

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC SUPREME COURT

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

Unpublished Opinion No. 2015-UP-491
Filed October 14, 2015

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

Respondents,

v.

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

Defendants,

Of Whom

Dixon-Hughes and Lynne L. Kerrison are

Petitioners

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
Volume V, Record on Appeal Volume IV

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

Appellants,

v.

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

Defendants,

Of Whom

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

Respondents.

RECORD ON APPEAL
Volume 4, Pages 1486-1903

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS

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

7 Jacquelin S. Bennett, Genevieve S.
8 Felder and Kathleen S. Turner,
9 individually, as Co-Trustees and
10 beneficiaries of the Marital Trust
11 and the Qualified Terminable Interest
12 Trust created by the Thomas Stevenson
13 Will, and Jacquelin S. Bennett, and
14 Kathleen S. Turner, as Co-Personal
15 Representatives on behalf of the
16 Estate of Jacquelin K. Stevenson,

17 Plaintiff(s),

18 vs.

Case No: 2011-CP-10-400

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

24 Defendant(s).

25 D E P O S I T I O N

1 WITNESS: T. HEYWARD CARTER, JR., ESQUIRE

2 DATE: July 14, 2011

3 TIME: 10:00 a.m.

4 LOCATION: Barnwell Whaley Patterson & Helms, LLC
5 885 Island Park Drive
6 Charleston, South Carolina

7 TAKEN BY: Attorneys for the Plaintiffs

8 REPORTED BY: HEATHER M. CURLIN
9 Professional Court Reporter

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ALSO PRESENT: Mr. Heyward Grimbball

1 (The deponent waives reading and signing of
2 the deposition transcript.)

3 - - - - -

4 T. HEYWARD CARTER, JR., ESQUIRE, being
5 first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. LEWIS:

8 Q. Give us your name, please.

9 A. T. Heyward Carter, Jr.

10 Q. Mr. Carter, have you had your deposition
11 taken before?

12 A. I have.

13 Q. So you understand that when I ask you a
14 question and you don't understand that, you're to
15 tell me that, and I'll try to clarify it; otherwise
16 that will be your answer?

17 A. I understand.

18 Q. And you understand you're allowed to finish
19 your answer; and if I interrupt you or get excited,
20 you're supposed to tell me and I'll stop, hopefully,
21 and you'll be able to finish your answer?

22 A. I do understand.

23 Q. And do you understand that you can read and
24 sign. Do you know what that means?

25 A. I do.

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1 Q. And you can tell your lawyer so she can
2 tell the court reporter if you want to read and
3 sign. And you know you don't change yeses to no's?

4 A. I understand.

5 Q. All right. And I get to ask the questions
6 and even though you'll want to ask me a question,
7 you don't get to do that. Do you understand that?

8 A. I do.

9 Q. All right. Now, you know what we're here
10 on. It's with reference to the Stevensons -- when I
11 say "Stevensons," I mean Tom, Dan, the three sisters
12 and the trusts and Mrs. Stevenson, that whole
13 scenario. You understand that?

14 A. I understand how the case is styled, yes.
15 I understand who the plaintiffs are.

16 Q. And you understand what it's about?

17 A. Yes, I believe I do.

18 Q. All right. And you understand that your
19 deposition was taken in a prior case concerning the
20 same subject matter?

21 A. Correct.

22 Q. Now, what did you do to prepare for this?

23 A. I looked over some documents. I met with
24 my attorneys.

25 Q. You met with your attorney and you looked

1 over some documents. Was one of the documents your
2 prior deposition?

3 A. I have looked through that in the past.

4 Q. Okay. And what documents did you look at?

5 A. A number of documents that have been -- I
6 would consider relevant to this matter.

7 Q. Okay. What --

8 A. I can't recall all of the documents.

9 Q. Can you recall any of them?

10 A. There have been some letters. At one
11 time --

12 Q. What letters?

13 A. What letters. My billing record. Letters
14 would have included a letter to -- from me to Howell
15 Morrison, a letter from Howell Morrison to me. I
16 can't recall specifically what others.

17 Q. Okay. Those are the only ones that come to
18 mind?

19 A. Yes.

20 Q. Okay. Now, your billing record, that's
21 already --

22 MR. LEWIS: Is that in evidence, Mary?

23 MS. LEWIS: I believe you put it in
24 yesterday with Kerrison.

25 MR. SHARPLESS: Kerrison 4.

1 MS. LEWIS: Yeah.

2 BY MR. LEWIS:

3 Q. Kerrison 4. This is Kerrison 4. Is that
4 the billing record you looked at?

5 A. Yes, I believe it is.

6 Q. Okay. Now, and why did you look at that?
7 What was the purpose of looking at that?

8 A. To refresh my memory as to dates and
9 sequence of events.

10 Q. So your dates and sequence of events would
11 come from Kerrison 4?

12 A. In part, yes.

13 Q. Do you have any different ones that you
14 remember other than these?

15 A. Do I have any different what?

16 Q. Events other than these that you see here.

17 A. None that I recall.

18 Q. Okay. And do you have a different date for
19 the events that are on here that would mean that
20 they happened at another time?

21 A. Not that I'm aware of.

22 Q. And when I say "this," that's Kerrison 4.
23 That's the exhibit. Do you understand?

24 A. I understand.

25 Q. And you said there was a letter that you

1 wrote to Howell. Now, that's a --

2 MR. LEWIS: Would you mark this as Exhibit
3 Number 1.

4 (Exhibit No. 1 was marked.)

5 BY MR. LEWIS:

6 Q. Is that the letter you were referring to?

7 A. This is the letter I was referring to.

8 Q. All right. And you wrote to Mr. Howell
9 Morrison, right?

10 A. That's correct.

11 Q. Now, who was Mr. Morrison representing?

12 A. Mr. Morrison was representing Dan Stevenson
13 and Tom Stevenson, I believe, as trustees.

14 Q. He was representing them as trustees. Who
15 was representing them as individuals?

16 A. I don't know. The letter says: "I was
17 glad to learn at our recent meeting that you are
18 representing Tom and Dan Stevenson as trustees of
19 the trusts for their mother under their father's
20 will."

21 Q. Okay. So that was -- did you know who was
22 representing Dan and Tom as themselves, as
23 individuals? You didn't know that? You don't know
24 who that was?

25 A. I don't know if they had individual

1 representation.

2 Q. Now, who were you representing?

3 A. I was representing their mother,
4 Mrs. Jacquelin Stevenson.

5 Q. And did you know at this time that there
6 were powers of attorney?

7 A. Yes.

8 Q. So were you not representing Kathleen and
9 Dan, the two powers of attorney also?

10 A. Definitely not.

11 Q. Well, it's your position that when you
12 represent Mrs. Stevenson, you have no obligation to
13 the powers of attorney for Mrs. Stevenson?

14 A. That's correct.

15 Q. So if someone is taking money from
16 Mrs. Stevenson, stealing from her, do you have an
17 obligation to tell the powers of attorney?

18 A. I think that's a hypothetical. I don't
19 know that I can answer that.

20 Q. Well, it is a hypothetical. And it's --
21 just assume that it's true; people are stealing from
22 Mrs. -- that there are people stealing from
23 Jacquelin Stevenson. And do you have an obligation
24 to tell the powers of attorney?

25 A. I understand that you're asking me the

1 hypothetical if someone is stealing from
2 Mrs. Stevenson.

3 Q. Yeah.

4 A. Depends on the circumstances.

5 Q. Oh, it does. Well, let's suppose it's the
6 housekeeper. The housekeeper is stealing from
7 Mrs. Stevenson. Do you have an obligation to tell
8 the powers of attorney?

9 A. I think it would depend on the
10 circumstances.

11 Q. What circumstances do you need to know
12 other than the housekeeper is stealing?

13 A. Well, it depends on who else might be
14 available to tell that would be better than the
15 powers of attorney. It depends on whether I feel
16 that it needs to be discussed directly with
17 Ms. Stevenson or someone else or handled in some
18 other way.

19 Q. Well, was Ms. Stevenson, how was her health
20 at this time in January of 2003?

21 A. She was in her 80s. As far as I know, her
22 health was okay for somebody in their 80s.

23 Q. Okay. You understand that sometimes people
24 in their 80s -- housekeepers will take things from
25 them, don't you?

1 A. Yeah, I suppose that's the case.

2 Q. And now, let's suppose that's the case
3 here. Would you have told the powers of attorneys?
4 Would you have told them? Did you have an
5 obligation to tell them?

6 A. You know, you've already asked me that
7 question.

8 Q. You haven't answered it.

9 A. I answered it depends on what the
10 circumstances are.

11 Q. All right. They're stealing the silver.
12 They're just -- they're taking two forks a day from
13 the house and they're taking them when they leave
14 the house. Then they come back the next day, the
15 little maid, and she steals two more. And you find
16 out about it. Do you tell the powers of attorney?

17 A. Depends on the circumstances --

18 Q. What other circumstances do you want?

19 A. Well, you have to tell me what
20 circumstances there are.

21 Q. The circumstances are she works for
22 Mrs. Stevenson, Mrs. Stevensons is in her 80s, and
23 she's stealing two forks a day. And, of course,
24 Mrs. -- do you tell the POAs?

25 A. Well, let me give you a hypothetical.

1 Q. No, sir. You don't get to ask me.

2 A. No, I'm not asking you anything.

3 Q. You don't get to give me anything. I'm
4 asking you the question. Just answer it, please.
5 If you can't answer it, say, I can't answer it.

6 MS. WALL: Objection.

7 A. The answer is it depends on the
8 circumstances.

9 Q. All right. That's fine. Let's suppose
10 what's her name, Pat -- was that the bookkeeper?

11 A. Yesterday that's what Lynne Kerrison said.

12 Q. All right. Let's suppose Pat is writing
13 herself checks out of the account. Do you tell the
14 POAs that Pat's taking money out of Mrs. Stevenson's
15 accounts?

16 A. Do I tell the POAs? Depends on the
17 circumstances.

18 Q. What other circumstances do you need,
19 Mr. Carter, other than she's stealing?

20 A. There could be plenty of other
21 circumstances.

22 Q. Name them. Name them for me, and we'll
23 create them. What are they? Circumstances.

24 A. Mrs. Stevenson's relationship with Pat;
25 past dealings with Pat --

1 Q. Wait a minute. Wait. Relationship.

2 A. Other people that -- other people that --

3 Q. Relationship. Does relationship --

4 A. -- perhaps ought to be informed.

5 MS. WALL: Let him finish his answer,
6 please.

7 MR. LEWIS: I want to write them down.

8 BY MR. LEWIS:

9 Q. Does the relationship allow Pat to steal?

10 A. Depends on the circumstances.

11 Q. Okay.

12 A. If Mrs. Stevenson has a kind of a
13 relationship with Pat that she knows that Pat has
14 been taking things or unauthorized use of funds but
15 that's something that she sanctioned, that's a
16 circumstance.

17 Q. Okay. Now, let's suppose Mrs. Stevenson,
18 who is 80-something years old has a -- you think she
19 sanctioned Pat stealing money?

20 A. I didn't say that.

21 Q. Well, let's -- you said sanctioned her
22 unauthorized taking money.

23 A. I said if that were a circumstance. You
24 asked for --

25 Q. All right. Let's assume --

1 A. -- examples of circumstances --

2 Q. -- that's the circumstance.

3 A. -- and that's a circumstance.

4 Q. Let's assume that's a circumstance. An
5 80-year-old woman is -- bookkeeper is without
6 authorization taking money from her account,
7 Mrs. Stevenson, do you have an obligation to tell
8 the POA?

9 A. You know, again, it depends on the
10 circumstances.

11 Q. All right. Look at Exhibit Number 1. Why
12 didn't you send a copy of that to Mrs. Turner?

13 A. Based on the information I had at the time,
14 I had no basis to send it to Mrs. Turner.

15 Q. What would you have -- what basis would you
16 have needed to send to Mrs. Turner?

17 MS. WALL: Object to the form.

18 A. Well, I don't know how to answer that
19 question. But at this point, Dan and Tom Stevenson
20 had an attorney to advise them. I didn't see that
21 there was any -- sending it to Mrs. Turner would not
22 have forwarded what was being done.

23 Q. What was being done?

24 A. Getting Dan and Tom Stevenson to an
25 attorney -- to their attorney to advise them on

1 trust matters.

2 Q. And why did you want to get them to
3 somebody on the trust matters?

4 A. Because there had been loans that they had
5 been taking to themselves from the trusts, and I was
6 trying to handle that in the way, using my best
7 judgment, I thought proper.

8 Q. Now, those loans -- you wanted to get them
9 to their own attorney. Why didn't you tell Kathleen
10 about those loans?

11 A. Well, I spent a great deal of time and
12 effort trying to get Kathleen informed, which
13 eventually I accomplished.

14 Q. Well, let me ask you something. Did you
15 have a phone?

16 A. Oh, yeah, I have a phone in my office.

17 Q. Could you have picked it up and called
18 Kathleen?

19 A. Well, physically, I could have --

20 Q. Thank you.

21 A. -- but ethically, I may not have been
22 allowed to do that.

23 Q. Why?

24 A. Well, if you take a look at the ABA Rules
25 of Professional Conduct and the South Carolina Bar

1 Rules of Professional Conduct and the American
2 College of Trusts and Estate Counsel Commentaries on
3 those rules, you'll see that there's a whole body of
4 law about advising and dealing with a client with
5 and for a client who may be under a disability.
6 There are also such a thing as attorney-client
7 privilege.

8 Q. All right. Now, but don't the POAs step in
9 the shoes of the client?

10 A. In certain circumstances.

11 Q. In all circumstances, in this case. Tell
12 me what circumstance under this -- let me give it to
13 you. Look at Exhibit 8.

14 MR. LEWIS: Do we have Exhibit 8 right
15 there?

16 BY MR. LEWIS:

17 Q. Look at Exhibit 8. Is that the Kerrison?
18 Is that right? Is that the Exhibit 8 to Kerrison?

19 Mr. Carter, is that Exhibit 8 to Kerrison?

20 A. To Kerrison's deposition?

21 Q. Yeah.

22 A. It is, yes.

23 Q. All right. Now, look at that. Tell me
24 what limitations that power of attorney gives so you
25 can't talk to Kathleen Turner.

1 A. This is a broad power of attorney, but I
2 wouldn't use a power of attorney the client has
3 given someone unless that client has authorized me
4 to.

5 Q. Well --

6 A. It doesn't mean -- giving someone a power
7 of attorney doesn't mean that they're free to go out
8 and do anything with that client's assets or get any
9 of that client's information they want to. That's
10 up to the client.

11 Q. That's why they give a power of attorney,
12 so that they don't have to go ask every time. If
13 you ask every time, you don't need a power of
14 attorney. Isn't that right?

15 MS. WALL: Object to the form.

16 A. No, that's not right.

17 BY MR. LEWIS:

18 Q. So the reason you didn't call Kathleen
19 Turner and tell her is because you don't think the
20 power of attorney allowed you to?

21 MS. WALL: Object to the form.

22 A. No. I didn't say that.

23 BY MR. LEWIS:

24 Q. Well, why didn't you then?

25 A. Because I thought there was a better way to

1 handle the situation.

2 Q. And that better way didn't work for five
3 years, did it?

4 A. No, I don't agree with that.

5 Q. And the better way was to let the boys
6 tell?

7 A. Better way was to -- I thought in light of
8 Mrs. Stevenson's age, condition, past history of her
9 dealings with her children, that the better way was
10 to have the family handle the matter.

11 Q. Okay. And the family to handle the matter,
12 Dan and Tom had to start the process, didn't they?

13 A. I thought it was best that they inform
14 Kathleen so they or Kathleen could discuss it with
15 the siblings.

16 Q. So what you did is you, Mr. Carter, made
17 the decision that was better to have the crooks tell
18 on themselves than for you to inform Kathleen
19 Turner, correct?

20 MS. WALL: Object to the form.

21 A. What crook -- well, I'm not sure who you
22 mean by crooks.

23 Q. The two boys who were taking the money, Dan
24 and Tom.

25 A. I don't know that anybody had been

1 convicted of being crooks.

2 Q. Okay. Then the people that were taking the
3 money, Dan and Tom, were supposed to tell Kathleen
4 that Dan and Tom were taking the money. Is that
5 right?

6 A. Using my best judgment --

7 Q. Is that right?

8 A. I'm trying to answer the question.

9 Q. No, you're not. It's a yes or no question.

10 A. No, it's not.

11 Q. It isn't?

12 A. If you'll listen to me, you'll find out it
13 isn't.

14 Q. Well, I want you to listen to me,
15 Mr. Carter. We're going to have a long day. I
16 thought you'd stand up and be straight. And I want
17 you to answer my questions. If I ask a yes and no,
18 do you think you might be able to answer them?

19 MS. WALL: Object to the form.

20 A. Possibly. If it's a yes --

21 BY MR. LEWIS:

22 Q. All right.

23 A. -- or no question.

24 Q. Okay. Did you want Dan and Tom to start
25 the process --

1 A. I thought --

2 Q. -- of telling Kathleen?

3 A. I thought it would be best, in light of my
4 judgment as to Mrs. Stevenson's situation, the
5 family history, my knowledge of the family history,
6 the pertinent rules of conduct, that they discuss it
7 with Kathleen and then discuss it with their
8 sibling.

9 Q. Okay. And were Dan and Tom the ones that
10 were taking money from the trusts for which they
11 were trustees?

12 A. Yes. They had taken money from the trusts
13 that were characterized as loans.

14 Q. Okay. And you felt no obligation upon
15 yourself to tell Kathleen?

16 A. I felt not a legal obligation, but I felt
17 that it would be best for the family if Kathleen
18 were told. And in fact, Kathleen was told. She was
19 told in the spring of 2003, and she was told again
20 in 2006.

21 Q. Were you at the meeting in the spring of
22 2003?

23 A. No, I wasn't.

24 Q. So you don't know what she was told; that's
25 just what you understand?

1 A. That's what I understand.

2 Q. But you just said she was told. Now, would
3 you please, when you answer a question, let me know
4 what you understand and what you heard. Because
5 what you understand is a lot different than what you
6 hear. Okay?

7 A. I understand.

8 MS. WALL: Object to the form.

9 BY MR. LEWIS:

10 Q. Was Tom at that meeting?

11 A. What meeting?

12 Q. With Ms. Stevenson in 2003.

13 A. Meeting -- there was -- I don't know what
14 meeting --

15 Q. With Ms. Turner. The one you just talked
16 about.

17 A. Now, when you said "Ms. Stevenson," you
18 mean Ms. Turner?

19 Q. Yeah, Ms. Turner. I'm sorry.

20 A. Okay. I don't know. It's my
21 understanding, my understanding -- I wasn't there --

22 Q. And you --

23 A. -- but it was my understanding that he was
24 at that meeting.

25 Q. That's great. And you understood that your

1 understanding about that meeting comes from Tom?

2 A. I believe that's what he testified to.

3 Q. So what you would do if we want to find out
4 what happened at that meeting from someone that was
5 there, we would read Tom's deposition, wouldn't we?

6 A. I think you would look at whatever
7 information is available about that meeting.

8 Q. And Tom's deposition would be one of them,
9 wouldn't it?

10 A. That would be.

11 Q. Now, your deposition -- here it is right
12 here. Do you want to -- have you reviewed it?

13 A. I've looked it over.

14 Q. Do you want to change anything?

15 A. No. I mean, as far as -- as far as I knew
16 at the time, it's accurate.

17 Q. Is it still accurate today?

18 A. As far as I know.

19 Q. So we can adopt this deposition for this --
20 for purposes of today.

21 MR. LEWIS: Would you mark that as an
22 exhibit. What number is it?

23 THE COURT REPORTER: 2.

24 (Exhibit No. 2 was marked.)

25 BY MR. LEWIS:

1 Q. Look at Exhibit Number 6, please, from
2 Kerrison. We looked at that Exhibit 6 from
3 Kerrison, and it looks like a fax or an e-mail from
4 you to Lynne Kerrison. Is that right?

5 A. That's what it appears to be. Yeah.

6 Q. Well, did you send that fax and that
7 attachment on March 23rd?

8 A. I believe I did.

9 Q. 2006. Huh?

10 A. I believe I did.

11 Q. And you wrote that letter?

12 A. Yes, I think I did.

13 Q. Did you ever sign that letter?

14 A. I can't recall if I did or not.

15 Q. Did you know if this letter was ever sent?

16 A. I can't recall.

17 Q. Did Ms. Kerrison sign it?

18 A. I don't remember.

19 Q. Why did you want Ms. Kerrison to sign it?

20 A. You know, I can't remember my exact
21 thinking at the time.

22 Q. Okay. The circumstances on why you say
23 that letter is being written existed prior to March
24 2006, didn't it?

25 A. I don't understand the question.

1 Q. Well, the fact is that there were matters
2 that would affect Mrs. Stevenson's financial
3 situation all the way back to 2001 that you knew
4 about. Isn't that true?

5 A. Well, what the letter says is that I was
6 writing them to apprise them of a matter which may
7 affect their mother's financial situation. In fact,
8 I don't believe it ever did affect her mother's
9 financial situation.

10 Q. Well, you say -- you wrote them because you
11 thought it may?

12 A. That's correct.

13 Q. And the same circumstances that may have
14 affected her financial situation, you knew, were
15 also there in 2001. Isn't that true?

16 A. Well, you'll have to tell me what you mean
17 by "the same circumstances."

18 Q. Loans to -- by the boys, the trustees, out
19 of the trusts to themselves. You knew that in 2001,
20 2002, 2003, 2004, 2005, and then you write them in
21 2006. Isn't that true?

22 A. I did know in 2001 that there had been some
23 loans. I knew that in 2003. I did not know that in
24 2004, '5, until '6 that there are additional loans.

25 Q. I know. But you knew that there were

1 loans. Then you found out there were additional
2 loans, right?

3 A. I knew there had been loans in 2001 and, I
4 believe, additional loans in 2002.

5 Q. Okay.

6 A. And then again in -- prior to 2006.

7 Q. You didn't --

8 A. I did not know about the loans between 2002
9 or '3 and 2006.

10 Q. Before that, though, 2003, you advised them
11 to tell Kathleen, didn't you? The boys.

12 A. I did. So did their attorney.

13 Q. And you never followed up to see that they
14 did?

15 A. Their attorney told me that they were
16 telling Kathleen.

17 Q. They were going to. Did he ever tell you
18 they did tell them? Did that attorney ever tell
19 you, We told Kathleen about these loans?

20 A. I don't believe so. He told me that it was
21 being done and --

22 Q. I understand that.

23 A. -- I relied on what he told me. He's a
24 reputable attorney.

25 Q. So when he said it's being done, you felt

1 no more obligation?

2 A. No. After he said that, I heard no more
3 about it for three years.

4 Q. Did you look into it?

5 A. Felt no need to, based on what I knew at
6 the time.

7 Q. You understood that the loans to the boys
8 posed risk to the beneficiary of the trusts, didn't
9 you?

10 A. I'll have to see what -- what document
11 you're --

12 Q. No, you don't.

13 A. -- quoting that from.

14 Q. I'm just asking a question. It's my note
15 to myself. Let me ask it again. You understood
16 that the loans that the boys were taking from the
17 trusts posed risk to the beneficiaries of the
18 trusts, didn't you?

19 A. I think I understood that it was possible
20 that it would pose a risk to my client who was a
21 beneficiary of the trusts.

22 Q. Okay. And, of course, there were other
23 beneficiaries, too, weren't there?

24 A. There were. There were remainder
25 beneficiaries of those trusts.

1 Q. And they stood to be injured, too, didn't
2 they?

3 A. That's possible. But they were not my
4 clients.

5 Q. Why does Tom say you're his lawyer?

6 A. I don't know that Tom has -- I have no
7 information he's ever said that.

8 Q. Well, he says that you were his lawyer. Is
9 that a big fib?

10 MS. WALL: Object to the form.

11 A. I don't know -- the first time I've ever
12 heard that Tom said I was his lawyer.

13 BY MR. LEWIS:

14 Q. Well, if he thinks you were his lawyer, do
15 you think you were his lawyer?

16 A. I absolutely was not his lawyer.

17 Q. All right.

18 A. Never was.

19 Q. Okay. You considered that Dan and Tom
20 Stevenson's behavior constituted a breach of trust,
21 didn't you?

22 A. I thought it breached fiduciary conduct.

23 Q. And the fiduciary -- the breach was the
24 fact that they were self-dealing. Is that correct?

25 A. That they were distributing money to

1 themselves from the trusts without authorization, as
2 far as I knew the facts at the time.

3 Q. And when did you first became -- you became
4 aware of that in 2001, right?

5 A. I believe that's correct.

6 Q. And you understood that the boys, that is,
7 Dan and Tom, were -- avoided disclosing their
8 actions to their siblings for as long as they could.
9 You said that, didn't you?

10 A. That's what they appeared to be doing at
11 one point to me.

12 (Exhibit No. 3 was marked.)

13 BY MR. LEWIS:

14 Q. See Exhibit Number 3, Mr. Carter?

15 A. I do.

16 Q. Those are your notes?

17 A. Yes, they are.

18 Q. And they're from 1/5/01?

19 A. Yeah. That's what they're marked.

20 Q. And teleconference -- or telephone call
21 with Dan Stevenson?

22 A. That's correct.

23 Q. Who placed the call?

24 A. I don't recall.

25 Q. What was the subject matter of the call?

1 A. I believe that it was in preparation for a
2 meeting with some of the Stevenson siblings.

3 Q. All right. And who were the siblings that
4 you are speaking of?

5 A. I think at that meeting were Dan and Tom,
6 Jacquelin Bennett, and Kathleen Turner. I believe
7 that's correct.

8 Q. And that was the -- this was a telephone
9 conference with Dan in preparation for that meeting?

10 A. Yes. I think that's right.

11 Q. All right. And what are these numbers
12 here?

13 A. These are -- as I recall, I believe that
14 Dan was giving me information about his mother's
15 assets. I had been -- or was being asked by the
16 siblings or some of the siblings to make some estate
17 planning recommendations for Mrs. Stevenson.

18 Q. So make sure I understand that. Some
19 people who were not your clients were asking you to
20 make estate planning recommendations to
21 Mrs. Stevenson, who you say was your client?

22 A. Yes. She had --

23 Q. Is that correct?

24 A. I just said yes.

25 Q. Thank you.

1 A. She had, for some time before this meeting,
2 more or less turned over her financial affairs, at
3 least to some degree, to her son, Dan. She had met,
4 I know, several times with -- I had met several
5 times in previous years with Mrs. Stevenson and Dan
6 to discuss her will, changes to her will, estate
7 planning matters. So she, to some extent, turned
8 over that area of her business to Dan. And so it
9 was not unusual for her children to be asking for
10 advice for her in these areas.

11 Q. And it wasn't unusual for you to give the
12 children what you thought was best?

13 A. Well, at that meeting --

14 Q. Is that right or not? Was it unusual for
15 you to tell the children what you thought was best
16 for Mrs. Stevenson?

17 A. At that meeting, I gave them the
18 information as to her assets, which I had been
19 given; told them there was other information that
20 was privileged because it had not been given to me
21 by them; and gave them what I thought were some
22 estate planning suggestions or recommendations.

23 Q. What did you -- was that at a time when the
24 power of attorney was in existence?

25 A. I can't -- there were two -- the first

1 power of attorney, I recall, was signed in 2001.
2 Let me see -- here's a copy of it. Let me see
3 whether -- yeah. Apparently she had signed the
4 power of attorney very shortly before the meeting.

5 Q. And, of course, the power of attorney --
6 you thought Dan had the right to speak for her. Is
7 that right?

8 A. I'm not saying Dan had the right to speak
9 for her. Dan was handling certain things for her
10 and giving me information at least in this regard.

11 Q. He was also her power of attorney?

12 A. He was. Co-power of attorney with
13 Kathleen.

14 Q. Now, co-power of attorney, does that mean
15 both of them have to agree, or does that mean one
16 can act and the other one doesn't have to act? When
17 it says co-power of attorney, does that mean
18 anything they do, they both have to act together?

19 A. Well, it depends on how the power of
20 attorney is written.

21 Q. How is that one written?

22 A. This one is written -- it says that holders
23 Kathleen and Dan act jointly and together.

24 Q. So that they have to act jointly?

25 A. When using the power of attorney.

1 Q. Okay. Now, when Dan was taking -- or
2 removing monies from his mother's estate and he
3 was -- what you call them, loans, and everything,
4 was he doing that as a power of attorney?

5 MS. WALL: Object to the form.

6 A. I'm not sure what money Dan had been
7 removing from his mother's estate.

8 BY MR. LEWIS:

9 Q. How about the trusts?

10 A. So what's the question?

11 Q. When he was removing monies from the
12 trusts, was he doing that as a -- under the power of
13 attorney?

14 A. I don't know how he thought he was doing
15 it.

16 Q. Well, did it bother you that you should --
17 or did you look into it?

18 A. Yes, of course, I did. You know I did.

19 Q. And when you looked into it, did you come
20 up with whether or not he was doing it as a power of
21 attorney or some other -- under some other status?

22 A. I didn't understand that he thought he was
23 doing it under power of attorney.

24 Q. Now, he had -- this power of attorney, you
25 had to both be -- act as -- both of them had to act

1 as -- to something to be able to operate under it,
2 right?

3 MS. WALL: Objection.

4 A. That's the way it's written.

5 BY MR. LEWIS:

6 Q. All right. Now, when you tell somebody
7 something that is a -- he is one of the powers of
8 attorney, can you tell just one and meet your
9 obligation, or do you have to tell two?

10 A. I'm -- you know, I would have to say it
11 depends on the circumstances. That's a pretty broad
12 question.

13 Q. Well, I mean, it says you have to act as
14 a -- together. Okay? If you had an obligation to
15 tell the power of attorney something -- I don't care
16 what it is -- would you be able just to tell one of
17 them and meet your obligation, or did you have to
18 tell both of them?

19 MS. WALL: Object to the form.

20 A. I'm trying to think of how to -- it's an
21 odd question. If I'm speaking to somebody who has a
22 power of attorney -- I don't think I have to speak
23 to both of them at the same time.

24 BY MR. LEWIS:

25 Q. Well, let's suppose you got information

1 that someone is, well, taking money from
2 Mrs. Stevenson. Can you tell one power of attorney
3 and that will meet your obligation, or do you have
4 to tell both of them?

5 A. Again, I don't think I'd have an
6 obligation. It depends on the circumstances whether
7 I'd have to tell either one of them.

8 Q. I see.

9 All right. What if one of the people
10 taking the money is one of the powers of attorney,
11 do you have the obligation to tell the other power
12 of attorney that the co-power of attorney is taking
13 money?

14 A. You know, in this particular situation, I
15 don't think the power of attorney entered into it.
16 As I said, I don't think that Dan thought that he
17 was taking these withdrawals from the trusts under
18 the power of attorney.

19 Q. Well, do you know what Dan was thinking?
20 Are you in his head?

21 A. No, I don't know what Dan was thinking.
22 But that never occurred to me at the time. That's
23 not what I thought at the time.

24 Q. Of course not. Because you decided -- did
25 you make a conscious decision not to tell Kathleen

1 Turner?

2 A. I made a conscious decision that I thought
3 it was best for Mrs. Stevenson's situation that
4 Kathleen be told. I thought the best way to have
5 that done was by family members themselves rather
6 than getting the lawyers involved.

7 Q. You know, but there was about a little over
8 a four-year span that that didn't happen. Do you
9 understand that?

10 A. Well -- no. The only reason that Kathleen
11 wound up being told, I believe, was because of my
12 efforts.

13 Q. Okay. But I mean, your efforts took over
14 four years. Isn't that true?

15 A. Well, in 2001, when I initially learned of
16 these loans, they were documented as loans with
17 promissory notes. When I found out that they had
18 continued, I got them with their lawyer, was assured
19 that they were discussing them with Kathleen. They
20 did, in fact, meet with Kathleen. I don't know of
21 any reason other than to give her information on the
22 trusts; I wasn't there.

23 I was assured by their lawyer that it was
24 being handled. I didn't hear anything more about it
25 for three years. And when I did, I made sure that

1 they did meet with Kathleen again, and this time I
2 was present to make sure what was discussed.

3 Q. Okay. So you, for some period of time --
4 and the dates are in your deposition -- you agree
5 that Kathleen needs to be told. And you made the
6 decision that the -- Dan and Tom or just Dan should
7 tell her?

8 A. I was trying to get both of the brothers to
9 speak with their sister.

10 Q. So you were going to get both of the
11 brothers to speak with their sister or their
12 sisters?

13 A. Well, what I thought was the best way to be
14 handled was that they discuss it with Kathleen and
15 that they all discuss it with their siblings
16 together.

17 Q. And the reason you picked Kathleen was
18 because she had a power of attorney, right?

19 A. Yes. That seemed to be logical at that
20 point.

21 Q. Did you ever instruct Dan and Tom not to
22 make loans to themselves, stop making loans to
23 themselves?

24 A. I don't recall if I specifically said, You
25 have to stop making loans to yourselves. I did, I

1 believe, tell them that I thought what they had
2 done, taking money from the trusts without
3 beneficiaries' consent or knowledge, was a breach of
4 fiduciary duties and that they needed to get their
5 attorney to advise them on how to proceed.

6 Q. Now, when you first learned of this, it was
7 in 2001, right?

8 A. Learned of what?

9 Q. Of these loans. When Ms. Kerrison called
10 you.

11 A. Well, yeah. These particular loans, she
12 called me in late 2001. There had been a series of
13 loans previously when -- when I first got involved
14 with Mrs. Stevenson, it was back in 1991 when her --

15 Q. I'm sorry. I would like you to --

16 MS. WALL: He can finish his answer.

17 MR. LEWIS: No. If he'd answer my
18 question. He just wants to give speeches, and I'm
19 not going to do it.

20 BY MR. LEWIS:

21 Q. I'm not going to sit here and let you give
22 speeches, Mr. Carter.

23 MS. WALL: You're entitled to finish your
24 answer. Please do so.

25 A. You know, you said you're entitled to ask

1 the questions, and I'm entitled to give the answers.

2 BY MR. LEWIS:

3 Q. Yes, but you need to answer my question.

4 That's all I'm --

5 MS. WALL: Go ahead and finish your answer
6 again.

7 BY MR. LEWIS:

8 Q. I'm going to start all over again. Ready?

9 MS. WALL: No. Let him finish his answer.

10 Go ahead.

11 MR. LEWIS: We'll be here all day.

12 MS. WALL: Well . . .

13 Go ahead.

14 A. When I first became involved with
15 Mrs. Stevenson in 1991 when her CPA, Henry Buist,
16 called me and said that she had made a number of
17 loans --

18 MS. WALL: Go ahead. He doesn't have to
19 listen.

20 A. -- to her son, Tom Stevenson, and needed
21 some tax advice on how to handle those loans,
22 specifically, how to forgive those loans with the
23 minimum of tax effect. And I worked with Henry for
24 some time and, in the process of that, met
25 Mrs. Stevenson and talked to her about drawing a

1 will. Those notes were forgiven over a period of a
2 couple of years, and I think that there were some
3 later notes to loans that she had made to them or
4 sums that she had given to them. So I had some
5 prior knowledge and prior history of her loans.

6 With the loans in 2001, I first found out
7 about from Lynne Kerrison in late 2001.

8 BY MR. LEWIS:

9 Q. Okay. You found out in late 2001 from
10 Lynne Kerrison about the loans to the boys from the
11 trusts in which they were the trustees?

12 A. Correct.

13 Q. All right. And so you learned of those
14 loans in 2000 -- do you remember, late 2001?

15 A. Yes. Lynne Kerrison called me in late --

16 Q. Say, October?

17 A. Probably October of 2001.

18 Q. Okay. October 2001. Okay. When did the
19 boys go -- when is that letter that you sent to
20 Mr. Morrison about this -- to the boys? When is
21 that?

22 A. That's -- I think -- let me find that. I
23 think it was early 2003. Yes. January 2003.

24 Q. Okay. January 2003?

25 MR. SHARPLESS: I'm sorry. Can we have an

1 identification of the document that Mr. Carter just
2 looked at?

3 MS. WALL: Exhibit 1.

4 BY MR. LEWIS:

5 Q. So for all of 2002, you didn't --
6 nothing -- you didn't do anything?

7 A. Of course, I did. I had --

8 Q. What?

9 A. I had notes drawn to document the loans.
10 Those notes were signed, put in place.

11 Q. But you didn't do anything to let
12 Ms. Kathleen Turner know, did you?

13 A. I -- I did not speak with Kathleen Turner.
14 I told her brothers that I -- that they needed to
15 speak with Kathleen Turner.

16 Q. And you could have easily picked up the
17 phone and called her?

18 A. Again, you asked --

19 Q. Couldn't you have?

20 A. -- the question before. Physically, yes, I
21 could have.

22 Q. Thank you.

23 A. There's certain ethical restraints, which I
24 spent a good deal of time looking into, that led me
25 to conclude that that was not the thing to do.

1 Q. Was there any ethical restraint for you
2 calling Kathleen Turner and telling her that there
3 were loans from the trusts to Dan and Tom?

4 A. I believe there were. In addition to that,
5 I did not think that it was the best thing to do,
6 that I call Kathleen, best thing to do in her
7 mother's interest using my best judgment as to what
8 was known at the time.

9 Q. I know the best judgment rule. You can say
10 that all you want to. That's fine.

11 A. Thank you.

12 Q. What I'm trying to do is find out -- okay? --
13 what ethical rules you think apply to you telling
14 Kathleen what you learned from Lynne Kerrison. I
15 don't understand what -- do you represent Lynne
16 Kerrison?

17 A. Absolutely not.

18 Q. Do you represent the trusts?

19 A. Absolutely not.

20 Q. Lynne Kerrison gave you information about
21 the trusts, did she not?

22 A. She gave me information about loans -- or
23 funds being distributed to Dan and Tom.

24 Q. From the trusts?

25 A. From the trusts.

1 Q. Okay. What ethical considerations kept you
2 from telling Kathleen that information? I want you
3 to tell it to me.

4 A. This was basically Mrs. Stevenson's
5 business, because she was -- Lynne Kerrison was
6 letting me know this as Mrs. Stevenson's lawyer.
7 There are -- my responsibility as Mrs. Stevenson's
8 lawyer was to make sure that she wasn't financially
9 or emotionally damaged. She was an
10 80-something-year-old woman who was in, as I said,
11 probably okay physical shape for an
12 80-something-year-old woman, which is not generally
13 great shape. And my responsibility was to make sure
14 that she was taken care of with the least trauma, so
15 to speak, to her.

16 Also, as an additional answer to your
17 question, the ABA Model Rules of Professional
18 Conduct, South Carolina Rules of Professional
19 Conduct, and the American College of Trusts and
20 Estate Counsel Commentaries on those rules in
21 Section 1.14 discuss dealing with a client who may
22 be disabled or -- or -- I can't remember exactly the
23 title, but it's dealing with a client who may have a
24 disability.

25 Q. When you have a client that may have a

1 disability, that heightens your requirement to
2 protect that client. Isn't that what it says?

3 A. I don't know that it says it heightens that
4 requirement. There are other considerations that
5 have to be taken into account.

6 Q. But it heightens it. It makes you more
7 responsible to make sure nothing happens to them
8 because they can't operate themselves. Isn't that
9 what that rule says?

10 A. Well, that's your interpretation of it.

11 Q. All right. Thank you.

12 A. And --

13 Q. It's not your interpretation?

14 A. In general, it leaves it to the lawyer's
15 best judgment based on his history with the client
16 and his knowledge of the facts at the time.

17 Q. But doesn't it put more responsibility on
18 you to make sure something doesn't hurt that client?
19 Isn't that what you do? Isn't that what it says?

20 A. I don't know that it heightens the
21 responsibility, but that was my job, to make sure
22 that it didn't hurt the client. Which I did.

23 Q. They went on getting loans. That doesn't
24 seem to me like you did a very good job.

25 A. It didn't hurt Mrs. Stevenson in the least,

1 as far as I can tell.

2 Q. You mean she just lived the same; she lived
3 well. Is that what you're saying?

4 A. I don't have any information and didn't
5 know at the time -- still don't know that she
6 suffered any financial or emotional hardship because
7 of these loans.

8 Q. She had less money, didn't she?

9 A. No.

10 Q. She didn't?

11 A. She had all the money she needed.

12 Q. I didn't ask you that. She had less money
13 than she would have if the loans had not been taken.
14 Isn't that true?

15 A. Her income did not -- her income and her
16 spending money, to the best of my knowledge, did not
17 diminish at all.

18 Q. I didn't ask you that. I asked you, didn't
19 she have less money than she would have had if the
20 loans had not been made? When the loans come out of
21 an account, there's less money, isn't it?

22 A. Well, those loans --

23 Q. Is that true?

24 A. -- didn't come out of her account. She
25 didn't have less money. As those loans were taken,

1 there was less liquidity in the trusts.

2 Q. All right.

3 A. The trusts had notes from Dan and Tom
4 Stevenson, just like the trusts owned a share of GE
5 stock or a Treasury bond.

6 Q. Oh, now, you think a note from Tom and Dan
7 is as good as a GE Treasury bond? Is that what
8 you're saying?

9 A. It turned out that that was not the case.

10 Q. It sure did.

11 A. Yeah. But even when Kathleen knew of these
12 loans, she didn't have a problem either with them,
13 apparently.

14 Q. How are you going to know what Kathleen
15 knows? You got something in --

16 A. I don't know --

17 Q. -- her head now too? You're --

18 A. -- what Kathleen knows, but I know that --

19 Q. Thank you.

20 A. -- after she -- we had the meeting in the
21 spring of 2006, she didn't think it was significant
22 enough to discuss with her sibling for about a year,
23 apparently.

24 Q. Do you know that, or is this just what you
25 want to say?

1 A. I believe that's what's been testified to.

2 Q. Where?

3 A. That's in the underlying suit.

4 Q. Now, looking at your time records -- do you
5 see that? That's Exhibit Number 4.

6 MS. LEWIS: Is that to your deposition or
7 is that --

8 MR. LEWIS: No. To Kerrison's.

9 BY MR. LEWIS:

10 Q. Do you see that?

11 A. Yes, I have a copy of Exhibit Number 4.

12 Q. I see, looking in 2001, starting on
13 January, I see you -- telephone conferences with Dan
14 Stevenson and Tom Stevenson all the way through that
15 year. Do you see that?

16 A. Yes. There are some telephone conferences
17 with Dan or Tom Stevenson.

18 Q. There are -- with Dan, there's one, two,
19 three, four, five, six -- at least six. And with
20 Tom, there's one, two, three -- at least three with
21 Tom. Do you see that?

22 A. Yeah. I hadn't counted them, but there are
23 several.

24 Q. Did you make them all -- did you call him?

25 A. No, I can't -- I can't recall.

1 Q. Did you ever call those -- either one of
2 those?

3 A. I'm sure I did, but I can't recall --

4 Q. I know you can't recall --

5 A. -- what days --

6 Q. -- but you do agree that you called them?

7 A. I think I probably, during the course of
8 the last -- of those several years --

9 Q. I'm just looking --

10 A. -- probably --

11 Q. -- at this one year --

12 A. -- called --

13 Q. I'm just looking at this one year, 2001.

14 A. Yeah. No, I can't tell you in 2001 that I
15 ever made any of those calls myself. I just don't
16 know.

17 Q. You don't know. And then on 11/24 you
18 review meeting notes and correspondence to Dan and
19 Tom. Do you see that?

20 A. Yes, I do.

21 Q. Do you remember what correspondence that
22 was?

23 A. As I recall, that was the letter following
24 up on the meeting I had with them and Lynne Kerrison
25 in her office on October 23, 2001.

1 Q. And that was telling them to tell their
2 siblings?

3 A. I don't recall exactly what that letter
4 said.

5 MR. LEWIS: Do you have it?

6 THE WITNESS: I'm going to take a break.

7 (A brief break transpired.)

8 BY MR. LEWIS:

9 Q. Would you look at Kerrison Number 7? See
10 it? And read me that last paragraph.

11 A. The last paragraph says: "My best regards
12 to you both as always."

13 Q. Well, okay. The next one.

14 A. "Finally, the two of you are discussing a
15 strategy for meeting with your siblings in relation
16 to these loans and will let Lynne and me know if you
17 would like us to be present at that meeting."

18 Q. And that was your -- what you say was your
19 best idea was to let them come up with the strategy
20 to meet with their siblings and let you know -- let
21 them know if they -- let you know if they needed
22 you?

23 A. Let us know, let me and Lynne Kerrison know
24 if they would like us to be at the meeting with
25 their siblings.

1 Q. Yes. And so once you wrote that letter and
2 you put that little paragraph in it, you were
3 finished with any obligation you had?

4 MS. WALL: Object to the form.

5 A. Well, any --

6 BY MR. LEWIS:

7 Q. Is that a yes or no?

8 A. -- obligation I had to Mrs. Stevenson at
9 that time based on what I knew at the time had been
10 done. They had documented these loans or were in
11 the process of having them documented, which they
12 did, with signed promissory notes.

13 Q. Okay. So you turned over the
14 responsibility to Dan and Tom?

15 A. No. That's not what I said. I said that I
16 had done what I felt was necessary at that point on
17 behalf of Mrs. Stevenson or as Mrs. Stevenson's
18 attorney. I had the loans documented as loans and
19 had recommended to them that they reveal these loans
20 to their siblings.

21 Q. Okay. So you turned over the
22 responsibility to reveal the loans to the siblings,
23 and you turned over that obligation or that
24 recommendation to the people who were making the
25 loans to themselves?

1 A. Well, I don't think I --

2 Q. Is that right?

3 A. I don't think I had an obligation --

4 Q. Well, just say you --

5 A. -- to reveal these loans --

6 MS. WALL: Let him answer.

7 A. -- to the siblings, so I don't see how I
8 could be said to have turned that over to Dan and
9 Tom.

10 BY MR. LEWIS:

11 Q. It was your recommendation that Dan and
12 Tom, who were writing loans to themselves as
13 trustees, tell the beneficiaries. That was your
14 recommendation?

15 A. That's correct.

16 Q. And you felt no obligation to tell anybody
17 else, even though you're asking, in effect, the
18 crooks to tell on the crooks?

19 MS. WALL: Object to the form.

20 A. Well, you know, based on everything that
21 was the facts at the time, these people weren't
22 crooks. My obligation was to Mrs. Stevenson. I
23 felt that I had performed my obligation as far as
24 Mrs. Stevenson was concerned.

25 BY MR. LEWIS:

1 Q. Okay. Let's do it this way, then. You
2 told the two people who were breaching their
3 fiduciary duties to tell their brothers and sisters
4 on themselves; in other words, to tell the brothers
5 and sisters that they were breaching their fiduciary
6 duties. That's what your recommendation was?

7 A. I thought that was the best way to handle
8 that family situation. These were -- all facts at
9 the time, these were upstanding citizens. Tom was
10 on the board of a bank. They both had businesses
11 that were, apparently, doing very well. They told
12 me that they would do that. I had no reason to
13 question that. I had done what I needed to do at
14 the time for my client.

15 MR. LEWIS: Well, we'll find out,
16 Mr. Carter. Thank you very much.

17 THE WITNESS: You're quite welcome.

18 MR. SHARPLESS: Are you finished?

19 MR. LEWIS: Yeah. He told me what I wanted
20 to know.

21 (Discussion off the record.)

22 MR. SHARPLESS: I do have some questions.

23 EXAMINATION

24 BY MR. SHARPLESS:

25 Q. Mr. Carter, I'm Rick Sharpless. I

1 represent Lynne Kerrison and Dixon Hughes in this
2 lawsuit. I have a few questions for you today.

3 If you need to take a break at some point,
4 just tell us and we'll take a break. If you don't
5 hear or don't understand my question, please tell me
6 that as well.

7 How long have you been practicing law, sir?

8 A. I was admitted to the South Carolina Bar in
9 1971, and I've been actively practicing since 1973.
10 So almost 40 years.

11 Q. Do you have an area in which you specialize
12 or hold yourself out as specializing?

13 A. Estate planning and probate law. I'm a
14 certified specialist in South Carolina, and I've
15 also been -- although I've dropped the certification, in
16 the past I've been certified as a tax specialist.

17 Q. Are you licensed in any states other than
18 South Carolina?

19 A. No, I'm not.

20 Q. Have you had any lawsuits for professional
21 malpractice brought against you other than this one?

22 A. Yes. There was one some years ago.

23 Q. Do you know who brought it?

24 A. There was a doctor named Michael Tapert.

25 Q. T-A-B-A-R-D?

1 A. T-A-P-E-R-T.

2 Q. Okay. And where was that lawsuit brought?

3 A. Here in Charleston.

4 Q. I take it it was resolved some years ago as
5 well?

6 A. It was.

7 Q. How did your relationship with Jacquelin
8 Stevenson begin?

9 A. As I said a little while ago in response to
10 a question of Mr. Lewis's, her CPA, Henry Buist,
11 contacted me sometime in 1991 because she had made a
12 number of loans to Tom Stevenson and asked for my
13 advice and asked me to work with him as to how these
14 loans best might be handled. She wanted to forgive
15 those loans. As I recall, it was somewhere in the
16 neighborhood, at that time, of \$400,000. She wanted
17 to forgive those loans, and he wanted to discuss the
18 best way of doing that from a tax point of view.

19 Q. When, in this case, a mother, Jacquelin
20 Stevenson, makes loans to their children in
21 significant amounts of money, what are the tax
22 considerations that you look at as an attorney when
23 that happens?

24 A. Well, there's a gift tax consideration.
25 And also if there are notes given, which was the

1 case, there are income tax considerations at least
2 because of the interest on those notes, how best it
3 might be handled.

4 Q. Now, in the case that you encountered in
5 1991, those loans were already documented with
6 promissory notes? Is that correct? Or did you --

7 A. No.

8 Q. -- advise that they be documented?

9 A. Either I or Henry Buist or both of us -- I
10 can't remember; it's a while back -- advised that
11 they be documented.

12 Q. Was the practice within the Stevenson
13 family that somebody, at that time Jacquelin
14 Stevenson, would write a check or cause a check to
15 be written to another family member, such as Tom,
16 without necessarily obtaining a formal promissory
17 note?

18 In other words, Tom went to his mother and
19 said, I need money for this purpose; she said,
20 That's okay, and wrote a check?

21 A. As far as I know, that's the case because
22 the -- at the time I got involved, to the best of my
23 recollection, the money have been disbursed but
24 there weren't any notes.

25 Q. Okay. Now, in that situation, that the

1 money's been disbursed and there's no note, it's not
2 documented with an obligation to repay, does that
3 trigger, potentially, an obligation to file a gift
4 tax return and either pay gift tax or claim unified
5 credit for that?

6 A. Yes.

7 Q. So at least in 1991 when this problem came
8 to you or this concern came to you, one of the
9 things you're thinking about is if this is treated
10 as a gift, if it's not set up as a loan, then
11 Mrs. Stevenson is going to have to pay gift tax,
12 right? Or use unified credit?

13 A. Yeah. I think at that time it would have
14 been a matter of using -- because of the amount of
15 the loan and the amount of the available unified
16 credit, it would have been a matter of using unified
17 credit. I don't think any gift tax would have been
18 due, but I just can't recall.

19 Q. Now, unified credit, even though the
20 amounts changed over the years, is something that
21 each person gets once in their lifetime, right?

22 A. Correct.

23 Q. And they can either use it to exempt gifts
24 for taxation, or if not for gifts, they can use to
25 exempt part of their estate from taxation. Is that

1 right?

2 A. That's the way it works now and has worked
3 for the last number of years. I can't remember in
4 1991 whether there were separate exemptions or not.
5 I don't think so. So I believe that the answer to
6 your question is yes.

7 Q. Did you think, generally, that it would be
8 in Mrs. Stevenson's benefit to preserve as much
9 unified credit as she could to use -- to lessen her
10 estate tax burden when she died?

11 A. Well, as I recall, she wasn't interested in
12 that. She -- as I recall, at least from what I was
13 told by Henry and perhaps her too, she had pretty
14 much given these funds to Tom, but the question was,
15 as gifts, how to best handle them.

16 Q. And did you determine that it would be in
17 her best interest to set these funds up as loans and
18 then forgive them in small amounts over a period of
19 time so that you could use the annual exclusion?

20 A. Yeah. Henry Buist and I recommended that.

21 Q. Is that what was done?

22 A. As I recall, it was what was done.

23 Q. During the 1990s, you did some work
24 devising an estate plan for Mrs. Stevenson, did you
25 not?

1 A. Yeah, to some extent. I worked with her on
2 drawing at least a couple of wills over a period of
3 time. I wasn't -- certainly wasn't her only lawyer,
4 but I did work with her in that area.

5 Q. And can we agree, Mr. Carter, that there
6 was certainly a concern in your work for
7 Mrs. Stevenson in the estate planning arena to try
8 to minimize the estate tax burden that would fall on
9 her estate when she died?

10 A. Well, I mean, that's -- that is part of
11 overall estate planning, the recommendations.

12 Q. Was it part of your planning and
13 recommendations for Ms. Stevenson?

14 A. That was a consideration, yes. I can't say
15 that was her major consideration, but it was a
16 consideration.

17 Q. In response to Mr. Lewis's questions, you
18 identified some notes -- I think they were Carter
19 Exhibit 3 -- of a conversation that you had with Dan
20 Stevenson, January 5th of 2001.

21 A. Correct.

22 Q. And Dan is making you aware of loans that
23 had been made both to Tom and to Dan, some from the
24 trusts and some from possibly -- you've got from
25 Mrs. Stevenson individually and a question mark

1 noted there. Is that right?

2 A. That's apparently correct. I don't recall
3 that specifically, but apparently there was some
4 discussion about loans. Whether they were current
5 loans or past loans, I don't know.

6 Q. Were these loans documented with promissory
7 notes?

8 A. I do not know. Let me say this. On the
9 question about the loan to Tom -- and I don't know
10 whether this is connected or not -- but I -- as I
11 recall, there were a couple of \$100,000 loans -- and
12 again, I don't -- I think they were from the
13 trusts -- to one of Tom's companies. And those, I
14 think, had been documented at some point in the
15 past. I didn't have anything to do with that, but I
16 learned of it. Again, I'm not sure that's the
17 \$200,000 that this note refers to or not, but it may
18 be.

19 Q. If you'll look at the exhibit of your time
20 records, Kerrison 4 -- do you have that, sir?

21 A. Yes, I do.

22 Q. Between the middle of December of 2000 and
23 March the 22nd of 2001, there are a number of time
24 entries in there referencing, among other things,
25 preparation of the power of attorney but also

1 correspondence and a number of telephone
2 conferences. Do you see those?

3 A. Let's see. Starting in December -- this is
4 2000? The year 2000? Is that correct?

5 Q. Yes, sir.

6 A. Yeah. Starting in December -- on December
7 4th, there was a telephone conversation with
8 Ms. Kerrison; then on the 18th with Dan Stevenson
9 and Mr. Hamrick; and then correspondence with
10 Mr. Stevenson, who I assume was Dan Stevenson;
11 telephone conference with Dan Stevenson on the 19th
12 and the 20th; 26th, researching planning methods;
13 telephone conference with Mrs. Kerrison. Yeah,
14 there were a number of telephone calls.

15 Q. Do you recall what the subject matter of
16 these discussions was at the time? What was the
17 area of concern about which you were being consulted
18 during that period of time?

19 A. I don't recall specifically. I think that
20 it had to do with preparing for a meeting that I had
21 shortly after the first of the year with some of the
22 Stevenson siblings to talk about planning
23 recommendations for their mother.

24 Q. Do you recall what brought up the desire to
25 have this meeting?

1 A. No.

2 Q. At this meeting that occurred in January of
3 2001, who was present? Do you recall?

4 A. As I said, I think it was Dan Stevenson;
5 Tom Stevenson; and their sisters, Jacquelin Bennett
6 and Kathleen Turner.

7 Q. Was the subject of the loans that had been
8 made to Tom and Dan at various times discussed at
9 that meeting?

10 A. I don't recall.

11 Q. Look at your notes, Carter Exhibit 3, if
12 you would, sir.

13 A. Yes.

14 Q. At the top of those notes, you reference a
15 \$200,000 loan and a \$500,000 loan. Am I reading
16 that correctly, sir?

17 A. Yes.

18 Q. And then there are a number of other
19 numbers below that, and out on the right side you
20 have a bracket drawn and a number that looks like
21 \$8,5941,910?

22 A. Yeah, that's what it looks like.

23 Q. What is that \$8,541,910 number intended to
24 be? Do you recall, sir?

25 A. I don't recall. Whether that was total

1 assets or part of assets, I just don't remember.

2 Q. And you don't remember whether the subject
3 of the loans was discussed with the family at this
4 family meeting that occurred in January of 2001?

5 A. No. I mean, I don't recall one way or the
6 other. I don't recall that it was.

7 Q. Did you discuss with Ms. Kerrison the fact
8 that these loans had been made or apparently had
9 been made?

10 A. I don't recall.

11 Q. Do you recall if these loans -- and when I
12 say "these loans," I mean the two loans referred to
13 on Carter Exhibit 3 -- at the time you became aware
14 of them whether they had been documented? Or did
15 they need to be documented?

16 A. No, I don't recall. As I said, it's
17 possible, but I don't know this, that the \$200,000
18 loan to Tom referenced, was the two \$100,000 loans
19 that had been made to his company, Fabtech, as I
20 recall, and I think had been documented at that
21 time.

22 Q. And with respect to the \$500,000 loan to
23 Dan, do you know --

24 A. I just don't know. I don't remember
25 anything about that.

1 Q. Were Tom and Dan the only surviving
2 trustees of the two trusts?

3 A. They were.

4 Q. Were you concerned at that time when Dan
5 reported to you that there had been a \$500,000 loan
6 made from the trusts, apparently, to him or one of
7 his companies?

8 A. I just don't remember the circumstances of
9 that \$500,000 loan, what it was or whether it had
10 been documented or needed documenting. I just don't
11 recall.

12 Q. Can we agree, sir, that when, in October
13 2001, you had a conversation with Ms. Kerrison about
14 a number of loans that had been made to Tom and Dan
15 from the trusts, you were sufficiently concerned
16 that you contacted Tom and Dan and made certain
17 recommendations, including the recommendation that
18 they get counsel of their own?

19 A. Correct.

20 Q. And you were sufficiently concerned that
21 you -- where you had reached the conclusion that
22 what they were doing in making loans to themselves
23 was breaching their fiduciary duties, at least in
24 the circumstance where the family was not aware of
25 these loans?

1 A. I was concerned that they had breached
2 their fiduciary duties.

3 Q. Is it fair to say, sir, that given your
4 years of experience -- that's not based on something
5 you learned about the law of fiduciaries between
6 January and October of 2001 -- had you known of a
7 loan that had been made by Dan to himself or one of
8 his companies in January of 2001 in circumstances
9 where the family had no knowledge of it other than
10 Dan and Tom, you would have been concerned even then
11 that that was a breach of fiduciary duty?

12 A. Well, I don't know what -- I don't remember
13 anything about the \$500,000 loan that's referred to
14 in this note. I don't know what the circumstances
15 were and whether it had been documented or not.

16 Q. Do you think that in January of 2001 if you
17 were -- in the context of having a meeting with, at
18 least, Jacquelin, Kathleen and -- was Genevieve
19 present at that meeting as well?

20 A. I don't think so.

21 Q. Okay. -- at least with Jacquelin and
22 Kathleen if they were aware of that \$500,000 loan,
23 that your concern would have at least been lessened?

24 A. Again, I don't remember the circumstances
25 of that. At that meeting, in general, their mother

1 's assets were discussed. If those loans were loans.
2 that had -- to Dan were loans that had been made
3 from the trusts, they would have been simply trust
4 assets at that time. And I don't know that the
5 individual trust assets -- just sort of total
6 amounts were discussed.

7 Q. In October of 2001, you had a communication
8 from Ms. Kerrison, did you not?

9 A. I did.

10 Q. What do you recall of that communication?

11 A. In general, that she had contacted me -- I
12 can't remember if it was by phone or e-mail -- and
13 said that some monies had been disbursed from the
14 trusts to Dan and Tom individually or to their
15 businesses, and she thought as Mrs. Stevenson's
16 lawyer I ought to know about it. And -- which led
17 to a meeting with her and Dan and Tom.

18 Q. Did she ask you -- and I realize you
19 weren't representing Ms. Kerrison. But did she ask
20 you what should be done next?

21 A. I don't remember if she specifically asked
22 me that or not. But when she gave me the
23 information, I told her that I thought it would be a
24 good idea if she and I met with Dan and Tom
25 Stevenson to find out more about these disbursements.

1 Q. Did you become aware at or around that time
2 that these disbursements had been made by the method
3 of Tom or Dan writing themselves a check? Or
4 authorizing themselves a check. I guess Pat
5 Neapolitan was still actually --

6 A. Yeah, I can't recall if I was informed or
7 knew exactly how the disbursements had taken place.
8 I know Ms. Kerrison, yesterday in her deposition,
9 said that the bookkeeper, Pat Neapolitan, had
10 actually written the checks.

11 Q. And at that time -- and when I say "that
12 time," I mean October 2001 -- did you have an
13 understanding as to whether these disbursements to
14 Tom or Dan or their businesses were, at that time,
15 documented with promissory notes?

16 A. At least -- maybe beforehand, but at least
17 when I met with Ms. Kerrison and Dan and Tom
18 Stevenson, I was informed that there weren't any
19 notes.

20 Q. Okay. You described yourself -- you
21 described one of your concerns as being protecting
22 Ms. Stevenson's, your client's, not only her assets,
23 but her emotional health and well-being. Is that
24 correct?

25 A. That's right.

1 Q. So both of those things were a concern for
2 you during this time?

3 A. Yes.

4 Q. And speaking on the -- just the protection
5 of her assets, if there are a number of checks
6 written out of these trusts to Tom and Dan, if
7 they're not documented with promissory notes, that's
8 a tax problem, isn't it?

9 A. I think there would be some tax issues.

10 Q. There might be a gift tax obligation?

11 A. Well, with checks out of the trusts, I'm
12 not sure -- I'd have to think about that as to
13 whether there'd be a gift tax obligation or not, but
14 there would be some tax obligations, I'm sure.

15 Q. Okay. And your recommendation that
16 promissory notes be obtained to document these
17 transactions or disbursements that had been made,
18 was made with the idea that this would be protective
19 of the trusts, both in terms of documenting the
20 obligation of Dan or Tom to repay and also with
21 minimizing adverse tax consequences?

22 A. Could you give me the question again?

23 Q. One of the things you recommended was that
24 these disbursements or these transactions be
25 documented with promissory notes. Is that correct?

1 A. That's right.

2 Q. And was at least part of the reason for
3 your doing that a desire to minimize adverse tax
4 consequences of these transactions having already
5 occurred?

6 A. I don't know how much consideration I gave
7 to the tax consequences as much as I just wanted to
8 be sure these were documented as trust assets.

9 Q. In January of 2001, you had a durable power
10 of -- or was it your office that prepared a durable
11 power of attorney for --

12 A. Yes.

13 Q. And I think we looked at that document
14 earlier today. Do you have it there, sir?

15 A. No.

16 MS. LEWIS: It's right there.

17 A. I have it now.

18 BY MR. SHARPLESS:

19 Q. Are you looking at Kerrison 8?

20 A. Yes, I am.

21 Q. It's entitled "Durable Power of Attorney,"
22 sir, but if you'll look through it, would you agree
23 with me that it does not have any language in there
24 that would be required to make it actually durable
25 under the South Carolina Probate Code? In other

1 words, there's no language in this power of
2 attorney, is there, that says it's intended by
3 Jacquelin Stevenson to continue in the event of her
4 disability?

5 A. That's correct.

6 Q. So although it's a valid power of attorney,
7 it would not be durable were she to become
8 incapacitated, as drafted. Is that correct?

9 A. That's right.

10 Q. Is that why you prepared another power of
11 attorney in 2003?

12 A. That's correct.

13 Q. You looked back in your files and noticed
14 that issue and wanted to correct it?

15 A. I don't know if it was a matter of
16 correction. It was -- as I recall, in 2003, there
17 was some discussion about Mrs. Stevenson's mental
18 state and whether she was becoming or possibly was
19 disabled. So the idea was to make sure that she had
20 a power of attorney that would survive disability.

21 Q. I take it in 2001 you were not concerned --
22 or not greatly concerned about her mental state and
23 competency?

24 A. I had no information in 2001 to indicate
25 that there was any concern.

1 Q. Okay. In 2003 when you prepared the second
2 power of attorney for Mrs. Stevenson, you actually
3 took it to her and spoke with her about it when she
4 signed it. Is that right?

5 A. That's correct.

6 Q. Is that because you wanted to satisfy
7 yourself that she was competent to execute that
8 power of attorney?

9 A. Well, normally, I'm present when a client
10 executes a power of attorney that I've drawn. But,
11 yes, I did want to satisfy myself that she was
12 competent.

13 Q. And did you make notes of that meeting with
14 her?

15 A. I did.

16 Q. Were you satisfied that she was competent
17 at the time she signed the 2003 power of attorney?

18 A. I was.

19 Q. And that power of attorney, although I
20 don't have it with me, that one was, in fact, to
21 your recollection, durable? In other words, it
22 contained the required language?

23 A. That's correct.

24 Q. If you'll look at the Exhibit Kerrison 4,
25 that's your time records. There's a column in there

1 that appears on every page on the right, it says
2 "TMKR," and then it has a number, usually but not
3 always 3. Do you see that?

4 A. Yes, I do.

5 Q. What does that indicate?

6 A. That's the timekeeper. That's the lawyer
7 who is performing that particular portion of time.

8 Q. And what's your number, sir?

9 A. I'm 3.

10 Q. Who was Number 10 at that time, in 2001?

11 A. I have no idea.

12 Q. Do you know who Number 5 was?

13 A. No.

14 Q. And do you know who Number 14 was?

15 A. I don't.

16 Q. Would you have that information available
17 to you at your office?

18 A. I probably would.

19 Q. Okay. There's also, two columns over from
20 that, a column entitled "TCD." Do you see that?

21 A. I do.

22 Q. What does that indicate?

23 A. I don't have a clue.

24 Q. Do you use numerical time codes? Or did
25 you with whatever billing system this was generated

1 from?

2 A. You mean to indicate the amount of time?

3 Q. Or the nature of the service that was being
4 provided and the subject matter of it.

5 A. As far as I know, not the nature of the
6 service.

7 Q. All right. Is there some key available at
8 your office that would tell us what "TCD" means and
9 what these various numbers mean?

10 A. Probably.

11 Q. Do you still use this same time keeping and
12 billing system today?

13 A. I don't know.

14 Q. After your October 2001 meeting with Tom
15 and Dan, you gave them advice at both the meeting
16 and in writing that they needed to tell their
17 siblings what had occurred. Is that correct?

18 A. That's what I told them I thought they
19 should do.

20 Q. Okay. And you also advised them to get
21 their own attorney?

22 A. I did.

23 Q. Was Ms. Kerrison aware of -- perhaps you're
24 not comfortable with using the word "advice," but
25 was Ms. Kerrison aware of the fact that you had told

1 Tom and Dan these things?

2 A. I believe she was.

3 Q. Did you have any discussion with
4 Ms. Kerrison about whether and to what extent she
5 should do anything additional or different as of
6 October 2001?

7 A. I don't recall that I did.

8 Q. Do you recall ever having a discussion with
9 Ms. Kerrison after October 2001 about whether and to
10 what extent she should do anything different than
11 what she had done?

12 A. No, I don't recall any such discussion.

13 Q. Through 2002, there's a -- well, let's look
14 on your -- again, Kerrison 4, your time keeping
15 records. Look at the entry on the second page,
16 November 13, 2002, "Researching Considerations of
17 Disclosure of Loans." Do you see that?

18 A. Excuse me. What was the date?

19 Q. November 13, 2002. About more than midway
20 down.

21 A. Right. Right.

22 Q. Is it fair to say, sir, that the subject of
23 the loans to Tom and Dan and the manner and method
24 in which they should be disclosed to the siblings
25 was still a concern to you then?

1 A. I don't recall exactly the circumstances.
2 I just don't recall what prompted that.

3 Q. There is -- or there was identifying in
4 your previous deposition a letter in November
5 2002 -- I think it was Exhibit 35 to your previous
6 deposition -- that said that your understanding was
7 that Tom and Dan still had not informed their
8 siblings of the loans and that if they did not
9 inform them by January of 2003 that you would
10 undertake to inform them. Do you recall that, sir?

11 MR. LEWIS: Is it Number 35?

12 MR. SHARPLESS: Should have been Exhibit
13 Number 35. The letter dated, I believe, November
14 2002.

15 A. Yeah, I'm looking at a letter -- I'm not
16 sure what the exhibit number is, but it's dated
17 November 25, 2002, to Tom Stevenson and Dan
18 Stevenson where I said if I've not heard from them
19 by the first of January 2003 that they'd discussed
20 it with Kathleen, I felt responsible to contact her.
21 I recommend she discuss it with her -- with them.

22 BY MR. SHARPLESS:

23 Q. With respect to your concerns about your
24 duties to Ms. Stevenson, your duties to protect her
25 interests, and the concerns that you had researched

1 about the extent to which you would even be able to
2 make disclosure to other people, what led you to the
3 thought that you might, at least, be able to make a
4 disclosure directly to Kathleen? What facts or what
5 analysis led you to that conclusion?

6 A. Well, what I was trying to do was to keep a
7 harmonious, as much as possible, family situation.
8 I felt that my responsibilities to Mrs. Stevenson
9 were handled at that point. But I felt that just
10 the family -- just the -- part of my sort of
11 practice is dealing with families. I have a client,
12 whether it's a couple, parents, or single parent or
13 whatever, but family considerations are part of my
14 type of practice. And I wanted to try to have the
15 family proceed with these loans in a feeling that
16 would cause, as little as possible, disruption.

17 Q. And so you felt that the preferred way that
18 this would be addressed would be for Tom and Dan to
19 make their siblings aware of it?

20 A. That's correct.

21 Q. However, you say in that letter that if
22 they don't make you aware -- excuse me. More
23 precisely, you say in that letter of November 25,
24 2002, that if you haven't heard from them by the
25 first of the year that you will make that

1 disclosure.

2 A. Yeah. Initially --

3 Q. Did you -- let me ask you a question. Did
4 you mean what you said? In other words, had you
5 reached the conclusion that you could make that
6 disclosure if you didn't hear from them?

7 A. Because of the circumstances at the time
8 which were somewhat changed from the circumstances a
9 year earlier, I thought that, if necessary, I
10 probably could.

11 Q. Okay. I take it what, in fact, happened is
12 you heard from Howell Morrison instead at or around
13 the first of the year, 2003?

14 A. That's right. I think we had a -- maybe a
15 conversation before the end of 2002. I'm not sure
16 about that, but we did communicate the first of
17 2003.

18 Q. And if you'll look at Kerrison 4, you have
19 a time entry for January 2nd of 2003, telephone
20 conference with Mr. Howell Morrison. Is that right?

21 A. Correct.

22 Q. Did Mr. Morrison assure you that Tom and
23 Dan were going to make the requisite disclosures to
24 Kathleen and to Genevieve and Jacquelin, to their
25 siblings?

1 A. As I recall his letter to me, told me that
2 Tom would be speaking with Kathleen.

3 Q. Do you see that there is a time entry for
4 January 16th, 2003, telephone conference with
5 Ms. Lynne Kerrison for 1/10 of an hour?

6 A. Yes, I do.

7 Q. In that telephone conference, did you relay
8 to Ms. Kerrison what you had learned from Mr. Morrison?

9 A. I can't recall.

10 Q. Is there any reason you would not have
11 shared that information with Ms. Kerrison?

12 A. I don't know at this time whether it would
13 have been, but I can't recall whether it would have
14 been. I don't know of any reason that I would not
15 have.

16 Q. I see from your time entries that the next
17 time you gave attention to Ms. Stevenson's affairs
18 after March or February of 2003 appears to be March
19 of 2006. Is that right?

20 A. That's the next time entry.

21 Q. Did you have any other client numbers that
22 you kept for things relating to Ms. Stevensons? In
23 other words, did you give her affairs attention
24 under any other client number that wouldn't be on
25 this billing record?

1 A. Not during that period of time.

2 Q. So during that period of time, you're not
3 hearing anything from Ms. Stevenson or from Tom or
4 Dan or from Ms. Kerrison concerning Ms. Stevenson.
5 Is that your recollection, sir?

6 A. I believe that's correct.

7 Q. It was in 2006, then, that you heard again
8 from Ms. Kerrison. Is that right?

9 A. I think that is right.

10 Q. And what did you hear from her?

11 A. As I recall, she told me that there had
12 been additional funds disbursed from the trusts to
13 Dan and Tom. And I don't know whether there had
14 been -- well, I can't remember whether there had
15 been additional notes, but that there -- I don't
16 think so -- but, basically, that there had been
17 additional funds disbursed to them.

18 Q. What did you do?

19 A. Called Howell Morrison. I remember I
20 talked to him about it. He -- and then told Dan and
21 Tom again that they needed to meet with Kathleen.

22 Q. Was it your -- did you have an
23 understanding as to whether -- did you personally,
24 at that time, have an understanding as to whether
25 they had or had not informed any of their siblings?

1 I'm not asking you what you learned through
2 other testimony that you've heard.

3 A. Did I personally know whether they'd
4 informed?

5 Q. Well, I'm asking you what your
6 understanding was in March of 2006 when Ms. Kerrison
7 calls you, tells you that there have been additional
8 loans.

9 A. With the exception of Kathleen, it was my
10 understanding that they had not met with their
11 siblings.

12 Q. Did you have an understanding that they had
13 at some previous time met with Kathleen?

14 A. I don't recall whether I had been told
15 about the meeting in spring of 2003, but I know that
16 I had been told that it was going to take place.

17 Q. What was Jacquelin Stevenson's condition at
18 this time? And when I say "this time," I mean March
19 of 2006.

20 A. You know, I don't think I had seen
21 Mrs. Stevenson since she signed her power of
22 attorney in 2003, so I really can't answer that.

23 Q. Were you present for a meeting that
24 occurred on April 27th, 2006, with Ms. Turner and
25 Ms. Kerrison and with Tom and Dan Stevenson?

1 A. Yes, I was present. I think the meeting
2 was with Ms. Turner, Ms. Bennett, and Tom and Dan
3 Stevenson. And I can't remember whether Lynne
4 Kerrison was there or not. I think she was.

5 Q. What was said at this meeting?

6 A. These loans that Dan and Tom had from the
7 trusts were discussed at that meeting.

8 Q. Did anyone express any surprise?

9 A. No.

10 Q. Did anyone indicate at that meeting that
11 they were aware of these loans?

12 A. I don't recall. I don't recall.

13 Q. Do you recall anyone saying that they found
14 these loans objectionable or that they were unhappy
15 that these loans had been made?

16 A. One correction on something I said a minute
17 ago. I said I thought Jacquelin Bennett was there.
18 She was not. It was Kathleen Turner, Dan and Tom
19 Stevenson, and I believe, Lynne Kerrison.

20 Excuse me. What was your last question?

21 Q. Did anyone express any thought that these
22 loans were objectionable or that they were unhappy
23 about these loans having been made?

24 A. I don't recall that being done.

25 Q. Was there any demand made that Tom and Dan

1 repay these loans immediately?

2 A. No, I don't think so.

3 Q. Mr. Carter, do you find any fault with
4 anything Ms. Kerrison did or didn't do in reference
5 to the --

6 MR. LEWIS: Object to the form.

7 Q. -- Stevenson matter?

8 MS. WALL: I object as well and, of course,
9 caution the witness not to reveal anything that he's
10 learned from his counsel. If it's from anywhere
11 else --

12 MR. SHARPLESS: I'm just asking. I'm not
13 asking the witness for your legal contentions. I'm
14 just asking him personally.

15 A. Would you ask the question again?

16 BY MR. SHARPLESS:

17 Q. Do you find any fault with anything that --
18 do you personally find any fault with anything
19 Ms. Kerrison did or didn't do with regard to the
20 Stevenson matter?

21 MR. LEWIS: Object to the form.

22 A. You know, I don't know all of the things
23 that she did or didn't do, so I'm not sure that I
24 can answer that question.

25 MR. LEWIS: I withdraw my objection.

1 BY MR. SHARPLESS:

2 Q. Did you ever express to Ms. Kerrison --

3 MR. SHARPLESS: Thank you, Cam.

4 BY MR. SHARPLESS:

5 Q. Did you ever express to Ms. Kerrison any
6 dissatisfaction with what she had done or with
7 anything that she had not done?

8 A. I don't think that I ever did.

9 Q. Did she ever express any dissatisfaction to
10 you?

11 A. Not that I can recall.

12 MR. SHARPLESS: Give me just a moment,
13 please.

14 (Discussion off the record.)

15 BY MR. SHARPLESS:

16 Q. Mr. Carter, if you'll look at Kerrison
17 Exhibit 18.

18 MR. LEWIS: What is that?

19 MR. SHARPLESS: That is a fax of October
20 12, 2001 that is a cover sheet and sends the 2001
21 power of attorney to Ms. Kerrison.

22 MR. LEWIS: Oh, yeah.

23 BY MR. SHARPLESS:

24 Q. My question, Mr. Carter, is why did you
25 send that power of attorney to Ms. Kerrison in

1 October of 2001?

2 A. I can't remember specifically, but I think
3 it was in connection with the information that Lynne
4 Kerrison had given me about the -- or at least the
5 preliminary information about these loans and the
6 general context of that situation.

7 Q. Did she ask that you send her that power of
8 attorney?

9 A. I don't recall.

10 Q. And do you recall why you might have sent
11 it to her?

12 A. No.

13 MR. SHARPLESS: That's all I have.

14 MR. LEWIS: I have just a -- six questions.
15 Six subjects.

16 THE WITNESS: Well, he only had one, and he
17 asked about four or five.

18 MR. LEWIS: I understand. That's all
19 right.

20 FURTHER EXAMINATION

21 BY MR. LEWIS:

22 Q. Tom says that you and Lynne Kerrison drew
23 up the notes. Is that correct? The notes for the
24 loans.

25 A. Who said?

1 Q. Tom.

2 A. Which notes?

3 Q. The notes that were done to cover the loans
4 that had been made and were not -- didn't already
5 have notes.

6 A. I don't think so. I think the notes were
7 drawn by Pratt-Thomas Gumb.

8 Q. Okay. And he --

9 A. I had drawn up notes back in 1991.

10 Q. No, I'm talking about in 2000 -- when
11 you --

12 A. Those notes, I don't think that I drew.

13 Q. Okay. He --

14 A. There were later notes also, I know, that
15 were drawn by Howell Morrison's office.

16 Q. Okay. He also said that you and Lynne
17 Kerrison decided the interest rates to put on the
18 notes. Did you decide any interest rates to put on
19 notes?

20 A. I remember there was some discussion with
21 Lynne about that. So I don't know whether you can
22 say "decided," but I remember there was some
23 discussion.

24 Q. So you participated in the decision into
25 what interest rates should go on there?

1 A. I did.

2 Q. Huh?

3 A. I did.

4 Q. Okay. Now looking at Exhibit 4 there in
5 front of you. I think it's your time sheets.

6 Mr. Sharpless asked you about them. And I don't

7 understand something. Is there something that you

8 fill out that you give to someone that then they'd

9 enter it into some computer, which would then later

10 generate this list?

11 A. Yes.

12 Q. What do you call that that you gave to
13 them?

14 A. Time sheets.

15 Q. And where are the time sheets for the
16 backup for Exhibit 4?

17 A. I don't know. They may be destroyed in the
18 process. I don't know.

19 Q. Have you looked for them?

20 A. No. I can't recall having looked for them.

21 Q. Well, I think our -- well --

22 MR. LEWIS: Our request covers that, so
23 would you look for them or tell me I need to send
24 another request. I'd like to have the backup for
25 Exhibit Number 4.

1 BY MR. LEWIS:

2 Q. Now, when you do these promissory notes to
3 cover this money that was the checks that were
4 written to Dan and Tom, when you did a promissory
5 note to cover money that had already been given, do
6 you backdate those promissory notes?

7 A. I can't recall whether those promissory
8 notes were backdated or not.

9 Q. Does it make any difference to you if they
10 were backdated or not?

11 A. Well, I mean, again, I guess it depends on
12 the circumstances. I guess one difference that it
13 could make is to when interest would apply.

14 Q. So you don't remember if they were
15 backdated; we just have to look at the notes
16 themselves?

17 A. I assume that's correct.

18 Q. If they're all dated at the time of the
19 distribution, that would mean they were backdated,
20 wouldn't it?

21 A. It would if -- if the distribution is not
22 the time that the -- that the -- if there was a --
23 if the notes were made out at a later time.

24 Q. Okay. And I don't know -- this power of
25 attorney, durable power of attorney, I didn't know

1 this until that sharp Mr. Sharpless pointed it out,
2 that this is -- says "Durable Power of Attorney,"
3 but it's not?

4 A. That's correct.

5 Q. Why would you label something that's not
6 what it is?

7 A. Well, that's just an -- I suppose an office
8 form. I don't know why it says "Durable Power of
9 Attorney."

10 Q. But it's not a durable power of attorney?

11 A. No.

12 Q. It should say up there, "General Power of
13 Attorney"?

14 A. Or "Power of Attorney" is one thing.

15 Q. All right. And a power of attorney, does
16 it -- it's operative from the day you sign it, isn't
17 it?

18 A. This type of power of attorney is.

19 Q. And so you can go use it to do whatever the
20 powers are in here that allow you to do it?

21 A. With the caution, I think, that if the
22 person giving you the power of attorney tells you
23 not to or you know that they don't want you to, I
24 think that would be a restriction.

25 Q. But, I mean, as far as if I -- usually

1 these are filed somewhere, filed in the courthouse.
2 That gives me the power of attorney, and I could
3 show the bank, I can show the insurance company, and
4 I can act as the person who gave me that power of
5 attorney. That's what they're for, aren't they?

6 A. Generally, that's correct.

7 Q. But the durable one, on the other hand,
8 doesn't come into effect until the person's unable
9 to act?

10 A. No, that's not right.

11 Q. A durable one, what is the difference?

12 A. A durable power of attorney continues to be
13 effective if the person is unable to act.

14 Q. Okay.

15 MR. LEWIS: Would you mark this. This is
16 the last thing.

17 (Exhibit No. 4 was marked.)

18 BY MR. LEWIS:

19 Q. You were looking at that as Exhibit 35 to
20 your prior deposition, and we've now made it Exhibit
21 4 here.

22 A. Uh-huh.

23 Q. Do you remember looking at it?

24 A. I do remember looking at it.

25 Q. All right. Now, that was on November 25th,

1 2002. Is that correct?

2 A. That's correct.

3 Q. And what you say in here is what you
4 believed, isn't it?

5 A. As far as I know, that's correct.

6 Q. Now, it says in here: "Kathleen along with
7 Dan holds your mother's power of attorney and thus
8 represents your mother when your mother is unable to
9 act."

10 That's not true, is it? They can represent
11 the mother in anything that the power of attorney
12 says they can.

13 A. Ask me the question again, please.

14 MS. WALL: Object to the form.

15 Q. Okay. You say here: "The power of
16 attorney and thus represents your mother when your
17 mother is unable to act." Well, that means it's a
18 durable power of attorney when you're unable to act,
19 right?

20 A. It is a -- yes. If someone is incompetent,
21 it has to be a durable power of attorney.

22 Q. Well, then this one is not a durable power
23 of attorney that was in effect at the time, was it,
24 Kerrison 18? We've just gone over that.

25 A. And that may be the reason that in early

1 2003 -- in January 2003 another power of attorney
2 was executed.

3 Q. Okay. But what you wrote here, then, is an
4 error?

5 A. Well, that may be correct.

6 Q. The rest of it, though, you believe it to
7 be correct, correct?

8 A. As far as I know.

9 MR. LEWIS: I have no further questions.

10 MR. SHARPLESS: I have no additional
11 questions.

12 (The deposition was concluded at 12:11 p.m.)
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CERTIFICATE OF REPORTER

I, Heather M. Curlin, Professional Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of July, 2011, at Charleston, Charleston County, South Carolina.

Heather M. Curlin
Professional Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
May 27, 2021

I N D E X

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EXAMINATION

4

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BY MR. SHARPLESS

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Certificate of Reporter

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E X H I B I T S

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Marked for Identification:

12

1. 1/14/03 Letter from T. Heyward
Carter to Howell Morrison

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2. 9/24/08 T. Heyward Carter
Deposition Transcript
(Not produced)

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16

3. 1/5/01 Handwritten Notes

27

17

4. 11/25/02 Letter from T. Heyward
Carter to Dan and Tom Stevenson

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In the Matter Of:

Stevenson vs. Carter

2011-CP-10-400

THOMAS C. STEVENSON, III

February 13, 2013



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VIDEOTAPED DEPOSITION OF THOMAS C. STEVENSON, III
(Taken by Defendants T. Heyward Carter, Jr., and
Evans, Carter, Kunes & Bennett, P.A.)
Charleston, South Carolina
Wednesday, February 13, 2013



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3	(NO EXHIBITS WERE MARKED.)		
4			
5			
6			
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Fred Felder
Kathleen Turner
William Turner
Stephen Barksdale-videographer



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1 VIDEOTAPED DEPOSITION OF THOMAS C. STEVENSON, III, a witness
2 called on behalf of Defendants T. Heyward Carter, Jr.,
3 and Evans, Carter, Kunes & Bennett, P.A., before
4 Lyn Allen Hudson, Notary Public in and for the State of
5 South Carolina, at the law offices of McNair Law Firm, P.A.,
6 100 Calhoun Street, Suite 400, Charleston, South Carolina
7 on Wednesday, February 13, 2013, commencing at 11:08 a.m.
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P R O C E E D I N G S:

VIDEOGRAPHER: This is tape number one to the videotaped deposition of Thomas C. Stevenson in the matter of the Estate of Jacquelin K. Stevenson, deceased and the estate of Thomas C. Stevenson, deceased, Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as co-trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson will, and Jacquelin S. Bennett and Kathleen S. Turner as co-personal representatives on behalf of the Estate of Jacquelin K. Stevenson versus T. Heyward Carter Jr., et al., being heard before the Court of Common Pleas, Ninth Judicial Circuit, State of South Carolina, County of Charleston, Case Number 2011-CP-10-400. This deposition is being held at the McNair Law Firm, 100 Calhoun Street, Suite 400, Charleston, South Carolina, 29401 on February 13th, 2013. And the time is 11:08 a.m. My name is Stephen Barksdale and I am the videographer. The court reporter is Lyn Hudson. Will everyone



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1 present please identify themselves for the
2 record?

3 MS. WALL: Susan Wall. I represent
4 Defendant Heyward Carter and his law firm.

5 MR. CARTER: Heyward Carter.

6 MR. BABCOCK: Keith Babcock representing
7 the plaintiffs.

8 MR. BENNETT: William Bennett.

9 MR. FELDER: Fred Felder.

10 MR. TURNER: William Turner.

11 MS. BENNETT: Jacquelin Bennett.

12 MS. TURNER: Kathleen Turner.

13 MR. SHARPLESS: Rick Sharpless. I
14 represent Lynn Kerrison and Dixon-Hughes.

15 VIDEOGRAPHER: Lynn, please swear in the
16 witness.

17 THOMAS C. STEVENSON, III,
18 having been duly sworn, testifies as follows:

19 EXAMINATION

20 BY MS. WALL:

21 Q. Tom, would you introduce yourself to the jury?
22 Would you tell them where you live? Tell them a little bit
23 about your family.

24 A. My name is Tom Stevenson. I live in Brevard,
25 North Carolina. I am married and have been for over 40



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1 years to Irven Myer Stevenson. We have two children, and
2 they each have two children. One lives here, and one lives,
3 one of my children lives in New York.

4 Q. All right. Now, let me give you a few
5 instructions as I'm required to do under the Rules. Do we
6 understand that you have been deposed before? You've been
7 through this process?

8 A. Yes, I have.

9 Q. All right. As part of this process, I will be
10 asking you questions. There may be some other counsel here
11 who, when they have their opportunity to do so, may be asking
12 you questions. If at any time you don't hear or understand
13 the question, you simply need to let us know. And, of course,
14 we'll be very pleased to rephrase or restate the question.
15 And the reason for that, of course, is that once you answer a
16 question we're entitled to assume that you understood it and
17 you answered it to the best of your ability; all right?

18 A. Yes, ma'am.

19 Q. And if at any time you would like to take a break,
20 certainly just let us know and we will be happy to
21 accommodate you; all right?

22 A. Yes, ma'am.

23 Q. As I think you're aware, everything that you'll be
24 saying here today, all the questions asked of you, all the
25 responses that you give will be taken down by the court



1 reporter. And in this instance, we also have a videotape
2 which will pick up everything that is said during this
3 deposition. Are you on any sort of medication that would
4 prevent you here today from understanding questions and
5 answering them truthfully?

6 A. I am not.

7 Q. Now, you were telling us a little bit about your
8 family. You have four grandchildren?

9 A. Four. Yes, ma'am.

10 Q. And your two children, what are their ages and
11 what are their names?

12 A. My daughter is Elizabeth Irven Calder, C-A-L-D-E-R.
13 Elizabeth Stevenson Calder. She lives in New York. She was
14 born in 1978. My son Thomas C. Stevenson the Fourth is
15 married to Katie Long. They live here in Charleston. And
16 he was born in 1979. They are 20 months apart.

17 Q. Now you are Thomas Stevenson the Third; is that
18 correct?

19 A. Yes, ma'am.

20 Q. Are you named after your father?

21 A. I am.

22 Q. And why don't you tell us a little bit, tell the
23 jury a little bit about the Stevenson family? Why don't you
24 begin with your grandfather? Did your grandfather live here
25 in Charleston?

1 A. Yes, he did. He was a graduate of the Citadel in
2 1980, I mean, in 1894. And after that, he went into the
3 contracting business. And as a matter of fact, when the, he
4 graduated when the Citadel was at Marion Square downtown.
5 But when the Citadel moved to the, its present location, he
6 was one of the early contractors building some of the
7 original buildings at the Citadel. He, in 1929, founded a
8 company called Concrete Products which he operated. And
9 subsequently, his son and grandson operated until, it was one
10 of the oldest operations, companies in operation in this
11 part of the world up -- I can't remember when they closed
12 the operation. Maybe in, sometime in 2000, the middle of
13 2000 it seems like to me. He, my grandfather for whom I'm
14 named as well, he was Thomas C. Stevenson, had, was married
15 and had five boys. My father was the oldest. There were
16 four other boys, sons, one of which committed suicide at an
17 early age.. The remaining three all lived and worked here in
18 Charleston. Two of them worked for, at one time or another,
19 for my grandfather's company Concrete Products. My father
20 did not. He graduated from the Citadel in 1928. And
21 because of the, the depression and the newness of the
22 company that my grandfather started, my father did not go to
23 work for that company. He actually went to, he was a
24 mechanical engineer out of, graduated from the Citadel. And
25 he went to work for the, a company called McClintock and



1 Marshall which was the erection division for Bethlehem
2 Steel. Bethlehem Steel had been awarded the contract to
3 build the first Cooper River Bridge. And my father and
4 McClintock-Marshall was the contractor. And my father went
5 to work for McClintock-Marshall. He was actually the first
6 person to walk across the Cooper River Bridge. Not the
7 first person to drive across. But one afternoon when the
8 final I-beam had been put together, they built it from both
9 sides of the river, and when it came together and the I-beam
10 was laid, he had left his surveying instruments up there.
11 He returned that afternoon. And the News and Courier, which
12 was the newspaper which had been following the construction
13 of the bridge daily, was up there. He walked across the
14 I-beam to get his equipment. They took a picture of him.
15 And he is known, it's recorded in one of the history books
16 about the construction of the bridge as the first person to
17 walk across the Cooper River Bridge. When they tore the
18 bridge down, I was fortunate enough to be in the metal
19 fabrication business. And unbeknownst, unknown to me,
20 people that I worked with went and secured a piece of the
21 bridge, the I-beam. They brought it back without my
22 knowledge to our fabrication shop, reworked it and cleaned
23 it up and painted it and had a plaque put on it stating
24 Thomas C. Stevenson, the first person to walk across the
25 Cooper River Bridge. And I, that very heavy large item is



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1 still with us in my family. And when the bridge was
2 completed, which in, back then, it took 17 months or 19
3 months which is an almost unheard of time, they completed
4 the bridge, my father, McClintock-Marshall was headquartered
5 in New York in Buffalo, New York. And they recalled all of
6 their senior engineers to Buffalo, New York. My father,
7 that was not, I think, his idea of, ideal place to be
8 working. He moved there though. He had a good friend of
9 his, Tommy Kirkland, Mr. Tommy Kirkland who was working for
10 a new company in Armonk, New York, a company called
11 International Business Machine, International Business
12 Machine Company selling typewriters and adding machines.
13 They got, corresponded, got together. And Mr. Kirkland
14 persuaded my father to move from Buffalo, New York to
15 Armonk. It was a move south anyway. And he moved there and
16 joined the firm which later became IBM. He joined the firm
17 in the same year that the founder of the firm, Mr. Watson's
18 son, joined the firm. And they were in class, they were in
19 the introductory class together. He became a very good
20 salesperson for them; was in their, I think they called it
21 their Presidential Club, almost right away. Then the
22 company, IBM started getting a great deal of, a lot of
23 orders for typewriter, for adding machines from a company, a
24 small fledgling little company down in a part of the country
25 that they didn't know anything about in Winston-Salem. A



1 company called R.J. Reynolds was selling something called
2 cigarettes. And they began to sell a lot of them and needed
3 a lot of adding machines. And so IBM decided to open up
4 their first location outside of the New York area in
5 Winston-Salem to handle the volume of work. And as my
6 father said since they, he spoke the foreign language, they
7 recruited him to become the manager of the first operation
8 outside of New York. And he moved to Winston-Salem to head
9 up IBM's office there. Again, their largest client was R.J.
10 Reynolds Tobacco Company. Prior to that, he had married his
11 first wife. This part of the story I don't know very well.
12 But he was married. I don't know the conditions of that
13 marriage. He had a, I believe he had a daughter from that
14 marriage. And the, his wife was an alcoholic and committed
15 suicide. And I'm not again quite sure of all of his, of
16 that part of his life. But when he moved to Winston-Salem,
17 he was not married. And he was introduced, and I'm not
18 quite sure how, to my mother who was from, I think she was
19 living, maybe she was from Winston-Salem or Greensboro, one
20 or the other, I'm not quite sure. But they got married and
21 he, they got married and they had, they got married and then
22 the war, World War II came along. When he graduated from
23 the Citadel in 1928, he took a commission in the Army. And,
24 but he did not serve in any active duty. When the war came
25 along, he wanted to enlist and join but he was too old at

1 that time. And so he was, he did sign up with the Navy.
2 And they put him in the Naval Intelligence Command. And he
3 was located with, here, located to Charleston fortuitously.
4 And he and my mother moved here. IBM paid for him to be in
5 the war, paid him while he was in the war. And he fully
6 expected to go back with IBM when the war ended. He and my
7 mother had two children during that time. And when the war
8 ended, my father's father was failing in health. My
9 father's younger brother Fred had gone to work for Concrete
10 Products and was working there. And after the war and my
11 father's father's health not being what it was, my father
12 and mother decided that they wanted to stay in Charleston
13 rather than go back with IBM. My father then went to work
14 for the, as he called it, the gas company here in Charleston.
15 He worked there for I think about a year. But anxious to be
16 on his own, he and a friend or an acquaintance started a
17 company on the side selling gas, Domestic, they call it,
18 selling home heating fuel to rural areas. When my father's
19 company found out that he had a second job, they fired him
20 from the gas company. And when, he and my mother had only
21 one car. And when she came to pick him up, they were on
22 their own, having children and no job. And he began to
23 figure, or try to figure out what to do. He, his father was
24 able to provide him some capital and some property. And
25 they bought property west of the Ashley and developed what

1 is now Albemarle Point where Porter-Gaud School is. They
2 built I think eight lots and sold them. My father got
3 financial help from his father to do that. And that was the
4 beginning. He then had the gas company which I think he
5 called, at that point, Domestic Gas Company going as well.
6 And in a few years, the Domestic Gas Company that he was
7 operating as, he was a distributor for a division of Union
8 Carbide Corporation. And when Union Carbide Corporation
9 decided to open up a series of welding supply companies,
10 they naturally went to their existing company, existing
11 distributors. And my father started stocking or
12 inventorying welding supplies and industrial gases in his
13 Domestic Gas Company. He didn't know anything about the
14 welding supply business. But Union Carbide wanted him to be
15 in that business. There was another company in town selling
16 welding equipment run by a fellow named Moore. My father
17 went and talked to them, to him. And they formed a company,
18 they merged their companies. And in a short period of time
19 from the end of the war and the development with his father,
20 his father died then, he had a number of activities going
21 on. They all looked profitable on paper. But the cash was
22 not coming in to the company. And my father and his younger
23 brother who was by then a lawyer, Norman Stevenson, and who
24 became and was always my father's closest associate and
25 confidant, they became convinced that the company was going



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1 to fold. And they were actually in the process of
2 discussing bankruptcy options. And my father had already
3 begun a conversation prior to that with another gentleman
4 who was in New York but wanted to move to this part of the
5 world, Mr. Conrad Zimmerman. And Mr. Zimmerman and my
6 father had talked about joining forces or coming together as
7 partners. They actually agreed to a partnership because my
8 father needed, one, management help and additional capital
9 given the strains on the company. The, they decided that
10 they would form a company. Mr. Zimmerman went back to New
11 York to close up what he was doing up there. He was working
12 for a company that went on to become Photostat Corporation
13 which I think later became Xerox Corporation if I'm right
14 about that. Then my father sent his accountant, Mr. Daniel,
15 Mr. Daniel was my father's accountant. He sent him to audit
16 everything that my father had so that he could have a full
17 accounting. And when he closed the matter with
18 Mr. Zimmerman, and it was then that he found that Mr. Moore
19 having opened up a branch of Industrial Welding in Columbia,
20 South Carolina, was stealing from -- and that is why, though
21 the company was showing a profit, the company was going
22 broke. And my father with the advice of, particularly of
23 Mr. Daniel at the time since he thought the company was
24 profitable, my father in lieu of filing legal action against
25 Mr. Moore, took Mr. Moore's stock back, owned a hundred

1 percent of everything, contacted Mr. Zimmerman and told him
2 that things were not what they, what he thought they would
3 be. Mr. Zimmerman came down and to his credit looked over
4 everything and decided to go ahead with the merger.
5 Mr. Zimmerman put some cash in. But this is the point I'm
6 trying to get to. My father was completely broke,
7 financially destitute. He turned to his good friend
8 Hugh Lane who was a banker who lent my father what was then
9 called on a character loan, lent my father money. But then
10 my father turned to where else but to his mother. And he
11 borrowed I believe \$5,000 from his mother who I'm sure
12 that was a, a lot of money for her. But as his father
13 had helped him in the beginning, his mother helped
14 him when he was very, very, very down and out. But with the
15 man stealing out of the company and with the new capital
16 coming in, Mr. Zimmerman retained a 20 percent interest in
17 the company. And my father retained an 80 percent interest
18 in the company, everything. The company began, the company
19 was, the underlying businesses were profitable. And the
20 company began to prosper. And if it, but if it had not been
21 for Mr. Lane lending him money against collateral that he
22 did not have and his mother stepping up and helping him, all
23 of which was very well known to his young, new and young
24 wife, the condition of our family would have been greatly
25 different at that time than it was. So my father, very



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1 cognizant and very aware of the help given to him by both
2 his infirmed father and his mother at a time of great, great
3 duress. I don't know how far you want me to go with this.
4 But my father and Mr. Zimmerman made for a very good pair, a
5 combination. And the companies that they had prospered all
6 through the 19-, the late 1950s here and all of the, in the
7 1960s. And in 1972, they sold the first, they sold for the
8 first time -- excuse me. In 19-, in the late 1960s, they
9 sold the Domestic Gas Company so that they could, and my
10 father and Conrad Zimmerman were on the same page on this,
11 take the proceeds and put them back into the welding supply
12 company which by this time had not only an office in
13 Charleston and in Columbia and in Florence and in
14 Greenville, but they used the money to buy an operation in
15 Charlotte. And the, but in 1972, five or six years later
16 the, after the Bank Holding Act of 1970, all the banks formed
17 holding companies so that they could acquire particularly
18 mortgage companies which was a big part of my father's
19 business. And in 1972, my father and Mr. Zimmerman spun off
20 and sold off what was called Stevenson Zimmerman Enterprises
21 in a deal primarily developed and financed by
22 Mr. Arthur Swanson and the First National Bank. And they sold
23 that company for 5 million dollars. My father as the 80
24 percent owner retained 4 million dollars. There were
25 taxes -- Mr. Zimmerman retained a million dollars. There



1 were taxes to be paid. But in the end, my father had a
2 million dollars in cash that he quickly put into municipal
3 bonds which were tax-free bonds. And he was the single
4 largest shareholder in the First National Bank of South
5 Carolina by virtue of the stock that he received as part of
6 the, as part of the sale. So in 19-, he and Mr. Zimmerman
7 started in 1950. It was 22 years after that that he
8 realized the first fruits of that effort. And, but again,
9 had it not been for the very courageous acts taken by
10 several people close to him in, at the end of, in the late
11 1940s, none of that would have happened.

12 Q. Now, you and, excuse me, your father and your
13 mother had how many children?

14 A. They had four children.

15 Q. Had your mother been previously married? Did she
16 have any children?

17 A. Yes. She had been married before at a young age.
18 And she had a child, a son. And he lived up in, he worked
19 and lived primarily in Massachusetts or, I think, primarily
20 selling furniture. One, he was much older than I am. And I
21 didn't see him very much. But he ended up, he did not live,
22 he did not live with us. And I did not see him but
23 periodically maybe during the summers. But my father never
24 adopted him. But he was my mother's first child.

25 Q. And your father's child, you mentioned that your



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1 father, before he married your mother, had a daughter. And
2 what was her name?

3 A. Genevieve.

4 Q. And what kind of, did you see her? Did she grow
5 up in your family household?

6 A. Well, she is quite a bit older than I am, 20
7 years I think. And by the time I came along, she was already
8 either married or getting married. And she did not live in
9 the house that I grew up in. But I'm not aware of the
10 prior, you know, prior to my time where she -- she lived
11 with my mother and father, her mother being dead. And she
12 was, my mother was young. And my father's child was, they
13 were actually close, closer in age. But I don't, I was not
14 around when they, when she lived with my mother and father.

15 Q. Now, your mother and father, your mother's name
16 was what?

17 A. Jacqueline.

18 Q. And your mother and father together had how many
19 children?

20 A. Four.

21 Q. And why don't you tell us a little bit about, take
22 each one, the oldest to the youngest and tell us a little
23 bit about each one of those children?

24 A. My father and mother's children, or all of these?

25 Q. Well, let's talk about your father and mother's



1 children, that is your full siblings.

2 A. My former siblings start with Kathleen who went to
3 Ashley Hall. Graduated from Ashley Hall. Went to Sweet
4 Briar. Got married and had children of her own. And she
5 and my former brother-in-law moved several times. But he
6 was a teaching neurologist at the medical university for
7 most of his career.

8 Q. And what was his name?

9 A. Bill Turner.

10 Q. And Kathleen was the oldest; is that correct?

11 A. Kathleen was the oldest.

12 Q. And who came next?

13 A. My former sibling Jacqueline. She too went to
14 Ashley Hall. She too went to Sweet Briar. She, the,
15 there's a yacht club here in Charleston that years ago
16 wanted to resurrect their sailing program. And they
17 interviewed around and they hired a gentleman named
18 Bill Bennett. My father offered to, to the yacht club to
19 defray their costs to provide Mr. Bennett a room and board
20 on my father's boat. And Mr. Bennett moved in there. And
21 once again, my father trying to help the club, offered up what
22 he could. Mr. Bennett moved here. And at some point, he
23 started to date my former sibling. And eventually they got
24 married.

25 Q. And that was Jacqueline?



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1 A. That was Jacqueline.

2 Q. And who is the next child?

3 A. I am the next child.

4 Q. And how much older than you is Kathleen?

5 A. How much older is Kathleen than I am?

6 Q. Yes.

7 A. Kathleen is seven years older than I am.

8 Q. And what about Jacqueline?

9 A. She is five years older than I am.

10 Q. And were there any children after you?

11 A. Yes. I have a younger brother, Dan, who is four
12 years younger than I am.

13 Q. So there's approximately a dozen years between the
14 oldest or, am I missing this, the oldest and the youngest of
15 the four children of your mother and your father?

16 A. That's correct.

17 Q. Approximately?

18 A. Yes.

19 Q. Is that right?

20 A. Yes. Might be more than that.

21 Q. Tell us about the relationship that you had with
22 your mother and your father growing up and through your
23 adulthood until they both passed away.

24 A. Well, my father was a very, I'll use the word
25 austere person to describe his personality. And he was also

1 a very driven, hard-working person. He, I had a rocky
2 relationship with him from the time I was ten years old. My
3 family had some gathering at -- back then there weren't too
4 many places to eat. And we had some celebration, I can't
5 remember, family gathering at the restaurant in the Francis
6 Marion Hotel. I cannot remember the name of the restaurant
7 back then. But we were, and a part of the framework or
8 fabric of my family was that my mother and father,
9 particularly my father drank a lot. And at that family
10 meeting, I was either ten or twelve years old. And he made
11 some harsh comment to me. And I remember leaving the room,
12 and then from there, running back down to our home at 2
13 South Battery. And back then there was nothing but dark and
14 creepy bad things on King Street in 1961 or '2. And that
15 run back there was very frightening. But my mother came
16 back to console me. And she had been doing the, had been
17 doing that ever since on any number of occasions. And my
18 mother despite all my failings and, she loved me greatly.
19 And she helped me in more ways than I can possibly describe
20 in this meeting or in any other meeting. My father and I
21 began to have a more even relationship as I got older. When
22 I graduated from college, I married my wife, my present
23 wife, my first and present wife. And he enjoyed her
24 company. And he enjoyed her. I went to work for his
25 company. And was transferred to a number of locations. I



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1 also took a leave of absence from the company to go back to
2 graduate school, business school at the University of North
3 Carolina. And after completing a very, very successful year
4 with very high marks, my father called me to come visit him
5 at our lake house to say that our Charlotte office, the
6 Charlotte office of Industrial Welding was unprofitable, had
7 been through two managers in 12 months, and that he
8 thought, and he needed someone to go there, and would I
9 consider doing that? And so my wife and I left Chapel Hill
10 without me finishing my second year, moved to Charlotte,
11 took over the operation. And in the five years we were
12 there, the company grew, returned a very good substantial
13 profitability, significantly enough to, or with enough
14 credibility to warrant the building of a whole new facility
15 in Charlotte, a first top-of-the-line operation in there.
16 And was as profitable as the, from time to time, as
17 profitable as the main operation of Industrial Welding here
18 in Charleston. And during that time, both of our children
19 were born in Charlotte and baptized and christened in the
20 Episcopal Church in Charlotte. That was a very high watermark
21 for me and our my wife and our family. My father took
22 a great deal of pleasure and pride I think, but certainly
23 having one of his operations go from losing a lot of money
24 to making money was very important to him. And he called me
25 on a number of occasions to tell me that. And after that, an



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1 operation in Greenville started to not be profitable. And
2 he called me again. And I, my wife and I moved to
3 Greenville and took over basically the same task of trying
4 to restore profitability to an unprofitable operation which
5 we did. And again my father expressed his appreciation for
6 that. And so our relationship began to mellow out, so to, or
7 become very interesting and good. And I believe there was,
8 I know from my point of view, a great amount of trust between
9 the two of us.

10 Q. So you were with the company, the family company
11 in Charlotte for five years. And how long were you in
12 Greenville?

13 A. About a year. Over a year.

14 Q. And then where did you go?

15 A. The company was beginning to, had incurred a lot
16 of debt and, from expansions that were not, were not
17 well thought out and well-planned. I moved, we moved back
18 to Charleston briefly for a year or so. I'll back up for
19 just a minute. After having moved originally when I was
20 hired to Charlotte, we moved from Charlotte to a new store
21 in Asheboro or Greensboro. And I was there a year. It was
22 then after that that we moved back to Chapel Hill to
23 business school. And then as I say, I was there over a year
24 and a half or two years getting ready to start my second
25 year when I moved back to Charlotte for five years. And



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1 from Charlotte, I moved to Greenville. And then from
2 Greenville, I moved back to Charlotte, I mean, back to
3 Charleston. And I was there a year or so as the company
4 went through a very, very, and our family, a very significant
5 time in the life of our company and the life of our family.
6 And the result of that was a merger of our company with a
7 competitor of ours in Charlotte. The headquarters of the
8 company were then moved to Charlotte. And my wife and I
9 relocated back to Charlotte to accommodate the transition of
10 that. And we were in Charlotte for several years while I
11 did my part to make the transition occur between our
12 competitor and our company. And then I left, I left that
13 company. But the more, the significant events that occurred
14 in the late 70s when, were that in 1977, I think, my
15 father, when I was in Charlotte, I told my father that we
16 were losing, we were losing ground and we were losing market
17 share to our two competitors in Charlotte. And that our
18 company was not being managed well. And that if that were
19 to keep up, I thought we would not survive as this was a
20 welding supply company. He called me and conferred with his
21 brother Norman. And I drove over to the lake. He called
22 Norman on the phone. And we decided that his partner of all
23 these years, Mr. Zimmerman, needed to retire. And
24 Mr. Zimmerman was looking after the welding supply company.
25 But had begun to slip and not be able to, we were not

1 keeping up with our competitor. My former brother-in-law,
2 Mr. Bennett, was in the financial department of the company.
3 And he too recognized, we both viewed, reviewed a Dunn and
4 Bradstreet report that indicated the, our main competitor
5 had a net worth increase in one year of I believe \$800,000.
6 And we determined that to have a net worth increase
7 of 800, their pre-tax profit would probably have been
8 a million six hundred thousand roughly or a million
9 eight hundred or a million three or a million six.
10 The most profit that Industrial Welding had ever had in a
11 year was I believe pre-tax 600,000, which would
12 have given them a two or three times advantage. They had
13 made several strategic decisions that were good and correct.
14 And we had not. So in that meeting, at the lake my father
15 decided that he needed to have Mr. Zimmerman retire. The
16 question was who would take his place. My father decided
17 that it would be a gentleman who was running our operation
18 in Greenville and that it would not be my former
19 brother-in-law, Bill Bennett. My father was not going to
20 have Mr. Bennett running the company. He had had many, my
21 father had had many discussions with many people in the
22 company who found it very difficult to work with my former
23 brother-in-law. And he was not going to have that. So my
24 father, while I waited at the lake, got in his car and drove
25 down to Charleston. He met with Mr. Zimmerman and informed

1 him that he would no longer be working in the company. And
2 that he then made the announcement that the gentleman in
3 Greenville would become the de facto president of the
4 company. And I actually thought that with that gentleman
5 involved and my former brother-in-law involved and me
6 involved that we could steer the company in a good
7 direction. And so that occurred. My, several things
8 happened. My former brother-in-law --

9 Q. Now are you referring to Bennett? If you would
10 call him names so we could follow. Mr. Bennett?

11 A. Mr. Bennett reacted very negatively to that
12 announcement. He and my father and mother had already
13 planned a trip around the world with their friends Mr. and
14 Ms. Lane that would take them a couple of months to go
15 around the world. And they embarked on that. Mr. Bennett
16 decided that he would with the, this decision being somewhat
17 of an affront to him that he would begin to act as a
18 somewhat of a co-equal or partner with my father. And he
19 began to get into other businesses of his own choosing.
20 When my father got back from the two-month trip and found
21 out about this, he confronted Mr. Bennett, informing him
22 that he couldn't operate, that Mr. Bennett could not operate
23 these other interests and at the same time be a senior
24 member of the firm, of the company. Mr. Bennett wrote my
25 father a four-page handwritten letter. I wish that I had

1 kept it for the record. It went into a great deal of
2 discussion about why my father's decision was not a good
3 one. And that, and he ended the letter with a line, famous
4 line saying that I, that he hoped that this incident would
5 not result in a Mexican stand-off were his, with my father.
6 And my father as the president, CEO, founder, 100
7 percent owner, did not, found that to be the last straw. He
8 called me, my father. I flew down to Charlotte. He picked
9 me up at the airport. He and I drove out to a club near
10 the, my father's operation. We sat down and read through
11 the letter over and over and over. The, we, my father then
12 decided that he would go to his office with the two of us,
13 drove to his office. We went in. Mr. Bennett's office was
14 right next to my father's office. My father's long-time
15 secretary was there. We went into my father's office. He
16 called his secretary in the office. He composed the letter
17 of dismissal to Mr. Bennett. She went out, typed it up,
18 came back in, signed it. And the two of us got up. He
19 stepped next door, handed it to Mr. Bennett. And we walked
20 out the door. It caused a great deal of pain and suffering
21 and problems in our family. My mother who not only loved me
22 but loved my former siblings as well, was very concerned
23 about her daughter. But one thing that my father did which
24 distinguishes him from the actions that my former siblings
25 and, have taken is that when he removed Mr. Bennett for



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1 cause, and in our company for cause, the dismissal, would have
2 been immediate. For anybody else with cause, it would be
3 two weeks' severance pay. My father offered and Mr. Bennett
4 took and received a year's salary along with the medical
5 benefits that we had in the company. And so Mr. Bennett in
6 a time of great concern and difficulty and his wife
7 suffering from a form of cancer, my father made, made
8 available his salary which was unheard of in our company.
9 And the medical benefits that went along with it. The
10 departure of my former brother-in-law was a big blow to the
11 company and me in particular because it, as I said, even
12 though I was in Charlotte and in charge of five or six of
13 the operations up there, I thought that if he was in
14 Charleston minding the books and I was involved with the
15 operation and the gentlemen from Greenville were there, that
16 we could in fact turn the company around. His departure did
17 not allow for that to occur. And so our company suffered.
18 And in 1982, all of this occurring in '77, '78, '79, I
19 think, in 1982 we merged our company under unsatisfactory
20 circumstances. In 1982, my father was 75 years old maybe,
21 had been fighting a lot of battles for a long time. He was
22 tired. He was, he had just finished removing his partner
23 from the company. And I will say tangentially from that,
24 not having, not needing to or required to by his stock, my
25 father offered to buy Mr. Zimmerman's stock in the company



1 which got into a litigious situation or almost, was not done
2 well. But my father did buy my, Mr. Zimmerman's stock in
3 the company. And but in 1982, we merged with our competitor
4 in Charlotte whose net worth was twice ours. And my father
5 managed in his kind of last great stroke, stroke of good
6 work, to have us have a 50/50 deal in the voting stock of
7 the company. They retained another third of the stock in
8 non-voting stock. And at the closing with everything all
9 said and done everybody around the table, my father spoke to
10 his counterpart and said that there was one more requirement
11 and that that would be that his salary, my father's salary
12 and the other gentleman's salary, would remain the same
13 forever. My father at the age of 75 was terrified that his
14 salary was going to be taken away from him and that he would
15 have no recourse. And the other gentleman agreed to it.
16 And so my father's salary, their salaries went up together
17 but they always remained the same. Had that not gone
18 through, I don't know whether the merger would have gone
19 through. I was in the room, of course. And it was a
20 brilliant move on his part to guarantee his, at least his
21 salary. But it was a terribly disappointing demeaning time
22 for my father to have to negotiate that arrangement. But it
23 was the best thing that he could come up with. And so from,
24 that occurred in 1982. My father then pretty much did not
25 have any more, much operational dealings with the company.



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1 He relied on his portfolio of municipal bonds, his rental
2 money from cylinders and his income that he had salvaged in
3 the merger, on the day of the merger. And I moved to, back
4 to Charlotte as the number two, in effect, number two man
5 behind the other gentleman's son since they had the, in
6 effect the majority of the company. And I worked as hard as
7 I could to make that, I went to places, I talked to, we
8 had people who had worked for our company for 35 years who
9 were now asked to sign a non-compete or they couldn't stay
10 on with the company. I had to work as hard as I could to
11 have them do that. It was demeaning and, but I did. And I
12 stayed in that position for two years doing what I could to
13 secure that or to help cement that merger. My brother who
14 had worked for the company kind of off and on, but he left
15 the company immediately, embarked on a, in the securities
16 business in Charlotte.

17 Q. You're referring to Dan?

18 A. My brother Dan. And while I was trying to do my
19 job in the company, in the new company in Charlotte, he was
20 working on a program involving my father's portfolio. And
21 over a number of years he managed to have that portfolio
22 highly leveraged. And in 19-, in the crash, in the stock
23 market crash of 1987, my father died in 1988. He was very
24 infirmed at that point. In the stock, in October of 1987
25 the stock market crashed. And my father, all of his



1 municipal bonds, all of his stocks, all of his outside
2 collateral was gone. The cylinder rental income was ending.
3 And at that point in time in 1987, my father's income went
4 from 500- or \$700,000 a year and whatever his net
5 worth was to his hundred and fifty or a hundred and
6 seventy thousand dollar salary. My uncle and my
7 father's closest, other closest associate who became a
8 trustee of his estate, Mr. Henry Buist, came to me with my
9 father's tax return for April of 1978. I'm not right about
10 that.

11 Q. 1987?

12 A. 1987. Thank you. 1988 is when, in April I went
13 in and had to have my father sign his tax return without
14 going over the devastation to his income and all of his
15 securities and the great loss that he suffered. In the, my,
16 a number of things occurred. But my father and mother's
17 will, determination was that the, upon mother's death that
18 the, my father prior to this, and this, again, my former
19 sibling wanted my mother and father to have a house in the
20 country, that she wanted it as well.

21 Q. Who is that?

22 A. That was, that was Jacquelin. They found a house,
23 a beautiful home. And my parents bought it I think for
24 \$500,000 that was secured by the stocks that we lost.
25 And at the time, my uncle and I had to go down to

1 see Hugh Lane and borrow \$500,000 to either make the
2 acquisition or, of the house. But my father was
3 determined that that, he would have a house for his, for
4 two of my former siblings and a house at the lake for me and
5 my brother. And that his oldest child he would provide a
6 cash payment to accommodate everybody.

7 Q. The oldest child being Kathleen?

8 A. His oldest child.

9 Q. Uh-huh (affirmative response).

10 MR. BABCOCK: Susan, when you get to a
11 break, can we take --

12 MS. WALL: We'll go. I want him to
13 finish this.

14 A. Pardon me?

15 BY MS. WALL:

16 Q. You can go ahead and finish.

17 A. No one was aware in my family of the tremendous
18 loss of income. And my father died in July. And with that,
19 there was no income. The only income there was at that time
20 were rental income on the cylinders which had a time certain
21 to it, maybe another year or two. So my former siblings had
22 no idea of all of this. But my father's last years were
23 full of tremendous stress, financial hardship. And, but in
24 many instances all through his life, some of which I have
25 spoken to here, he provided for each one of us in his own

1 way, having been helped himself. He never forgot to extend
2 a hand and help the rest of us, even in the midst, at the
3 end of great financial devastation and all of that. And
4 each one of us had benefited from him and her. And each one
5 of us at different times have had our, have had a hand held
6 out to us. And in the case of my former siblings, when they
7 sued me and went to the FBI to form a criminal action
8 against me, they lost or forgot, particularly for instance
9 my former brother-in-law, the hand that was offered to him
10 at a terrible time in his life, no matter the right or the
11 wrong, I don't say no matter the right or the wrong. But
12 that dealing a good deed even in the midst of very difficult
13 times is the legacy that my father and my mother left to me.

14 Q. All right. Thank you. With that, we'll take a
15 break.

16 MR. BABCOCK: Susan, I don't know. Did
17 you instruct the witness about not being able
18 to talk to people during breaks? If you did,
19 I didn't hear you.

20 MS. WALL: I haven't done that. But if
21 during breaks, if, you could certainly pass
22 pleasantries. But if you'll refrain from
23 discussing the substance of your testimony or
24 anticipated testimony.

25 A. Well, for the record I have been deposed before.



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1 My siblings, former siblings deposed me for four days. And
2 they managed to make it over a weekend in which five days,
3 six days, I was not allowed to speak to anybody. So I am
4 very aware of the rules and know how difficult that can be,
5 even for a short period of time.

6 VIDEOGRAPHER: We are off the record at
7 12:36 p.m.

8 (Off the Record.)

9 VIDEOGRAPHER: We are back on the record
10 at 12:47 p.m.

11 BY MS. WALL:

12 Q. Now, we ended to take a short break. And you
13 brought us through to we were talking about your father
14 passing away in 1988; is that correct?

15 A. Yes, ma'am.

16 Q. All right. Let me direct your attention now to
17 some specific matters. I'm going to ask you some specific
18 questions. And, again, let me know if you're not following
19 where I'm going or have any difficulty in understanding what
20 I'm asking you about. When your father passed away in 1988,
21 was there in existence one or more trusts?

22 A. Yes. At his demise.

23 Q. At his death?

24 A. Yes.

25 Q. Okay. And do we understand that there were two



1 trusts?

2 A. Yes.

3 Q. And did he have trustees or were there trustees
4 appointed?

5 A. Yes.

6 Q. And who were they?

7 A. His brother and closest confidant,
8 Mr. Norman W. Stevenson who was an attorney, Davidson College
9 graduate, UVA law school and closest confidant and friend of my
10 father's. Mr. Henry Buist who was an accountant who was my
11 father's accountant for many, many years. Me,
12 Thomas C. Stevenson the Third and my brother
13 Daniel R. Stevenson the Second.

14 Q. And were you and Dan as trustees a good bit
15 younger than Henry Buist and Norman Stevenson?

16 A. Yes, we were.

17 Q. Okay. And how many years would you say?

18 A. Well, my --

19 Q. Were they contemporaries of your father?

20 A. Well, my brother, I mean, my Uncle Norman, my
21 father's youngest brother was my mother's age. And they
22 were, and he was ten years younger than my father. I guess
23 he was 40 or 50 years older than I was. Something like
24 that.

25 Q. Uh-huh (affirmative response).



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1 A. That's my father, that's my uncle. And
2 Henry Buist about the same as far as I could tell. So
3 yes, they were.

4 Q. Tell us about during, let's say over from 1988
5 when you and your brother and Henry Buist and
6 Norman Stevenson became trustees of the two trusts, and over
7 the next ten years, say from 1988 to 1998, we'll just take ten
8 years, explain to the jury how this, what went on among the
9 trustees, what kind of activities, if any, did y'all undertake
10 with regard to the trusts. How did this work?

11 A. First of all, I did not know that I was going to
12 be a trustee until my father's death. I had never been a
13 trustee, had no training to be a trustee. And but the four
14 of us met. And with my Uncle Norman's, with my Uncle
15 Norman's experience as a lawyer and my, and Mr. Henry Buist's
16 experience as an accountant, and for that matter as
17 my brother's experience now at that time in the securities
18 business, the protocol of the, of our, our protocol was set
19 up by my Uncle Norman and by, primarily by Mr. Henry Buist.
20 We met irregularly on no, maybe three or four times a year.
21 My uncle was the de facto leader of our group. We,
22 Mr. Buist served as the, not only as a trustee but he
23 performed all of the accounting functions for the trust.
24 Whatever trust requirements, I'll use the word, were set up
25 by my uncle. Though I'm not aware of any written

1 instructions or book or anything that was produced by that,
2 for that. They relied a great deal on my brother's
3 connections and/or experience in the brokerage business to,
4 I recall one day where we interviewed four money
5 managers, all of whom had been put forth by my brother's
6 investigation of them for the purpose of deciding what, of
7 having a money manager advise us. We, at that time we had
8 settled on one. I don't recall who it was. I did not know
9 any of them. But after that we decided on one. We went, we
10 used that group for some period of time until my brother
11 determined that, he thought that there was a better or
12 another group. The firm came up and interviewed with us.
13 The Douglas Capital is their name. And we chose to go with
14 them, a change. And the, throughout their, they throughout
15 the time my uncle and Mr. Buist were alive and active
16 trustees, they determined the protocol, when we would meet,
17 what we would discuss. And I offered up whatever, whatever
18 I could. But I again was not a -- though I was a business
19 person, I was not a stock or bond or investment person. And,
20 again, all of that, all of our activities were primarily
21 directed by Norman Henry and my brother Dan to include any
22 reporting that we did or didn't do to anybody.

23 Q. Let me ask that question. During the time that
24 Mr. Buist and Norman Stevenson were trustees, do you recall
25 any reporting to beneficiaries, written or oral, with regard



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1 to the state of the investments or otherwise?

2 A. I do not recall any, any reports or discussions or
3 certainly no meetings with anybody.

4 Q. During this ten-year period, were you ever asked by
5 any beneficiary or person interested in the trust except for
6 your mother as to the state of the trust or the state of the
7 finances or the state of the estate?

8 A. I'm not even sure that my mother, my mother never
9 asked me about that. Whether she asked Norman or
10 Henry Buist that or not, I don't know. Certainly not in my
11 presence or in any formal meeting that we would have had.
12 And the same for anyone else. And I would just, not only
13 beneficiaries, but for instance, Mr. Buist performed, did the
14 tax returns and filed the tax returns. I don't know what he
15 and Norman talked about or discussed or signed. I never saw
16 those tax returns or reports. But they were filed properly
17 by Mr. Buist. And that was, and so any other correspondence
18 or meeting or information that was needed to be provided was
19 done by them.

20 Q. During this ten-year period, we're going from 1988
21 to 1998, did you from time to time borrow money from your
22 mother?

23 A. Yes.

24 Q. And did your mother willingly lend you money?

25 A. Yes.



1 Q. Tell us a little bit more about your relationship
2 with your mother. Was she generous to you? Was she kind to
3 you or not?

4 A. Well, she was very generous and very kind to me.
5 And at difficult times she was very helpful to me. One
6 particular time, and I believe this would have been in the
7 late 80s, 1980s, I went, I had a falling out with, and
8 a bad business arrangement with a partner of mine. And we
9 owed money and I went to see her. I asked her about it.
10 And I asked, though, that she allow me to make an
11 appointment with Mr. Heyward Carter to come visit with him
12 so that any action taken on her behalf would be fully
13 disclosed to him so that he could advise her as best he
14 could what to do.

15 Q. Whose attorney was Heyward Carter? Your mother's?

16 A. Well, Norman Stevenson was very involved in my
17 mother's, after my father's death, very involved with my
18 mother. But I think he believed that she needed the best
19 advice and the best estate lawyer that she could have. And
20 I'm not sure how, whether I advised her to seek out
21 Mr. Carter or whether my Uncle Norman did. But I believed
22 that Mr. Carter was the best, the best person for her to
23 talk to, particularly since I thought Norman, and I'm not
24 sure when he died, Norman was advanced in age and thinking.
25 And I, so Heyward was my mother's lawyer. And so we went to



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1 visit Mr. Carter, my mother. I took my mother there.

2 Q. After you asked her to borrow the money?

3 A. That is correct.

4 Q. So you asked her to borrow the money. And you
5 thought that there needed to be, that there would be tax
6 implications; is that correct? Did you recognize that?

7 A. Well, I knew that there would be several
8 implications, estate implications and tax implications. And
9 I did not, I wanted to make sure that she was not only fully
10 advised of that but that she was fully, that she was
11 represented by the best that there could be. And at the
12 meeting when I discussed or when we discussed this with
13 Mr. Carter, I requested that I leave the meeting and not be
14 a part of any discussions that they would have about what if
15 anything to do about my request or how it, how it would
16 affect her estate. The other former siblings of mine and to
17 make, so that it would be their decision and not mine or
18 that I would not have any input into that.

19 Q. How much money had you requested?

20 A. I think \$4,000.

21 Q. And what was the purpose for? Was it for
22 business?

23 A. To pay off existing indebtedness.

24 Q. And before you went to see Mr. Carter when you
25 asked your mother for that money did she agree to give you

1 the money?

2 A. She did.

3 Q. Did you ultimately sign a note?

4 A. I believe so.

5 Q. And when did this occur?

6 A. Well, my father died in 1988. 1987, the crash
7 occurred. 1988, he died. 1989, the hurricane, Hugo, came
8 through. And I would think that this was sometime in 1990
9 or '91.

10 Q. Did there come a time when you requested of
11 Norm Stevenson after this period of time after 1990 or 1991
12 that the trust purchased from you a promissory note in the
13 amount of \$583,000 from Sunox?

14 A. At, and let's see, we merged in 1982. The stock,
15 the stock came into existence in 1982. In 1992, the
16 company, Sunox offered to acquire the stock back from our
17 family of which I will say and I have said in my prior
18 deposition from my former siblings that I was totally and
19 completely against this transaction. The only reason that
20 we had to do it again was because of the serious illiquidity
21 that existed in the family. No one knew, of which no one
22 properly or fully understood except for me and my Uncle
23 Norman and Henry Buist. So in 1992, the company approached,
24 called Mother, called Norman and asked if they could have a
25 meeting. Norman, Mother and I drove to Columbia. And we



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1 met the other part of the company, the other family in the
2 club up at the top of the bank building. And they offered
3 to buy the, our interests for 10 million dollars. We told
4 them that we would consider it. And on the way back I told
5 my mother and told Ms.-, my uncle that the gentleman who made
6 the offer, Mr. King, who never graduated from high school,
7 smart as he could be and as hard working a gentleman as, was
8 not going to offer us 10 million dollars for something that
9 he thought was worth 12 or 15 million dollars. I
10 thought that if he were offering us 10 million dollars, he
11 was expecting that to be worth 50 million dollars. It
12 turns out by the way two years later he sold after he bought
13 our interests that he, for 10 million dollars, he sold his
14 whole company for 165 million, 30 percent of, 33 percent of
15 165 million is 45 or 50 million dollars which is what our
16 interests would have been worth just two years later. But
17 we were in such dire financial, such difficult liquidity,
18 again no one knowing it. The Sunox stock was, paid no
19 dividend. There was no salary coming in because my father
20 was dead. There was a little bit of cylinder rental income
21 coming in. All of the stocks and the bonds and everything
22 else other than the real estate had been liquidated in the
23 crash of '87. So over my strenuous objection, we sold our
24 interests to them. And it had three components to it. Six
25 million dollars came in the form of cash directly to my



1 mother or to the estate, 3 million dollars or 4
2 million dollars was, came in the form of interest bearing
3 notes. And those notes were distributed to the other, my
4 former siblings and me and Dan. So we received interest
5 bearing notes from the company. The trust received 6
6 million dollars in cash. And my mother received \$200,000
7 a year in cylinder rental for either two, or maybe
8 just two years. So each one of us, those receiving
9 the notes, the notes had, there were five people receiving
10 3 or 4, 3 million dollars I think, 3-something
11 million dollars' worth of notes, five. Each note
12 had a, well, there were many notes depending on which family
13 we had. But each family had an equal number in aggregate.
14 But the notes had a total face value of approximately
15 \$600,000. And at the time, the interest rate
16 was, I think 10 or maybe even 12 percent. I'm not
17 sure. At some, and now that was, that was it. Now, that
18 provided liquidity to my mother primarily. And so we went
19 along for several years like that. And at a time, at a
20 point when the notes were to be redeemed for their face
21 value. And I can't, I think that, that it had originally
22 had a five-year redemption feature to it. I thought that it
23 would be a good thing for the trust to have in its portfolio
24 a 12, 10 or 12 percent interest bearing note that
25 would be paid off or redeemed in 12 months or less or



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1 something like that. So I offered or suggested to my uncle
2 that they, that the trust buy my note for its face value.

3 Q. We're going to have to stop here.

4 A. Pardon.

5 VIDEOGRAPHER: This is the end of
6 videotape number one in the deposition of
7 Thomas C. Stevenson. We are off the record
8 at 1:18 p.m.

9 (Off the Record.)
10 (Defendant's Exhibit Numbers One and Two were marked for
11 identification purposes.)

12 VIDEOGRAPHER: This is tape number two
13 to the videotaped deposition of Thomas C. Stevenson.
14 We are on the record at 1:21 p.m.

15 BY MS. WALL:

16 Q. Tom, I just handed you what we've marked as
17 Exhibit Number One and Exhibit Number Two. And I direct
18 your attention first to Exhibit Number One which is dated
19 February the 28th, 1994, from Norm Stevenson, your uncle, to
20 you. Is that correct?

21 A. Yes, ma'am.

22 Q. And this references the fact that the three other
23 trustees, that being Norm Stevenson, Henry Buist and
24 Dan Stevenson met and considered your request that the trust
25 purchase from you your promissory note in the face amount of



1 \$583,000 from Sunox. Do you see that?

2 A. Yes, ma'am.

3 Q. And in this letter from Norm Stevenson, the, he
4 sets forth certain conditions for the trust to purchase this
5 note. And the first is that you resign as the trustee. In
6 fact, did that ever come about?

7 A. It did not.

8 Q. Exhibit Number Two, is that a letter back to him
9 from you with regard to this same subject matter, that being
10 the Sunox note?

11 A. That's correct. It is.

12 Q. And you set forth in that first paragraph in
13 response in the document marked Exhibit Number Two with your
14 letter to Norm Stevenson dated March the 7th, 1994, that the,
15 and I quote, the trustees presently have various forms of
16 self-dealings which vary in type and substance but benefit
17 the trust and are therefore deemed prudent. Were these
18 matters that you four as trustees had undertaken from time
19 to time?

20 A. Yes, ma'am.

21 Q. You go on to say in that letter in section number
22 two that the trust would be acquiring an investment which
23 substantially increases the return of the trust. And then
24 you discuss that. What ultimately was the determination of
25 the trustees with regard to your requests that the trust



1 purchase this note?

2 A. The trustees acquired the note at the face value.
3 It performed as I stated it would, generating a much higher
4 income for the trust for the balance of its life or its
5 time. And the company redeemed, the company being Sunox,
6 when it redeemed all of the notes, and if I may say the
7 reason for it is because the interest rates in the market
8 were substantially less than this which I again thought that
9 this would benefit the trust by having the higher interest
10 rate. And when the interest rates were, became much lower
11 as they were, the company wanted to, I think they even
12 acquired, redeemed these notes sooner than they needed to.
13 But in any event, the trust received the higher interest
14 rate than it had, than it could have possibly gotten
15 anywhere else. And it received the principal when the notes
16 were all redeemed by the company.

17 Q. You go on in this letter to state, and I quote, my
18 mother has been more generous and more helpful to me than I
19 can ever speak about or deserve, end quote. Were you aware
20 that your mother within several years of loaning you
21 \$400,000 forgave that note?

22 A. I was not aware at any time until I, until my
23 mother, until I, until my mother's death that my mother had
24 decided to forgive that indebtedness.

25 Q. And when did your mother --



1 A. I had, as I said before, I had left the meeting
2 intentionally between she and Heyward Carter. That was a
3 prerequisite. I told Mr. Carter that I was not going to be
4 there for that, any further discussion. And I wasn't. And
5 I had no, I was unaware until my mother died that she had
6 forgiven that indebtedness.

7 Q. When did your mother die?

8 A. In 2007.

9 MS. WALL: Can we take a break?

10 VIDEOGRAPHER: Off the record at 1:28
11 p.m.

12 (Off the Record.)

13 VIDEOGRAPHER: We are back on the record
14 at 2:01 p.m.

15 BY MS. WALL:

16 Q. Tom, I'm going to take you to October of 2001. Do
17 you recall that in October 2001 you and your brother Dan met
18 with Lynn Kerrison and Heyward Carter?

19 A. Yes, ma'am.

20 Q. Now before that meeting in October 2001, had you
21 from time to time taken moneys from one or the other trust,
22 borrowed moneys from one or the other trusts? I'm going to
23 use the word borrowed, moneys from one or the other trusts.

24 A. Well, I, the word borrow is a, is not quite the
25 word. But I had a plan to invest money from the trusts in

1 my company. And actually somewhat similar to this much
2 earlier note, issue involving the Sunox trust, the Sunox
3 stock, Sunox note. And I approached my brother with an idea
4 that would increase the income to the trusts. And I did in
5 fact move money from the trusts to my company secured by a
6 note and personally guaranteed by me.

7 Q. And did you move money from both trusts?

8 A. I believe so. Though my brother handled, I'll
9 call it the logistics of that. And I think that, I think we
10 talked about equal amounts from the two, from both trusts.

11 Q. And did, during this time frame did Dan also move
12 money from the trusts to put into one or more of his
13 companies?

14 A. At some point he did. I am not aware of the,
15 there is a portion of money and time in which he transferred
16 money to his operations of which I am not aware. And I
17 can't, certainly by the time of this meeting with Mr. Carter
18 I was aware of the, of moneys that he had transferred.

19 Q. Now, before transferring moneys from either or
20 both of the trusts, you did not first discuss that with
21 Mr. Carter, did you?

22 A. I did not.

23 Q. Now you say that you moved money from the trusts
24 to your company. Tell us about your company. What company
25 are you referring to?



1 A. The company is called Fabtech or was called
2 Fabtech, F-A-B-T-E-C-H, a company involved in the metal
3 fabrication business. A company I started by, with the
4 acquisition of three smaller machine shops, metal working
5 companies, that I bought and physically merged together.
6 And we made parts for clients like what was Westvaco's paper
7 mill here. I think it's MeadWestvaco now. Maybe it's --
8 no, I think, I'm not sure now. But we had a, a group of
9 first class clients for whom we did and made metal parts.
10 And I started that company in 1999 I believe.

11 Q. Were you the sole owner?

12 A. I was.

13 Q. Now, did you understand that you were asked to meet
14 with Lynn Kerrison and with Heyward Carter because
15 Lynn Kerrison had told Heyward Carter about some of the
16 moneys that you had moved from the trusts into your company?

17 A. Yes.

18 Q. At that meeting in October 2001, specifically
19 October the 23rd, 2001, did you assure Heyward Carter that
20 you would sign notes in order to protect your mother?

21 A. I did.

22 MR. BABCOCK: Object to the form.

23 BY MS. WALL:

24 Q. Did you --

25 A. I had already signed notes in the original, I had



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1 already signed notes.

2 Q. You hadn't signed notes for all of the moneys that
3 you had moved from the trusts, had you?

4 A. No. But the original amount I did. And that was
5 the protocol that I was prepared to follow all the way
6 through.

7 Q. When you reference the original amount, you are
8 referencing the amount that you actually borrowed from your
9 mother that she willingly gave to you in the amount of
10 approximately \$400,000?

11 MR. BABCOCK: Object to the form.

12 BY MS. WALL:

13 Q. Is that right?

14 A. No. I'm actually talking about the first of, the
15 first moneys that went into my company that came out of the
16 trust.

17 Q. When did that occur?

18 A. I will have to look at the, at those notes.

19 Q. Okay. And was that first money that came out of
20 the trust and into your company, was that done at a time
21 when Henry Buist and Norm Stevenson were still alive?

22 A. No. It was not.

23 Q. Did you prepare your own note?

24 A. Yes.

25 Q. Heyward Carter did not prepare that note; correct?



1 A. He did not.

2 Q. At that meeting in October 2001, did you tell
3 Heyward Carter that you would go out and get an attorney?

4 A. Yes.

5 Q. Did you tell Heyward Carter that you would tell
6 your siblings about the moneys being taken from the trust?

7 A. Yes.

8 Q. I'm going to hand you what we've marked as Exhibit
9 Number Three.

10 (Defendant's Exhibit Number Three was marked for
11 identification purposes.)

12 Q. And this is entitled Conference With Dan and
13 Tom Stevenson and Lynn Kerrison October 23, 2001. And I
14 understand this is not your document, is it?

15 A. No, it is not.

16 Q. All right. And I will tell you that this is a
17 memorandum prepared by Heyward Carter about a meeting with
18 you, your brother Dan and Lynn Kerrison on October the 23rd,
19 2001.

20 A. Yes, ma'am.

21 Q. And I'm going to give you an opportunity to look
22 at this. And then I'm going to ask you a few questions.

23 A. May I make a comment right --

24 Q. Uh-huh (affirmative response).

25 A. In this first paragraph, Tom explained the

1 distributions to Fabtech had been approved by Dan. Said the
2 two notes to the trust for a hundred each dated 11/99.

3 These are the notes that I was referring to prior to --

4 Q. All right.

5 A. -- prior to that I had already done.

6 Q. Okay. So what we can do is we can go through it
7 as you're looking at it.

8 A. I'm sorry. Yes, ma'am.

9 Q. And then looking at that first full paragraph you
10 explained to Heyward Carter and Lynn Kerrison that
11 distributions, or you earlier called it moving money from
12 the trusts to Fabtech had been approved by Dan, and that it
13 was your earlier testimony you prepared two notes for a
14 hundred thousand dollars each dated November 1999 which you
15 had updated when there were further loans or when you moved
16 further money from the trusts into your company; is that
17 correct?

18 MR. BABCOCK: Object to the form.

19 A. That is correct. Except, with this, I didn't know
20 whether I would be or would not be. But that the notes
21 guaranteed, signed and, the notes signed by the company and
22 guaranteed by me at a higher interest rate than was
23 available in the market, was a, was the model under which I
24 was operating and would be the model under which I would
25 operate going forward if that were the, to be the case.



1 BY MS. WALL:

2 Q. And these were notes that you prepared; correct?

3 A. Yes, ma'am.

4 Q. And you explained in this meeting that the moneys
5 moved from the trust that you had made these as investments;
6 is that correct?

7 A. That's correct.

8 Q. Did you also say that you had paid interest which
9 interest payments had gone into Douglas Capital accounts for
10 the trust?

11 A. I had made a, one or two interest payments and
12 intended to make more. But I, but that was my intent and I
13 had made a few. I can't remember the number. There is a
14 list that, I mean, there is a record of what I did do.

15 Q. Now, do you recall that in this meeting as the
16 memo sets forth that you understood that Heyward Carter was
17 representing your mother's interests; correct?

18 A. That is correct.

19 Q. Heyward Carter was not representing your
20 interests, was he?

21 A. No, ma'am.

22 Q. He was not your lawyer, was he?

23 A. No, ma'am.

24 Q. He wasn't representing your siblings' interests or
25 anyone else's interests except for your mother; isn't that



1 right?

2 A. That is correct.

3 MR. BABCOCK: Object to the form.

4 BY MS. WALL:

5 Q. Do you recall that he said to you and Dan is that
6 you needed to address the moneys that the two of you were
7 moving from the trust to your companies with your siblings?

8 A. Yes.

9 Q. Do you also recall that he told you that there
10 needed to be proper documentation in place?

11 A. Yes, ma'am.

12 Q. Do you also recall that he told you that you
13 should have an independent party review and approve your
14 loans, that is not just you approving Dan and Dan approving
15 yours?

16 A. Yes.

17 Q. Do you also recall that he told you and discussed
18 with you and Dan and Lynn Kerrison at this meeting the
19 advisability of a family meeting with siblings and that such
20 a meeting before your mother died could help avoid more
21 serious problems? Do you recall that?

22 A. Yes.

23 Q. Did you tell Heyward Carter at that meeting that
24 you would decide about a time of meeting with the siblings
25 and that you would meet with your siblings?

1 A. Would you ask -- I mean, I said that we would,
2 that Dan and I certainly would strategize about having the
3 meeting and when to have the meeting. And that we, it was
4 our responsibility to have the meeting.

5 Q. Do you recall a discussion by Dan that he had
6 talked to your mother about his borrowings or movement of
7 money from the trust to his businesses?

8 A. That was the first time I had heard him say that.
9 I was aware that he had gotten my mother to co-sign a note
10 at the Bank of South Carolina. And actually, not actually,
11 and I knew that not from him but from my position on, as a
12 member both of the board of the Bank of South Carolina and
13 as a member of the loan committee of the Bank of South
14 Carolina of which subsequently I became the chairman of that
15 committee. So I, from that I knew that Dan had the, had had
16 meetings with his mother and had done a variety of things of
17 which I was not privy to or aware of.

18 Q. Was that loan that your mother co-signed obtained
19 from the Bank of South Carolina, that had nothing to do with
20 the trust, did it? It was her, that was a loan --

21 A. That is correct. That is from the --

22 Q. -- from the bank; correct?

23 A. From the bank to Dan.

24 Q. Co-signed by your mother?

25 A. Co-signed by my mother.



1 Q. Up to October the 23rd, 2001, you had never given
2 any checkbooks or other financial documents to Heyward Carter
3 concerning your moving money from the trust, had you?

4 A. No, ma'am.

5 Q. And you had never asked Heyward Carter's
6 permission, advice or otherwise discussed with him your
7 moving moneys from either trust and putting them into your
8 company, had you?

9 A. I had not.

10 (Defendant's Exhibit Number Four was marked for
11 identification purposes.)

12 Q. Going to hand you what we've marked as Exhibit
13 Number Four, a letter dated November the 29th, 2001, to you
14 and to your brother Dan. Do you recall receiving this?

15 A. Yes, I do.

16 Q. And that was a letter from Mr. Carter copied to
17 Lynn Kerrison as a follow-up to the meeting that we've just
18 been discussing, that is the meeting of October the 23rd,
19 2001; correct?

20 A. Yes, ma'am.

21 Q. And in that letter he, Mr. Carter states that
22 following up on, up our meeting at Lynn Kerrison's office on
23 October 23, I understand that each of you is drafting
24 promissory notes. And were you, did you in fact take care
25 of that? Was that done?



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1 A. Yes, ma'am.

2 Q. And that Dan was to determine whether the
3 certificate of deposit at the Bank of South Carolina and the
4 loan what the factors were as to that; correct?

5 A. Well, again, this was between Dan and his mother
6 and the Bank of South Carolina.

7 Q. And that Dan was to determine it; correct?

8 A. This was to be his. Yes.

9 Q. And then at the end at the bottom of the letter it
10 says the two of you, and he is referencing you and Dan, are
11 discussing a strategy for meeting with your siblings;
12 correct?

13 A. Correct.

14 Q. And did you do that?

15 A. We eventually did that. Yes. But we certainly
16 discussed a strategy for meeting with our siblings.

17 Q. And that was you and Dan discussed it; correct?

18 A. Yes, ma'am.

19 Q. At that meeting there was also a discussion about
20 your obtaining an attorney. And did you eventually do that?

21 A. Yes, ma'am.

22 Q. Was there also a discussion at that meeting that
23 your and Dan's moving of money from the trust to put into
24 your own companies could be seen as improper?

25 A. Yes, ma'am.



1 Q. After the meeting in October of 2001, did you and
2 Dan stop moving money from the trust into your companies?

3 A. No, ma'am.

4 Q. Before making additional movements of money from
5 the trust into your companies, did you first call Heyward
6 Carter for his advice, approval or to otherwise discuss it?

7 A. No, ma'am.

8 Q. Approximately a year later in November of 2002, do
9 you recall a telephone conversation that you had with
10 Heyward Carter, wherein there was a discussion as to whether
11 or not you had in fact met with your siblings to discuss the
12 moneys being removed from the trust to put into your and
13 Dan's companies?

14 A. Yes.

15 (Defendant's Exhibit Number Five was marked for
16 identification purposes.)

17 Q. I'm going to hand you what we've marked as Exhibit
18 Number Five. And this is Heyward, I will represent to you
19 this is Heyward Carter's file document concerning a
20 telephone conversation with you dated November the 12th
21 2002. Do you recall that in that telephone conversation
22 with you he reminded you about the meeting at Pratt-Thomas
23 Gumb's office?

24 A. I do.

25 Q. And that you and Dan were to meet with your

1 sisters to discuss the loans from the trusts?

2 A. Yes, ma'am.

3 Q. Do you recall he then asked you if that meeting
4 had in fact occurred?

5 A. I do.

6 Q. And did you tell him that there had been no
7 meeting with the sisters?

8 A. I did.

9 Q. Did you go on to discuss with him some
10 disagreement that was going on among your siblings?

11 A. I did.

12 Q. And what were you referencing?

13 A. My sister, my former sibling Jacquelin Bennett and
14 her husband had left on the boat and had sailed across the
15 Atlantic and in various places and had been gone a long
16 time. And this may have been actually, they would fly back
17 for various reasons. And after one trip, I mean, after
18 flying back or after being in the Black Sea and coming back,
19 my other sibling Kathleen had undertaken a, I'll call it a
20 major renovation of the country house that my mother and
21 father had bought for the express purpose of giving to them.
22 My, in my mother's later years, she did not, she in the
23 beginning of the purchase of that house found it difficult
24 to drive my father up to the house in North Carolina. She
25 was aware of my siblings' interests in having a house in the

1 country, purchased this house. But found it very difficult
2 to go there. And when the, my siblings who were using the
3 house had left it, had let their dogs roam around and had
4 just not left the house in good hands. And she expressed
5 that to them. She expressed that to me, to my brother Dan.
6 I know that he expressed that to my siblings to try to get
7 them to clean up the house and leave it in -- and my mother
8 became increasingly unwilling to go down there because of
9 that. And so the house was in need of remodeling and repair
10 and rework. I think it bothered everybody, including
11 Kathleen. And she undertook an effort to remodel. It was
12 an extensive remodeling. And when, I did not know, I didn't
13 know what they were doing. It was strictly her work and Dan
14 signing the checks to have it done. But a great amount of
15 work was done. And when Jacquelin returned and walked in
16 and saw the extensive amount of renovation, she became
17 extremely upset. She became extremely upset and let
18 Kathleen know that. And it intimidated Kathleen. It scared
19 Kathleen. And it, and Kathleen was extremely upset by the
20 reaction of Jacquelin. And that was, we were all, we, the
21 rest of us were aware of that. And it was not a time for
22 our family to discuss anything. And so Kathleen agreed,
23 understood and agreed that this was not the time to have any
24 discussion of any kind with our family.

25 Q. I think you maybe started to say something. And I



1 want to give you that opportunity. You say that Jacquelin
2 became very, I've forgotten the term you used, upset or,
3 was she angry?

4 A. She was angry. She was.

5 Q. Did she scream?

6 A. Yes. And I use the word intimidate to mean she
7 intimidated Kathleen. She didn't scream at me. But she
8 screamed at Kathleen and scared Kathleen to death.

9 Q. Now, finally in this telephone conversation of
10 November the 12th, 2002, did you tell Heyward Carter and
11 confirm to him that you would in fact discuss these moneys
12 being moved from the trust to the company with your siblings
13 and that he could trust you to do that?

14 A. Yes, ma'am.

15 Q. Did you give Heyward any reason to conclude that
16 you were not a trustworthy man?

17 A. No.

18 Q. Do we understand that, from your earlier testimony
19 and let me see if I can narrow it down and review it, that
20 certainly in 2002 and in 2001 you were, were you a respected
21 member of this community in Charleston, South Carolina?

22 A. Well, I --

23 Q. Did you have any reason to believe that you were
24 not a respected member of this community?

25 A. No.



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1 Q. Were you on a bank board?

2 A. I was.

3 Q. Were you a member of a church and, in fact, on
4 occasion taught Sunday school?

5 A. I did. I was.

6 Q. Were you a small business owner?

7 A. I was.

8 Q. Were you a member of the Stevenson family who at
9 the time enjoyed a positive reputation in the community?

10 A. I was.

11 (Defendant's Exhibit Number Six was marked for
12 identification purposes.)

13 Q. I'm going to hand you what we've marked as Number
14 Six. And is this a letter that Heyward Carter after your
15 telephone conversation with him wrote to you and Dan?

16 A. I'm sorry?

17 Q. Is this a letter following that telephone
18 conversation --

19 A. Yes, it is. Yes, it is. I'm sorry. Yes.

20 Q. -- that Heyward Carter wrote to you and your
21 brother Dan dated November the 25th 2002?

22 A. Yes, ma'am.

23 Q. Did he again ask that you discuss these moneys
24 being taken from the trust and placed into the companies
25 with your siblings?

1 A. Yes.

2 Q. And in fact does he state in that letter that it
3 is important that you discuss it with Kathleen?

4 A. Yes.

5 Q. All right. Let me ask you a question about
6 Kathleen so that this record will be straight and the jury
7 can understand what's going on here. Your oldest sister
8 Kathleen, did she hold the co-power of attorney of your
9 mother's with your brother Dan?

10 A. She did.

11 Q. And had she held that co-power of attorney with
12 Dan since 2001?

13 A. Yes.

14 Q. And did you understand that as the holder of the
15 power of attorney that she was jointly and together with
16 your brother Dan to do certain things that had to do with
17 your mother's finances including the right to deposit
18 moneys, to be sure the tax returns were prepared and filed,
19 to execute deeds, bills and notes, to allow for gifts, to
20 receive debts, to settle accounts? Did you understand that?

21 A. Yes, ma'am.

22 Q. Now after receiving this letter that we've marked
23 as Exhibit Number Six dated November the 25th, 2002, from
24 Heyward Carter, again, telling you to meet with your
25 siblings and specifically referencing Kathleen, did you have

1 a subsequent telephone conversation with Mr. Carter?

2 A. I believe so. Yes, ma'am.

3 (Defendant's Exhibit Number Seven was marked for
4 identification purposes.)

5 Q. Going to hand you what we'll mark as Exhibit Seven
6 which we recognize to be an internal document of
7 Mr. Carter's referencing a conversation or a conference with
8 you and Dan dated December the 6th 2002. Do you see that?

9 A. And it references I might say that I called
10 Mr. Carter.

11 Q. That you had called Mr. Carter asking for a
12 meeting in response to the letter that we just looked at
13 that we marked as Exhibit Number Six; correct?

14 A. That's correct.

15 Q. And did Mr. Carter in that conference talk to you
16 about the importance of keeping beneficiaries of a trust
17 informed?

18 A. Yes, ma'am.

19 Q. And did he in that conversation tell you that you
20 and Dan needed to talk to your lawyer?

21 A. Yes, ma'am.

22 Q. And that you responded you would talk to a lawyer;
23 correct?

24 A. Yes, ma'am.

25 Q. And, in fact, did you and Dan thereupon in December



1 2002 go out to hire a lawyer?

2 A. We did.

3 Q. And did you first, you or Dan, talk to
4 Michael Jones at Haynsworth Sinkler?

5 A. Yes. I did.

6 (Defendant's Exhibit Number Eight was marked for
7 identification purposes.)

8 Q. And I'm going to hand you what we've marked as
9 Exhibit Number Eight. And do you recognize that as a letter
10 from Mr. Carter to the lawyer you spoke to, Michael Jones at
11 Haynsworth Sinkler, attaching certain documents requested by
12 Mr. Jones which were notes prepared for signature by you and
13 Dan and a copy of your father's will?

14 A. Yes, ma'am.

15 Q. Did you ultimately retain a different lawyer?

16 A. We did.

17 Q. And who was that?

18 A. Mr. Howell Morrison.

19 (Defendant's Exhibit Number Nine was marked for
20 identification purposes.)

21 Q. Going to hand you what we've marked as Exhibit
22 Nine and ask you if you recognize this as a letter to
23 Mr. Howell Morrison at Moore, Van Allen Law Firm dated
24 January 14th 2003 from Heyward Carter referencing the fact
25 that Mr. Carter has heard from Mr. Morrison that he,

1 Mr. Morrison is representing you and Dan as trustees of the
2 trust?

3 A. That is correct.

4 Q. And you and Dan did in fact retain Mr. Morrison as
5 your attorney; correct?

6 A. That is correct. We met with him at my office up
7 in North Charleston to discuss this and retain him. Yes.

8 Q. And you understood from Mr. Morrison that it was
9 incumbent upon you and Dan to meet with your siblings and
10 certainly with Kathleen as attorney-in-fact as the co-holder
11 of the power of attorney for your mother, Ms. Stevenson;
12 correct?

13 MR. BABCOCK: Object to the form.

14 A. Correct.

15 BY MS. WALL:

16 Q. Handing you what we've marked as Exhibit Number
17 Ten.

18 (Defendant's Exhibit Number Ten was marked for
19 identification purposes.)

20 Q. Do you see that this is a letter from your lawyer
21 Howell Morrison to Heyward Carter dated January 22nd, 2003,
22 and copied to you and to Dan?

23 A. Yes, ma'am.

24 Q. And in that letter does it state that Howell Morrison
25 is, he and his firm, I'm on the third line, are in



1 the process of meeting with Lynn Kerrison and her team to
2 assess the status of the trust to advise the trustees and
3 the trustees being you and Dan; is that correct?

4 A. Correct.

5 Q. And that you and Dan appreciate your ongoing
6 obligation to keep the beneficiaries reasonably informed as
7 to the status of the trust and that you and Dan are
8 committed to the process. Do you see that in the first
9 paragraph?

10 A. I do. Yes, ma'am.

11 Q. And in fact were you committed to the process and
12 did you so tell Howell Morrison, your lawyer?

13 A. Yes, ma'am.

14 Q. And did you commit to inform Kathleen about the
15 loans in her position as the co-holder of the power of
16 attorney?

17 A. I -- yes.

18 Q. And did you intend to schedule a formal meeting
19 with Kathleen as the co-holder of the power of attorney
20 before meeting with all of the beneficiaries?

21 A. Yes, ma'am.

22 Q. And did Mr. Morrison as your attorney and Dan's
23 attorney impress upon you the relative urgency of speaking
24 with Kathleen and setting a meeting with the beneficiaries?

25 A. Yes, ma'am.



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1 Q. And were you, in fact, aiming for a propitious time
2 to hold the meeting?

3 A. Yes, ma'am.

4 Q. And were you committed to the process and moving
5 forward?

6 A. Yes, ma'am.

7 Q. And is that what you told your lawyer Howell Morrison
8 who in turn told Heyward Carter that in this letter
9 of January the 22nd, 2003?

10 A. Yes, ma'am.

11 Q. And, Tom, are you a man of your word?

12 A. I am.

13 Q. When you told Heyward Carter, when you told Howell
14 Morrison that you would do certain things, were you telling
15 the truth or were you lying?

16 A. I was telling the truth.

17 Q. And did you give Heyward Carter or your lawyer
18 Howell Morrison any basis to conclude that you were anything
19 but a truthful person?

20 A. No.

21 Q. Did you in fact meet with Kathleen on May the 21st,
22 2003?

23 A. Yes, ma'am.

24 Q. And I want you to tell this jury about that
25 meeting with Kathleen as the co-holder of the power of

1 attorney for your mother that occurred on May the 21st, 2003.

2 A. I made, Kathleen and I either e-mailed or called
3 each other several times trying to set up a meeting. I have
4 it in my calendar that we tried, had several times set
5 aside. And for various reasons on her part or mine, we
6 could not meet until the date that you, that we have. We
7 agreed that we would meet at 58 Meeting Street which was the
8 home of my mother and father.

9 Q. Let me stop you there. 58 Meeting Street was your
10 mother and father's home. After your father passed away did
11 your mother continue to live there on her own for a number
12 of years?

13 A. She did.

14 Q. And at this time on May the 21st, 2003 was your
15 mother still living in that home?

16 A. No.

17 Q. Where was your mother living?

18 A. She had moved to Bishop Gadsden.

19 Q. And when she moved to Bishop Gadsden for purposes
20 of those members of the jury who may not know what Bishop
21 Gadsden is, what it looks like, what it's like, did she
22 first move into her own apartment there?

23 A. Yes. She did. We, and primarily and in
24 particular my former sibling Jacquelin wanted her apartment
25 to resemble her house. And we undertook a very expensive

1 remodeling of the apartment at Bishop Gadsden and moved my
2 mother and her, a great deal of her furniture to that
3 apartment. It was in the main building. I can't remember
4 the name of it. And it was for independent living. My
5 mother moved there. It was a very frantic time. One day I,
6 my wife and I received 19 phone calls from my mother. I
7 don't know if anybody else received any. But I received 19
8 in one day. And a similar number in many, many days. She
9 was terribly confused, upset, anxious. And she continued to
10 drink in a heavy fashion. And I, for one, objected to the
11 extensive amount of remodeling. One, I didn't know how long
12 she would be there and I didn't think that it would matter
13 to her. It might have mattered to my former siblings. But
14 one of the requirements in the independent living building
15 there was that you needed to be able to find your way back
16 to your apartment after dinner, after you finished dinner.
17 Within three months or two or three months, a very short
18 period of time, mother could not find her way back to her
19 apartment. And Bishop Gadsden informed, demanded that she
20 move from that apartment which we had spent a hundred and
21 fifty or \$200,000 renovating to another apartment,
22 an assisted living apartment, assisted living room.

23 And they gave, it was no option. There was
24 no discussion. There was no negotiation. My mother was not
25 able to meet the requirements of living in that apartment.

1 And we did, in fact, move her to the next apartment, not the
2 next one but whatever they had available for us.

3 Q. During the years that you and Dan were removing
4 moneys from the trusts to place into your businesses, did,
5 and your mother continued to live at 58 Meeting Street and
6 then she went to Bishop Gadsden, did her lifestyle ever
7 suffer?

8 A. No. It did not.

9 Q. Why don't you tell the jury a little bit about
10 how, the lifestyle that your mother did have so that they
11 can understand how she lived? For example, did she have
12 someone to do housekeeping for her? Did she have someone to
13 be her personal secretary?

14 A. Well, in that regard she had several people
15 working for her. She had a full-time housekeeper, full-time
16 housekeeper. She had a gentleman who came by once or twice
17 a week, I think once or twice a week to do some of the
18 heavier lifting like polishing the brass and that kind of
19 thing. She had a personal secretary who handled her
20 finances, check writing, who came in. I'm not sure how
21 often she came in. She had a gentleman whom she was
22 particularly fond of who came in and did a lot of the yard
23 work and the landscaping in and around her house at 58
24 Meeting Street. In addition, she had a full-time
25 housekeeper at her home in Rockville. And I'm not sure that

1 I remember anybody else at the moment. She drove her own
2 car which was a Jaguar. She went out regularly. And I mean
3 like five times a week. A lot of times to, she was very
4 involved with all of the concert and theater and musical
5 activities in and around Charleston. She would go out and
6 then either have dinner at, her favorite place was the very,
7 the finest, she would go to a number of restaurants but they
8 were all the finest in town. Unfortunately, one night, she
9 went to one of them owned by my friend Dick -- I can't
10 remember his last name. But he owns High Cotton, Slightly
11 North Of Broad. I can't remember his last name. She was
12 at, I can't, maybe High Cotton and had had too much to
13 drink. Dick, last name I can't remember, called me at home.
14 I went to get her. It was not particularly, it wasn't a
15 very polite event, picking her up and carrying her out of
16 the restaurant. But she, she did that. She, she had a home
17 in North Carolina. She had a home on the water in North
18 Carolina. She had a home on the water in South Carolina. I
19 mean, in deep water in Rockville. She had a beautiful home
20 in, on Meeting Street. All of her furniture was handmade
21 for her primarily. She would put, if she had parties at her
22 house they were the parties that, they were sumptuous and
23 people wanted to come to them. They were, unfortunately at
24 one of those parties, I think it was primarily our family
25 was there which she loved to entertain. After consuming too

1 much alcohol, she fell down and cut her, split her head wide
2 open. I had to call my friend Duke Hagerty. And we, I took
3 her to the hospital where she had surgery to sew up her
4 face, her head. She, I don't, she used to take trips. She
5 was very fond of going places with her friend Ms. Hugh Lane.
6 They took a number of trips together. And I can't
7 remember all the places. However, on one occasion she and
8 Ms. Lane were on a small boat either on the Danube or some
9 other river. And she having had too much to drink she went
10 into a, a, not a seizure but a, she was physically unable to
11 continue. Ms. Lane took it upon herself to get either the
12 boat to a port and abort the trip and traveled back with my
13 mother immediately back home. She went on many trips with
14 her sister, older sister to whom she, for whom she adored.
15 And she was well known in this community for her grace and
16 her beauty and particularly her ability to give and to
17 forgive. And she is well known for that.

18 Q. Now let's go back and turn your attention to this
19 meeting on May the 21st, 2003, at 58 Meeting Street which was
20 your parents' home. At this time on May the 21st, 2003, we
21 understand that your mother no longer lived there, still
22 owned it but didn't live there. She was out living at
23 Bishop Gadsden; correct?

24 A. Correct.

25 Q. Tell us about that meeting. Who was there?



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1 A. Well, first of all after I said Kathleen and I
2 exchanged, it took us a couple of shots to get the meeting
3 date. I think it was a Wednesday, five o'clock or
4 something, I mean, it was five or 5:30. And we, Tom, I was
5 there, my brother Dan was there, and my sister Kathleen,
6 former sibling was there as well. We went into the living
7 room, I mean the dining room which is just right as soon as
8 you walk in the door. We turned right. We went into the
9 dining room. We sat down. I had prepared a document
10 entitled Stevenson Family Assets. And I told her that I
11 wanted to advise her of the holdings of the family. And
12 that I had it on this piece of paper. I handed it to her.
13 I described what was on the, in the document. I, to include
14 a, I called it an investment in Fabtech. And a, and I don't
15 know whether I said a loan or an investment in my brother
16 Dan's company called Fresh Cuts. The documents started off
17 with a list of the other assets, by somewhat by category.
18 What was in the marital trust, what was in the, or the
19 amounts, what was in the Q Tip trust, all the real estate
20 was in one section. The cash was in another section. And
21 the investments in Fabtech and the notes to Fresh Cuts were
22 at the bottom, not at the bottom but the last two entries.
23 I told her that as a trustee I was, I wanted her to know
24 what was in the trust, in the family assets. And that was
25 what I was doing. I handed her the document. She looked

1 over it.

2 Q. May I stop you there?

3 A. You may.

4 Q. Just so I can follow this in methodical order.

5 Did you discuss with Kathleen the amount of moneys taken
6 from the trust and put into Fabtech and Fresh Cuts?

7 MR. BABCOCK: Object to the form.

8 A. I did not discuss the amounts. I did point out
9 that these amounts that were on the paper were, and they
10 were designated Fabtech investment, whatever the dollar
11 amount was at the time and Fresh Cuts and the dollar amount
12 at the time.

13 BY MS. WALL:

14 Q. So the amount was on the paper. And did you
15 discuss that with her?

16 A. Yes.

17 Q. Did you talk with her about what was on the paper?

18 A. I talked to her about what was on the paper that
19 this was an investment in Fabtech and an investment in Fresh
20 Cuts.

21 Q. Under oath, I'm representing to you this, under
22 oath Kathleen has stated that you mumbled, she had no idea
23 of what you were saying the entire time she was at this
24 meeting with you. Is that true?

25 MR. BABCOCK: Object to the form.



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1 A. It is not true. I didn't mumble. I --

2 BY MS. WALL:

3 Q. Were you trying to hide anything from her?

4 A. No, ma'am. I handed her the document. I, after
5 she looked at it, I asked her if she, I said, this document
6 is for you. I asked her if she would like to have the
7 document, no conditions to it, no strings attached. I
8 simply said, would you like this document. She looked at it
9 and she said, no, I don't want it. I don't want this kind
10 of thing getting out. And I said, well, it is certainly
11 confidential. But this document is for you. And she said,
12 no. And I, she gave the document back to me.

13 Q. Did she explain to you why?

14 A. I was -- no. She just said she did not want this
15 kind of information out anywhere.

16 Q. Why?

17 A. Well, she did not say why at that time.

18 Q. What did you subsequently learn?

19 A. Well, I determined, I was aware that when she and
20 her, my former brother-in-law, her husband had filed for
21 divorce, and they had divorce lawyers and were proceeding
22 with a divorce that, in that action her husband's lawyer
23 demanded, made a demand on Kathleen to produce a list of all
24 of the, of her family's assets. And when Kathleen reported
25 that to mother, mother became very upset. Kathleen I



1 believe was upset. And it is my, mine and other people's
2 belief that she and her husband reconciled and dissolved the
3 divorce proceedings because my mother and Kathleen did not
4 want it to go any further after receiving that document.

5 MR. BABCOCK: Objection. Move to strike
6 on hearsay and not responsive to question.

7 A. So I believe that that was on her mind. And she
8 simply said she did not want that kind of information to get
9 out, to be out. And as I said, I said to her, well, it's
10 certainly confidential but that this document is for you.
11 She gave me the document back. I put it in my pocket. And
12 that was the end of the meeting. So if she has said that I
13 mumbled and that she couldn't understand, she certainly
14 understood that part of the discussion. And I retained the
15 document that I had prepared for her. And we got up and we
16 all left.

17 BY MS. WALL:

18 Q. Did she, she being Kathleen say to you at this
19 meeting that she thought you should not be taking any
20 further moneys from the trusts to invest in Fabtech or Fresh
21 Cuts?

22 A. She did not.

23 Q. Did she ask you questions about the financial
24 viability or any questions about Fabtech or Fresh Cuts?

25 A. She did not.



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1 Q. What kind of education does Kathleen have? Is she
2 an educated woman?

3 A. She is.

4 Q. Where did you understand that Kathleen was going
5 after the meeting?

6 A. Well, I do not know for sure because I did not
7 follow her. But at the time, she was having an affair
8 with --

9 MR. BABCOCK: Objection. Move to
10 strike. He has no firsthand knowledge here
11 and that's totally irrelevant. It's not in
12 response to the question.

13 A. Well, she had discussed this with, my brother Dan
14 was aware of it. And had discussed it with --

15 MR. BABCOCK: And I'm going to object
16 for the record on this hearsay. And I'll
17 have a continuing objection on the hearsay
18 nature of this testimony.

19 A. I did not follow her out of the house.

20 BY MS. WALL:

21 Q. Did Kathleen at that meeting indicate to you in
22 any way that she was not in her right mind, that she did not
23 have her faculties about her, that she was unable to hear,
24 unable to understand or otherwise unable to appreciate what
25 was being explained to her?



1 A. No.

2 Q. Did she give you any impression in your looking at
3 her while you were explaining the family finances to her
4 that she was incapacitated, unable to understand, unable to
5 comprehend what you were saying?

6 A. No.

7 Q. Have you ever known Kathleen in any meeting to be
8 incapacitated, unable to understand, unable to comprehend
9 the English language and words and documents being presented
10 to her?

11 A. No. Quite the contrary. I find her, and
12 certainly in this matter, particularly when we met with
13 Heyward Carter to be very observant and quite observant
14 about the situation and the dynamics that were going on in
15 the room.

16 Q. And when you and Kathleen met with Heyward Carter
17 that was in 2006; correct?

18 A. That is correct.

19 Q. And when you and Kathleen met with Heyward Carter
20 and Lynn Kerrison in 2006 and the family finances were
21 discussed, and we'll get to that meeting in more detail in a
22 minute, did she express surprise?

23 A. I don't, I don't think so. But I had met with her
24 prior to that meeting. But I, I don't recall, I don't
25 recall surprise.



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1 Q. Well, had you met with her back in May of 2003?

2 A. Yes.

3 Q. And had you discussed with her in May 2003 the
4 family finances and the borrowings from the trust among
5 other financial matters?

6 MR. BABCOCK: Object to the form.

7 A. Yes.

8 BY MS. WALL:

9 Q. After your last discussion with Heyward Carter in
10 December of 2002, you had no further discussion or contact
11 with him in any way with regard to the trusts, your removing
12 moneys from the trusts, until 2006; correct?

13 A. Correct.

14 Q. And in March of 2006 did you for the first time
15 since December of 2002 have a conversation with Heyward
16 Carter and your brother Dan involving your and Dan's taking
17 money from the trust?

18 A. Could I get you to walk through that question
19 again?

20 Q. Sure. That was very inartful.

21 A. Okay.

22 Q. Did you become aware in March of 2006 that
23 Lynn Kerrison had made contact with Heyward Carter
24 concerning moneys that you and Dan had continued to take
25 from the trust?



1 A. Yes.

2 Q. Did you understand that Heyward and Lynn were
3 going to send a letter to Kathleen as co-holder of the power
4 of attorney in March of 2006 with regard to the moneys being
5 taken from the trust?

6 A. Yes, ma'am.
7 (Defendant's Exhibit Number Eleven was marked for
8 identification purposes.)

9 Q. I'm going to hand you what we'll mark as Exhibit
10 Eleven which again is an internal memo of Heyward Carter
11 reflecting a March 27, 2006 conference with you and Dan.
12 And do you see the first line, I met at five o'clock this
13 afternoon with Dan and Tom at their request? Do you recall
14 that?

15 A. Yes, ma'am.

16 Q. And in that meeting did you say to Heyward Carter
17 that informing Kathleen of the increased loans by the trusts
18 would cause disruption in the family and jeopardize
19 investments?

20 A. Yes, ma'am.

21 Q. Now, had you told Kathleen about the loans from
22 the trust back in 2003?

23 MR. BABCOCK: Object to the form.

24 BY MS. WALL:

25 Q. That's what you testified to; correct?



1 A. That's correct.

2 Q. All right. And so now we're in 2006. Did you
3 confirm to Heyward in that meeting of March the 27, 2006, as
4 it states in the second paragraph that you had talked to
5 Kathleen about the loans at that time, that is in 2003?

6 A. Yes.

7 Q. But you are telling him in 2006 that you did not
8 speak with the rest of the family; is that correct?

9 A. That's correct.

10 Q. You had never told Heyward Carter before March the
11 27th, 2006, that you had not spoken to the rest of the family,
12 did you?

13 A. No, ma'am.

14 Q. Now, in this meeting of March the 27, 2006, you
15 told Heyward that your father had told you that he did not
16 want his daughter's husbands to become involved in family
17 investments. Had your father actually told you that?

18 A. Yes.

19 Q. What had your father told you?

20 A. That he --

21 MR. BABCOCK: Object to the form.

22 That's hearsay.

23 BY MS. WALL:

24 Q. Go ahead.

25 A. That he wanted the family matters to be handled by



1 me and Dan and not anyone else. And that he had gotten
2 advice from Mr. Hugh Lane who he admired and trusted that it
3 would be, I think my father asked Mr. Lane what he would
4 recommend or who he would recommend handle his affairs.
5 Mr. Lane advised him, this is according to my father, that
6 he had two sons that had reasonable capability and that he
7 should entrust it to them and not worry about anybody or,
8 anybody else.

9 Q. Now, did you also tell Heyward Carter that you
10 would call your attorney Howell Morrison about having a
11 meeting, another meeting with Kathleen and ultimately a
12 meeting with all the siblings?

13 A. Yes.

14 Q. And did you make contact with Howell Morrison?

15 A. Yes.

16 (Defendant's Exhibit Number Twelve was marked for
17 identification purposes.)

18 Q. Going to hand you what we're marking as Exhibit
19 Twelve and ask you if you recognize that as the follow-up
20 letter from Heyward Carter to you and to Dan dated March the
21 28th, 2006?

22 A. Yes.

23 Q. And he references the meeting of the afternoon
24 before; is that correct?

25 A. Yes, he does.



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1 Q. And in which you and Dan ask that he and Lynn
2 delay sending the jointly signed letter to Kathleen; is that
3 correct?

4 A. Right.

5 Q. And that he understood from a message left by you
6 that you planned to talk to Kathleen as soon as you could
7 arrange it; correct?

8 A. Correct.

9 Q. And did you do so?

10 A. I did.

11 Q. And he reiterates to you in this letter of March
12 the 28th, 2006, at the bottom of that letter that he believes
13 that you have placed him in a very awkward position by not
14 following through on what he clearly understood to be your
15 commitment three years earlier as well as what had been
16 conveyed to him by your lawyer Howell Morrison in a letter
17 of January of 2003 that there would be a meeting with all of
18 the beneficiaries; is that right?

19 A. That is correct. One thing I, in here one failing
20 that I had or that Dan had, after the meeting with Kathleen
21 I thought Dan was going to either call Howell and Howell
22 convey that to Heyward or, and I think Dan thought that I
23 was going to call him. But in any event, neither one of us
24 called Howell to tell him that we had had the meeting at 58
25 Meeting Street. And therefore Howell did not communicate

1 anything like that to Mr. Carter.

2 Q. When you had that meeting in 2003 with Kathleen at
3 58 Meeting Street, did Kathleen say to you and/or Dan let's
4 get a date to get together with all of the beneficiaries
5 with the rest of our siblings so that we can have this
6 discussion about the family finances?

7 A. No. She did not.

8 Q. Now going back, or forward, to 2006, we have,
9 we're in March of 2006. In April, specifically on April the
10 19th, 2006, did you meet with Kathleen at Fabtech?

11 A. Yes.

12 Q. And before that meeting at Fabtech had you been in
13 contact with her to arrange that date?

14 A. Yes.

15 Q. And did you discuss with her why you were having
16 that meeting at Fabtech which occurred on April the
17 19th, 2006?

18 A. Yes.

19 Q. Now, what did you tell her?

20 A. I told her that we were, that we needed to have a
21 meeting at Heyward Carter's office so that the, so that all
22 the issues relating to the investment in Fabtech and the
23 loans from, to Easy Tray up from Tom and Dan could be fully
24 explained to her. And that that, that we needed to meet
25 with Heyward.



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1 Q. Was it also with Lynn Kerrison?

2 A. And with Lynn Kerrison. So that they could
3 explain that that was something that I was required to do,
4 that we needed to have that meeting.

5 Q. But before that meeting you met with Kathleen at
6 your place of business, that is at Fabtech; correct?

7 A. That's correct. This is when I told her this. I
8 told her that's the purpose of, that was why I asked her to
9 come to Fabtech so that I could tell her that, that we were
10 going to have a meeting with Mr. Carter.

11 Q. And Ms. Kerrison?

12 A. And Ms. Kerrison.

13 (Defendant's Exhibit Number Thirteen was marked for
14 identification purposes.)

15 Q. I'm going to hand you what we've marked as Exhibit
16 Thirteen which appears to be a series of e-mails with you
17 and to Heyward Carter. And in the middle of this first page
18 it indicates on April the 19th, 2006, at 11:16 a.m., am I
19 correct in reading this that you wrote, you sent an e-mail
20 to Heyward Carter stating that you have just met with
21 Kathleen in your office at Fabtech and that you discussed
22 with her investments in both Fabtech and Easy Tray; is that
23 correct?

24 A. Correct.

25 Q. And did you, in fact, do that, meet with Kathleen at

1 Fabtech to discuss investments in Fabtech and Easy Tray on
2 Wednesday April the 19th, 2006?

3 A. I did.

4 Q. Did you then go on to tell her there would be a
5 meeting scheduled for the following Thursday?

6 A. I did.

7 Q. Now, above that you have an e-mail dated April the
8 21st to Heyward Carter regarding the meeting. And it states
9 in there that you're in receipt of his letter, Mr. Carter's
10 letter dated April the 19th and that you forwarded that
11 letter, you sent it, that letter both to Dan and to
12 Kathleen; is that correct?

13 A. Correct.
14 (Defendant's Exhibit Number Fourteen was marked for
15 identification purposes.)

16 Q. I'm going to hand you what we'll mark as Fourteen
17 and ask you if that's a copy of the letter that you're
18 referencing in your e-mail that you forwarded on to
19 Kathleen, that is, Heyward Carter's letter of April the
20 19th? Did I give you the wrong thing? No. That's right.

21 MR. SHARPLESS: Susan, when you get to a
22 good spot, can we take a short break?

23 MS. WALL: Certainly.

24 BY MS. WALL:

25 Q. Let me more artfully phrase my question to you and



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1 then we can take a break. I've handed you what we've marked
2 as Exhibit Fourteen which should be, yes, a letter dated
3 April 19, 2006 from Heyward Carter to you. And in your
4 e-mail which we've marked as Exhibit Thirteen, you tell
5 Heyward that you sent on to Kathleen his letter of April the
6 19th?

7 A. Right.

8 Q. Which is what we're looking at as Exhibit
9 Fourteen; is that correct?

10 A. That's correct.

11 Q. With that, we can take a break.

12 VIDEOGRAPHER: This is the end of
13 videotape number two in the deposition of
14 Thomas C. Stevenson. We are off the record
15 at 3:41 p.m.

16 (Off the Record.)
17 (Defendant's Exhibit Number Fifteen was marked for
18 identification purposes.)

19 VIDEOGRAPHER: This is tape number three
20 to the videotaped deposition of Thomas C. Stevenson.
21 We are on the record at 3:55 p.m.

22 BY MS. WALL:

23 Q. Tom, when we took the break, we were looking at
24 events of April 2006. And we saw that you had a meeting at
25 Fabtech with Kathleen on April the 19th 2006 and discussed

1 with her the investments from the trust moneys into Fabtech
2 and Easy Tray. And now I'm turning your attention to what
3 we've marked as Exhibit Fifteen which is an internal
4 memorandum by Heyward Carter concerning a conference on
5 April the 27th, 2006, between or among you, Dan, Kathleen,
6 Lynn Kerrison and Heyward Carter. And this references the
7 meeting with Kathleen, Lynn Kerrison, Heyward, you and your
8 brother Dan took place at eleven o'clock in the morning.
9 And that Heyward Carter expressed that Kathleen should be
10 aware of the status of the loans from the trusts into the
11 businesses so that Kathleen, you and Dan could seek whatever
12 advice and make whatever decisions you all felt were
13 appropriate. Do you recall that as a part of the meeting?

14 A. I do.

15 Q. Heyward Carter states in this memo that at this
16 meeting with Kathleen and others on April the 27th, 2006, that
17 you handed out a list of Stevenson family assets. Do you
18 recall doing that?

19 A. I do.

20 (Defendant's Exhibit Number Sixteen was marked for
21 identification purposes.)

22 Q. All right. I'm going to hand you what we'll mark
23 as Exhibit Sixteen and see if you recognize that as a copy
24 of the referenced Stevenson Family Assets document. And you
25 will note in the top corner, we assume it's not your

1 handwriting. It says from Tom. So we can assume that that
2 is Mr. Carter's handwriting.

3 A. Correct.

4 Q. Okay. Had you prepared this Stevenson Family
5 Assets document that we've marked as Exhibit Sixteen, did
6 you update it from the time that you had the asset document
7 that you had handed to Kathleen in 2003?

8 MR. BABCOCK: Object to the form.

9 A. I -- yes.

10 BY MS. WALL:

11 Q. I'm going to hand you what we'll mark as Seventeen
12 what appears to be the same document but with other
13 handwriting on it.

14 (Defendant's Exhibit Number Seventeen was marked for
15 identification purposes.)

16 Q. Do you recognize that as Kathleen's handwriting?
17 Or whose?

18 A. Maybe this is Kathleen's. I cannot, it doesn't, I
19 guess it is.

20 Q. All right. I want you to assume for purposes of
21 my question that this is Kathleen's handwriting.

22 A. Okay.

23 Q. That it comes from her deposition. And does, were
24 these handwritten notes that indicate for example how much
25 is in the checking account, cash at Bank of South Carolina

1 and other handwritings that that came from the meeting on
2 April the 27th, 2006, were those matters that were discussed?

3 A. Yes.

4 Q. At this meeting with Kathleen when these various
5 financial matters were discussed, Stevenson Family Assets,
6 did Kathleen register shock and surprise?

7 A. I do not believe so. I did not detect any.

8 Q. Did she ask for further clarification? In other
9 words, did she ask any questions, ask how much was in the
10 checking account, those sorts of questions?

11 A. No, ma'am.

12 Q. Did Kathleen question the wisdom of the investment
13 of trust assets that you and Dan had made in the businesses
14 Fabtech and Easy Tray?

15 A. No, ma'am.

16 Q. At the conclusion of this meeting did you
17 understand that you and Dan and Kathleen together, the three
18 of you were going to move forward and find new counsel, that
19 is someone other than Howell Morrison?

20 MR. BABCOCK: Object to the form.

21 A. Well, this is where I, this is the only question
22 that I know that Kathleen asked in this meeting. And this
23 is what I was referring to a while back in that being in
24 meetings with Kathleen I find her to be very perceptive and
25 insightful. After this her question was as we got up, her



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1 question to Mr. Carter was what do you recommend we do, to
2 which Mr. Carter said, I recommend that you get an attorney.
3 And I believe Kathleen said, do you even recommend one or I
4 think would you recommend one. And I think Mr. Carter said
5 that he would get back to her with the names of, with
6 several names for her to look at. And again that was the
7 only question that I know that she asked and the answer.

8 And --

9 Q. And, in fact, did Kathleen contact an attorney who
10 you and Dan subsequently met with?

11 A. Yes. She forwarded an e-mail shortly after, the
12 next day or two or three in which Mr. Carter had provided
13 the name, the three names, none of which I knew. And my
14 response to Kathleen was whatever she decided or whomever
15 she wanted, I didn't have any knowledge of any of the three
16 nor any preference. But whatever she, and it was a period
17 of time, a few days I think later that she e-mailed me with,
18 stating that she had talked to Bobby Pearlman who was one of
19 the three lawyers. And that we were going, and that she was
20 scheduling a meeting for us with Mr. Pearlman.

21 Q. And did you and Kathleen and Dan actually meet
22 with attorney Bobby Pearlman?

23 A. We did.

24 Q. And did you meet with him in, sometime after
25 April 2006 within a month or so?



1 A. Yes.

2 Q. As a result of, did you have more than one meeting
3 with Bobby Pearlman as the lawyer?

4 A. Yes.

5 Q. As a result of the meetings with Bobby Pearlman
6 with you, Kathleen and Dan, did, Kathleen, you or Dan, any
7 of the three of you call or meet with the rest of the
8 siblings, that is the beneficiaries under the trust to
9 discuss the investments that had been taking place?

10 A. No.

11 Q. And, in fact, no meeting with the siblings occurred,
12 did it, for another year and several months? More than a
13 year later; is that correct?

14 A. That's correct.

15 Q. And this entire time from April 2006 forward
16 Kathleen had and had access to from Lynn Kerrison, you and
17 Dan, all of the financial information on the trusts and the
18 investments; is that correct?

19 A. That is correct.

20 Q. How did it come about that there was a meeting
21 with the siblings, that is, certain of the beneficiaries
22 under the trust in 2007?

23 A. I had, all, one of the things that I had done all
24 along was to make sure that the, all the checks and all the,
25 well, all the checks were fully accounted for, documented



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1 and were in a, and they, and it was Lynn Kerrison's idea to
2 keep them in a set of binders, three large binders, one for
3 the marital trust, for the Q Tip trust and for my mother's
4 personal account. In early 2007, I, Bobby Pearlman informed
5 me that, either late 2006 or early 2007, that based on the
6 conversation that --

7 MR. BABCOCK: Objection to hearsay.

8 BY MS. WALL:

9 Q. Go ahead.

10 A. Based on the conversation that he had had with my
11 brother Dan, that Dan and I appeared to be separating in our
12 positions or interests. Dan had some thoughts that he had
13 wanted to put forward. And I, and Bobby, I objected to
14 them. I didn't know that Dan had these issues. And
15 Bobby Pearlman told me that he could no longer represent the
16 two of us, or the three of us. I actually thought at that point
17 throughout his time that he was, because he said he was,
18 representing Kathleen, me and Dan. In one meeting he, I
19 found it I guess intellectually interesting or legally
20 interesting that there were, that he would represent Dan and
21 me as trustees, Dan and Kathleen as co-executors, maybe all
22 three of us collectively. And that he thought, one, that he
23 could do it, two it would be interesting, three, he thought
24 he could pull everything together and present this with, to
25 our family in a way that would be helpful to the family.



1 And he wanted to do it. That's why he took on the
2 assignment. He, but so at all times I thought he was
3 representing all three of us in various capacities. When he
4 called me to inform me of my brother's opinion or ideas, and
5 that I told him that I found, that I objected to them, a
6 word I guess, he said that he could no longer represent us,
7 I just, I said that I needed to go ahead and get this out to
8 everybody, that a long time had been, this had been going on
9 a long time. A lot of people, a lot of different people had
10 tried to pull all the information together so that we could
11 have a meeting. There was good intention on everybody's
12 part to have a meeting. And with this latest with
13 Bobby Pearlman in effect firing us, I decided that I wasn't
14 going to wait any longer. I did hire or I went to see my, my
15 friend, my lawyer John Hagerty. Reviewed the situation with
16 him. And he advised us to immediately send the documents,
17 send the three-ring binders out and to begin the process of
18 full disclosure and a meeting. Without hesitation I, I did
19 that. We got the binders to him. He sent them to
20 everybody. We even sent them across the ocean to the boat
21 where Jacquelin and Bill were. We sent them to the other
22 two. And with that John Hagerty either wrote, e-mailed or
23 wrote everybody saying that we, or I did, that we would like
24 to have a meeting and discuss what was in the binders. That
25 for one thing, Kathleen returned an e-mail to me very



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1 quickly saying that if there was going to be a meeting she
2 was going to call the meeting. And I said, okay. But at
3 least the binders had gone out. And so that precipitated a
4 series of events. People got lawyers. And the next thing
5 that I knew Mr. McCutchen who was retained by my former half
6 sister sibling and --

7 Q. That being who?

8 A. That was Genevieve.

9 Q. (Nods head affirmatively.)

10 A. She, Mr. McCutchen called us all to a meeting that
11 was held at Mr. Carter's office. Mr. McCutchen --

12 Q. May I stop you there so we can go through this
13 methodically? You referenced then, we're trying to put a
14 time frame on this. So we have you and your sister Kathleen
15 and your brother Dan going to Bobby Pearlman in, shortly
16 after April of 2006. And then at some point in late 2006 or
17 early 2007 he informed, Bobby Pearlman informs you that due
18 to various circumstances, he can't continue to represent you
19 and Dan. And then you go to John Hagerty at Nelson Mullins
20 and let me -- and if I'm wrong please correct me.

21 A. Well, I'm not sure about the time.

22 MR. BABCOCK: I think there needs to be
23 a question that he answers.

24 BY MS. WALL:

25 Q. Is that correct?



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1 MS. WALL: Does that work for you?

2 MR. BABCOCK: Object on the leading.

3 A. In, I may not, from the, when we went to see
4 Bobby Pearlman, we initially, and his response was what I said.

5 Q. Right.

6 A. Yes, I think I can help. This is a very, you
7 know, a lot. I've seen a lot worse. Yes, I can help. And
8 it's interesting. I have all these representations but I
9 can handle it. We came back once or twice more to visit
10 with Bobby. And he was gathering again information from
11 Lynn Kerrison and all of that. That took a period of time
12 in which I'm not quite sure. But I mean, it may have been
13 six months or a year. I'm not quite sure of the time frame.
14 But whenever we first went to, whenever the time shows that
15 we first went to Bobby Pearlman it was I think early in the
16 year. And then late in the year is when after he had done
17 quite a bit of work he had not only gathered information, he
18 had come up with ideas that would promote good strategy
19 going forward, how we might, estate planning, how we might
20 take all of these things and make something very positive
21 out of them. And he was very confident that we could do
22 that. And again he had prepared a variety of ideas. He had
23 some flowcharts and that kind of thing. So that took him
24 some period of time. And that's what I'm, there was that
25 period of time. But then in the fall, in the latter part of



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1 that year, my brother had a, I don't say a change of heart.
2 Just a change of ideas. And he expressed those to Bobby
3 Pearlman who then as I said called me. And I questioned
4 them and thought that they were not true, weren't truthful
5 or accurate. And that we should stay on the course that we
6 had started with Kathleen's lead. That Bobby, let Bobby
7 Pearlman do his work. And that a meeting would come forward
8 from that. Again, when, out of nowhere Bobby Pearlman
9 having had this conversation with Dan informed me that he
10 could no longer go forward after I, a good period of time,
11 I'm not sure a year, but some length of time, I just said,
12 that's when I said okay, I will go, and went and saw
13 John Hagerty. So I was just trying to clarify there was a
14 time frame of dealing with Bobby Pearlman of, and he put in a
15 good deal of work. And he billed us for it and that kind of
16 thing. So then it was late 2006 and right into 2007 that I
17 had this issue with Dan or that I did. And then I retained
18 John Hagerty and sent out the books in the early part of
19 2007.

20 (Defendant's Exhibit Number Eighteen was marked for
21 identification purposes.)

22 Q. All right. And I'm handing you what we've marked
23 as Exhibit Eighteen just so the record is clear. Is that a
24 copy of the letter from John Hagerty to the various, to you
25 and Dan, Kathleen, also to Jacquelin and Genevieve



1 concerning having a meeting of all the beneficiaries to
2 review the current status of the trust and a reference to
3 Lynn Kerrison of the Dixon-Hughes Firm will be providing
4 various financial reports to me shortly. Hopefully early
5 this week. And that's dated May the 1st, 2007; is that
6 right?

7 A. That's correct.

8 Q. Now, one of the copy recipients is Heyward Harvey.
9 Did you understand Heyward Harvey to be Kathleen's attorney
10 that she had hired in the meantime?

11 A. When Heyward Harvey called me, or maybe Kathleen,
12 I think Kathleen called me, I don't recall an e-mail, saying
13 that she thought that she needed to have her own
14 representation. I didn't take it, I don't think it was
15 personally but as the co-trust, co-power of attorney. And
16 she informed me that she had retained Heyward Harvey for
17 that purpose. She did not inform me that she had retained
18 him as her personal attorney in regards to a forthcoming
19 litigation, you know, litigation. So to make sure that he
20 was in the loop we sent this, we sent him a copy of
21 everything. I later found out that he was representing her
22 personally.

23 Q. Did Kathleen ever tell you why she didn't pick up
24 the phone and call Jacquelin about these various investments
25 or any of her other siblings or half-siblings?

1 A. No. No, ma'am.

2 Q. After the letter that went out that we just marked
3 as Exhibit Number Eighteen, did there come a time shortly
4 thereafter when, in fact, there was a meeting of all the
5 beneficiaries, that is, of all the whole siblings and the
6 half-sibling Genevieve but not James King?

7 A. The, my hesitation is I believe, I am not sure, I
8 believe that a meeting was held by some of the beneficiaries
9 with Jim King at Rockville, their house in the country. I
10 did not attend that meeting.

11 Q. Were you asked to?

12 A. Yes. But by that time after this May 1st letter
13 and a series of either telephone calls or letters from
14 Heyward Harvey which indicated to me that he was
15 representing Kathleen personally and not as a power of
16 attorney, demanding that I produce information and a variety
17 of other things, and I can't remember about Mr. McCutchen at
18 this point. But I, on the advice of my attorney John Hagerty,
19 declined to attend that meeting. So I don't know
20 what occurred at that meeting. The only, the next meeting
21 that I know about is one where Mr. McCutchen called and I
22 believe it was in July or August of 2007. I don't think it
23 was September. But I'm not exactly sure of that meeting
24 date. But I was not, I did not attend the meeting at
25 Rockville.

1 Q. How many full, I'm going to call them family
2 meetings, I think you know what I mean, in 2007 when I
3 believe your testimony was everyone went out and got a
4 lawyer; is that true? Could you tell that when you had your
5 first meeting that everybody was there with a lawyer?

6 A. Oh, yes.

7 Q. How many meetings, full meetings were there?

8 A. Well, there was the original, the first meeting at
9 Mr. Carter's office with Mr. McCutchen in charge.
10 Mr. Carter was there. My attorney, I was there with my
11 attorney John Hagerty. Bobby Pearlman was there. I was not
12 sure why. But my brother Dan in the last minute, the day
13 before or two had engaged a lawyer. And the two of them
14 were there. My former sibling Kathleen had her lawyer
15 Heyward Harvey. Lynn Kerrison was there. My half-sibling
16 Genevieve was there. And her lawyer, Mr. McCutchen was
17 leading the meeting. Ms. Felder said that she had a power
18 of attorney I believe from my other sibling who was in the
19 Black Sea from their boat giving, I believe both of them,
20 both Kathleen and Genevieve whatever rights they needed at
21 the meeting. I, at the opening of that meeting before
22 Mr. McCutchen started I took the floor and I went around the
23 room. And I personally apologized to everybody in the room
24 including and beginning with Mr. Heyward Carter and
25 including Lynn Kerrison. I had also had money put back or



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1 returned to the trust that Ms. Kerrison could talk about.
2 And at the end, after having gone around the room
3 Mr. McCutchen commended me for the first, he commended me
4 twice in that meeting. The first time after that to say
5 that if we start off like that there's a good, I mean, we
6 have a good chance of getting somewhere today. Shortly
7 after that the meeting got very contentious in that my
8 brother Dan and his lawyer had determined that somebody was
9 seeking to potentially file a criminal action against either
10 him or and/or me. I assume me. But him. And that, it was
11 a great deal of commotion. And Dan and his lawyer left the
12 meeting. I thought it best that I leave the meeting because
13 I thought if we were going to have a productive meeting that
14 everybody ought to be there. So I stepped out while my
15 lawyer discussed this with Mr. McCutchen. I was not aware
16 or not privy to any of the, those discussions. But my
17 lawyer called me back in there. And I stayed the rest of
18 the day, four hours of intense blistering questions from
19 Mr. McCutchen about every check from whatever they, whatever
20 they were looking at. I answered the, the best I could.
21 The, at the end of the meeting Mr. McCutchen again commended
22 me for staying in there for answering all of the questions.
23 And at that point Ms. Turner, my former siblings' lawyer
24 Heyward Harvey offered up a proposal whereby a note would be
25 signed by Dan and Tom for the amount of the indebtedness.

1 And that at the time of mother's death that Dan's
2 inheritance would be the first proceeds used against it. If
3 there were any shortfall, that I would be responsible for
4 it. And he offered up that on that, in that regard, they
5 would consider forgiveness, the forgiveness of that amount.
6 I'm not sure what it was, would be. And that we could
7 discuss the offer and the issue of forgiveness now or
8 discuss the issue of forgiveness later. With that offer put
9 on the table Mr. McCutchen again stated that he was very,
10 not surprised but very, he thought as he, I think his direct
11 words, we've come a long way to the point that we now have
12 an offer of settlement on the table. My lawyer and I said
13 we would like to discuss it. And the meeting broke up. I
14 left the meeting thinking that the next point of discussion
15 was more about the settlement offer. So a second meeting
16 was called. And that meeting, I'm not sure where that
17 meeting was held. Whose law office, I don't know. But in
18 any event the same group was there. I'm not sure -- yeah.
19 Bobby Pearlman was there. I'm not sure that Lynn Kerrison
20 was there. But by that time my former sibling
21 Jacquelin Bennett and her husband Bill Bennett were there
22 and had arrived. My brother's lawyer then kind of immediately
23 brought up the idea of filing a lawsuit against the third
24 parties involved in this which led to a great amount -- and
25 the Bennetts were not happy, they were not satisfied with



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1 the way the situation was. We traded words. But the, I,
2 and through my lawyer made it clear that I had no intention
3 of filing any lawsuit or have anything to do with the third
4 parties. And that I thought I was there to discuss the
5 proposal that Mr. Harvey had put forward in the earlier
6 meeting. I was told by my lawyer that that proposal was not
7 going to be discussed. And so the meeting broke up. A
8 third meeting occurred. In between I was, Mr. Bennett
9 informed me that he was going to investigate at the, he says
10 at the request of Mr. McCutchen. He was going to
11 investigate all of mother's checks, finances. He needed my
12 permission as the trustee to look into all the trust
13 matters. He had gotten permission from Kathleen as the
14 co-trustee, co-executor, co-power of attorney to look at my
15 mother's account even though all of the checks under
16 question at issue were segmented, fully accounted for and
17 having been sent out. He spent approximately a month at our
18 accounting firm, Dixon-Hughes. I think the bill for that
19 was just for the use of the room and the occasional people.
20 was something like 25- or \$30,000. I think if we
21 had hired some professional to do it, it might have been
22 twice that or three times that. So I guess we saved money.
23 But with that authority, he conducted an inquiry into every
24 check that my mother had written back into the early
25 80s, which would, way back into the time when she was



1 fully capable of making any and all of her decisions. And
2 as I said any checks that were in question and subject to
3 any legal issues were already segregated, separated in the
4 folders, fully known to, and then having been sent out. So
5 the third meeting was held at Bobby Pearlman's office. And
6 at that meeting I am pretty sure that Mr. Jim King who was
7 my mother's first child and his wife were there. I don't
8 think they had, they had an attorney. We met there. I'm
9 not quite sure exactly what we did there other than the, the
10 growing legal clouds were evident to everybody in the room.
11 I'm not sure if Mr. McCutchen was there. I think Mr. Harvey
12 conducted the meeting. I'm not sure about that. And I
13 think those were the three meetings, family style meetings
14 that I recall in that year.

15 MR. BABCOCK: Let's take a brief break
16 so the lawyers can talk.

17 VIDEOGRAPHER: Off the record at 4:40
18 p.m.

19 (Off the Record.)

20 VIDEOGRAPHER: We are back on the record
21 at 4:45 p.m.

22 (Defendant's Exhibit Number Nineteen was marked for
23 identification purposes.)

24 BY MS. WALL:

25 Q. Tom, I've handed you what we've marked as Exhibit



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1 Nineteen which is three pages long. You mentioned in your
2 testimony a few moments ago that around about the time
3 of the first or perhaps second meeting you had repaid to
4 both trusts certain moneys. Does Exhibit Nineteen reflect a
5 repayment to the Q Tip Trust of a hundred thousand dollars
6 on July the 25th 2007, a second check in the amount of
7 \$200,000 to the Q Tip trust on July the 25th, 2007,
8 and on the same day July the 25th, 2007, a check to the
9 marital trust of \$407,500?

10 A. Yes, ma'am. Yes, ma'am.

11 Q. So on July the 25th, 2007, at the approximate time
12 of the first or second meeting you personally, let's see,
13 before I say that, two of these checks are on your personal
14 checking account, the one for \$200,000 is on
15 LaurenTide, Inc. The total repaid on that day was \$707,500;
16 is that correct?

17 A. Yes, ma'am.

18 Q. And for purposes of clarity of the record what is
19 LaurenTide, Inc., in relationship to Fabtech just briefly?

20 A. LaurenTide, Inc., it was a subsidiary of Fabtech
21 and it was 100 percent owned by Fabtech. So it was
22 the operating company associated with Fabtech.

23 Q. Okay. And the top half of each of these three
24 documents that indicate the date of the loan, the loan
25 amount, the interest rate, the years and the total interest,

1 who prepared that?

2 A. This was prepared by Lynn Kerrison.

3 Q. And to the best of your knowledge does this
4 accurately reflect the top of page one and the top of page
5 three, the date of the loan, the loan amount, the total
6 interest due on each one of those loans?

7 A. It does. Again we have moved from investment to
8 loan. But for the purposes of discussion we'll call it a
9 loan. But those are the, those are the amounts.

10 Q. So those are the correct amounts and the dates.
11 And the repayment that you made on July the 25th, 2007, in the
12 total amount of \$707,500 was applied to those loans; is that
13 correct? Or to those withdrawals from the two trusts?

14 A. Yes, ma'am.

15 Q. And that was done by the accountant?

16 A. Yes, ma'am.

17 Q. Did you also pay additional funds to one or the
18 other of the trusts? In addition to the \$707,500, was there
19 a time in February of 2008 where you paid \$200,000
20 in total, that is a hundred thousand to each of the
21 trusts?

22 A. That is correct.

23 (Defendant's Exhibit Number Twenty was marked for
24 identification purposes.)

25 Q. And I will hand you what we'll mark as Exhibit



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1 Twenty just for purposes of illustration. This is not your
2 document. It is a document from the accounting firm of
3 DuRant, et al., dated April 27, 2010, in conjunction with this
4 litigation. It indicates, however, on the front page number
5 four that you repay \$200,000 in February of 2008,
6 specifically February 8, 2008, in the total amount
7 of \$200,000, that is the Q Tip trust 100,000 and the marital
8 trust 100,000.

9 Does that reflect your testimony --

10 A. Yes, ma'am.

11 Q. -- that you just gave? So in total you paid to
12 the two trusts \$907,500 that we've talked about so far;
13 correct?

14 A. Correct.

15 Q. In addition to that, did you, did there come a
16 time when you paid some additional moneys under a settlement
17 agreement?

18 A. Yes.

19 Q. So for purposes of clarity of the record for the
20 jury, did there come a time after these various meetings
21 that you described for the jury that you had with the
22 various lawyers representing various family members, did
23 there come a time when your siblings sued you and Dan?

24 A. In January of 2008. Yes, ma'am.

25 Q. So your various siblings filed a lawsuit against



1 you. Did that include James King?

2 A. No.

3 Q. So was that your sisters Jacquelin and Kathleen
4 and your half-sister Genevieve?

5 A. My -- yeah. That is correct.

6 Q. And --

7 A. It was preceded by a demand for a confession of
8 judgment for 8 million dollars or something like that, a
9 confession of judgment that I would sign on one day or three
10 days later, the lawsuit wouldn't be filed.

11 Q. Did you agree to sign a confession of judgment for
12 8 million dollars?

13 A. I did not.

14 Q. And was a lawsuit then filed against you?

15 A. It was.

16 Q. And how long did that lawsuit go forward?

17 A. Until November of 2009.

18 Q. And they --

19 A. They also proceeded to go to the FBI on at least
20 two occasions personally or physically. However that is.
21 And they stayed on the phone with the FBI a number of times
22 after that seeking a criminal action against me as well.

23 Q. Did the FBI ever file a criminal action against
24 you?

25 A. Not to my knowledge.



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1 (Defendant's Exhibit Number Twenty-one was marked for
2 identification purposes.)

3 Q. Let me hand you what we've marked as Exhibit
4 Number Twenty-one. And as I'm doing that ask you what
5 happened in November to bring the lawsuit against you to a
6 close?

7 A. We had had several, well, we had several, two
8 mediation sessions which were, the first one was required by
9 the initial lawsuit. And then subsequently when Mr. King
10 joined in another mediation, it was in the first mediation
11 that my former siblings' lawyer informed everyone and
12 informed me that they weren't interested in, they were going
13 to take my house, my home, my company, my dog, my car. And
14 they were not going to stop until they took everything from
15 me. They, towards the end of the day having reviewed my
16 financial statement which they had seen on a number of
17 occasions and had become -- on my financial statement I
18 listed the value of my company Fabtech at \$500,000,
19 which I had been doing for many, many years and had
20 been commended by the bank on which I was a board member and
21 a loan committee on which I had seen many loan applications
22 where small businesses and private businesses are vastly
23 over-valued, they determined that I was hiding or seeking to
24 confuse or distract. I might note that Fabtech went out of
25 business in 2010. The value, it is, if it had had a value

1 of \$500,000 we would have all been very happy with that.
2 But it turned out not to be that case. And they, but they
3 would not recognize, they found that to be an action on my
4 part that was devious and typical of my general
5 practices.

6 MR. BABCOCK: I'm going to object and
7 move to strike the mediation testimony.
8 That's not appropriate.

9 A. Well, it was in that mediation that they called my
10 lawyer. We --

11 MR. BABCOCK: Again, I would object to
12 the mediation testimony. It's not proper.

13 A. Well, we almost had an agreement late in the
14 afternoon. Then they called my accountant. They called him
15 at home. He had just received my 2007 returns which showed
16 a very large profit. And they therefore canceled or
17 discarded the mediation offer that was on the table.

18 BY MS. WALL:

19 Q. Did you come to an agreement, did you come to sign
20 an agreement of settlement and release?

21 A. That was after, then the second mediation was
22 after Mr. King joined the battle. We had a mediation
23 session. I, I think that it was in the first mediation that
24 my former brother-in-law --

25 MR. BABCOCK: Again I'm going to object.

1 I hate to keep interjecting here.

2 MS. WALL: You can object.

3 MR. BABCOCK: But I object to the
4 mediation testimony again and move to strike
5 all the testimony about what goes on in a
6 mediation, either the first or the second.

7 A. The settlement offer settlement came about because
8 the, after all the depositions in our case depending on or
9 being based on a number of, in my defense on a number of
10 issues to include the statute of limitations, my sister,
11 former sister Kathleen's deposition had been taken. And,
12 then she redacted her deposition, added to it a completely
13 untrue. She went back to the lawyer. It was all in legal
14 terms. Stating that there had been a meeting with Dan a
15 long time prior to any of this that did not occur in which
16 Dan told her that she, everything was fine and that he did
17 not, she did not need to do anything, file a lawsuit or tell
18 anybody. This meeting was long before any of these other
19 meetings where, long before the meeting at 58 Meeting
20 Street, long before any of these other meetings..

21 MR. BABCOCK: Objection. This is not
22 responsive to the question at all.

23 A. Well, the --

24 MR. BABCOCK: Move to strike as being
25 non-responsive.

1 A. Well, as a result of that, the under oath, I mean,
2 that deposition then being redacted and this new claim, my
3 attorneys and I, I decided that the money that I had spent
4 and the issues would not be, if they were going to be under
5 oath testimony that was not true, deliberately not true that
6 we would work our way towards a settlement. And we
7 proceeded to work on a settlement offer finally. And
8 that --

9 BY MS. WALL:

10 Q. All right. I'm going to hand you what we've
11 marked as Exhibit Twenty-one and ask you if that's a copy of
12 the settlement agreement that you entered into which was
13 agreement of settlement and release dated November the 25th,
14 2009.

15 A. This has got my initials on it, and I believe this
16 to be it.

17 Q. All right. As part of that settlement did you
18 agree to pay a certain portion of your salary or income in
19 Fabtech and/or LaurenTide quarterly to various individuals
20 including your siblings?

21 A. The reason that the Fabtech, that this payment is
22 in here goes back to the mediation that in that mediation
23 they determined --

24 MR. BABCOCK: Same objection as to what
25 goes on in the mediation. Not responsive.

1 A. Well, the mediation is where they determined
2 incorrectly though and would not sit down out of mediation
3 and discuss the profitability of the company they made their
4 own determination that I was busy evading, doing, and so
5 they put in here a very strict model for me to conform to.

6 BY MS. WALL:

7 Q. Were you able to make payments under this
8 settlement agreement which payments are set out for example
9 on page four? I'm just asking you did you make some
10 payments --

11 A. Yes.

12 Q. -- before you were unable to make any more?

13 A. I was able, I know I made one for 40-something
14 thousand dollars. I believe that I made another one, an
15 earlier one for 30-something thousand dollars.

16 Q. Do you recall the numbers as approximately \$35,000
17 and \$48,000?

18 A. \$48,000 comes right to mind. I believe that I had
19 made an earlier payment of \$35,000.

20 Q. All right. And thereafter were you able to make
21 any more payments?

22 A. I was not. The company went into bankruptcy in
23 2010.

24 Q. All right. As a part of this settlement agreement
25 had you agreed to confess judgment and thus if you were

1 unable to pay under this settlement agreement the confession
2 of judgment would be filed against you?

3 A. Yes.

4 (Defendant's Exhibit Number Twenty-two was marked for
5 identification purposes.)

6 Q. Handing you what we've marked as Exhibit
7 Twenty-two and ask you if you can identify that as a copy of
8 the confession of judgment in the amount of 2 million
9 dollars?

10 A. Yes, it is.

11 Q. How was the 2 million dollars reached?

12 A. Again, going back to the mediation and all the
13 other conversations they --

14 Q. Was this, let me ask it this way. Was the 2
15 million dollars reached as a result of negotiations by and
16 among the parties and their counsel?

17 A. Yes.

18 Q. Was this confession of judgment filed of record
19 against you?

20 A. Yes.

21 Q. What steps have the holders of this confession of
22 judgment, that is those that are set forth as the
23 plaintiffs, Jacquelin Bennett, Genevieve Felder,
24 Kathleen Turner individually as co-trustees and beneficiaries
25 of the estate of Jacquelin Stevenson, what steps have they taken

1 against you to collect on the confession of judgment?

2 A. I'm not aware of, I'm not aware of anything that
3 they have done or not done. I have no idea.

4 Q. Okay. As a part of the settlement of, the
5 agreement of settlement and release of the litigation
6 instituted against you, did you give up your rights as a
7 beneficiary in your mother's estate?

8 A. I did.

9 Q. And to whom did the moneys otherwise that would
10 have gone to you as a beneficiary of your mother's estate,
11 to whom did it go instead?

12 A. I do not know. I assume other beneficiaries.

13 Q. The remaining beneficiaries?

14 A. Yes. I don't know that but I assume that.

15 (Defendant's Exhibit Number Twenty-three was marked for
16 identification purposes.)

17 Q. All right. I'm going to hand you what we'll mark
18 as Exhibit Twenty-three which is the final accounting of
19 your mother's estate. Let's go back for a moment. When did
20 your mother die?

21 A. In 2007. Late 2007.

22 Q. September of 2007 sound correct?

23 A. September. Yes, it does.

24 Q. And at the time of your mother's death in
25 September 2007 were you still a trustee of the two trusts



1 for the benefit of your mother?

2 A. I don't think I, I can't remember when I resigned.

3 Q. Do you recall that you were not asked to resign as
4 the trustee of the two trusts until October of 2007?

5 A. Yes. That was after -- yes. It was after my
6 mother's death. Am I to look at this?

7 Q. Well, have you ever had an opportunity to see any
8 of the information in this final accounting in the probate
9 court on your mother's estate?

10 A. I have seen some of this. Yes.

11 Q. Are you aware that as part of the expenses for the
12 estate that was paid before the final accounting that the,
13 it included attorney's fees for the plaintiffs in the
14 lawsuit against you?

15 A. I see that there are checks to the Hood Firm. I
16 don't know the exact total amount. One of them is
17 280-something thousand dollars.

18 Q. Were you aware that it totaled in excess of
19 \$800,000?

20 A. No.

21 Q. If you had remained as a beneficiary, would that
22 have been moneys or costs that you would have borne?

23 MR. BABCOCK: Objection as to form.

24 A. It would have been.

25 BY MS. WALL:



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1 Q. But, in fact, did you remain a beneficiary of any
2 disbursement from the estate?

3 A. No.

4 Q. Were you also --

5 A. I might add that the ability of the estate to make
6 these ten thousand dollar payments to the King family and
7 their subsequent payments which I don't know whether they're
8 in here or not, that Mr. Bennett initiated a week prior to
9 my mother's death were funded by the money that the
10 investment at Fabtech returned to the estate. And without
11 it, those funds wouldn't be available. But I haven't studied
12 this. I would like the opportunity to. But anyway. No.
13 I'm sorry.

14 Q. Let me ask you some questions. When you remained
15 until, while you were the trustee, one of the trustees, did
16 the trusts invest in Forced Protection?

17 A. It did.

18 Q. And on or around the time of your mother's death,
19 was there an issue as to whether the Forced Protection stock
20 should be sold or held?

21 A. Yes.

22 Q. And what was the outcome of that?

23 A. Well, I can't say since I was removed from the
24 actions and activities very soon after that. At the time of
25 her death I think that, well, we purchased the stock. It



1 was at two dollars a share. It got as high as \$30 a share.
2 I wish that I had sold it at \$25 a share or whatever. But
3 at the time of my mother's death, I think the stock was at
4 either \$17 or \$12 a share. I can't remember. But from the
5 time I was, from the time Henry and Norman died, the value
6 of the estate, of the total Stevenson assets were close to
7 9 million dollars. That was on my mother's financial
8 statement that she provided the bank for the loan that she
9 signed with my mother. I mean, with my brother. That
10 included the real estate, everything. On my financial
11 statement for ten years I thought that my, and I was on the
12 inside and I thought that I disclosed that I might receive
13 one and a half million dollars. It's on my bank, I mean, on
14 my personal financial statement. It goes back for ten
15 years. I never thought I would receive any more than that.
16 The, from the time those two gentlemen died, the value of
17 the estate was 9 million. Every year from the time that
18 I was there, we had a \$250,000 insurance premium and 300-
19 or \$400,000 worth of expenses from Bishop Gadsden
20 to provide for my mother. That would be close to
21 5-, \$600,000 a year. And despite what Dan took
22 out of it, when, at my mother's death, the estate was
23 worth in, 15 million dollars or more. So it started
24 at nine, we paid out 500- or 600- a year, thousand
25 dollars. We paid out whatever we paid to Dan. And we ended



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1 up, when I was let go we ended up with a lot more than we
2 started with.

3 Q. In --

4 A. That is not, it doesn't include taking Dan out of
5 it and the Fabtech loan. The Fabtech matter got paid as I
6 had hoped it would.

7 Q. In your interest in the estate, the lake property,
8 and you've referenced it several times today, that was
9 property that in your mother's will was left to you and Dan;
10 is that correct?

11 A. Yes. A specific devise left to me and Dan.

12 Q. And are you aware that under this final accounting
13 that was given and a value of 1.1 million dollars?

14 A. I see that in there.

15 Q. But neither you nor Dan received any part of that
16 lake property or its value; correct?

17 A. That is correct.

18 Q. And did you have a one-fifth interest in the Q Tip
19 trust?

20 A. I did.

21 Q. Did you have a one-sixth interest in the marital
22 trust?

23 A. I did.

24 Q. And you received nothing from either the Q Tip
25 trust or the marital trust; correct?

1 A. Correct.

2 Q. And did you have an interest in the residual
3 estate?

4 A. I did.

5 Q. Did you receive anything from the residual estate?

6 A. I did not.

7 Q. Now, do we understand that your mother while she
8 was alive had an interest in the marital trust, the Q Tip
9 trust and she also had her own money; is that correct?

10 A. That is correct.

11 Q. And did she from time to time make loans from her
12 own money to you and other of your siblings?

13 A. She did.

14 Q. Did she also simply give money to you and to your
15 other siblings?

16 A. She did.

17 Q. And in that regard, going back to the beginning of
18 the day, I had asked you about moneys that your mother
19 loaned to you of approximately \$400,000 that she
20 ultimately forgave. Those were not, that was a
21 non-trust loan; is that correct?

22 A. That is correct.

23 Q. That was her money; correct?

24 A. That is correct.

25 Q. When your mother and father bought the Rockville



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1 home because your sisters or at least your sister Jacquelin
2 according to your testimony wanted the house in Rockville,
3 was that with personal funds and/or borrowed moneys?

4 A. It was borrowed money because the estate, their
5 liquidity had been compromised. And so it was with borrowed
6 money. When we were talking -- may I ask --

7 MR. BABCOCK: No. There's no question.

8 BY MS. WALL:

9 Q. If you didn't finish your answer. I didn't mean
10 to cut you off. Go ahead.

11 A. No. That's fine.

12 Q. Was your mother generous financially with all of
13 her children?

14 A. She was very generous. I -- as was my father. I
15 remember that my former sibling Jacquelin wanted her son to
16 go to Woodberry Forest Boarding School. And she came to me
17 and asked me to go talk to my father about providing the
18 funds to do that, which I did. And he went there. And he
19 was, my father was glad to do it. But my sister was
20 hesitant to go to him directly and she came to me for that.
21 And I went and on her behalf spoke to my father. He
22 provided the funds for her, for that to occur. And was glad
23 to do it.

24 (Defendant's Exhibit Number Twenty-four was marked for
25 identification purposes.)



1 Q. I'm going to hand you finally as the last exhibit
2 what is entitled affidavit of Thomas C. Stevenson with a
3 date of December the 29th, 2011. Is this your affidavit?

4 MR. SHARPLESS: Twenty-three. Is this
5 number Twenty-three?

6 MS. WALL: Yes.

7 A. Mine says Twenty-four.

8 MS. WALL: Oh, okay. Twenty-four.

9 A. Yes. It is. It's my signature.

10 BY MS. WALL:

11 Q. And was it true when you signed it?

12 A. It was.

13 Q. And does it continue to be true today?

14 A. It does.

15 Q. Let's just take a quick break.

16 VIDEOGRAPHER: Off the record at 5:21
17 p.m.

18 (Off the Record.)

19 VIDEOGRAPHER: On the record at 5:25 p.m.

20 BY MS. WALL:

21 Q. Just a few concluding questions for you, Tom. As
22 I understand your testimony and what we've established here
23 this afternoon, you paid back to the two trusts almost a
24 million dollars, about \$950,000 give or take. I don't have
25 all the math in front of me.



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1 A. Right.

2 Q. But does that sound about right?

3 A. Yes, ma'am.

4 Q. Now, how much, did you take more than that?

5 A. No, ma'am.

6 Q. Then why did your sisters pursue you when you paid
7 back the moneys that you took from the trust and placed into
8 your businesses?

9 A. I can't, I don't know. I had been as forthcoming
10 as I can be. Sounds self-serving. I tried to do the best I
11 could. And anything and everything I either said or did
12 they found to be objectionable, untrue, devious, delay. And
13 to not only sue me but then to go to the FBI to find a
14 criminal action is just part of what they deemed I needed to
15 have happen. So I can't answer it any more than that.

16 Q. All right. And the lawsuit brought against you,
17 your, the confession of judgment against you and these
18 various meetings that you had with your siblings in 2007
19 with the outcome that it was, what has this done to you?

20 A. Well, I am financially ruined which is interesting
21 because that is in an e-mail from my former brother-in-law
22 Bill Bennett to my son Tom saying that I was facing a
23 lawsuit --

24 MR. BABCOCK: Objection. Hearsay.

25 A. -- that would probably ruin me. And

1 psychologically I have been diagnosed with what's commonly
2 called post-stress, post-traumatic stress disorder for which
3 I have received various forms of treatment. I spiritually
4 am or, psychologically back to it, depressed. And but
5 spiritually I am burdened and downcast and defeated. And so
6 I am, the judgment on me has a very heavy burden to bear in
7 terms of going forward and getting credit and various things
8 like that. The notion that my, no matter almost no matter
9 what I did but certainly knowing what I did to have not only
10 a lawsuit but an effort to, concerted effort to go not FBI
11 and have me found to be a criminal and put in jail. The, I
12 used to during the lawsuit I would get the pattern that they
13 had was to send me stuff every two weeks or three weeks on a
14 Friday that I would be at some place or provide something.
15 And with the clear undertone that I was either holding back
16 or trying to evade and that kind of thing. One time I got
17 the mail on a Friday and it was a series of photographs.
18 And it was the front of my house. And it was the side of my
19 house. It was the back of my house. It was the top of my
20 house. It was a picture of my house with the garage open
21 showing that I had a sports car, that I was, that I had
22 pictured of the front of my business, the side of my business,
23 all around my business. And there was no, there was nothing
24 else but those photographs in the mail. So it has, it's been
25 like my brother-in-law wrote me, it has ruined me.



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1 BY MS. WALL:

2 Q. And what about the extended Stevenson family? Do
3 y'all do holidays together? Do you even live here anymore?

4 A. No. I don't live here and no we don't have
5 holidays and --

6 Q. That's all I have. Thank you.

7 EXAMINATION

8 BY MR. SHARPLESS:

9 Q. Mr. Stevenson, I'm Rick Sharpless. I know we've
10 met this morning and spoken before. I represent
11 Lynn Kerrison and Dixon-Hughes in this litigation. I do have
12 a few questions for you today. If at any time you don't
13 understand my question, just stop me and ask me to repeat it
14 or rephrase it; okay?

15 A. Yes, sir.

16 Q. And I'll try to be brief in my questions and try
17 to keep them focused. And I hope that you can do so in your
18 answers. When did you first meet Lynn Kerrison?

19 A. I have been a client of Barry Gumb for a long
20 time. When Barry was on his own after he suffered the going
21 down with Pug Ravenel's firm which was Capital South, he
22 worked there and then went on his own. And I started doing
23 my work with Barry. And then Barry added on and merged and
24 all of that. And somewhere along the line he, Lynn Kerrison
25 came into his firm. But I never, I did not know her. I had



1 not met her until she made the call or that I had the
2 meeting with Lynn and Mr. Carter, whatever the record
3 states. I did not know her until then.

4 Q. So it was at that first meeting, in-person meeting
5 that you met Ms. Kerrison; is that right?

6 A. That's correct.

7 Q. All right. And what did you understand her role
8 to be in connection with that meeting?

9 A. Well, Henry Buist had died. And Dan had made the,
10 we but primarily Dan decided that we would move the
11 accounting and bookkeeping function to Pratt-Thomas and Gumb,
12 which it was at that time. And he did all of that. And I
13 still did not, had not met or knew of Lynn Kerrison. So it
14 was only by name that I knew her until that meeting. But I,
15 from Dan telling me that she was keeping the books and that
16 kind of thing.

17 Q. So going back to your answers, sir, at the time
18 Ms. Kerrison worked for Pratt-Thomas Gumb; correct?

19 A. Well, I didn't know that at the time. But
20 apparently she did.

21 Q. Apparently?

22 A. Right.

23 Q. And her function as you understood it at that time
24 was accounting and bookkeeping; is that correct?

25 A. Correct.



1 Q. And preparing tax returns?

2 A. Yes.

3 Q. Now, she didn't sign checks, did she?

4 A. She did not.

5 Q. Okay. And, in fact, the checks at that time were
6 being written by Ms. Heisenbottle (sic)?

7 A. Yes, they were.

8 Q. Okay. And at some point during the year a record
9 of the checks that had already been written would be brought
10 to Ms. Kerrison or to Pratt-Thomas Gumb; is that your
11 understanding?

12 A. Well, I didn't have anything to do with that so --

13 Q. Who did?

14 A. My brother Dan.

15 Q. All right, sir. So we would have to ask Dan to
16 know for sure how that information got other to
17 Ms. Kerrison?

18 A. Yes, you would.

19 Q. Now, at that meeting what did you understand
20 Ms. Kerrison's role to be? Was she just there to present
21 information?

22 A. Primarily. She was keeping the records involving
23 the, she had the checks involving the trust matters. And
24 that's, she provided that information. That's all I knew.

25 Q. Did she provide an outline or a summary of the

1 total of the checks that had been written to the businesses
2 with which you were involved?

3 A. I believe she did.

4 Q. And the businesses with which your brother Dan was
5 involved; is that correct?

6 A. Yes. That's correct.

7 Q. Do you remember -- Ms. Kerrison, I'm not talking
8 about Mr. Carter who I know was present at this meeting. Do
9 you remember Ms. Kerrison saying anything else at that
10 meeting other than presenting a summary of what the checks
11 written had been?

12 A. I don't.

13 Q. All right. Now, what's the next time you remember
14 having personal communication, you yourself with
15 Ms. Kerrison?

16 A. At the second meeting that we had with Mr. Carter.
17 I think there were two meetings.

18 Q. All right. And are these, are these meetings both
19 in 2001 relatively close in time?

20 A. No.

21 Q. All right.

22 A. No. They weren't. I mean, I can't, but they were
23 not close in time, the meetings.

24 Q. Are we talking about a 2002 meeting then that
25 occurred, about a year later?



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1 A. Yes.

2 Q. All right. So when you say second meeting, you're
3 referring to that meeting that was about a year later?

4 A. Correct.

5 Q. What was Ms. Kerrison's role at that meeting as
6 you understood it?

7 A. She had been keeping track of all of the checks
8 that had been written. And I, I think I commented to her
9 that I was glad she was, and that that was important that
10 she do that. And but that's all, that's all I --

11 Q. Did she present the same type of information
12 understanding that the numbers may have changed at that
13 second meeting that she had at the first?

14 A. Yes. Yes, sir.

15 Q. What's the next contact that you remember with
16 Ms. Kerrison?

17 A. I believe it was at that, the, this first family
18 meeting that -- well, I had gone in to see her, the day or
19 two prior to that family meeting. But I went to see her to,
20 I think that was the first time I had seen her in her
21 office, first time I had really talked to her when I wrote
22 the checks back to the trust. And then she was at the
23 family meeting.

24 Q. Now we're talking about the family meeting that
25 occurred in 2006; is that correct?



1 A. I thought it was in 2007 but it was in 2006?

2 Q. Okay. There was a meeting on April 27th I believe
3 of 2006 at which you, your brother Dan, Ms. Turner,
4 Mr. Carter and Ms. Kerrison were present?

5 A. Oh, I'm sorry. Yes.

6 Q. All right.

7 A. Yes. I'm sorry.

8 Q. All right. That's the meeting we're referring to?

9 A. Yes.

10 Q. All right. And what do you remember Ms. Kerrison
11 saying if anything at that meeting?

12 A. I believe she presented the loan, the amounts of
13 money and, but I don't think anything else but that. I
14 might mention about that meeting that I believe that in
15 addition, there was another person in that meeting who, I
16 believe it was Edward Bennett who was an associate of
17 Mr. Carter's was I think in that meeting as well.

18 Q. Are you aware of what contact if any your brother
19 Dan had with Ms. Kerrison?

20 A. I am not.

21 Q. Haven't talked about it with him?

22 A. I have not.

23 Q. Have you seen the lawsuit that's been filed
24 against Ms. Kerrison and Mr. Carter?

25 A. I have not.



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1 Q. Are you aware in general that they are being sued
2 for professional negligence and alleged wrongdoing for
3 failing to prevent or to give notice earlier of the loans
4 that were made from the trust or what the, or what your
5 former siblings claim are loans?

6 A. Well, I've not seen it and no one has said to me
7 what specifically it is. But I am, I'm aware that there is
8 this, that these are the issues that are out there.

9 Q. When you referred earlier to a suit against third
10 parties, is a suit like this one what you understood
11 somebody to be talking about?

12 A. This one meaning your, this suit?

13 Q. Yes.

14 A. Well --

15 Q. The suit against Mr. Carter and Ms. Kerrison.

16 A. When they talked about a third party lawsuit I,
17 one, didn't know what they were talking about to begin with.
18 And this, given what I've been through, I never imagined
19 that I would be going through a, anything like what I went
20 through. And so I don't know what a third party lawsuit is.

21 Q. All right, sir. Do you think --

22 A. I may --

23 Q. Do you think Ms. Kerrison did anything wrong from
24 what you know?

25 A. I do not. And furthermore I apologized to her as

1 the party of, I mean, I'm the responsible party. And that's
2 my apology to her and to Mr. Carter and to everybody else in
3 the room.

4 Q. I was going to ask the same question with respect
5 to Mr. Carter. Do you think Mr. Carter did anything wrong?

6 A. I do not.

7 Q. Give me just a minute. Have you heard all of my
8 questions, sir?

9 A. I have.

10 Q. And did you hear all of Ms. Wall's questions
11 earlier today?

12 A. I did.

13 Q. And have you tried to give truthful answers to the
14 very best of your ability throughout?

15 A. I have.

16 Q. Thank you, sir. I have no other questions.

17 MR. BABCOCK: Let's take a brief break.

18 VIDEOGRAPHER: Off the record at 5:45
19 p.m.

20 (Off the Record.)

21 VIDEOGRAPHER: This is the end of
22 videotape number three in the deposition of
23 Thomas C. Stevenson. Off the record at 5:45
24 p.m.

25 This is tape number four to the videotaped

1 deposition of Thomas C. Stevenson. On the record
2 at 6:02 p.m.

3 EXAMINATION

4 BY MR. BABCOCK:

5 Q. Mr. Stevenson, let me make it clear. You are not
6 an accountant; correct?

7 A. I am not.

8 Q. And you're not a lawyer; correct?

9 A. Correct.

10 Q. So you would have no way of knowing whether an
11 accountant breached its standard of care, would you?

12 A. No. I wouldn't.

13 Q. And you would have no way of knowing whether a
14 lawyer breached his standard of care, would you?

15 A. No.

16 Q. Mr. Stevenson, you're mad, aren't you?

17 A. Well, I'm, I have been through a lot, and I'm
18 depressed and I'm upset about it. Yes.

19 Q. And you're mad at your three sisters, aren't you?

20 A. I haven't been sued or had anybody to go to the
21 FBI like has happened to me. And as a consequence, I have a
22 good deal of anxiety about that at this point.

23 Q. Anger and resentment; right?

24 A. Well, I'm again having been through a lawsuit in
25 which I was pretty well-worked over, deposed for over four

1 days and had my siblings find it important to go to the FBI,
2 I find it, and I think anybody would, to be difficult. And
3 but I'm trying to deal with it best I can.

4 Q. Well, every chance you had today you referred to
5 your sisters as your former siblings, didn't you?

6 A. Yes, I did.

7 Q. All right. And the reason you consider them to be
8 former siblings is because of the lawsuit they brought
9 against you and the criminal issue that you testified about
10 before; isn't that right?

11 MS. WALL: Object to the form.

12 A. Yes. That's correct.

13 BY MR. BABCOCK:

14 Q. Okay. Now, let's look at the Exhibits Twenty-one
15 and Twenty-two.

16 MS. WALL: You're going to have to
17 identify them because --

18 MR. BABCOCK: I'm going to.

19 BY MR. BABCOCK:

20 Q. Let's put these over here. All right. Exhibit
21 Twenty-one is the agreement of settlement and release in the
22 litigation that your sisters brought against you; correct?

23 A. Correct.

24 Q. And Exhibit Twenty-two is the confession of
25 judgment that got filed when you didn't make your payments

1 under your agreement; correct?

2 A. Correct.

3 Q. All right. Now, so that we're clear on the
4 record, the litigation that your sisters brought against you
5 involved the things you've been talking about today, your
6 actions as trustee in investing, borrowing, call it what you
7 will, but pulling money from the estate, the two trusts, the
8 Q Tip trust and the marital trust; correct?

9 A. Correct.

10 Q. Now, and I want to be absolutely clear on this,
11 Mr. Stevenson. You go over to page four of Exhibit
12 Twenty-one which is the agreement of settlement and release,
13 you agreed to pay 5-, I'm sorry, 2 million dollars;
14 correct?

15 A. Yes.

16 Q. That was to settle that lawsuit with your sisters;
17 correct?

18 A. Correct.

19 Q. And that's something that, and I think you noted
20 earlier you initialed each of these pages, didn't you?

21 A. I did.

22 Q. All right. And you voluntarily signed this
23 document, didn't you, to end that litigation?

24 A. Yes, I did.

25 Q. Now, as part of that resolution to that litigation



1 involving your sisters, you gave up your interests in the
2 estate and trust, didn't you?

3 A. Yes, I did.

4 Q. And you gave up your interest in the property we
5 talked about earlier, the lake property; correct?

6 A. I did.

7 Q. And I think as you testified earlier you made two
8 payments, but then didn't make payments thereafter under this
9 settlement agreement; correct?

10 A. Correct.

11 Q. And is that because you can't pay?

12 A. That is correct.

13 Q. And that is why you stopped paying; correct?

14 A. Correct.

15 Q. And that's why you're not paying now; is that
16 correct?

17 A. Correct.

18 Q. Mr. Stevenson, before you came here to testify at
19 this deposition, what did you do to prepare?

20 A. Well, I, the only person that I spoke to was
21 Ms. --

22 Q. Ms. Wall?

23 A. Ms. Wall. And other than that I have done nothing
24 to prepare for it.

25 Q. Okay. Ms. Wall's office prepared that affidavit



1 that we saw earlier today as Exhibit Twenty-four; correct?

2 A. Yes.

3 Q. Okay. Now, that affidavit is dated back in
4 December of 2011. Right?

5 A. Right.

6 Q. And so I imagine you had interaction with
7 Ms. Wall's firm at that time period; is that correct?

8 A. Yes.

9 Q. All right. Had you had interaction with her firm
10 before that time?

11 A. No.

12 Q. Between the time you did that affidavit and then
13 had your discussion with Ms. Wall before you came here to
14 testify today; had you had any other interaction with
15 Ms. Wall's firm?

16 A. No.

17 Q. And did you look at any documents before you came
18 and testified today?

19 A. Yes, I did.

20 Q. What documents did you look at?

21 A. A number of, to refresh my memory, a number of
22 these documents that I have seen today.

23 Q. The exhibits we've seen today?

24 A. Yes, sir.

25 Q. And those were documents that Ms. Wall provided to

1 you; is that right?

2 A. That is correct.

3 Q. And did you talk to Mr. Sharpless at all before we
4 came in for your deposition today?

5 A. He and I had a telephone conversation a year or
6 more ago. But just a phone conversation. I've never met
7 him or spoken to him about any of this other than a phone
8 conversation about a, I think it was a year ago or maybe
9 longer.

10 Q. All right. And with the interaction you had with
11 Mr. Sharpless, did you initiate that or did he?

12 A. I think he called me.

13 Q. And how about the various interactions with
14 Ms. Wall's firm? Did you initiate that or did somebody from
15 her office or did she call you?

16 A. She called me.

17 Q. And you're testifying today in South Carolina;
18 correct?

19 A. Yes.

20 Q. And you live in North Carolina; correct?

21 A. Correct.

22 Q. So you voluntarily come down here to testify;
23 correct?

24 A. Correct.

25 Q. All right. No subpoena or anything like that;



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1 right?

2 A. Correct.

3 Q. Talk a little bit just so we're clear on the
4 record with the accountants. We've talked about
5 Lynn Kerrison. And you answered some questions earlier
6 with regard to when you interacted with her. But you
7 understood she was part of the Pratt-Thomas Gumb Accounting
8 Firm; correct?

9 A. I did not know. I do not, I did not know she was
10 part of the Pratt-Thomas Firm until those times that I met
11 with her.

12 Q. That's fine. But then you did know that?

13 A. Yes. Yes.

14 Q. And you later were aware that that Pratt-Thomas
15 Gumb Accounting Firm came to be part of Dixon-Hughes;
16 correct?

17 A. Correct.

18 Q. Now, let's talk a little bit about the accountants
19 who did work for you. As I understand it you considered
20 Mr. Gumb to be your accountant; correct?

21 A. Yes.

22 Q. And he prepared tax returns for you; correct?

23 A. Correct.

24 Q. And do you know who did the accounting work for
25 your brother Dan?



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1 A. I do not.

2 Q. Do you know who did the accounting work for Dan's
3 businesses?

4 A. I am not sure. But it could have been Harold
5 Pratt-Thomas, the firm.

6 Q. And that same firm, the Pratt-Thomas Gumb Firm did
7 work, accounting work for your mother; correct?

8 A. Yes. Yes.

9 Q. And now, and your company Fabtech which as I
10 understand it you were the sole owner of?

11 A. Correct.

12 Q. That company was actually set up I think you
13 indicated by Mr. Gumb; correct?

14 MR. SHARPLESS: Object to the form.

15 A. Well, it was set up by a law, a lawyer. Mr. Gumb
16 was the accountant for it.

17 BY MR. BABCOCK:

18 Q. Okay. So you used a lawyer to do the paperwork.
19 But Mr. Gumb was the accountant for it from the very start;
20 correct?

21 A. Correct.

22 Q. And I think your method of payment at Fabtech was
23 you got distributions from Fabtech on a periodic basis; is
24 that right?

25 A. Correct.



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1 Q. And Mr. Gumb was the one who helped calculate what
2 distributions would come to you; correct?

3 A. Yes.

4 Q. Other than Mr. Gumb did anybody else at the firm
5 do work for Fabtech?

6 A. Yes. Another gentleman. I'll have to get a list
7 of the people there to come up with that.

8 Q. Don't worry about that. But it would be another
9 individual at the Pratt-Thomas Gumb Accounting Firm, now
10 Dixon-Hughes?

11 A. Correct.

12 MR. SHARPLESS: Object to the form.

13 A. He's no longer there but yes.

14 BY MR. BABCOCK:

15 Q. But he was there at the time?

16 A. Correct.

17 Q. Now, we talked earlier today about the marital
18 trust and the Q Tip trust. And originally as I understand
19 it, there were four trustees for those two trusts; correct?

20 A. Correct.

21 Q. That would have been yourself and Dan along with
22 Norman Stevenson and Henry Buist; correct?

23 A. Correct.

24 Q. And the trustee loans or investments that were
25 made involving you and your companies and Dan and his

1 companies, they began after Mr. Stevenson and Mr. Buist
2 died; correct?

3 A. Correct.

4 Q. And at that point in time which was the late 1990s
5 and going forward, there were just two trustees, nobody else
6 replaced them, did they?

7 A. No.

8 Q. So the two trustees were yourself and Dan;
9 correct?

10 A. Correct.

11 Q. And as I understand your testimony when the loans
12 were taken, the moneys were taken from the trusts, you
13 mentioned that to Dan; is that right?

14 A. Yes, I did.

15 Q. And --

16 A. I went to him with an idea.

17 Q. Okay. And did you go to him each time moneys were
18 taken from the trust?

19 A. Yes, I did.

20 Q. And each time moneys were taken from the trusts
21 you tried to even it out between the Q Tip trust and the
22 marital trust; correct?

23 A. Yes.

24 Q. All right. And did you understand that Dan was
25 also taking money from the trusts?



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1 A. Not in the beginning. Not for some time.

2 Q. What would some time be?

3 A. Well, the time that I became aware of it was when
4 he called me to tell me that the loan that he had at the
5 Bank of South Carolina which my mother had guaranteed, that
6 that loan had been called. And that mother was going to
7 have to pay the loan. He called me to ask me to come to his
8 office to tell me that.

9 Q. And that --

10 A. I --

11 Q. I'm sorry. Go ahead.

12 A. I can't, I can't recall, I just would have to look
13 closer at when he started to take, to put, to take money and
14 when I got the call from him. But according to what he had
15 stated at some point in there, his mother knew about what he
16 was doing and he was able to have her go with him to the
17 bank and sign as a co-, I mean, as a, you know, a --

18 Q. Guarantor of some sort?

19 A. -- a guarantor.

20 Q. And that was something that your mother did that
21 she knew about and she approved of?

22 A. Well, I assume so. But yes.

23 Q. But there was a period of time after that when he
24 would take money from the trust and not talk to anybody;
25 correct?

1 A. Correct.

2 Q. And you were aware of that at least by the time of
3 that first meeting in 2001 that we've heard about with
4 Ms. Kerrison and Mr. Carter; correct?

5 A. Yes.

6 Q. Now, you knew in early 2001 that your sister
7 Kathleen and Dan were, had, were co-powers of attorney for
8 your mom; right?

9 A. Correct.

10 Q. And it is I think clear from your testimony today
11 that in that 2001, we're just going to talk about 2001
12 first, in that 2001 time period, when you would take money
13 from the trust you didn't tell Kathleen, did you?

14 A. No. No. I did not.

15 Q. Now, we're going to talk about the October 2001
16 meeting in a minute. But I would like to be clear on the
17 methodology by which the moneys were taken from the trusts;
18 okay?

19 A. Yes, sir.

20 Q. All right. You didn't write checks from the
21 trusts, actually physically write the checks, did you?

22 A. I did not.

23 Q. Originally those checks were written by your
24 mother's assistant; correct?

25 A. I don't know.



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1 Q. Well, wasn't there a Pat Napolitano that worked
2 with your mother?

3 A. Yes.

4 Q. All right. And do you know whether she wrote
5 checks that were used for the trust or from the trust?

6 A. I would have thought Norman would have written
7 those checks or Henry Buist but --

8 Q. All right. I'm talking about just so we're
9 clear --

10 A. I know she would, I know that money would go to,
11 that they would write checks and deposit money into her
12 account monthly. So I believe that Norman and Henry did
13 that. Ms. Napolitano and the other lady were just writing
14 mother's checks to pay her bills.

15 Q. Okay.

16 A. They were not involved with the trust at all.

17 Q. I didn't make my question clear and I apologize
18 for that. I'm talking about that period of time after
19 Norman Stevenson and after Mr. Buist had died. After that
20 time period. And I'm looking now at that, let's look at the
21 2001 time period. There was a period of time when checks
22 were written by Ms. Napolitano from the trusts; correct? Or
23 do you know?

24 A. Well, in my, I mean, I don't think I know. I
25 don't know.

1 Q. Okay. Was Dan more involved in that than you?

2 A. Yes.

3 Q. Was there a period of time do you know when the
4 checks were actually being written from the trusts by
5 someone over at the accounting firm?

6 MR. SHARPLESS: Object if he knows.

7 A. I don't know. And --

8 BY MR. BABCOCK:

9 Q. Okay..

10 A. I don't know. Dan handled all that. And I just
11 don't know.

12 Q. All right. When you wanted a check for Fabtech,
13 how did you get it from the trusts?

14 A. How many checks were there to Fabtech? I'm not
15 sure. Maybe, I don't know, over a five-year period of time
16 I just would have to go back and look. I mean, it's in the
17 record. But I would periodically call Dan and say that I
18 think that some amount of money, \$25,000, a hundred thousand
19 dollars ought to be put into this investment that I
20 conceived or considered. And he would in a day or two bring
21 me the checks. And they were signed by him. They were made
22 out I think primarily to the company. I'm not, there may
23 have been some made out to me. But I think they were
24 primarily made out to the company. And I, that's an --

25 Q. So you asked for Dan. He got the checks and gave

1 them to you; is that right?

2 A. That's correct.

3 Q. And those checks, you think some were for Fabtech
4 and some were directly for you?

5 A. I don't think any of them were directly to me.
6 But I'm not sure, sir.

7 Q. Either Fabtech or you though?

8 A. Yes.

9 Q. Let's move over to the first meeting that you had
10 with Mr. Carter and with Ms. Kerrison. We've talked about
11 that some today. But I want to go back and make sure I've
12 got a few points clear for the jury. There was a, the
13 document which we've marked as Defendant's Exhibit Four or
14 Exhibit Four is a letter of November 29, 2001, from
15 Mr. Carter to you and Dan Stevenson; correct?

16 A. Yes.

17 Q. All right. And the first paragraph references the
18 meeting at Lynn Kerrison's office on October 23rd, of 2001;
19 correct?

20 A. Yes, it does.

21 Q. All right. And one of the issues that was raised
22 by Mr. Carter at that meeting was the need to have
23 promissory notes; correct?

24 A. Correct.

25 Q. And as I understand it initially promissory notes



1 were drafted by you for the Fabtech moneys; correct?

2 A. Yes. And the bigger issue always was what to do
3 about these, the, the money that Dan, involving Dan. And
4 not so much my, since I had already written a set of notes,
5 set a precedent and the protocol for it, they were already
6 in place, that the bigger issue was the moneys involved with
7 Dan.

8 Q. And --

9 A. And at that point I think again I was only
10 becoming aware of this loan that Dan had and his statement
11 that mother, well, I mean mother was on that loan. These
12 other amounts I was, one, not aware of them; and, two, we
13 needed to, I was not clear what he intended or, but getting
14 the notes secured, or getting the notes were primarily
15 directed at Dan.

16 Q. You had already done contemporaneous notes when
17 you had loans involving Fabtech. Is that your testimony?

18 A. The first investments I call them.

19 Q. The first one or two?

20 A. Yes.

21 Q. All right. You say the word investment. Were
22 shares of stock issued by Fabtech to the trust?

23 A. No. A note was.

24 Q. A note. And that's normally what we use with a
25 loan, isn't it?



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1 A. Well, the --

2 Q. It's either yes or no and then you can answer the
3 question.

4 MS. WALL: Object to the form.

5 A. Well, the note that we all had from Sunox was,
6 while it referred to moneys owed was part of their way of
7 paying, paying us off. And the notes were then viewed as, I
8 mean, they were secured notes representing the need to pay
9 back the, I wanted the investment to be secured as best I
10 could by having the notes in place by the company..

11 BY MR. BABCOCK:

12 Q. All right.

13 A. But the, the vehicle itself was an investment.
14 The, I mean, companies issue bonds all the time, and other
15 debt instruments that are investments. And that is what I
16 considered these to be.

17 Q. We're not going to belabor this point. But when
18 you borrow money from the bank you normally sign a note for
19 that money; correct?

20 A. Correct.

21 Q. And when you talk about security, there was no
22 security given for these notes, was there?

23 A. Well, there was my personal guarantee and the
24 security of the company signed it pledging its assets and
25 its wherewithal and my personal guarantee.



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1 Q. Is it your testimony that with every note you
2 signed or that was signed for Fabtech you had a personal
3 guarantee? Is that your testimony?

4 A. It was certainly in the two that I prepared. And
5 I believe it would have been through the others. I may be
6 wrong about that. But the protocol and the original notes
7 that I set up had my personal guarantee on them. And I
8 fully intended all of the notes to have my personal
9 guarantee to them.

10 Q. And let's going forward after your first couple of
11 notes you stopped preparing the notes; correct?

12 A. Well, I --

13 Q. Is that right or wrong?

14 A. I thought that the protocol was set up that we
15 would adjust the note amounts by, if, I didn't know that
16 they would be continuing, I didn't know how much or whether
17 we would continue with that investment plan or not. I just
18 wanted to see what it was like to start off with.

19 Q. Okay.

20 A. So any further action like that was simply to,
21 would be simply to adjust the amount of the note, not the
22 protocol of the note being signed by the company and
23 personally guaranteed by me --

24 Q. All right.

25 A. -- at a higher interest rate than was out in the



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1 market.

2 Q. What I want to ask you is after you prepared the
3 first two, who prepared the notes after that point in time?
4 It wasn't you, was it?

5 A. I don't know. It may have been. I'll have to
6 look at it.

7 Q. You don't remember either between the lawyer and
8 the accountant that notes were prepared? You don't remember
9 that?

10 MS. WALL: Object to the form.

11 A. Well, as I said most of the notes that were
12 prepared were for Dan and making whatever arrangements he
13 was making for his. His were in an entirely different set
14 of circumstances than mine.

15 BY MR. BABCOCK:

16 Q. All right. Let's deal with him then. We'll stay
17 with him for a minute. Who prepared the notes that he
18 signed?

19 A. I do not know.

20 Q. Do you know whether the law firm did, Mr. Carter's
21 law firm?

22 A. I do not know.

23 Q. Do you know whether Ms. Kerrison's accounting firm
24 did?

25 A. I do not know.

1 Q. And as you sit here today you don't recall for
2 certain who did the notes for your firm, Fabtech, after you
3 did the first two, do you?

4 A. It may have been Howell Morrison who was working
5 for us. But the, he was aware again of the notes that were,
6 the original notes that were the protocol as I call it, the
7 foundation on which the investment strategy that I came up
8 with were based.

9 Q. All right. Mr. Stevenson, I know it's getting a
10 little late here.

11 A. Right.

12 Q. You're testifying under oath.

13 A. Yes, sir.

14 Q. And I'm not wanting you to guess. I want to tell
15 you to tell me what you know or if you don't know tell me
16 you don't know; is that fair?

17 A. That's fair.

18 Q. All right. So as you sit here right now is it
19 fair that you don't know who prepared the notes after the
20 first couple that you did for Fabtech?

21 A. It is, it is my belief that Howell Morrison
22 prepared the note though I'm not sure about that.

23 Q. All right. So you're as sure of that as other
24 things you've testified to today?

25 MS. WALL: Object to the form.



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1 MR. SHARPLESS: Objection.

2 BY MR. BABCOCK:

3 Q. That's a yes or no.

4 A. Would you repeat the question?

5 Q. Yeah. Are you as sure of that that Mr. Morrison
6 was involved in the note preparation as some of the other
7 things you've testified to today?

8 MR. BABCOCK: Objection to the form.

9 MR. SHARPLESS: Objection.

10 A. I am, yes.

11 BY MR. BABCOCK:

12 Q. All right. Now, the meeting that you had with
13 this 2001, fall 2001, October 23, was at Ms. Kerrison's
14 office; correct?

15 A. Yes.

16 Q. And at that point in time Mr. Carter discussed
17 with you the need to discuss these loans with Ms. Turner who
18 had the power of attorney with your, on your mother;
19 correct?

20 A. Correct.

21 Q. And he also talked about the need, you being
22 Mr. Carter the need to talk to your siblings; correct?

23 A. Correct.

24 Q. And that's what he indicated in the third
25 paragraph of that letter; correct?



1 A. Correct.

2 Q. Now, just to put us in the right time frame,
3 Mr. Stevenson, I'm looking at Exhibit Nine. And there's a
4 letter that was utilized earlier from Mr. Carter to
5 Mr. Morrison; correct?

6 A. May I see that?

7 Q. Sure.

8 A. Yes.

9 Q. Okay. And that's when Mr. Morrison came into
10 play, that was early 2003; correct?

11 A. Correct.

12 Q. Now, let's go backwards to the point in time after
13 Mr. Carter wrote you in November of 2001. In the first
14 three or four months after that letter was written, did you
15 have any contact with Mr. Carter?

16 A. Would you say that again?

17 Q. Sure. Let's just try and, let's try and we'll
18 just look at the, the letter was written on November 29,
19 2001. Let's look at the first quarter of 2002.

20 A. May I --

21 Q. Sure. You've got the letter right there.

22 A. Oh, this one. Okay. What about it now?

23 Q. I'm asking you what contact you had with
24 Mr. Carter between, in the first quarter of 2002.

25 A. I don't, I don't recall any contact with him one



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1 way -- I don't recall. No.

2 Q. During that time period, that first quarter of
3 2002, he never called you and asked how things were going
4 concerning discussing the strategy for meeting with your
5 siblings that he indicated in the third paragraph of that
6 exhibit, did he?

7 A. 2003 is when we met with Mr. Morrison?

8 Q. Yes, sir. We just looked at that letter. And you
9 testified earlier about a meeting in late 2002 with
10 Ms. Kerrison and Mr. Carter. We're going to get to that in
11 a minute. I'm just looking at the first quarter of 2002.

12 A. No.

13 Q. And the question I've asked you is Mr. Carter
14 didn't follow up on whether you had done anything to set up
15 the meeting with your siblings, did he?

16 A. He did not.

17 Q. And the same question for Ms. Kerrison during that
18 first quarter of 2002. She didn't contact you to see if
19 there had been a meeting for you with your siblings to
20 discuss these loans, did she?

21 A. She did not.

22 Q. Let's move to the second quarter of 2002. Same
23 questions. During that second quarter of 2002, another
24 three-month time period, Mr. Carter didn't contact you
25 concerning this meeting with your siblings, did he?



1 A. Not to my knowledge.

2 Q. All right. Same thing with Ms. Kerrison, she
3 didn't contact you concerning the meeting with the siblings,
4 did she?

5 A. Not to my knowledge.

6 Q. All right. Now, I'm going to give you Exhibits
7 Five, Six, Seven, Nine and Ten. And just for the record
8 Exhibit Five was the document entitled telephone
9 conversation with Tom Stevenson 11/12/02. Exhibit Six is
10 November 25, 2002 letter from Mr. Carter to Tom Stevenson
11 and Dan Stevenson. Exhibit Seven is a document, says
12 conference, or CONF Dan and Tom Stevenson, 4 p.m. Friday
13 December 6, 2002. And then Exhibit Nine is a January 14,
14 2003, letter from Mr. Carter to Mr. Morrison. And Exhibit
15 Ten is a letter of January 22, 2003, from Mr. Morrison to
16 Mr. Carter. And I'm really just giving you these at this
17 point for a frame of time reference; okay? Fair enough?

18 A. Yes, sir.

19 Q. All right. Now, before we get to the document
20 Exhibit Five which is a document which starts, says Tom
21 returned my call this morning, would it be correct to
22 understand that the first conversation you had or
23 communication you had from Mr. Carter to you checking up on
24 whether y'all had that meeting was on a telephone call on
25 November 12, 2002?



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1 MS. WALL: Object to the form.

2 BY MR. BABCOCK:

3 Q. Let me rephrase that actually. If you read the
4 first sentence here. It says Tom returned my call this
5 morning from my message left at his office yesterday
6 afternoon. So apparently there was a phone message from
7 Mr. Carter to you on November 11, '02, that you returned on
8 November 12, '02. Is that how you recall it?

9 A. And the question you've asked me is what, that
10 this is the first communication since the, since the earlier
11 time?

12 Q. The question for you is if this phone call that
13 was originated by Mr. Carter and then you returned was the
14 first contact you had with Mr. Carter since the November
15 2001 meeting we've already talked about concerning the
16 subject of talking to Kathleen and talking to the siblings.

17 A. Well, this is the only documented conversation, I
18 believe. I think I had told, or Heyward believed that I
19 would be doing the things that I needed to do to get the
20 notes signed, get a lawyer, get a meeting set up with my
21 sisters and/or with my sister Kathleen. And I was, was
22 doing some or all of that during 2002. But this was his
23 call back to me to check on that.

24 Q. Following up a year after the meeting to see what
25 you had done; right?

1 A. Right.

2 Q. And he, the second paragraph says, I reminded Tom
3 that some time ago he, Dan, Lynn Kerrison or another partner
4 employee of Pratt-Thomas Gumb and I met at, it says PT
5 Gumb's office to discuss the loans from his father's
6 testamentary trust to Dan and Tom. I had recommended at
7 that time Dan and Tom meet with their sisters and discuss
8 these loans from the trusts to them. And during that entire
9 year period you hadn't done that, had you?

10 A. Well --

11 Q. That's a yes or no and you can explain.

12 A. No. We hadn't.

13 Q. And during that entire time period, that one-year
14 period, neither Mr. Carter nor Ms. Kerrison had contacted
15 you to follow up as to whether you had done that, had they?

16 A. That's correct.

17 Q. And then if we look at the fourth paragraph it
18 says, I explained to Tom that as a lawyer for his mother at
19 least in drawing her will and estate planning matters I felt
20 an obligation to see that the family as a whole was aware of
21 these loans. He said he understood and asked me to leave it
22 in his hands, that he would take care of it when the time
23 was right. And the phrase the time was right is in
24 quotation marks; correct?

25 A. Correct.



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1 Q. Is that what you told him?

2 A. That is correct. Because in the earlier paragraph,
3 we had had a discussion and I about the incident with my two
4 sisters. And the anxiety that, disarray that they were in
5 at that time, that slowed me down from, slowed me down from
6 doing whatever, whatever I was going to do.

7 Q. Mr. Stevenson, in fairness, you could have met
8 with them individually as a group, individually or as a
9 group during that year between the fall of 2001 and the fall
10 of 2002, you could have done that; right?

11 A. The question is -- right.

12 Q. You could have done that; correct?

13 A. I could have done a lot of things.

14 MS. WALL: Object to the form.

15 BY MR. BABCOCK:

16 Q. And you didn't do that?

17 A. I did not do that.

18 Q. Okay. Now, you got a letter, you and Dan did,
19 which we've marked as Exhibit Six which is dated November
20 25, 2002. Do you see that?

21 A. I do.

22 Q. All right. And that letter is again urging you in
23 the third paragraph to discuss, you say according to that I
24 again urge you to discuss this matter with your sisters at
25 the earliest convenient time. I suggest you may wish to

1 discuss it first with Kathleen as she along with Dan holds
2 your mother's power of attorney and thus represents your
3 mother when the mother is unable to act. If I have not
4 heard from you by January 1, 2003, to the effect you have
5 discussed that with Kathleen, I feel responsible to contact
6 her at that time to inform her of these loans and recommend
7 that she discuss them with you. Do you see that?

8 A. I do.

9 Q. All right. And there was another conference call
10 or conference with Dan and Tom Stevenson on December 6,
11 2002; is that right?

12 A. Yes.

13 Q. All right. And who was present for that?
14 Mr. Carter was present; correct?

15 A. Yes.

16 Q. You were present; correct?

17 A. Yes.

18 Q. And Tom was present; correct?

19 A. Dan.

20 Q. I'm sorry. Dan; correct?

21 A. Correct.

22 Q. And the third paragraph of that document says, I
23 told him my aim was not to interfere in Stevenson family
24 business but since I had not been made aware of the loans
25 for the trust by the accountants, but since I had been made

1 aware of the loans from the trust by the accountants I
2 believed I was ethically compelled as Ms. S', assuming
3 Stevenson's will lawyer to try to protect and enforce her
4 interests as trust beneficiary. I explained that South
5 Carolina law requires a trustee to keep the beneficiaries of
6 the trust informed of the status of the trust and since
7 Ms. S is not competent that required informing Kathleen as
8 her POA, presumably power of attorney with Dan; correct?

9 A. Correct.

10 Q. And the next paragraph talks about you getting a
11 lawyer. And we think we heard earlier that you first went
12 to one law firm and then ended up with Howell Morrison;
13 correct?

14 A. Correct.

15 Q. And that was in January of 2003; correct?

16 A. Yes. It also says if he asks about the trusts, if
17 any further funds have been taken. And I responded that I
18 had not, I was not aware, Dan said he wasn't sure by himself
19 but I had not, but that's part of the conversation.

20 Q. All right. But the records will show what moneys
21 you took from the trust and what moneys Dan took from the
22 trust; correct?

23 A. Yes. They will.

24 Q. All right. Now, let's talk about this May 21,
25 2003, meeting at your parents' house. First off present at



1 that meeting was you, Dan and Kathleen; is that right?

2 A. That is correct.

3 Q. Now, between the time period of January 1, 2003,
4 and May 20, 2003, did Mr. Carter ever contact you to see
5 whether you had talked to your siblings?

6 A. I don't believe so. But we were working on that.
7 And I could have told him that we were working on it. But I
8 don't think that he called.

9 Q. There's no indication of a call from Mr. Carter or
10 Ms. Kerrison to you between that January '03 period and the
11 May '03 period, is there?

12 A. I'm not aware of one.

13 Q. Okay. Now, as I understand it at this meeting you
14 have testified that you were not mumbling; is that correct?

15 A. That's correct.

16 Q. And that you showed Kathleen a copy of a list of
17 assets for the family; is that right?

18 A. That's correct.

19 Q. All right. Now, let's be real clear on this.
20 That list was a Stevenson family asset list? Is that what
21 you called it?

22 A. That's correct.

23 Q. And it's your testimony that you tried to give it
24 to Kathleen and she wouldn't take it? Is that your
25 testimony?



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1 A. It is my testimony that I gave it to her for her
2 to look at and told her that that was hers if she, that it
3 was for her.

4 Q. All right. Did you keep that list?

5 A. She did not want it. She did not want to take it.

6 Q. That wasn't my question. Did you keep that list?

7 A. Eventually I kept it.

8 Q. All right. And, but you don't have that list
9 today, do you? The list you say you showed her in May of
10 2003.

11 A. I don't, but I -- no, I don't.

12 Q. My understanding was at the time of your
13 testimony, your deposition a few years ago you said you
14 didn't have a copy of that list.

15 MS. WALL: Object to the form.

16 A. Okay.

17 BY MR. BABCOCK:

18 Q. You're not here to testify that you have a copy of
19 that, are you?

20 A. No. I don't have a copy of it.

21 Q. And we're going back, 13, almost 10 years ago,
22 aren't we? 2003?

23 A. Right.

24 Q. Can you testify under oath what was said about, or
25 what was -- was this written or typed?

1 A. Typed.

2 Q. Who typed it?

3 A. My secretary at my office.

4 Q. And what was the specific phrase that was used
5 with regard to the Fabtech loans on this list?

6 A. State that again. What were the --

7 Q. I want to know if you can tell me exactly what the
8 phrasing was about Fabtech on this list.

9 A. I, it's the same that is on one of these documents
10 that I have been shown today. And it's a distinguishing
11 feature is that it has a personal guarantee of, and I think
12 we just used TCS as the --

13 Q. Are you talking about Exhibit Sixteen?

14 A. Yes.

15 Q. All right. I'm sorry?

16 A. Well, in the first meeting I'm not sure that, I
17 can't remember when Easy Tray became the name of that. But
18 this remained the same.

19 Q. Let's be clear. Easy Tray is Dan's company?

20 A. That's correct.

21 Q. All right. And the document we're looking at has
22 been identified as something that was used on April 27, '06;
23 correct?

24 A. Correct.

25 Q. And this document says Fabtech note personally



1 guaranteed by TCS?

2 A. Yes.

3 Q. Are you able to testify under oath that that's the
4 same phrase that was used in the piece of paper you say you
5 showed Kathleen in '03?

6 A. I am.

7 Q. How do you know that? It's ten years ago.

8 A. Because the personal guarantee by my was very
9 important to the whole, to what I was doing with the Fabtech
10 investment. And I wanted to make that clear all the time.

11 Q. All right.

12 A. Any time.

13 Q. I'm asking, and I want to make sure I understand
14 your testimony. Your testimony is this exact phrase is what
15 appeared on the 2003 document you say you showed Kathleen;
16 is that correct?

17 A. Yes.

18 Q. All right. That what I think would mean that
19 after you had that conversation on May 21st, 2003, you would
20 have called Mr. Carter and said, hey, I've had the
21 conversation you wanted me to have with Kathleen.

22 MS. WALL: Object to the form.

23 A. In my earlier deposition, I --

24 BY MR. BABCOCK:

25 Q. I don't want to hear about the deposition. I want



1 to hear about you today testifying with us in this case
2 right now.

3 A. Yes, sir. I was speaking of the earlier
4 deposition today.

5 Q. Oh, earlier today, today? Okay.

6 A. Yes. I stated that one of the failings I guess or
7 one of the issues is, and I talked to Dan about this is that
8 we had, I thought Dan was going to call Howell Morrison and
9 tell him that we had had the meeting which I have said in my
10 earlier deposition. And he thought I was going to call
11 Howell. Dan is, Dan arranged for us to meet with
12 Howell Morrison. Howell Morrison is Dan's best friend.
13 Howell Morrison is younger than I am and not, and I thought
14 that Dan was going to call Howell and tell him of this meeting.
15 Neither one of us did it and I, we should have called him to
16 tell him right away so that he would have called, hey,
17 Mr. Carter or at least him know that we had done what we
18 said we would do.

19 Q. Let's be very clear. You didn't call
20 Mr. Morrison, did you?

21 A. No. I did not.

22 Q. And we're talking about the May '03 meeting.

23 A. Right.

24 Q. You didn't send an e-mail or a letter to him
25 either, did you?



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1 A. I did not.

2 Q. And the same thing for Mr. Carter, you didn't call
3 him, you didn't write him and you didn't e-mail him, did
4 you?

5 A. No.

6 Q. And the same thing with Ms. Kerrison. You didn't
7 call her, you didn't write her and you didn't e-mail her,
8 did you?

9 A. I did not.

10 Q. So as we continued forward in 2003, you kept
11 taking some money for Fabtech, didn't you?

12 A. I would think so.

13 Q. All right.

14 A. I'm sure the records will show whatever I did.

15 Q. You will be comfortable with whatever the record
16 shows will be correct; right?

17 A. I will.

18 Q. And you wouldn't disagree with one check being
19 taken in 2002, one in 2003, I say one check, one from each
20 trust and two in 2004, would you?

21 MS. WALL: Object to the form.

22 A. No. I wouldn't object to that. That sounds like
23 the plan that I had.

24 BY MR. BABCOCK:

25 Q. And three more in '05; correct?



1 A. Yeah.

2 Q. Now, as we go forward with the rest of '03, no
3 contact by Mr. Carter to find out what you've done to tell
4 Ms. Turner or the siblings, was there?

5 A. No. I just regret that, and I've testified
6 earlier that I did not follow through. And I talked to Dan
7 at the time that one of us, I again thought he was going
8 to call Mr., I thought we had an obligation to call
9 Mr. Morrison because that is what we told him we were going
10 to do and that he would then since he was representing us he
11 would make whatever, he would either call Mr. Carter or
12 whatever. But I know that we met. I know that we should
13 have called our lawyer and we did not. I thought Dan was
14 and he thought I was.

15 Q. And we've been through that. But during the rest
16 of 2003 my question is you never got contacted by Mr. Carter
17 about talking to the siblings, did you?

18 A. I don't think so. But it was my responsibility to
19 get in touch with my lawyer. So I don't, I wasn't expecting
20 to hear from Mr. Carter.

21 Q. But Mr. Carter doesn't know what's happened. He
22 hasn't contacted you to find out what's happened in the last
23 part of 2003, did he?

24 MS. WALL: Object to the form.

25 A. I don't know whether he contacted Mr. Morrison or



1 not. I don't know. But we were, we were working with
2 Mr. Morrison and we had done what we said we would do. One,
3 that would be to get a lawyer. Two, to get the notes in
4 place. And three, to have the meeting and to begin the
5 process of having a full disclosure. So we were doing what
6 we were supposed to, what we were supposed to do.

7 BY MR. BABCOCK:

8 Q. I understand your testimony. But the question is
9 very simple.

10 A. Okay.

11 Q. Mr. Carter who you admit you didn't tell anything
12 about this, you say happened at this meeting, he doesn't
13 know anything about the meeting, he doesn't contact you
14 through the rest of 2003, does he?

15 A. Well, he's not my lawyer. He never has been my
16 lawyer. Mr. Morrison was my lawyer. I regret that I
17 didn't, I mean, I regret, I mean, I knew right after the
18 meeting that one of us should have called Mr. Morrison. I
19 have no idea about what Mr. Carter did or didn't do or
20 should have done.

21 Q. And I'm asking a simple question and we can move
22 on. During the remainder of 2003 you didn't get any phone
23 call from Mr. Carter asking about whether you told the
24 siblings, did you?

25 MS. WALL: Asked and answered.

1 had with Mr. Morrison, whether he did.

2 Q. I'm not asking about you talking to Mr. Morrison
3 or Mr. Morrison and Mr. Carter. I'm asking Mr. Carter to
4 you. No communication and you're testifying here today --

5 A. Yes.

6 Q. -- and I think it's clear from everything you've
7 heard and everything you said there was no communication
8 from Mr. Carter to you in 2004 about the conversation with
9 the siblings, was there?

10 A. Well, he -- no.

11 Q. Same thing for Ms. Kerrison. There was no contact
12 with Ms. Kerrison in 2004, was there?

13 A. No.

14 Q. Going to 2005, no contact by Mr. Carter in 2005
15 concerning the meeting with the siblings, was there?

16 A. If there's not a record here, then no.

17 Q. Same thing for Ms. Kerrison; correct?

18 A. Correct.

19 Q. I'm going to hand you two documents. One is a
20 document we've marked as Exhibit Eleven. And the other is a
21 document marked as Exhibit Twelve.

22 MS. WALL: Can you identify?

23 MR. BABCOCK: I'm sorry. Yes. Exhibit
24 Eleven is a document that starts at the top
25 conference with Tom and Dan Stevenson

1 3/27/06. And Exhibit Twelve is the March 28,
2 2006 letter from Mr. Carter to Dan Stevenson
3 and Tom Stevenson. Okay.

4 BY MR. BABCOCK:

5 Q. Now, the Exhibit Eleven is the notes apparently
6 that Mr. Carter took concerning the meeting at your, at his
7 office; correct?

8 A. Yes.

9 Q. Is that what you understand them to be?

10 A. Uh-huh (affirmative response).

11 Q. And then he wrote you on March 2006; do you see
12 that?

13 A. Yes.

14 Q. All right. And the second, well, second full
15 paragraph, the one that starts I told them the manner, do
16 you see that?

17 A. Yes, I do.

18 Q. All right. And that paragraph starts, I told them
19 that the manner and quality of what funds had been invested
20 were irrelevant to my concerns. I explained that I had been
21 assured when this subject was discussed three years ago they
22 were going to speak about it to Kathleen and then the rest
23 of the family. They told me that they had talked to
24 Kathleen about it at that time. And that's apparently the
25 time that you tell Mr. Carter about this May '03 meeting

1 with Kathleen; is that right?

2 A. Correct.

3 Q. Now, what hadn't happened that Mr. Carter told you
4 to do was to also meet with the other beneficiaries;
5 correct?

6 A. It had not happened.

7 Q. Didn't do it in '03, did you?

8 A. No.

9 Q. Didn't do it in '04, did you?

10 A. No.

11 Q. Didn't do it in '05, did you?

12 A. Right.

13 Q. And now we're up to March of '06. And let's look
14 at the letter of March 28, 2006. First paragraph says, I
15 want to confirm my statement to you at our meeting yesterday
16 afternoon that I would delay sending the letter which Lynn
17 Kerrison and I have signed and which is dated March 27,
18 2006, addressed to Dan and your sister Kathleen for a
19 reasonable time until you and Dan have a chance to talk to
20 Kathleen or we have met again with Lynn and Howell Morrison
21 present; is that correct?

22 A. Correct.

23 Q. And that is a letter that they had signed that
24 they were going to send to Kathleen to tell them about these
25 loans; correct?

1 MS. WALL: Object to the form.

2 A. Correct.

3 BY MR. BABCOCK:

4 Q. And you didn't want them to send it, you wanted
5 one last chance to talk, to have some kind of meeting; is
6 that right?

7 A. Well, it wasn't that we didn't want them to send
8 it. We wanted to have the meeting and were working on that
9 to have the meeting.

10 Q. And ultimately you had the meeting; correct?

11 A. Yes.

12 Q. And that was a meeting on April 27, 2006; is that
13 right?

14 A. Right.

15 Q. Now, as I understand it it's your testimony that
16 on April 18th -- I'm sorry. Strike that. Let's talk about
17 the, let's use, let's go to Exhibit Fourteen first. Exhibit
18 Fourteen is an April 19, 2006, letter from Heyward Carter to
19 you; correct?

20 A. Yes.

21 Q. All right. And the first paragraph said this is
22 to confirm that the meeting you had with Edward Bennett and
23 me on Tuesday afternoon, April 18, 2006, we agreed that you
24 and Dan, Kathleen, Lynn Kerrison and I would meet as soon as
25 possible so that Lynn and I could inform Kathleen as



1 co-holder of her mother's durable power of attorney of the
2 current status of loans from the trust under your father's
3 will to you and Dan; correct? Did I read that right?

4 A. That's right.

5 Q. All right. And then he says as I stated in my
6 letter of March 28, 2006, to you and Dan, if such a meeting
7 has not been held by Friday April 28th 2006 I will mail or
8 deliver to Kathleen the letter which Lynn and I have already
9 signed informing Kathleen of the status of the loans and
10 recommending that she and Dan as holders of your mother's
11 power of attorney consider having those loans secured by
12 your and Dan's assets; correct?

13 A. Correct.

14 Q. All right. Now, as I understand your testimony
15 you, you took Kathleen on April, on April 19 to your, to
16 Fabtech; is that right?

17 A. Well, I invited her to come over there. She came
18 by herself. I didn't take her there.

19 Q. All right. Why did you have her come to Fabtech?

20 A. It was convenient a place as I could think of.

21 Q. Okay. And Dan had her come to his business;
22 correct?

23 A. I was not aware of that, but I had, I understand
24 that that happened. But I did not know he was going to. I
25 had no idea he was.



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1 Q. All right. The purpose of you having her come to
2 Fabtech was for her to have some comfort level about the
3 business, wasn't it?

4 A. The primary reason was so I could tell her that we
5 had a meeting that we were going to have to have with
6 Mr. Carter about the moneys involved in Fabtech and in
7 particularly in Dan's company.

8 Q. And you could have done that by going, you and Dan
9 coming together to her house and doing that, couldn't you?

10 A. Well, I was prepared to, I was trying to move this
11 along. And I was prepared to get this thing, get her in
12 front of Heyward Carter so that all this could be explained
13 and, I mean, or discussed and -- but that, I wanted her to
14 come, I wanted to meet with her somewhere.

15 Q. Which you could have done at her house; right?

16 A. I could have.

17 Q. Or you could have told her on the telephone;
18 correct?

19 A. I could have.

20 Q. And if you had told her about everything to do
21 with the loans, you wouldn't have needed that meeting at
22 Heyward Carter's office, would you?

23 A. Well, I think Mr. Carter was planning on us having
24 that meeting with Ms. Kerrison at his office. And it wasn't
25 going to be left to me to tell anybody anything. Ms. Carter

1 was going to have Ms. Kerrison explain everything to
2 Kathleen so that --

3 Q. Did you ever tell Mr. Carter and Ms. Kerrison I'm
4 meeting with her, Kathleen at Fabtech and I'll show her
5 everything? We don't need to have this meeting. Did you
6 ever tell her that?

7 A. No. I didn't.

8 MS. WALL: Can I take a break?

9 MR. BABCOCK: Sure.

10 VIDEOGRAPHER: Off the record at 7:14
11 p.m.

12 (Off the Record.)

13 VIDEOGRAPHER: We are on the record at 7:19 p.m.
14 7:19 p.m.

15 MR. BABCOCK: Thank you, Mr. Stevenson.

16 A. You're welcome.

17 FURTHER EXAMINATION

18 BY MS. WALL:

19 Q. Mr. Stevenson I have, Tom, I have a couple of
20 follow-up questions for you based on what plaintiff's
21 counsel just asked you about. Go back if you would for me
22 to Exhibit Number Four which you were asked about David,
23 dated November 29, 2001.

24 A. Yes, ma'am.

25 Q. And let's clarify the record here. As this letter

1 to you and Dan says, following the meeting at
2 Lynn Kerrison's office, Heyward Carter was left to understand
3 that each of you meaning you and Dan were drafting promissory
4 notes to your mother's trust?

5 A. That is --

6 Q. And, in fact, was that done?

7 A. Yes. It was.

8 Q. Okay.

9 A. But it was our responsibility to do it.

10 Q. And the drafting was done not by Mr. Carter but by
11 you and Dan; correct?

12 A. Correct.

13 Q. Or someone that you asked to do it for you;
14 correct?

15 A. Correct.

16 Q. And that person was not Heyward Carter; correct?

17 A. Correct.

18 Q. Now, let's go to these questions that have to do
19 with the meetings with Kathleen and the siblings. In that
20 same letter, Exhibit Number Four, Mr. Carter says, does he
21 not, he says to you for you to let Lynn and him, Mr. Carter
22 know if you, if you would like for them to be present at
23 that meeting. You never asked Mr. Carter or Lynn Kerrison
24 that they be present for a meeting, did you?

25 A. I did not.

1 Q. And you told Heyward Carter and Lynn Kerrison that
2 you were undertaking and would have the meeting with
3 Kathleen and your siblings; correct?

4 A. I did.

5 Q. Did you expect Heyward Carter to follow up with
6 you and quiz you as to whether or not you had done what you
7 pledged to him you were going to do in November of 2001?

8 A. I didn't. I did not have any thought that he
9 wouldn't.

10 Q. Did you give him any reason to believe or suspect
11 that you were not going to do what you said you were going
12 to do and that he needed to check up on you?

13 A. I did not.

14 Q. Now you were asked a number of questions as to
15 whether Mr. Carter followed up with you after you hired your
16 attorney Howell Morrison in January of 2003. Did you ever
17 expect Heyward Carter to be calling you after January of
18 2003 and follow up with you when you had your own lawyer
19 Howell Morrison?

20 A. I did not.

21 Q. And did you understand that Howell Morrison had
22 assured Heyward Carter in a letter to him and in a
23 discussion that you, in fact, were going to do what you said
24 you were pledged to do?

25 MR. BABCOCK: Object to the form.

1 A. I did. There were -- I did --

2 MR. BABCOCK: There's no questions.

3 BY MS. WALL:

4 Q. You can go ahead and finish your answer.

5 A. I fully expected to be doing what I needed to do.
6 There were during this time period a number of reasons why
7 it kept having what appears to be a delay issued to it. A
8 lot had to do with Mr. and Ms. Bennett not being here. But
9 the, what we, what Lynn Kerrison did do was to keep track of
10 every check and keep it in a separate folder so that every
11 dime was accounted for.

12 Q. And those were records that Lynn Kerrison had
13 were, did she share those records with you and possibly
14 Howell Morrison as you set out in Exhibit Number Thirteen in
15 your e-mail where you say, and I quote, my records and those
16 at Howell Morrison's office state these moneys were to
17 Fabtech, Inc., all of them and that I as a prudent thing
18 personally guarantee these notes, end quote?

19 A. All right. Is there --

20 Q. Exhibit Thirteen.

21 A. Just let me put my hands on it. Yes, ma'am. Will
22 you say that again or --

23 MR. SHARPLESS: What was the question?

24 BY MS. WALL:

25 Q. You said that Lynn Kerrison kept all of the

1 records of the moneys taken from the two trusts. My
2 question was, did you also have records and were some of
3 those at Howell Morrison's office as you set forth in your
4 April 21, 2006, e-mail which is Exhibit Thirteen at the top?

5 A. My records and, were that and are that these notes
6 were, were personally guaranteed by me. And that was my
7 intention to begin with before anybody said anything to me
8 at all. And that that is what I intended to have happen.
9 And that is what I did and what I intended to have happen.

10 Q. Heyward Carter was never your attorney, was he?

11 A. He was never my attorney.

12 Q. And he was never the attorney for the
13 beneficiaries of these trusts, was he?

14 A. No.

15 Q. That's all I have. Thank you.

16 FURTHER EXAMINATION BY MR. SHARPLESS:

17 Q. Probably just one question, Mr. Stevenson. After
18 that October 2001 meeting with Ms. Kerrison, there was no
19 time when you were expecting Ms. Kerrison to follow up with
20 you or affirmatively reach out to contact you, was there?

21 A. No. We did not have anything like that at the end
22 of that meeting. Any notion of that.

23 Q. That's all I have.

24 FURTHER EXAMINATION BY MR. BABCOCK:

25 Q. And I, just briefly, if I understand your



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1 testimony, Ms. Kerrison was keeping track of the moneys
2 that were being taken; is that correct?

3 A. That is correct.

4 Q. And sharing that information periodically with
5 Mr. Carter; is that correct?

6 A. I don't know. I don't know about that.

7 MR. SHARPLESS: Object.

8 BY MR. BABCOCK:

9 Q. But what we do know is that during the time period
10 from October 2001 until we finally have the April 27, 2006,
11 moneys are being taken from those trusts by you and Dan;
12 correct?

13 A. Correct.

14 Q. And Ms. Kerrison is keeping track of the moneys
15 that are being taken?

16 A. Correct.

17 Q. No further questions.

18 A. We did have the meeting with Ms. Turner.

19 (Off the Record.)

20 VIDEOGRAPHER: This is the end of
21 videotape number four and the deposition of
22 Thomas C. Stevenson. The deposition concludes
23 at 7:28 p.m.

24 (Signature reserved.)

25 (Deposition concluded at 7:28 p.m.)



DEPOSITION ERRATA SHEET

Our Assignment No. 3047AS
Case Caption: Bennett, et al., v Carter, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of

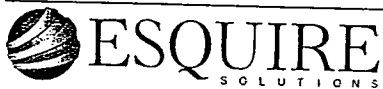
_____, 20____.

Thomas C. Stevenson, III



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1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

3
4 REPORTER'S CERTIFICATE

5 I, Lyn Allen Hudson, a Notary Public, do hereby
6 certify that there came before me on Wednesday, February 13,
7 2013, the person hereinbefore named who was by me duly sworn
8 to testify to the truth and nothing but the truth of his/her
9 knowledge concerning the matters in controversy in this
10 cause; that the witness was thereupon examined under oath,
11 the examination reduced to typewriting under my direction,
12 and the deposition is a true record of the testimony given
13 by the witness.

14 I further certify that I am neither attorney nor
15 counsel for, nor related to, or employed by any attorney or
16 counsel employed by the parties hereto or financially
17 interested in the action.

18 IN WITNESS WHEREOF, I have hereto set my hand this
19 18th day of February, 2013.

20
21
22
23 Lyn Allen Hudson, Court Reporter
Notary Public for South Carolina

24 My commission expires: February 8, 2016
25



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1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2011-CP-10-400
)
 3)
 4 JACQUELINE S. BENNETT, GENEVIEVE)
 5 S. FELDER AND KATHLEEN S. TURNER,)
 INDIVIDUALLY, AS CO-TRUSTEES AND)
 6 BENEFICIARIES OF THE MARITAL)
 TRUST AND THE QUALIFIED)
 7 TERMINABLE INTEREST TRUST)
 CREATED BY THE THOMAS STEVENSON)
 8 WILL, AND JACQUELIN S. BENNETT)
 AND KATHLEEN S. TURNER, AS)
 9 CO-PERSONAL REPRESENTATIVES ON)
 BEHALF OF THE ESTATE OF)
 JACQUELIN K. STEVENSON,)
)
 10 Plaintiff,)
)
 11 vs.) Transcript of Record
)
 12 T. HEYWARD CARTER, JR.; EVANS,)
 CARTER; KUNES & BENNETT, P.A.;)
 13 DIXON-HUGHES F/K/A PRATT-THOMAS)
 GUMB & CO., P.A.; AND LYNNE L.)
 14 KERRISON,)
)
 15 Defendant.)
)
 16 DATE: APRIL 29, 2013
)
 17 B E F O R E:
 18 The Honorable Roger M. Young
 19 A P P E A R A N C E:
 20
 21 Keith M. Babcock
 For the Plaintiff
 22
 23 Frederick K. Sharpless and M. Dawes Cooke, Jr.
 For the Defendants, Lynne Kerrison and Dixon-Hughes
 24
 25 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

1 THE COURT: I guess nobody attended the meeting
2 where I said how much I love getting this kind of stuff
3 on a Monday morning of a hearing. But, nevertheless, all
4 right, defendants made a motion for a summary judgment.
5 Who's arguing it?

6 MR. SHARPLESS: I am, Your Honor. Frederick
7 Sharpless of the North Carolina Bar, practicing with
8 Mr. Cooke in this matter. I represent the defendants,
9 Lynne Kerrison and Dixon Hughes.

10 First I would like to thank the Court for
11 permitting me to practice here. And I will try to do
12 nothing that makes you regret the wisdom of that
13 decision.

14 THE COURT: Is discovery completed?

15 MR. SHARPLESS: Yes. There are a couple of very
16 little issues outstanding, but, yes. This case has been
17 pending for quite awhile now and discovery is complete.

18 Your Honor, this is an interesting case. It's
19 got some novel theories; raises some novel issues. The
20 plaintiffs are the siblings, and the children are
21 siblings with each other. They are the children of a
22 lady named Jacquelin Stevenson.

23 They are aggrieved because their brothers, Tom
24 and Daniel, made some significant self-dealing loans to
25 themselves and to companies that they control from trusts

1 of which their mother was then the current beneficiary.
2 These trusts have actually been established by their
3 father.

4 They are now suing -- they previously sued their
5 brothers, and those lawsuits have been resolved. They
6 are now suing the accountant who prepared their mother's
7 taxes and who prepared the tax returns for the two trusts
8 because the accountant, that's Ms. Kerrison, my client,
9 told their mother's attorney about the loans and was
10 assured that the attorney would act on that information.

11 But they complain that Ms. Kerrison should have
12 told them, even though they had no relationship with
13 Ms. Kerrison. They weren't her client. They never asked
14 her for any information. And at that time they were not
15 even beneficiaries of the trust. They would become
16 beneficiaries if nothing changed, if their mother didn't
17 exercise powers of appointment or spend all the money
18 upon their mother's death, but they were not at that
19 time.

20 So their brothers -- in the lawsuit with their
21 brothers, they eventually reached a resolution of that.
22 They got a large judgment against one brother and a
23 settlement from the other. But in Oliver's famous words,
24 they are here because they want some more.

25 There's some interesting issues that are raised

1 about their theory of damages, most of which are trial
2 issues, but a little of which we will discuss today. And
3 there are also significant issues concerning their
4 claims.

5 Now, the state I come from, North Carolina, as
6 in South Carolina, summary judgment motions are generally
7 inappropriate in negligence cases if what you are talking
8 about is the substance of the plaintiffs' claim. There's
9 almost always going to be a factual issue in there
10 somewhere. But we don't bring the motion today directed
11 to the elements of the plaintiff's claim. We are here to
12 talk about statute of limitations, abatement, and whether
13 there is any duty at all owed by an accountant to a
14 nonclient.

15 These are significant aspects of our motion, all
16 of which have nothing to do with whether plaintiffs'
17 expert's testimony is sufficient or not to prove one
18 element of their claim or not, or getting into an
19 argument about who said what to who on what day.

20 So let's look at what I think Mr. Babcock, who
21 represents the plaintiffs, would agree are uncontested
22 facts. The plaintiffs are three in number. They are
23 sisters. They are the remainder beneficiaries of two
24 trusts that were established by their father. And they
25 were defendant beneficiaries of their mother's estate, or

1 they became beneficiaries of their mother's estate.

2 The defendant, my client, is Lynne Kerrison, and
3 an accounting firm, Dixon Hughes, now Dixon Hughes
4 Goodman. At the time all these things happened, she was
5 actually associated with Pratt-Thomas & Gumb. And the
6 issues of transition one to the other aren't important
7 for today.

8 About 1997, 1998 through 2006, the services that
9 Ms. Kerrison provided that are pertinent to this case
10 were tax return preparation, and for a brief time,
11 bookkeeping, meaning actually had the checking account
12 and kept up with who was writing what to the trustees who
13 were then the trustees to the trust. Those are the
14 plaintiffs' brothers, Tom and Daniel.

15 The trustees were clients of Ms. Kerrison's.
16 Mrs. Stevenson, the plaintiff's mother, and Tom and Dan's
17 mother, was a client, but the plaintiffs were not.

18 In 2001, when she was preparing the tax returns
19 for the trust, Ms. Kerrison saw something. She saw that
20 Tom and Dan had transferred money. In other words, they
21 had written checks out of the trust to themselves or to
22 companies with which they were then associated. And she
23 wondered about that. So she called Heyward Carter, who
24 was at that time an attorney for Jacquelin Stevenson, the
25 then-current beneficiary of the trust.

1 Now, Mr. Carter was at one time a defendant in
2 this lawsuit. He no longer is. Our understanding is
3 that those issues have been resolved. I don't think the
4 dismissal has been filed yet, but those issues have been
5 resolved.

6 She told Mr. Carter on October 23rd of 2001,
7 that these checks had been written. She had asked the
8 woman who was at that time the bookkeeper for
9 Mrs. Stevenson and for the trust, the lady named Pat
10 Neapolitan, what's up with these checks? Ms. Neapolitan
11 said, I think they are loans. That was the discussion
12 between Ms. Neapolitan, Ms. Kerrison, and Mr. Carter.

13 Mr. Carter understood that transactions between
14 trustees -- as a lawyer, transaction between trustees
15 themselves in their individual capacity and the trust are
16 problematic. And there were meetings, discussions
17 Mr. Carter had with Tom and Dan that followed almost
18 immediately after that October 23rd, 2001, meeting. And
19 the essence of those discussions was that, number one,
20 you need to document these loans; number two, you need to
21 cut it out; and number three, you need to tell your
22 family what's going on. Tom and Dan said, yeah, we will
23 do that, and we will get back to you.

24 THE COURT: And pay the loans back, which I take
25 it was never done?

1 MR. SHARPLESS: That was never done. And the
2 content of Mr. Carter's advice on paying the loans back,
3 I think was in some doubt or dispute. But he certainly
4 demanded they be documented and that they not be paid in
5 the future.

6 Well, the following year, Ms. Kerrison was doing
7 the taxes again and she saw the same thing. She called
8 Mr. Carter and told him the same thing. And much the
9 same series of events occurred. Mr. Carter discussed
10 this with Tom and Dan, who at that time retained their
11 own counsel, Howell Morrison I believe at the time. And
12 the discussions were to the general effect that you need
13 to make sure it is documented. And, in fact, they were
14 documented. You need to cut it out, which didn't happen.
15 And you need to talk to your family about it. And
16 there's some discussions one way or another as to whether
17 that actually happened.

18 So, she told Mr. Carter. He continued to insist
19 that the loans be documented, which they were. And he
20 continued to talk to Tom and Dan about the need to meet
21 with their sisters -- or meet with their siblings.

22 Now, there is a meeting that occurred May 21 of
23 2003. The fact that that meeting occurred between Tom
24 and Kathleen, who was at that time power of attorney for
25 her mother as well as one of the contingent beneficiaries

1 of these trusts, is somewhat in dispute. Kathleen admits
2 that the meeting occurred. She admits that Tom had the
3 piece of paper. She admits that there was something
4 about transactions affecting the family and the family
5 companies. And she says that Tom was mumbling so she
6 didn't really understand it.

7 Tom tells a different story. He says, I brought
8 a piece of paper there that outlines every loan and every
9 transaction. I gave it to Kathleen. I talked about it
10 with her. That's the testimony between Tom and Kathleen
11 about the 2003 meeting.

12 The next meetings that occurred were in 2006.
13 Kathleen admits, and this is established by the responses
14 to request for admissions, which takes it out of
15 difficult deposition testimony and interpretation, and
16 the responses to request for admissions. And I'm looking
17 at Kathleen's response to request for admission number
18 170: You met with Tom Stevenson on April 19, 2006.

19 This date will become important.

20 Admitted.

21 171: Thomas Stevenson informed you that he and
22 Daniel Stevenson removed money from the trust on April
23 29, 2006.

24 Admitted.

25 So, this is admitted. This is beyond deposition

1 testimony. This is an established fact without contest
2 that's before the Court, April 19th, 2006.

3 The next date that's important is a meeting that
4 occurred on April 27, 2006. Tom and Dan met with
5 Kathleen and all the other siblings and talked about the
6 loans, the transactions that have been occurring for
7 several years. So, those are the pertinent dates.

8 The next pertinent date, though, is April 24 of
9 2009. That's when this lawsuit was filed. So, this
10 lawsuit was filed more than three years after the April
11 19 meeting, more than three years after the 2003 meeting,
12 and more importantly, more than three years after
13 Ms. Kerrison, who is the remaining defendant in this
14 case, gave notice of what was going on to Ms. Stevenson's
15 attorney. That occurred in 2001.

16 But the plaintiffs will argue that they met the
17 statute of limitations because it was less than three
18 years from the April 27, 2009 meeting of Tom and Dan and
19 all the siblings.

20 What are the claims that are asserted in this
21 lawsuit? And this is important too. Number one is
22 professional negligence, even though none of them are
23 clients of Ms. Kerrison or Pratt-Thomas & Gumb; second,
24 breach of fiduciary duty, even though none of the
25 plaintiffs had any relationship to Ms. Kerrison or the

1 firm; third, aiding and abetting a breach of fiduciary
2 duty for failing to rat out directly to the plaintiffs
3 what their brothers were doing.

4 And the plaintiffs want to talk about the fact
5 that Ms. Kerrison, for a number of years, knew after the
6 fact that the brothers were continuing to write checks
7 for themselves. And that upon Pat Neapolitan's death,
8 that Dixon, or at that time Pratt-Thomas & Gumb, had
9 custody of the checkbook.

10 So for several of the checks that were written
11 in '05, the brothers would come to Pratt-Thomas Gumb and
12 say, give me a check for X, which Pratt-Thomas Gumb had
13 no authority to sign, they didn't control, but they did
14 have custody of the checkbook. This they claim is aiding
15 and abetting a breach of fiduciary duty.

16 So, why are we here today? Well, the first one
17 is statute of limitations. And I already laid out the
18 series of dates that we believe are important to that.
19 The lawsuit was filed, again, more than -- far more than
20 three years, in fact, 7 1/2 years after the October 2001
21 meeting between Ms. Kerrison and Mr. Carter, who was
22 Jacquelin Stevenson's attorney, in which Ms. Kerrison
23 told Mr. Carter about the loans.

24 Second, to the extent that there was inquiry
25 notice more than 5 1/2 years after the May 2003 meeting

1 and more than three years, slightly more than three years
2 after the April 19, 2006, meeting when Tom told Kathleen
3 about the loans, and she admits that.

4 Second reason is abatement. All of these claims
5 sound in fraud, breach of fiduciary duty claim, the
6 aiding and abetting breach of fiduciary duty claim, and
7 the negligence claim. The essence of these claims is
8 that our brothers, Tom and Dan, were engaged in
9 fraudulent acts. That's the underlying sources of the
10 liability. If Tom and Dan's loans were not fraudulent,
11 then we wouldn't be here. They would have no claim. So
12 they arise out of what they claim is a fraudulent
13 transaction. And under South Carolina survival statute,
14 claims in fraud do not survive the death of the person
15 who was affected by it, that being Jacquelin Stevenson.

16 And they have tried to bring those claims in
17 Ms. Stevenson's names. The capacities with which they
18 are bringing these claims are as beneficiary of
19 Ms. Stevenson's estate, in the case of Kathleen as
20 personal representative of Ms. Stevenson's estate, that's
21 the survival claim, as now substitute trustees of the
22 trusts, that's also, in essence, a survival claim, and as
23 beneficiaries of the trust.

24 The next is, there's a claim for there's no
25 duty. And there are two elements to that. One is

1 whether there is any duty in South Carolina law on the
2 part of an accountant, such as Ms. Kerrison, to a
3 stranger to her practice, not a client to these
4 plaintiffs in which she owed them any duty, and whether,
5 even if the Court were to find such a duty, whether that
6 duty would be consistent with the obligations of
7 confidentiality of an accountant under both state and
8 federal law.

9 With respect to the aiding and abetting of
10 breach of fiduciary claim, there is no evidence of the
11 kind of active participation in the breach of fiduciary
12 duty that's required to support that claim. And that's
13 under the Futures -- Future -- Gordon vs. Busbee and
14 Future Group II vs. Nations Bank cited in our brief.

15 And last, we have a motion for partial summary
16 judgment on two damage issues, which I will come to at
17 the end. For the most part, it is laid out in our brief.
18 And the Court may conclude that's an issue that's better
19 left until trial.

20 Let's talk about what the essential law is in
21 the statute of limitations, obviously, the three-year
22 statute limitations, South Carolina Code 15-3-530, Sub 5.
23 The pertinent cases are the Dorman case and the Kreutner
24 case. The Dorman case and the Kreutner case both say
25 that you are -- the discovery, if you will, of a fact

1 giving rise to the cause of action notice is when it
2 objectively should have been known. And they say as
3 important to this case that notice of the attorney is
4 considered notice to the client as a matter of law.

5 And the Dorman case, that was a case that arose
6 out of a claim that there was fraudulent nondisclosure in
7 sale of a house. The evidence in that case was that the
8 seller's attorney had communicated a fact to the buyer's
9 attorney, who had never communicated that fact to the
10 buyer. And the buyers were saying, well, gee, our
11 attorney never told us about that fact; therefore, the
12 information that was given to him does not start the
13 running of the statute of limitations. And the Court
14 said, yes, it does. Notice to your attorney is notice to
15 you. That's the end of the inquiry. Summary judgment
16 for the defendants was properly granted and was affirmed.

17 In this case, the uncontested facts are that
18 Ms. Kerrison gave notice to Jacquelin Stevenson's
19 attorney in October of 2001. And Jacquelin -- what's
20 important, Jacquelin Stevenson is the person in whose
21 name these plaintiffs claim as her beneficiary's under
22 the will and as her personal representatives.

23 And with respect to the trusts, Jacquelin
24 Stevenson was the only beneficiary of the trusts who was
25 then entitled to receive anything from it during her

1 lifetime, and she was still alive at that time. So until
2 Ms. Stevenson died, there was no need to have notified
3 these plaintiffs. Ms. Stevenson could have spent the
4 entirety of her estate or changed her will and given it
5 to anyone she wanted up until her death. She could have
6 appointed the entire remaining corpus of the marital
7 trust to anyone she wanted.

8 In fact, she did exercise the power of attorney
9 and made some changes. And she could have spent all the
10 money in the other trust, the Q-tip trust, had she wanted
11 to do that.

12 This is from the Bemis case in South Carolina,
13 which Bemis case calls that there is essentially no cause
14 of action in favor of dissatisfied beneficiaries. In the
15 Bemis case, the beneficiaries, much like in the Stevenson
16 case, were several siblings who sought to bring a lawsuit
17 against their brother during their mother's lifetime
18 inducing her to transfer property out of her estate to
19 that brother, thereby reducing what the plaintiffs
20 receive from the mother's estate, uncomplicated by modern
21 trust law and federal estate taxes, but the Court makes
22 some really pertinent observations in the Bemis case.

23 Until somebody dies, you have no right to their
24 estate. You have no right to the trust that they
25 control. All you have is an expectancy that if nothing

1 happens and they still have money, that maybe you will
2 get something. And, therefore, a beneficiary of a trust
3 or an estate as such has no claim against the third-party
4 for interfering with that trust or estate during the
5 lifetime of the person whose estate it is or the person
6 who controlled the trust.

7 So, what does that tell us? Well, it will tell
8 us some things about duty and abatement too. But what it
9 is going to tell us in this particular circumstance is
10 Ms. Kerrison gave notice to the person that she needed to
11 give notice to, which was the attorney for Jacquelin
12 Stevenson, who's qualified to evaluate and act upon that
13 information. And Jacquelin Stevenson was then the only
14 beneficiary of these trusts. And, obviously, with
15 respect to her personal estate, still controlled her
16 personal estate.

17 So, our contention to the Court is that October
18 23, 2001 meeting, the content and existence of which is
19 uncontested, was sufficient to start the running of the
20 statute of limitations. It ran no later than October 23,
21 2004. This lawsuit was filed in 2009. The plaintiffs
22 claim it should be dismissed.

23 We also argue in the brief, and I will simply
24 mention this, that under South Carolina Code 62-7-303 --

25 THE COURT: Go back to the meeting that you said

1 that prohibited that. What got said at that meeting
2 again?

3 MR. SHARPLESS: The meeting with Mr. Carter?

4 THE COURT: You said there was one in October.

5 MR. SHARPLESS: 2001, or are we talking about
6 the May 2003 meeting?

7 THE COURT: May 2003.

8 MR. SHARPLESS: May 2003 meeting is a -- and we
9 will be frank with the Court -- is a more difficult one
10 for the defendants to argue with respect to the statute
11 of limitations. Whether it is truthful or not, if you
12 read Ms. Turner's deposition, she says that her brother
13 Tom mumbled throughout the meeting and she really did not
14 understand what was being said. The Court could conclude
15 that that is not objectively reasonable, since the
16 standard is an objective one.

17 Tom's deposition testimony was that he laid it
18 out for her with a piece of paper outlining all the
19 transactions that had occurred to date and told her about
20 them.

21 THE COURT: What do other people at the meeting
22 say?

23 MR. SHARPLESS: There was nobody else at the
24 meeting.

25 THE COURT: Just those two?

1 MR. SHARPLESS: It was just those two. So the
2 Court may conclude that that's an issue that's best
3 explored with development of the evidence, and we would
4 have a hearing such as this on deposition testimony.

5 However, there was an April 19, 2006, meeting,
6 which is also slightly more than three years outside the
7 statute of limitations. And we've provided it to you in
8 that notebook, Your Honor. I believe it is at Tab 7,
9 Ms. Turner's responses to the request for admissions, and
10 I mentioned them to you earlier.

11 Request for admissions I believe is 170 and 171.
12 They admit that meeting. They admit that the contents of
13 that meeting included disclosure of the fact that Tom and
14 Dan had taken money from the trusts. And that is outside
15 the statute of limitations.

16 Now, what's also important is Kathleen was in
17 October of 2000 -- excuse me, in April of 2006, was power
18 of attorney for her mother, who was still alive, as well
19 as one of the beneficiaries. So, again, Jacquelin
20 Stevenson is still alive in April 2006. And Kathleen is
21 POA for her.

22 So by April 19th of 2006, we have 2001 notice to
23 Ms. Stevenson's lawyer and 2006 notice to Ms. Turner, who
24 is POA for her mother.

25 I believe the plaintiffs are going to try to

1 argue that the lawyer's knowledge should not be imputed
2 to Ms. Stevenson, and they are going to try to argue the
3 adverse interest exception. The adverse interest
4 exception is when an agent is acting so contrary to the
5 interest of the principal that the knowledge of the agent
6 is in that circumstance not imputed to the principal.

7 This most commonly comes up in the situation
8 where an agent is themselves embezzling money or
9 something from a principal employer or someone for whom
10 they are in a fiduciary relationship. And then the
11 agent's knowledge would not be -- of the embezzlement is
12 not imputed to the principal, but by the principal's
13 claim back against the agent or other third-parties who
14 are involved.

15 That's not the facts here. There is no evidence
16 in this case that Mr. Carter was in any way involved in
17 any sort of illegitimate transaction. The only
18 allegation that was made against Mr. Carter is the same
19 one that's made against Ms. Kerrison. He did not whistle
20 loudly enough and enough times in that 2001 to 2006 time
21 period. So the adverse interest exception clearly
22 doesn't apply.

23 There's no evidence that Mr. Carter was in 2001,
24 or at any time, acting adversely to the interest of
25 Jacquelin Stevenson or that he was in any way involved in

1 the illegitimate transactions.

2 I would like to turn, unless the Court -- well,
3 there's one other issue that I want to mention. Under
4 South Carolina Code 62-7-703, as it existed up until the
5 2005 amendments, and because it is not easy to find --
6 may I approach, your Honor?

7 THE COURT: Uh-huh.

8 MR. SHARPLESS: I brought a copy of it. Of
9 course, there was a substantial rewrite of the probate
10 code in 2005. But up until then, under Subsection (b)
11 and (c), beneficiaries of trusts had a right to certain
12 information if they requested it from trustees. And we
13 would contend that this at least puts the plaintiffs on
14 inquiry notice during that time. They had every bit as
15 much information, ability to get information out of Tom
16 and Dan as did Ms. Kerrison or Mr. Carter, and they
17 failed to exercise that right. Therefore, they should be
18 charged with the knowledge that they could have had under
19 that statute.

20 THE COURT: How much money are we talking about?

21 MR. SHARPLESS: Excuse me?

22 THE COURT: How much money are we talking about
23 here?

24 MR. SHARPLESS: Well, that may be an issue a
25 little bit at trial. But if you add it up, without

1 starting to impute interest and things of that nature to
2 it, it is at least \$4 or 5 million, of which Tom paid
3 back quite a bit. But he didn't -- excuse me, of which
4 Tom paid back almost all of the money that Tom removed.
5 Dan did not.

6 And one of the questions is, when do you start
7 counting, because the plaintiffs would like to start
8 counting back in the mid '90s. Apparently, Jacquelin
9 Stevenson was someone who was very generous with her
10 children, gave a lot of money to her children over the
11 years. They want to take everything that was ever given
12 to Tom and Dan at least from the mid '90s forward and put
13 it in their damage column.

14 We will contend that the relevant date certainly
15 isn't before October of 2001, that there's no way that
16 you can charge any of the defendants in this case with
17 what happened before October of 2001, because there's no
18 evidence that any of those transactions were not
19 legitimate, viewed and approved and made with a full
20 knowledge and consent of Jacquelin Stevenson. But that's
21 an issue that will come up in this case at some point in
22 time, but it's a lot of money.

23 We would also contend that the recoveries that
24 have been made by the plaintiffs in this case more than
25 fully compensate them. In other words, the money they

1 got from Tom, the forfeiture of their brother's interest
2 in the mother's estate, and the redistribution of the
3 estate and the trust assets because they forfeited their
4 interest in the trust to the plaintiffs, resulted in them
5 actually getting more than they would have received had
6 the brothers never done anything. That's not a summary
7 judgment issue.

8 The abatement claim, Your Honor, really comes
9 from the Brailsford case. And that is the leading case
10 on this issue. The Bemis case also has something to say
11 to it, but the Brailsford case is a 2008 decision of the
12 South Carolina Court of Appeals. In that case, the Court
13 held that the widow of a trust beneficiary could not
14 bring an action against the trustee for fraud. And the
15 reason she could not is because the survival statute,
16 South Carolina Code 15-5-90 does not preserve -- does not
17 allow a claim for fraud to survive the death of the
18 principal or the person whose property it was.

19 And the Court looked at the facts of that case
20 and said, this exception to survival, which has been long
21 established in South Carolina, applies not only to
22 out-and-out claims labeled fraud, but any claim in which
23 the deceptive conduct, fraudulent conduct, or
24 concealment, is an essential element.

25 They cite another case, the Ferguson case, that

1 is not that old and discussed in the citing of our brief,
2 which claims under the Motor Vehicle Dealers Act, which
3 had as an element, fraud, deceit, or nondisclosure, which
4 is pertinent to this case, of a pertinent fact, whether
5 intentional or negligent, which is also important, did
6 not survive.

7 So what both of those cases are saying is that
8 if an element of your case is that there was a failure of
9 proper disclosure, that there was some element of
10 self-dealing, that there was some element of deceit or
11 misrepresentation, that claim does not survive. And in
12 the Brailsford case, all of the causes of action --

13 THE COURT: Does not survive whose death?

14 MR. SHARPLESS: Does not survive the death of
15 the person who was the victim, if you will, of the fraud
16 or deceit, such that in that case, the person who was
17 trying to bring the case was the widow of the trust
18 beneficiary, who then would have become the beneficiary
19 herself. And she was saying, gee, you defrauded the
20 principal and that has resulted in harm to me.

21 The Bemis case deals with the flip side of that,
22 which may have been what you were thinking about there,
23 Your Honor, where you deal with someone who is now
24 bringing a claim in their individual capacity saying,
25 hey, I was a victim too; somehow or another, I had a

1 legally protectable interest. And that legally
2 protectable interest has been damaged by the conduct of
3 either you, the defendant, or the third-party for whose
4 conduct you are responsible.

5 The Bemis case says, no. In that case, as I
6 mentioned earlier, the heirs were suing their sibling for
7 fraudulently pursuing their mother during her lifetime to
8 transfer real estate to him. The Bemis case, it said,
9 you have no standing to sue as heirs because you had
10 nothing other than a covenant expectancy. You have no
11 standing to sue in your mother's name as her personal
12 representatives because the claim has an element of fraud
13 and does not survive. So the only person that could have
14 brought that claim would have been your mother during her
15 lifetime. In this case, Jacquelin Stevenson could have
16 brought that claim during her lifetime.

17 And we see why when we consider that why the law
18 is what it is. Because Jacquelin Stevenson could have
19 brought the claim against Tom and Dan during her
20 lifetime. But it would have been very difficult for her
21 to bring the claim against Mr. Carter and Ms. Kerrison
22 during her lifetime because Ms. Kerrison told her
23 attorney, Mr. Carter, what was going on. And Mr. Carter
24 made a decision as to how that would be handle.

25 Now, whether that would give rise to some sort

1 of claim of legal malpractice against Mr. Carter, I don't
2 know. But what we see is Ms. Kerrison told
3 Ms. Stevenson. So it would have been difficult for her
4 to bring that claim during her lifetime against
5 Ms. Kerrison. And that's why if we look at --

6 THE COURT: I thought you said Ms. Kerrison told
7 Mr. Carter.

8 MR. SHARPLESS: That's what I did say. Did I
9 say Ms. Stevenson a minute ago?

10 THE COURT: Yeah.

11 MR. SHARPLESS: She told Mr. Carter, which is
12 notice to Mr. Stevenson. Ms. Kerrison, just to be clear,
13 Ms. Kerrison never affirmatively communicated to
14 Ms. Stevenson in person what had happened. She
15 communicated this to Mr. Carter, who was Ms. Stevenson's
16 attorney.

17 THE COURT: Does he deny that he ever told her,
18 or we just don't know?

19 MR. SHARPLESS: No. Mr. Carter admits that all
20 of these meetings occurred, yes.

21 THE COURT: He told Ms. Stevenson, Jacquelin,
22 the lady?

23 MR. SHARPLESS: Did Mr. Carter personally tell
24 Ms. Stevenson?

25 THE COURT: Uh-huh. He says he did or did not?

1 MR. SHARPLESS: I don't believe he claims that
2 he told her personally.

3 THE COURT: Okay.

4 MR. SHARPLESS: I don't believe that Mr. Carter
5 testified that he told her personally.

6 THE COURT: Okay. But under your theory, it
7 doesn't matter? He was her lawyer and he got told.

8 MR. SHARPLESS: He got told.

9 THE COURT: So she could sue Mr. Carter, I mean,
10 Ms. Stevenson or her estate, or --

11 MR. SHARPLESS: She would have whatever claims
12 she had against Mr. Carter that she wouldn't against
13 Ms. Kerrison, exactly right, Your Honor.

14 THE COURT: Okay.

15 MR. SHARPLESS: So if we look at the Bemis case
16 and Brailsford case together, what they are telling us is
17 the claims that you would have brought in your mother's
18 name have abated. The claims that you seek to bring in
19 your own name don't exist because you have nothing other
20 than a covenant expectancy.

21 The next issue I want to talk about is duty.
22 What we have in this case is an effort to impose upon a
23 CPA a duty to tell someone who is not a client, who
24 hasn't even, as a nonclient, asked the CPA for
25 information, and who hasn't been provided with any

1 information by the CPA.

2 Now, if you think that last thing is important,
3 because in some situations, we have a certified public
4 accountant issuing something in the nature of an audit
5 report, which is an opinion that says, I've looked at
6 certain things and I have this opinion about them and
7 here's my opinion. And that audit report under the MLE
8 case is going to be published to some group of people.
9 And if you are in that some group of people, you may have
10 a claim against that accountant for negligent
11 misrepresentation; not for professional negligence, but
12 for negligent misrepresentation under Section 5-52.

13 That's not the claim that's being brought here
14 because the plaintiffs don't claim that they ever
15 received any sort of assurance from Ms. Kerrison that all
16 was well. They don't claim Ms. Kerrison ever issued any
17 opinions one way or another about what was going on with
18 the two trusts or with their mother's personal assets.
19 In fact, they admit they had no communication with
20 Ms. Kerrison whatsoever. That's what they are
21 complaining about, in fact.

22 Instead, what the plaintiffs claim is that you
23 knew that if our mother died and she hadn't spent all the
24 money in the trust, she hadn't exercised her power of
25 appointment, she hadn't changed her will, that we were

1 hoping -- thinking we would get some money from her
2 estate from these trusts, and you knew what our brothers
3 were doing was going to diminish the amount of money, at
4 least if they were unable to pay those loans back, and,
5 therefore, you should have picked up the phone book,
6 looked us up, called us and said, hey, do you know what's
7 going on over here, you need to take action, or you need
8 to know about this. That's a pretty expansive duty to
9 put on someone whose only engagement is to prepare tax
10 returns.

11 So if we look at what the common law is on that,
12 let's start with the MLE case. The MLE case is, of
13 course, where the South Carolina Supreme Court in a
14 fairly short and terse opinion, affirmed what the South
15 Carolina Court of Appeals had done in recognizing a cause
16 of action in favor of a third-party under restatement
17 Section 552 for negligent representation, specifically
18 concerning an accountant's audit opinion.

19 If you are a person in that -- to whom the
20 accountant knew their representation would be published
21 or a member of a group like that person, then you may
22 have a claim for negligent misrepresentation if you jump
23 through the other hoops, not a claim that they are
24 bringing in this case. What the MLE case also said is,
25 you are not the client, you don't have a professional

1 negligence claim. Full stop. Only clients have
2 professional negligence claims. That's true for lawyers.
3 That's true for accountants. Only patients have
4 professional negligence claims against doctors.

5 So, when we look at that part of the MLE case,
6 what someone arguing against this might say is, well,
7 gee, actually, what the Supreme Court said is that that
8 issue hadn't been properly preserved. That was the trial
9 court's determination, you didn't present that properly
10 on your appeal and, therefore, it's law in the case, we
11 are not going to touch it. But that's not the end of it.

12 In two other South Carolina cases, the Court has
13 said the same thing. Most recently last year in the
14 Johnson vs. Robert E. Lee case, the South Carolina Court
15 of Appeals said that a CPA owed no duty to an individual
16 employee of a corporate client. The facts in that case
17 were that the corporate client engaged the CPA to look at
18 some transactions and to give an opinion about whether
19 there had been fraud. The CPA looked at those
20 transactions and apparently erroneously concluded that an
21 employee had committed fraud. There was a criminal --
22 the employee was discharged, criminal prosecution
23 resulted, which was ultimately -- which the employee was
24 ultimately vindicated. They sued the CPA. And, of
25 course, hum-um, there's no duty. You are not a client.

1 They didn't talk about public policy. They
2 didn't talk about any of these other things, whether this
3 was the elements of a defamation claim. They said CPAs
4 are viewed as professionals, have professional duties
5 only to their clients.

6 The same as the South Carolina Supreme Court
7 said in 2009 in the -- I hope I don't mispronounce it,
8 Rydde vs. Morris case. An attorney owed no duty to a
9 nonclient beneficiary of a will. I'm not sure this comes
10 out of estate work. But in that case, a person who hoped
11 to be the beneficiary of a will sought to bring a lawsuit
12 against the attorney who had arguably made some errors in
13 the execution formalities of the will resulting in the
14 invalidity of the bequest. The attorney -- or the Court
15 said, the attorney doesn't owe any duty to you. You are
16 a beneficiary. The client, who was now deceased, is the
17 only person who would have had this claim, and they are
18 not bringing it.

19 The last thing the plaintiffs say is, well, gee,
20 if we don't have a professional duty, it's a breach of a
21 fiduciary duty. The uncontested evidence in this case,
22 and it is established by -- oh, golly, we cite them in
23 our brief, but probably dozens of their responses to
24 request for admissions, because we ask them year by year,
25 plaintiff by plaintiff, whether they ever asked

1 Ms. Kerrison for information, whether they were ever
2 communicated information by Ms. Kerrison. And in every
3 case, they admitted in response to request for admissions
4 that there were no communications from Ms. Kerrison to
5 them. They have all admitted in their depositions that
6 they were not clients of Ms. Kerrison or the Pratt-Thomas
7 Gumb firm.

8 So if they are not clients in any capacity, much
9 less with respect to this engagement, but if they are not
10 clients in any capacity and they had no communication
11 with Ms. Kerrison, how on earth can there be not just a
12 professional duty, but a fiduciary duty?

13 South Carolina, like most states, does not hold
14 the accountant/client relationship to be a, per se,
15 fiduciary relationship. It's a facts and circumstances
16 test. Is there such degree of trust and confidence
17 imposed in one party by the other, usually but not always
18 involving the handling of assets or property, such that
19 the Court should impose the standard of the fiduciary
20 duty?

21 Well, Ms. Kerrison wasn't handling the
22 plaintiffs' assets at all. She didn't handle anybody's
23 assets. Even during the time that the Pratt-Thomas Gumb
24 firm had the checkbooks that they signed the checks, only
25 Tom and Dan signed the checks, and that was only a brief

1 time anyway.

2 With respect to the rest of the time period, all
3 of the time period, there was no communication. So there
4 can be no argument that the plaintiffs were imposing some
5 degree of trust and confidence in Ms. Kerrison as someone
6 who was watching over or taking care of even their
7 mother's affairs, much less their own affairs. Court
8 couldn't impose a fiduciary duty. So, we had no
9 professional duty. We had no fiduciary duty. And that
10 really right there takes care of the claims that the
11 plaintiff is asserting in this action. There simply is
12 no duty.

13 I think what the plaintiff is going to say is
14 that they want to turn this into, rather than a legal
15 issue, which the existence of a duty has been held over
16 and over again to be, they want to try to turn it into a
17 subject for expert testimony. They want to bring dueling
18 experts in there to say, oh, well, don't know anything
19 about the law but their expert George Durant says I think
20 you should have told them anyway, just because that's
21 what he thinks. Mr. Durant may think that in good faith;
22 I don't know.

23 But whether Mr. Durant thinks that or not has
24 nothing to do with what decision this Court should make
25 as to the fundamental question of, does an accountant owe

1 a duty to a nonclient? Can an accountant owe a fiduciary
2 duty to someone who is not only a nonclient, but with
3 whom they have had no contact? Those are both legal
4 issues, not factual issues for this Court to determine.

5 If the Court determines that an accountant could
6 owe a duty to a nonclient, then the extent of that duty,
7 the parameters of that duty, how it should apply in a
8 particular situation, might be a legal -- might be a
9 subject for expert testimony. But whether that duty
10 exists is a legal question for this Court.

11 The next claim that the plaintiffs rely on is
12 their aiding and abetting breach of fiduciary duty claim.
13 There's two cases that are pertinent, Gordon vs. Busbee,
14 South Carolina Court of Appeals 2011 and Future Group II
15 vs. Nation's Bank South Carolina Supreme Court 1996.

16 Both of those cases require and they say that the
17 gravamen of the cause of action for aiding and abetting a
18 breach of fiduciary duty is knowing participation, not in
19 the acts but in the breach itself. And there is
20 absolutely no evidence in this case that Ms. Kerrison
21 knowingly participated in the breach.

22 There's never even been an allegation that she
23 benefited in any way from this, which is normally where
24 you will see an aiding and abetting a breach of fiduciary
25 duty case. She never got any of these moneys. Tom and

1 Dan loaned it to their companies or loaned it to
2 themselves and gave it to themselves. There's no
3 evidence that she gave them tools or facilitated their
4 doing it. She simply recorded what they had already
5 done, and during a period of time of about a year, had
6 actually the records at the time that they were doing it,
7 had the checkbook. The rest of the time she didn't even
8 find out about it until the end of the year.

9 So what we have is no evidence of aiding and
10 abetting their breach of fiduciary duty to the other
11 trust beneficiaries or to the trust. We simply have
12 someone who was a record keeper.

13 The guy sitting over in the dugout who is
14 keeping the box score doesn't get the hitter's batting
15 average put on him; doesn't get the pitcher's ERA on him.
16 He has a duty only to keep the score, not to say, hey, if
17 the pitcher pitches a good game, I get the credit; if the
18 pitcher pitches a bad game, I get the claim. That's what
19 the plaintiffs seek to do in this case.

20 So those are the two pertinent cases on that
21 issue. Some cites on that were, again, those two cases.
22 And the Kerrison deposition, Page 37, Lines 10 to 25;
23 Pages 115 to 130 cited in our brief.

24 The last issue, Your Honor, that we raise with
25 respect to the duty issue really involves a point of

1 federal law. And I don't think it is the most important
2 part of the argument by a long shot, but there is a
3 federal statute that evinces a federal policy, 26 US Code
4 72-16, and it prohibits --

5 THE COURT: Say it again. What's your cite?

6 MR. SHARPLESS: I'm sorry. 26 US Code 72-16.

7 THE COURT: Okay.

8 MR. SHARPLESS: It makes it a
9 misdemeanor under federal law for any person who prepares
10 a tax return, professional or not, to disclose any
11 information furnished to them in connection with the
12 preparation of the return. And there are exceptions.
13 And I believe the plaintiffs are going to argue that
14 exception number three applies, and they are going to
15 cite regulations issued by the Internal Revenue Service.
16 And I think what they will argue to you is that the
17 regulations issued by the Internal Revenue Service say
18 that this law does not prohibit disclosure to a related
19 party whom they define as the beneficiary of a trust.

20 The problem with that argument for the
21 plaintiffs is they weren't beneficiary at that time.
22 They were contingent beneficiaries. And the disclosure
23 that was made was made to the then-current beneficiary,
24 who also held power of appointment over one of the
25 trusts, Jacquelin Stevenson. So she was the -- we would

1 argue that the disclosure that was permissible was made
2 and the plaintiffs would argue for impermissible
3 disclosure. That would be our argument with respect to
4 duty.

5 And you don't have to get to the federal
6 statute. You would only have to look at the federal
7 statute if you concluded that South Carolina common law
8 did impose the kind of duty that the plaintiffs argued
9 for. And then you would have to consider whether there
10 were preemption issues.

11 We've raised in our brief, Your Honor, two other
12 issues with respect to partial summary judgment. These
13 are not issues that are dispositive of the case, but they
14 are dispositive of significant issues. And this is under
15 Rule 56D. And as the Court I'm sure knows, whether the
16 Court wishes to go down that issue or not specifying
17 issues that appear without contest is entirely
18 discretionary. Under the federal rules there's no
19 requirement that the Court do so. The Court can
20 certainly reserve that judgment for a later time, such as
21 trial.

22 But there are two issues we've raised. One is
23 what the start and stop dates of plaintiffs' damage
24 calculation should be. And rather than give you a
25 lengthy argument on that, I refer you to our brief. And

1 we will say that their damages, if they have them -- this
2 is not the way their experts have done things -- should
3 begin no earlier than October 2001 when Ms. Kerrison
4 first became aware of these transactions, and should
5 terminate no later than April 27, 2006, when the
6 plaintiffs even admit that there was the big family
7 meeting at which everybody was told about everything.

8 Plaintiffs' expert has tried to extend the
9 damages to loans made before October 2001 and to a time
10 after April 2006. Because even after the plaintiffs were
11 told about this, Tom and Dan made some more moneys.

12 The second is the question of prejudgment
13 interest. The plaintiffs' expert, in fact, the largest
14 part of the damages that he calculates results from
15 taking all the transactions between Tom and Dan and the
16 trusts of the mother and imputing interest to 8 3/4
17 percent. For the reasons stated in our brief, this is
18 clearly an unliquidated claim. It is contested as to
19 liability. And there is a vigorous contest as to the
20 amount of the loss.

21 The defendants' experts, Thomas Petrus, says
22 there is no loss; plaintiffs are better off than they
23 were had this never occurred.

24 The defendants' expert, George Durant, says,
25 well, the net loss is \$4 1/2 million, which he uses 8 3/4

1 percent interest. So what we are asking the Court to do
2 is to specify the start and stop dates as October 31,
3 2001, and April 27, 2006, at the outside, and to
4 determine at this time that the plaintiffs will not be
5 entitled to recover prejudgment issues. That would be
6 our arguments for the partial summary judgment. And that
7 would be our argument.

8 THE COURT: Do you all have a trial date set?

9 MR. SHARPLESS: We do not. That's been
10 discussed, I believe, with the Court. We've discussed a
11 date certain setting July 15th, I think, before Your
12 Honor.

13 THE COURT: Might have been talking to Don.

14 MR. SHARPLESS: We did talk to Don.

15 THE COURT: I have to have a talk with Don when
16 he puts motion like this in front of me first thing on a
17 Monday morning.

18 All right. Let's take a short restroom break
19 and we will come back and hear from Mr. Babcock.

20 (A recess transpired.)

21 THE COURT: All right. Mr. Babcock.

22 MR. BABCOCK: May it please the Court.

23 THE COURT: You want to sue their whistle
24 blower, that's what this boils down to?

25 MR. BABCOCK: We wanted them to be a

1 whistle blower. They failed to blow the whistle to the
2 right people.

3 THE COURT: Is that what the theory is?

4 MR. BABCOCK: Your Honor, and I think this case
5 is a good example of one where people have
6 different views of what's -- what are the important facts
7 and what are not the important facts. So let me back up
8 and talk about this case, which was initially a
9 malpractice case against an attorney, an accountant, and
10 their firms. The attorney part of the case had been
11 resolved. It is just the accountant part that remains.

12 And the three claims that are before the Court
13 are claims for negligence, breach of fiduciary duty, and
14 aiding and abetting. And as to those claims, we believe
15 there are clearly questions of fact for the jury
16 ultimately to decide.

17 Let's go back and see how we got here.

18 Mr. Stevenson died in 1988. And at that point he
19 established two trusts, trust whose beneficiaries were
20 tied down in a marital trust.

21 Lynne Kerrison and Pratt-Thomas Gumb, now Dixon
22 Hughes, were the accountants for trusts Ms. Stevenson,
23 one of the brothers, Dan, and several of the companies
24 that Dan owned. They were accountants for all of that
25 group.

1 Let me make an aside right now, Your Honor.

2 Your Honor asked a question about how much money was
3 involved. We have Mr. Durant's report attached to our
4 memorandum, I think Exhibit 2. There was methodology by
5 which he looked at all the money taken and all the money
6 put back, giving credit for everything and looking at the
7 estate with Dan and Tom not receiving any interest, which
8 is the most conservative way of looking at the damages in
9 this case, and came out with \$4.5 million number. And
10 that's I think the most conservative issue for damages.

11 But let me go back. In January, 2001 there's a
12 critical time, January, 2001, because it is at that time
13 that Kathleen and Daniel received A power of attorney for
14 their mother. Mrs. Stevenson had had a stroke in late
15 2000. There was a power of attorney that was initially
16 issued that was not durable.

17 Couple years later, another power of attorney
18 was done that was durable, and that's created by
19 Mr. Carter. But at all times relevant for us, Kathleen
20 has a power of attorney. And that's what's so important
21 as we look at everything that occurred, is because she is
22 sitting in her mother's place because her mother is old,
23 her mother is infirmed, and ultimately ends up with
24 dementia. That's why we have powers of attorney. She is
25 in her mother's place. She subsequently died in 2007.

1 You know, Tom and Dan were the only trustees of
2 these trusts. And the relevant time period for them
3 taking money is 1999. That's when there's no question,
4 it is not gifts by mom to the boys; it's the two boys
5 taking money in 1999.

6 Now, Ms. Kerrison learned of the trustees taking
7 money from the trust at least by 2001. And she knew that
8 wasn't right. And she went to Mr. Carter, Heyward
9 Carter, the lawyer. And they had a meeting with Dan and
10 Tom in October of 2001. And what was supposed to happen
11 from that meeting was, A, they were supposed to stop it;
12 B, these loans were supposed to be memorialized; and, C,
13 they were supposed to go tell the family. And that
14 didn't happen.

15 As Mr. Sharpless indicated, in 2002, you again
16 got a situation where communication -- Ms. Kerrison knows
17 things are still going awry. Now, there is a meeting
18 that the defendants allege has significance in May of
19 2003 where I believe it was Tom claimed that he had told
20 Kathleen about the -- again, the power of attorney for
21 her mom -- had told her about these takings, these
22 withdrawals. That's a clear question of fact, because
23 Kathleen says, no, I was not told that, I did not know
24 that.

25 And I think as you see the rest of the

1 progression occur, that makes sense, because if she had
2 been told, Tom would have told Heyward Carter and told
3 Ms. Kerrison, hey, I told Kathleen. Didn't happen.
4 Didn't happen.

5 What we know is that in April of -- April 27,
6 2006, there was a meeting where Kathleen was called. And
7 we know that this case was started within the three years
8 statute of limitations after that. If she had been told
9 in 2003, there would have been no need for that meeting
10 on April 27th, 2006, or even if she had been told on
11 April 19, as defendants assert, there would have been no
12 need for the meeting on April 27th, 2006.

13 In fact, things had gotten so bad in 2006 that
14 in March, I believe, Ms. Kerrison and Mr. Carter got
15 together and they put together a letter telling Kathleen
16 and the other sisters about what happened. It was a
17 letter saying, if you don't meet and tell Kathleen, we
18 are going to have to take action. And they gave the
19 brothers a little bit of time to go ahead and have that
20 meeting with their sister. But they both understood that
21 it was April 27th, 2006.

22 THE COURT: They being who?

23 MR. BABCOCK: They being the accountant and the
24 lawyer.

25 THE COURT: Okay.

1 MR. BABCOCK: Understood there was a
2 need for the meeting because they hadn't been told;
3 otherwise, there would be no need for that meeting.

4 Now, I want to go back. One thing is clear.
5 And we've cited the testimony in our brief. Ms. Kerrison
6 testified quite clearly at her deposition that she was
7 not told by the brothers, although she met with them on
8 April 19th, she was not told about the takings.

9 Now, a more logical interpretation of what
10 happened, oh, yeah, question of fact is the brothers were
11 each trying to soften her up. They wanted to see the
12 businesses where these moneys had gone to make her more
13 comfortable about what had occurred and then have the
14 April 27th meetings where she actually hears it. But we
15 have a question of fact on that.

16 Mr. Sharpless made reference to a request to
17 admit. That was request to admit Number 171, a 43-page
18 series of requests to admit. But the wording is very
19 important on that request to admit, Your Honor. What
20 that request says is that: Thomas Stevenson informed
21 you, that would be Kathleen, that he and Daniel Stevenson
22 removed money from the trust on April 19, 2006. Let me
23 read it again: Thomas Stevenson informed you that he and
24 Daniel Stevenson removed money from the trust on April
25 19, 2006.

1 Does not say on April 19, 2006, Thomas Stevenson
2 informed you that he and Daniel Stevenson had previously
3 removed money from the trust. Doesn't say that at all.
4 So I think the most logical interpretation of that
5 request to admit is that on April 19th, 2006 was a
6 removal for money, but even if you can --

7 THE COURT: Was there, in fact, money removed on
8 that date?

9 MR. BABCOCK: There -- well, we don't think so,
10 but we don't know that it was, in all candor, Your Honor.
11 But I think regardless, at worst, you've got a
12 dispute between what this request to admit says and the
13 actual testimony at deposition. So if they want to try
14 to impeach her, that's fine. But at the deposition
15 testimony they asked her very clearly about what happened
16 at that meeting, and she told them very clearly what
17 occurred on April 19, 2006.

18 Again, no need for the meeting on April 27th,
19 2006, if she had been told previously.

20 Two other points, Your Honor, which I think are
21 important in terms of looking at the totality of what the
22 accountants are doing. First off, and they make light of
23 this, but they actually took responsibility for the
24 checking account. Checkbook came and stood with the
25 accountants. So the checks, they are being written, the

1 checks where these improper withdrawals are occurring,
2 are from the checkbook in the possession of the
3 accountant.

4 I think when you look at the totality of the
5 relationship, this is far different than just somebody
6 doing an occasional tax return. If you look at the
7 totality, it is a much different, fuller relationship.

8 You even had, Your Honor, one of the accountants
9 in the firm investing in one of Daniel Stevenson's
10 ventures, which is where the money went. That gives you
11 a little bit more flavor of what happens here.

12 Now, our expert is George Durant for both the
13 standard of care for accountants and the damages. And
14 when you look at the duty, and he says this in his
15 affidavit and in his deposition, the duty is rooted in
16 Kathleen being the power of attorney.

17 I think we have a different case, perhaps, if
18 Kathleen doesn't have that power of attorney, but she
19 did. And there are no cases that have been cited to you
20 where with a power of attorney and that responsibility,
21 an accountant doesn't have a responsibility to come
22 forward and tell that power of attorney, who is standing
23 in her mother's shoes, about what's going on.

24 Let's look at the different legal issues that
25 Mr. Sharpless has raised. First, the statute of

1 limitations, well, we really only talked about that. We
2 say the statute started on April 27th, 2006. This case
3 was brought within the three-year statute. As to any of
4 the other dates, there are questions of fact. And again,
5 there would have been no need for the meeting on April
6 27th if she had already told.

7 The cases, if you look, that defendant cited
8 here, like the Dorman case, that was a situation where
9 there was an attorney, a real estate closing, and the
10 purchaser had extensive knowledge about the -- there was
11 a question, I think, about a room being in a flood zone
12 in the house. They had surveys done. They had
13 inspectors. There was a lot of independent knowledge
14 that the clients had. And that setting, it is a very
15 different one from here where you've got really the
16 attorney and the accountant acting somewhat together in
17 knowing that there was something wrong and not stepping
18 out and telling Kathleen Stevenson with her power of
19 attorney.

20 This question of abatement or survival goes to
21 matters of fraud. And those are not the claims that we
22 brought here. They are based on negligence, breach of
23 duty, and aiding and abetting. That's not fraud. And,
24 again, in terms of what factual basis you've got to
25 support that, you've got Mr. Durant's opinion that he

1 should have reported to the power of attorney. We know
2 it was not reported to the power of attorney. And we
3 know that the checks shouldn't have been being written by
4 the accounting firm.

5 And in that case, what you've got is not
6 something rooted in fraud, but you've got something
7 rooted in, again, negligence, breach of fiduciary duty,
8 and aiding and abetting.

9 The federal statute -- third point, your Honor.
10 The federal statute which Mr. Sharpless cited, in
11 stepping back, that issue is one of preemption. And we
12 know that when we deal with preemption with Congress,
13 questions whether they are trying to preempt the field,
14 there is certainly nothing expressed that there is
15 preemption here. And there's nothing implied to occupy
16 the field. Nothing saying state law would not or common
17 law would not apply.

18 This statute was really geared, Your Honor, to
19 all those tax preparers out there, not real accountants,
20 but people that prepare taxes, to ensure that
21 confidential information being used for tax preparation
22 was not misused by that kind of individual.

23 And, again, we have cited in the Code of Federal
24 Regulations. There are a number of exceptions to this,
25 and one being trusts, estates, beneficiaries even. We

1 say clearly that when you are dealing, again, with a
2 power of attorney, the person standing in her mother's
3 shoes, there's no prohibition by that statute at all.

4 The duty issue, Your Honor, it again comes back
5 to the power of attorney. And there's been no case law
6 submitted to you saying that when you've got somebody
7 with a power of attorney, you don't have a duty. We say
8 clearly that's what the power of attorney is for,
9 particularly here with an elderly person and eventually
10 having dementia in the time periods at issue. That's
11 what that power of attorney is for.

12 The aiding and abetting issue, Your Honor, the
13 accountant had the knowledge. The accountant's writing
14 the checks. And importantly, she knew it was wrong. She
15 knew what the brother was doing was wrong from the very
16 start. That's why she went to the lawyer. She heard the
17 lawyer say it was wrong. She heard the lawyer say you
18 need to do these things, you need to memorialize what
19 you've taken, we will make them loans, you need to stop
20 doing it, and you need to tell the family.

21 She knows those last two don't happen. She
22 knows because she's continuing to write checks. And she
23 knows because she keeps worrying about letting the family
24 know, again, as late as right before the April 27th,
25 2006, meeting.

1 And, Your Honor, what happened here in terms of
2 how it got extended over five years, the brothers kept
3 having excuses for why they wanted to wait and tell.
4 They wanted the right setting to tell. It was a wedding
5 here or an illness there. And they just extended and
6 extended and extended. And who goes along, the
7 accountant, who continues to write the checks.

8 THE COURT: Who actually wrote the checks out?

9 MR. BABCOCK: There was a woman initially --
10 Your Honor, there was a woman who was Ms. Neapolitan.
11 She then died, and the checkbook was transferred to the
12 accountant's office. It was not Ms. Kerrison, but
13 somebody in her office.

14 THE COURT: So somebody in the accountant's
15 office wrote the checks out in their handwriting or typed
16 it out or computer-generated a check? These guys didn't
17 have the checkbook themselves?

18 MR. BABCOCK: No, sir. But when they wanted
19 a check, they let the accounting firm know
20 they wanted a check and the check would be prepared.
21 They would go pick up the check. As trustee, they had to
22 go and sign the checks to themselves. So you would have
23 Dan giving checks to himself and Dan getting checks
24 either directly or to companies they controlled. In each
25 case that was where the money was going, was to some of

1 Tom's companies, Dan's companies. That's where the flow
2 of the money went.

3 THE COURT: Was Ms. Kerrison writing any of
4 these checks?

5 MR. BABCOCK: I don't believe Ms. Kerrison
6 herself did, but they did -- the accounting firm took
7 control and they had the checkbook. And there was a
8 woman in Ms. Kerrison's firm who actually wrote the
9 checks. She knew she had the checkbook.

10 THE COURT: All right. But Ms. Kerrison herself
11 was not writing the checks out? She just was doing the
12 tax preparation based on the information that somebody
13 else in the office was compiling; is that correct?

14 MR. BABCOCK: Your Honor, she got the
15 information. She did prepare the taxes. The source of
16 information I think was probably coming from the
17 trustees, because they would have had information that
18 they would have given to her. And I guess also from the
19 woman in her office who would have been able to document
20 exactly what loans or withdrawals or takings occurred and
21 when. But that's all -- this is all happening within the
22 same accounting firm, Your Honor.

23 THE COURT: I understand that, but you are suing
24 Ms. Kerrison individually as well as the firm she worked
25 for. And so it's one thing for somebody else in the

1 office to know, and it was another thing for her to find
2 it out and report it, as opposed to being actively
3 involved in the check writing.

4 MR. BABCOCK: Your Honor, I don't know that
5 that's the case here, because she knows the check writing
6 is occurring in her office and she doesn't stop that.
7 She has the ability to go to the person in her office and
8 say, do not write them any more checks, that's wrong,
9 family hasn't been told. That's her own office.

10 We have sued both her and her office. I don't
11 think she can hide behind the fact that somebody else in
12 the office is actually writing the checks that she knows
13 is occurring.

14 THE COURT: Well, I guess, what was her job
15 title? And what was the other person's job title? I
16 mean, it's -- there's a difference between saying you
17 should go tell somebody that something is going on than
18 going and confronting the person whose doing something
19 wrong involved in it and saying, you need to stop it. If
20 you are supporting of them, an equal of them, or their
21 supervisor, I think there's different levels of things
22 that you can be expected to have done.

23 MR. BABCOCK: Well, Your Honor --

24 THE COURT: She may not have had any authority
25 to go to the person and say -- I don't know what her job

1 title was -- to say you need to stop this.

2 MR. BABCOCK: She was not an accountant, as I
3 understand it. So I think she would have been a
4 subordinate in that sense, Your Honor. I think she had
5 the clear ability to stop it. But even if it was clerk
6 person, I think within the firm, you have to at least
7 make the effort to stop something that you know is wrong.

8 THE COURT: Well, and then that goes to what did
9 she do. It would be one thing to go to a person in her
10 office, but from what I heard, she went to the lawyer and
11 said something is wrong.

12 MR. BABCOCK: Several times, Your Honor, yes,
13 knowing it was going on. And the first time is before
14 her office is writing the checks. They start taking over
15 that check-writing responsibility during the time period.

16 THE COURT: Well, that's the -- the accountant's
17 office's liability and Ms. Kerrison's may or may not be
18 the same thing depending on the facts. Again, I'm just
19 finding out about this this morning because somebody
20 dropped that thing off Friday afternoon and yours just
21 got handed up. That's my sum total knowledge of this
22 case.

23 So what I'm getting at is -- I've lost my train
24 of thought. She may or may not have this same -- the
25 principal is responsible for the wrongs of their agents.

1 All right? But it may be that some other agent in the
2 office of the accountant is really responsible for the
3 things that you are trying to pin on Ms. Kerrison.
4 Whatever Ms. Kerrison did wrong as an agent of the
5 accountant would obviously cause -- create liability for
6 her employer. But she's not responsible for everything
7 that went on in that firm, only for the things that she
8 did. She could also be personally responsible for the
9 torts that she committed. The firm maybe is going to be
10 responsible for anything that she did wrong, plus things
11 that other agents in that office did wrong.

12 So I'm trying to get what did Ms. Kerrison do
13 wrong and what did other people in that office do wrong.
14 Because Ms. Kerrison is not going to be vicariously
15 liable for other agents in that office's wrongdoing
16 necessarily if she wasn't their supervisor. That's, I
17 guess, what I'm trying to get at, inarticulately.

18 MR. BABCOCK: No, I understand where you're
19 going. Let's step back and look at what our theory is.
20 First off, the check writing isn't integral to the
21 theory, because the check writing wasn't going on in 2001
22 when she went to Mr. Carter. Our theory is based in
23 large part on the duty, as Mr. Durant expressed, it's
24 a duty of the accountant to tell the power of
25 attorney. That's where the wrongdoing occurs with

1 Ms. Kerrison.

2 It gets worsened because she also has knowledge.

3 And we will supplement with Ms. Kerrison's deposition,
4 but we will supplement that. It is my understanding it
5 was a subordinate within the firm. It was not somebody
6 of co-equal. But I think that once you know that your
7 office has the checkbook and there are checks being
8 written that you know to be wrong, that heightens the
9 responsibility, if nothing else, for her to make sure she
10 goes and tells Kathleen, who's got the power of attorney,
11 hey, you've got to know what's going on here, because she
12 knows that her office is now writing the checks that she
13 knows to be wrong.

14 So that's where the check writing becomes
15 significant, Your Honor. Her duty was breached when she
16 didn't disclose.

17 The damage issue, I think all those damage
18 issues are more properly for either the jury or perhaps
19 motion in limine, summary judgment really, we submit,
20 shouldn't be slicing and dicing and looking at the
21 damages in a piece meal fashion, but significantly, the
22 damages which we say the defendants are responsible for
23 after the April 27, 2006, time period, include the
24 efforts to mitigate the damages. And those are
25 attorney's fees spent, approximately \$800,000 worth of

1 attorneys' fees spent chasing the millions of dollars
2 from the brothers. And there were lawsuits, ultimately a
3 verdict and settlement.

4 And we submit a case law in our brief that when
5 we all know you've got a duty to mitigate, but when it
6 costs you money trying to mitigate, those costs are
7 recoverable in the underlying case.

8 The before issue, before the 2001 date, Your
9 Honor, if the power of attorney had been told by the
10 accountant in October of 2001 what was going on, both
11 brothers were still solvent at that point in time, moneys
12 could have come back.

13 But by the time the whistle gets blown, by the
14 time people ultimately find out about what occurred, it
15 is too late. The brothers had lost those moneys. And
16 although some was repaid by Tom, none was repaid by Dan.

17 At the end of the day, you've got the estate
18 and, again, Mr. Durant's analysis looked at what would
19 have occurred if the moneys hadn't been taken out in a
20 normal distribution, and then what moneys were available
21 when the proposal for distribution was filed in 2011,
22 eliminating the two brothers whose rights to their
23 inheritances had been forfeited along the way.

24 So that we are not looking for any benefit of
25 anything other than the losses, again, as conservative as

1 we can be, the losses to the estate before and after as
2 though those takings did not occur. And that's \$4.5
3 million.

4 Finally, Your Honor, on prejudgment issues, I
5 can't imagine anything being more sum certain or
6 liquidated amount than knowing exactly when moneys were
7 taken out of the trust. We know all those days. There's
8 no question. We may have different damage theories, but
9 there's no question about when the moneys were taken out.
10 So if you know when the money was taken out, we believe
11 you get prejudgment interest. Thank you.

12 THE COURT: All right. Well, I think I've
13 got -- I know I've got a better feel for it because I
14 didn't know anything about it before I got in here. Let
15 me study this a little bit, and I will let y'all know
16 what I decide.

17 I ran into Don during our break and asked him
18 why I was hearing this this morning. And he said y'all
19 have a date certain, trial date in July. And he says it
20 is set in front of me, so at least that makes sense why I
21 was hearing it.

22 So let me do this. Let me read through this in
23 light of my enlightenment. And I will let y'all know what
24 I decide. Okay? Thanks.

25 (Proceedings are concluded.)

CERTIFICATE OF REPORTER

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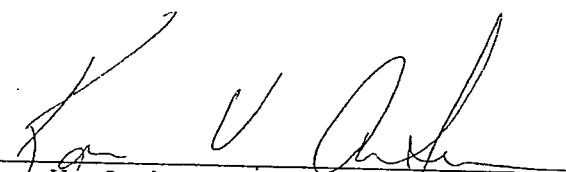
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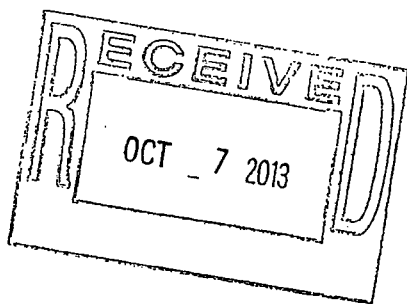
I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the
State of South Carolina at Large, do hereby certify that
the foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 28th day of September, 2013 at
Charleston, Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016



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AGREEMENT OF SETTLEMENT AND RELEASE

This Agreement of Settlement and Release (the "Agreement") is entered into as of November 22, 2009, by and among (i) Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, both in their individual capacity and as co-trustees (the "Co-Trustees") of the Jacquelin K. Stevenson Marital Trust and the Q-TIP Trust U/W/O Thomas C. Stevenson (collectively, "Trusts") and as beneficiaries (collectively, the "Beneficiaries") of the Trusts, (ii) Jacquelin S. Bennett, and Kathleen S. Turner, as the co-personal representatives (collectively, the "Co-Personal Representatives") of the Estate of Jacquelin K. Stevenson (the "Estate") and (iii) James K. King, in his individual capacity, as a former Co-Trustee of the Marital Trust, and as a beneficiary of the Estate of Jacquelin K. Stevenson (with the above named parties being collectively referred to herein as the "Payees"), and Thomas C. Stevenson III, Fabtech, Inc. Laurentide, Inc. and Commerce Circle LLC (collectively, the "Thomas C. Stevenson, III Parties") (with the Payees and the Thomas Stevenson, III Parties referred to collectively as the "Parties").

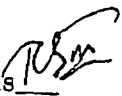
WHEREAS, on or about January 22, 2008, the Payees filed a Complaint against the Thomas C. Stevenson, III Parties and others in an action entitled Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as co-trustees and beneficiaries, and Jacquelin S. Bennett, and Kathleen S. Turner, as co-personal representatives of the Estate of Jacquelin K. Stevenson v. Thomas C. Stevenson, III, Daniel R. Stevenson, II, Fabtech, Inc. Laurentide, Inc., Easy Tray, LLC, Carolina Fresh Cut, LLC, Carolina Fresh Cut, LLC d/b/a Toogoodoo Farms, Toogoodoo Farms of the Carolinas, and Commerce Circle, LLC ("Suit 1") in the Probate Court for the County of Charleston, State of South Carolina (the "Probate Court"), case number 2007-ES-10-1437. On or about February 12, 2008, this case was removed to the Circuit Court for the County of Charleston, State of South Carolina (the "Circuit Court"), case number 2008-CP-10-806;

WHEREAS, on or about March 6, 2009, the Payees filed an Amended Complaint against the Thomas C. Stevenson, III Parties and others (the "Amended Complaint");

WHEREAS, on or about March 23, 2009, the Thomas C. Stevenson, III Parties filed an Answer to the Payees' Amended Complaint denying the allegation of the same and asserting a Cross-Claim against Daniel R. Stevenson and Counter-Claims against the Payees (the "Suit 1 Counter-Claims");

WHEREAS, on or about April 17, 2009, Payees filed an Answer to the Counterclaims of the Thomas C. Stevenson, III Parties denying the allegation of the same;

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EXHIBIT

A

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WHEREAS, on or about September 11, 2008, James K. King filed a Complaint entitled James K. King v. Jacquelin S. Bennett, Genevieve S. Felder, Kathleen S. Turner, Thomas C. Stevenson, III, Daniel R. Stevenson, II, William A. Bennett, Fabtech, Inc., Laurentide, Inc., Easy Tray, LLC, Carolina Fresh Cuts, LLC d/b/a Toogoodoo Farms, and Toogoodoo Farms of the Carolinas ("Suit 2") (Suit 1 and Suit 2 hereinafter referred to collectively as "the Litigation"), in the Probate Court, case number 2007-ES-10-1437;

WHEREAS, on or about November 18, 2008, the Thomas C. Stevenson, III Parties filed an Answer to Suit 2 asserting a Cross-Claim against Payees and William A. Bennett and others;

WHEREAS, the Parties, without acknowledging or admitting any liability whatsoever, and to avoid the costs associated with litigation, now desire to resolve the Litigation under the terms outlined below; and

WHEREAS, the Parties believe that the terms of this Agreement are fair, equitable, and the result of an arm's length, bargained-for, contemporaneous exchange for new value as outlined below;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Recitals Incorporated Into Agreement. The Parties incorporate into this Agreement the recitals set forth above as part of the terms of this Agreement.

2. Effective Date. The Parties agree that the effective date of this Agreement shall be November 25, 2009 ("Effective Date").

3. Dismissal with Prejudice of the Litigation. On the Effective Date, each of the Parties will instruct their respective legal counsel in the Litigation to execute the Stipulation of Dismissal With Prejudice of all claims adverse to the other parties to this Settlement Agreement (the "Stipulation") in the form attached hereto as *Exhibits A & B*, and to take all other steps necessary to promptly to effectuate the filing of same with the Circuit Court and the Probate Court and the dismissal of the claims consistent with the terms of such Stipulation.

4. Cooperation. The Parties agree to cooperate fully and to execute any and all supplemental documents and to take any and all additional actions that may be necessary to give full force and effect to the basic terms and intent of this Agreement and which actions are not inconsistent with such terms, including, but not limited to, cooperating and using best efforts to obtain the

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dismissal with prejudice of the claims by and between the Parties to this Agreement in the Litigation as set forth in Paragraph 3 of this Agreement.

5. Time The parties agree that time is of the essence in reaching this agreement and in complying with its terms and conditions.

6. Terms

- a. In consideration of the dismissal of the Lawsuit, the Thomas C. Stevenson, III Parties hereby release and forever discharge the Co-Trustees, the Trusts, the Co-Personal Representatives, and the Estate from any and all rights and claims which the Thomas C. Stevenson, III Parties may have against the same.
- b. In consideration of the dismissal of the Counterclaims asserted by the Thomas C. Stevenson, III Parties and the other consideration set forth herein, the Co-Trustees, the Trusts, the Co-Personal Representatives, the Beneficiaries, and the Estate release and forever discharge the Thomas C. Stevenson, III Parties from any and all rights and claims the Co-Trustees, the Trusts, the Co-Personal Representatives, the Beneficiaries, or the Estate may have against the Thomas C. Stevenson, III Parties.
- c. In exchange for the consideration set forth herein, James Kelly King releases and forever discharges the Thomas C. Stevenson, III Parties from any and all rights and claims he may have against the Thomas C. Stevenson, III Parties.
- d. The Payees agree that the Settlement Payment to be made under this Agreement shall be made to the law firm Slotchiver & Slotchiver, LLP, as counsel for the Trusts and Estate identified above, or its successor as may be later designated by the Payees or their authorized agent, for distribution of the Settlement Payment in accordance with the terms of the Marital Trust, QTIP Trust, and Will of Jacquelin K. Stevenson and the terms of this Agreement. The Thomas C. Stevenson, III Parties shall have no responsibility to ensure the Settlement Payment or any installments thereto are properly disseminated to the Payees from their agent.
- e. Thomas C. Stevenson, III expressly releases and waives any and all claims he may have or may have had in the Estate,

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including, but not limited to, any claim he may have under any and all trusts and/or the Will, including, but not limited to, any claim he may have on the property located at Lake Summit (the "Lake Summit House") and any other real property, as well as any claim, present or future, to any recovery the Estate and/or the Payees may receive from any and all lawsuits, either pending or future. Thomas C. Stevenson, III agrees to convey to the Estate, by limited warranty deed, as part of this settlement, all of his interest in the Lake Summit House.

- f. Thomas C. Stevenson, III agrees to pay the sum of Two Million Dollars and No/100 (\$2,000,000.00) (the "Settlement Payment") to the Payees. Interest shall accrue on the outstanding balance of the Settlement Payment, beginning on the date of execution of this Agreement, at a per annum rate of seven percent (7%) and capitalized annually, if not paid.
- g. The Settlement Payment shall be payable in the amount of Twenty-Five Percent (25%) of the salary, commissions or other bonuses paid to Thomas C. Stevenson, III, paid quarterly plus Fifty Percent (50%) of the salary, commissions or other bonuses paid to any family member of Thomas C. Stevenson, III other than Thomas C. Stevenson, III and Thomas C. Stevenson, IV, OR 25% of income reported on the Fabtech, Inc., and/or Laurentide, Inc. Form 1120S, Page 4, Schedule M-1, Line 8 and/or reported on the Commerce Circle, LLC income tax return Schedule M-1 Line 9 or Schedule M-3 if applicable (or replacement IRS Form) LESS income tax on undistributed taxable income (computed by preparing Tom Stevenson III's 1040 tax return with and without the K-1 from Fabtech, Inc) plus depreciation as shown on Schedule M-1 and amortization whichever is greater, as recorded on the financial statements of Fabtech Inc., Laurentide, Inc., Commerce Circle, LLC, their successors or assigns, and/or any other business that Thomas C. Stevenson, III controls or which the Companies are controlled by. The Settlement Payment shall also include 50% of the non-salary distributions made to Thomas C. Stevenson, III, or to members of his family, above the difference of the taxes from Thomas C. Stevenson, III's 1040 tax return with and without the K-1 from Fabtech, Inc., Laurentide, Inc. and Commerce Circle, LLC. The Settlement Payment shall be made in the manner and amounts as follows:

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- i. First payment shall be due on February 15, 2010 and shall be based upon 25% of the salary and/or bonuses paid to Thomas C. Stevenson, III in the fourth quarter of 2009 and 50% of any distributions made to Thomas C. Stevenson, III in the fourth quarter of 2009, above that amount necessary for the payment of state and federal income taxes.
- ii. For purposes of paragraph 6(g), the payment due and payable at the end of each quarterly period is hereinafter referred to as the "Quarterly Payment." Payments after those referenced in paragraph 6 (g)(i) are due on April 15, 2010. Thereafter, the Quarterly Payment for each of the first three fiscal quarters shall be due and payable thirty (30) days after the end of each such quarter. The fiscal year end fourth Quarter Payment shall be due and payable on April 15 of each successive fiscal year until the Settlement Payment, plus interest, is paid in full. Interest on the outstanding balance of the Settlement Payment, or any unpaid Quarterly Payment, shall be seven percent (7%), compounded annually, until the Settlement Payment, plus all accrued interest, is paid in full.
- iii. For purposes of paragraph 6(g), a copy of the unaudited annual financial statements of Laurentide, Inc., Fabtech, Inc. and Commerce Circle, LLC, their successors or assigns, and/or any other business that Thomas C. Stevenson, III controls or is controlled by, shall be made available to the CPA firm of McGuire & Company, LLC or its successor as may be later designated by the Payees or their authorized agent on or before April 15, 2010 for the fiscal year ended 2009. The Thomas C. Stevenson III Parties agree that a copy of the audited annual financial statements of Laurentide, Inc., Fabtech, Inc. and Commerce Circle, LLC, their successors or assigns, and/or any other business that Thomas C. Stevenson, III controls or is controlled by, shall be made available to the CPA firm of McGuire & Company, LLC or its successor as may be later designated by the Payees or their authorized agent on or before April 15, 2011 for the fiscal year ended 2010 and each April 15th thereafter. In addition, a copy of the interim financial statements of Laurentide, Inc., Fabtech, Inc., and Commerce Circle, LLC, their successors or assigns, and/or any other business that Thomas C. Stevenson, III controls or is controlled by, shall be made

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available to McGuire as the Certified Public Accountants for the Trusts and Estate identified above, or its successor as may be later designated by the Payees or their authorized agent no later than thirty (30) days after the mid-year end, and the Companies agree to provide any further information or documentation supporting these financial statements to McGuire & Co., the accountants for the Trusts and Estate identified above, or its successor.

- iv. For purposes of paragraph 6(g), the Parties further agree that the fiscal year end fourth Quarter Payment shall be adjusted as necessary and that all Quarterly Payments shall be subject to review by the Payee's Certified Public Accounting firm and/or individual Certified Public Accountant.
- v. If the review referenced in paragraph 6(g)(iv) reveals differences or discrepancies in the amounts paid or payable, the Parties will retain a mutually agreed upon auditor to act as arbitrator. Personal expenses such as travel, meals, entertainment, contributions, for the benefit of Thomas C Stevenson, III or his family are not permitted in the income figures referenced paragraph 6(g). Such expenses if discovered will be reviewed by the arbitrator, and increase the payment to the Payees on a dollar for dollar basis. The decision of the auditor shall be final. If any such differences or discrepancies in the amounts paid or payable, as determined by the auditor, are not paid in full within thirty (30) days, the Payees or their heirs will have the absolute right, but not the obligation, to file and record a confession of judgment (hereinafter, the "Confession of Judgment," as more fully described in paragraph 6(i) below) against Thomas C. Stevenson, III for the full unpaid amount, plus interest. Interest on the outstanding balance shall be seven percent (7%), compounded annually, until the Settlement Payment, plus all interest accrued, is paid and received in full.
- vi. In the event that the full amount of the Settlement Payment, with interest, has not been paid by April 15, 2015, the

Confidential

outstanding balance shall be converted into a note payable and held in the names of Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder, and James K. King or their heirs (hereinafter, the "Note"). The Note shall be amortized over five (5) years and payable in equal quarterly installments. The Note shall be due and payable on or before April 15, 2020 at an interest rate of eight percent (8%), compounded annually.

- vii. The Parties further agree that it is in their best interest that Thomas C. Stevenson, III be allowed to freely conduct, without undue interference, the operations of Laurentide, Inc., Fabtech, Inc., and Commerce Circle, LLC, their successors or assigns, and/or any other business that Thomas C. Stevenson, III controls or is controlled by, and the Payees hereby undertake not to interfere in any way with such operations, except to the extent necessary to enforce the terms of this Agreement.
- viii. Thomas C. Stevenson, III agrees to provide to Slotchiver & Slotchiver a statement of the attorney fees and expenses incurred in this litigation which have been incurred on behalf of Thomas C. Stevenson, III individually so that they can be claimed as a deduction for estate tax purposes, if permitted.
- h. Should it become necessary for any party to this Agreement to initiate any further legal proceedings to enforce any provision of this Agreement, the Court shall award the Prevailing Party their reasonable attorneys' fees and costs incurred in such enforcement efforts.
- i. As security for the Settlement Payment to be made by Thomas C. Stevenson, III, Thomas C. Stevenson, III shall sign and deliver to Robert H. Hood, Esquire, counsel for Jacquelin S. Bennett, Kathleen S. Turner, and Genevieve S. Felder, a Confession of Judgment (the "Confession of Judgment") as to claims for breach of fiduciary duty breach of trust and conversion in favor of Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder and James K. King, or their heirs in the amount of Two Million Dollars and No/100 (\$2,000,000.00). The parties intend that the

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Confession of Judgment as to claims for breach of fiduciary duty, breach of trust and conversion qualifies as one of the exceptions from discharge contained in 11 U.S.C. § 523(a) and intend for this agreement to have preclusive effect as to the issue of dischargeability in any subsequent bankruptcy proceeding voluntary or involuntary. If Thomas C. Stevenson, III is placed into bankruptcy, he will support the Payees cause of action that this claim shall be non-dischargeable and will so advise any trustee or examiner of this position. Robert H. Hood, Esquire or his successor shall hold the Confession of Judgment in trust and shall not file, record, make public in any way to any person not a party to this Agreement or their counsel, or otherwise seek to enforce it unless a Default shall occur. "Default" shall be defined as a failure by Thomas C. Stevenson, III to make any payment as outlined in paragraph 6(g) above, or failure to make the entire Settlement Payment by April 15, 2020, and the continuation of such failure for a period of thirty (30) business days after Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder or James K. King shall have sent a notice of default to Thomas C. Stevenson, III. Upon the occurrence of a Default, Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder and/or James K. King, or their heirs shall have the right to file, record, or otherwise seek to enforce the Confession of Judgment. If the Confession of Judgment is filed, recorded, or otherwise sought to be enforced by Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder, and/or James K. King or their heirs the judgment amount shall be reduced by the amount of any payments of principal made by Thomas C. Stevenson, III in accordance with this Agreement prior to the occurrence of the Default. When Thomas C. Stevenson, III pays the entire Settlement Payment, including interest, Jacquelin S. Bennett, Kathleen S. Turner, and Genevieve S. Felder's attorney, Robert Hood or his successor in this capacity shall return the original and all copies of the Confession of Judgment to Thomas C. Stevenson, III or his attorney.

- j. As further security of the Settlement Payment to be made by Thomas C. Stevenson, III, Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder and James K. King shall obtain a second priority mortgage on the real property located at 915 Commerce Circle, Hanahan, South Carolina and 917 Commerce Circle, Hanahan, South Carolina. There will be a

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second mortgage to this property which will be subordinate to pre-existing mortgages and/or liens on this property previously recorded.

- k. As further security of the Settlement Payment to be made by Thomas C. Stevenson, III, the Thomas C. Stevenson, III Parties hereby sell, assign, mortgage, hypothecate, convey, transfer, and grant to the Payees a continuing security interest in the Distributions as set forth above in paragraph 6(g), and in their expectancy to acquire the Distributions in the ordinary course of business and hereby authorize the Payees to file financing statement(s) describing the Distributions in the Office of the Secretary of State of South Carolina and in any other filing office deemed necessary or appropriate by the Payees, whether in or out of the State of South Carolina.
- l. Thomas C. Stevenson, III agrees to waive any interest in the pending suit brought by Jacquelin S. Bennett, Kathleen S. Turner, and Genevieve S. Felder against T. Heyward Carter, Jr.; Evans, Carter, Kunes & Bennett, P.A.; Douglas Capital Management, Inc.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Civil Action No. 2007-ES-10-1437 and 1988-ES-10-00747.
- m. In the event that Thomas C. Stevenson, III, any of the Companies or any of his affiliated entities, which is hereby understood to refer to entities that control or are controlled by Thomas C. Stevenson, III, prepare to file for bankruptcy, Thomas C. Stevenson, III, or such Companies or such affiliated entities shall notify Robert H. Hood or his successor in writing and by e-mail or other form of immediate transmittal ten (10) days before such filing of bankruptcy and the Payees, at their option, may immediately record the Confession of Judgment. In the event that any creditor with debt owed to it from the Thomas C. Stevenson, III Parties in excess of \$10,000 issues a formal notice of default on said loans, or if any of the Companies shall be sold, liquidated, dissolved or otherwise disposed of as a result of insolvency and the surviving companies or successors are unable to perform under this agreement, then Payees shall have the right to direct Robert H. Hood or his successor to record the Confession of Judgment. This Judgment will be senior to any and all other confessions of judgment.

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- n. Compensation to Thomas C. Stevenson, III, including base salary and bonuses is limited to \$250,000 per year, unless consented to in writing by the Payees. Compensation to Thomas C. Stevenson, IV, including base salary and bonuses is limited to his current salary plus 10% per year, unless consented to in writing by the Payees.
- o. There shall be no loans from any of the Companies to Thomas C. Stevenson, III or any family member.

7. Release by Thomas C. Stevenson, III Parties. Upon the Effective Date, in consideration for the performance of all terms and conditions of this Agreement, except as to such rights which may be created by this Agreement, Thomas C. Stevenson, III for himself, his heirs and assigns, and the Thomas C. Stevenson, III Parties and their successors and assigns, do hereby remise, release and forever discharge the Payees, their heirs and assigns, from any and all manner of claims, losses, debts, liabilities, demands, obligations, rights, disputes, fees, controversies, costs, expenses, actions, causes of action, claims, damages and suits whatsoever, at law or in equity or pursuant to statute, fixed or contingent, made or that could have been made by Thomas C. Stevenson, III against the Payees in his Counter-Claims in the Litigation and any and all claims which the Thomas C. Stevenson, III Parties have now or may have had against the Payees from the beginning of time up to and including the Effective Date.

Additionally, upon the Effective Date, in consideration for the performance of all terms and conditions of this Agreement, except as to such rights which may be created by this Agreement, Thomas C. Stevenson, III for himself, his heirs, and assigns, does hereby remise, release and forever discharge the Payees, William A. Bennett, Frederick J. Felder, III, and William R. Turner, Jr., their heirs, and assigns, from any and all manner of claims, losses, debts, liabilities, demands, obligations, rights, disputes, fees, controversies, costs, expenses, actions, causes of action, claims, damages and suits whatsoever, at law or in equity or pursuant to statute, fixed or contingent, made or that could have been made by Thomas C. Stevenson, III in the Suit 2 Cross-Claim and any and all claims that Thomas C. Stevenson, III has now or may have had against the Payees and/or William A. Bennett and/or Frederick J. Felder, III, and/or William R. Turner, Jr. from the beginning of time up to and including the Effective Date (collectively the "Thomas C. Stevenson, III Parties' Released Claims").

8. Release by Payees. Upon the Effective Date, in consideration for the performance of all terms and conditions of this Agreement, except as to such rights which may be created by this Agreement, Payees, William A. Bennett, Frederick J. Felder, III, and William R. Turner, Jr., their heirs, and assigns, do hereby remise, release and forever discharge the Thomas C. Stevenson, III

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Parties, Irven M. Stevenson, Elizabeth S. Calder, Thomas C. Stevenson, IV, and Thomas C. Stevenson III's heirs, executors, predecessors, successors, trustees, and beneficiaries, from any and all manner of claims, losses, debts, liabilities, demands, obligations, rights, disputes, fees, controversies, costs, expenses, actions, causes of action, claims, damages and suits whatsoever, at law or in equity or pursuant to statute, fixed or contingent, made or that could have been made against the Thomas C. Stevenson, III Parties, Irven M. Stevenson, Elizabeth S. Calder, and Thomas C. Stevenson, IV in their Complaint and any and all claims that Payees, William A. Bennett Frederick J. Felder, III, and William R. Turner, Jr., their heirs, and assigns have now or may have had against the Thomas C. Stevenson, III Parties, Irven M. Stevenson, Elizabeth S. Calder, or Thomas C. Stevenson, IV from the beginning of time up to and including the Effective Date.

9. Limitation on Releases/Covenant Not to Execute. The Parties hereby expressly acknowledge that no Party to this Agreement is, by this Agreement, releasing any cause of action, claim, set-off, or defense that arises from the terms of this Agreement, or the breach of such terms, nor is any party releasing any claim it may have against Daniel R. Stevenson, II.

10. No Admission of Liability. Neither the negotiation, execution or delivery of this Agreement by the Parties (or by any Party) constitutes or is to be construed as an admission by any Party as to any of the issues raised in the connection with the subject matter of the Releases herein or the Lawsuit, the Parties having entered into this Agreement solely for the purpose of resolving and compromising disputed matters. No Party will contend that the settlement of disputed matters reflected herein represents a concession of wrongdoing by any other Party. The Parties acknowledge that this settlement is a reflection of the amount collectible from Thomas C. Stevenson, III and is not a reflection of the true and full value of the damages suffered by the Estate.

11. Assumption of Risk. Each Party assumes the risk, in entering into this Agreement, that the facts or law are not as they believe them to be. The discovery by a Party that any fact was untrue or that his or its understanding of the facts or law was untrue or that his or its understanding of the facts or law was incorrect shall not entitle the Party to any relief, or to rescind, or set aside this Agreement. This Agreement is final and binding between the Parties regardless of any claims of mistake of fact or law. However, the Parties acknowledge that the representations and information provided as to the financial condition of the Thomas C. Stevenson, III Parties have been material to this Litigation and the settlement of the same. To the extent that there has been any material misrepresentation as to the financial condition of the Thomas C. Stevenson, III Parties, the Payees have not assumed the risk and shall be entitled to seek any relief to which they may be entitled under the law.

Confidential

11. Neutral Interpretation. This Agreement shall be interpreted in accordance with the fair meaning of its language and to implement the intent of the Parties. The provisions contained herein shall not be construed in favor of or against any Party because that Party or its counsel drafted this Agreement, but shall be construed as if all Parties prepared this Agreement, and any rules of construction to the contrary are hereby specifically waived. The terms of this Agreement were negotiated at arm's length by the Parties hereto.

12. Successors In Interest. The terms, conditions and provisions of this Agreement are binding upon and shall inure to the benefit of all assigns, successors in interest, personal representatives, estates, administrators, heirs, devisees, insurers, and legatees of each of the Parties hereto. This Agreement shall not be interpreted, however, to inure to the benefit of any third parties who are not expressly identified as such herein.

13. Entire Agreement; Waiver; Amendment. This Agreement states the entire agreement of the Parties, and supersedes all prior agreements or understandings among the Parties with respect to its subject matter and no representations, inducements, promises or agreements, whether oral or otherwise, between such Parties not contained herein or incorporated herein by reference will be of any force or effect. No provision of or right under this Agreement will be deemed to have been waived by any act or acquiescence on the part of any Party, but only by an instrument in writing signed by the Party from whom such a waiver is sought. No waiver by any Party of any breach of this Agreement by any other Party will be effective as to any other breach, whether of the same or any other term or condition and whether occurring before or after the date of such waiver. This Agreement may be amended only in a written agreement signed by all of the Parties.

14. Confidentiality. The Parties mutually agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than as may be necessary for future court proceedings and/or other than as may be mutually agreed to in writing any of the terms of this Release or any of the amounts, numbers or terms and conditions of any sums payable to Plaintiffs hereunder, except as required by existing statutes and/or governing laws. Confidentiality is in the mutual best interest of the parties, as a result of which, Plaintiffs and Defendants pledge confidentiality on the terms set forth in this paragraph. As confidentiality is in the mutual best interest of the parties, no damages paid herein are paid for confidentiality.

15. Severability. In the event any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision hereof. The Parties agree that they will negotiate in good faith to replace any provision hereof so held invalid, illegal or unenforceable with a valid

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provision which is as similar as possible in substance to the invalid, illegal or unenforceable provision

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall constitute one and the same Agreement. Facsimile signatures shall have the same force and effect as original signatures.

17. Choice of Law. This Agreement shall in all respects be interpreted, enforced, and governed under the substantive law of the State of South Carolina, without regard to choice of law principles.

18. Attorneys' Fees. The Parties agree that should it become necessary for either Party to initiate any further legal proceedings to enforce any provision of this Agreement, the Court shall award the prevailing party (as determined by the Court) their reasonable attorneys' fees and costs incurred in such enforcement efforts.

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25th WHEREFORE, the Parties execute this Agreement under seal on this
day of November, 2009.

Cynthia F. Dunstead

Thomas C. Stevenson, III

Thomas C. Stevenson, III,
Individually

JBL
Cynthia F. Dunstead
JBL

Thomas C. Stevenson, III

Thomas C. Stevenson, III,
As President and Authorized Agent
of Fabtech, Inc.

Cynthia F. Dunstead
JBL
Cynthia F. Dunstead
JBL

Thomas C. Stevenson, III

Thomas C. Stevenson, III,
As President and Authorized Agent
of Laurentide, Inc.

Thomas C. Stevenson, III

Thomas C. Stevenson, III,
As Member and Authorized Agent
of Commerce Circle, LLC

Confidential

Julie A. De
Patricia B. Fiel

J. L. S. Bennett
Jacquelin S. Bennett, Individually

Julie A. De
Patricia B. Fiel

J. L. S. Bennett
Jacquelin S. Bennett
as Co-Trustee of the Jacquelin K.
Stevenson Marital Trust and the Q-
TIP Trust U/W/O Thomas C.
Stevenson

Julie A. De
Patricia B. Fiel

J. L. S. Bennett
Jacquelin S. Bennett
as Co-Personal Representative of the
Estate of Jacquelin K. Stevenson

Julie A. De
Patricia B. Fiel

Genevieve S. Felder
Genevieve S. Felder

Julie A. De
Patricia B. Fiel

Genevieve S. Felder
Genevieve S. Felder
as Co-Trustee of the Jacquelin K.
Stevenson Marital Trust and the Q-
TIP Trust U/W/O Thomas C.
Stevenson

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John A. Doe
Patricia B. Fiel

John A. Doe
Patricia B. Fiel

John A. Doe
Patricia B. Fiel

Kathleen S. Turner
Kathleen S. Turner, Individually

Kathleen S. Turner
Kathleen S. Turner
as Co-Trustee of the Jacquelin K.
Stevenson Marital Trust and the Q-TIP
Trust U/W/O Thomas C. Stevenson

Kathleen S. Turner
Kathleen S. Turner
as Co-Personal Representative of the
Estate of Jacquelin K. Stevenson

James K. King, individually

James K. King
as a former Co-Trustee of the
Marital Trust

James K. King
as a beneficiary of the Estate of
Jacquelin K. Stevenson

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives of the Estate of Jacquelin K. Stevenson,

Plaintiffs,

Versus

Thomas C. Stevenson, III, Daniel R. Stevenson, II, Fabtech, Inc. Laurentide, Inc., Easy Tray, LLC, Carolina Fresh Cut, LLC, Carolina Fresh Cut, LLC d/b/a Toogoodoo Farms, Toogoodoo Farms of the Carolinas, and Commerce Circle, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2008-CP-10-806

CONFESSION OF JUDGMENT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 SEP 14 AM 11:02

FILED

The Defendant Thomas C. Stevenson, III, hereby confesses judgment as to claims for breach of fiduciary duty, breach of trust and conversion in favor of Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder and James K. King, or their heirs, in the amount of Two Million and No/100 Dollars (\$2,000,000.00). This Confession of Judgment is subject to the terms of the Agreement of Settlement and Release in this case, executed November 25, 2009. This Confession of Judgment is further made subject to Plaintiffs and their counsel agreeing to hold this Confession of Judgment in trust and to not file, record, make public in any way to any person not a party to the Agreement of Settlement and Release or their counsel, or otherwise seek to enforce it unless a Default shall occur. Grounds for "Default" by Thomas C. Stevenson, III, shall be defined in Paragraph 6(i) of the Agreement of Settlement and Release, and is hereby referenced in this Confession of Judgment as if set forth fully herein.

Upon the occurrence of a Default, Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder and/or James K. King, or their heirs, shall have the right to

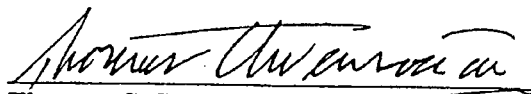
EXHIBIT

6

file, record, or otherwise seek to enforce this Confession of Judgment. If this Confession of Judgment is filed, recorded, or otherwise sought to be enforced by Jacquelin S. Bennett, Kathleen S. Turner, Genevieve S. Felder, and/or James K. King, or their heirs, the judgment amount shall be reduced by the amount of any payments of principal made by Thomas C. Stevenson, III, in accordance with the Agreement of Settlement and Release prior to the occurrence of the Default.

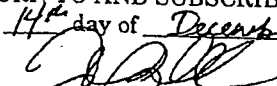
The Parties further intend that this Confession of Judgment as to claims for breach of fiduciary duty, breach of trust and conversion qualifies as one of the exceptions from discharge contained in 11 U.S.C. § 523(a) and intend for this agreement to have preclusive effect as to the issue of dischargeability in any subsequent bankruptcy proceeding of Thomas C. Stevenson, III, entered into either voluntarily or involuntarily.

Upon final payment set forth in the Agreement of Settlement and Release or other satisfaction in full the amount set forth above, the Plaintiffs and their counsel agree that this Confession of Judgment will be null and void, and that this original and all copies of same will be returned to Thomas C. Stevenson, III, or his attorney and notice of same will be given to all parties to the above-captioned action.


Thomas C. Stevenson, III

December 14, 2009
Charleston, South Carolina

SWORN TO AND SUBSCRIBED before me
this 14th day of December, 2009.


NOTARY PUBLIC FOR SOUTH CAROLINA,
MY COMMISSION EXPIRES: 1/17/18

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

JUDGMENT IN A CIVIL CASE

Case No.: 2008-CP-10-806

Jacquelin S. Bennett etal

versus

Daniel R. Stevenson II, Easy Tray LLC,
Carolina Fresh Cut LLC, Carolina Cut
LLC d/b/a Toogoodoo Farms, Toogoodoo
Farms of the Carolinas

Plaintiff

Defendant

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled);
☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Other: _____

FILED
2009 DEC - 2 AM 10:30
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order ☒ Statement of Judgment by Court
Directed Verdict for the Plaintiffs against all above named defendants for actual damages in the amount of \$8,848,413.00.

Jury Verdict: Jury finds for the Plaintiff punitive damages in the amount of One Million, Nine Hundred Sixty-Two Thousand One Hundred Twenty Eight Dollars (\$1,962,128.00) against Daniel R. Stevenson II only.

Dated at Charleston, South Carolina,

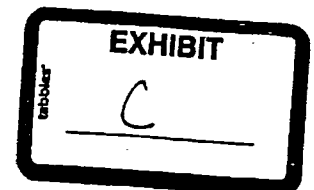
12/1/09.
Date

Judge

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)



IN THE STATE OF SOUTH CAROLINA)
CHARLESTON COUNTY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER 08-CP-10-0806

JACQUELIN S. BENNETT, GENEVIEVE S.)
FELDER and KATHLEEN S. TURNER,)
individually, as Co-Trustees and beneficiaries,)
and JACQUELIN S. BENNETT, and)
KATHLEEN S. TURNER, as Co-Personal)
Representatives of the Estate of Jacquelin K.)
Stevenson,)
Plaintiffs,)

vs.)

DANIEL R. STEVENSON, II, EASY TRAY,)
LLC, CAROLINA FRESH CUT, LLC,)
CAROLINA FRESH CUT, LLC d/b/a)
TOOGOODOO FARMS, TOOGOODOO)
FARMS OF THE CAROLINAS,)
Defendants.)

VERDICT

I have directed a Verdict for the Plaintiffs and against the Defendants on their claims of Breach of a Fiduciary Duty, Breach of Trust, Conversion, and Fraud in the amount of \$8,848,413.00 actual damages.

Walter L. E.
FOREMAN

The Plaintiffs claim that the Defendant, Daniel R. Stevenson, II, intentionally, willfully, or recklessly did the abovementioned things and that this is established by clear and convincing evidence, and, therefore, find in favor of the Plaintiffs and against the Defendant ONE MILLION NINE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED TWENTY EIGHT dollars punitive damages.

Walter L. E.
FOREMAN

We find for the Defendants--no punitive damages.

Walter L. E.
FOREMAN

STATE OF SOUTH CAROLINA

) IN THE CHARLESTON COUNTY
) PROBATE COURT

COUNTY OF CHARLESTON

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

) Case No. 2007-ES-10-1437

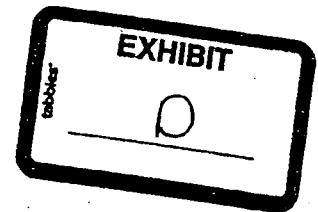
) Petitioners,

) PETITION TO RECOVER MONEY IN
) DANIEL R. STEVENSON, HIS
) INVESTMENT ACCOUNTS

) Versus

) Daniel R. Stevenson, II, Thomas C.
) Stevenson, III, James King, Genevieve S.
) Felder

) Respondents.



The Petitioners, Jacquelin S. Bennett and Kathleen S. Turner, the duly appointed Personal Representatives of the Estate of Jacquelin K. Stevenson, respectfully request that the Court order Respondent Daniel R. Stevenson, II to remit to the Estate of Jacquelin K. Stevenson any funds being held in his various investment accounts that originated as improperly retained proceeds of the life insurance policy of Jacquelin K. Stevenson.

Following the death of his mother, Jacquelin K. Stevenson, Daniel R. Stevenson, II, hereinafter "Dan Stevenson", wrongfully retained approximately \$400,000 of her life insurance proceeds. By agreement of Mrs. Stevenson and the beneficiaries of the policy, these proceeds were to be used to pay estate taxes upon Mrs. Stevenson's death. Instead, Dan Stevenson obtained and spent a large portion of these proceeds, including depositing some of the money in investment accounts with Scottrade and First Citizens Bank.

In 2008, upon learning that Dan Stevenson had retained this life insurance money, the Petitioners took immediate action to recover these funds. Following a

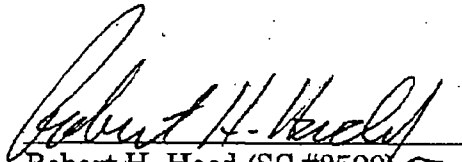
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hearing in front of Master-in-Equity Judge Mikell Scarborough, an injunction was entered against Dan Stevenson, preventing him from transferring, selling or otherwise disposing of assets, including any interests he had in investment accounts. (Exhibit A). Regarding the money Dan Stevenson obtained from Jacquelin Stevenson's life insurance proceeds, Judge Scarborough ordered that Dan Stevenson return the money that was still within his possession or control, but that "any funds including the approximately \$36,000 that Daniel R. Stevenson, II has placed in investment accounts with First Citizens Bank, and any amounts remaining in his accounts with Scottrade, must remain in those accounts and may not be withdrawn or transferred pending further Order of the Court." (Exhibit A). There has been no subsequent Order regarding Dan Stevenson's investment accounts.

On December 1, 2009 the Petitioners obtained a \$10,810,541.00 judgment against Dan Stevenson for their claims of Breach of Fiduciary Duty, Breach of Trust, Conversion and Fraud. Prior to the judgment, however, Dan Stevenson filed a Chapter 7 proceeding in the United States Bankruptcy Court for the Western District of North Carolina. The Bankruptcy Court has since issued an Order allowing the Estate to proceed in the Charleston County Probate Court to determine "the setoff rights of the Estate of Jacquelin K. Stevenson against the indebtedness owed to the Estate of Jacquelin K. Stevenson by Daniel R. Stevenson, II". Now that Dan Stevenson's liability has been established, the Petitioners respectfully request that the Court order the funds held in Dan Stevenson's investment accounts that were funded through the improperly retained life insurance money be remitted to the Estate. A Proposed Order is attached as Exhibit B for the Court's convenience.

This Motion may be supplemented by additional Memoranda, affidavits and/or other supporting material prior to the hearing on this matter.

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

May 3, 2010
Charleston, South Carolina

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 4 day of May, 2010.

Heather Chavis

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Petitioners,

Versus

Daniel R. Stevenson, II, Thomas C. Stevenson, III, James King, Genevieve S. Felder,

Respondents.

) IN THE CHARLESTON COUNTY
) PROBATE COURT
)

) Case No. 2007-ES-10-1437
)
)

**ORDER GRANTING PETITION
TO SETOFF**

This matter comes before the Charleston County Probate Court pursuant to Petitioners Jacquelin S. Bennett and Kathleen S. Turner, as Co-Personal Representatives of the Estate of Jacquelin K. Stevenson's, Petition to Setoff the amount of Daniel R. Stevenson, II's liquidated indebtedness against his interest in the Estate. It is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. Daniel R. Stevenson, II, is named under the Last Will and Testament of Jacquelin K. Stevenson as a specific beneficiary of a portion of the Estate's personal property, a fifty (50%) percent beneficiary of the Estate's interest in the real estate located at Lake Summit, Henderson County, North Carolina and a residuary beneficiary under Article 5 wherein he is entitled to twenty (20%) percent. As an heir, Daniel R. Stevenson, II has a claim against the Estate that normally would be a valid enforceable claim and existed prior to his Chapter 7 bankruptcy filing.

EXHIBIT

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2. On December 1, 2008, the Petitioners, on behalf of the Estate of Jacquelin K. Stevenson, obtained a Ten Million Eight Hundred Thousand (\$10,800,000) Dollar Judgment against Daniel R. Stevenson for Breach of Fiduciary Duty, Breach of Trust, and Conversion and Fraud. This Judgment establishes a valid and enforceable claim by the Estate against Daniel R. Stevenson, II prior to his Chapter 7 bankruptcy filing.
3. Pursuant to S.C. Code Ann. Section 62-3-902, Dan Stevenson's liquidated indebtedness of \$10,800,000 amount is required to be offset against his interest in the Estate of Jacquelin K. Stevenson. The claims are mutual and subject to setoff.
4. The Bankruptcy Court for the Western District of North Carolina, where Daniel R. Stevenson, II's bankruptcy is currently pending, issued an Order on February 8, 2010 allowing the Estate to proceed in the Charleston County Probate Court to determine "the setoff rights of the Estate of Jacquelin K. Stevenson against the indebtedness owed to the Estate of Jacquelin K. Stevenson by Daniel R. Stevenson, II".
5. Pursuant to S.C. Code Ann. Section 62-3-902, the Personal Representatives of the Estate of Jacquelin K. Stevenson may setoff any entitlement which Daniel R. Stevenson, II, would have otherwise had in the Estate of Jacquelin K. Stevenson by the full amount of the aforesaid Judgment and verdict entered against Daniel R. Stevenson, II.
6. The remaining portion of the aforesaid Judgment is to be distributed and assigned to the other residuary beneficiaries of the Estate of Jacquelin K. Stevenson.

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Petitioners' Petition to Setoff is, therefore, **GRANTED**.

IT IS SO ORDERED.

June 8, 2010
Charleston, South Carolina
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Anna C. King Assoc.
Presiding Judge
Charleston County Probate Court

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