

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
2005-CP-29-0724

EVELYN LOWERY,
PLAINTIFF,
-VS-
EULA DANIELS, ET AL,
DEFENDANTS.

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SC Court of Appeals

TRANSCRIPT OF PROCEEDINGS
LANCASTER, SOUTH CAROLINA
JUNE 20, 2014

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12
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16 Guardian Ad Litem

17
18 Kevaofan Waiters, Defendant

19 Pro Se

20
21 Donald Frank Waiters, Defendant

22 Pro Se

23

24

25

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E X H I B I T S

REPORTER'S NOTE: This proceeding was held in 2014 and transcribed in 2016. All exhibits were retained by the court. To obtain copies of the exhibits in 2016, it was necessary to obtain the exhibits from the Lancaster County Clerk of Court's office. Not all exhibits were found in the Clerk's file. *** Denotes exhibits that were not found and not included in this transcript.
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P R O C E E D I N G S

BEFORE - THE HONORABLE CLAY WALKER, SPECIAL REFEREE

10:48 A.M.

* * * * *

THE COURT: We are here today in the case of Lowery versus Daniels. This is Case Number 05-CP-29-724. And Mr. Grier, you represent the Plaintiff?

MR. GRIER: I represent the Plaintiff, Your Honor. Your Honor, first of all, I represent Evelyn Lowery, and unfortunately she is incapacitated and unable to attend. She has designated her son, Guy Samuels, as her Power of Attorney, and also she has given authority to Howard Waiters, who is present, to represent her to deal with me on this matter. And so I am acting under the authority of her under -- Mr. Samuels is not here. I believe he is expected to be here. So she is not present, but she has authorized these three to kind of work with -- either her son, Guy Samuels, or Howard Waiters, who is present.

THE COURT: Okay.

MR. GRIER: Secondly, Your Honor, I think it would be appropriate at this point to stipulate to what we determined -- something that needed to be

1 raised in the Second Amended Complaint, and that is
2 reflected on the exhibits, Your Honor. Are the
3 exhibits already admitted or --

4 THE COURT: No, not on the record.

5 MR. GRIER: We have marked the Plaintiff's
6 already. Your Honor, therefore, for the purposes
7 of --

8 THE COURT: Are you referring to what has been
9 marked as Plaintiff's 2?

10 MR. GRIER: Yes, sir. I refer to what's been
11 marked as Plaintiff's 2. And what that document
12 does is, it gives -- articulates the interests of -
13 - that were not correct in the Complaint, wherein
14 the interest of Liza Waiters Thompson was conveyed
15 to Henry Waiters in 1948, and then Henry Waiters
16 conveyed his interest to John H. Coleman and Harry
17 Waiters.

18 And that is the one thing that everyone here
19 is in agreement, that it is John Coleman and Harry
20 Waiters received that interest.

21 THE COURT: What page is Exhibit 2?

22 MR. GRIER: Your Honor, that would be, Your
23 Honor -- They are not marked. Four, five, six --
24 it's on the sixth page, Your Honor, of that
25 exhibit.

1 THE COURT: Thank you.

2 MR. GRIER: Your Honor, Mr. Robbins has
3 mentioned something that we had discussed, that
4 everyone who had answered in this case needed to be
5 identified, and I have the -- the Court files would
6 reflect, if my records are correct, that we have
7 had Answers filed back in 2006 by Harry Lee
8 Waiters, by Janice Dixon, by Donald F. Waiters, by
9 Raeford J., I believe, Waiters, by Carolyn
10 McKinney, by Larry B. Waiters, by Kevin Waiters,
11 and by Ginger Ann Waiters, and by John Waiters in
12 2009. And those are the parties who have made
13 appearances, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. GRIER: I call the first -- Could I just
16 make sure everybody is present from the list?

17 THE COURT: Certainly.

18 MR. GRIER: Is Harry here? Harry Waiters here?
19 He is here. Okay. And Janice Dixon is here.
20 Larry Waiters? He is here. All right. Carolyn?
21 She is here. Kevaofan Waiters is here. And John is
22 here. Thank you.

23 THE COURT: You are welcome.

24 MR. GRIER: I call Andy Harper, Your Honor.

25

1 Whereupon -

2 Andy Harper

3 was called as a witness and first being duly sworn,
4 testified as follows:

5 Examination: (By Mr. Grier)

6 Q. Please state your name?

7 A. Andy Harper.

8 Q. Mr. Harper, what occupation are you in?

9 A. I am a real state appraiser and a broker.

10 Q. How long you been doing that?

11 A. About 37 years.

12 Q. Okay. And so do you routinely appraise land
13 and -- developed and undeveloped land?

14 A. Yes.

15 Q. And have I approached you about doing an
16 appraisal for, for purposes of --

17 A. Yes.

18 Q. You're just testifying to the value of what a
19 property is worth is what you were asked to do today,
20 weren't you?

21 A. Yes.

22 Q. Okay. Well, there's a lot of scribbling on
23 this, Mr. Harper, but do you recognize what I am holding
24 out here marked as Court's Exhibit 7?

25 A. Yeah. I believe it's the aerial photograph,

1 right here.

2 Q. Okay. What are the tax map numbers that are
3 associated with --

4 A. 130 and Parcel 28, and 130, Parcel 28.01.

5 Q. Okay. And how about the other sub-parcels
6 within the -- that are on the -- how about 2201 and
7 2202?

8 A. I just looked at 28 and 28.01. That's what
9 was in the deed.

10 Q. Okay. And those are the largest parcels of a
11 formerly larger tract?

12 A. Yes. Right. 131-A was one for 109.

13 Q. Okay. Now, is that property that you
14 examined, does it have improvements on it?

15 A. Yes, sir. There's a house, trailer --

16 Q. Were you asked to consider the improvements?

17 A. No.

18 Q. Okay. And were you asked to consider the
19 timber on the property?

20 A. No.

21 Q. Okay. And so what you've been asked to do
22 today is to give a value or just to estimate what the
23 value of that, of the land that you examined, would be
24 without factoring in the timber value?

25 A. Correct.

1 Q. Okay. And did you come to conclusions as a
2 result of examining that?

3 A. Yes. I think the land not counting the timber
4 and stuff would be worth 12 to 1,400 dollars an acre.

5 Q. Okay. How did you arrive at that conclusion?

6 A. I found some sales for similar properties in
7 Heath Springs and Stoneboro. There was one that was one
8 on old Camden Highway. It was 59.5 acres, and it sold
9 7-17 of 2013 for 125,000. That's approximately \$2,000
10 an acre.

11 Then I got another parcel that was on old Stoneboro
12 Road, and it was 146 acres. It sold for 350,000.

13 Q. And that's in that area as well?

14 A. Yes, sir. That was \$2,391.00 an acre, but it
15 was a managed timber tract. He wasn't cutting any
16 timber off it or anything, so -- and it would drop the
17 value of this property down significantly, not counting
18 the timber that's on it.

19 Q. Okay.

20 A. And there's another tract that was in Pleasant
21 Hill, and it was 125 acres. And to me this would be the
22 most similar tract. It has just about the same kind of
23 road frontage that the subject property has, and it sold
24 for 250,000. It's 125.11 acres, and that averaged out
25 to \$1,998.00 an acre.

1 And they bought it with the timber on it, and
2 they cut the timber off of it and got \$60,000.00 for
3 that. And that knocked the value down for what they
4 got, and that's why I came up with 12, 1,400 dollars an
5 acre.

6 Q. Okay. All right. Any other factors that go
7 in to distinguishing the differences in those
8 comparables besides the timber?

9 A. That's all that I saw.

10 Q. Okay. How do sales of land in the southern --
11 this is considered the southern part of the county?

12 A. I'd say there about the only people that would
13 be buying land down in there would be either timber
14 companies or people buying it for hunting purposes.

15 There's a pretty big crowd, people out of North
16 Carolina, that have sold a piece, say, up there and they
17 want to reinvest in property, they'll come down here and
18 buy a hunting place. There's some big tracts. So --

19 Q. But is there hot demand for property in that
20 area?

21 A. There is no hot demand.

22 Q. Okay. Well, is there anything else relevant
23 to the value of the property that you could advise the -
24 -

25 A. No. It had good road frontage, and there's a

1 small pond on the property. And, like I said, but I
2 didn't consider the timber, but it looked like it had
3 pretty good timber on it.

4 Q. Okay. All right. were you promised to be
5 paid for your participating in this proceeding today?

6 A. Yes, sir.

7 Q. Okay. who made a promise to you?

8 A. You.

9 Q. Okay. who are you expecting payment from?

10 A. You.

11 Q. And are you expecting that immediately?

12 A. Well, when I get out of here.

13 Q. Okay. All right. And how much is that
14 promise? what did I agree to pay you?

15 A. \$375.00.

16 Q. \$375.00?

17 A. Uh-huh.

18 MR. GRIER: Okay. Thank you, Mr. Harper.

19 Answer any questions that any of the other
20 participants may have for you.

21 THE COURT: Mr. Robbins?

22 MR. ROBBINS: I don't have any questions for
23 this witness. Thank you.

24 THE COURT: Mr. Mills?

25 MR. MILLS: None, Your Honor.

1 Examination: (By The Court)

2 Q. Mr. Harper, how much road frontage?

3 A. I don't know the exact amount, but it's on the
4 plat of the 109 acres, and I do know --

5 Q. Just look at the plat and give me some idea?

6 A. It was several hundred feet.

7 THE COURT: Okay. Thank you.

8 MR. GRIER: That's all, Your Honor. Thank you,
9 Mr. Harper.

10 THE COURT: I assume you have no objection to
11 the witness being excused?

12 MR. ROBBINS: No, no.

13 THE COURT: While we are at a stopping point,
14 Mr. Grier, do you want to go ahead and move Exhibit
15 3 and any other exhibits which we may use?

16 MR. GRIER: Your Honor, I did use Exhibit 2
17 previously. I'd -- well, with Mr. Harper I used
18 what was labeled as Court's Exhibit 7. I move that
19 be admitted.

20 THE COURT: Any objections?

21 MR. ROBBINS: No objections.

22 MR. MILLS: No objections.

23 MR. GRIER: Your Honor, that will be admitted
24 as Plaintiff's Exhibit 7.

25 THE COURT: Okay.

1 MR. GRIER: We call Philip Smith.

2 whereupon -

3 Philip Smith

4 was called as a witness and first being duly sworn,
5 testified as follows:

6 Examination: (By Mr. Grier)

7 Q. Please state your name for the record?

8 A. Philip G. Smith.

9 Q. Mr. Smith, what is your occupation?

10 A. I am a licensed professional land surveyor.

11 Q. And how long have you been a licensed
12 professional land surveyor?

13 A. Twenty-two years.

14 Q. Are you familiar with the piece of
15 property I am showing you? It's marked as Exhibit --
16 it's Plaintiff's 7.

17 A. Familiar with everything on the north side of
18 Hoke Road.

19 Q. Okay. And is it your understanding that's all
20 that's being considered today?

21 A. Uh-huh.

22 Q. Okay. And how are you familiar with it?

23 A. Well, my father was a surveyor. He used to do
24 a lot of work for the Waiters family every year, so I
25 was with him when I was a child and working for him,

1 back years ago. I been out there several times myself
2 just to cruise the trees. I been familiar with it all
3 along.

4 Q. Okay. Are you familiar with any of the
5 parties that are in this action? Are you familiar with
6 any of the waiters family?

7 A. I don't know the particulars. I've met a few.

8 Q. Have you met John Waiters?

9 A. Yes.

10 Q. And how did you come to meet John Waiters?

11 A. Well, used to just bump in to him when we was
12 out there in the field, He'd be outside doing something.

13 Q. Okay. And as a result of y'all's meetings,
14 has there been some conversation and some agreement
15 between you and Mr. John Waiters as to what a reasonable
16 price for a perimeter survey --

17 A. Yes.

18 Q. -- of this tract of land would be?

19 A. Yes, sir.

20 Q. And what have you -- what price did you quote
21 him for a perimeter survey?

22 A. I spoke to him about a year ago and told him a
23 rough price on it, and he had a few questions about it,
24 and I told him it would be at least \$6,000.00 to do the
25 perimeter.

1 Q. Okay. Now, does the perimeter -- Would you
2 describe, using Exhibit 7, what you consider to be the
3 perimeter?

4 A. That would be the parcel, 2801 and 28.

5 Q. Okay. Would it include --

6 A. Well, that would include 2801 because it's
7 inside 28.

8 Q. Okay. So it would go around all of the
9 parcels that are marked as separate tax map parcels and
10 use the frontage on Number 12?

11 A. Right. To cut out 2201 would be an additional
12 \$1700.00.

13 Q. Okay. So it would be inclusive of Tax Map
14 Number 2801, 28 -- 130, 28, that is. 130, 2801. And
15 2202, 2201, and 2301. The outside perimeter would
16 include those, simply the outside of those pieces of
17 property?

18 A. For the perimeter.

19 Q. Okay. And what would be a -- what's the
20 standard in the profession for the cost, and what would
21 you charge for additional surveying that might involve
22 subdividing this property?

23 A. It's nearly impossible to charge by acreage.
24 Some surveyors try to do it by \$50.00 an acre, \$100.00
25 an acre. The best way to explain that is like a

1 cardboard box. When you survey a box, you take the
2 width of that box, okay? The distance around that box.
3 And you got a certain amount of area in it. And if you
4 go by the area, okay, you get the perimeter of that box.
5 But if you take that same box and squash it flat, you
6 still got the same distance around that box, but no area
7 inside of it. So you can't get it by the area. So I do
8 a property by the foot. So I don't do it by an acreage
9 pricing. I do it by using 43 cents a linear foot around
10 the property.

11 Q. Okay. And is that consistent with people in
12 your profession, what they are doing?

13 A. I charge consistent with my competition.

14 Q. Okay. And would you be -- commit to that
15 price for subdividing this property if that were to be -
16 -

17 A. There's variances. When we run in to creeks
18 we got to add some for that. Takes longer to traverse a
19 creek, due to sometimes you can't get to it and you got
20 to shoot both sides. So this particular parcel we had a
21 \$600.00 additional for the creek that's in the back. So
22 what I did is I got 12,600 linear feet, and that come to
23 \$5,400.00 at 43 cents a foot, and then I added 600 for
24 the creek, and that brings it up to 6,000, and that's
25 how I arrived at that figure. But if you did it the

1 linear-foot way I think you'd come up with \$5,400.00.
2 But the 600 more is for that creek back there. That's
3 how we do that.

4 Q. Okay. Those same variables would govern, you
5 know, if you were to subdivide the property, as well?

6 A. Right.

7 Q. And you can't anticipate, without knowing
8 where --

9 A. Without knowing where the line would end up --
10 I am assuming this would end up the line being the
11 previous number.

12 Q. Okay. Are there any other considerations in
13 what the charge for surveying and subdividing that would
14 be relevant in whether it would be practical to
15 subdivide, and what the overall costs of subdividing
16 this property might be?

17 A. Not for the perimeter, but if I go to
18 subdividing -- say, I got to do this perimeter and the
19 timber's been cleared off of it then it goes a whole lot
20 quicker with no trees on it. Then we might go down a
21 few cents a foot.

22 Q. So --

23 A. That don't mean -- When I say cleared off, lot
24 of times they go in there and clear it off and say they
25 just logged the land, that makes it harder. They leave

1 a mess and you can't cross it.

2 Q. Okay.

3 A. I mean, it depends on how it's cleared.

4 Q. Okay.

5 A. I mean, a lot of times my daddy used to double
6 the price if you couldn't walk it to the end. Clearing
7 just makes it worse when you cut it. You can't drive
8 across it when they clear-cut it. They leave stumps
9 everywhere and everything, and it takes a lot more time.

10 Q. Okay. Anything else relevant to what your
11 costs in conducting the survey, either in what you've
12 already testified to about the perimeter or with doing
13 any future subdividing, if you were to undertake that
14 task?

15 A. No, I think that's it.

16 MR. GRIER: Okay. Answer any questions others
17 may have for you.

18 THE COURT: Mr. Robbins?

19 Examination: (By Mr. Robbins)

20 Q. I wonder if you could give us an idea of what
21 the cost per linear foot would be if the property has
22 been cleared properly?

23 A. Oh, roughly 40 cents a linear foot.

24 Q. So 40 for cleared, and 43 --

25 A. Yes, sir. And then drawing the plats up.

1 Every part has to have a plat drawn for it.

2 THE COURT: I've got a few questions.

3 Examination: (By the Court)

4 Q. First of all, I want you to come down here and
5 I want you to trace out on this exhibit exactly where
6 the perimeter is.

7 A. Okay. (Witness complies.)

8 Q. I know you are not a lawyer, but as a surveyor
9 you're generally familiar with the zoning regulations of
10 the county?

11 A. Uh-huh.

12 Q. This property would be subject to zoning,
13 right?

14 A. Uh-huh.

15 Q. If it's going to be subdivided is that
16 probably going to have to get approved by some
17 committee?

18 A. Yes. If I have to go through Planning they
19 charge per lot. You can divide it up any way and, they
20 charge the same thing. They charge me \$25 apiece.

21 Q. Are you familiar with getting zoning approval
22 on stuff like this?

23 A. I can get it through. Main thing I worry
24 about is size, buildings, structures and access for
25 emergency vehicles. I am assuming it's an R45, which

1 means the minimum area would be an acre. The minimum
2 width would be 130 feet for any structure to be built.
3 You would have to have at least a 25 foot easement if it
4 is land where you have to travel across the property of
5 another one. You can only put three of those in
6 succession. And you can't stack lots up, you know, have
7 a whole bunch of them and one right-of-way to them --

8 Q. Can't put three lots on top of each other?

9 A. Right. They got a bunch of little rules like
10 that and I am familiar with them, so I tell the customer
11 what we can and can't do on it.

12 Q. But getting zoning approval to subdivide this
13 parcel, if done correctly, you don't think it would --

14 A. Not any problem for me because I know the
15 rules. So I won't survey anything that I know won't get
16 approved, and I have never had a problem getting a
17 subdivide approved.

18 THE COURT: I don't have anymore questions.

19 Further Examination: (By Mr. Robbins)

20 Q. Is there a minimum, at least for a lot size
21 under zoning rules?

22 A. Yes. For R45 it's an acre.

23 Q. An acre?

24 A. An acre would be the minimum.

25 Q. And that's if you want to put a home or a

1 residence on it?

2 A. Well, that's just the rule for anything. Got
3 to be a minimum of an acre.

4 MR. ROBBINS: Nothing further, Your Honor.

5 THE COURT: All right. Again I am assuming
6 it's no objection for the witness to be excused.
7 Thank you for your time.

8 MR. GRIER: Your Honor, having taken care of
9 all our experts I am going to defer to the
10 Defendants to present a witness, unless he objects.

11 THE COURT: I certainly understand. Mr.
12 Robbins?

13 MR. ROBBINS: We call David McKittrick.
14 Whereupon -

15 David McKittrick
16 was called as a witness and first being duly sworn,
17 testified as follows:

18 THE COURT: Mr. McKittrick, how do you spell
19 your name?

20 THE WITNESS: M-C-K-I-T-T-R-I-C-K.

21 THE COURT: Thank you.

22 THE WITNESS: Yes, sir.

23 Examination: (By Mr. Robbins)

24 Q. Mr. McKittrick, would you tell the Court about
25 your background as far as working with timber, the

1 purchase of timber, surveying property, what your
2 credentials are?

3 A. Yes, sir. Well, my father had a sawmill. We
4 bought timber, and I grew up in the business with him.
5 During the '70s, mid-'80s, I started my own timber
6 company. We shut the sawmill down, and I been buying
7 and harvesting timber ever since. Thirty, thirty-some-
8 odd years.

9 Q. And you've played a role with the Association
10 of Timber Harvesters?

11 A. South Carolina Timber Cruise Association.
12 Actually had a board meeting yesterday. I was past
13 Chairman for four years of the Timber Producers
14 Association, and we are charter members of the American
15 -- the National Association. So I have been on that
16 board since, I think, '04, and we -- Well, actually, we
17 do have our meetings at the Forestry Commission, so we
18 are -- You know, we all work together and, you know,
19 provide landowners assistance and whatever, you know, to
20 the needs of timber folks.

21 Q. Your company purchases tracts of timber?

22 A. Mostly from private planters. Correct.

23 Q. Okay. Did you have an opportunity to look at
24 the Waiters' heir property?

25 A. We did, back in September '13. Brad McGuire,

1 one of my agents, cruised the property. I want to say
2 it was September of 2013.

3 Q. Now, we have a Defendant's Exhibit 1 from the
4 previous hearing. We'd like to go ahead and admit it.
5 This is just a summary sheet, but I'd like to go ahead
6 and admit the whole -- the whole timber cruise survey.
7 Mr. McKittrick, is this a copy of the timber cruise
8 survey --

9 A. It is.

10 Q. -- which was done in August 2013?

11 A. Correct. This is it.

12 MR. ROBBINS: All right. I'd like to introduce
13 the whole survey instead of the summary as
14 Defendant's Exhibit 1, if it is without objection.

15 MR. GRIER: No objection.

16 THE COURT: First, I want these marked.

17 Whereupon - Document was marked Defendant's
18 Exhibit 1.

19 THE COURT: Any objection to Defendant's 1, Mr.
20 Grier?

21 MR. GRIER: No, Your Honor.

22 By Mr. Robbins: (Resuming)

23 Q. Now, Mr. McKittrick, you were asked to do two
24 things. One was to value the timber that's standing,
25 correct?

1 A. Correct.

2 Q. And the second was to value the timber that
3 would have been removed?

4 A. Correct.

5 Q. The timber cruise survey -- what -- which of
6 those two did that relate to?

7 A. Well, --

8 Q. The value of the timber standing or the value
9 of the timber removed?

10 A. Both.

11 Q. Okay. All right. Would you explain to the
12 Court what is reflected in the cruise survey? what all
13 it means?

14 A. I will. Well, what you do in timber is,
15 initially we cruise the standing timber. And you just
16 go in -- and I'm sure --

17 Q. I actually know what you're talking about.

18 A. You know exactly what I'm talking about on
19 timber cruise. You know, we go in, we grid it out, we
20 take the land change, we take a plot. Value every tree
21 in every plot that's in there, primarily plot, taking
22 note of the standing timber.

23 Q. Does your summary show that information?

24 A. It does. It does. And we own a program --
25 Once we got that done we enter it all, everything done,

1 we put it on the computer program, and that's what
2 prints out from the computer program. That's on the
3 standing timber. Now --

4 Q. All right. Let me ask you, do you -- did you
5 make a determination in 2013 as to the value of the
6 standing timber and what offer your company would make
7 for the standing timber?

8 A. Yes, we did.

9 Q. And what was that?

10 A. \$50,000 for the remaining timber.

11 Q. All right. And the -- tell me, you're
12 identifying would be all the remaining timber --

13 A. That's correct.

14 Q. -- or just a portion of that?

15 A. Over the 140 acres.

16 Q. Over the 140 acres?

17 A. Correct.

18 Q. Does that take in to consideration -- there's
19 an additional 30 acre tract?

20 A. Yes. This is the 109, then the 31.

21 Q. Both tracts together total the 140 acres, yes?

22 A. Right.

23 Q. All right. There's an exhibit that we had, I
24 believe, that -- this is -- it was marked as Plaintiff's
25 Exhibit Number 3 from the previous hearing. Is this an

1 aerial depiction of the area you're talking about, the
2 approximate area you're talking about?

3 A. Yes, from -- well, you can tell the property
4 line goes back, and then they come in here together.

5 Q. So that's represents the 140 acres you're
6 talking about?

7 A. It is.

8 Q. All right. And so there's a considerable
9 amount of standing timber that could be harvested?

10 A. Right. Right. You know, we made it right at
11 \$50,000.

12 Q. I am going to show you what is marked
13 Defendant's Exhibit 2 from the previous hearing. I ask
14 you if you recognize that document?

15 A. Yes, sir.

16 Q. And what is that?

17 A. That is a -- that's my offer to buy the
18 remaining timber for \$50,000.

19 Q. So it's on your letterhead and it's your offer
20 to purchase the standing timber?

21 A. Right. That is correct.

22 MR. ROBBINS: All right. I don't know if
23 anybody has any objection to this, but we'd like to
24 have it marked as Exhibit, Defendant's Exhibit 2
25 for purposes of --

1 MR. GRIER: No objection.

2 THE COURT: Without objection.

3 Whereupon - Document marked Defendant's
4 Exhibit 2.

5 By Mr. Robbins: (Resuming)

6 Q. Now, did you also evaluate the value of what
7 the timber that was removed from the property would be
8 worth?

9 A. Yes, sir. We did.

10 Q. And what did you -- First, can you identify by
11 --

12 A. I can better on this one.

13 Q. All right. He has, for the record, he has a
14 copy, an aerial copy, of the 140 acres, and I would ask
15 him to circle the areas where timber was, the general
16 area where timber was removed before.

17 A. (Witness complies.) That's the general area
18 there. But there was, you know, some spots that was
19 really hard to come up with a GPS acreage that was also
20 removed.

21 Q. All right. I believe this is -- this is
22 probably from GIS or Google Maps or something?

23 A. That's right. That came from the Lancaster
24 County Tax Records Office maps.

25 Q. Okay.

1 A. Which, they do Google. That's what it is,
2 Google.

3 MR. ROBBINS: I'd like to have this marked as
4 Defendant's Exhibit -- I believe it would be 4.

5 THE COURT: Exhibit 1 was the entire cruise;
6 Exhibit 2 was the offer to purchase.

7 MR. ROBBINS: And this was the exhibit -- I
8 guess this is Plaintiff's Exhibit 3, Your Honor, of
9 the -- so this would be Defendant's Exhibit 3, Your
10 Honor.

11 Whereupon - Photograph marked Defendant's
12 Exhibit 3.

13 THE COURT: As long as we are talking about
14 Plaintiff's 3, have you already put it in to
15 evidence?

16 MR. GRIER: Yes.

17 By Mr. Robbins: (Resuming)

18 Q. Mr. McKittrick, if you look at -- Let me hand
19 you this, what's been marked as Plaintiff's Exhibit 3,
20 and ask you to look at that and see if that reflects the
21 -- or portrays the 140 acres that we are talking about?

22 A. It does. And just like the other map, I guess
23 you want me to identify those --

24 Q. Circle the areas --

25 A. I mean, they already circled.

1 Q. I believe at the last hearing you circled some
2 areas that you are referring to?

3 A. That's right.

4 Q. Okay. And what you are talking about is the
5 value of the timber that was removed in those areas?

6 A. Correct.

7 MR. ROBBINS: Okay. For the record, this came
8 off of Google Maps and it's a compilation that's
9 been taped together. It's a very poor exhibit, but
10 it's -- I believe it's an aerial depiction, a
11 satellite depiction of the property.

12 THE COURT: Any objection?

13 MR. GRIER: No objection.

14 MR. MILLS: No objection.

15 By Mr. Robbins: (Resuming)

16 Q. What did you determine that the value was,
17 what the cash value would have been, of the timber
18 removed?

19 A. Could I have a look at that?

20 Q. I am handing him Defendant's Exhibit 3.

21 A. I came up with the acres off of the GPS -- I
22 did it the same way you'd look it up on the tax map.
23 And I guess you want the values? We put it at 75 tons
24 per acre. That would be consisting of 40 tons of saw
25 timber and 35 tons of pulpwood per acre that was taken

1 off. And that's -- you go by the calculations of the
2 standing timber, because it was real grown up there.
3 And on the low-end value, we came up with \$767.00 per
4 acre.

5 Q. And approximately how many acres?

6 A. We come up with about seven acres or so, about
7 \$10,000 total we would remove.

8 Q. And was that a conservative estimate?

9 A. Very conservative. Very conservative.

10 MR. ROBBINS: I don't have any further
11 questions for the witness.

12 Examination: (By Mr. Grier)

13 Q. Mr. McKittrick, how are the contracts taken
14 care of in terms of the exchange of the funds for the
15 timber? Is that done once the contract is reached? Is
16 the timber cut before there is any exchange of funds?

17 A. No. In this case, we'll do, you know, the
18 \$50,000. We'll do -- We have to get a lawyer, you know,
19 that'll do the title search, and then at the closing
20 they can get the checks. And then, you know, we would
21 at some time after closing, you know, a certain amount
22 of time, another check.

23 Q. Okay. So is a lien or anything put on the
24 timber to protect your interests?

25 A. Yes. On the timber?

1 Q. Yes.

2 A. Yes. The timber lien, it's really all -- what
3 we need.

4 MR. GRIER: All right. Thank you.

5 Further Examination: (By Mr. Robbins)

6 Q. Okay. Just a followup. That would be
7 provided, the \$50,000 ---

8 A. Correct.

9 Q. That was in 2013. Would the number be the
10 same today or different?

11 A. Well, the markets are pretty close to the
12 same. It would most likely be the same.

13 Q. It would not likely be higher than in 2013?

14 A. Correct.

15 MR. ROBBINS: All right. Nothing further.

16 Examination: (By the Court)

17 Q. Mr. McKittrick, I haven't read one of these in
18 a long time --

19 A. Yes, sir.

20 Q. -- but I have in the past. Are you
21 considering all the wood you take off the tract to be
22 all pulpwood and no saw timber?

23 A. No. It was saw timber there. And that's what
24 that reads.

25 Q. Just tell me what -- I am missing it.

1 A. It's --

2 Q. And you're on the second page?

3 A. Second page.

4 Q. The yellow pine?

5 A. That's board footage. That is saw timber.

6 THE COURT: Okay.

7 MR. ROBBINS: Your Honor, I can ask him to go
8 through the survey and identify everything.

9 THE COURT: I was just curious about that, and
10 he's -- I just want to be sure that the -- all the
11 family is getting --

12 MR. ROBBINS: It may be, for the record, if I
13 can just go through and say what is the basis for
14 the offer.

15 THE COURT: That'll be fine. Again, this is
16 y'all's case to try.

17 THE WITNESS: This is a break down of what
18 brought that up. This is the actual tree count.
19 This is the log diameters, how many logs in all.
20 This is Virginia pine. This is how they are
21 identified, which, there is some difference. And
22 then this is saw timber.

23 THE COURT: And it looks like this is
24 summarized on the second page?

25 THE WITNESS: On the second page. That's

1 correct. That's your hardwood, pulpwood. That's
2 your tree count.

3 THE COURT: Got it. Thank you.

4 Further Examination: (By Mr. Robbins)

5 Q. Mr. McKittrick, I would ask you if you would
6 just to explain what the timber cruise shows, the first
7 sheet shows. Is that just a summary?

8 A. The first sheet, the very first sheet is just
9 a -- just a recognition of the tract.

10 Q. And then the second sheet?

11 A. That is the -- the total in board footage of
12 the saw timbers. The top numbers would have been yellow
13 pine, and then to the bottom you got the cords of the
14 pine pulpwood and the cords of the pulpwood, at the
15 bottom.

16 Q. Okay. And the pages that follow that, are
17 they the breakdown --

18 A. Basically. I mean, that's the actual tally
19 sheet where we mark each tree in the plot. This just
20 records it.

21 Q. It identifies the diameter of trees, and then
22 a count on the numbers?

23 A. Diameter, height and numbers.

24 Q. All right. And would you just address what
25 your summary shows, what you found from the cruise

1 survey in terms of the type of wood that's available?

2 A. We found 54,681 feet of pine, yellow pine, saw
3 timber; 124,000 -- and that's not Virginia pine, that's
4 the small pine. That's the way we brook it down, small
5 pine and large pine, the saw timber. Virginia pine's
6 not what it is. Virginia pine is just the small ---

7 Q. Small, but you can cut lumber out of it?

8 A. Totally, 179,464 feet of total saw timber.

9 Q. Okay.

10 A. And then 1,036 cords of pine pulpwood and 85
11 cords of hard pulpwood.

12 Q. All right. And then there's a different price
13 for the saw timber and --

14 A. Right. We broke that down, you know.

15 Q. And how did you break it down? Does it show
16 on your report?

17 A. Not really. What I actually do, I call each
18 company that the crop is going to, and they'll quote me
19 a price that they currently pay. I do not have that in
20 front of me. But I -- They will honor the prices that
21 they gave me back then. That's why we can leave it at
22 the price we are now.

23 Q. All right. And you -- are you in a position
24 to move forward with cutting timber if the court were to
25 approve that?

1 A. I am.

2 Q. So you could start up within -- how much time
3 would you need?

4 A. Well, we need some time. I mean, you know,
5 we've got to get this lined up, but we would do it as
6 soon as possible.

7 Q. All right. And typically how long do you --
8 before you have the closing, is the whole process?

9 A. It takes -- Once we get the go-ahead on it,
10 it'll take two or three weeks for -- at the closing,
11 from the end of closing.

12 Q. And then how long to do the tract?

13 A. Once we start, normally we do about 20, 25
14 acres a week. So it'd take about six weeks, six or
15 seven weeks to cut it.

16 Q. What kind of condition is the property in when
17 you finish?

18 A. The same plus the roads. In our contract,
19 we have a simple contract on roads, they will be better
20 than when we started. You know, no trash. Our simple
21 contract, it really looks after the landowner. Say we
22 do a new contract and we're starting on it and, say,
23 September we have torrential rains or whatnot, you know,
24 it's up to the landowner -- well, I won't go that far.
25 But the landowner has the option to, you know, call for

1 a stoppage. And if it, you know, comes to the point a
2 year is up or, you know, whatever -- whatever time we
3 are out for wet weather, you know -- you know, it's just
4 a simple contract that really protects, you know, the
5 landowner.

6 Q. But what happens to the brush and -- after the
7 pulpwood and the logs have been removed?

8 A. It's generally spread across, you know,
9 throughout the site. Or we put it in piles. You know,
10 whatever -- everybody wants it different. Some people
11 want it in piles; some people want it spread out to go
12 back, you know, in to the soil.

13 MR. ROBBINS: All right. No further questions.

14 THE COURT: Mr. Grier?

15 Further Examination: (By Mr. Grier)

16 Q. Are the trees replanted?

17 A. We do not replant, but we can recommend -- we
18 can refer several names to replant. We can even line
19 that up, you know, if that happens.

20 MR. GRIER: Okay. Nothing further.

21 MR. ROBBINS: Your Honor, I apologize. I do
22 not know the names of -- will you stand, please?

23 MR. KEVAOFAN WAITERS: Kevaofan Waiters.

24 MR. DONALD WAITERS: And Donald Waiters.

25 KEVAOFAN WAITERS: And I just have one question

1 on the cutting of the timber. Your Honor, I --

2 THE COURT: You are entitled to ask questions,
3 and you just go ahead, sir.

4 KEVAOFAN WAITERS: In your estimation of the
5 \$10,000 of cutting the timber, is there a time
6 limit of the timber that is being cut? I mean,
7 what's the estimation based on? Is it -- Was it in
8 a short period of time or several years or what do
9 you base that on?

10 THE WITNESS: It was all done within, you know,
11 a pretty short time, you know. The regrowth was
12 all pretty equal.

13 KEVAOFAN WAITERS: Okay. What -- In your
14 estimation, how many truckloads would it take to
15 remove \$10,000 worth of timber?

16 THE WITNESS: Let's see. We figure that -- Let
17 me go back to see if I got that information.

18 KEVAOFAN WAITERS: It doesn't have to be exact,
19 just an estimate.

20 THE WITNESS: All right. Figuring 75 tons per
21 acre that was estimated, it would be an average of
22 about three loads per acre. And at seven acres,
23 that would be 21 loads. And the value would be
24 about \$10,000.

25 KEVAOFAN WAITERS: All right.

1 DONALD WAITERS: And how long would one man
2 take to do that?

3 THE WITNESS: One man, you know, he could take
4 -- you know, if he got one load a day, you know,
5 that's take 20 days, you know, 21 days if he got
6 that. I know one man, he got two loads a day, but
7 that wasn't a big truck; it was a small truck, you
8 know. Two loads a day, by himself.

9 DONALD WAITERS: Thank you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Anymore questions?

12 MR. GRIER: Your Honor, may I sort this, the
13 stuff that has been admitted in to evidence from
14 what hasn't? Is that in evidence?

15 THE COURT: I don't think that's been admitted
16 yet.

17 THE COURT: Mr. Robbins, did you want to admit
18 that?

19 MR. GRIER: I just want to get that straight
20 before we get any further, Your Honor.

21 THE COURT: The Plaintiff's Exhibits that are
22 in are Exhibit 3 and Exhibit 7. And Exhibit 7 is
23 right up here.

24 MR. GRIER: Right. So ---

25 THE COURT: Seven was the drawn map.

1 MR. GRIER: I call my next witness, Your Honor,
2 if we are prepared to move on.

3 THE COURT: Okay.

4 MR. GRIER: Mr. Waiters?

5 THE COURT: I need to swear you in, Mr.
6 Waiters.

7 Whereupon -

8 John Waiters

9 was called as a witness and first being duly sworn,
10 testified as follows:

11 Examination: (By Mr. Grier)

12 Q. Please state your name?

13 A. John C. Waiters.

14 Q. Mr. Waiters, --

15 THE COURT: Mr. Waiters, if I could get you to
16 -- it's going to help the Court Reporter if you'll
17 move that microphone over where you can talk in to
18 it.

19 THE WITNESS: Yes, sir.

20 MR. GRIER: Would it be okay if I moved the
21 admitted documents up to your desk where they'll be
22 --

23 THE COURT: Sure.

24 MR. GRIER: -- in front of you, and I can use
25 this space instead of crowding out the witnesses

1 here?

2 THE COURT: Sure.

3 By Mr. Grier: (Resuming)

4 Q. Mr. Waiters, these are some documents that --
5 copies were made and you received.

6 MR. GRIER: Did you have a copy of what's now
7 Plaintiff's 1 that was made for the benefit of
8 pretrial that I could use so that you can have one?

9 MR. ROBBINS: I think I made only one copy and
10 taped them together, so you would have a facsimile
11 of that.

12 By Mr. Grier: (Resuming)

13 Q. Mr. Waiters, how long have you lived on the
14 Ken Waiters estate property?

15 A. Eighty years.

16 Q. And were you born on that property?

17 A. I was.

18 Q. Okay. And who are you descended from, Mr.
19 Waiters? Who was your dad?

20 A. Henry Waiters.

21 Q. And did he live on the property as well?

22 A. Yes, he did.

23 Q. Okay. And he -- you grew up in the home site
24 from Ken Waiters?

25 A. Yes.

1 Q. Your dad ended up getting that and you grew up
2 in that house?

3 A. Right.

4 Q. So you've been around and you know the history
5 of this place, don't you?

6 A. I do.

7 Q. And you know all the family?

8 A. I do.

9 Q. Family's gotten pretty big, hasn't it?

10 A. Yes, it has.

11 Q. And it just keeps getting bigger, doesn't it?

12 A. Yes.

13 Q. Are Evelyn Waiters is your sister?

14 A. Yes, sir.

15 Q. And your sister actually, and you, have been
16 trying to clarify problems with the title of the
17 property for some time, haven't you?

18 A. Yes, we have.

19 Q. And going back in to the early '80s, and even
20 the '70s?

21 A. Right.

22 Q. And you've had -- haven't been able to get a
23 resolution on that, have you?

24 A. No.

25 Q. Well, your sister Evelyn moved back to

1 Lancaster. She worked in Washington, DC, didn't she?

2 A. Yes.

3 Q. And she was resolved that she was going to get
4 this taken care of, wasn't she?

5 A. Yes, she was.

6 Q. And we -- I met with her a few times, Evelyn,
7 a couple years before it was decided that she wanted us
8 to try to get this case, this situation resolved. Is
9 that true?

10 A. Yes.

11 Q. You were in some of those conversations and
12 were quite often present during the times, the many,
13 many times that we met, weren't you, Mr. Waiters.

14 A. Yes.

15 Q. And so the purpose of Evelyn -- She wanted to
16 do this for the family, didn't she, so every person in
17 the family would -- that had an interest would be able
18 to get their interest, and the people on the property
19 would be able to have good title to their homes --

20 A. Right.

21 Q. -- on the property. And that was what was
22 motivating her, wasn't it?

23 A. Right.

24 Q. She didn't want to take anything away from
25 anybody?

1 A. No.

2 Q. She wanted to give it back to the family,
3 didn't she?

4 A. Yes.

5 Q. She's not able to be here today, is she?

6 A. No.

7 Q. How is she? How is she, health-wise?

8 A. Well, not good.

9 Q. She's just not able to participate?

10 A. Right.

11 Q. Okay. John, you and I and your sister,
12 Evelyn, met many, many times trying to figure out your
13 family history and your family tree, didn't we?

14 A. Yes.

15 Q. And we constantly learned more and more about
16 the family over the years?

17 A. Right.

18 Q. It was a long and protracted process, wasn't
19 it?

20 A. Uh-huh.

21 Q. In fact, we -- I believe you and I discussed
22 it, and we did 18 different drafts over the years of it
23 as new information was developed. Correct?

24 A. Yes.

25 Q. So you became very familiar with the Complaint

1 and the document that's before the Court today asking
2 that the Court resolve this issue and partition this
3 property and do what you and your sister wanted to
4 accomplish? Correct?

5 A. Yes.

6 Q. And you participated and you are knowledgeable
7 of, you know, the names of the people and maybe not
8 specifically, but you've been in this and you're
9 familiar with this document, which is the Second Amended
10 Complaint?

11 A. Yeah.

12 Q. Now, the Second Amended Complaint excluded
13 what was known as the Bell property --

14 A. Yeah.

15 Q. -- south of Hoke Road. Correct?

16 A. Right.

17 Q. Now, Mr. Waiters -- Your Honor, Plaintiff's, I
18 believe, Exhibit 1 is the copy -- I have a copy of it,
19 but --

20 THE COURT: It's 7.

21 Q. Seven, excuse me. That's right. You did put
22 it, do it as 7. Mr. Waiters, you --

23 THE COURT: You are welcome to use the exhibit.

24 Q. Well, I have this one marked exactly like you
25 so we could both have one, is my reasoning in doing

1 that.

2 So Mr. Waiters, the area outlined on this document
3 in yellow is what all the land for the Ken Waiters
4 Estate, that originated from the Ken Waiters Estate
5 north of Hoke Road, isn't it?

6 A. Uh-huh.

7 Q. And you've -- You are familiar with this
8 document, the Complaint --

9 A. Uh-huh.

10 Q. -- and all of the people that are named in it
11 --

12 A. Uh-huh.

13 Q. -- And you've been a part in figuring out the
14 percentages and -- that everybody's entitled to.
15 Correct?

16 A. Right.

17 Q. And you heard the stipulation, before we
18 started this proceeding, that the Eliza Thompson -- that
19 portion that went in to Henry Waiters ultimately became
20 the property of John Coleman and Harry Waiters?

21 A. Right.

22 Q. Right?

23 A. Right.

24 Q. So except for that, this document accurately
25 reflect due diligence in figuring out who are the heirs

1 to the property? Correct?

2 A. Uh-huh.

3 Q. As a result of that, a spreadsheet was
4 prepared to reduce those numbers and tweak them down to
5 the mathematical percentage that each heir was to
6 receive?

7 A. Right.

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. And that's the spreadsheet that was meant to
11 say who the heirs are and what their interest in this
12 property was. Correct?

13 A. Correct.

14 Q. And this is marked as Plaintiff's Exhibit 2 at
15 this point?

16 A. Uh-huh.

17 MR. GRIER: Your Honor, I would move that this
18 be admitted as --

19 THE COURT: Any objections?

20 MR. ROBBINS: No.

21 By Mr. Grier: (Resuming)

22 Q. To the best certainty that it could be done,
23 this document reflects the heirs and the percentages
24 that each of those heirs would receive, and it
25 accurately reflects the stipulation we made of the -- of

1 the Eliza to Henry to John Coleman and, and Harry
2 Waiters transaction. Right?

3 A. Uh-huh.

4 Q. Mr. Waiters, you and Evelyn and the purpose in
5 the family, and your son Howard's here today, nobody
6 wants to throw anybody off the property, do they?

7 A. No.

8 Q. And the purpose -- what you would like to have
9 accomplished is the Court fashion, give everybody their
10 interests that lives on the property --

11 A. Uh-huh.

12 Q. Correct?

13 A. Correct.

14 Q. And to fashion a solution for splitting the
15 property up that would be most beneficial as possible to
16 all the parties that have an interest in this property?

17 A. True.

18 Q. But you're asking that it be taken in to
19 account to accommodate the interests of the people and
20 the property and to leave them and not bother with the
21 value of their property, --

22 A. Right.

23 Q. -- correct?

24 A. Right.

25 Q. And you're one of those people?

1 A. Right.

2 Q. Okay. Now, the other people that live on the
3 property, Mr. Waiters -- Now, this is marked -- this is
4 Plaintiff's Exhibit 7 laid before you.

5 A. Uh-huh.

6 Q. Now, some time ago, a long time ago, you and
7 I, you took me on a tour of the property, didn't you?

8 A. Sure did.

9 Q. We took some pictures, didn't we?

10 A. Sure did.

11 Q. And those pictures -- Now, do you recognize
12 these pictures?

13 A. Yes, I do.

14 Q. Okay. And those -- okay.

15 A. That one, and that one, and that one.

16 Q. Okay. So these three pictures are pictures we
17 took of property that is of the improvements and homes -
18 -

19 A. Uh-huh.

20 Q. -- that sit on the Waiters estate today?

21 A. Uh-huh.

22 Q. And I guess it's with the exception of the
23 home place?

24 A. Right.

25 MR. GRIER: Okay. Now, Your Honor, I'd ask for

1 these to be admitted.

2 THE COURT: That's as Numbers 4, 5 and 6.

3 MR. GRIER: Yes, sir.

4 THE COURT: Mr. Robbins?

5 MR. ROBBINS: No objection. No objection.

6 Whereupon - Photographs were marked as
7 Plaintiff's Exhibit 4, Plaintiff's Exhibit 5
8 and Plaintiff's Exhibit 6.

9 By Mr. Grier: (Resuming)

10 Q. Now, Mr. Waiters, when we -- we put numbers on
11 each of these photos, didn't we?

12 A. Yes.

13 Q. And for each number we put a mark of the
14 approximate location on this map, which Plaintiff's
15 Exhibit 7, correct?

16 A. Uh-huh.

17 Q. So for instance, where it is marked Number 1 -
18 - Can you find that on the property?

19 A. Right here.

20 Q. Okay. Now, that is the home of the -- Idell
21 Waiters, correct?

22 A. That is.

23 Q. Okay. So the picture is marked, or it has a
24 Number 1 under it, that has the name Idell Waiters under
25 it, that's her home, and that home is where Number 1 is

1 marked on that Plaintiff's 7 exhibit. Correct?

2 A. Correct.

3 Q. Likewise Donald Waiters --

4 A. Uh-huh.

5 Q. --that is marked Number 2. Will you look at
6 Number 2? That is Donald Waiters's home. Does he live
7 on --

8 A. Yes, he is.

9 Q. -- on that property?

10 A. Yes.

11 Q. And now, is that Donald Frank Waiters or is
12 that --

13 A. Donald.

14 Q. Okay. And Donald Waiters is --

15 A. Yes, sir.

16 Q. -- is Idell's son?

17 A. Uh-huh.

18 Q. And does he live in that home now?

19 A. He is.

20 Q. Okay. Now, if you will look at Number 3. Now
21 that -- excuse me. Uumber 3, --

22 A. Uh-huh.

23 Q. On the photograph, the number under the
24 Photograph Number 3, is the name John Willie James?

25 A. Uh-huh.

1 Q. Okay. And is that where John Willie James
2 lives?

3 A. That's correct.

4 Q. Okay. Now, Number 4 -- excuse me. It's
5 struck out --

6 A. Okay.

7 Q. -- so that's not -- we're not considering
8 that. Number 4 is not to be considered, --

9 A. Yeah.

10 Q. -- but Number 5, now, I have Larry Waiters on
11 Number 5. Now, can you -- and, now, you don't have a
12 current photograph, and it's kind of hard to see. Your
13 Honor, if I might show him that. Number 5. Who lives
14 in that residence?

15 A. Where at?

16 Q. Right here.

17 A. William right there.

18 Q. Who, then?

19 A. William.

20 Q. Okay. So that's William Waiters's house?

21 A. Uh-huh.

22 Q. Okay. Can I hold that again? Can you
23 recognize -- see these -- okay. Now, Number 7, that's
24 where the old home place was?

25 A. Yes.

1 Q. And we are going to be talking about the old
2 home place some more, so where that's marked on that
3 map, that structure is no longer there?

4 A. No.

5 Q. Okay. All right. And so, nobody lives there?

6 A. Right.

7 Q. Okay. Now, on the map can you make out Number
8 8?

9 A. Yeah.

10 Q. Okay. Can you make it out from that or is it
11 too dark?

12 A. That's it.

13 Q. Okay. And it's marked, and that's the home
14 Evelyn built?

15 A. Uh-huh. Evelyn built it.

16 Q. Now, how about Number 9?

17 A. Yeah. That's mine.

18 Q. And that's you?

19 A. That's right.

20 Q. And that's marked Number 9 --

21 A. Yeah.

22 Q. -- on the Exhibit 7, right?

23 A. Right.

24 Q. All right. Now, Number 10, Number 10 is
25 marked Monique Thompson. Okay? So, now, that is also

1 marked -- so that is --

2 A. She live there now.

3 Q. She lives there now, and that is -- that home
4 is located on what is also -- it's on Tract 22.01.
5 Right?

6 A. Uh-huh.

7 Q. On that map. All right. So that's Number 10
8 that's on that part of the property that is mapped as
9 2201 And then -- and Janice Dixon lives where the map is
10 marked 11. Correct?

11 A. That's right. Right.

12 Q. So are those all the folks that live on the
13 property?

14 A. That's all the folks live on the property.

15 Q. All right. Did I go over Number 6? I don't
16 remember Number 6.

17 A. That's Carrie.

18 Q. It's Carrie's? Okay.

19 A. Carrie.

20 Q. Okay. Do we -- I don't remember. Did I skip
21 it?

22 A. Skipped it. Yeah.

23 Q. I skipped it. Okay. Well, it looked like
24 there was an X across it, okay, on this dark photo, is
25 what caused me to skip it. Okay. But -- and Number 5

1 is on, captioned as -- that home is located on 23.01,
2 and that's William Waiters's home place?

3 A. Uh-huh.

4 Q. Right. Okay. Now, Mr. Waiters, over the
5 years you've been a participant and done a lot of
6 research, and pulling deeds and figuring out, you know,
7 what happened and when it happened, and you know a lot
8 about why it happened. Correct?

9 A. Uh-huh.

10 Q Now, the tract that is highlighted around it
11 is the same map -- Again, and just a -- And I think it's
12 probably abundantly clear, but just for the record --
13 You know, that is -- what you're looking at is
14 everything that is derived from the Ken Waiters estate,
15 which is north of Hoke Road. Right?

16 A. That's right.

17 Q. Okay. All right. Now, the property that's
18 derived -- It came down through Ken Waiters. Over the
19 years there's been various deeds and -- that have gone
20 out, and people have kind of staked a claim and prepared
21 deeds, and as a result of all of that, there are
22 multiple parts that derived from Ken Waiters's estate
23 that now have separate tax map numbers. Correct?

24 A. Right.

25 Q. Now, the largest of those, and you're looking

1 at those, Plaintiff's Exhibit 7. Now, do you know how
2 to identify the tax map numbers?

3 A. Yeah.

4 Q. All right. Do you see 28?

5 A. Uh-huh.

6 Q. And that's from Tax map 130-28?

7 A. Uh-huh.

8 MR. GRIER: All right. Your Honor, I'd offer
9 the documents titled, Title Summary, Tax Map 130-
10 28, as Plaintiff's Exhibit -- let's see. They were
11 all marked as one exhibit previously, but I think
12 for clarity it would be better to do it separately.
13 Can we go ahead and mark -- well, Tax map 28, Your
14 Honor, this would be Plaintiff's --

15 MR. ROBBINS: Well, we already pre-marked
16 exhibits through Number 8.

17 MR. GRIER: Okay. So this would be -- we could
18 do it this way. We have Plaintiff's Exhibit 1, and
19 it consists of five different summaries, and we
20 could mark them A, B, C, D, E. I'd ask that we
21 mark them that way so that --

22 THE COURT: Get the Reporter to make some
23 stickers.

24 Whereupon - Documents marked Plaintiff's
25 Exhibit 1A, Plaintiff's Exhibit 1B,

1 Plaintiff's Exhibit 1C, Plaintiff's Exhibit 1D
2 and Plaintiff's Exhibit 1E.

3 THE COURT: Mr. Reporter, can we go off the
4 record for a minute?

5 (Off the record)

6 By Mr. Grier: (Resuming)

7 Q. Now, these are marked Plaintiff's Exhibits.
8 Do you recognize these documents that we have been
9 through, these title summaries, Mr. Waiters

10 A. Yes.

11 Q. And you are familiar with the deeds and the
12 transaction in these title summaries, okay? Right?

13 A. Yeah.

14 Q. And these title summaries are broken down
15 based on the tax maps?

16 A. Right.

17 Q. Now --

18 THE COURT: This is Plaintiff's Exhibits 1A
19 through 1E?

20 MR. GRIER: Your Honor, I offer those -- Well,
21 I will continue. I didn't mean -- I guess I need
22 to authenticate them a little bit better for you.

23 By Mr. Grier: (Resuming)

24 Q. Those documents were obtained from the Clerk
25 of Court's Office?

1 A. Uh-huh.

2 Q. All of these documents were obtained from the
3 Clerk of Court's Office, Mr. Waiters? Correct?

4 A. Correct.

5 Q. And they're all authentic copies, and they
6 were filed in the Clerk of Court's Office?

7 A. Right.

8 Q. But you've challenged they are legitimate
9 deeds?

10 A. Right.

11 Q. Okay. That's what I want to ask you about,
12 all right?

13 A. Yes.

14 Q. Now, a couple of these title summaries reflect
15 property that has homes on them?

16 A. Uh-huh.

17 Q. And you're not asking anybody to get thrown
18 off of their home. You want them to receive their home
19 and some property with their home?

20 A. Right.

21 Q. You and Evelyn and Howard and the people that,
22 you know -- Mr. Robbins represents you, but I have you
23 as my witness.

24 A. Right.

25 Q. But you want everybody to stay in their home?

1 A. Sure.

2 Q. But you want their homes to be, you know, then
3 their interest to be counted against their home?

4 A. Right.

5 Q. Even though they have a tax number and have a
6 tax deed?

7 A. Right.

8 Q. When you look through all these properties
9 the-- you know, the 100 and -- All of those, all of the
10 other four tax maps, Tax Map 2301 -- If you'll look at
11 them, okay? Okay. 2301, 2801, 2201, and 2202, all
12 those are separate tax numbers. All of those are
13 derived from, really, the part that remains, the only
14 part of the original piece that remains that's not a
15 separate tax map number, is now on 130-28. Correct?

16 A. Uh-huh.

17 Q. So, 130-28.01, what is marked as Plaintiff's
18 Exhibit 1 -- okay. What is marked as Plaintiff's
19 Exhibit 1E here, Mr. Waiters, that says that's the title
20 that came from 130-28, right?

21 A. Uh-huh.

22 Q. Now, that property has -- it has not been
23 subdivided. Correct?

24 A. Right.

25 Q. Okay. And that, most certainly, you're not

1 challenging anything about the status of that. That is
2 all heir property and nobody's done anything with it,
3 correct?

4 A. Correct.

5 Q. Now, 2801, which is the Plaintiff's 1C, that
6 is 2801 on the exhibit's you are looking at?

7 A. Uh-huh.

8 Q. All right. Now, how did that come to be cut?

9 A. What happened -- what happened is once William
10 had his house, and they came along and they kind of
11 traded out two acres from that.

12 Q. Okay. Now, I am talking about 28.01, which
13 is, shows as 31 acres now.

14 A. Yeah.

15 Q. So two acres has come off of it --

16 A. Yeah.

17 Q. -- because it was -- that was a 33 acre piece
18 of property?

19 A. Uh-huh.

20 Q. Well, do they have good title to it?

21 A. Yeah.

22 Q. I mean, did everybody participate in getting
23 that 33 acres, the -- you know, taken out of the
24 original estate?

25 A. No.

1 Q. I mean, that was not a proper deed?

2 A. No.

3 Q. That was done -- They just cut that out and
4 had a few of the people that do have interest in it,
5 they just went out, had a survey done --

6 A. Yeah.

7 Q. -- cut it out, and haven't done anything with
8 it except that two acre tract at the bottom that they
9 cut off of the original 31 acres, right? The original
10 33 acres?

11 A. Right.

12 Q. It's just sitting there. Nothing's been done
13 with it, and do you challenge that, that being --

14 A. Yeah, I do.

15 Q. Should that be part of the Ken Waiters's
16 Estate, or be part of what all of the heirs are supposed
17 to receive, and whoever is named, you know, as the
18 title, should receive their fair share, but that deed is
19 -- you don't believe that that deed is legitimate, do
20 you?

21 A. No.

22 Q. And you believe that the Court ought to
23 declare that that deed is -- has no force and does not
24 bind all the heirs of the Ken Waiters Estate?

25 A. Yes.

1 Q. Okay. And so you're asking that he set that
2 deed aside?

3 A. Uh-huh.

4 Q. It does not have the heirs giving title to
5 anybody, does it?

6 A. No.

7 Q. Okay. All right. Now, of course, 2301, which
8 is Plaintiff's 1B, that's part of that tract as well,
9 correct?

10 A. Uh-huh.

11 Q. Now, that, that piece of property actually was
12 deeded out to Chris Waiters --

13 A. Uh-huh.

14 Q. -- and went through a foreclosure process, and
15 somehow they got a loan on it, didn't they?

16 A. Yes.

17 Q. Okay. And that's also where that -- there's a
18 William Waiters home site on that tract, correct?

19 A. Yes, sir.

20 Q. And so you have no objection to , you know,
21 them receiving the tract, but they ought, it ought to go
22 against their share as an heir?

23 A. Yeah.

24 Q. They don't own it outright, unless this Court
25 says they own it --

1 A. Right.

2 Q. -- is what you believe the Court should do
3 today, declare the title to be null and give it back to
4 them after the interests are considered?

5 A. Uh-huh.

6 Q. You think that would be the fair thing to do?

7 A. Uh-huh.

8 Q. For all the heirs, and --

9 A. Yeah.

10 Q. Okay. All right. The same as to tax map or
11 rather Plaintiff's Exhibit 1A, which on that map is
12 2202?

13 A. Uh-huh.

14 Q. Okay. There were -- It purports to pass
15 title, but the title didn't originate but from -- you
16 know, from -- the heirs didn't participate in doing it.
17 It wasn't a legitimate title --

18 A. Right.

19 Q. -- correct?

20 A. Right.

21 Q. I mean, the interests, you know, purport to be
22 a handful of the heirs, but it most certainly was not
23 exclusive to them. You don't believe that was
24 legitimate title, but you do want to receive the
25 property based on their interest they have inherited?

1 A. Right.

2 Q. Okay. And the same goes as to Plaintiff's
3 Exhibit 1D, which on the map is Tax Map 2201?

4 A. Uh-huh.

5 Q. Okay. You see that on Plaintiff's Exhibit 7?

6 A. Uh-huh.

7 Q. Likewise that purports to convey title, and it
8 was identified as a tax -- a tax map --

9 A. Uh-huh.

10 Q. -- but you believe that should be set aside
11 and the person in possession of that property should
12 receive their interest through the Court as opposed to
13 they would have a legitimate deed, correct?

14 A. Right.

15 Q. And you are asking the Court to set that deed
16 aside?

17 A. Uh-huh.

18 Q. So you are asking the Court to take all of
19 those properties that is derived from Ken Waiters's
20 estate north of Hoke Road, return it to the estate, give
21 everyone -- determine what the interest of each of the
22 heirs is in terms of their -- the amount of property
23 they would receive or the benefit they would receive if
24 they don't get property --

25 A. Uh-huh.

1 Q. All persons in possession of homes or living
2 on the property to receive that, and to have their
3 interest that they received as an heir counted against
4 the land that they receive?

5 A. Uh-huh.

6 MR. GRIER: Judge, if I could just have one
7 minute to look at my notes and --

8 THE COURT: Okay.

9 MR. GRIER: judge, I think after conversation
10 with Mr. Robbins, and I haven't consulted with Mr.
11 Mills over there but he looks hungry, I think if we
12 did take a break, I believe we might be able to
13 streamline the process during that time as well,
14 and if I could, determine whether I would rest when
15 we return from lunch or not. I know I had earlier
16 proposed another plan, but I think I'm to the point
17 where, you know, it is time for a break.

18 THE COURT: If that's good with the parties,
19 that's fine. When do y'all want to come back?
20 Take an hour? Folks, we are going to take an hour
21 for lunch. We going to lock the court room up, or
22 -- so if you've got something you are leaving here,
23 we are going to lock the court room up and it's
24 going to be safe, but we'll come back here a little
25 bit before 1:15 and we'll get started again.

1 Before we leave, one more thing. Mr. Waiters,
2 you are still under oath, and you are advised not
3 to talk to anybody about your testimony. I know
4 that's going to be hard, but we hold you to that.
5 Thank you, sir.

6 Whereupon - A lunch recess was taken.

7 MR. GRIER: Your Honor, I think, while we are
8 fresh from our meeting where all the parties were,
9 that were right here, were present or represented -

10 -

11 THE COURT: Right.

12 MR. GRIER: -- about a development in the
13 heirs, of some knowledge that had been learned
14 during the course of this hearing that wasn't in
15 the record. And I think that all the parties agree
16 that it's been determined that, or there's
17 information that has led them to believe, that
18 there are heirs of one of the children of Ken
19 Waiters, whose name was Beaudry, that weren't
20 reflected in the Second Amended Complaint. And it
21 now appears that Beaudry may have had children.

22 In fact, Mr. Donald Frank Waiters knew of him,
23 and Mr. Kevaofan Waiters has apparently met someone
24 professing to be the offspring or descendant of
25 Beaudry Waiters, and that everybody agrees that

1 that is going to affect the outcome and the
2 distribution that is essential for someone having
3 an interest that's not represented here. And of
4 course, that brings our Guardian Ad Litem in to the
5 picture, and we ask the Court to accept the
6 stipulation that the interests of the descendants
7 of Beaudry Waiters be protected in the proceedings,
8 and others.

9 And also, my understanding is that we have
10 further determined that there are some -- there's
11 an inaccuracy in the spreadsheet that's been
12 presented. Certainly, if there are descendants of
13 Beaudry, that's going to be inaccurate, but also
14 that then interests of the individual named as
15 Annabelle Hillman in the spreadsheet as well as in
16 the Second Amended Complaint is -- has no surviving
17 descendants.

18 And that information has been discovered
19 through conversations with the family, and that is
20 going to change the calculus somewhat.

21 I think everybody agrees that those are facts
22 that are not in dispute, but we currently don't
23 know what the outcome of the investigation of
24 Beaudry Waiters' heirs will be, but it's something
25 that would be required.

1 THE COURT: So the stipulation that Beaudry was
2 survived by issue is that --

3 MR. GRIER: Appears to have been.

4 THE COURT: He was survived by issue?

5 MR. GRIER: That's my understanding. Your
6 Honor, also all the parties with interests have
7 determined, you know, to the extent it may have
8 some bearing on the distribution -- it's going to
9 be a math issue. I think at this point it's
10 determining what that's going to constitute, but
11 one of the -- one of the children of Ken Waiters,
12 Manuel Waiters, he died intestate, and that his
13 wife also died intestate, and that the offspring
14 have died intestate leaving no children. And that
15 would factor in to the calculus as well.

16 THE COURT: And the anticipation is that you
17 are going to prepare another spreadsheet?

18 MR. GRIER: Yes, Your Honor. I believe Mr.
19 Robbins has those materials and, you know, has the
20 capacity to minimize the extent and trouble of
21 doing that.

22 MR. ROBBINS: I have the program that was used
23 to run the numbers for the heirs. It appears that
24 we've broken the heirs down in to six family, sub-
25 family trees, and that an allocation needs to be

1 made for one-sixth to each. And then one of those
2 six subsequently convey their interest to other
3 parties. So it will affect the numbers, and I want
4 to do a calculation which would show the
5 descendants for the heirs that are to receive
6 through the proceeding.

7 THE COURT: Okay. And if the stipulations are
8 complete, this would be your witness?

9 MR. GRIER: Yes, sir.

10 THE COURT: I thought you were finished with
11 your direct and --

12 MR. GRIER: No, I believe I had told Your Honor
13 during the break I would consider whether or not I
14 would rest when we came back, and I would like, you
15 know, to continue with additional examination of
16 Mr. Waiters.

17 By Mr. Grier: (Resuming)

18 Q. Mr. Waiters, in the -- This action was
19 initially filed on August 3, 2005. Correct?

20 A. Uh-huh.

21 Q. And shortly after that there was some timber -
22 - some timber operations were commenced on the property,
23 --

24 A. Yes.

25 Q. -- is that correct?

1 A. Yes.

2 Q. The Lis Pendens had been filed --

3 A. Yes.

4 Q. -- correct?

5 A. Uh-huh.

6 Q. And this means that this lawsuit put a hold on
7 anything that would disadvantage the parties at interest
8 in the property?

9 A. Correct.

10 Q. Now, far as the -- what knowledge do you have
11 of this two thousand -- we ended up filing a -- for a
12 temporary restraining order. Correct?

13 A. Yes.

14 Q. And we ended up stopping that?

15 A. Yes.

16 Q. We had a hearing back in November of -- the
17 end of November of 2005 as a result of that timber --

18 A. Right.

19 Q. -- cutting. Correct? And that ceased at that
20 time?

21 A. Yes.

22 Q. A lot of resources were put in to stopping
23 that timber, that cutting of that timber.

24 A. Yes.

25 Q. Now, who was involved in the -- who initiated

1 the cutting of that timber? Are you aware of who was
2 responsible for that?

3 A. Donald, Frank and Kev.

4 Q. And did they -- Had they hired someone?

5 A. Yes.

6 Q. Who was that individual?

7 A. That's Watts.

8 Q. Okay. Was it a Stevenson or was that a Watts?
9 In 2005?

10 A. 2005? That's Watts.

11 Q. Okay.

12 A. No, Stevenson. They was two, two --

13 Q. There were two different incidents involved in
14 that. Right?

15 A. Yes.

16 Q. Okay.

17 A. Stevenson first.

18 Q. Right. Okay. Now, at the time that -- During
19 the initial few years figuring out the direction we were
20 going, the intention was to include the property south
21 of Hoke Road in this matter and to challenge the
22 ownership of the property south of Hoke Road. Is that
23 correct?

24 A. Right.

25 Q. Okay. Now, as, you know -- there was -- that

1 would prove -- that is the Martins, the Ferrell, the
2 Miller property -- that has been excluded form the
3 property. We had to go through considerable proceedings
4 to do that as well --

5 A. Yes.

6 Q. -- correct?

7 A. Correct.

8 Q. They hired an attorney, and this attorney --
9 although we believed we might have merit in continuing
10 that suit, that -- If I understand correctly, it is my
11 discussion with you and Evelyn, those folks are
12 unrelated to the waiters but they had cared for your
13 grandmother --

14 A. Yes.

15 Q. -- and in the -- is that right?

16 A. Yes.

17 Q. And they had -- As a concession to them for
18 taking care of -- excuse me, of your grandfather, your
19 grandmother actually gave -- her intention was that they
20 receive property?

21 A. Right.

22 Q. And although that probably was not done
23 correctly, ultimately the decision was made that this
24 was not going to be challenged --

25 A. Right.

1 Q. -- but part of that involved stopping timber
2 while those negotiations and all of that was going on.
3 But that didn't involve, you know, any of your family.

4 A. Right.

5 Q. That was a separate matter, but it did involve
6 quite a bit of effort and work to halt that timber --
7 that was nice hardwood timber land, wasn't it, just,
8 like, virgin?

9 A. Right. Uh-huh.

10 Q. So there were considerable efforts put in to
11 preventing that until all of that could be resolved.

12 A. Right.

13 Q. Okay. Fast forward to 2009. Another timber-
14 harvesting operation commenced. Correct?

15 A. Right.

16 Q. And that's when we -- you began to have
17 communication with, with Mr. Robbins, as well?

18 A. Right.

19 Q. And Mr. Robbins commenced a -- proceeded to
20 contact me, contacted me and we kind of linked forces
21 and, and we commenced and got an order to halt that --

22 A. Uh-huh.

23 Q. -- timber harvesting, which was while this Lis
24 Pendens had been filed and this lawsuit was going on,
25 and it was being done without any authority. Correct?

1 A. Uh-huh. Correct.

2 Q. And who was responsible for cutting that
3 timber?

4 A. Kev and Frank.

5 Q. Okay. Now, was there ever any -- were there -
6 - were the proceeds of that timber harvesting ever
7 shared with anyone else in the family?

8 A. Never.

9 Q. Okay. Were the proceeds of the timber
10 harvesting back in 2005 ever shared or, you know, for
11 the benefit of the family?

12 A. Never.

13 Q. Do you know for certain that taxes were not
14 paid with it, or that some contribution was not made
15 towards the -- towards the benefit for all of the
16 Waiters?

17 A. No.

18 Q. Okay. You don't know or you know that those
19 taxes were not paid from those funds?

20 A. Taxes were not paid from the funds.

21 Q. Okay. In our Complaint, we have asked that
22 the Court consider assessing the expenses that were
23 incurred due to folks that were acting contrary to the
24 interests of all the waiters, that they be held
25 responsible for, you know, for the fees and costs that

1 were an unnecessary result for cutting timber and that
2 they were not reasonably entitled to do it at that time,
3 --

4 A. No.

5 Q. -- correct?

6 A. Right.

7 MR. GRIER: Okay. All right. Thank you.

8 THE WITNESS: Yes, sir.

9 Examination: (By Mr. Robbins)

10 Q. Was there a family account that was kept, in
11 fact, for the purpose of paying taxes and things of that
12 nature?

13 A. It was.

14 Q. All right. What is your recollection? Do you
15 know when that account was created or who was alive at
16 that time?

17 A. William, Evelyn and, I believe it was, Frank
18 that created it.

19 Q. Okay. Frank took care of it. And where was
20 the account set up?

21 A. Heath Springs.

22 Q. Okay. And did they give you a passbook for
23 that account? Was it a savings account?

24 A. Yeah, it was a savings account.

25 Q. How did you go about -- Did you pay money from

1 that -- Did you use money from that account to pay
2 taxes?

3 A. Yes.

4 Q. How would you go about getting the money from
5 the account to pay the taxes?

6 A. We all three had to sign for it, and Carrie
7 had the book.

8 Q. Okay. So you had to all three be involved in
9 the process?

10 A. True.

11 Q. And was the money from that account used for
12 the payment of real estate taxes or property taxes?

13 A. Right.

14 Q. And at some point did the three people change,
15 the people that were authorized to access the account?

16 A. Beg pardon?

17 Q. At some point did the people change, the
18 people that were authorized to access the account?

19 A. No. They was the ones at the beginning.

20 Q. All right. They started it. Was there ever a
21 change where Frank was named with Carrie, with them
22 having authority over the account?

23 A. No. It was myself, Carrie and William.

24 Q. So it changed to you, Carrie and William?

25 A. Right.

1 Q. And at some point William passed away.

2 A. Right.

3 Q. And then who was involved at that point?

4 A. That was Frank.

5 Q. William's son, right?

6 A. That's right.

7 Q. And so you had an account in Heath Springs?

8 A. Right.

9 Q. And then you transferred the account where?

10 A. Wachovia.

11 Q. Wachovia. And at Wachovia, was it a -- I have
12 a book here I want to show you, and deposits. I've got
13 copies of this. I'd like to mark it as an exhibit, make
14 it Defendant's Exhibit 4.

15 Whereupon - Document marked Defendant's
16 Exhibit 4.

17 Q. But it's a copy of these two receipts and a
18 savings book, and I would be happy to show you these
19 things if you'd like to look at it. Now, this Exhibit
20 Number 4, you said you changed it to Wachovia?

21 A. Uh-huh.

22 Q. This indicates a deposit made on January 19,
23 2007. Would that have been the time that you did the
24 transfer from Heath Springs to Wachovia?

25 A. That's correct.

1 Q. And it looks like at that time how much money
2 was left in that account, the family account? Can you
3 tell by the receipt, there?

4 A. Right.

5 Q. Looks like \$3,872.00. Is that correct?

6 A. Right. \$3,872.00.

7 Q. So that's the amount that was on hand in 2007?

8 A. Correct.

9 Q. All right. Now, I have a -- This is just
10 front of one of the savings books, here. I'd like to
11 mark this as the next exhibit.

12 Whereupon - Document marked Defendant's
13 Exhibit 5.

14 Q. This is Defendant's Exhibit Number 5, and this
15 is the front of your Wachovia book. Is that right?

16 A. Yes, sir.

17 Q. And whose names are on that?

18 A. John and Carrie.

19 Q. Did the two of you cooperate together in
20 handling that account?

21 A. That's right.

22 Q. Okay. And funds from that account were used
23 for payment of the taxes on the property?

24 A. Right.

25 Q. And what process would you go through to pay

1 the taxes?

2 A. Well, draw the money out in a check, like
3 that.

4 Q. All right. Did you go by yourself to --

5 A. Yes, a lots of times I did.

6 Q. Did Howard go with you sometimes?

7 A. No. Renee went.

8 Q. Renee went with you?

9 A. Yeah.

10 Q. And then what happened to the receipts for the
11 tax payments? What would you do with the receipts?

12 A. I'd make a copy, give Carrie one, and I'd keep
13 it.

14 Q. So you both kept a copy?

15 A. Yes.

16 Q. And did that -- I want to show you -- This is
17 the next exhibit, which is just a bank statement from
18 that -- is this a bank statement for that savings
19 account?

20 A. What?

21 Q. From the Wachovia account?

22 A. It is.

23 Q. Okay. And that's the account we are talking
24 about, now, where you and Carrie were named on it --

25 A. That's right.

1 Q. And this is a family account and it's called
2 Waiters Company?

3 A. That's right.

4 Q. All right. And this is Defendant's Exhibit 6.
5 Whereupon - Document marked Defendant's
6 Exhibit 6.

7 Q. Now, this exhibit, it shows on here
8 withdrawals being made. There's a withdrawal on
9 October, in October 2006 -- excuse me. October 6. This
10 is for 2010. Excuse me. This is a statement for
11 October through December 2010, correct?

12 A. Right.

13 Q. Was there a withdrawal made in October 2010?

14 A. That's right.

15 Q. How much was the withdrawal? Can you read
16 that?

17 A. I'm sorry, I can't --

18 Q. All right. \$642.00. And I want to hand you,
19 too, a document here and ask you, do you recognize that
20 as a 2010 tax bill?

21 A. Yes.

22 Q. Now, would you get taxes like this every year?

23 A. Every year.

24 Whereupon - Document marked Defendant's
25 Exhibit 7.

1 Q. This is Defendant's Exhibit 7. And this
2 Exhibit 7 is actually one sheet of paper that has two
3 tax bills on it. And so the top one says \$606.59, and
4 it's for acreage, 109 acres. Is that the Waiters heir
5 property?

6 A. Yes.

7 Q. And then the one below it says 31 acres.
8 That's the tax map number, and the tax amount, \$37.51?

9 A. Yes, sir.

10 Q. All right. And is that -- and every year you
11 would get a tax statement and you, or you with another,
12 would go to the account and get the money to pay the
13 taxes?

14 A. Yes.

15 Q. And did you do that in 2011, as well, the
16 following year?

17 A. Yes.

18 Q. 2012 is the year it went up?

19 A. Yeah, 2012.

20 Q. Well, at some point did you change the bank
21 from Wachovia to another bank?

22 A. Yes.

23 Q. And where did you change it to?

24 A. Founders.

25 Q. And is this a copy of the summary of accounts

1 you had with Founders? Is that the account that you
2 had?

3 A. Right.

4 MR. ROBBINS: And this is the next one, Judge.

5 Q. And is it fair to say that you set up this account
6 some time in 2011?

7 A. Uh-huh.

8 Q. And how much money was deposited -- did you
9 have in the account at the time this statement was made?
10 It's at the bottom, in the balance. Is it \$1,456.00?

11 A. That's right.

12 Q. And that was the amount the account had been
13 reduced to after paying taxes?

14 A. Yes.

15 Q. Was this \$1,456 applied to taxes the following
16 year?

17 A. Right.

18 Q. Okay.

19 A. It wasn't enough.

20 Q. It wasn't enough money?

21 A. No.

22 Q. Okay. So this was the account that was the
23 family account?

24 A. Right.

25 Q. All right. Let's change things up a little so

1 I don't get lost in my paperwork. Mr. Waiters, you were
2 aware that there were trees that were being cut and sold
3 and taken off the property while this action was
4 pending?

5 A. Right.

6 Q. Did any of the money from the sale of those
7 trees go in the family amount?

8 A. No.

9 Q. I would ask you if you recognize these
10 photographs here. I've got a series of them. What are
11 those? Are you familiar with those photographs? Do you
12 know what they represent?

13 A. Yes.

14 Q. They represent what?

15 A. Timber.

16 Q. Timber cut by Cecil Watts?

17 A. Yes. All this his equipment.

18 Q. His equipment?

19 A. Uh-huh.

20 Q. What kind of equipment did he have?

21 A. He had loaders and trucks, skidder.

22 Q. He had a skidsteer?

23 A. Right.

24 Q. I understand that you were present when these
25 photographs were taken?

1 A. Yes.

2 Q. And who took the photographs?

3 A. My son, Kevan, take them. And I recognize
4 where they were took.

5 Q. All right. Did you ever call me about it?

6 A. That's when we told them to stop, and they
7 wouldn't stop.

8 Q. And they wouldn't stop. That was in 2009?

9 A. Yes.

10 MR. ROBBINS: All right. I'd like to mark
11 these as an exhibit.

12 Whereupon - Photographs marked as Defendant's
13 Exhibit Number 8.

14 By Mr. Robbins: (Resuming)

15 Q. You mentioned that Stevenson had been cutting
16 in 2005?

17 A. Uh-huh.

18 Q. And was Stevenson, was he made to stop
19 cutting?

20 A. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. Okay. And then later on Cecil Watts started
24 cutting?

25 A. Uh-huh.

1 Q. All right. Was he -- Back when Stevenson was
2 involved, was the Plaintiff, Evelyn. involved at that
3 time?

4 A. Yes.

5 Q. How was she involved?

6 A. She tried to stop it.

7 Q. When Stevenson was involved, she tried to stop
8 it?

9 A. Yes.

10 Q. All right. And there was a hearing at that
11 time. There was a temporary restraining order at that
12 time --

13 A. Yes.

14 Q. -- and then there was a hearing on it?

15 A. Yes.

16 Q. And it was acknowledged that the wood was
17 being cut on the property?

18 A. Yes.

19 Q. And then the Court, they issued -- did they
20 issue a temporary injunction --

21 A. Right.

22 Q. -- saying to stop? And at any time after that
23 when they started cutting again, did you go out and try
24 to stop them cutting and ask them not to cut?

25 A. Right.

1 Q. You have to speak a little louder.

2 A. Yes, sir.

3 Q. All right. How many times or occasions did do
4 that?

5 A. How many times I do that?

6 Q. Yes.

7 A. I went out there four times.

8 Q. Four times you tried to get them to stop?

9 A. Well, one time they stopped, and pulled the
10 equipment to the gate. And I guess they talked to
11 Carrie, or somebody, and they brung all they equipment
12 back and started back up. And when I seen they started
13 back cutting, then I talked to them again and they
14 didn't stop. And that's when I went and talked to a
15 lawyer. I showed him those papers and told him what
16 Cecil watts was saying, and he said they came from
17 Carrie or Harry, one.

18 Q. The trees being hauled out, they were the
19 family's?

20 A. Right. But the truck pull up, loaded, and
21 then run off again, and that's when I approached you to
22 try and get them to stop cutting.

23 Q. All right. And then even after you contacted
24 me and we filed a motion with an order to stop, did they
25 stop?

1 A. No.

2 Q. And how many times did you call the sheriff to
3 come out? Twice?

4 A. Yes.

5 Q. And I believe you said that you had talked to
6 Cecil--

7 A. Yes.

8 Q. -- directly and told him to stop?

9 A. Yes.

10 Q. All right. And were you the only person that
11 was telling him that he wasn't permitted to cut the
12 trees?

13 A. No.

14 Q. Who else was telling him that?

15 A. Carolyn.

16 Q. Who's Carolyn?

17 A. Carolyn, she's a gal stay there sometime. I
18 call her Carolyn. Can't recall her real name.

19 Q. Okay. But she was living on the property?

20 A. Yeah, at that time.

21 Q. And so she approached him a couple of times?

22 A. Yeah.

23 Q. And did she call the sheriff's department?

24 A. Yes.

25 Q. Was there any action to try to stop them and

1 get them off the property?

2 A. Yes. We put up a chain.

3 Q. And what happened?

4 A. They'd come in and out and the chain was down.

5 Q. Taken down. And when were they coming in and
6 out?

7 A. From 6:00 o'clock on until over in the night.

8 Q. In the nighttime?

9 A. And they would be all in there then.

10 Q. Did you ever see -- Do you know anything about
11 his son being with him at times?

12 A. No.

13 Q. I don't know what age sons are.

14 A. He was there all the time.

15 Q. So he would watch them while they were
16 working?

17 A. Right.

18 Q. Okay. And then you were there when the
19 sheriff came out once, weren't you?

20 A. I was there several times.

21 Q. Several times?

22 A. Yeah.

23 Q. Would he stop and let the sheriff talk to him?

24 A. No. No.

25 Q. And there are photographs which show -- this

1 is from the photographs showing the area where Cecil
2 Watts cut?

3 A. Right. Right.

4 Q. I would like to show you the exhibit that --
5 There are some pictures to look at showing areas where
6 timber had been cut. Are these some of the areas where
7 timber was being cut?

8 A. Right.

9 Q. And this is Defendant's Exhibit 3. Now, as a
10 result of your involvement, what, as far as in this case
11 here -- you've been involved with the actions to stop
12 the cutting, but have you been involved with helping to
13 identify the heirs of the property, who are the heirs,
14 the Waiters heirs?

15 A. Yes, all of it. But a lot of them -- they's
16 more than I know.

17 MR. ROBBINS: Okay. All right. I think I have
18 covered everything that I need to cover. Just one
19 second. Your Honor, the orders -- there should be
20 some orders in the file from the TRO, temporary
21 injunction, and there was an order in August 2010
22 to stop the cutting and a second order in March
23 2012. I don't think Mr. Waiters can testify about
24 those orders, but they were matters that were filed
25 and are of record.

1 THE COURT: I have read them.

2 MR. ROBBINS: Okay. As far as the briefs we
3 have submitted, we've talked about a plan for how
4 to rectify the matter at issue, and we've put
5 together a document for the partition plan, a
6 document that you have a copy of, signed by Mark
7 Grier and myself that we submitted jointly as a
8 proposal for how to correct the issues with the
9 property. That's something we should discuss.

10 THE COURT: Absolutely.

11 By Mr. Robbins: (Resuming)

12 Q. I believe you have read a copy of that deal?

13 A. I have.

14 Q. Okay. And are you in agreement with what was
15 being proposed?

16 A. I am.

17 Q. And you are confident that all the family
18 members are protected?

19 A. Right.

20 Q. And that all the family members that have an
21 interest receive something from the property?

22 A. Right.

23 Q. Now, you have a house on this property. Is
24 that correct?

25 A. Sure.

1 Q. And are you interested in having the title
2 quieted so that you know whether or not you're the owner
3 of that property?

4 A. Correct.

5 Q. You'd like to have that done during your
6 lifetime?

7 A. That's right.

8 Q. And you've also paid money for fees in the
9 course of the actions in this case in behalf, on behalf
10 of the family members --

11 A. That's right.

12 Q. -- and you are asking to be reimbursed for
13 that --

14 A. Correct.

15 Q. -- in the amount, I think it was \$3,500 --
16 Well, I don't know the specific amount, but I have got
17 it in my affidavit. But you would ask to be reimbursed
18 for that?

19 A. I paid it. Yes, sir.

20 MR. ROBBINS: Well, thank you for your
21 testimony, and please answer any questions anybody
22 else has.

23 THE COURT: I have a few questions.

24 Examination: (By the Court)

25 Q. Mr. Waiters, I want to be sure I've got the

1 names right.

2 A. I am John Waiters.

3 Q. I know you are John. But you talked about a
4 Frank, and is it Carrie, C-A-R-R-I-E?

5 A. Right.

6 Q. And Frank is Frank?

7 A. Right. Frank is Carrie's son.

8 Q. Frank's last name is?

9 A. Waiters.

10 THE COURT: Thank you. Just wanted to be sure.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you very much, sir.

13 KEVAOFAN WAITERS: I have a question.

14 THE COURT: Yes. John, -- and I apologize for
15 calling you by your first name.

16 THE WITNESS: That's okay.

17 THE COURT: And I apologize for not giving you
18 your turn. But he's filed an Answer and he's
19 allowed to ask questions, too. And I apologize for
20 jumping the gun.

21 KEVAOFAN WAITERS: Your apology is accepted.

22 Examination: (By Mr. Kevaofan Waiters)

23 Q. Mr. Waiters, you stated that you been living
24 on your place for 80 years?

25 A. Yes.

1 Q. Okay. Have you eve lived anywhere else?

2 A. Yes.

3 Q. How long did you stay somewhere else?

4 A. Oh, ten years or so.

5 Q. Okay. The ten years that you wasn't here, do
6 you know how the taxes were paid?

7 A. Yes.

8 Q. How were they paid?

9 A. They was paid by family that was still living
10 here.

11 Q. You say it was paid by family that was still
12 living here?

13 A. Yes.

14 Q. Okay. When you said that you stopped some
15 Stevensons from cutting wood, how many loads of wood --

16 A. I didn't stop the Stevensons. Mr. Grier
17 stopped the Stevensons. But I was there during parts of
18 it when they were cutting.

19 Q. Well, how many loads did they cut?

20 A. Well, I don't know.

21 Q. They didn't cut -- they didn't even cut a
22 whole load.

23 A. What?

24 Q. They didn't even cut a load of wood. So the
25 wood that would have been cut, they --

1 A. They did cut. You say they didn't cut?

2 Q. Where did they cut?

3 A. He cut north. On the north he cut plenty of
4 wood. He even cut over to the line, over there by the
5 gate.

6 Q. So when he started cutting, y'all got out
7 there and told him to stop cutting wood.

8 MR. GRIER: Your Honor, I think if he wants to
9 testify -- Mr. Waiters may testify if he wants to
10 testify, but this isn't the time for him to
11 testify.

12 THE COURT: The point that the lawyer is trying
13 to make is, you have to ask a question. This has
14 to be in the form of a question.

15 By Mr. Waiters: (Resuming)

16 Q. And I asked, how many loads of wood did he
17 cut?

18 A. Well, I don't know, but I know he cut quite a
19 bit. How many loads I don't know, but he went down
20 there in the low part and cut loads, all down there.
21 How many I don't even know. He cut all on the other
22 side. I don't want to take nothing, and I don't want
23 nothing taken from the family. I'm doing this for the
24 family.

25 Q. Okay. So, you said that when Cecil watts

1 came, you came down and you stopped him from cutting
2 wood?

3 A. I didn't stop him. I asked him to stop.

4 Q. And you called the law and --

5 A. Yes, I did, several times.

6 Q. Okay.

7 A. And you know that.

8 Q. Okay. In time that you approached Cecil
9 Watts, your expert witness testified that there were 20-
10 some loads of wood cut out of there. There were 20-some
11 loads of wood cut in between the time you tried to stop
12 him and he stopped?

13 A. I don't know how many because I didn't count
14 them because somebody was over there at night. I wasn't
15 out there, I was at home, and you know that. You want
16 me to tell you how many loads. I don't know, because I
17 wasn't out there. You know that.

18 Q. Twenty loads?

19 A. That's right?

20 Q. He cut 20 loads of wood?

21 A. I don't know how many loads he cut. I was
22 thinking he estimated it on the profit, didn't he? He's
23 the expert.

24 Q. My point is, one person ain't cut 21 loads of
25 wood. In all, and I been counting, I seen Cecil Watts

1 come out of there with three loads. No more than that.

2 THE COURT: I need to caution you to ask him
3 questions. And you'll be allowed to speak later.
4 Okay?

5 MR. KEVAOFAN WAITERS: Okay. That's all my
6 questions, Your Honor.

7 THE COURT: All right. Mr. Robbins?

8 Further Examination: (By Mr. Robbins)

9 Q. Just one question. You had mentioned that --
10 It was brought to your attention that when Mr. Stevenson
11 was cutting he was cutting on other people -- he was
12 cutting over the line?

13 A. Stevenson cut over the line, and Watts cut
14 over the line.

15 Q. It was some neighbor that had contacted you
16 because of that?

17 A. Yes.

18 Q. All right. So you went and looked at the
19 situation?

20 A. Right.

21 MR. ROBBINS: All right.

22 THE COURT: Anything else? Mr. Waiters, you
23 are welcome to step down.

24 THE WITNESS: Thank you.

25 MR. ROBBINS: I'd like to call Guy Samuels.

1 Whereupon -

2 Guy Samuels

3 was called as a witness and first being duly sworn,
4 testified as follows:)

5 Examination: (By Mr. Robbins)

6 Q. Mr. Samuels, please tell me who your parents
7 are?

8 A. I am the son of Evelyn Lowery. My father is
9 O.K. Samuels.

10 Q. So, your mother is the Plaintiff in this case
11 or one of the Plaintiffs?

12 A. My mother is the Plaintiff, and she is the
13 daughter of Henry Waiters.

14 Q. Okay. How did it come -- Does she live, or
15 did she live at one point, on the property?

16 A. My mother has a mobile home on this property,
17 yes.

18 Q. And how is it she got involved in this
19 lawsuit?

20 A. I think it all started with she wanted to
21 divide the property, and it started with the division of
22 the property.

23 Q. The partitioning of the property?

24 A. Yes. Yes.

25 Q. She sought to get that title to the property?

1 A. I think she wanted -- because she didn't have
2 a partition for the property, a deed, and when changes
3 were being done to her property, she had no legal
4 recourse. It was heir property, so the heirs has as
5 much rights on the property as she did.

6 Q. Okay. In what way did she attempt to take
7 action to stop it when the timber was being cut?

8 A. I really can't answer that question
9 truthfully. I just know that she had hired, I believe
10 it was Mark Grier, who had -- I know she had gone and
11 hired Mark and the reason was another employee had hired
12 Mark and said he was a fine man. They started to take
13 action to divide the land.

14 Q. In 2005 there was cutting. In 2009 there was
15 more cutting. Were you present or did you come to know
16 about them cutting timber at that time?

17 A. In, I believe it was, September, I had
18 happened to be in South Carolina, and Henry asked me to
19 go across the road at that time, that they were cutting
20 timber. So I witnessed the guy with his equipment and
21 his truck there. And he was told that he could not cut
22 the timber. He wasn't, you know, happy. And he was
23 told -- and I don't know who the guy is or what his name
24 is or whatever. And he was over there. And he had no
25 right to be cutting because he didn't hire him.

1 Q. So you're saying that Henry, your cousin, told
2 -- your family member told --

3 A. Told him, yes.

4 Q. -- that he didn't have any right to be there,
5 that he didn't hire him. Did he say who hired him?

6 A. I believe he said that my aunt Carrie had
7 hired him.

8 Q. Okay. And did the sheriff come while you were
9 there?

10 A. The Sheriff came, yes.

11 Q. And did the Sheriff tell them to stop what
12 they were doing?

13 A. No. He told him we didn't have the right to
14 be telling him that because --

15 Q. The sheriff?

16 A. Yes. You know, getting -- he couldn't make
17 him stop, because he didn't --

18 Q. He was under an injunction and couldn't make
19 him stop?

20 A. Right.

21 Q. Right.

22 A. And so -- but they went on.

23 Q. I understand. I talked about the policies.
24 So what -- How did that end up? The sheriff advised him
25 about that, and then what happened after that?

1 A. The sheriff left.

2 Q. The sheriff left. Did they continue cutting?

3 A. Not at that time, no.

4 Q. Okay. Do you know anything else about that?

5 A. No.

6 Q. That's all you know?

7 A. That's all I know.

8 MR. ROBBINS: Okay. Mark Grier has some
9 questions for you.

10 Examination: (By Mr. Grier)

11 Q. What y'all discussed right now, I wanted to
12 ask you something about that, but Mr. Robbins just
13 covered that. Your mom, she stepped forward on this
14 business, and she didn't want to do it for herself; she
15 wanted to do it for her family, didn't she?

16 A. Yes.

17 Q. And we are -- Did she talk to you about that
18 often?

19 A. And she talked to my sister, who was --

20 Q. Deloris?

21 A. -- Deloris, who was helping her to track the
22 heirs, find out who they were, but she passed two years
23 or so ago.

24 Q. Well, Guy, you are aware of the expenses that
25 your mother had paid already previously on this. In

1 fact, I have a document -- I have a copy of a check,
2 which she paid \$3,000.00 to me --

3 A. Yes, sir.

4 Q. -- to begin this process. Correct?

5 A. Yes, sir.

6 Q. And also, she -- plus the \$200.00 to have some
7 title work done --

8 A. Yes.

9 Q. -- as well?

10 A. Yes.

11 Q. So these are the monies that she paid towards
12 these -- that have been paid for the attorney's fees and
13 costs to move this along and to partition this action,
14 by your mom, right?

15 A. Yes.

16 Q. Do you believe it was fair that she should be
17 reimbursed, to the family, for your mother to be
18 reimbursed for her expenses? In other words, you have
19 her power of attorney, and, you know, are you asking the
20 Court to reimburse your mom for her expenses?

21 A. Yes, sir. I am. Yes.

22 MR. ROBBINS: Okay. All right. Your Honor, I
23 would offer these as Plaintiff's -- whatever
24 numbers we are on.

25 THE COURT: It should be Plaintiff's 8. Is it

1 pre-marked?

2 MR. GRIER: It's pre-marked 8, but I don't know
3 if we already used that one up, Your Honor.

4 THE COURT: We didn't. Any objection?

5 MR. ROBBINS: No objection.

6 Whereupon - Document marked Plaintiff's
7 Exhibit 8.

8 By Mr. Grier: (Resuming)

9 Q. Now, Mr. Samuels, you have examined that copy
10 of the check?

11 A. Yes, sir.

12 Q. And this is a copy of the documentation that
13 was spent for expenses of the estate as well, correct?

14 A. Correct.

15 MR. GRIER: All right. Thank you. That's all,
16 Your Honor.

17 THE COURT: Mr. Mills? Anybody else?

18 MR. MILLS: No questions.

19 MR. ROBBINS: No further questions of this
20 witness.

21 THE COURT: I do not believe the Plaintiff has
22 ever really rested. I know y'all are trading
23 witnesses back and forth. I don't know who's
24 rested, so I want to know who rests, and I will go
25 to the Plaintiff first.

1 MR. GRIER: Yes, sir, Your Honor. I have
2 rested.

3 THE COURT: So you've rested?

4 MR. GRIER: Yes, sir.

5 THE COURT: Mr. Robbins?

6 MR. ROBBINS: Howard Waiters I would like to
7 call as my next witness.

8 Whereupon -

9 Howard Waiters
10 was called as a witness and first being duly sworn,
11 testified as follows:

12 Examination: (By Mr. Robbins)

13 Q. Howard, who are your parents?

14 A. John and Delvina Waiters.

15 Q. John Waiters, that has been testifying?

16 A. Correct.

17 Q. And I take it you are probably going to be
18 very happy when all this is finished with?

19 A. Yes.

20 Q. The reason I wanted to have you come up is
21 just, did you ever go with your father as part of the
22 process of paying taxes? Did you go down to the Tax
23 Collector's office for paying the taxes?

24 A. Yes. I went with my father several times to
25 the courthouse to pay the taxes.

1 Q. And what was the process that you would follow
2 when the two of you would go to pay your taxes?

3 A. Well, we would usually go to the courthouse.
4 If he didn't have the bill that was sent saying what his
5 taxes were, we went to the courthouse and got the notice
6 of the amount. And then dad would withdraw the money,
7 and then we would take it back over, pay the taxes and
8 then come back and follow up with him to give a copy to
9 Carrie so that she would know that the taxes were paid.

10 Q. You gave her a copy of the receipt?

11 A. Yes.

12 Q. Did the money come out of the account that
13 your father referred to, the family account?

14 A. Yes.

15 Q. All right. And when he would take it out, it
16 would be based on the tax liability for that year?

17 A. Correct.

18 Q. All right. And have you done that in recent
19 years?

20 A. The last year that I went with my dad to do it
21 was around the 2011 time frame. That was when it was
22 reassessed and the taxes went way up that year.

23 Q. Right. And tell me, was there insufficient
24 funds in the fund to pay the taxes?

25 A. Yes. It was during that year that it was

1 insufficient funds. It was only, like, \$1,400.00, just
2 over \$1,400.00 in the account, and the taxes were 19-
3 something.

4 Q. As part of this proceeding, there was a
5 publication that took place to put people on notice
6 about the lawsuit?

7 A. Yes.

8 Q. Did you incur any cost as a result of that, of
9 the publication?

10 A. Yes, I did.

11 Q. Did you put up part of the money that was
12 required to publish the notification?

13 A. Yes. I received an e-mail for myself that was
14 directed from Mr. Grier, and it stated that money was
15 needed to pay to run that ad in the paper.

16 Q. Okay. Did you expend \$1,470.00 for the
17 publication?

18 A. Yes, I did.

19 Q. All right. And you want to be reimbursed
20 that?

21 A. Yes, sir.

22 MR. ROBBINS: All right. No further questions.

23 MR. GRIER: No questions.

24 THE COURT: Mr. Mills?

25 MR. MILLS: None, Your Honor.

1 THE COURT: Anybody else? Okay. You may step
2 down, sir. Mr. Robbins?

3 MR. ROBBINS: We don't have any further
4 witnesses.

5 THE COURT: Mr. Mills?

6 MR. MILLS: Nobody I want to call.

7 THE COURT: Okay. Now, I know there are two or
8 three people who filed Answers who are here, and if
9 there is anything you want to testify to now is
10 your opportunity to come up and talk about it. And
11 if anybody else is here -- I want to try and get an
12 idea about the time. We have been going for about
13 an hour, and we can take a break if we are going to
14 go very long. Anybody else who's going to testify
15 whose filed An answer in this case? Okay, come on
16 up, sir. And I apologize. I don't know your name.

17 MR. KEVAOFAN WAITER: Kevaofan Waiters.

18 THE court REPORTER: What was your first name,
19 sir?

20 MR. WAITERS: It's K-E-V-A-O-F-A-N.

21 Whereupon -

22 Kevaofan Waiters
23 was called as a witness and first being duly sworn,
24 testified as follows:

25 THE COURT: Mr. Waiters, there's nobody to ask

1 questions, so you are allowed to talk to me about
2 the facts of the case.

3 MR. WAITERS: Sir, first, my name is Kevaofan
4 Waiters. I am employed with Lancaster County
5 Central Courts, and been living back in Lancaster
6 County for 18 years. I retired from the Marine
7 Corps and moved back home, and now --

8 THE COURT: What year did you move back?

9 MR. WAITERS: In 1992.

10 THE COURT: Thank you.

11 MR. WAITERS: And I been in law enforcement
12 since then. I worked as a detective and a shift
13 supervisor for the Lancaster County Sheriff's
14 Department. And now I am a constable for the
15 Court, the Clerk of Court.

16 A couple of things I want to put in the
17 record. Now, this has been going on for, now, nine
18 years. We are all are ready to come to some, you
19 know, solution to the problem. My mother is 92
20 years old. She have lived on the Waiters estate
21 since --

22 THE COURT: And your mother is?

23 MR. WAITERS: My mother is Carrie Lee Waiters.

24 THE COURT: And I hope you don't mind me
25 interrupting here. I want to make sure I have it

1 straight.

2 MR. WAITERS: No, sir.

3 THE COURT: Go ahead.

4 MR. WAITERS: My mother is Carrie Lee Waiters.
5 My father is Harry Waiters. And my mother and my
6 father and my uncle, John Coleman, had purchased --
7 we talking about the land. They bought the land
8 from my uncle --

9 THE COURT: When you are talking about the
10 land, let's be sure I am clear. Show me on here.

11 MR. WAITERS: Well, when they was breaking it
12 down to the heirs, they purchased an heir property,
13 my father and my uncle, John Coleman.

14 THE COURT: So, anything inside of --

15 MR. WAITERS: Like it was never cut out. It
16 was four or five different places. They never cut
17 it out.

18 THE COURT: So it doesn't have a separate --

19 MR. WAITERS: No, sir.

20 THE COURT: Okay. Got you.

21 MR. WAITERS: Based on that information, we
22 talked to an attorney, and he stated that as long
23 as we didn't cut the land out that she had free
24 reign to cut timber and maintain the property.
25 When I was a child, my father and I, we cut timber

1 to pay the taxes. He went and made a deal with
2 Bowater, and we cut small pulpwood timber. And
3 when we cut the timber, he paid taxes on the
4 property.

5 THE COURT: And this was around what period of
6 time.

7 MR. WAITERS: This was during about the '70s.
8 And my father passed away in --

9 THE COURT: Before you left and came back?

10 MR. WAITERS: Yes, sir. And so, the attorney
11 had informed them that long as they didn't cut
12 their land out of the estate that they really would
13 have free reign to cut timber on the property.

14 So when the question came in we couldn't cut
15 any timber, by right my mother did have the right
16 to cut the timber off the property.

17 THE COURT: So when you state the word came in,
18 not to -- you are talking about the last ten years.

19 MR. WAITERS: Yes, Your Honor, the last ten
20 years.

21 THE COURT: Okay. Got it.

22 MR. WAITERS: And in that same time frame there
23 was evidence that was presented that Janice Dixon,
24 who isn't present today but is a Defendant in this
25 case, was -- the family, all of the family heirs

1 that were living at the time signed over to make
2 her the owner. And we are addressing all that
3 here, that that land could not be put back in the
4 estate because it was signed over.

5 THE COURT: Now, I want to be 100 percent sure
6 I understand you.

7 MR. WAITERS: He was numbering up lots, and he
8 didn't -- he didn't give a name on them.

9 THE COURT: We got houses here. Then we got
10 two acres he's cut out, looks like, probably a
11 little over an acre here. Let me make a rough
12 calculation. So you're referring to, you think,
13 the parcel that's got the number 11 in the middle
14 of it?

15 MR. WAITERS: Yes, sir.

16 THE COURT: Parcel 22.02

17 MR. WAITERS: And Number 5.

18 THE COURT: And Number 5 is -- that's the old
19 home place, right?

20 MR. GRIER: Beg pardon? I couldn't hear --

21 THE COURT: Number 5 is the old home place,
22 isn't it? Excuse me. I got it mixed up with
23 something else. Don't worry about it.

24 MR. WAITERS: Number 11, Number 10 and Number
25 5.

1 THE COURT: If you would, repeat it and slow
2 down because they can't hear it back there.

3 MR. GRIER: Judge, I believe you were
4 questioning whether Number 5 was the old home
5 place?

6 THE COURT: It's not.

7 MR. GRIER: I was just wanting to say that I
8 did not believe it was.

9 THE COURT: It wasn't. Thank you.

10 MR. WAITERS: The first property on the record
11 was Janice Dixon's, and the heirs that were living
12 at the time signed over her land for a home. It
13 was addressed at our hearing the last time that
14 that land was going to be cut out of the estate.
15 And the same thing with Parcel Number 10. The
16 heirs had signed that land over, and her land was
17 no longer property of the estate. And Parcel
18 Number 5, it was initially willed to William C.
19 Waiters, and it was two acres to put a home on, and
20 the heirs signed over the two acres.

21 Later on, W.C.'s son obtained a loan on the
22 land, on the two acres of land, and when the loan
23 was foreclosed the Bank of Wachovia bought the
24 land. And Larry Waiters purchased the land from
25 Wachovia Bank. And it was ruled in our last

1 hearing that once that land was sold to Wachovia,
2 it was no longer in the Waiters Estate, and that
3 Larry Waiters had obtained ownership of the
4 property. And that once the land was bought from
5 the bank, that those lands could not be included in
6 to this hearing.

7 THE COURT: And the two acres we're talking
8 about, the parcel says 22.01?

9 MR. WAITERS: Yes, sir.

10 THE COURT: All right.

11 MR. WAITERS: And to my understanding we all
12 had agreed upon that in our last hearing, that
13 because those things were actually removed from the
14 estate, and that they wouldn't be included in the
15 hearing, the proceeding of this estate.

16 THE COURT: Okay.

17 MR. WAITERS: Like I say, my mother, Carrie
18 Waiters, has lived on this land. In September, my
19 mother will have been there 73 years. She's been
20 living there for 73 years and never moved. The
21 other land that is surrounding her, and never left
22 the location, is Idell's land, James Waiters's
23 wife. And those two, they have lived there from
24 their marriage, from day one to now. And we've all
25 got to just, basically, give thought and make sure

1 that, well, we try to do what is right.

2 But at the same time, the intentions that, you
3 know -- I was taught by my father that, and from my
4 grandfather, was not to sell any property. By not
5 selling property, as long as a Waiters was living
6 and he lived in South Carolina, he had a place to
7 stay. And this has been going on for over 100
8 years, and I am real afraid now that we see that,
9 you know, this is all turning back, but this is
10 going to have to be done.

11 My request to you, sir, is that if possible,
12 when you get through then synopsis of this whole
13 thing, is that where my mama's home is located --

14 THE COURT: Show me.

15 MR. WAITERS: Okay. I think it's going to be
16 Number 6.

17 THE COURT: All right, sir.

18 MR. WAITERS: My other request is that the
19 property that -- Harry Waiters and John C. Waiters
20 and John Coleman, is that it is attached to that
21 property, you know, at a point of entry starting
22 from that property that covers that area. That
23 would help improve her home in that property so we
24 don't have to go through a corner coming off of
25 those, off of -- off that lot, which will be the

1 two acres in front of that corner of her land.

2 THE COURT: Okay. Anything else you want to
3 tell me about what you think would be a fair way to
4 divide it up?

5 MR. WAITERS: Well, I -- we looked at the
6 avenues that they were trying to do, and it's a
7 tough decision to make. We do have a pond that was
8 done in 1965. My father had a pond built that. I
9 can remember. I was a young child, seven years
10 old. At that time, I watched them build it, and
11 next year that pond will be 50 years old. And we
12 have been trying to make sure we maintain that pond
13 and keep it up, you know, where people can enjoy
14 it. We have spent money putting fish in the pond,
15 fertilizing the pond and keeping the area clean
16 around the pond. And I have a nephew and a brother
17 with me today who, you know, we just spent over a
18 thousand dollars in putting new fish in the pond,
19 restocking it.

20 So, you know, it's going to be hard, because
21 where it's located it's in the very back of the
22 property. And so, you know, it's a few acres
23 behind it, and then it hits the line. And there's
24 a pasture and then there's timber. And so, you
25 know, we have always wanted to just treat the

1 property, cut the timber and treat the property and
2 re-seed so it could have the opportunity to grow
3 back and keep the taxes on it. Because when I was
4 a teenager, by cutting pulpwood in the woods we was
5 using that to pay taxes on the property.

6 And so, you know, I had initially thought, you
7 know, if this was possible, that we could just try
8 to resolve it by, you know, cutting it for the
9 timber and using it to pay the taxes, pay the fees
10 that everyone had incurred. But the only problem I
11 had was when going through and evaluating
12 everything was that even the \$50,000 from the
13 timber, when we got through with paying for a
14 survey and paying out attorney fees, and we got
15 through paying the taxes, it wasn't going to be
16 anything left of that money. And then we would
17 still have the land, then, and we still going to
18 have a higher tax base. Because once we split the
19 land up, then the land, each individual -- there's
20 six homes on the property that's separate to those
21 three that does not have a -- they are not paying
22 any tax on it, on that property.

23 And I live across the street, which is not a
24 part of the estate, but I pay, on one acre, I pay
25 \$800.00 a year on taxes. Those people would now

1 incur that same tax issue once this is done, and
2 then we would have the other land to separate. So
3 my concern was with a lot of the people, like Miss
4 Idell and Donald Waiters, they are disabled and,
5 you know, for those people, they may come out of
6 this with a piece of land. But for those people
7 that are not now having to pay the taxes, how can
8 they afford it? But, if we're going to do this,
9 we're going to increase a higher tax base on the
10 property itself, because I have a separate piece of
11 property. I have 14 acres on Mount Carmel Road,
12 and initially I was paying \$800.00 a year on that,
13 just the land itself and nothing on it. And my
14 concern was that once we split this property up, we
15 are going to have a humongous tax bill that I don't
16 know if the estate can handle it, because riding
17 around this county every day for the last 18 years
18 there's a lot of land for sale, and I don't see a
19 whole lot of buyers standing in line to buy this
20 property. And so the property isn't sold, then
21 someone has to make sure the taxes are paid on the
22 property itself.

23 So my concern was that we was going to
24 increase -- we was going to basically increase a
25 undue hardship on family members. And I think we

1 all have to work something out feasible for paying
2 them.

3 And I just wanted the Court to be aware of
4 that. You know, we didn't take in to
5 consideration, you know finances. But then it's a
6 lot of us is living from paycheck to paycheck, and
7 then they going to increase, they going to pay half
8 more than the half they already have to pay, I just
9 know they can't afford it. So that's all I have.

10 THE COURT: Okay. I understand what you're
11 saying, and thank you for your time.

12 THE WITNESS: Yes, sir.

13 MR. ROBBINS: Actually, Your Honor, I have a
14 question.

15 THE COURT: Okay.

16 Examination: (By Mr. Robbins)

17 Q. You talked about this purchase of property that
18 was done by your father?

19 A. That's correct.

20 Q. What it was was, you talked about the purchase
21 of an interest that Liza Waiters owned, and then later
22 Henry Waiters owned. It wasn't a certain tract of land,
23 was it?

24 A. Well, sir, what happened was my aunt offered
25 to sell her share to her brother, and he didn't want it,

1 and she offered to sell to another brother, and he
2 didn't want it. So then my father said, I will buy it.
3 So what happened was, my grandfather had the money and
4 he purchased the property.

5 So when he purchased, it he put it in his name.
6 And it stayed in his name, but then my mother persisted
7 to my father that you need to make sure that property
8 get put in your name, and in your brother's name,
9 because if my father and his brother wanted to sell --
10 John told me hisself, would you be interested in going
11 in with me to purchase the property. So on paper it
12 looked like Henry Waiters purchased the property, which
13 he did, but he actually purchased the property through
14 Carrie Waiters' and John Waiters' money, and it was just
15 maybe a year later is when my mother made sure that's
16 the land got transferred in to their name.

17 Q. Okay. And once it was divided, wherever the
18 line is, whatever his interest was, was it--

19 A. Right. It would be a child's portion of the
20 property. And so we was informed by our attorney that
21 as long as it didn't go to the point and cut the land
22 out, that we could go anywhere on that property.

23 Q. And so your understanding of it, and the
24 family's understanding was that you could go ahead and
25 cut trees wherever you wanted to on the property, even

1 if it was family heirs' property?

2 A. We were part of that heir property.

3 Q. Right.

4 A. But we was the only family that actually had -
5 - we actually hold a child's portion of the property.

6 Q. So you thought your family was different
7 because they had --

8 A. No, I didn't think that. The attorney told us
9 that we had that right. I mean, it wasn't something
10 that we just tried to make up on our own. We was going
11 from the legal information that we received.

12 Q. All right. And even though your family was
13 served -- Carrie and Frank were served with injunction
14 papers, they thought legally that they were still
15 entitled to continue cutting?

16 A. Well, eventually the injunction papers were
17 bad, okay? You had a certain time frame. So how long
18 does an injunction last? And then, from -- It was,
19 like, a two year period, and then it was nothing. So
20 nothing was been helped, and then after a while
21 everything just went blank. Nothing was being done in
22 the court, we wasn't being informed about anything.

23 Q. Did your family move to have the injunction
24 removed?

25 A. The injunction had -- you either had a statute

1 of limitation or you had a time frame. I mean, it just
2 don't happen and then you have an injunction.

3 Q. Now, did the injunction in 2005 and 2010 when
4 it was reiterated, these were documents that were
5 served. Are you aware of the service of any of those
6 documents on your mother and on Frank?

7 A. I didn't actually see the injunction itself.
8 But when we got a five-year time frame from that -- it
9 was a temporary injunction. How long is a temporary
10 injunction? It's either temporary or it's a permanent.

11 Q. I can ask you questions, but I can't give you
12 my opinion or make a statement about it. As far as --
13 you were talking about the various deeds that were
14 signed. Can you tell me if all the heirs signed those
15 deeds that were deeded out?

16 A. At the time that those deeds were signed, it
17 was done by the proper heirs that had the authority to
18 make that decision. And they was old, and you will see
19 that, from the last hearing, that once those deeds were
20 signed by the proper heirs then those became -- those
21 became permanent deeds.

22 Now, they already mentioned that the agreement for
23 people that the deeds being signed, this was in the last
24 hearing, that the land was paid off. The mortgage was
25 paid off. It was supposed to put the land back in to

1 the estate, and then the judge ruled that if it wasn't
2 in writing you couldn't do that. And it wasn't anything
3 in writing. It was just, like, a hearsay.

4 Q. We, in introducing things, presented evidence
5 -- we have talked about what the judge did before, what
6 may have been discussed. I don't know. I am not
7 familiar with what you are talking about, but we have to
8 go by what's presented today. As far as to your
9 knowledge, though, did all the family members sign off
10 on these deeds?

11 A. That's correct. The proper family members at
12 the time signed off on it.

13 Q. What do you mean, what do you mean by proper
14 family at the time?

15 A. Well, the members that they could -- the
16 members that they could get in contact with at the time,
17 they was -- the people that had a vested interest in the
18 property were the ones that authorized those deeds to be
19 signed.

20 Q. But you're saying some of the heirs signed off
21 on it?

22 A. From my knowledge the proper people that had
23 the proper right to sign off on the land, signed off on
24 it. When Mr. Grier introduced those things to the judge
25 today, he used lot numbers. He didn't use any names.

1 In the past, we had him name those names, specifically
2 identified. But when we had the previous hearing we was
3 using the names of the individuals.

4 So that's why -- and I didn't object to it because I was
5 -- I wanted to basically bring to the judge's attention
6 on what was happening because initially we were going --
7 saying we was under the understanding that we was going
8 along with a lot of things that was agreed with our
9 previous conversation to save time. And then, now, it
10 seems like those things that we -- that was real
11 important was being -- The question was, he was saying
12 that all the properties, all the deeds, should be put
13 back in to the estate, and then the land divvied up.

14 And that was, that was not what we agreed upon
15 the last time, nor should that be what we agree upon
16 this time, because you have at least three deeds that
17 are there that were properly done. And then, one of the
18 deeds was lost in a foreclosure, and it was purchased by
19 another family member. So that deed automatically is
20 thrown out of the estate. The estate lost that land, so
21 it shouldn't be included in this estate here because
22 it's a separate entity.

23 And then, the other two deeds, Janice Dixon and
24 Monique Thompson's deeds were also introduced, and they
25 were -- and, of course, they were signed by proper

1 authorities. Even John Waiters signed for that, those
2 deeds. And those deeds cannot be used and be put in to
3 the estate, either.

4 Q. The way I interpret the deeds, and we could --
5 aren't the deeds just binding on the people who signed
6 them?

7 A. The way I interpret it, the way from our
8 previous hearing and still today, and I don't think I am
9 misunderstanding, but those deeds, those particular
10 deeds are legitimate deeds.

11 Q. You think they are binding on people that
12 didn't sign them?

13 A. Sir, all the people that were signed were the
14 ones that, at the time, at the time of the deeds, they
15 was all authorized to sign those.

16 Q. There's no proof that anybody's authorized to
17 do anything.

18 A. They signed the deeds. I mean--

19 Q. No proof they were authorized to sign them,
20 though. There's no proof of that?

21 A. The people that signed the deeds -- My uncle,
22 John Waiters had signed the deeds --

23 Q. Right.

24 A. -- and he's saying that -- and my father,
25 Harry Waiters, signed the deed, and James Waiters signed

1 the deeds. Are you telling them that -- They've lived
2 on the property. They didn't have no authority to sign
3 anything?

4 Q. No. Did they have authority, to bind people
5 that were from other families?

6 A. Sir, at the time those deeds were signed, and
7 from now to then, they have been a legal document, and I
8 don't have anything that will change that. I am not
9 going to make up anything, but everyone that signed
10 those deeds at the time was under the opinion that those
11 people who signed the deeds had the authority to sign
12 the deeds.

13 MR. ROBBINS: Okay. I just question that. It's
14 going to be up to the judge to determine whether
15 they can bind unknown people or other family
16 members that are parties. Mark, do you have any
17 questions?

18 MR. GRIER: I would just like to ask one
19 question.

20 Examination: (By Mr. Grier)

21 Q. Mr. Waiters, I mean, it is your desire that
22 all the property remain in the Waiters family. I mean,
23 I am not saying specifically who or what, but nobody who
24 is here today desires to have anything done with this
25 property that's going to turn it over to anybody that's

1 not a Waiters family member. Is that your
2 understanding? Do you -- I gather that there's some
3 concern that this is going -- this proceeding is going
4 to result in persons other than Waiters family, which
5 was your great-grandfather, your grandfather, all
6 intended that it stay in the family. Your desire is
7 that the land stay within your family members forever?

8 A. That's correct.

9 Q. And no one is advocating anything other than
10 that here today. I mean, do you believe that anybody's
11 advocating that persons other -- besides the Waiters
12 receive land out of this?

13 A. You know, it was mentioned that the land would
14 be broke up and then would be offered to the Waiters
15 heirs to buy it. And then if they didn't, it would be
16 put on the public market.

17 Q. Okay. Well, but would you -- And what I am
18 getting at really is, are you aware of anybody that
19 would object to the Court having an auction which would
20 allow the -- only the descendants of Kenneth Waiters for
21 that auction, so that the individuals who have inherited
22 an interest, that are not going to get property because
23 their interest is so small, but they could be
24 compensated out of that fund. It's your desire that
25 somebody that's a descendant of Ken Waiters ends up with

1 all the property, correct? And do you believe that an
2 auction is the best method for insuring that? I mean,
3 where you would have a -- and your family would have
4 their interests protected with regard to, for instance,
5 where your mother's -- the structure where your mother
6 resides. If that's protected, that's your primary
7 concern for you, isn't it? And I understand that, and I
8 respect that. But, that is a primary objective of
9 yours, what the Judge does today, correct?

10 A. That's part of it.

11 Q. Okay. For instance, you're in it. You would
12 receive, if you weren't able to participate in an
13 auction, you would receive some monies as a result of it
14 being sold to another Waiters heir. Do you understand
15 that?

16 A. I understand it.

17 Q. Okay. Or you could use your portion of the
18 interest to bid and purchase other parts of the Waiters
19 estate, if you wanted to do that. You understand all
20 that?

21 A. I understand.

22 Q. Okay. Well, just in interest of making sure
23 that -- I don't think anybody is asking the Court to do
24 something that's going to put anybody that's not a Ken
25 Waiters heir on the property. What happens after it

1 goes to the next generation, is not in the control of
2 this Court, but I just want to make sure we are on the
3 same page with regard to that.

4 You have no objection to an auction where waiters
5 are able to acquire the property, is the question I want
6 to get to?

7 A. I don't have any objection to that.

8 MR. GRIER: Thank you.

9 Examination: (By the Court)

10 Q. You do understand that there are some people
11 who are inheritants of the property who have never lived
12 on the property?

13 A. Yes, sir. I am looking at the list of --
14 There are some people that I don't even know --

15 Q. Right. And that's a product of -- it's
16 nobody's fault, necessarily, but that's just what the
17 operation of what the law does. You understand?

18 A. Yes, sir.

19 Q. Okay. And you understand that those people,
20 even though they are not present, that they have the
21 right to make a claim on that property. If they came in
22 here, an unknown person could force this kind of
23 proceeding and not be cooperative. Do you understand
24 that?

25 A. Yes, sir.

1 THE COURT: Thank you. That's all I have.

2 MR. ROBBINS: I don't have anymore questions.

3 THE COURT: Okay. We've been going for an hour
4 and a half. I'd like to take ten minutes where
5 everybody can catch their breath and take a break,
6 so be back in here -- It's 18 after, so at 3:28
7 we'll start again. We'll let everybody stretch
8 their legs and catch their breath. Does anybody
9 else here intent to provide testimony? Okay.
10 We're going to take a ten-minute break, and we'll
11 get you up here.

12 Whereupon - A recess was taken.

13 whereupon -

14 Donald Frank Waiters
15 was called as a witness and first being duly sworn,
16 testified as follows:

17 THE COURT: What's your name, sir?

18 THE WITNESS: My name, my proper name is Donald
19 Frank Waiters.

20 THE COURT: Mr. Waiters, this is your
21 opportunity to testify, so tell me what you want me
22 to know.

23 THE WITNESS: Okay, sir. I been on this case
24 since 1980, and I been in a struggle because
25 everybody said they wanted a piece of this land,

1 and we talked about what's real and what's not
2 real. And I fought in the '80s about who have
3 legal deed, and who didn't have a legal deed.
4 I went to Columbia, and it was stated that these
5 are the deeds that are legal, and the rest of the
6 deeds are no good. That was in the '80s.

7 Now, we checked on them. We kept going, we
8 got to the 2000s. I lived away from here. My
9 father died, I was here, and he called all the
10 people on the place and told them that I was at
11 home now, and that I was going to be the one that
12 was taking over his spot, and he died.

13 After he died, I wanted this land and he sold
14 it to me, opened up that account and called it
15 Waiters Company. We started putting money in there
16 to pay the taxes because prior to that my father
17 had been the one responsible the taxes, contrast to
18 what everybody else believes.

19 Examination: (By the Court)

20 Q. When you say we, that was you and who else?

21 A. Me, William Waiters, John Waiters, and I gave
22 my mother the book.

23 Q. And that was in what time?

24 A. This was in 1983.

25 Q. Okay. Got it.

1 A. So I left here in 1984. When I left here in
2 1984, everything was intact. People were able to do
3 whatever they wanted to do with the land. They'd say,
4 we going to do this. I didn't have anything to do with
5 that then. When I came back home in 2005, I informed
6 the people of that, because I figured that while I was
7 away I wasn't in the position to tell anybody to do
8 anything, because I wasn't on the property, so I didn't.

9 But when I came back, I told my uncles and I told
10 my son that I was back. And I was told this. Well, we
11 doing things different now. Why you want be doing
12 things different? I ended up in court. And we been in
13 court every since.

14 Now, my point is just this. I don't want to take
15 anything from anybody. I just want to leave it like it
16 was, a handshake. They made an agreement, everybody
17 lived by that agreement for almost 100 years. But then
18 we all had our own ideas, and everybody wanted this, and
19 everybody wanted that, I want this and I want that. For
20 100 years, the people lived on that agreement. And now
21 all of a sudden we got to have everything one way or
22 this person's way. It's the law.

23 I went down to Columbia where you from and talked
24 to one of the lawyers that handles heir property, and he
25 told me I could take your money, but I won't because the

1 laws in the State of South Carolina has give it to them
2 and you might as well accept it. So I didn't hire a
3 lawyer. Everybody else did. We did not hire a lawyer.
4 The Court told me we didn't have any need, but I got
5 something every time, because according to what we were
6 under the impression was, was that we had a right to
7 move in there and cut and plant and do what we wanted to
8 do. We wasn't doing noting.

9 So I was told, you can't do that. why? Because
10 it's heir property, the same reason I was doing what I
11 was doing.

12 So, now, it's down to this. Let's separate it
13 because it's going to cost this, and it's going to cost
14 that -- Your Honor, ain't nobody going win. We all
15 going to lose, one way or the other. Everybody's going
16 lose.

17 Now, I ask the last time. The best way to do it
18 this way, is to have what belongs to my family cut out
19 from the larger portion of the property. Just cut it
20 out.

21 Q. You're talking about cutting out -- what are
22 you talking about?

23 A. I am talking about we want to keep the --
24 everybody going have their property. I am talking about
25 the part we have, the child's portion that we have.

1 Q. You're not talking about a specific place?

2 A. I'm not talking about a specific place. I am
3 just talking about the child portion that we have, take
4 it out, and if you want to split the rest of it up,
5 fine. But that will stay intact. It won't be moved.
6 Everybody else can go where they wants to go. And then,
7 we going sell it, then we will have the opportunity to
8 bid on it, too, but take ours out. Don't let ours be
9 bid on because we don't want to lose.

10 Q. When you say ours, who are we talking about?

11 A. I am talking about Carrie, Bernice, Irene,
12 myself, Joe Rae, Carolyn, that group. And my uncle, his
13 children live in Winston-Salem, that group. Because we
14 -- we purchased the Eliza portion of it. We going fight
15 it, and we going fight it direct. Now, I was told that
16 this ain't going work unless it's all intact.
17 Everybody's got to participate, but I won't participate
18 with that deal. So I am saying that.

19 So the thing about it is, we lived here all these
20 years. And everybody didn't stay here the whole time.
21 Our father was the one that did. He lived -- He was
22 born here, he lived here and he died here, and he never
23 left here to go nowhere. So, now, I was trying to do
24 what he told me to do. Just -- that's it. And I kept
25 my mouth closed. But everything I tried to do to start

1 with, it's blown out of proportion. So I am the bad
2 guy. I accept that role. I will accept that role. But
3 the deal is right here, I just don't want my mother, who
4 is 92, to have disruption, because ---

5 Q. Now, you are Carrie's --

6 A. I am Carrie's son, her second child, second
7 son.

8 Q. Okay. Carrie still lives on the property,
9 doesn't she?

10 A. She lives on the property, yes, sir.

11 Q. Okay.

12 A. My address is Waiters Circle. I still stay
13 there, sir, every day. But everybody else say I don't
14 live there. So, where we going, then? There been a
15 struggle in this family since, I know -- since 1980 to
16 now we been fighting back and forth.

17 Q. You're on the same place as Carrie?

18 A. 4018 Waiters Place.

19 Q. I just wanted to make sure. Thank you.

20 A. Yes, sir. If we going sell it, then you sell
21 -- I been told it's for -- for heirs of the estate only,
22 and that's people that don't live on the property of the
23 estate, so I guess they wouldn't want it, just the
24 people on it.

25 There's people on the place, like I said before,

1 that's been there the whole time they been married.
2 James and my father were two guys that put their
3 families on the place, and they never left, and they
4 raised their kids there. We come up together. And we
5 still lives there. My father - and we call him Jake -
6 never had a quarrel, never said anything against each
7 other, nothing. But that ain't been the case all the
8 time. Not being the case.

9 And we knew -- This morning I was told, let the
10 Lord handle it. You asked that we act in here like we
11 was in church, and we going to treat this the way
12 Christians -- I thank you for that because somebody
13 needs to look at this like it really should be looked
14 at. But seems like, who going get how many lots? I
15 thank you for the opportunity to just say that. I can
16 leave here in peace with myself and not be mad that I
17 didn't say anything. Thank you.

18 THE COURT: You're welcome. And just like every
19 other witness the lawyers and the other parties have a
20 chance to ask questions, too.

21 MR. GRIER: I've got one.

22 Examination: (By Mr. Grier)

23 Q. Mr. Waiters, as far as I recall you have
24 attended every proceeding, haven't you?

25 A. I believe so.

1 Q. Okay. And one was a proceeding we had in
2 March of 2012. Do you recall that proceeding, where the
3 issue of the property south of Hoke Road was before the
4 Special Referee? Do you remember that proceeding?

5 A. I remember quite vividly.

6 Q. Okay. Do you remember receiving a subpoena as
7 part of it?

8 A. I received it.

9 Q. Okay. And we are trying to obtain copies of
10 the records that you said you had for -- During the 2005
11 proceeding, we were trying to obtain the records that
12 you said you had for the cutting of the timber and the
13 timber that had been cut. Do you recall that subpoena,
14 where --

15 A. You said that you were trying to recover the
16 records, but -- tell me about that.

17 Q. For timber that you were a participant in
18 having cut.

19 A. Okay. Well, --

20 Q. Before you respond, same question as to last
21 October. You received a subpoena requesting those same
22 records, as well. Correct?

23 A. I believe I did.

24 Q. Okay. All right. Well, you stated that you
25 were maintaining those accounts back in 2005. I mean,

1 do you not have any records or why haven't you produced
2 those?

3 A. I told you when you asked that question the
4 first time, and I told you when you asked that question
5 the second time, and I tell you while I am sitting here
6 today, those records that I had, they was Carrie's.
7 They were her records, so I don't keep them.

8 Q. Okay. All right. Now, she was also served
9 with that subpoena as well, correct?

10 A. I guess she was at that time.

11 Q. And we still haven't received any. Was there
12 a conversation between you and her about, you know,
13 producing those records?

14 A. You knew all that.

15 Q. Well, I am just asking if you and your mama
16 had any conversations about producing the records that
17 you have both said that you were in possession of?

18 A. I never said I had possession of anything,
19 sir.

20 Q. Okay. All right. Did you and your mom ever
21 have a conversation about those records and the monies
22 that may have been in some other account

23 A. You brought the account up.

24 Q. Yes, sir.

25 A. Okay. You brought it up.

1 Q. I brought it up.

2 A. There was two accounts, just one account in
3 two different banks. I think there was more in a third
4 bank.

5 Q. Okay.

6 A. I don't know a thing about the third bank. I
7 do know about Heath Springs, and I do know about
8 Wachovia because I put the money in both of them.

9 Q. Okay.

10 A. I put the money in Heath Springs, and when
11 Heath Springs was telling all that stuff about you don't
12 have access at this time I got it out and took the money
13 to Wachovia. It was family money. Now, I want to tell
14 you that we have that account over here at -- whatever.
15 Founders. I think that there was an account at
16 Founders. I don't know anything about that money.

17 Q. Okay. Well, assuming you know something about
18 it, you participated in removing from it?

19 A. Yes.

20 Q. Well, your name was on it? Or, how did you
21 participate in doing that?

22 A. When I opened up the account in 1983, yes,
23 sir, my name was on it.

24 Q. Okay.

25 A. Okay? In 1986 or '87, I was living in

1 California. My name was taken off of it. When I came
2 back to Heath Springs and asked them, they said some
3 thing about, well, you don't -- you don't -- you don't -
4 - wait a minute. I was here when they set it up. They
5 investigated and found out I did. That's what -- that
6 when they released the funds. The wasn't going to, but
7 when they found out that I opened up the account, they
8 allowed me to take it out and I took it over to
9 Wachovia.

10 Q. Okay. That was after you came back?

11 A. That was after I came back.

12 Q. And you came back when?

13 A. 2005.

14 Q. Okay. So --

15 A. I know that. The other thing, my house got
16 burnt up in 2005.

17 Q. Okay. All right. Well, did the bank burn
18 down with all the records, too?

19 A. Well, you should have got that.

20 Q. I beg your pardon?

21 A. You should have got those records. John
22 Waiters had access to the bank records.

23 Q. Those at Wachovia?

24 A. All of them.

25 Q. Okay. But you opened the account, right?

1 A. Back in 1983, I opened that account.

2 MR. GRIER: Okay. Thank you.

3 MR. MILLS: No questions, Your Honor.

4 MR. ROBBINS: I don't have any questions, Your
5 Honor.

6 THE COURT: I appreciate your time, sir.

7 THE WITNESS: I thank you, sir.

8 THE COURT: Mr. Robbins, Mr. Grier, any
9 rebuttals?

10 MR. GRIER: Your Honor, if I could have a
11 couple of minutes. I've had a few thoughts about
12 that.

13 MR. ROBBINS: I would have a rebuttal witness
14 to call, John Waiters.

15 THE COURT: Mr. Waiters, if you would, come
16 back up, please. Have a seat. You are reminded
17 that you are under oath.

18 Whereupon -

19 John Waiters
20 was recalled as a witness and having been previously
21 sworn, testified as follows:

22 Examination: (By Mr. Robbins)

23 Q. Mr. Waiters, I am just trying to clarify this
24 about the bank account that you testified about. You
25 testified that there was an account set up in 1983?

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. And Frank Waiters was involved in setting up
5 that account, correct?

6 A. Right.

7 Q. And at some point there were three people that
8 were required before --

9 A. Three names, yeah.

10 Q. Pardon?

11 A. It had three names on it, Frank and Carrie and
12 myself, and to write checks -- it was three put it in,
13 and two to draw. That was the bank.

14 Q. So you got money from the trees at that point
15 to go in to the family account?

16 A. Right. Okay. In Heath Springs Bank. And
17 Carrie --

18 Q. Heath Springs Bank?

19 A. Right. And Carrie wanted to move it.

20 Q. Okay.

21 A. Okay. Carrie wanted to move it, and she knew
22 where to put it, so I said all right. So we took it out
23 of Heath Springs and give it to Wachovia. And I went on
24 down there with that crowd, and there was a lady helping
25 us open up an account. Said we could make some money.

1 And so she went on, she typed it out. She said, who-all
2 sign it? I said, me and Carrie. She said, you don't
3 have to have two people anymore. She said -- so, Carrie
4 said, I want my name on it.

5 Q. So you're saying it's Carrie's name that's on
6 the Wachovia account?

7 A. Right.

8 Q. And then who transferred the money to the
9 Wachovia account? Did you have two accounts or did you
10 transfer the money from one to --

11 A. Took the money from the Heath Springs bank and
12 put it in the Wachovia.

13 Q. Okay. What happened to the Wachovia account?

14 A. Closed it out.

15 Q. Closed it, and then you transferred to
16 Founders?

17 A. Right.

18 Q. All right. And the money that was in there,
19 no money was put in after -- in 2011, 2005, 2009, 2010?

20 A. No.

21 Q. This was just the money that was ---

22 A. That's correct. When the tax went up so
23 high -- The property tax went up so high. Taxes went
24 up so high. I went up there, and wanted to know, you
25 know -- I don't even remember what the tax was. They

1 broke it down. They had it broke down.

2 Q. So, basically, for purposes of taxes they took
3 houses -- They broke it down for land and houses?
4 Right?

5 A. Yeah. But, no, Carrie and I went to Wachovia
6 and that's all.

7 Q. But there's just the one account that you were
8 transferring from bank to bank?

9 A. Right.

10 MR. ROBBINS: Thank you. That's all, Your
11 Honor. Your Honor, I would ask -- I would like for
12 the exhibits to be introduced through Mr. Waiters
13 be introduced in to evidence as part of the record.

14 THE COURT: One thing at a time. Anybody else
15 have any questions --

16 MR. GRIER: No, Your Honor.

17 THE COURT: Okay. And there is a motion to
18 admit Defense Exhibits 4 through 9. Any objection?

19 MR. GRIER: No objections.

20 THE COURT: Okay. Thank you. Mr. Waiters, we
21 appreciate your time, and you are free to go.

22 THE WITNESS: Thank you, sir.

23 MR. ROBBINS: Your Honor, may I approach on a
24 bookkeeping matter?

25 THE COURT: Yeah. I got some housekeeping

1 stuff too, so you can go first.

2 MR. MILLS: We've heard some kind of
3 revelations about some potential new heirs. We
4 have an indication they may be in Pittsburgh, in
5 Pennsylvania somewhere.

6 I am here representing them whoever they are,
7 wherever they are. I don't know what obligations I
8 have at this point. Normally, the process would be
9 finding them and serving them, and I would
10 represent them. But I didn't know if I had to take
11 any affirmative action to try to locate these
12 individuals, or what my responsibilities are at
13 this point.

14 THE COURT: Well, we just found these people
15 based on an encounter - I think it was from 12
16 years ago - from in that vicinity, that may exist.
17 And I think we're going to have to impose on you to
18 make some minimal effort, Internet searches, phone
19 searches, and see if we can get a read on these
20 people.

21 And, frankly, I'd like to speak with Frank
22 before we leave here today, off the record. I
23 understand it's been 12 years, based on off-the-
24 record conversations, but see what we can glean
25 from it, and then we need to make some at least

1 effort of some sort to try to determine who these
2 people are. I am certainly not talking about hiring
3 private investigators. They are kind of expensive.
4 But do all we can do with computers and phone
5 records.

6 MR. MILLS: We know we don't want somebody
7 draining resources that would ultimately go to the
8 larger pie. I have tried that before in other
9 cases, and it --

10 THE COURT: It can be a nightmare.

11 MR. MILLS: -- it can be a sinkhole.

12 THE COURT: Well, we're not going to have a
13 sinkhole.

14 MR. MILLS: Okay. The other thing is, Your
15 Honor, is what do I need for the Court?

16 THE COURT: What I need is an affidavit that
17 addresses the factors. And if you put that in an
18 affidavit form that will be fine. I understand --
19 I know Mr. Robbins submitted an affidavit
20 previously that will need to be supplemented, but
21 anybody who's working on this, just give me an
22 affidavit and just put the various things, the
23 factors, in there. And they all need to be
24 addressed in the affidavits.

25 Now that we know that shares may be split in a

1 different fashion, I understand that the
2 spreadsheet, which has been put in evidence, will
3 most probably be modified. Since that is a
4 numerical calculation, we'll wait and see what we
5 can -- what the Guardian can do to identify some
6 heirs. If we can identify them, they are going to
7 need to be incorporated. I understand we are going
8 to perhaps have to shuffle around the shares.

9 So once we get all this cleared up, I
10 understand we will leave the record open so we can
11 submit an additional exhibit which will be a
12 spreadsheet with a revised apportionment. Is that
13 your understanding of the parties?

14 MR. ROBBINS: Yes, Your Honor. On behalf of
15 John Waiters, he's concerned about the need for
16 harvesting the timber before something happens to
17 the timber, and we'd like for that to be an issue.
18 At least it could be considered whether or not any
19 type of order could be issued, or whether it be
20 part of the final order about harvesting of the
21 timber. We know that it will generate funds.

22 His concern is that there could be another
23 hurricane or something that could cause a problem,
24 and then you wouldn't have this valuable timber.
25 It wouldn't be worth as much.

1 THE COURT: My expectation is I am going to try
2 to get an order by August. I've got some -- In the
3 next month, I've got two substantial personal
4 obligations that are going to take up a lot of my
5 time. I anticipate it would be August before I can
6 get you an order, and this is the first I have
7 heard of some effort to potentially bifurcate. But
8 I'll give that some consideration.

9 MR. ROBBINS: Your Honor, this is just based on
10 the prior order which said that if the injunction
11 was vacated as to John Waiters if he obtained
12 permission from the Court, he would cut
13 (inaudible) and put it in the hands of the trustee
14 for the benefit of the heirs.

15 THE COURT: Got it. But we don't have a
16 trustee. None has been appointed. There is not a
17 trust fund, so that makes some sense.

18 MR. ROBBINS: Do we need a trustee?

19 THE COURT: Well, we need to think about that,
20 and that's one of the things I want to talk to you
21 about. Funds are going to be generated. Then,
22 particularly if we go ahead and timber now and
23 allocate later, there are going to be funds that
24 are going to have to be held for some period of
25 time. Y'all had kind of favored using a Trustee,

1 but you never have identified one. So I don't want
2 to be in the distribution business. I don't know
3 if there is an accountant --- Y'all may want to
4 discuss this off the record and make some
5 suggestions to me. But it would make sense to get
6 someone who is a number person and a check writer.
7 We may can benefit from having a trustee.

8 MR. GRIER: Your Honor, our prior Special
9 Referee had indicated he would -- he had a trustee
10 that he would contemplate appointing and that
11 didn't happen. So we had that conversation about
12 whether we should be doing that. He had indicated
13 he would appoint someone. I don't know if you were
14 aware of that, but we did have it, and he was going
15 to appoint someone --

16 THE COURT: But it never happened.

17 MR. GRIER: Never happened. Your Honor, in
18 that vein, if you agree to contemplate, then, doing
19 some bifurcation and issuing some interim order to
20 expedite the process, if that's feasible. I'd ask
21 that you consider something that is also going --
22 It seems inevitable to me that it's going to be
23 necessary to get a number for what the actual
24 acreage is through a perimeter survey of some sort,
25 and getting that as soon as possible would, you

1 know, get us ahead of the game on --

2 THE COURT: I don't think -- I understood the
3 forester guy to say that he would make an offer
4 today for the timber on the property. It wasn't a
5 per-acre number.

6 MR. GRIER: Well, that's right.

7 THE COURT: So I think you don't need the
8 survey before this, plus you don't have the money
9 to pay for the survey until you get the timber.

10 MR. GRIER: Right. My suggestion is that if
11 you are addressing the timber issue, then getting a
12 jump on the perimeter survey, at least for the
13 property, would just get us a little bit ahead of
14 the ballgame for whatever the plan ultimately is --

15 MR. ROBBINS: You're talking about the 109
16 acres?

17 MR. GRIER: Yes.

18 THE COURT: I understand what you're saying. I
19 just want to clarify a few things. I understand
20 that it's the lawyers' expectations that the
21 expenses of the case are going to be paid out of
22 the common fund, and not be taxed -- weighted
23 against different parties. Am I right?

24 MR. ROBBINS: Yes, Your Honor.

25 THE COURT: The proposal y'all gave me, the

1 partition plan, it -- As I read it, it contemplates
2 the Trustee's duty extending to determining the
3 scheme to subdivide the property, and I am not sure
4 I've got the power to delegate that to someone who
5 is not a Referee. So I will tell you I am real
6 reluctant to do that unless y'all can show me
7 something that I have the power to do it. But I
8 invite you to look at that and if you feel like I
9 have the power to delegate that function to
10 someone, you need to probably persuade me that I
11 do.

12 And I have not done any research on it. It
13 just was a concern. And I don't want to go down
14 that road without more confidence than I have now
15 that I am able to do that.

16 Your plan talks about an option only open to
17 descendants of Ken Waiters, and it refers to having
18 minimum pricing designed merely to cover costs of
19 the proceedings. And to the extent that doesn't
20 reflect the value of the property, I am concerned
21 that I'd really -- I'd be treading on some thin ice
22 (inaudible) to minimize the cost to the extent
23 there are a number of heirs out of state and all
24 who have no more interest in it anyway, other than
25 they might get check.

1 MR. ROBBINS: Your Honor, I think one of the
2 things that I am concerned about is that someone's
3 bid needs to be enough to cover the survey for the
4 property and the expenses involved with the sale.

5 THE COURT: So you're talking a minimum.

6 MR. ROBBINS: A minimum.

7 THE COURT: Got you. I understand what you are
8 saying. Now I understand your intent. Your plan
9 also talks about setting aside, probably, the home
10 place and perhaps the pond, as a family park, and
11 again I am going to look at it, but I question
12 whether I have the power to unilaterally do that. I
13 anticipate if something is going to be
14 dedicated like that, it's probably doing to have
15 to be purchased by one or more family members
16 with that intent in their heart to do. I will look
17 at that, but that's the other the proposal that
18 I'm reluctant to pursue at this point.

19 Anything else from anybody about housekeeping
20 or the legal issues?

21 MR. GRIER: Do you intend to order a transcript
22 as a matter of necessity, or is -- and I think the
23 court reporter, you know, as far as -- what would
24 be the circumstances where a transcript would
25 be ordered?

1 THE COURT: I've taken extensive notes. I
2 don't need a transcript, I think, to prepare an
3 order. The rule actually refers to an action like
4 this, a transcript being filed with the Clerk, but
5 I -- and no offense, Mr. Reporter, but this is not
6 my money, and to the extent I can protect the
7 estate, I want to. So that's something I'll want
8 to think about briefly off the record to see if
9 there's any way I can avoid the expense.

10 MR. GRIER: Thank you, Your Honor. My
11 immediate personal concern is that I think I am the
12 responsible party, and I don't know what the
13 billing arrangements are. And, of course, those
14 bills will be forthcoming, and I am just
15 contemplating whether that's something we might
16 need to have a conversation with the families
17 about. And if there was going to be a transcript
18 ordered, about how we might fund that.

19 THE COURT: All right. Let me look briefly --
20 We don't need to think about it right now, if
21 there's a way to get around it, if we could avoid
22 that. I appreciate your time, and we're off the
23 record.

24 whereupon - Hearing concluded at 4:28 P.M.
25

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2 1

3 CERTIFICATE OF REPORTER

4
5 State of South Carolina)

6)

7 County of York)

8 I, William H. White, a Notary Public for the State
9 of South Carolina, do hereby certify that I reported the
10 foregoing proceedings at the time and place herein
11 designated and that the foregoing pages are a true,
12 accurate and correct transcript of the aforesaid
13 proceedings to the best of my ability.

14 I further certify that I am not a relative,
15 employee, attorney or counsel of any of the parties, nor
16 relative or employee of such attorney or counsel, nor in
17 anyway interested in the event of said cause.

18 In witness my hand and official seal this the 24th
19 day of January, 2016, in the City of Rock Hill, County
20 of York, State of South Carolina.

21
22 William H. White

23 Court Reporter/Notary Public

24 My Commission Expires:

25 8-8-2018