter regarding your -- it says "clients'," whatever that may have meant, their interest in purchasing the Caw Caw Swamp property?

A: Yeah.

Q: All right.

A: It's also -- again, I've forgotten about this, but we had real difficulty getting a hold of a copy of Elizabeth Pence's will.

Q: Right.

A: I couldn't get anybody to send it to me, so that's, you know, that was something that Norman wanted to look at as well. But, yeah, I think that, again, this is just Norman's interest. And again, as far as I'm concerned, I'm representing Norman here, even though that I sent a copy to Jim as well.

MR. ALEXANDER: Can I interject for a moment, a clarification there. When you said, "Elizabeth Pence's will," are you talking about the older Elizabeth or the younger Elizabeth?

WITNESS: I couldn't tell you which one.

MR. ALEXANDER: Okay.

WITNESS: I think it was the younger one; I believe it's the younger one, because the older one had left everything to the younger one, as I recall. The younger one left her some charities and some things. We ultimately got a copy of it.

Q: Okay.

A: I don't know exactly what it said.

Q: Can we rest assured that Exhibit Six and Exhibit Seven indicate that Jim McLean was to be given a copy of those letters, that those were, in fact, sent to him?

A: Sure. I mean, I don't -- I didn't -- I wouldn't put that down there if I didn't do it.
Q: Okay.
A: Now, I may have sent it to Jim at Norman's address or something. I could well have done that.
Q: All right.
A: But I can't swear to that one way or another.
Q: Okay.
A: A copy was sent to at least one of them.
Q: Sure. At any time when you were talking to Norman McLean about these issues raised in these letters, did you get the impression from him by anything that he said, that he had discussed any of these with his children?
A: Yes.
Q: And tell me about that.
A: Well, there was always -- again, even from my very first letters, it was always -- I mean, Norman always had an idea that this property ought to be going to his children. And I don't know whether that goes through the trust or didn't go through the trust. But -- and I was aware that the children -- he told me that the children were looking into that situation.

Q: Okay.
A: And that's as far as it went. I mean, they had another lawyer doing it and -- and so...
Q: Are you -- can you testify --
A: I can't -- September 27th letter, Exhibit Four sets forth what Norman's position was.
Q: Okay. And are you convinced, that at least by the time that letter was written, September 27th, 2002, that Norman McLean and his children were aware that the Caw Caw property was not in the trust?
MR. ALEXANDER: Object to the form.
Q: Whether they thought it should have been or not, can you testify that based on your conversations with Norman McLean, that he and his children understood that the property was, in fact, not in the trust?
MR. ALEXANDER: Object to the form.
A: I'm trying to think. We talked about that trust, he talked about -- I think there was some property in Orangeburg County that was in it and some that wasn't.
Q: Right.
A: And that's about the best I can remember. I mean --

Q: Well, as I understand --
A: I'm sure we talked about everything.
Q: Well, as I understand it from your previous testimony, you were made aware during this time frame between September 27th of 2002 and October 21st of 2002 that his children were aware of this issue and that they were pursing it on their own?
A: I'm assuming that's when I was made aware of it. I don't remember the exact dates as to when I was made aware of it, but Norman told me about that at some point. I'd hate to get trapped on it. Not trapped. I know you're not trying to trap me. I'd hate to be --
Q: Okay. No, I'm not trying to trap you.
A: And it may be that that's the case and it may be that's why I was sending copies of those things to Jim McLean, because I knew they had somebody else looking at them. I just don't recall.
Q: Okay.
A: But somewhere along the way, I was told about that, that the children were looking into it.
Q: And --
A: And I think they probably knew. I mean, I

would assume they knew. It seems like I knew that some of it was in the trust and some of it wasn't.

Q: And that would have been during the time that these letters were written that you came to that understanding?

A: Presumably so.

Q: Did you also have an understanding from Norman that during this period from March 11th to your October 21st letter, during that period of time that he had discussed these issues with his children?

A: At some point he turned the whole thing over to his children. Whether it was during this time, I can't say for sure. And I can't -- I wasn't there when he had conversations with his children, so I don't know exactly when that occurred either. But, I mean, Norman, I would think that, you know, if he were concerned about it, he spoke to his children about it. But I couldn't swear to that.

Q: And again, I'm understanding that you would not have been a party to any of those conversations. I guess the real question is, did Norman McLean ever tell you that or

intimate to you in any way while he's, I guess, discussing this with you or giving you the authority to write what you did in Exhibit Six, did he indicate to you in any way that he had discussed that with his children, those issues with his children?

MR. ALEXANDER: Object to the form.

A: I don't know that he's ever told me what he's discussed with his children. Maybe what he told me was he turned it over to his children, whenever that occurred. And I don't think I was involved in that. Beginning October 21st did I know whether he had discussed this with his children or not? I can't say that I did know that or I didn't know it. Again, my conversation would have been with Norman only even though, again, I sent a copy of this letter to Jim.

Q: Would you agree or disagree that based on the October 21, 2002 letter, that it was reasonable for Jim Drennan to believe that the McLean family agreed with his position on the Caw Caw Swamp property?

A: I mean, you can't ask me to speculate on what Jim Drennan thought. That's kind of hard to

do.

Q: Well, I guess --

A: I mean, I think in my recollection of this is, we were just accepting that that was Jim Drennan's position on this matter. But it says what it says.

Q: That's true. And I guess it does a little bit more than that. Would you agree that your letter goes as far as to say, "We accept that the title of this property is passed through the wills and not through the trust." I mean, is that what it says?

A: It says what it says.

Q: Okay.

A: And again, I --

Q: So we can take the language as you wrote it as face value?

A: Sure.

Q: Okay.

A: However, it would still -- again, I had not looked at these estates, I had not checked the title to any of this property. And, you know, Jim Drennan supposedly did that. And again, I guess if his position was wrong at that time, then our acceptance of it doesn't make the

wrong position right. But again, it does -- I mean, the letter says what it says. And it does indicate that at least Norman would accept that position at that time.

Q: Have you learned from any source at any time before today that the Caw Caw Swamp property was ever, in fact, deeded to the trust?

A: No.

Q: Okay. And do you recall having any other dealings with or conversations with Mr. Drennan prior to this March -- October 2002 period regarding property or the Caw Caw Swamp property or the description of it?

A: The only conversations I had with Mr. Drennan were around this time.

Q: Let me show you Exhibit Number Three and ask you if that refreshes your recollection about any additional conversations that you may have had regarding the Caw Caw Swamp property. And that's a letter dated August 30th, 2002. Is that correct?

A: Uh-huh, that's correct.

Q: Okay.

A: I don't remember this one at all.

Q: Do you remember doing any title work or looking

up anything or getting copies of any deeds for Mr. Drennan at any time?

A: I think I did.

Q: Okay.

A: I did get copies of deeds. I didn't do any title work. I try my best not to do title work. But I did get copies of deeds and faxed them to him or mailed them to him at his request.

Q: And do you think that the deeds that you would have gotten would have related to the Caw Caw Swamp property?

A: I can't remember. He would have asked me for certain deeds and I would have got them. I would have done that for anybody.

Q: Does that suggest it from Exhibit --

A: Yeah.

Q: -- Three there?

A: Yeah.

Q: That it was the Caw Caw Swamp property that you helped him get --

A: Yeah.

Q: -- the property description for?

A: Yeah.

Q: That letter indicated that he was preparing a

deed of distribution and needed a description of the property?

A: Yeah, right.

Q: Do you remember communicating that with Mr. McLean at all?

A: No, no. But again, I would probably consider this as, you know, as coming from any lawyer, who just want a copy of the legal description. And I don't know that this would have raised anything to me with regards to the subject matter. I mean, I knew that things were going on, but I had very little personal knowledge of the details of it. What I knew was very broad and general. I don't know how you can do a deed of distribution prior to the personal representative, he's got to see that sooner or later.

Q: Right. After Exhibit Seven was written, the January 2003, did you have any other contact with Mr. McLean or any member of his family regarding the Caw Caw Swamp trust litigation issue?

A: Once I became aware -- and maybe this answers one of your earlier questions. Once I became aware that they had somebody else looking into

it, I don't think I did much work. So maybe I wasn't aware of that when I was writing these letters. Again, the more I think about it, it wouldn't have made much sense for me to be writing if they had someone else looking into it. So again, I'm just trying to figure it out. But I -- because I just don't remember when I learned that. Pretty much when Norman told me that the children had a lawyer looking into it, I didn't do anything much after that.

Q: Okay.

MR. HENDERSON: Thank you. I don't think I have any other questions at this time. I appreciate your cooperation and coming in.

WITNESS: Sure.

MR. HENDERSON: Some of these other lawyers may have questions.

WITNESS: Sure.

MR. JAMES: I've got a couple of questions.

MR. JACKSON - EXAMINATION BY MR. JAMES:

Q: Mr. Jackson, I'm Jay James and I represent Marlboro Academy and it is one of the beneficiaries under the will of --

A: I remember that, yeah.

Q: -- Elizabeth P. Pence. Do you still represent

Norman McLean?
A: Yes, sir.
Q: Would his files, including the files for the time period that we're talking about now, be in possession of your present firm?
A: No.
Q: Where would those files be?
A: Well, the files I have, the current ones are in my possession at my new firm. Any closed files or other files would be in possession of my old partner, but, I mean, I can get them.
Q: Before coming here today did you review the files that include these correspondences that have been shown to you?
A: No, sir.
Q: Do you recall whether you would have kept time records showing when you might have met with any member of the McLean family?
A: I'm one of the poorest time records keeper you ever saw. No, I would not have kept time records on Norman McLean. I never have.
Q: Would you have made file memoranda of any of your conversations with Mr. McLean, telephone or in person?
A: No, sir.

Q: Do you recall whether you gave advice to Norman McLean or any other member of the McLean family about the possible need to file a claim against the estate of Elizabeth P. Pence?

A: No, sir. Never brought that up. Again, I think -- I'm pretty sure at the time she died, and I don't know whether this Exhibit Three refers to it, Liz Pence. Is that your -- is that the mother or the daughter?

Q: I'm not sure. The daughter died in August of 2002.

A: Yeah. That would be --

Q: The mother died three years earlier?

A: Again, I just don't recall doing a whole lot, although, obviously I did. I wrote a couple of letters after the daughter died. And we never discussed whether or not there was a need to file a claim.

Q: Have you ever heard of a property called the Cannon Bridge Road property?

A: Yes, sir.

Q: Did that property come up in any of these discussions?

A: The Cannon Bridge Road property was subject to this '94 litigation that we discussed earlier.

Again, the Cannon Bridge Road property was the homestead of the father of Norman and Lennon McLean and Elizabeth Pence. And it was left to Lennon McLean for the most part for his life, and there was litigation on that. The ongoing litigation we talked about, selling some of the property. We worked that deal to sell some of the timber. And there was an ongoing issue which we were able to avoid in regards to who got the money from selling the timber. But that was a different piece of property.

Q: Did any member of the McLean family discuss with you that it should be a part of the trust?

A: Not that I recall. I don't see why they would, because Lennon's dad, after that property went into -- to Norman I think.

Q: Well, half to Norman and half to Elizabeth McLean Pence.

A: Okay. Well, again, I don't know why it would need to go in a trust if that were the case, which I think you're right. And if she predeceased him, the both -- the daughter did and -- anyway, I don't know. The whole things's kind of -- I just never knew -- I knew a fair amount about the Cannon Bridge Road

property and about the deed that the father left back in the '50s. And that's about the extent of my knowledge. And I had forgotten a lot of that.

Q: Did any member of the McLean family communicate to you a price at which they would want to purchase any of the Caw Caw Swamp or the Cannon Bridge Road property?

A: I don't recall there being a price. I think they expressed, obviously, an interest in buying the Caw Caw property. Again, I don't think they would have expressed an interest in buying the Cannon Bridge Road property, because like you said, at least half of that was coming to Norman anyway. And it was pretty much tied up with the -- with Lennon McLean and his situation, because he had a lifetime estate.

MR. JAMES: Nothing further.

WITNESS: Thank you.

MR. HENDERSON: I don't have any questions.

MR. MOORE: I don't have any questions.

MR. EASTERLING: I don't have any questions.

MR. ALEXANDER: No questions here.

MR. DAVIS: I have a few.

MR. JACKSON - EXAMINATION BY MR. DAVIS:

Q: Mr. Jackson, my name is Ward Davis. I represent Wachovia Bank in this matter --

A: Okay.

Q: -- one of the defendants. Have you spoken with Norman McLean about your deposition today?

A: Yes.

Q: Tell me what you and Mr. McLean discussed, please.

A: I told him that I got a call from Mr. Henderson, that he faxed me the letters, which he did, not all of these, but most of them. And that they wanted -- he wanted to take my deposition.

Q: What did Mr. McLean say?

A: Not much. I mean, what could he say? It was just a matter of information. I told him -- mainly I called him to let -- you know, find out if he would be willing to waive attorney-client privilege or, you know -- and the only thing that he really wanted me to do was talk to Mr. Alexander, and I did that. And I found out from Mr. Alexander that they were willing to waive attorney-client privilege. And so...

Q: Did you and Mr. McLean discuss any of the

substance of the letters that are now exhibits in this deposition?

A: No.

Q: Did you discuss any issues related to the Caw Caw Swamp property at all?

A: Not really.

Q: Not really? I mean, did you or didn't you?

A: If we did, I don't remember what we talked about. I mean, I -- it was not any intense conversation about the property. I think I sent Norman copies of the letters that were sent to me. And so we -- there wasn't a whole lot to discuss. If he had a discussion about it, I don't recall exactly what it was, but there wasn't much to it.

Q: Do you recall whether you discussed the contents of the letters? You said you sent those to Mr. McLean. Did you discuss the contents of those letters?

A: No.

Q: Did you discuss whether he remembers those letters?

A: He didn't remember much about them, no.

Q: Did he say he didn't remember them at all?

A: He didn't remember the content of them, at

least. At least some of the content he didn't remember. And he didn't know why we sent those letters. But, I mean, obviously, I sent them.

Q: Did he dispute the content of the letters?

A: No. He can't. No. He just didn't recall the content of some of them. And he didn't recall why -- I think he didn't recall why I sent copies to Jim. I don't know why I did that either, so it couldn't be too critical.

Q: Did you --

A: I've got to the point in life where it's hard to remember five minutes ago, much less five years ago. But I'm trying. I mean, a lot of it I just can't remember.

Q: And I appreciate that. Did you discuss with Mr. McLean whether you represented any of his children?

A: Yes. We did discuss that. And I was very clear that I did not. I mean, there's no question in my mind about that.

Q: Okay.

A: All my discussions, and even though -- I can understand why sending copies to Jim McLean and saying in there that I got copies of things from Jim McLean in there otherwise. But I

never -- I just don't -- I didn't -- I'm certain that I never discussed this case, this situation with Jim McLean. I'm certain that I've never had -- any conversation that I've ever had with Jim McLean in regards to my client who had an issue with another piece of property that helped me resolve. I know I haven't talked to Marie. The only person I talked to about this was Norman.

Q: Okay.

A: I'm assuming Norman told me to send copies to Jim, and that's what I did.

Q: Just so we understand your position. There are multiple references in the October 1, '02 letter. What is that? Exhibit Six, to clients, plural. And then there is -- I haven't actually seen the letter, but apparently, what is that, the January '03 letter, Exhibit Seven, also refers to clients, plural.

A: It does.

Q: And is there -- I mean, you said you only represented Norman McLean, but is there any explanation or doubt in your mind about why you, in multiple letters on multiple occasions,

referred to clients, plural, if you only represented one person when you wrote those letters?

A: I really don't. Other than it was just an error that I didn't catch proofreading the letter. I don't have any other explanation of it other than that. I did not represent anybody other than Norman.

Q: There's no doubt in your mind about that?

A: None, none. I'm sure of that. Again, I just -- I know Jim McLean. He's the one I would have the most conversations with. And he's the county tax assessor. And all the conversations I've ever had with him involved those kind of issues. And Norman, I'm certain is the only person I've ever talked to about all of this.

Q: I take it --

A: I know Marie, but I haven't seen Maria in a number of years, and I know I haven't talked to her.

Q: How are you paid for your legal services by Norman McLean?

A: I send him a bill and he pays them.

Q: And is that bill un-itemized?

A: Generally speaking, yeah.

Q: Was that the case in 2002?
A: I doubt -- I don't think I billed him for any of this stuff.
Q: What were you billing him for in 2002?
A: I don't know. It might not have been anything. Again, Norman's been a client of Mr. Yarborough since way before I got there. And we do things for him and bill him for it and he -- and we might do others for him and not bill him. I don't think I billed him for any of this.
Q: Have you checked any records to determine whether or not you billed him for any of this?
A: I have not.
Q: Would those records still exist?
A: I doubt it.
Q: Is there a way we can confirm that?
A: I would just have to look and see. It's kind of hard to find something that's not there, and that's what I think, it's not there.
Q: All right.
A: And the other thing too, Norman was, as far as our office was concerned, was Mr. Yarborough's client, so Mr. Yarborough would have been the one doing that. I was helping out. I have changed courses since Mr. Yarborough died. But

at this point in time Mr. Yarborough was still alive, and so even though we were equal partners, some of us were more equal than others, and Mr. Yarborough was that way. And he would -- you know, decisions about billing Norman would have been his.

Q: And if that ---

A: And the records would still be there, if we can find them.

Q: If the decisions about billing Mr. McLean were up to Mr. Yarborough in 2002, how would he make that determination on these letters if you weren't recording your time?

A: Again, I'm a very poor time keeper. I generally sort of count up stuff. I know generally what I've done. I do a sort of generic bill and charge a rate, is usually what I do. I'm not -- in 27 years I haven't had too many troubles with that. I probably shouldn't be saying this under oath, but, I mean, you know, that's a reasonable way to do it. I probably cheat myself.

Q: But is it your testimony that you didn't charge for this time for these letters at all or they were just part of a generic bill that you would

have sent out?

A: I didn't charge for this at all.

Q: Do you know that for sure?

A: I'm pretty sure.

Q: And I believe, Mr. Jackson, you testified that you didn't undertake any independent evaluation of your own about the Caw Caw Swamp property issues?

A: Correct.

Q: So the basis for your October 21, '02 letter would have been discussions with Norman McLean?

A: Correct.

MR. DAVIS: I don't believe I have any other questions. Thank you.

MR. HENDERSON: I just have one more.

MR. JACKSON - RE-EXAMINATION BY MR. HENDERSON:

Q: You and Mr. Yarborough represented Mr. McLean, Norman McLean, in the partition action?

A: Yes.

Q: Do you remember who represented Mrs. Pence?

A: Marshall Williams.

Q: And --

A: At least initially Marshall Williams, yeah.

Q: Was there anyone else involved?

A: Marshall died -- well, Marshal died in '95 or

'96, so I guess back in '94 it would have been him. Now, that was probably -- that was in probate court with Lennon McLean. There were a lot of issues going on with Lennon that -- and, you know, and Patricia Harrison who's a whole other story that I'm still dealing with. I know Marshal was involved in the probate court because it was odd, the two of them being on the same case at that time in their careers.

Q: And Mrs. Pence and Norman McLean were deposed in that litigation?

A: I don't know.

Q: You don't know?

A: If they did, I wasn't there.

Q: At that time that that litigation was going on, would you characterize their relationship as I guess being that of animosity for each other?

A: Between Norman and Elizabeth?

Q: Yes.

A: I didn't know what their relationship was.

Q: Okay.

A: The only thing I can remember about that, I got a frantic call from Mr. Yarborough one day, "Come over to the probate court." And when I got over there, he handed me a complaint.

Patricia Harrison had threatened to sue not only Norman and Elizabeth, but Marshal Williams and Hall Yarborough because of their influence on old Mr. McLean and that 1955 deed, and alleging that -- you know, for example, that they knew the interstate was coming through in 1959 and some crazy stuff. Mr. Yarborough wanted me to look at that and he thought he might need a lawyer, and that was a mess. I mean, I remember dealing with that, because you don't get these calls from your partner every day, who's fixin' -- threatening to be sued. But Hall and Marshal worked together on things. You know, there was certainly no animosity between them in regards to -- they've been known to have no animosity.

Q: And I wasn't suggesting between the lawyers. I was really asking more about Mrs. Pence and her brother.

A: Well, I guess what I'm saying is, because Hall and Marshal got along pretty well, I don't know that there was any animosity between brother and sister --

Q: And in --

A: -- but I can't tell you that for sure.

Q: In representing Mr. McLean over the years, have you perceived from any source that --

A: No.

Q: Prior --

A: He never told me anything.

Q: Just let me finish the question for the record.

A: I'm sorry.

Q: No problem. Have you perceived from anything that Mr. Norman McLean has said to you that there was any animosity between he and his sister up until the time of her death?

A: No.

Q: Okay.

MR. HENDERSON: Thank you. I don't have anything else. I appreciate it.

MR. JAMES: One or two additional questions.

MR. JACKSON - RE-EXAMINATION BY MR. JAMES:

Q: You said you had trouble getting a copy of the will of Elizabeth Pence.

A: Yeah.

Q: Did you finally get one?

A: Yes, sir.

Q: From whom did you get it?

A: I think I got a title abstractor to go get it for me.

Q: Did you get it from -- did you order it from Marlboro County or --

A: I think I found the title abstractor who went up there on a regular basis and copied it and sent me a copy I think.

Q: So you got a copy from the Marlboro County probate court you think?

A: Yes. I believe so. Yes, sir.

Q: Did you get a copy of the entire file?

A: No, sir. I think -- and I remember seeing the will, because I remember the private school that you represent. I can't remember the name of it. Again, it was one of the beneficiaries. I thought that was unusual and that's why I remember it.

Q: Do you know -- would you have had that copy before you wrote, say, the letter of January 17, 2003?

A: Well, I didn't have it -- no. Because in there I asked for a copy of it. So it would have been later when I got it. Again, Norman just wanted a copy of it. Nobody would give me a copy, therefore, I wanted it really bad, kind of thing. I don't think we had any great use for it, but we finally got it. And I think I

sent some title abstractor or somebody I knew to go get me a copy of it.

Q: Okay.

MR. JAMES: Nothing further.

MR. EASTERLING: No questions.

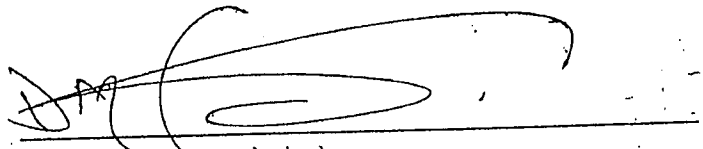
(There being no further questions, the deposition concluded at 4:55 p.m.)

CERTIFICATE

This is to certify that the deposition of JAMES B. JACKSON, JR., ESQUIRE, consisting of Fifty (50) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

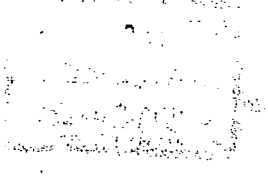
IN WITNESS WHEREOF I have hereunto set my hand and seal on December 12, 2007.



Diane M. Hendricks
Court Reporter

Notary Public for South Carolina
My Commission Expires: April 30, 2011

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Norman M. McLean, James N. McLean, Marie McLean-Choi, William N. McLean, Robert L. McLean, and JL McLean Properties, LLC,

Plaintiff,

vs.

James B. Drennan, III, as Personal Representative of the Estate of Elizabeth McLean Pence, James E. Brogdon, Sr., as Trustee of the Trust Agreement of Elizabeth McLean Pence dated May 28, 1999, Wachovia Bank, National Association, as Personal Representative of the Estate of Elizabeth P. Pencer Trustee, Marlboro Academy, Inc., Charles P. Thompson, Cheri Brown Thompson, Money To Go, LLC, James J. Pence, Jr. as Personal Representative of the Estate of Stephen Pence, and Harry R. Easterling, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2006-CP-38-1523

AGREEMENT

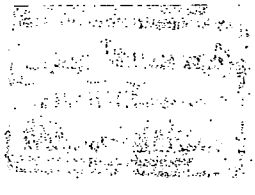
To the extent, if any, that there is any attorney-client relationship between any of the Plaintiffs above-named and James Jackson related to the Orangeburg real estate which is the subject of the above-captioned action, then any privilege which may arise from that attorney-client relationship, if any, is waived.

Culbertson & Alexander, LLC

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Δπ EXHIBIT 1
Deponent Jackson J
Date 11/19/07 Rptr dmh
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March 11, 2002

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.**
ANTHONY H. RANDALL, P.A.***
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
*** ALSO ADMITTED IN NORTH CAROLINA

R. RAY DENNIS*
OF COUNSEL

By Fax: (803) 536-2175
James B. Jackson, Jr., Esq.
Yarborough, Hutto and Jackson.
Orangeburg, SC 29116

Re: Elizabeth M. Pence Estate

Dear Jay:

Hall Yarborough helped me obtain appraisals on Orangeburg real property which was subject to the estate tax at Elizabeth Pence's death in 1999. That property included (1) 120.11 acres off Highway 21, near Caw Caw Swamp having no road frontage, (2) 54.8 acres also off Highway 21, near Caw Caw Swamp, and (3) 307.99 acres at the intersection of I-26 and Highway 33.

When Mr. Yarborough sent me the appraisals he indicated that the property had been conveyed by Mrs. Pence to James Brogdon, Trustee, by deed recorded in Book 761 at page 209. I reported all of it as trust property on the estate tax return (it made no difference tax-wise, whether it was or was not in the trust).

Mr. Brogdon now tells me that the Caw Caw Swamp property was not included in the conveyance to the trust. If this is correct, I will need to file a copy of Mrs. Pence's will in Orangeburg and do a deed of distribution out of Mrs. Pence's estate. Could you help me sort through this and determine who has title to the Caw Caw Swamp property?

After calling you earlier today and asking that you obtain a copy of the deed, I found a copy in my file. I will enclose a copy of that deed for your information and to give you a starting point.

I would appreciate it if you would help me determine who has title to this property, and if it is still in Mrs. Pence's name, I will need a property description so that I can prepare a deed of distribution.

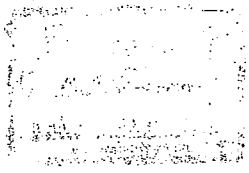
Thanks for your help.

Sincerely yours,

James B. Drennan, III

EXHIBIT 2
Deponent Jackson, J
Date 11/9/07 Rptr. dmh
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DENNIS, SHAW & DRENNAN, LLC
ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

August 30, 2002

JAMES W. SHAW, P.A.·
JAMES B. DRENNAN, III, P.A.··
ANTHONY H. RANDALL, P.A.···
·ALSO ADMITTED IN MASSACHUSETTS
··CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
···ALSO ADMITTED IN NORTH CAROLINA

R. RAY DENNIS·
OF COUNSEL

By Fax: (803) 536-2175
James B. Jackson, Jr., Esq.
Yarborough, Hutto and Jackson.
Orangeburg, SC 29116

Re: Elizabeth M. Pence Estate

Dear Jay:

You may have heard that Liz Pence died earlier this week. As soon as a successor personal representative has been appointed to her mother's estate, I will want to do a deed of distribution for the Caw Caw Swamp property.

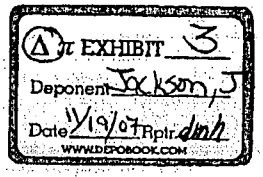
Will you be able to provide me with a legal description of this property? I would really appreciate hearing from you at the earliest.

With kindest personal regards,

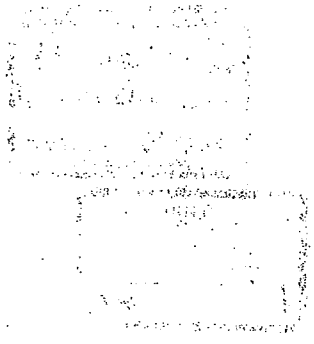
Sincerely yours,

James B. Drennan, III

CC: Freeman Coggins



4



YARBOROUGH, HUTTO & JACKSON
ATTORNEYS AT LAW
198 DOCKET STREET, N.E.
POST OFFICE BOX 2268
ORANGEBURG, SOUTH CAROLINA 29116-2268

F. HALL YARBOROUGH
RONALD E. HUTTO
JAMES B. JACKSON, JR.

TELEPHONE:
(803) 534-0626
(803) 534-0852
FAX:
(803) 536-2175

September 27, 2002

James B. Drennan, III, Esquire
Dennis, Shaw & Drennan, LLC
103 Lafayette Street
Spartanburg, S.C. 29304-0891

Re: Elizabeth M. Pence Estate

Dear Jim:

Pursuant to your request of August 30, 2002, I am enclosing a copy of the deed from O. Davic Burgdorf, Master-in-Equity for Orangeburg County to Elizabeth M. Pence which seems to convey the Caw Caw Swamp property to her and provides a legal description therein. It seems to me that the 120.11 acres and the lot shown as tract 2-A would be Caw Caw Swamp property. The remaining piece seems to me to be in Limestone Township which is probably a different piece of property. I trust that this will provide you the information you need to prepare the Deed of Distribution.

Additionally, I have been asked by Jim McLean, who is the son of Norman McLean, to review a number of documents that he provided me which includes the Elizabeth Pence Trust agreement prepared by attorney J. Munford Scott, Jr. dated May of 1999 and the Order Approving Compromise and Settlement with the attached Compromise and Settlement Agreement which was the result of a lawsuit filed in Marlboro in case number 00-CP-34-354. In reading the Compromised and Settlement agreement, which was approved by Judge Lockemy, in paragraph 8 entitled "Separate Accounting For Orangeburg Reality", its says that in the event that Elizabeth P. Pence dies without children that the intent was for the Orangeburg real property to be distributed to the issue of Norman M. McLean. Therefore, it appears to me on the face of this matter that since Ms. Pence died recently without children that the Order and Settlement Agreement would require that the Orangeburg property be distributed from her estate or from the trust or both to the children of Norman McLean. I would appreciate your letting me know your position in regards to that matter so that I can advise my clients appropriately.

With kind regards, I am

Sincerely,

James B. Jackson, Jr.

JBJjr/ddb

EXHIBIT 4
Deponent Jackson, J
Date 1/9/07 Rptr. dmh
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EXHIBIT #3
PENGAD 800-631-6989

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DENNIS, SHAW & DRENNAN, LLC
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October 1, 2002

JAMES W. SHAW, P.A.
JAMES B. DRENNAN, III, P.A.*
ANTHONY H. RANDALL, P.A.**
*ALSO ADMITTED IN MASSACHUSETTS
**CERTIFIED SPECIALIST IN ESTATE PLANNING, PROBATE & TRUST LAW
*** ALSO ADMITTED IN NORTH CAROLINA

R. RAY DENNIS
OF COUNSEL

James B. Jackson, Jr., Esq.
Yarborough, Hutto & Jackson
Attorneys at Law
P.O. Box 2268
Orangeburg, SC 29116-2268

Re: Estate of Elizabeth M. Pence

Dear Jay:

I appreciate your sending me a copy of the deed by which Elizabeth M. Pence acquired the two properties which comprise the Caw Caw Swamp property.

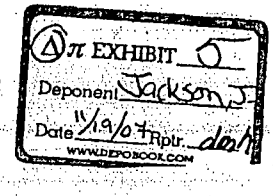
I was disappointed at the comments which you made in your letter of September 27th regarding your construction of the Compromise and Settlement Agreement which was reached in connection with the Brogdon trust litigation: I believe that I have already explained to you why the Caw Caw Swamp property is not covered by that Settlement Agreement and it will not, therefore, be included in the Orangeburg County property which passes to your clients, the McLeans.

What I told you previously is that Hall Yarborough had advised me that the Caw Caw Swamp property was part of the Orangeburg County property which had been transferred into the Brogdon trust. If I have not already given you a copy of his letter to me to that effect, I can do so.

Acting upon the information which had been given to me by Mr. Yarborough, I believed that the Caw Caw Swamp property was part of the Brogdon trust and I included it on the estate tax return as property belonging to that trust, but taxable as part of Mrs. Pence's estate.

When we settled the Brogdon trust litigation, I still was under the impression that the Caw Caw Swamp property was in the Brogdon trust. It was only after the Court had approved the Settlement Agreement that Mr. Brogdon advised me for the first time that the Caw Caw Swamp property had never been transferred into his trust and it was not, therefore, subject to the Settlement Agreement.

Since the purpose of the Settlement Agreement was to divide up the Brogdon trust property and end the trust litigation, it has no effect on any property which was not trust



property at the time the Settlement Agreement was entered into. If it had been intended that the Caw Caw Swamp property be made subject to the trust and to the provisions of the Settlement Agreement which will cause the trust's Orangeburg County property to go to your clients, there would have been a provision to that effect in the Settlement Agreement.

I believe that Hall Yarborough made an honest mistake when he told me that the Caw Caw Swamp property was part of the Brogdon trust, but his mistake is not going to inure to the benefit of your firm's clients and to the detriment of my client, whom he was effectively representing when he undertook to do the work for me.

If your clients have an interest in purchasing this property from Mrs. Pence's estate, I will be glad to discuss that with you.

With kindest regards,

Sincerely yours,

James B. Drennan, III

JBD,III/tl
CC: Freeman W. Coggins, Jr., Senior Vice President
Mack Cornett, Trust Officer



YARBOROUGH, HUTTO & JACKSON
ATTORNEYS AT LAW
198 DOCKET STREET, N.E.
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F. HALL YARBOROUGH
RONALD E. HUTTO
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(803) 534-0626
(803) 534-0852
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October 21, 2002

James B. Drennan, III, Esquire
Dennis, Shaw & Drennan, LLC
103 Lafayette Street
Spartanburg, S.C. 29304-0891

Re: Estate of Elizabeth M. Pence Estate

Dear Jim:

This is to advise that I am in receipt of your letter of October 1, 2002 and I appreciate your again explaining this situation to me. Unfortunately, I did remember that you had made some explanation to me regarding this matter but I could not remember all of the details and I appreciate your putting those in writing. I apologize for making you go to this efforts but I appreciate your letter.

I have discussed the matter with my clients and they do accept the fact that the Caw Caw property and the Cannon Bridge Road property in which Elizabeth had a remainder interest were not put into the trust. Therefore, we accept that title to those properties passed through the Wills of Elizabeth Pence, the mother, and Elizabeth Pence, the daughter. Therefore, the purpose of this letter is simply assure you that we do accept and agree with the matters set forth in your letter of October 1, 2002.

The additional purpose of this letter is to request that you provide us with a copy of the Will of Elizabeth Pence, the daughter, because we do not have a copy of that document. Additionally, we would like to let you know and would ask that you let the beneficiaries of Ms. Pence's Will know that my client's are willing, to purchase these two pieces of property in order to keep them in the family. My clients first choice would be to purchase the remainder interest of the Cannon Bridge Road property in which the Lennon McLean has a life estate. Secondly, my clients would also be interested in purchasing the Caw Caw property but believe that they would probably have to do so after the timber was cut and sold on thereon. I would appreciate your forwarding this

EXHIBIT 6 Deponent Jackson Date 11/9/04 Rptr. dmh
EXHIBIT #4

information to the appropriate persons to determine whether or not they might be willing to sell these Orangeburg properties.

With kind regards, I am

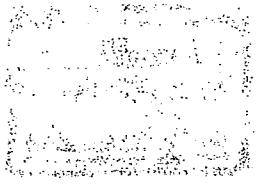
Sincerely,

James B. Jackson, Jr.

JBJjr/ddb

cc: Jim McLean

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January 17, 2003

James B. Drennan, III, Esquire
Dennis, Shaw & Drennan, LLC
103 Lafayette Street
Spartanburg, S.C. 29304-0891

Re: Estate of Elizabeth M. Pence Estate

Dear Jim:

This is to reconfirm my telephone conversation with you in which I indicated that my clients here in Orangeburg are interested in purchasing the Orangeburg County property owned by the late Elizabeth Pence. You indicated to me on the telephone that you would make sure that the heirs of her estate are aware of my clients' desires so that in the event they wish to sell the property, they will make sure that my clients do have an opportunity to purchase this property. In addition, I want to again ask you to please forward me a copy of Elizabeth Pence's Will so that my clients can have the opportunity to review it for themselves. Your cooperation in this matter is greatly appreciated.

With kind regards, I am

Sincerely,

James B. Jackson, Jr.

JBJjr/ddb

cc: Jim McLean

EXHIBIT
Deponent Jackson
Date 1/9/07 Rptr. dmb
WWW.DEPOBOOK.COM