

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

OCT 27 2015

Roger M. Young, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2012-212331

Ron Orlosky in his capacity as
Personal Representative of The
Estate of Debora L. Orlosky, and
in his capacity as trustee of the
Debora Laura Orlosky
Revocable Trust,

Respondent,

v.

The Law Office of Jay A.
Mullinax, LLC,

Petitioner.

CORRECTED APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101
Bar No. 68293
Attorney for Petitioner

VOLUME ONE

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APPENDIX A
RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2012-212331

Ron Orlosky in his capacity as
Personal Representative of The
Estate of Debora L. Orlosky,
and in his capacity as trustee of
the Debora Laura Orlosky
Revocable Trust,

Respondent,

v.

The Law Office of Jay A.
Mullinax, LLC,

Appellant.

CORRECTED RECORD ON APPEAL

Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101
Bar No. 68293
Attorney for Appellant

John R.C. Bowen, Esquire
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Attorney for Respondent

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-07-4146

RON ORLOSKY

2012 MAY 17 PM 3:55

THE LAW OFFICE OF JAY A. MULLINAX,
LLC and JAY A. MULLINAX, individually

JERRY ANN ROSENEAU
BEAUFORT COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Plaintiff's Motion for Taxable Cost and Interest pursuant to S.C. Code. Ann. §15-35-400 is **GRANTED.** Judgment is entered by the Court in the total amount of \$89,354.26

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment is entered by the Court in the total amount of \$89,354.26

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Ron Orlosky	The Law Office of Jay A. Mullinax, LLC	\$89,354.26
Ron Orlosky	Jay A Mullinax	\$89,354.26
		\$

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

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

Circuit Court Judge
SCRPC Form 4C (10/2011)

2134
Judge Code

Date

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 17th day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Shirley Breen - STAFF
CLERK OF COURT

Court Reporter: N/A

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2012 MAY 17 PM 3:55

2010-CP-074146

BEAUFORT COUNTY, S.C.

CLERK OF COURT

RON ORLOSKY in his capacity as Personal Representative of THE ESTATE OF DEBORA L. ORLOSKY, and in his capacity as trustee of the DEBORA L. ORLOSKY REVOCABLE TRUST,

Plaintiff,

vs.

THE LAW OFFICE OF JAY A. MULLINAX, LLC and JAY A. MULLINAX, individually

Defendant.

**ORDER GRANTING PLAINTIFF'S
MOTION TO TAX COSTS AND
AWARD INTEREST AND DENYING
DEFENDANT'S MOTIONS TO ALTER
OR AMEND JUDGMENT, FOR
RELIEF FROM JUDGMENT, FOR
DIRECTED VERDICT OR FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT, AND FOR A NEW
TRIAL ABSOLUTE OR FOR A
NEW TRIAL *NISI REMITTITUR***

This matter came before this court for trial on April 18-20, 2012. Plaintiff brought a breach of contract claim against Defendant regarding a contract for legal services in estate planning. The parties made the appropriate motions for a directed verdict, which were denied. The jury returned a verdict in favor of the Plaintiffs against the Defendants in the amount of \$80,000.00. On April 21, Plaintiff filed a Motion to Tax Costs as provided in Rule 54 of the South Carolina Rules of Civil Procedure and to Award Interest pursuant to S.C. Code Ann. §15-35-400. On April 26, the Defendant filed Motions to Alter or Amend Judgment, for Relief from Judgment, for a Directed Verdict and for Judgment Notwithstanding the Verdict, and for a New Trial.

I. Plaintiff's Motion to Tax Costs and Award Interest.

S.C. Code. Ann. §15-35-400 controls the effect of Offers of Judgment and reads in relevant parts:

SECTION 15-35-400. (B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

In this case, Plaintiff served an Offer of Judgment upon the Defendant on December 1, 2010, offering to take judgment against the Defendant in the amount of \$29,751.68. This offer was not accepted by the Defendant. At trial, the jury awarded the Plaintiff a verdict in the amount of \$80,000.00 – a more favorable verdict than the Offer of Judgment.

Therefore as the statute mandates, the Plaintiff is entitled to 8% interest computed on the amount of the verdict from the date of the offer – December 1, 2010 to April 20, 2012. The total amount of interest is \$8,889.26

Additionally, Rule 54(d) of the South Carolina Rules of Civil Procedure states that the recovery of "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." Therefore, this court awards the Plaintiff taxable costs in the amount of \$465.00. It follows that judgment should be entered by the Court in the total amount of \$89,354.26.

II. Defendant's Motions to Alter or Amend Judgment, for Relief from Judgment, for a Directed Verdict and for Judgment Notwithstanding the Verdict, and for a New Trial Absolute or New Trial *Nisi Remittitur*.

Standard of Review

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law. Umhoefer v. Bollinger, 379 S.E.2d 296, 297 (S.C. Ct.App.1989). "In deciding whether to assess error to a court's denial of a



motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.” Id.

Discussion

A. Defendant's Motion to Alter or Amend Judgment.

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

I have thoroughly considered the Defendant's Motion, supporting and opposing material and arguments, and based on same **DENY** Defendant's Motion to Alter or Amend the Judgment.

B. Defendant's Motion for Relief from Judgment.

Relief from an order or judgment is granted for good cause shown under Rule 60(b) of the South Carolina Rules of Civil Procedure. Grounds for relief include mistake, inadvertence, surprise, or excusable neglect; misrepresentation or other misconduct of the plaintiff; or void judgment. In determining whether relief should be granted, the court considers the promptness with which relief is sought, reasonable explanations for failing to act promptly, the existence of a meritorious defense, and prejudice to the other parties if relief is granted. S.C. R. Civ. P. 60(b); Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).

I have thoroughly considered the Defendant's Motion, supporting and opposing material and arguments, and based on same **DENY** Defendant's Motion for Relief from Judgment.

C. Defendant's Motion for Directed Verdict and for Judgment Notwithstanding the Verdict.

Under Rule 50(b) of the South Carolina Rules of Civil Procedure, a party is entitled to move for a judgment notwithstanding the verdict (“JNOV”) requesting the court to set aside the judgment and/or verdict, and in the alternative having the judgment entered in accordance with the party’s prior motion for a directed verdict. Johnson v. Hoechst Celanese Corp., 453 S.E.2d 908, 911 (S.C. Ct. App. 1995); Smith v. Ridgeway Chemicals, Inc., 395 S.E.2d 742, 743-44 (S.C. Ct. App. 1990) (JNOV is available “only when the same issues were submitted to the judge at the directed verdict stage.”). Important is that “[i]n considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight.” Curcio v. Caterpillar, Inc., 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003); see also Washington v. Whitaker, 317 S.C. 108, 113-14, 451 S.E.2d 894, 897-98 (1994) (“Court is not concerned with the weight of evidence, but whether there is any evidence which the jury is warranted in making a finding.”). “The trial court must deny the motion when the evidence yields more than one inference or its inference is in doubt.” Ippolito v. Hospitality Management Associates, 575 S.E.2d 562, 565 (S.C. Ct. App. 2003) (Hearn, C.J.); see State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 93 (2002) (“[A] JNOV may be granted only if no reasonable jury could have reached the challenged verdict.”); see also Clark v. South Carolina Dept. of Public Safety, 578 S.E.2d 16, 21 (S.C. Ct. App. 2002) (Goolsby, J.) (motion should be granted only when there is no evidence to support the previous ruling). Specifically, “[t]he verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict.” Brown v. Stewart, 557 S.E.2d 676, 680 (S.C. Ct. App. 2001) (citing Shupe v. Settle, 445 S.E.2d 651, 654 (S.C. Ct. App. 1994)); see also Sorin Equipment Co., Inc. v. The Firm, Inc., 474 S.E.2d 819, 823 (S.C. Ct. App. 1996). In fact, it does not matter how the jury arrives at their verdict, as long as there is evidence to support their



decision. See Sauers v. Poulin Brothers Homes, Inc. and Cota, 493 S.E.2d 503, 506 (S.C. Ct. App. 1997) (Howell, C.J.).

At trial, the testimony and evidence presented was sufficient for the jury to reach their verdict as to the breach of contract cause of action. Therefore, there is sufficient evidence in the record justifying the verdict granted by the jury. It does not appear anywhere in the record that a reasonable jury could not have come up with the outcome of this case based on the evidence presented. Therefore, Defendant's Motion for Judgment Notwithstanding the Verdict is be **DENIED**.

D. Defendant's Motion for New Trial Absolute.

A new trial absolute "should be granted only if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the 'result of caprice, passion, prejudice, partiality, corruption, or other improper motives.'" Smalls v. The South Carolina Department of Education, 339 S.C. 208, 217, 528 S.E.2d 682, 687 (Ct.App.2000), quoting McCourt ex rel. McCourt v. Abernathy, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). An excessive verdict is one that "must be flagrant, outrageous or extravagant" before the court will interfere. Haselden v. Atlantic C.L.R. Co., 214 S.C. 410, 422, 53 S.E.2d 60, 66 (1949). However, a "verdict which may be supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained is not excessive." Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969). The jury's determination of damages "is entitled to substantial deference." Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993), citing Brabham v. Southern Asphalt Haulers, Inc., 223 S.C. 421, 76 S.E.2d 301 (1953).

Under the "Thirteenth Juror Doctrine," the court may only grant a new trial absolute when the "evidence does not justify the verdict." Trivelas v. South Carolina Department of

Transportation, 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct.App.2004). The trial court has discretion to grant new trial based on thirteenth juror doctrine, and its ruling will not be disturbed on appeal unless decision is wholly unsupported by the evidence or unless conclusion court reached was controlled by error of law. Sorin Equipment Co., Inc. v. The Firm, Inc., 474 S.E.2d 819 (S.C.App. 1996). In reviewing the denial of a motion for a new trial under said doctrine, the Court of Appeals considers “only whether there is any evidence to support the trial court’s decision.” Haselden v. Davis, 341 S.C. 486, 506, 534 S.E.2d 295, 306 (Ct.App.2000).

Because this Court finds that the unique factual circumstances support the jury’s verdicts, the Defendant’s request for a new trial based on The Thirteenth Juror Doctrine is, respectfully, **DENIED**.

E. Defendant’s Motion for New Trial *Nisi Remittitur*

In considering a motion for a new trial *nisi*, “the trial court must evaluate the adequacy of the verdict in light of the evidence presented.” Becker v. Wal-Mart Stores, Inc., 339 S.C. 629, 637, 529 S.E.2d 758, 762 (Ct.App.2000), citing Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 493 S.E.2d 875 (Ct.App.1997). The “jury’s determination of damages, however, is entitled to substantial deference.” Smalls, supra, 339 S.C. at 215, 528 S.E.2d at 686.

Because great deference is given to the jury’s determination of damages in this case and sufficient evidence of damages was presented at trial, this Court affirms the jury’s verdict in its entirety and **DENIES** Defendant’s Motion for New Trial *Nisi Remittitur*.

Conclusion

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Taxable Cost and Interest pursuant to S.C. Code. Ann. §15-35-400 is **GRANTED**. Judgment is entered by the Court in the total amount of \$89,354.26.

IT IS FURTHER ORDERED that Defendant’s Motion to Alter or Amend Judgment is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion for Relief from Judgment is **DENIED**.

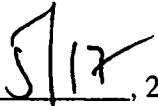
IT IS FURTHER ORDERED that Defendant's Motion for Directed Verdict and for Judgment

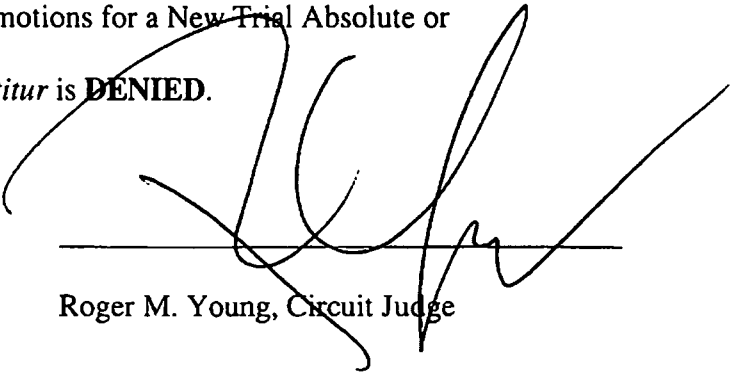
Notwithstanding the Verdict is **DENIED**.

IT IS FURTHER ORDERED that Defendant's motions for a New Trial Absolute or

alternatively for a New Trial *Nisi Remittitur* is **DENIED**.

AND IT IS SO ORDERED.


_____, 2012
Beaufort, South Carolina.



Roger M. Young, Circuit Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP0704146

Ron Orlosky	Debora L Orlosky	2012 APR 20 PM 4:12 Law Office of Jay A Mullinax Mullinax Llc	Jay A Mullinax
Estate Of Debora L Orlosky	Debora Laura Orlosky Revocabale Trust	MARK ROSENEAU BEAUFORT COUNTY, S.C. CLERK OF COURT	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

Jury awarded the Plaintiff \$80,000.00 against the Defendant on Breach of contract claim. Jury found for the Plaintiff on the Defendant's counter-claim for breach of contract.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

** Parties have 10 days to file post-trial motions.*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Ron Orlosky	The Law Office of Jay A. Mullinax, LLC	\$ 80,000.00

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 30 April, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 30 April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

John R. C. Bowen Laughlin & Bowen, P.C. P.O. Drawer
21119 Hilton Head Island, SC 29925-1

Jay Anthony Mullinax Law Office of Jay A. Mullinax, LLC
2 Office Park Rd., Ste. 303 Hilton Head Island, SC 29928
Thomas Calvin Taylor Attorney at Law 22 Bow Circle, Suite
A Hilton Head Island, SC 29928

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jerri Ann Roseneau - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) OR THE FOURTEENTH JUDICIAL
) CIRCUIT

2012 APR 20 PM 4:12
RON ORLOSKY in his capacity as
Personal Representative of THE ESTATE OF DEBORA L. ORLOSKY
OF DEBORA L. ORLOSKY, Trustee of the DEBORA
LAURA ORLOSKY REVOCABLE
TRUST,

Plaintiff,

vs.

THE LAW OFFICE OF JAY A.
MULLINAX, LLC,

Defendant.

VERDICT

Plaintiff's Breach of Contract Claim

☒ We, the Jury, find for the **Plaintiff** against the **Defendant** in the amount of

\$ 20,000.00 actual damages.

[Signature]
FOREPERSON

4/20/2012
DATE

☐ We, the Jury find for the **Defendant** against the **Plaintiff**.

FOREPERSON

DATE

Defendant's Breach of Contract Counter-Claim

- ☐ We, the Jury, find for the **Defendant** against the **Plaintiff** in the amount of
\$ _____ actual damages.

FOREPERSON

DATE

- ☒ We, the Jury find for the **Plaintiff** against the **Defendant**.

Shirley Jones
FOREPERSON

4, 20, 2012
DATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-07-4146

RON ORLOSKY in his capacity as)
Personal Representative of THE)
ESTATE OF DEBORA L.)
ORLOSKY, and in his capacity as)
Trustee of the DEBORA LAURA)
ORLOSKY REVOCABLE TRUST)

Plaintiff,)

vs.)

THE LAW OFFICE OF JAY A.)
MULLINAX, LLC and JAY A.)
MULLINAX, individually,)

Defendants.)

**ANSWER AND COUNTERCLAIM
OF DEFENDANTS**

**THE LAW OFFICE OF JAY A. MULLINAX, LLC
and JAY A. MULLINAX, individually**

(Jury Trial Demanded)

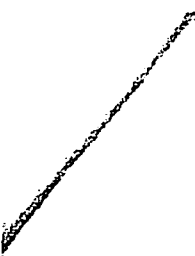
2010 OCT 19 PM 4:12

TO: JOHN R. C. BOWEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:

The Defendants above named herein file their Answer and Counterclaim to the Plaintiff's
Complaint and would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not hereinafter admitted, denied or otherwise addressed, is expressly denied, and strict proof demanded thereof.
2. The Defendants admit, upon information and belief, the General Averments in Paragraphs 2, 3 and 4 of the Plaintiff's Complaint.
3. The Defendants admit, upon information and belief, Paragraph 5 of the Plaintiff's Complaint.

- 
4. The Defendants admit, upon information and belief, Paragraph 6 of the Plaintiff's Complaint to the extent the referenced charges apply to the services necessary and appropriate to administer the estate under the laws of South Carolina. These Defendants admit that all other work performed on the matters for which they were engaged was to be charged at an hourly rate. These Defendants admit that they were to be reimbursed for actual costs as billed.
 5. The Defendants admit, upon information and belief, Paragraph 7 of the Plaintiff's Complaint, to the extent that a fee was imposed in this matter based on 2.5% of the value of the total gross Estate for the services necessary and appropriate to administer the estate under the laws of South Carolina.
 6. These Defendants lack the knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, in that the Defendants are unaware of any "proposed Federal Estate Tax Return, Form 706, for the Estate," nor has a copy of the alleged document been provided to or been seen by the Defendants and strict proof of its contents, supplements and exhibits is demanded thereof. These Defendants deny that the value of the total gross estate is \$2,809,932.96 and that 2.5% of the total gross estate is equal to \$70,248.32 and demand strict proof thereof.
 7. In response to the allegations of Paragraph 9, these Defendants deny that the Plaintiff performed all duties required under the Contract. These Defendants admit that the Plaintiff has paid the Defendants the sum of \$100,000.00 which the Defendants represented as due.

8. In response to the allegations of Paragraph 10, these Defendants deny that they are in breach of the Contract or that they have collected more than the agreed upon fee. The Defendants deny that the Plaintiff made an overpayment to the Defendants. The Defendants admit that they have not provided a refund to the Plaintiff. The Defendants admit that they demanded an additional payment of more than \$30,0000 via regular invoices and a subsequent claim filed in the Beaufort County Probate Court on July 29, 2010, several weeks prior to this Complaint being filed. The Defendants deny they failed to provide detailed time and billing records and would show, upon information and belief, that they have provided "detailed time and billing records" to the Plaintiff. The Defendants deny imposing additional charges for matters which were encompassed by the 2.5% set forth in the Contract. The Defendants admit demanding over \$30,000.00 for professional legal services rendered, including a balance remaining from the 2.5 % set forth in the Contract and hourly charges for professional legal services rendered not encompassed by the 2.5 percent set forth in the Contract.
9. Responding to the allegations of Paragraph 11, the Defendants admit that Plaintiff has demanded a refund of \$29,751.68 and the Defendants refuse to provide any refund. The Defendants deny that there was any overpayment made by the Plaintiff to the Defendants or that the Defendants are in debt to the Plaintiff.
10. Responding to the allegations of Paragraph 12, the Defendants deny that the Plaintiff is entitled to recover the sum of \$29,751.68 including pre-judgment interest, incidental and consequential damages, and the costs and disbursements of this action from the Defendants by reason of alleged breach of Contract.

11. The Defendants repeat and reallege the averments of Paragraphs 1 through 10 above in response to Paragraph 13 of the Complaint.
12. The Defendants admit the allegations of Paragraph 14 of the Complaint.
13. The Defendants deny the allegations of Paragraph 15 and demand strict proof thereof. Further, these Defendants would show, upon information and belief that “extra charges” imposed and referenced in Paragraph 15a. of the Plaintiff’s Complaint, were valid hourly charges for services rendered to the Plaintiff and in connection to Estate matters that were not “necessary and appropriate to administer the estate under the laws of South Carolina” and not encompassed by the minimum 2.5% charge.
14. The Defendants deny the allegations of Paragraphs 16, 17, 18, 19, 20, and 21 and demand strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State A Claim)

15. The Plaintiff fails to state facts sufficient to constitute a cause of action against the Defendants.

FOR A THIRD DEFENSE
(UTPA Not Applicable To Action)

16. The South Carolina Unfair Trade Practices Act is not available to redeem a private wrong. Where, as here, the alleged acts only affect the parties to a commercial transaction, the UTPA is inapplicable and must be dismissed.

FOR A FOURTH DEFENSE
(Estoppel)

17. The Defendants would show, upon information and belief, that they relied, in part, upon the information and valuations provided to the Defendants by the Plaintiff to determine the gross estate value and therefore the Plaintiff is estopped from alleging or attempting to prove valuations at variance with the earlier representations. Further, Defendants allege the Plaintiff accepted and confirmed the valuations used by the Defendants, further buttressing the estoppel argument.

FOR A FIFTH DEFENSE
(Reliance On Additional Defenses)

18. Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend their Answer to assert any such defenses.

COUNTERCLAIM

19. The allegations contained in Paragraphs 1 through 15 above are re-alleged as fully as if repeated verbatim herein.
20. The plaintiff has submitted to this Court's jurisdiction by instituting his claim in Probate Court and removing same to Circuit Court.
21. The Plaintiff and the Defendants are all residents of Beaufort County, South Carolina and as such, are subject to this Court's jurisdiction.

FOR A FIRST CAUSE OF ACTION IN COUNTERCLAIM
(Breach of Contract)

22. As is alleged in the Complaint, the Plaintiff and the Defendants entered into a written agreement on or about June 23, 2009, which agreement amounts to a contract in South Carolina.
23. A true and correct copy of the contract is attached to the Complaint as Exhibit A.
24. The Defendants have in good faith performed each and every requirement of the contract in a professional manner and in a manner that is in keeping with the expected standards of a lawyer and a law firm in the practice of probate administration in South Carolina.
25. Despite demand, the Plaintiff has failed to pay and continues to fail to pay, the professional fees set forth in the contract in the amount of \$32,101.20.
26. Interest accrues on the outstanding amount owed the Defendants at a statutory rate as set by law.
27. The failure and refusal of the Plaintiff to pay the professional fees set forth above, amounts to a breach of the contract, and entitles the Defendants to an award of damages consistent with the expectations of the contract.
28. As a result of this breach of contract, the Defendants are entitled to recover damages in an amount to be proven at trial, plus costs, pre-judgment interest, and such other damages as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION IN COUNTERCLAIM
(In the alternative, Unjust Enrichment)

29. The Defendants repeat and reallege the allegations contained in the foregoing paragraphs as if set forth herein verbatim.

- 
30. The Plaintiff has been enriched by the Defendants' professional representation and professional work performed to date, as was requested by the Plaintiff.
 31. The Plaintiff has unjustly retained the benefits of the Defendants' professional work without compensating the Defendants an appropriate professional amount of compensation.
 32. The action of the Plaintiff in failing and refusing to pay the professional fees was undertaken with the knowledge, intention and disregard that the Defendants would suffer damages and harm while the Plaintiff would unjustly enrich himself.
 33. That, as a direct and proximate result of such unjust enrichment, the Defendants have suffered damages, and the Plaintiff is liable for the reasonable value of the benefits bestowed upon the Plaintiff.
 34. Based on the above facts and circumstances, the Defendants are entitled to a Judgment against the Plaintiff in counterclaim in the amount of at least \$32,101.20, plus interest at the statutory rate from the date of filing until Judgment is issued herein, and such other damages as the Defendants may prove at trial.

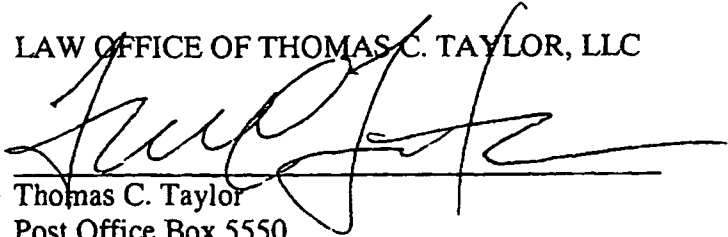
WHEREFORE, having fully answered the Complaint and asserted their counterclaims, the Defendants pray that this Honorable Court inquire into the matter set forth herein above and that it render its declaration and judgment against the Plaintiff on each cause of action set forth above, as follows:

- A. As to the First Cause of Action, a judgment in the amount of \$32,101.20, plus pre-judgment and post-judgment interest; or,
- B. As to the Second Cause of Action, a judgment in the amount of at least \$32, 101.20, plus post judgment interest;

C. For the costs and disbursements of this action, and,

D. For such other and further relief as this Honorable Court deems just and proper.

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

Post Office Box 5550

Hilton Head Island, SC 29938

S.C. Bar #: 5499

Telephone: 843/785-5050

Facsimile: 843/785-5030

Email: tom@thomastaylorlaw.com

ATTORNEY FOR DEFENDANTS

THE LAW OFFICE OF JAY A. MULLINAX, LLC and

JAY A. MULLINAX, individually

Hilton Head Island, South Carolina

October 19, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-07-4146

RON ORLOSKY in his capacity as)
Personal Representative of THE)
ESTATE OF DEBORA L.)
ORLOSKY, and in his capacity as)
Trustee of the DEBORA LAURA)
ORLOSKY REVOCABLE TRUST)

CERTIFICATE OF SERVICE

Plaintiff,

vs.

THE LAW OFFICE OF JAY A.)
MULLINAX, LLC and JAY A.)
MULLINAX, individually,)

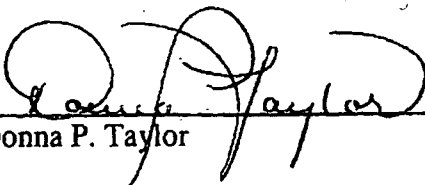
Defendants.

2010 OCT 19 PM 4:12

THIS IS TO CERTIFY that I, Donna P. Taylor, Legal Assistant to Thomas C. Taylor, Esquire, of the Law Office of Thomas C. Taylor, LLC, Attorney for the Defendants The Law Office Of Jay A. Mullinax, LLC and Jay A. Mullinax, individually, have this day mailed a true and correct copy of the **Answer And Counterclaim** to the below listed counsel of Record for Plaintiff Ron Orlosky in his capacity as Personal Representative of The Estate Of Debora L. Orlosky, and in his capacity as Trustee of the Debora Laura Orlosky Revocable Trust.

Mr. John RC Bowen
LAUGHLIN & BOWEN, P.C.
Post Office Drawer 21119
Hilton Head Island, SC 29926

The original Answer And Counterclaim was hand-delivered to the Clerk of Court, the Honorable Jerri Ann Roseneau, for filing.


Donna P. Taylor

October 19, 2010
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-07-4146

10 DEC -3 PM 1:50
BEAUFORT COUNTY, S.C.
CLERK OF COURT

RON ORLOSKY in his capacity as)
Personal Representative of THE)
ESTATE OF DEBORA L.)
ORLOSKY, and in his capacity as)
trustee of the DEBORA LAURA)
ORLOSKY REVOCABLE TRUST,)

Plaintiff,)

vs.)

OFFER OF JUDGMENT

THE LAW OFFICE OF JAY A.)
MULLINAX, LLC AND JAY A.)
MULLINAX, individually,)

Defendants.)

TO: THOMAS C. TAYLOR, ESQUIRE, ATTORNEY FOR THE DEFENDANTS.

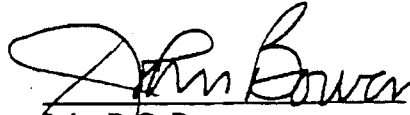
PLEASE TAKE NOTICE THAT the plaintiff, pursuant to §15-35-400 hereby offers to take judgment against the above named defendants on the within claims against them for the total sum of \$29,751.68. You may accept this offer by filing a written acceptance with the Clerk of Court for Beaufort County within twenty (20) days after notification of this offer or prior to or on the tenth (10th) day before the actual trial date, whichever date first occurs, and by serving a copy of this acceptance upon the undersigned. In the event that a written acceptance is not filed and served as aforesaid, this offer will be considered to have been rejected. If this offer of judgment is not accepted, and if plaintiff obtains a verdict or determination at least as favorable as this offer, plaintiff is allowed to recover from defendants:

- (1) administrative, filing, or other court costs from the date hereof until judgment; and,

- (2) eight percent interest computed on the amount of the verdict or award from the date of the offer.

LAUGHLIN & BOWEN, P.C.

By:



John R. C. Bowen

SC Bar # 791

Attorneys for Plaintiff

P. O. Drawer 21119

Hilton Head Island, SC 29925

(843)689-5700

November 30, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2010-CP-07-4146
	)	
RON ORLOSKY in his capacity as	)	
Personal Representative of THE	)	
ESTATE OF DEBORA L.	)	
ORLOSKY, and in his capacity as	)	
trustee of the DEBORA LAURA	)	
ORLOSKY REVOCABLE TRUST,	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND MOTION
	)	TO AMEND COMPLAINT
	)	AND
vs.	)	TO SHORTEN TIME FOR HEARING
	)	
THE LAW OFFICE OF JAY A.	)	
MULLINAX, LLC AND JAY A.	)	
MULLINAX, individually,	)	
	)	
Defendants.	)	

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TO: THOMAS C. TAYLOR, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the plaintiff will, ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge or Trial Judge of the Beaufort County Court of Common Pleas at 10:00 a.m. in the Beaufort County Courthouse, or at such other time and place as is convenient to Court and counsel, for an Order permitting plaintiff to amend its Complaint in accordance with the proposed Amended Complaint attached hereto, and further to shorten time for the hearing on said motion.

The grounds for this Motion are that the deposition of Michael Jordan, commenced on April 5, 2012 by the defendant makes clear that a claim for unjust enrichment should lie. This Motion is made pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, and shall be supported by the file in this case, discovery, oral argument, and any memoranda submitted by

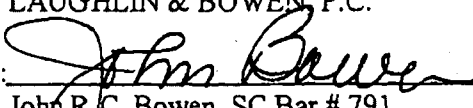
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counsel at or prior to the hearing. Further, Movant asserts that the ends of justice will be served by the allowance of this amendment, the amendment will not prejudice the other parties, and that it will not delay the trial.

Alternatively, plaintiff asks that the Trial Court allow plaintiff to present evidence of the alleged unjust enrichment at the trial of this matter, and thereafter allow the pleadings to be conformed to the proof.

Movant certifies that he has not consulted with counsel prior to filing this Motion as he believes that such consultation would be unavailing.

LAUGHLIN & BOWEN, P.C.

By: 

John R.C. Bowen, SC Bar # 791

Attorneys for Plaintiff

Post Office Drawer 21119

Hilton Head, South Carolina 29925

Tel (843) 689-5700

Fax (843) 689-9300

John@laughlinandbowen.com

Jcerrati@laughlinandbowen.com

April 6, 2012

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2009-ES-07-00512
COUNTY OF BEAUFORT	)	
RON ORLOSKY in his capacity as	)	
Personal Representative of THE	)	
ESTATE OF DEBORA L.	)	
ORLOSKY, and in his capacity as	)	
trustee of the DEBORA LAURA	)	
ORLOSKY REVOCABLE TRUST,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED
	)	COMPLAINT
	)	(A JURY MATTER)
THE LAW OFFICE OF JAY A.	)	
MULLINAX, LLC AND JAY A.	)	
MULLINAX, individually,	)	
	)	
Defendants.	)	

The plaintiff, complaining of the defendants herein, respectfully alleges the following:

DEMAND FOR JURY TRIAL

1. Plaintiff is informed and believes that one or more of the causes hereinafter alleged are, by right, triable by jury, and plaintiff hereby demands a jury trial.

GENERAL AVERMENTS

2. Plaintiff, Ron Orlosky, is a citizen and resident of Beaufort County, South Carolina, was the husband of Debora L. Orlosky, is the trustee of the Debora Laura Orlosky Revocable Trust (the "Trust"), and is the Personal Representative of The Estate of Debora L. Orlosky (the "Estate") which Trust and Estate is being administered in Beaufort County, South Carolina.

3. On information and belief, the defendant The Law Office of Jay A. Mullinax,

LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal office being located in Beaufort County, South Carolina. On further information and belief, Jay A. Mullinax is a citizen and resident of Beaufort County, South Carolina and is the sole Member of the aforesaid LLC. These defendants are sometimes referred to herein collectively as "Mullinax."

4. This court has jurisdiction over the parties hereto and the subject matter hereof which involves a claim for breach of a contract, a claim for money damages in excess of \$20,000.00, and a claim for violation of the South Carolina Unfair Trade Practices Act (SCUTPA).

FOR A FIRST CAUSE OF ACTION

5. Heretofore, on or about June 23, 2009 plaintiff entered into a contract with Mullinax ("Contract") for the administration of the Estate and the Trust, and of plaintiff as the named Personal Representative of the Estate and trustee of the Trust. A copy of the Contract is attached hereto as Exhibit A, made a part hereof, and the terms of the Contract are incorporated herein by reference.

6. According to the terms of the Contract, and among other things, Mullinax was to receive for its services minimum fee of 2.5% of the value of the Estate or the amount of its hourly charges for work performed in completing the matters for which it was engaged, whichever was greater. Additionally Mullinax was to be reimbursed for actual costs as billed.

7. Further, according to the Contract, plaintiff could terminate the Contract at any time upon notice to defendants, and plaintiff would be responsible for paying for services rendered up until the time of notice at defendants' hourly rate of \$285.00 per hour.

8. Plaintiff terminated the Contract on March 19, 2010. Thereafter, on information and belief, Mullinax demanded payment of a fee based on 2.5% of the value of the total gross Estate, and not on its hourly charges, despite the fact that Mullinax did not complete the work required under the Contract.

9. In addition, Mullinax demanded additional payment on an hourly rate for matters which it claimed were not "covered" by the Contract, despite the fact that these matters were included in the Contract.

10. Plaintiff has fully performed all duties required under the Contract, and has paid Mullinax the sum of \$100,000.00 which Mullinax previously represented was due.

11. Mullinax, in breach of the Contract, has collected more than the agreed upon fee, did not complete the work whereby entitlement to collect the entire percentage fee based on the value of the estate would arise, has been terminated by the plaintiff in accordance with the terms of the Contract, has failed to refund the overpayment, has demanded an additional payment of more than \$30,000.00, has failed to keep or to provide detailed time and billing records, and has imposed additional charges for matters which were encompassed by the Contract terms.

12. Plaintiff has demanded a refund of at least \$29,751.68; but Mullinax, in breach of their agreement, has failed and refused to return any part of the overpayment and is currently indebted to plaintiff in the amount of at least \$29,751.68 together with pre-judgment interest at the legal rate since October 20, 2009.

13. Plaintiff is informed and believes that he is entitled to recover the sum of at least \$29,751.68, or such greater amount as the Court may determine is due, including pre-judgment interest, incidental and consequential damages, and the costs and disbursements of this

action from Mullinax by reason of the breach of Contract.

FOR A SECOND CAUSE OF ACTION

14. Each and every allegation of the preceding paragraphs is realleged as fully as if repeated herein verbatim.

15. Defendants are engaged in the business of estate planning and estate and trust administration, and offers these services to the public, including the plaintiff.

16. In the conduct of the business as aforesaid, defendants acted toward plaintiff in an unfair, oppressive and deceptive manner by:

- a. Imposing extra charges for matters included in the Contract under the guise of such charges being "extras" or not a part of the agreement;
- b. Artificially inflating the gross value of the Estate by 1.7 million dollars in order to increase the percentage fee that could be charged;
- c. Obdurately refusing to follow the directions of the Personal Representative in order to increase the amount of the fee, and concealing from plaintiff that it was not following the directions given to it by plaintiff;
- d. Wrongfully conducting a "bait and switch" business calculated to take advantage of bereaved persons; and,
- e. Claiming an entitlement to full pay under the Contract where the defendants failed to complete the work and where the Contract was terminated in accordance with its terms.
- f. Such other and further actions as may be hereafter alleged following additional discovery.

17. The conduct of Mullinax, as described herein and above, constitutes unfair and or deceptive acts or practices made in the conduct of a trade or commerce which were calculated to damage the plaintiff, deceive the public, and to take money from them wrongfully through these deceptions. The conduct was willful and knowing, purposely calculated to damage consumers including the plaintiff, and intended to secure for Mullinax an unfair economic advantage through practicing the deception upon the public including the plaintiff. Further, the defendants conduct did cause special damage to the plaintiff in an amount of at least \$29,751.68.

18. Upon information and belief, the aforesaid deliberate deceptions and unfair acts are a part of a pattern and practice knowingly and intentionally followed by Mullinax to enrich itself/himself wrongfully.

19. Upon information and belief, the aforesaid pattern and practice has the potential to mislead and deceive the public, the potential for repetition, and the conduct, or substantially similar conduct as that complained of by plaintiff, has actually been repeated by Mullinax with other members of the public.

20. As a pattern an method of unfair conduct with the potential to be repeated and thereby to effect a large number of people, defendants' acts and practices in the conduct of trade are not only reprehensible, but are violations of §39-5-20 *Code of Laws of South Carolina for 1976*, as amended, which is a part of the South Carolina Unfair Trade Practices Act as fully set forth in §§ 39-5-10 *et seq.*, *Code of Laws of South Carolina for 1976*, as amended ("The Act") and constitute unlawful unfair and deceptive acts. Further defendants' willful conduct is the proximate cause of an ascertainable loss of money and other economic damage to plaintiff as set forth in this Complaint.

21. At all material times, Mullinax has acted intentionally, wilfully, and knowingly toward plaintiff, thereby entitling plaintiff to an award of actual, consequential, and incidental damages as well as the costs and disbursements of this action, and a reasonable attorney's fee, all in accordance with the provisions of The Act .

22. The defendants acts and practices as set forth are a willful and knowing violation of § 39-5-20 of the Act. As a consequence, plaintiff is informed and believes that, in addition to actual damages, he is entitled to recover three times the amount of his actual damages and a reasonable attorney's fee, all as provided in § 39-5-140(b) of the Act.

FOR A THIRD CAUSE OF ACTION

23. Each and every allegation of the preceding paragraphs is realleged as fully as if repeated herein verbatim.

24. Plaintiff has paid and defendants have accepted the sum of \$100,000.00 for the administration of the Trust and the Estate; however the defendants did not complete the administration, nor did defendants furnish services of a value of \$100,000.00 to the plaintiff prior to the time the Contract was terminated.

25. As a consequence of the defendants' conduct, on or about March, 2010 plaintiff had to engage another firm to complete administration of the Trust and Estate, the work for which defendants were engaged, and the task is still ongoing as of the date hereof.

26. Plaintiff is informed and believes that the services actually rendered by defendants have a value of less than \$25,000.00; that it would be inequitable to allow defendants to retain the \$100,000.00 paid to them, and the defendants have been unjustly enriched by at least the sum of \$75,000.00, or such greater sum as the Court may find.

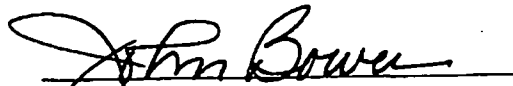
27. Plaintiff is informed and believes that it is entitled to recover said amount from the defendants under the principles of *Quantum Meruit*, and is further entitled to recover pre-judgment interest and the costs and disbursements of this action.

WHEREFORE, having fully made out the complaint against the defendants, plaintiff prays that this Honorable Court will inquire into the matters aforesaid, and:

- I. Award plaintiff actual and consequential damages of at least \$29,751.68 or such greater amount as the Court may determine for the breach of contract together with pre-judgment interest and the costs and disbursements of this action.
- II. Award plaintiff actual damages in the amount of at least \$29,751.68 or such greater amount as the Court may determine for defendants wilful violation of §39-5-20 of the Act, together with treble damages of at least \$89,253.00, a reasonable attorney's fee, the costs and disbursements of this action, and such other and further relief as to the court is just.
- III. Award plaintiff the sum of \$75,000.00, or such greater sum as the Court may find representing the amount by which the defendant has been unjustly enriched together with pre-judgment interest and the costs and disbursements of this action.

LAUGHLIN & BOWEN, P.C.

By:



John R.C. Bowen
Attorneys for Plaintiff
SC Bar # 791

P.O. Drawer 21119
Hilton Head Island, SC 29925
Tel: (843) 689-5700
Fax: (843) 689-9300
john@laughlinandbowen.com

April 6, 2012

LAW OFFICE OF JAY A. MULLINAX, LLC
THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com

June 23, 2009

VIA US POSTAL SERVICE

Mr. Ronald Joseph Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate/Trust Administration Engagement Letter

Dear Mr. Ronald Joseph Orlosky:

I extend my sincere sympathy to you and your family in the loss of your wife, Debora Laura Orlosky. It was truly a pleasure to know and work with her and I deeply regret your loss. Please be assured that I will make every effort to answer any questions you have and to assist you in completing all of the tasks involved in the estate administration.

The purpose of this letter is to confirm my representation of you as the named Personal Representative of the Estate of Debora Laura Orlosky and the trustee of the Debora Laura Orlosky Revocable Trust and to set forth the terms of engagement. At this time I ask that you please sign and return to me the enclosed "Authorizations to Release Information" which allows me to obtain information from various sources on your behalf.

I appreciate your confidence and trust in my firm to represent you in these matters of this estate. In any event, all questions should be directed to me or to my Legal Assistant to provide for continuity of communication. Estate administration is normally a process that takes between one and three years. I will make every effort to provide efficient services as we work together to administer the estate.

1. Summary of Services to be Performed for the Estate. I will provide services that are necessary and appropriate to administer the estate under the laws of South Carolina, commencing with the petition to probate the Will and have the Personal Representative qualified.

The following list includes the types of services that may be provided:

(a) Prepare and complete all notices of appointment the Personal Representative and other notices with respect to creditors as are required by the laws of the State of South Carolina and rules of court having jurisdiction of the estate.

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BEAUFORT COUNTY, SC

EX A-1

(b) Assist the Personal Representative in preparing a complete inventory of all assets of any kind or nature that are subject to probate, and any nonprobate assets such as life insurance, retirement benefits, and other assets.

(c) Help Personal Representative make a thorough search for all debts, obligations and contingent liabilities of the estate in order to determine the financial condition of the estate and advise the Personal Representative regarding other action which must be taken by the Personal Representative to secure, reinvest, or protect the assets and provide for the discharge of liabilities, including death taxes of the estate.

(d) Prepare and complete all interim reports to the Probate Court and the beneficiaries as required during the course of the administration of the estate.

(e) Prepare, assist, or coordinate for the preparation of all tax returns for the estate, including federal estate tax and generation-skipping tax returns, state inheritance tax, or any local or state property tax returns, as well as federal and state income tax returns.

(f) Review and consider with the Personal Representative/Trustee any post-death planning, such as alternative asset valuation options, use of disclaimers, funding of trusts as provided for in the estate plan, timing the distribution of assets that are beneficial to the estate and any beneficiaries, and election of income tax benefits to the estate and beneficiaries.

(g) Plan for the payment all death taxes and the source of funds to be used in payment of any obligations, along with any elections for installment payment of taxes if available.

(h) Prepare a plan of distribution of assets held in the estate, either outright or to separate continuing trusts, for the beneficiaries.

(i) Prepare all reports, notices, consents, receipts, and accountings for closing the estate and discharge as the Personal Representative.

(j) Counsel and advise on any related questions or matters arising out of the administration of the estate.

As the named Personal Representative and Trustee you should understand that we represent you as the named Personal Representative of the estate, until such time that the Court qualifies the Personal Representative. At that time we will continue to represent the Personal Representative of the estate and trustee. My representation of the Personal Representative or the estate does not include the representation of the beneficiaries of the estate, even though we will, from time to time, provide them with information about the administration of the estate.

EXA - Z

2. Charges for Legal Services and Out-of-Pocket Costs. I will bill you for charges based on the time devoted to the estate or a minimum of two and a half percent (2.5%) of the value of the estate. However, there is no method by which I can determine how much time will be necessary for the estate administration. My current hourly billing rate is \$285.00 per hour, but may be adjusted periodically. The charges of my paralegal will be billed at an hourly rate of \$110.00. I will generally bill the estate on a monthly basis. However, one third (1/3) of the minimum charge will be billed by the filing of the Petition, one third (1/3) of the minimum will be billed by the filing of the Inventory, and one third (1/3) of the minimum will be billed by the filing of the estate closing documents. If the bills are not paid reasonably soon after they are rendered, I reserve the right to stop work until your account is brought current.

I will also bill the estate for out-of-pocket expenses, such as probate and filing fees, travel expenses, delivery charges, duplicating, express mail, faxing and toll telephone calls. I will expect reimbursement of such costs upon presentation of periodic disbursement bills.

A retainer equivalent to one third (1/3) of the minimum charge should be maintained at all times. The firm may draw on the retainer during our representation and the remainder will be applied to the final statement. Any unused portion will be returned to you.

3. Conflicts of Interest and Confidentiality. Any relationship between an attorney and a client is subject to the Rules of Professional Conduct. In estates, ethical rules applicable to conflicts of interests and confidentiality are of primary concern because of the close relationship of the parties. Full disclosure to me at all times will assist me in the administration of this estate and will help to avoid problems that may arise in these areas.

As a condition of this representation, I require that, notwithstanding normal rules of confidentiality, I am authorized to notify the Probate Court, creditors, and beneficiaries of the estate, as the case may be, of any actions or omissions on the Personal Representative/Trustees part that have a material effect on their interests in the estate, including acts or omissions that may constitute negligence, bad faith or breach of the Personal Representative/Trustees fiduciary duties.

Because you are a potential beneficiary of the estate, I must advise you that I represent you as Personal Representative/Trustee currently, and can only represent you as a beneficiary if there is no conflict of interest by reason of such relationship. For example, a conflict could arise in the distribution of assets to you, or if one of the other beneficiaries should object to your individual ownership of the partial interest in an estate asset; or by reason of the amount of compensation which you may claim. In the event of such a conflict, consideration may have to be given by you to the employment of independent counsel to represent your personal interests.

EXA-3

4. Termination of Engagement

(a) The Personal Representative/Trustee, once determined, may terminate this engagement at any time by notice in writing to me. Upon receipt of such notice, subject to such court approval, as maybe necessary in the context of the situation, I will promptly cease providing any service to the estate or trust as allowed by law. The estate or trust will be responsible for paying for my services rendered up to the time I receive such notice and for such reasonable services that I provide thereafter in connection with the transfer of responsibility for the matters I am providing to new counsel.

(b) I may terminate this engagement by giving written notice to the Personal Representative. Upon termination of my representation, the estate will be responsible for paying for my services rendered up to the time I terminate our engagement and for such reasonable services that I provide thereafter in connection with the transfer of responsibility for matters I am then providing to new counsel.

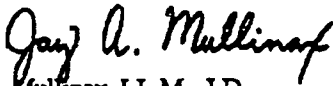
(c) We agree to represent you as Personal Representative and Trustee under the terms of this agreement. At the conclusion of your role in one capacity, this agreement will continue to control our relationship as to your remaining roles.

If you find the above arrangement acceptable, please sign the enclosed copy of this letter and return it to me in the envelope provided, along with your check in the amount of \$25,000.00 to serve as a retainer. The retainer will be applied to your last billing statement and any amount not due will be returned to you at the conclusion of this matter.

Should you have any questions regarding the contents of this letter, please give me a call. We welcome and look forward to the opportunity to be of further service to you.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC


Jay A. Mullinax, LL.M., J.D.


Ronald Joseph Orlosky

Dated: _____

EX A-4

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

RON ORLOSKY in his capacity as)
Personal Representative of THE)
ESTATE OF DEBORA L.)
ORLOSKY, and in his capacity as)
trustee of the DEBORA LAURA)
ORLOSKY REVOCABLE TRUST,)

Plaintiff,)

vs.)

THE LAW OFFICE OF JAY A.)
MULLINAX, LLC AND JAY A.)
MULLINAX, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-07-4146

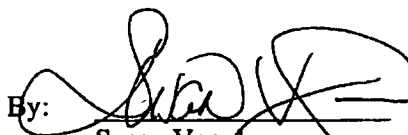
CERTIFICATE OF SERVICE

2012 APR -9 AM 10:46

This is to certify that I, Susan Vogel, an employee of the law firm of Laughlin & Bowen, P.C. have this day served a true and correct copy of the within and foregoing Motion Information Sheet, Notice of Motion and Motion to Amend Complaint and to Shorten Time for Hearing on Thomas C. Taylor, Esquire attorney for defendants by hand delivery to assure delivery as follows, to-wit:

Thomas C. Taylor, Esquire
Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head Island, SC 29938

This 6th day of April, 2012.

By: 
Susan Vogel
Post Office Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

RON ORLOSKY in his capacity as)
Personal Representative of THE)
ESTATE OF DEBORA L.)
ORLOSKY, and in his capacity as)
trustee of the DEBORA LAURA)
ORLOSKY REVOCABLE)
TRUST,)

Plaintiff,

vs.

THE LAW OFFICE OF JAY A.)
MULLINAX, LLC and JAY A.)
MULLINAX, individually,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-07-4146

**ANSWER AND COUNTERCLAIM
OF DEFENDANTS
THE LAW OFFICE OF JAY A. MULLINAX, LLC
and JAY A. MULLINAX, individually,
TO AMENDED COMPLAINT
(Jury Trial Demanded)**

2012 APR 16 PM 12:46
CLERK OF COURT
JAY A. MULLINAX, LLC
JAY A. MULLINAX, INDIVIDUALLY
S.C.

TO: JOHN R. C. BOWEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendants above-named, pursuant to S.C.R.Civ.P. 15(a), herein file their Amended Answer and Counterclaim to the Plaintiff's Complaint and would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Amended Complaint not hereinafter admitted, denied or otherwise addressed, is expressly denied, and strict proof demanded thereof.
2. The Defendants admit, upon information and belief, the General Averments in Paragraphs 1, 2, 3 and 4 of the Plaintiff's Amended Complaint.
3. The Defendants admit, upon information and belief, Paragraph 5 of the Plaintiff's Amended Complaint.
4. The Defendants admit, upon information and belief, Paragraph 6 of the Plaintiff's Amended Complaint to the extent the referenced charges (the 2.5 percent minimum fee) apply to the services necessary and appropriate to administer the estate under the laws of South Carolina. These Defendants crave reference to the Contract, which states that all

other work performed on matters not necessary and appropriate to administer the estate was to be charged at an hourly rate. These Defendants admit that they were to be reimbursed for actual costs as billed.

5. In response to Paragraph 7 of the Plaintiff's Amended Complaint, the Defendants state that the Contract speaks for itself.
6. As to Paragraph 8 of the Amended Complaint, these Defendants admit that the Contract was terminated in or around March of 2010. Further, these Defendants admit that the Defendants demanded payment for professional services rendered of a fee of 2.5 percent of the value of the Estate as per the contract, and these Defendants deny they did not complete the work expected through the time of termination. The Defendants would affirmatively show that they completed all work necessary and appropriate in the time frame under which they were operating. The remainder of Paragraph 8 is denied.
7. In response to the allegations of Paragraph 9, the Defendants admit they demanded payment for professional services rendered for the Plaintiff that were not necessary and appropriate to administer the estate, ie, the negotiation and proposed agreement for the estate to sell the Manor Development Company Stock owned by the Estate. The Defendants deny such work was covered or contemplated under the minimum fee agreement.
8. In response to Paragraph 10 of the Amended Complaint, these Defendants deny that the Plaintiff performed all duties required under the Contract. These Defendants admit that the Plaintiff has paid the Defendants the sum of \$100,000.00, which the Defendants represented as due.
9. In response to the allegations of Paragraph 11 of the Amended Complaint, these Defendants deny that they are in breach of the Contract or that they have collected more than the agreed upon fee. The Defendants deny that the Plaintiff made an overpayment to the Defendants. The Defendants admit that they have not provided a refund to the Plaintiff. The Defendants admit that they demanded an additional payment of more than \$30,000 via regular invoices and a subsequent claim filed in the Beaufort County Probate Court on July 29, 2010, several weeks prior to this Complaint being filed. The Defendants deny they failed to provide detailed time and billing records and would show, upon information and belief, that they have provided "detailed time and billing records" to the Plaintiff. The Defendants deny imposing additional charges for matters which were encompassed by the 2.5% set forth in the Contract. The Defendants admit demanding over \$30,000.00 for professional legal services rendered, including a balance remaining from the 2.5 % set forth in the Contract and hourly charges for professional legal services rendered not encompassed by the 2.5 percent set forth in the Contract.
10. Responding to the allegations of Paragraph 12 of the Amended Complaint, the Defendants admit that Plaintiff has demanded a refund of \$29,751.68 and the Defendants

refuse to provide any refund. The Defendants deny that there was any overpayment made by the Plaintiff to the Defendants or that the Defendants are in debt to the Plaintiff.

11. Responding to the allegations of Paragraph 13 of the Amended Complaint, the Defendants deny that the Plaintiff is entitled to recover the sum of \$29,751.68 including pre-judgment interest, incidental and consequential damages, and the costs and disbursements of this action from the Defendants by reason of alleged breach of Contract.
12. The Defendants repeat and reallege the averments of Paragraphs 1 through 11 above in response to Paragraph 14 of the Amended Complaint.
13. The Defendants admit the allegations contained in Paragraph 15 of the Amended Complaint.
14. The Defendants deny the allegations of Paragraph 16 of the Amended Complaint and demand strict proof thereof. Further, these Defendants would show, upon information and belief that "extra charges" imposed and referenced in Paragraph 16a. of the Plaintiff's Amended Complaint, were valid hourly charges for services rendered to the Plaintiff and in connection to Estate matters that were not "necessary and appropriate to administer the estate under the laws of South Carolina" and not encompassed by the minimum 2.5% charge. These Defendants specifically deny all remaining allegations of Paragraph 16 of the Amended Complaint.
15. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, 21 and 22, and demand strict proof thereof.
16. The Defendants repeat and reallege the averments of Paragraphs 1 through 15 above in response to Paragraph 23 of the Amended Complaint.
17. In response to Paragraph 24 of the Amended Complaint, the Defendants admit they accepted the sum of \$100,000 from the Estate of Deborah Orlosky for the administration of the Trust and Estate. The Defendants deny the remainder of Paragraph 24 and demand strict proof thereof.
18. The allegations of Paragraph 25 of the Amended Complaint are denied as pled. On information and believe, the Defendants assert that the Plaintiff sought the assistance of another law firm that would close the sale of the Manor Development Company Stock at a price that breached the fiduciary duty of the Trustee to sell the stock at the best possible price for the Trust.
19. The allegations of Paragraph 26 of the Amended Complaint are denied.
20. The allegations of Paragraph 27 of the Amended Complaint are denied.

FOR A SECOND DEFENSE
(Failure to State A Claim)

21. The Plaintiff fails to state facts sufficient to constitute a cause of action against the Defendants.

FOR A THIRD DEFENSE
(UTPA Not Available in a Representative Capacity)

22. The South Carolina Unfair Trade Practices Act is not available to a Plaintiff in a representative capacity.

FOR A FOURTH DEFENSE
(Estoppel)

23. The Defendants would show, upon information and belief, that they relied, in part, upon the information and valuations provided to the Defendants by the Plaintiff to determine the gross estate value and therefore the Plaintiff is estopped from alleging or attempting to prove valuations at variance with the earlier representations. Further, Defendants allege the Plaintiff accepted and confirmed the valuations used by the Defendants, further buttressing the estoppel argument.

FOR A FIFTH DEFENSE
(Waiver)

24. The Plaintiff's Complaint must be dismissed because same is in violation of S.C.R.Civ.P. 13(a) in that the allegations of the Complaint arise out of the transaction or occurrence that was the subject matter of the Defendant Jay A. Mullinax's Claims against the Estate of Deborah Orlosky, originally presented to the Personal Representative on or before June 14, 2010 in the Beaufort County Probate Court in Case No. 2009-ES-07-00512. As such, under S.C.R.Civ.P. 13(a), the Personal Representative had to raise the claim by counterclaim to the Mullinax Claims, or same was waived. Because what amounts to a mandatory Counterclaim in the Probate Court was not made in a timely manner, same was waived and may not be raised here.

FOR A SIXTH DEFENSE
(UTPA Not Available Where There Are No Ascertainable Losses)

25. Plaintiff Ron Orlosky suffered no ascertainable losses because all monies paid to the Defendants were paid by either the Estate of Deborah Orlosky or the Deborah Laura Orlosky Revocable Trust.

COUNTERCLAIM

26. The allegations contained in Paragraphs 1 through 25 above are re-alleged as fully as if repeated verbatim herein.
27. The plaintiff has submitted to this Court's jurisdiction by instituting his claim in Probate Court and removing same to Circuit Court.
28. The Plaintiff and the Defendants are all residents of Beaufort County, South Carolina and as such, are subject to this Court's jurisdiction.

FOR A FIRST CAUSE OF ACTION IN COUNTERCLAIM **(Breach of Contract)**

29. The Plaintiff and the Defendants entered into two written agreements, the first on or about April 1, 2009 and the second on or about June 23, 2009, which agreements amount to a contract in South Carolina. A true and correct copy of the agreement April 1, 2009 is attached hereto as Exhibit 1. The second is an Exhibit to the Amended Complaint.
30. The Defendants have in good faith performed each and every requirement of the contract in a professional manner and in a manner that is in keeping with the expected standards of a lawyer and a law firm in the practice of probate administration in South Carolina.
31. Despite demand, the Plaintiff has failed to pay and continues to fail to pay, the professional fees called for under the contract in the amount of \$32,101.20.
32. Interest accrues on the outstanding amount owed the Defendants at a statutory rate as set by law.
33. The failure and refusal of the Plaintiff to pay the professional fees set forth above, amounts to a breach of the contract, and entitles the Defendants to an award of damages consistent with the expectations of the contract.
34. The April 1, 2009 agreement, which forms a part of the contract between the Plaintiff and the Defendants, provides that if the Defendants have to bring collection efforts for payment, the Plaintiff is obligated to pay the costs of collection procedures, including reasonable attorneys fees incurred.
35. As a result of this breach of contract, the Defendants are entitled to recover damages in an amount to be proven at trial, plus attorneys fees, costs, pre-judgment interest, and such other damages as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION IN COUNTERCLAIM
(In the alternative, Unjust Enrichment)

36. The Defendants repeat and reallege the allegations contained in the foregoing paragraphs as if set forth herein verbatim.
37. The Plaintiff has been enriched by the Defendants' professional representation and professional work performed to date, as was requested by the Plaintiff.
38. The Plaintiff has unjustly retained the benefits of the Defendants' professional work without compensating the Defendants an appropriate professional amount of compensation.
39. The action of the Plaintiff in failing and refusing to pay the professional fees was undertaken with the knowledge and intention that the Defendants would suffer damages and harm while the Plaintiff would unjustly enrich himself.
40. That, as a direct and proximate result of such unjust enrichment, the Defendants have suffered damages, and the Plaintiff is liable for the reasonable value of the benefits bestowed upon the Plaintiff.
41. Based on the above facts and circumstances, the Defendants are entitled to a Judgment against the Plaintiff in counterclaim in the amount of at least \$32,101.20, plus interest at the statutory rate from the date of filing until Judgment is issued herein, and such other damages as the Defendants may prove at trial.

WHEREFORE, having fully answered the Amended Complaint and asserted their counterclaims, the Defendants pray that this Honorable Court inquire into the matters set forth herein above, dismiss the Plaintiff's Complaint with prejudice and that it render its declaration and judgment for the Defendants against the Plaintiff on each cause of action in counterclaim set forth above, as follows:

- A. As to the First Cause of Action, a judgment for the Defendants in the amount of \$32,101.20, plus attorneys fees, pre-judgment and post-judgment interest and costs; or,
- B. As to the Second Cause of Action, a judgment for the Defendants in the amount of at least \$32, 101.20, plus post judgment interest;
- C. For the costs and disbursements of this action; and,
- D. For such other and further relief as this Honorable Court deems just and proper.

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor
Post Office Box 5550
Hilton Head Island, SC 29938
S.C. Bar #: 5499
Telephone: 843/785-5050
Facsimile: 843/785-5030
Email: tom@thomastaylorlaw.com

ATTORNEY FOR DEFENDANTS
THE LAW OFFICE OF JAY A. MULLINAX, LLC and
JAY A. MULLINAX, individually

Hilton Head Island, South Carolina
April 16, 2012

*Exhibit 1
to Counterclaim*

LAW OFFICE OF JAY A. MULLINAX, LLC

**THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com**

April 1, 2009

VIA HAND DELIVERY

**Mr. and Mrs. Ronald J. Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928**

Re: Engagement Letter as Counsel

Dear Mr. and Mrs. Ronald J. Orlosky:

On behalf of the firm, I thank you for engaging my firm to represent you as legal counsel. We look forward to working with you with regard to your estate planning matters and appreciate the confidence you have placed in us.

It is the policy of the firm to require an engagement letter to avoid misunderstandings as to the scope of the matter, the fees to be charged, and the possibility of conflicting representation. Enclosed with this letter is a summary of our standard terms of engagement that will apply to our representation, except to the extent of any conflict with this letter, in which case the terms of this letter will control. Because this language is designed to be used for a broad spectrum of clients, it may appear somewhat formal and complicated; unfortunately, that is necessary to cover all of the relevant areas. Thank you for your understanding and cooperation.

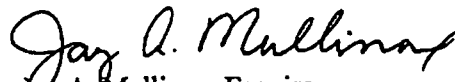
You have asked me to advise you in planning and preparing Wills and Revocable Trusts for each of you and pursuant to our discussion at the meeting, related estate planning documents such as Health Care Powers of Attorney and Durable Powers of Attorney. I quoted you a fee range of Five Thousand Two Hundred Dollars (\$5,200.00) to Six Thousand Dollars (\$6,000.00) for the Wills, Revocable Trusts, Health Care Powers of Attorney, Durable Powers of Attorney, and Quit Claim Deed based on your situation as I understood it. Barring significant changes or additions, this would be my fee for preparing these documents. I also agreed to charge you \$275.00 per hour for my consultations and any other work in regard to your file. The initial consultation is included in your fee range listed above. Based on our initial meeting, I do not anticipate that additional consultations will be necessary.

I anticipate no additional costs other than the court cost, of \$44.00, for recording the Durable Powers of Attorney and Quit Claim Deed with the Beaufort County Register of Deeds Office.

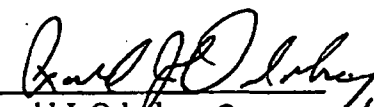
Again, we appreciate the opportunity to work with you in connection with these matters and look forward to our relationship. If you find the above arrangement acceptable, please sign the enclosed copy of this letter and return it to us along with a retainer in the amount of Six Thousand and Forty-Four Dollars (\$6,044.00).

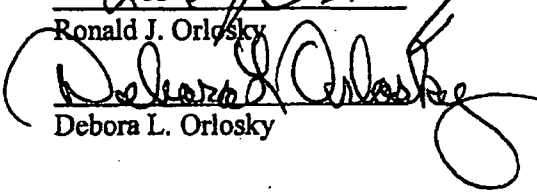
Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC


Jay A. Mullinax, Esquire

Enclosure


Ronald J. Orlosky


Debora L. Orlosky

**Law Office of Jay A. Mullinax, LLC
TERMS OF ENGAGEMENT
FOR ESTATE PLANNING SERVICES
FOR RONALD J. ORLOSKY and DEBORA L. ORLOSKY**

I appreciate your decision to retain my firm for your estate planning. This document contains important information about the relationship between you and my firm. My work will be limited strictly to legal services, unless otherwise described in the letter that accompanies this document. You are not relying on me for business, investment, accounting, or valuation decisions, or to investigate the character or credit of other persons or firms (such as insurance companies or investment advisors), unless otherwise specified in the letter.

My Duty to Preserve Your Confidential Information

Estate planning is a personal matter that requires you to disclose sensitive information about your family relationships and financial matters, and it may involve difficult questions. You agree to provide me with all information needed to perform legal services. You will be responsible for making decisions on matters not involving legal determinations. I urge you to make a complete disclosure of your financial matters and your wishes concerning your estate. Failure to do so could make it impossible for me to give proper advice to you. I will not be responsible for consequences caused by your failure to disclose essential information.

The ethics rules require me to keep information that you disclose to me confidential and not to disclose it to persons outside this firm without your permission. I may disclose information to other persons in the firm as needed to do your work, on a "need to know" basis, but I will not make unnecessary disclosures.

If persons outside my firm work with me with your permission (such as your accountant, a bank trust officer, a financial planner, an insurance agent, or another law firm), you agree that I can disclose information to them that they need to fulfill their role in your estate planning. Unless you instruct otherwise, you agree that I can disclose information to them that in my judgment is necessary for your best interests.

My Duty To Share Information With Each of You

I will represent both of you jointly in your estate planning. I owe duties to each of you, and each of you has an obligation to disclose to me all information that is relevant to both spouses' estate planning. You agree that among us (the two of you and my firm), there will be no confidentiality of communications or information, unless and until one of you instructs me otherwise. If one of you discloses information to me that is relevant to the other spouse's estate planning, I can disclose that information to the other spouse if I think it is necessary to fulfill my duties to the other spouse in your estate planning.

Either of you can terminate your permission for me to disclose information to the other spouse at any time, if you give me clear directions not to disclose. However, if you do terminate that permission, I must then decide if a conflict of interest has arisen that prevents me from adequately representing the other spouse. I will make that decision in my sole professional judgment. If I believe that I cannot adequately represent the other spouse without the disclosure, I will notify each of you separately in writing that a conflict of interest has arisen that prevents me from representing either one of you in your estate planning. I could not represent either one of you in your estate planning after that without the consent of both of you. Even if you revoke my permission to disclose information, you should be aware that if there is ever litigation between the two of you, I could be compelled to testify about information obtained from you or about advice that I gave to you in your estate planning.

If this agreement concerning confidentiality is not acceptable to you, you must advise me immediately so that other arrangements can be made.

If You Become Disabled

The ethics rules that govern attorneys state that if you become unable to make adequately considered decisions, whether because of mental disability or other reasons, I may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also state that I may seek the appointment of a guardian or to take other actions to protect your interests if I reasonably believe that to be necessary.

You can designate other persons to act on your behalf under a durable power of attorney and to make decisions for you concerning your estate planning, such as making gifts of your assets and signing trust agreements on your behalf. If you authorize someone to act on your behalf, and if I believe their authority is broad enough to allow them to instruct me on your estate planning, you agree that I can continue to do estate planning work for you by dealing with them, and that I can rely on instructions from them. You agree that I can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege. However, if I believe that they do not have the authority to act on your behalf, or if I believe they are not acting in your best interests, I reserve the right to refuse to act on their instructions and instead to take whatever action that I reasonably believe is necessary to protect your interests.

How I Charge for Services Rendered

I usually bill for estate planning work in two ways: a fixed amount (which may be expressed in a range), and an amount based on my time billed at standard hourly rates. I will bill you for my time at my standard hourly rates, unless you and I agree on a fixed amount.

Fixed Fee Arrangements

If I agree on a fixed amount, my fees will not be limited to that amount if you do not accurately disclose information that I request and need for your work, or if you materially change the terms, conditions, scope, or nature of the work after we agreed on the fixed amount. If this happens, you agree to pay me for my time billed at my standard hourly rates, unless we agree on a revised fixed amount.

Hourly Basis Fee Arrangements

I adjust my hourly rates periodically. I consider the ability, experience, and reputation of our lawyers and legal assistants when I set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. If your bill is based on hourly rates, increases in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect.

I generally record and bill my time in quarter hour units. If my or a paralegal's total time on your work is less than one-quarter hour for the entire day, one-quarter hour will be billed for that day. If my or a paralegal's total time on your work is more than one-quarter hour for that day (whether done at one time or not), only the time actually spent will be billed.

Costs and Expenses

I will bill you for out-of-pocket expenses that I pay on your behalf and for my internal costs. Out-of-pocket expenses generally include items such as travel expenses, filing, recording, and registration fees charged by government agencies. My internal costs include things like photocopying, long distance telephone calls, fax transmissions, courier services, terminal time for computer research, and complex document production. Rather than tracking precise and exact costs for every single internal charge (which would ultimately result in higher hourly rates), I charge fixed costs on a reasonable basis for these types of expenses. My charges for these internal costs may exceed the actual direct costs that I pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if I (rather than you) request their services, and so I may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to me in reimbursement.

How I Will Bill You

I will bill you periodically for my services and costs. I will attempt to provide as much billing information as you reasonably require. I can discuss with you the various billing formats available that best suit your needs.

If my fees are based on time, bills generally will be rendered on a monthly basis, but sometimes I may bill less frequently. My bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the 30th day and accruing thereafter. Interest charges will apply to specific monthly bills. Payments made on past due accounts will be applied first to the oldest outstanding bill. If the bills are not paid reasonably soon after they are rendered, I reserve the right to stop work until your account is brought current.

If I have to bring collection efforts for payment, you agree that you will be obligated to pay the costs of collection procedures, including reasonable attorneys fees incurred by me (whether paid to the firm or another firm retained by me).

Each of you agrees that you will be jointly and severally responsible for the payment of all amounts owed to me, and that I can seek payment in full from either one of you at my election. An agreement between the two of you to limit your responsibility for payment of amounts owed to me will not be binding upon me unless I also agree in writing to those limits.

I may require a retainer for your work. Unless you and I agree otherwise, the retainer will be applied to the final statement, and any unused portion will be returned to you. I may also request an advance cost deposit (in addition to the advance fee deposit) when I expect to incur substantial costs on your behalf.

Conflicts with Other Clients

Sometimes my firm is asked to represent a client who has interests that are adverse to another client whom I represent in other matters. Just as you may wish to hire other law firms that compete with me, I want to be able to consider representing other persons who may be competitors in your business or occupation or who may have interests that are potentially adverse to yours—but only in matters that are unrelated to the work that I do for you. The ethics rules that govern attorneys permit me to accept multiple representations if certain requirements are met.

While I represent you, I will not represent another client in matters that are directly adverse to your interests unless and until I have made full disclosure to you of all relevant facts, circumstances, and implications. You agree that I can represent other clients whose interests are adverse to yours if I confirm to you in good faith that the following conditions are met: (i) there is no substantial relationship between the other client's matter and my work for you, both now and in the past; (ii) my representation of

the other client will not involve or disclose any confidential information I have received from you (with the use of screening measures, if appropriate); and (iii) the other client also consents to my representation of you, based on full disclosure of all relevant facts, circumstances, and implications.

You agree that these rules will govern your right to object to me representing other clients whose interests are adverse to yours. You will have the right to contest (but only if done in good faith) my statement to you that these conditions have been met. If you make a good faith objection to my statement, I will have the burden of proving that these conditions have been met.

When I finish your work, the attorney-client relationship between us will end unless you and I have expressly agreed to a continuation for other matters. Either you or I can terminate the attorney-client relationship before the work is finished, subject to ethical restraints.

Your Agreement with Me

Your agreement to my representation constitutes your acceptance of these terms and conditions. If any of them are unacceptable to you, please tell me now so that I can resolve any differences and proceed with a clear understanding of our relationship.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RON ORLOSKY in his capacity as
Personal Representative of THE
ESTATE OF DEBORA L.
ORLOSKY, and in his capacity as
trustee of the DEBORA LAURA
ORLOSKY REVOCABLE
TRUST,

Plaintiff,

vs.

THE LAW OFFICE OF JAY A.
MULLINAX, LLC AND JAY A.
MULLINAX, individually,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-07-4146

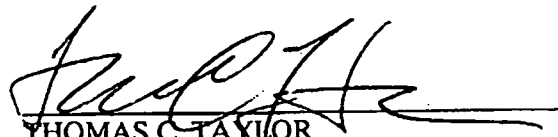
CERTIFICATE OF SERVICE

2012 APR 16 PM 12:46
CLERK OF COURT
BEAUFORT COUNTY, S.C.

I, Thomas C. Taylor, the undersigned Attorney of the Law Office of Thomas C. Taylor, LLC, Attorney for THE LAW OFFICE OF JAY A. MULLINAX, LLC AND JAY A. MULLINAX, individually, on this day do hereby certify that I have served a copy of the foregoing, Answer And Counterclaim Of Defendants The Law Office Of Jay A. Mullinax, LLC And Jay A. Mullinax, individually, To Amended Complaint upon the counsel for the Plaintiff, John R.C. Bowen, by hand-delivering a copy of the same in open court.

The original Answer And Counterclaim Of Defendants was hand-delivered to the Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court for filing.

John R. C. Bowen, Esquire
Laughlin & Bowen, P.C.
P.O. Drawer 21119
Hilton Head Island, SC 29925-1119
john@laughlinandbowen.com


THOMAS C. TAYLOR
Attorney for Defendants

Hilton Head Island, South Carolina
April 16, 2012

Jury Sworn, Preliminary Instructions

1 preliminary instructions.

2 Just for the record, her daughter used to be my law
3 clerk. I don't know -- five or six years ago. She doesn't
4 have anything to do with this trial.

5 Anyway, let me tell you about this case and what we'll
6 be doing over probably today and tomorrow. I think we will
7 probably be finished by the end of the day tomorrow. I hav-
8 en't talked with the lawyers this morning about what we've
9 got to do.

10 We have some procedures and some things that I do want
11 to talk to you about. This case is a breach of contract
12 case. The Plaintiff in this case is the Personal Represent-
13 ative of the late wife's estate -- hired the Defendant as a
14 lawyer to handle the estate.

15 There is a dispute over the amount of attorney's fees
16 that were earned and owed in this case, and so the Plain-
17 tiff and the Defendant have been unable to work out their
18 differences about that and so that's why they have asked
19 you to come in and listen to the evidence.

20 Let me tell you what the law is, and then you will de-
21 cide what the outcome will be. That is really what this
22 case boils down to.

23 Procedurally, when the person that bring the lawsuit
24 in the Court of Common Pleas, or civil court, like this, we
25 call them the Plaintiff, and they bring the lawsuit and

1 they have the burden of proof^o of what they allege in the
2 lawsuit.

3 The burden of proof in a civil case is by what is called
4 the preponderance of the evidence, or sometimes the greater
5 weight of the evidence, or, stated another way, whatever
6 they are trying to prove more likely is true than not true,
7 and there are probably a lot of you that think, like me,
8 what did he just say. What does that mean?

9 Well, it might be helpful if you could imagine a set
10 of scales. At the beginning of the trial, you've got both
11 parties, one on each side. The Plaintiff's on this side;
12 the Defendant's on this side.

13 At the beginning of the trial the scales are even. All
14 right?

15 The greater weight of the evidence simply means that
16 the Plaintiff has to tip those scales, even if it is just
17 slightly in his favor, and if so then he has met the burden
18 of proof and is entitled to a verdict.

19 On the other hand, if at the end of the trial those
20 scales are still even, or maybe they have tilted slightly
21 in favor of the Defendant, then he has not met his burden
22 of proof and the Defendant is entitled to a verdict.

23 In fact, it might help to contrast that -- if you have
24 served on a jury before, or you might have heard on TV and
25 movies the phrase, beyond a reasonable doubt.

1 That is a burden of proof too but that's a burden of
2 proof in a criminal court, and it is a much heavier burden
3 of proof. When the State accuses somebody of a crime,
4 they have to tip those scales a lot in order to prove their
5 burden in a criminal case.

6 But this isn't a criminal case. It is between two
7 parties. Nobody's going to jail.

8 There is a dispute about how much money is owed, and
9 so it is not as heavy of a burden of proof, but the Plain-
10 tiff does have the burden of proving this case.

11 The Defendant does not have to prove anything or dis-
12 prove what the Plaintiff says.

13 Now he does have a counterclaim. He is claiming that
14 he is entitled to some additional fees that he believes he
15 earned, and as to the counterclaim he does have the burden
16 of proof on that. We just reverse that because the counter-
17 claim is in essence the Defendant bringing a lawsuit against
18 the other side.

19 But as to the initial lawsuit that is brought, the
20 Plaintiff has the burden of proof. What does that mean?
21 It's a practical matter. They go first because they have
22 the burden of proof. They have to -- they get to put for-
23 ward their evidence first.

24 They get to call their witnesses first and ask ques-
25 tions of their witnesses first.

Mr. Bowen -- Opening Statement

1 covered under the agreement with Mr. Mullinax. He bas-
2 ically had to do it again, and he has billed another Seven
3 Thousand Dollars to defend against the claim that has been
4 filed by Mr. Mullinax that he is owed more money.

5 So you will see here that Mr. Jordan with the McNair
6 Firm has only billed about Thirty-two Thousand Dollars, and
7 that only about Twenty-three Thousand Dollars of that was
8 for the actual estate work that Mr. Mullinax had agreed to
9 do under the contract and the trust work that he agreed also
10 to do.

11 Now, you will also hear or see evidence from my client
12 and Mr. Jordan, and from my client's former brother-in-law,
13 Duke Lange, who is a person who lives in California -- we
14 intend to call him by deposition so he will not actually be
15 in the Courtroom. You will hear sworn testimony from him.
16 We will actually read his sworn testimony or some parts of
17 it. You will hear that the chief dispute between Ron and
18 Mr. Mullinax was as to the value of his wife's or his late
19 wife's interest in a family company that she and her brother
20 and sister owned in California.

21 That company had an agreement in place, a buy or sell
22 agreement they call it, and that it provided a formula that
23 said exactly what the company was worth if someone were to die
24 -- if one of the three were to die or if one of the three
25 wished to sell their stock.

1 Knowing that, it made me somewhat uneasy because of that
2 situation, and I thought it was prudent to be much more con-
3 servative in preserving the estate for the children, the bene-
4 ficiaries, and to sell the shares. It was a very volatile
5 situation, so I needed to be better able to preserve that
6 principle in the long term.

7 There were a couple of other that were important to me,
8 but one stood out. I recalled that in the last several years
9 in discussions between Debora and me there was kind of an un-
10 derstanding that the company was going to be eventually . .

11 MR. TAYLOR: Your Honor, excuse me. I object. I believe
12 he is testifying to something that Mrs. Orlosky told him. I
13 would object to that. Of course, under the Deadman's Statute
14 in South Carolina that would be absolutely prohibited.

15 THE COURT: Sustained.

16 MR. BOWEN: If Your Honor please, my client was testify-
17 ing about a conversation that he had with his wife during her
18 life, and I believe that he can testify as to what he under-
19 stood her wishes to be.

20 THE COURT: Let me send the jury out on this one.

21 MR. BOWEN: Thank you.

22 (Jury was excused from Courtroom to their jury room)

23 THE COURT: All right, sir.

24 MR. TAYLOR: Your Honor, my objection, of course, is that
25 the Deadman's Rule prohibits somebody from testifying about

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1 something that a deceased person told them that could benefit
2 them under the terms of a will, which is exactly what he pro-
3 poses to do now.

4 That is to say that notwithstanding what Debora said in
5 her estate documents or what she talked about in her estate
6 she had told him she wanted to see it taken over.

7 MR. BOWEN: If we could look at the Deadman's Statute,
8 Your Honor, it clearly . .

9 THE COURT: Tell me the number of the statute you are
10 referring to.

11 MR. BOWEN: It's 13 11 20, Your Honor.

12 THE COURT: Thank you.

13 MR. TAYLOR: If I could hand up in addition the case of
14 Hanahan versus Simpson.

15 THE COURT: All right. Give me a moment, please.

16 (Brief pause in the proceeding)

17 MR. TAYLOR: If Your Honor would refer to page ten in the
18 Hanahan case, the Supreme Court said the rule is founded on a
19 principal that it would be against public policy to allow the
20 witness to testify as to such matters because if the testimony
21 is untrue it cannot be contradicted.

22 The witness cannot testify as to conversations or to
23 transactions with a decedent where the testimony can affect
24 his or her interests.

25 This is directly on point here, I believe, Your Honor.

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1 THE COURT: Let me look at that as well.

2 MR. TAYLOR: Yes, sir.

3 (Brief pause in the proceeding)

4 THE COURT: What is the testimony that you intend to in-
5 troduce here?

6 MR. BOWEN: May it please the Court? Your Honor, this is
7 not something we have discussed. I don't know what his testi-
8 mony is going to be, but I believe he's going to say that it
9 was his understanding that ultimately since the two girls had
10 no active interest, no participatory role, that ultimately the
11 plan was for him to take over the whole property.

12 This is a lawsuit that involves the amount of the fees
13 that are owed, and this is not any thing that is covered by
14 the Deadman's Statute.

15 MR. TAYLOR: Your Honor, may I be heard, respectfully?

16 THE COURT: Yes, sir.

17 MR. TAYLOR: I don't want to be heard by the Court as ar-
18 guing. I am not arguing, but I just want to make sure that
19 you understand what my position would be.

20 It would be, Your Honor, that Mr. Orlosky is seeking by
21 this testimony to convey to the jury an understanding that he
22 asserts that was between he and his wife that he is saying but-
23 tresses the reason he wanted to sell the stock, and our con-
24 tention would be that he is using that to try to convince the
25 jury that the sale of the stock would be appropriate in the

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1 circumstances he advances, which absolutely has the potential
2 effect of being to his benefit.

3 THE COURT: Is your client trying in fact to say that he
4 had the right to sell the stock, Mr. Bowen?

5 MR. TAYLOR: That's where things start to break down here
6 because I don't think that he had the right to do what he had
7 wanted to do.

8 THE COURT: So your client is going to get to testify as
9 to it as well?

10 (Portion not audible on disc)

11 THE COURT: As far as this matter goes, it is not whe-
12 ther he had the right to do it, to sell the stock or not sell
13 the stock, to get the cash or not get the cash. That is not
14 going to be an issue for the jury to decide.

15 So he can testify about it because it is not an issue
16 prohibited by the Deadman's Statute, because his interests you
17 are talking about right now are not going to be something that
18 will be decided by this jury.

19 MR. TAYLOR: I just want to make sure that the record is
20 clear that it is our position that Mr. Orlosky's testimony
21 would be to try to convince the jury tht it was appropriate to
22 sell it for One Point Five Million Dollars.

23 That has a direct benefit to him because of Jay's Counter-
24 claim -- Mr. Mullinax's Counterclaim that he deserved more
25 money because the stock in the estate should have been valued

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1 at Two Point Six Million Dollars. If Mr. Orlosky could con-
2 vince the jury it was appropriate to sell the stock at One
3 Point Five Eight, that would benefit him.

4 THE COURT: It is a difficult issue but we are going to
5 try to get it right. As I understand it, what he wants to
6 testify about is not an interest that is going to be decided
7 or affected by this trial, so it is not prohibited
8 by the Deadman's Statute.

9 MR. TAYLOR: I understand the Court's ruling.

10 THE COURT: Okay, let's take a quick restroom break while
11 the jury is out. We'll take five minutes.

12 (Whereupon, the Court took a brief recess, after which
13 the matter resumed)

14 THE COURT: All right, Mr. Orlosky, if you will resume
15 the stand, we will continue with your testimony at this time.

16 You can bring the jury.

17 (Jury returned to Courtroom)

18 THE COURT: All right. Mr. Bowen.

19 MR. BOWEN: Thank you, Your Honor. May it please the
20 Court?

21 DIRECT EXAMINATION

22 BY MR. BOWEN:

23 Q. Mr. Orlosky, I believe you were explaining to the jury
24 why you decided to sell the Manor stock.

25 A. Yes, I was giving the reasons. One of the reasons, as I

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1 was discussing, was that in the year or so prior to my wife's
2 passing Manor Development Company was in the process of updat-
3 ing their buy and sell agreement.

4 The reason for that process basically was to determine
5 the future course of action in the event of the death of one
6 of the shareholders, or if one of the shareholders wanted to
7 have the company buy out their shares; to basically sell those
8 shares back to the company.

9 Throughout that process, there were discussions between
10 Deb and I frequently that the intention was for the company
11 to eventually be -- to be a company that was her brother's
12 company who was the President and would remain the main prin-
13 cipal in the operation of it, and that she and her sister --
14 that she and her sister would definitely down the road sell
15 their interests in Manor and it would be his company.

16 MR. TAYLOR: Let the record reflect that was exactly the
17 testimony I was talking about. I don't believe Your Honor ar-
18 ticulated all of what you overruled as far as our objection.

19 I just want to protect the record.

20 THE COURT: Your objection is overruled.

21 MR. TAYLOR: Thank you, sir.

22 THE COURT: Proceed.

23 A. We are talking about properties in the San Francisco area
24 for the most part, which is earthquake territory, and I just
25 wanted to be risk adverse.

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1 Upon someone's death there is an estate and this was some-
2 thing that required some administration. It was something I
3 needed to do which required some assistance.

4 Considering that he had previously created the Wills and
5 the Trust, I felt it was appropriate to give him a call and to
6 start the process of dealing with the estate.

7 Q. What was your state of mind?

8 A. Well, after eighteen years in a short period of time it
9 is pretty difficult, pretty traumatic -- a lot of pain, a lot
10 of grief, a lot of sorrow.

11 And besides me, I was dealing with two girls who at that
12 time were eighteen and fourteen, I believe, and it was diffi-
13 cult for them to go through it also. Their mother had passed
14 and the younger girl, to this day, has depression issues asso-
15 ciated with that loss.

16 I have actually enrolled her in a therapeutic boarding
17 school to try to deal with that. Even today, is it a very
18 traumatic time.

19 Q. I'm going to hand you what's been marked as Plaintiff's
20 Exhibit Number 5 and ask if you can identify that?

21 A. Yes.

22 Q. What is that?

23 A. This is the document by which Mr. Mullinax would be my
24 personal representative with the Trust.

25 Q. And is that the contract or the engagement letter?

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1 A. Yes.

2 Q. And that is between you and Mr. Mullinax?

3 A. Yes.

4 Q. Who prepared that document?

5 A. Mr. Mullinax.

6 Q. Did you have any input into what went into that document?

7 A. No, sir.

8 Q. Can you tell me from your understanding of the document
9 what the purpose of that was?

10 A. Basically that he was going to provide me with all the
11 legal services associated with the administration of the es-
12 tate and trust, and it also provided his fee schedule and in-
13 formation dealing with his fees.

14 Q. Can you please read to the jury the portion of Exhibit 5
15 where he -- where the letter tells you what you are going to
16 be charged?

17 A. Paragraph two?

18 Q. Yes, charges for legal services and out of pocket cost.

19 A. I will bill you for charges based on the time devoted
20 to the estate for a minimum of two and a half percent of the
21 value of the estate. However, there is no method by which I
22 could determine how much time will be necessary for the estate
23 administration.

24 My current hourly billing rate is Two Hundred Eighty-five
25 Dollars per hour, but may be adjusted periodically.

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1 A. A one third interest in a house at Lake Tahoe, a one
2 third interest in her father's condo and a one third interest
3 in Manor Development Corporation. Other ones say the values
4 are not required.

5 Q. Did you review that document with Mr. Mullinax?

6 A. Yes, I did.

7 Q. Did you have any questions about it?

8 A. Well, there were issues, considering that we were filing
9 a document that was very much incomplete, and I didn't under-
10 stand why you would file a document where the vast majority
11 of the values of assets were not included, and it just -- I
12 didn't understand it.

13 Q. Did you have a discussion with Mr. Mullinax about that?

14 A. Yes, I did.

15 Q. And what, if anything, did you learn?

16 A. Basically I was told that it needed to be filed within
17 ninety days of her passing. This is something which you can
18 fill in the remaining blanks later.

19 Q. During the time that you were represented by Mr.
20 Mullinax, to your knowledge, was any other document other than
21 those documents filed by him?

22 A. No.

23 Q. By the time of the end of your relationship with Mr.
24 Mullinax, was any other document filed?

25 A. No.

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1 Q. No other documents were filed with the Court?

2 A. No.

3 Q. And had Mr. Mullinax completed the work on the estate?

4 A. No, he had not.

5 Q. How much had you paid Mr. Mullinax?

6 A. Seventy-five Thousand Dollars.

7 Q. And what work on the estate to your knowledge was left
8 to be done, say from October until December of 2009?

9 A. Basically the values for the properties in California
10 and the values for the Manor shares. He was waiting for those
11 to come through.

12 Q. And tell us, if you would, approximately when those values
13 were determined?

14 A. I believe it was in November.

15 Q. And after receiving those values, did Mr. Mullinax file
16 an amended inventory and appraisal?

17 A. No, and the relationship thereafter ceased.

18 Q. You had signed . .

19 A. The one we have just discussed that was incomplete.

20 Q. I now hand you what have been marked for identification
21 as Plaintiff's Exhibits 11, 12 and 13. What are indicated on
22 these?

23 A. These are subsequent invoices that Mr. Mullinax sent.

24 Q. Can you give us the dates of those invoices?

25 A. Exhibit Number 11 is December 11th of 2009 and

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1 Exhibit 12 is January 8, 2010. Exhibit Number 13 is dated
2 February 12, 2010.

3 MR. BOWEN: Your Honor, I would move to admit Exhibits
4 11, 12 and 13 into evidence.

5 MR. TAYLOR: No objection.

6 THE COURT: Admitted.

7 (Invoices admitted into evidence as Plaintiff's Exhibits
8 11, 12 and 13 without objection, dated December 11, 2009, Jan-
9 uary 8, 2010 and February 12, 2010, respectively)

10 BY MR. BOWEN:

11 Q. Would you please tell us -- Exhibit 11 from December of
12 2009 -- would you please tell us what that says?

13 A. You want me to read it or summarize . .

14 Q. Go ahead and read it. What does the let-
15 ter say?

16 A. Enclosed please find a bill for professional services
17 rendered to December 11, 2009. Based on a revised value of
18 the estate we are including a bill for the adjusted payment
19 for services rendered. Please note that your previous payment
20 was placed into our trust account as a retainer and does not
21 satisfy the charges for the preparation of (portion not audi-
22 ble on disc)

23 Now that we have received valuations for all the property
24 the value of the estate appears to be Four Million Four Hun-
25 dred Forty-four Thousand One Hundred Dollars and Three Cents.

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1 As agreed, we have adjusted the minimum charge of two and
2 a half percent of the value of the estate (portion not audible)
3 However, we are currently requesting that you promptly remit
4 a minimum payment of Twenty-five Thousand Dollars toward the
5 balance. We anticipate significant work to be done on your
6 file within the next several days.

7 Please contact me if you have any questions. Thank you
8 in advance for your prompt attention to these matters.

9 Q. All right, and did you pay that invoice?

10 A. Yes, I did.

11 Q. And applying that payment, how much had you paid to Mr.
12 Mullinax?

13 A. One Hundred Thousand Dolalrs.

14 Q. Did you have any discussions with Mr. Mullinax about that
15 letter?

16 A. Yes, I did.

17 Q. Would you tell the jury what was discussed?

18 A. Basically, there was the issue of the value of the shares
19 of Manor stock and the number of Four Million Four Hundred val-
20 uation of the estate which was contrary to what I believed was
21 the formulation under the buy and sell agreement and what I
22 believed the value of the stock to be.

23 Therein, we started a disagreement relative to that issue
24 as well as the fees that were due him based on his calculation
25 of the estate value.

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1 Q. Did Mr. Mullinax tell you at that time or at any time
2 previous to that that you shouldn't sell the Manor Development
3 stock -- did he say to you at that time or previously that
4 your wife didn't want you to sell that stock?

5 A. No.

6 Q. Did he advise you at any time not to sell?

7 A. No.

8 Q. Is it fair to say that the only discussions you all really
9 had about the sale was how much or what the value of the com-
10 pany was?

11 A. Yes. The value of the company, what the purchase price
12 should be, was the highlight of our discussions, basically all
13 of our discussions.

14 Q. If the value of the company had been as Mr. Mullinax
15 thought it ought to be, under the agreement could you or the
16 estate have received any more?

17 A. No, I was bound by what the agreement said, the buy and
18 sell agreement, and that was what was required to be done.

19 Q. So did it matter if the value was Three Million, Two Mil-
20 lion, Four Million?

21 A. No.

22 Q. Would you have gotten any more regardless of the value?

23 A. No.

24 Q. Would there have been more to the estate or proceeds going
25 into the trust from the sale?

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1 A. No.

2 Q. Going from the sale of the shares?

3 A. No, that was a set formula.

4 Q. Now, turning to the next exhibit which I believe is Num-
5 ber 12, what is that?

6 A. This basically refers back to the December 11th bill where
7 he had asked for an additional Twenty-five Thousand. I had
8 paid him Twelve Thousand Five Hundred, and he was asking for
9 the remaining Twelve Thousand Five Hundred.

10 Q. What's the date of that letter?

11 A. January 8th.

12 Q. And when did you pay the remaining Twelve Thousand Five
13 Hundred?

14 A. I believe it was mid-January.

15 Q. And would you publish that letter?

16 A. (Witness reading Plaintiff's Exhibit 12 into the record)

17 Q. Please put that Exhibit beside Exhibit Number 11 where
18 there was a mention of significant work to be done on the es-
19 tate. To your knowledge, what additional work was done follow-
20 the December 11th letter?

21 A. I have no knowledge of any work done.

22 Q. But you paid the additional Twelve Thousand Five Hundred
23 Dollars?

24 A. Yes, I did.

25 Q. Turning now to Exhibit 13, what is that?

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1 A. A bill for professional services.

2 Q. Please publish Exhibit 13.

3 A. (Witness reading Plaintiff's Exhibit 13 into record)

4 Q. What did you understand the letter to be asking of you
5 at that time?

6 A. That I pay an additional Eleven Thousand Dollars..

7 Q. What was the Fifteen Thousand Dollar figure mentioned
8 in the letter?

9 A. I had no clue. I had no clue what it was about.

10 Q. Did you have any discussions -- did you have any concerns
11 about that letter?

12 A. Yes. He was charging me additional fees without any docu-
13 mentation. I had no idea what it was for or what it was all
14 about. Of course I did.

15 Q. The letter in Exhibit 12 was January and this one was in
16 February of 2010, is that correct?

17 A. Yes.

18 Q. Between January and February of 2010, were you aware of
19 -- well, let me back up. Between June and February, who did
20 you deal with primarily in Mr. Mullinax's office?

21 A. Mr. Mullinax himself.

22 Q. Did you ever have any dealings with his paralegal?

23 A. Yes, there were some dealings but nothing substantial,
24 no.

25 Q. Did you ever receive a bill for work the paralegal had

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1 Then Number 18 is a letter from Mr. Mullinax's office to
2 me dated March 16, 2010, and Exhibit 19 is a letter from me
3 to Mr. Mullinax dated March 19th.

4 MR. BOWEN: I would move in evidence Plaintiff's Exhibits
5 16, 17, 18 and 19.

6 MR. TAYLOR: May I have a moment?

7 (Brief pause in proceedings)

8 MR. TAYLOR: No objection.

9 (Plaintiff's Exhibits 16, 17, 18 and 19, being
10 correspondence between parties as described, were admitted in
11 evidence without objection)

12 BY MR. BOWEN:

13 Q. Please tell us about Exhibit 16, the first of these?

14 A. This is a document from Jay Mullinax to me.

15 A. And this was in response to an Email or document you had
16 sent to him?

17 A. Yes. Through this period of time we had a series of
18 Emails going back and forth between us.

19 Q. What was the substance, if you will, of your communica-
20 tions to Mr. Mullinax and his response?

21 A. I was basically trying to get the details of the Fifteen
22 Thousand Dollars in extra charges, and I was also interested in
23 in knowing more about what was going on with the sale of the
24 Manor stock.

25 I was asking him to tell us where we were with regard to

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1 the state of the Estate.

2 Q. And what was his response?

3 A. He basically said -- he requested an appointment with us
4 but prior to scheduling an appointment he demanded the Eleven
5 Thousand One Hundred Dollars.

6 Q. Going to Exhibit 17, can you tell me or identify what
7 that is?

8 A. This is a letter from me, dated March 4th.

9 Q. Would you please read to the jury what you said to Mr.
10 Mullinax?

11 A. (Reading into the record Plaintiff's Exhibit 17)

12 It concludes, please provide a list of the remaining ac-
13 tivities -- please provide a listing of the remaining activi-
14 ties that remain to be done up to and including the estate
15 closing process.

16 Please provide a detailed accounting of all expenses re-
17 lated to the handling of the Estate from day one. This account
18 should include the date of the expense, a description of the
19 activity and who performed the task. In parenthesis, attorney
20 or paralegal.

21 Please provide me with your best estimate of work involved
22 to complete all remaining activities. I request that you pro-
23 vide me with this information no later than March 15th.

24 Q. Why did you write that letter?

25 A. Basically I was not having satisfaction with Mr.

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1 Mullinax answering my questions or addressing my concerns on
2 the statements or addressing my issues about the valuations of
3 the Estate and the value of the trust.

4 And so I really wanted to get this information so that I
5 could understand what was going to happen or what needed to
6 happen.

7 Q. Did you, to your knowledge, receive copies of anything
8 Mr. Mullinax was doing?

9 A. No, I did not.

10 Q. Did you have any concerns about that?

11 A. Sure. When he sent letters to third parties such as the
12 attorneys for Manor Development and you are not provided with
13 a copy, it was pretty disconcerting.

14 He had exclusive knowledge of what was going on.

15 Q. That happened in this case?

16 A. Yes.

17 Q. Tell us about that, please?

18 A. It had to be on the sale of the shares of stock, and I
19 was in contact with my brother in law. We were going through
20 some upsetting times as relating to the communications between
21 Mr. Mullinax and his attorney.

22 And he basically said that . .

23 MR. TAYLOR: Objection.

24 THE COURT: Sustained.

25 A. He forwarded to me a letter that was sent to him and Mr.

MR. ORLOSKY ON DIRECT

1 Norstrum which did not have me receiving a copy of it.

2 Q. So you received that letter from your brother in law?

3 A. Yes, I did.

4 Q. And prior to your brother in law sending that to you, did
5 you ever see it?

6 A. No, I did not.

7 Q. Please describe your reaction when you received a copy of
8 that letter from your brother in law?

9 A. Well, there was a statement in there that I had not yet
10 decided whether I wanted to sell the shares in Manor Develop-
11 ment, and that in fact was not correct because a decision was
12 made back in December.

13 Q. Was there any other reason which caused you to write the
14 letter asking for information?

15 A. Both the valuation of the Estate and the expenses that
16 he was claiming had been incurred.

17 Q. Were you satisfied with the progress that had been made?

18 A. I would say no. I did not have a good understanding of
19 what was going on so it was hard to make a determination of
20 whether I was being dealt with satisfactorily.

21 Q. Except for the inventory or partial inventory of what the
22 Estate contained, had you received any other significant docu-
23 ments from Mr. Mullinax?

24 A. Just the partial inventory and appraisalment.

25 Q. At the time you wrote the letter to Mr. Mullinax he had

MR. ORLOSKY ON DIRECT

1 A. Well, they went into the background and were able to pro-
2 cure the letter for me, and it said there were two -- they had
3 stamped on notices for March 6th and March 7th, and they were
4 not picked up.

5 Q. What, if anything, did you do when you discovered that
6 he hadn't picked up the letter?

7 A. I was confused about it. The first thing I did was make
8 a copy of the letter for my records, and then I hand-delivered
9 it to his office.

10 I gave the letter to his secretary or receptionist.

11 Q. Did you receive a response to that letter?

12 A. Yes, I did.

13 Q. And is that response before you?

14 A. Yes. Exhibit 18.

15 Q. What is the date of the response?

16 A. March 16th, 2010.

17 Q. What, if anything, did it tell you in response to your
18 specific questions?

19 A. The response reenforced the fact that we needed to deal
20 with my minimum payments, but he provided me with no answers
21 whatsoever to the questions I gave to him in that March 4th
22 letter.

23 Q. He didn't tell you what was left to do on the Estate?

24 A. No, sir.

25 Q. He didn't tell you what he anticipated?

MR. ORLOSKY ON DIRECT

- 1 A. Aside from his letter, no. In this letter he says that
2 he disagrees.
- 3 Q. He said he was entitled to charge two point five percent.
4 Is that correct?
- 5 A. He never completed the job, so how can he charge -- but
6 yes, he said that.
- 7 Q. Let's go back for a moment to the Manor Development stock
8 during the time Mr. Mullinax represented you.
- 9 That stock never got sold, did it?
- 10 A. No, it didn't.
- 11 Q. Was it subsequently sold?
- 12 A. Yes, it was.
- 13 Q. Under what terms was it sold?
- 14 A. . .
- 15 Q. By that I mean, how much money did you get?
- 16 A. About One Million Five Hundred Eighty-five Thousand Dol-
17 lars.
- 18 Q. Did the Estate receive all of that?
- 19 A. The Estate took back a note. Basically, the Estate got
20 ten percent with a fifteen year note for the remainder.
- 21 Q. So it's going to be received by the Estate from Manor over
22 this period, is that correct?
- 23 A. Yes. I was dutifully bound to follow the buy and sell,
24 and that was the process by which the sale was to take place.
- 25 Q. In the letter you just read, you indicated that you had

MR. ORLOSKY ON DIRECT

1 A. No.

2 Q. Had you received any other itemized statement except
3 for that?

4 A. No.

5 Q. Do you know to date how much you have paid to Mr.
6 Jordan for work he did?

7 A. In terms of representing me on the Estate, Twenty-two
8 Thousand to Twenty-three Thousand Dollars.

9 Q. Do you understand that the work he did is basically
10 the same work that you had hired Mr. Mullinax to do?

11 A. Yes, and more.

12 Q. And are you paying Mr. Jordan for work he is doing in
13 regard to the claim Mr. Mullinax filed against the Estate?

14 A. Yes.

15 Q. And what is that additional amount?

16 A. I believe it is between Seven and Eight Thousand Dol-
17 lars, or in that range.

18 Q. What have you paid?

19 A. I believe I've been billed somewhere around Thirty-
20 one Thousand Dollars over the past two and a half years.

21 Q. By Mr. Jordan?

22 A. From Mr. Jordan -- yes, I have.

23 Q. Do you have an opinion as to what the value of Mr.
24 Mullinax's work . .

25 MR. TAYLOR: I object to that. I don't believe there

MR. ORLOSKY ON DIRECT

1 is any reason for him to render such an opinion as that.

2 MR. BOWEN: If Your Honor please, I think that a wit-
3 ness is entitled to testify as to what they believe the
4 value that they have is or what they perceive it to be, if
5 he has an opinion of the value of the work done by Mr.
6 Mullinax to the Estate.

7 THE COURT: I'll let him answer it.

8 A. Yes, I do.

9 BY MR. BOWEN:

10 Q. And what is that?

11 A. Having not received any detailed hours, my only frame
12 of reference is the work that Mr. Jordan did for me, and
13 Mr. Jordan essentially started at the beginning and has
14 prepared the requirements associated with the trust up and
15 to the filing, and all that we are waiting for to do is to
16 do with the claim that Mr. Mullinax has against the Estate
17 so we can complete that filing.

18 So fundamentally the work is all done, and he has
19 charged me about Twenty-two or Twenty-three Thousand Dollars
20 and has done far more work than Mr. Mullinax has done.

21 I find it hard to believe that Mr. Mullinax has --
22 the value he has put on his work on the Estate and the
23 trust, or that it could exceed that by so much.

24 Q. All right.

25 A. So taking the Twenty-two or Twenty-three Thousand

MR. ORLOSKY ON DIRECT

1 Dollar figure of Mr. Jordan, I would say maybe in the Fif-
2 teen to Twenty Thousand Dollar range.

3 Q. Now, your wife Debora remembered you in her Will, in
4 her Trust?

5 A. Yes.

6 Q. And the way she remembered you, was it necessary for
7 your income or survival (portion not audible on disc)?

8 A. No, I had a good career at Hershey. I was able to
9 invest money and save money appropriately, and I did this
10 comfortably based on my own personal investments and what
11 I had currently in the bank.

12 Q. Is it fair to say that you had a fair amount of sad-
13 ness in your life?

14 A. I think that's an understatement. First losing a
15 child and then my wife.

16 Q. Is it also fair to say that you have recently had any
17 happy events in your life?

18 A. Yes.

19 Q. Can you tell the jury what those are?

20 A. I recently was married, about three weeks ago. I
21 met a young lady about a year and a half ago and we hit it
22 off pretty well. We just got married.

23 Q. Do you believe that you have been treated fairly by
24 Mr. Mullinax or the Estate?

25 A. Obviously the Estate has not been treated fairly.

MR. ORLOSKY ON DIRECT

1 Q. Do you believe that he has been overpaid?

2 A. Certainly. I think he has been overpaid.

3 Q. If you believe you have overpaid him, how much would you
4 ask the jury to refund?

5 A. Based upon my analysis as I said before, I would say
6 Eighty to Eighty-five Thousand Dollars.

7 Q. Thank you. I don't have any more questions at this
8 time.

9 Please answer any questions Mr. Taylor has for you.

10 A. Yes.

11 MR. BOWEN: I would also move into evidence any Ex-
12 hibits that I didn't move to be admitted.

13 THE COURT: All right, sir.

14 (Following Plaintiff's Exhibits admitted in evidence
15 with no objection noted: Plaintiff's 2, Manor Development
16 Company buy and sell agreement; Plaintiff's Exhibit 5,
17 Estate engagement letter; Plaintiff's Exhibits 14 and 15,
18 Email and response to Email; Plaintiff's Exhibits 27 and
19 28, Mullinax letter and Email response)

20 THE COURT: Mr. Taylor.

21 CROSS EXAMINATION

22 BY MR. TAYLOR:

23 Q. You and I have met obviously before, sir?

24 A. Yes.

25 Q. Mr. Orlosky, can you tell the jury what you understood

MR. ORLOSKY ON CROSS Examination by Mr. Taylor

1 A. That is just common sense.

2 Q. So what we've got is a one third interest in the
3 company, along with Debora's sister and brother having a
4 one third interest, and they would be interested in getting
5 the shares back from you for the least money.

6 On the other side, you are the Trustee for the Estate
7 and you had the obligation to get the highest price you
8 could get. Is that correct? You've already agreed with . .

9 A. Yes.

10 Q. It's my understanding that you took the numbers pro-
11 vided by the President, by Duke, of the Corporation?

12 A. . .

13 Q. And he talked with his lawyers and came up with the
14 idea that One point Five Million -- One point Five Eight
15 Million would be the appropriate amount of money?

16 A. Governed by the buy and sell agreement that the share-
17 holders had signed, and that formulation was used for the
18 very purpose you are addressing, to avoid the situation
19 where there would be fighting as to the value of the Estate.

20 The buy and sell was the definitive so that the shares
21 could be sold.

22 Q. So there was no negotiation and that just was the
23 figure?

24 A. Well, actually there was negotiation in that there
25 was an error which was corrected upon the error being

MR. ORLOSKY ON CROSS

1 pointed out.

2 Q. Well, the first offer that they made for your shares was
3 One point Four Million?

4 A. That is correct.

5 Q. And there was an error in that calculation that was
6 discovered by Mr. Mullinax?

7 A. Yes, it was discovered and I give him credit for that.

8 Q. So he said, no, that's wrong; they are trying to
9 charge you a percentage of the sale, six percent, and that
10 is not in there and that's got to come out?

11 A. I give him credit for finding that but that was not
12 a negotiation. That was pointing out an error from what
13 was contained in the buy and sell.

14 Q. Well, it was a negotiation because Manor quickly said
15 . . .

16 A. They realized they made a mistake but I wouldn't
17 characterize it as negotiation, but they agreed to pay at
18 that point One point Fifty-three Thousand.

19 Q. You said you stuck by the buy and sell agreement?

20 A. Yes.

21 Q. Would you take a look at that Exhibit 2, and let me
22 see where it is in that -- Article Four -- the entire Arti-
23 cle Four under purchase price, that contains several pages?

24 A. Yes.

25 Q. And under Article Four of the buy and sell agreement

Michael Jordan -- Direct Examination by Mr. Bowen

1 DIRECT EXAMINATION

2 BY MR. BOWEN:

3 Q. Good afternoon, Mr. Jordan. Do you mind if I call you
4 by your first name?

5 A. You can do that.

6 Q. Would you please tell the jury what you do for a liv-
7 ing, sir?

8 A. I'm an attorney with the McNair Law Firm on Hilton
9 Head.

10 Q. How long have you practiced law on Hilton Head?

11 A. For thirty-nine years.

12 Q. Please tell the jury about your education and your
13 qualifications?

14 A. I went to graduate school at Pennsylvania State Uni-
15 versity in State College, Pennsylvania, and I received a Law
16 Degree from the University of Detroit in 1973.

17 In 1973 we left Michigan and moved down to Hilton
18 Head Island..

19 Q. In your practice, have you concentrated on any par-
20 ticular area of the law?

21 A. My practice is virtually exclusive to estate planning,
22 probate, trusts.

23 Q. Could you give the jury an estimate of how many es-
24 tates you have handled over the past thirty-nine years of
25 your practice?

MR. JORDAN ON DIRECT

1 A. I probably have thirty to fifty estates for admin-
2 istration at any point in time.

3 Q. And so it would be in the hundreds?

4 A. Oh, yes.

5 Q. And have you received any certifications from the
6 Supreme Court in South Carolina?

7 A. I have two specialty certifications from the South
8 Carolina Supreme Court. One is for estate planning and
9 probate law, and then a separate certification from the
10 State in taxation law.

11 Q. I hand you what's been marked as Plaintiff's Exhibit
12 Number 30 and ask if you recognize that?

13 A. Yes, this is my resume. It is on the law firm web
14 site and anybody can download it if they want to.

15 MR. BOWEN: We would move Plaintiff's 30 into evi-
16 dence.

17 THE COURT: Any objection?

18 MR. TAYLOR: Your Honor, I object in the area of rele-
19 vance. Mr. Jordan has testified as to his resume, and I
20 don't think this is of particular relevance. It should
21 not go back into the jury room.

22 THE COURT: I would agree that it should not go to
23 the jury room, but you are welcome to ask him about it
24 further.

25 MR. BOWEN: Thank you.

MR. JORDAN ON DIRECT

1 BY MR. BOWEN:

2 Q. What areas of practice do you deal with virtually
3 exclusively?

4 A. I practice estate planning and estate administration,
5 trust administration.

6 Q. And did you tell us you have been certified by the
7 Supreme Court as an expert or specialist in taxation law?

8 A. Yes.

9 Q. Have you been selected for any awards or recognition
10 in your profession?

11 A. I have been invited to attend as a member of both the
12 American College of Trusts and Estate Counsel. These are
13 invitation organizations, and I think you have to have a
14 degree or recognition in order to get invited to attend.

15 I have also had numerous recognitions as Best Lawyer
16 in South Carolina and that type of thing.

17 Q. Thank you. Can you tell
18 us how you came to be involved in the representation of
19 Debora Orlosky's Estate?

20 A. Mr. Orlosky asked to see me as to the estate adminis-
21 tration sometime in late March or early April of 2010.

22 Q. And did he come in to see you?

23 A. Yes, he did.

24 Q. At some point did you agree to represent him?

25 A. Yes, I did.

MR. JORDAN ON DIRECT

1 Q. And on what basis did you agree to represent him?

2 A. On an hourly basis.

3 Q. And what did you agree to do for him?

4 A. I agreed to complete the administration work for the
5 Estate and the related trust work, work related to the whole
6 estate administration.

7 Q. When you first heard from him, did you have an under-
8 standing of what stage the estate administration may have
9 reached?

10 A. No. We had to get into that and try to get documenta-
11 tion from Mr. Mullinax to find out exactly where he was.

12 Q. Would you please tell the jury what your hourly rate
13 is?

14 A. My hourly rate is today Three Seventy-five an hour.
15 It was Three Fifty last year and Three Twenty-five the year
16 before.

17 Q. So what would it have been in the spring of 2010?

18 A. Three Twenty-five an hour.

19 Q. And when Ron came in to see you and discuss the Estate
20 with you, did you understand if there were any problems at
21 that time?

22 A. I understood that he felt he was not having any for-
23 ward progress of the estate administration with Mr.
24 Mullinax, and he was also having trouble in communicating
25 with Mr. Mullinax.

MR. JORDAN ON DIRECT

1 He was having trouble understanding why the fees that
2 he was being asked to pay to Mr. Mullinax appeared to be
3 to him beyond the original understanding of what it was
4 going to cost for administration of the Estate.

5 Q. Did he -- did Mr. Orlosky have a lot of documents to
6 bring to you when he first met you?

7 A. No.

8 Q. At some point, did you receive a file or information
9 from Mr. Mullinax?

10 A. We received a single DVD which contained like a taped
11 copy of a few probate documents and correspondence and other
12 matters related to the beginning of the administration of
13 the Estate.

14 Q. When you received that from the Mullinax Law Firm,
15 were you able to determine what state the estate adminis-
16 tration had reached?

17 A. I would say we are basically in the preliminary stage
18 or dealing with preliminary issues. He had prepared and
19 filed a Petition to start the probate administration. He
20 had prepared and filed a preliminary inventory that had
21 very little detail in it with some line items left to be
22 determined.

23 There had been some communication about the Manor
24 Development Company stock with the folks in California,
25 but in essence no real work had been done.

MR. JORDAN ON DIRECT

1 stock?

2 A. That's correct.

3 Q. And did you prepare an analysis or a memo concerning
4 the Manor Development stock?

5 A. Yes, I did.

6 Q. I hand you what has previously been introduced as
7 Plaintiff's Exhibit Number 26 and ask if this is the memo
8 that you prepared?

9 A. Yes, I did research on this and wrote this.

10 Q. And can you tell this jury the results of your research
11 and the issues as you saw them, as well as how you resolved
12 them?

13 A. One of the questions in the administration of an es-
14 tate is whether or not the estate is required to file a
15 federal estate tax return.

16 So the principle asset of this Estate being the stock
17 in Manor Development Company, one of the questions that I
18 had to determine in my own mind was whether for estate tax
19 reporting purposes it was appropriate to take the value
20 in the buy and sell agreement as to the value of the stock
21 or whether for estate tax reporting purposes that number
22 should be ignored and some other valuation used.

23 I did research that led me to the professional con-
24 clusion that if the IRS were presented the issue that they
25 would recognize the legitimacy of that shareholders'

MR. JORDAN ON DIRECT

1 agreement; that they would choose the number -- would allow
2 the number to be used for evaluation concerning an estate
3 tax return.

4 This memo is a summary of my research.

5 Q. Let me hand you what's been marked as Plaintiff's Ex-
6 hibit Number 29 which has been admitted into evidence, which
7 is a letter dated June 14, 2010, to Mr. Orlosky from Mr.
8 Mullinax, in care of you, and ask if you remember receiv-
9 ing that letter?

10 A. I did receive that letter.

11 Q. And can you tell us what the substance of that letter
12 is?

13 A. Well, obviously Mr. Mullinax had had some correspon-
14 dance with Manor Development Company and because of that
15 interaction it did result in a corrected valuation pursuant
16 to the terms of the buy and sell agreement. That matter
17 is discussed in this letter.

18 Attached to this letter is a list of time and billing
19 entries that Mr. Mullinax submitted to Mr. Orlosky, asking
20 to be paid an additional -- it looks like Two Thousand Nine
21 Hundred Ninety-seven Dollars and some cents.

22 Q. From that letter did you derive any understanding of
23 whether he was -- Mr. Mullinax was claiming that to be ad-
24 ditional work not covered under their agreement?

25 A. Yes, he was claiming additional work was done.

MR. JORDAN ON DIRECT

1 Q. And did you have an opportunity to review what has
2 been admitted as Plaintiff's Exhibit Number 5, what is
3 called the engagement letter?

4 A. Yes.

5 Q. And did you consider whether the handling of the Manor
6 stock was something that had to be done in the course of
7 the administration of the Estate?

8 A. I believe the original engagement letter that Mr.
9 Mullinax signed with Mr. Orlosky said that Mr. Mullinax was
10 going to handle the legal work for the Estate and of the
11 trust. The engagement letter is very similar to an engage-
12 ment letter that we would use, and in the estate administra-
13 tion you have issues that come up.

14 You have assets that are easy to deal with. You have
15 assets that become problems to deal with, but, I mean, it
16 is just the course of handling the estate administration.

17 There was one engagement letter to handle the total-
18 ity of the estate administration and things to do with the
19 Estate were covered under that letter.

20 Q. I would hand you what has been previously introduced
21 as Plaintiff's Exhibit 5 and ask if that is what you've
22 been referring to?

23 A. Yes, this is the letter I've been referring to.

24 Q. Which is the engagement letter of June 23, 2009?

25 A. Yes.

MR. JORDAN ON DIRECT

1 Q. And did you prepare a response?

2 A. There were several responses back and forth.

3 Q. I show you what's marked as Exhibit 31 and ask if you
4 can identify that?

5 A. Yes, that is my letter to Jay Mullinax dated 6 15 of
6 2010. There were several back and forth letters.

7 MR. BOWEN: I would move for admission of Plaintiff's
8 Exhibit 31.

9 BY MR. BOWEN:

10 Q. Michael, did that Exhibit Number 31 address the issues
11 of the charges that Jay had imposed in his previous letter?

12 A. Yes.

13 Q. And to prepare that letter did you first review the en-
14 gagement letter?

15 A. I did.

16 Q. Can you tell the jury, please, the substance of your
17 letter, or, if you wish, you can read it?

18 A. I think the substance of this letter basically goes
19 back to Mr. Mullinax's engagement letter, and I quote in
20 here the operative paragraph, I will bill you for charges
21 based on the time devoted to the Estate or a minimum of two
22 and half percent of the value of the Estate.

23 That is the stated calculation, either time billing or
24 a percentage of some number undefined, as the term Estate is
25 undefined.

MR. JORDAN ON DIRECT

1 about the totality of the engagement, and I gave him my
2 calculation of what my opinion would be of what he would
3 be entitled to get pursuant to the agreement if he had done
4 the entire work for the administration.

5 Q. And what was your opinion of what he would be entitled
6 to receive if he had done the entire job?

7 A. If you use the calculation of two and a half percent
8 -- as I've said, the engagement letter does not decide what
9 is to be used -- but I did a calculation that I think was
10 fair. For doing all of the work from beginning to end, if
11 he had done the work from beginning to end -- he only did
12 or went about a quarter of the way through it -- I calcu-
13 late it to be Seventy Thousand Two Hundred Forty Dollars
14 and Forty-eight Cents.

15 Q. And do you believe the Seventy Thousand Dollar figure
16 you just gave would be a fair number for one hundred percent
17 of the work?

18 A. Yes. My calculation, interestingly enough, is really
19 near Mr. Mullinax's proximate calculation because he said
20 that the estimated fee would be Seventy-five Thousand
21 Dollars, because he wanted a one-third payment up front of
22 Twenty-five Thousand.

23 I feel comfortable that my calculation really supported
24 what he said it was going to cost Mr. Orlosky to administer
25 the Estate from beginning to end.

MR. JORDAN ON DIRECT

1 Q. I believe you just said that you estimated that maybe
2 Mr. Mullinax had done twenty percent of the work?

3 A. I think it's fair to say that. I think it can be
4 supported that probably a quarter of the work was done by
5 the time we took it over. I have looked at our time and
6 our billing records this morning for everything that we
7 have done as of last Friday with regards to the Estate,
8 and we have billed Mr. Orlosky a total of Thirty Thousand
9 Dollars and some change.

10 This Thirty Thousand was related to the administra-
11 tion as we took it basically at the one quarter point to
12 being ready to close.

13 We charged him Twenty-three Thousand of that on an
14 hourly basis.

15 Q. And did you do the calculation of what twenty-five
16 percent of the maximum value . .

17 A. Well, if you take twenty-five percent of Seventy Thous-
18 and.

19 Q. Let me ask you, had you performed the work that Mr.
20 Mullinax did prior to the time you took over, do you know
21 or have an idea of what your firm would have charged?

22 A. For that work, probably Five to Ten Thousand Dollars.

23 Q. And the Estate is not closed?

24 A. No.

25 Q. I hand you Exhibit Number 35 and ask if you can identify

MR. JORDAN ON DIRECT

1 that?

2 A. This is a letter from Mr. Mullinax that was received
3 about July 27th of 2010.

4 Q. And does Mr. Mullinax agree with your assessments?

5 A. No. He feels he is entitled to more money in addi-
6 tion to what he had been paid to that point, the One Hun-
7 dred Thousand Dollars.

8 Q. And is your firm able to say what . .

9 MR. TAYLOR: Your Honor, objection. This has been
10 asked and answered by Mr. Jordan now twice, I think.

11 THE COURT: I'll allow it.

12 A. I believe between Five and Ten Thousand Dollars.

13 BY MR. BOWEN:

14 Q. I hand you now what has been marked as Exhibit 36,
15 and ask if you can -- you have already identified it so
16 never mind.

17 Is that the Creditor's Claim that was filed on July
18 27, 2010, seeking Thirty-two Thousand One Hundred One Dol-
19 lars and Twenty Cent?

20 A. Yes, plus interest, and that is above the One Hundred
21 Thousand that they had already paid.

22 Q. And what is the total he's said he is entitled to
23 receive?

24 A. The One Hundred Thousand plus the Thirty-two Thousand
25 Dollars.

MR. JORDAN ON DIRECT

1 Q. I hand you Plaintiff's Exhibit 25 and ask you if you
2 can identify that?

3 A. Yes, that is the draft of an estate tax return, form
4 706, which was not required to be filed.

5 Q. Who prepared this?

6 A. My law firm prepared it basically as an exercise to
7 see whether or not we needed to be concerned about filing
8 the form.

9 Q. What did you determine?

10 A. We determined that the value of the Estate is Two Point
11 Eight Million Dollars and that we did not have a filing
12 requirement.

13 Q. Did you receive a copy of any draft form 706 previously
14 prepared?

15 A. Not to my knowledge. I understand from one of the
16 letters that they took the position that the Estate was
17 valued at Four point Four Million Dollars.

18 Q. And what is the difference between your valuation
19 and that valuation?

20 A. Mr. Mullinax has given the Estate a bottom line total
21 of Four point Four Million Dollars, and I can't speak to
22 that specifically.

23 The reality is this Estate is really very simple, and
24 there are only about a dozen different assets to be identi-
25 fied, and the only one asset of significance.

MR. JORDAN ON DIRECT

1 I can say that I think it should not be worth that
2 bottom line total. The buy and sell agreement says what
3 they are going to get for the Manor stock.

4 For there to be some magical higher number, what is
5 the purpose of coming up with that magical higher number?
6 There is no tax reason to have that magical higher number.
7 The only reason for having that magical higher number would
8 be to try to come back and say the calculation under his
9 retainer agreement -- even if you assumed that Manor Develop-
10 ment for some purposes ought to be valued at more, that
11 doesn't change the fact that there is a binding buy and sell
12 agreement; that all they're going to get is One point Five
13 Million Dollars. That is the value.

14 Q. Would placing a higher value on it benefit Mr.
15 Orlosky?

16 A. If I did consent to his calculation of what the value
17 of the Estate is for the purposes of multiplying that by
18 two and a half percent to get his fee, that would benefit
19 Mr. Orlosky -- I'm sorry, Mr. Mullinax -- I apologize.

20 It would not benefit Mr. Orlosky, no matter what the
21 decision; is only going to get One point Five Million for
22 the beneficiarries of the trust.

23 Q. Now, you stated a minute ago that you had your office
24 prepare a statement of all of your charges, all the time,
25 the billing that you had imposed on the Orlosky Estate since

MR. JORDAN ON DIRECT

Michael Jordan -- Cross Examination by Mr. Taylor (begins line 11)

1 A. . .

2 Q. Did you ever receive anything similar to that?

3 A. I'm not sure that I have. This has a comingling of
4 assets between Ron and Debora.

5 Q. Does it show any number for Ron's retirement check?

6 A. It would appear not.

7 Q. Thank you. Please answer any questions Mr. Taylor
8 may have for you.

9 A. Yes, sir.

10 THE COURT: Mr. Taylor.

11 CROSS EXAMINATION

12 BY MR. TAYLOR:

13 Q. Did I furnish you with a subpoena asking you to bring
14 your file with you today?

15 A. Yes.

16 Q. Did you do it?

17 A. Yes.

18 Q. Where is it?

19 A. The box is sitting right under the table.

20 Q. If you need to refer to it during my Cross Examination
21 would you get it?

22 A. Okay.

23 Q. Michael, would you tell the jury, please, what exactly
24 you did to analyze the appropriateness of the Manor stock
25 sale, the dollar figure?

MR. JORDAN ON CROSS

1 A. I referred to the shareholders' agreement that Mrs.
2 Orlosky signed while she was alive, which was represented
3 to me as being her signature and the signature of the
4 other parties to that agreement.

5 I believe your client agreed that the calculation of
6 the company's worth pursuant to that agreement created a
7 one third value of a Million Five. That was the value de-
8 termined under this agreement.

9 Q. So in response to my question as to what you did to
10 independently evaluate the value of the stock in the Manor
11 sale at One point Five Eight Million Dollars was correct,
12 your answer is I trust that she signed the agreement and
13 you contend that my client confirmed it.

14 Is that basically right?

15 A. That's basically correct.

16 Q. I hand you Exhibit Number 2 which is the shareholders'
17 agreement. Did you do anything to evaluate whether or not
18 the One point Five Eight Million Dollars was the appropri-
19 ate amount of money the Estate was entitled to for her
20 share of the stock?

21 A. I did the work that I felt was needed as it relates
22 to the administration of the Estate. My client said that
23 he was comfortable with that number, and that that number
24 was correct, and there was really no need to do make-work
25 or unnecessary work, or work that would not be productive,

MR. JORDAN ON CROSS

1 or work that would not benefit the Estate or the trust.

2 Q. Mr. Orlosky was indicating very clearly that he
3 believed the One point Five Eight Million Dollars was
4 appropriate?

5 A. Correct.

6 Q. Michael, what was Ron Orlosky's fiduciary duty in
7 acting as the trustee?

8 A. I'm sorry.

9 Q. Was it his duty to get the highest value he could for
10 that Manor stock?

11 A. Well, obviously as the personal representative of the
12 Estate and as the trustee he had a fiduciary duty to ad-
13 minister the Estate and trust and to try to both preserve
14 and protect the assets of the Estate.

15 Q. Did any of that that you just said address my ques-
16 tion about his duty to get the highest price for that Manor
17 stock?

18 A. I believe he had a duty to look at the investments,
19 all the assets of the Estate, and to try to handle it for
20 the best interests of the Estate.

21 Let's assume that the trust held a block of Wachovia
22 Bank stock. I've been told a couple of years ago probably
23 the people in North Carolina that held some of that stock
24 would have said the Wachovia Bank stock is gold; we can count
25 on it, but now you can't find Wachovia Bank stock any

MR. JORDAN ON CROSS

1 place.

2 I'm just saying you have to look at the fiduciary de-
3 cisions in an estate or trust as to whether or not to sell
4 and asset or to keep an asset, and whether or not if you
5 sell the asset -- whether the offer that is on the table
6 is the best offer.

7 I believe Mr. Orlosky felt comfortable that the offer
8 on the table or the amount set forth in the shareholders'
9 agreement, One point Five Million Dollars, was what he
10 could get for the stock.

11 Q. Michael, I hand you Exhibit Number 2, which is the
12 shareholders' agreement. We have heard several times today
13 that the amount in the shareholders' agreement was One point
14 Five Million.

15 Would you please tell me where that is in that share-
16 holders' agreement?

17 A. There is a procedure for assessing value in the share-
18 holders' agreement, and the accountant for the company I
19 believe prepared the valuation or initially prepared that
20 for Mr. Mullinax and then prepared a revised one.

21 That is where you would come up with the total value
22 of the business in accordance with this agreement and
23 the one third.

24 Q. So your testimony basically is that Mr. Orlosky re-
25 lied on the accountant for the company, who had an interest

MR. JORDAN ON CROSS

1 in selling the stock for the cheapest possible amount?

2 A. No, I think that my testimony was that Mrs. Orlosky
3 entered into an agreement that would bind Ron should he
4 want to sell, and they agreed upon how they would prepare
5 the calculation at the time it was needed, and that the
6 accountant for the company was going to prepare or put an
7 actual dollar figure to it.

8 At the time the shareholders entered into this agree-
9 ment they recognized the value of the business might go up
10 or it might go down, and, okay, we need to have a formula
11 or a calculation for the value should it be needed.

12 Q. Did it cross your mind with thirty-nine years of ex-
13 perience basically to recommend to Mr. Orlosky that perhaps
14 an outside independent accountant should review those num-
15 bers that were given to Mr. Orlosky or given to the Estate
16 by the accountant who worked for the corporation?

17 A. I don't think there is any question about their re-
18 vised calculation that was prepared by the CPAs for the
19 corporation.

20 In fact, in one letter I believe Mr. Mullinax said he
21 was responsible for the revised calculation which raised
22 the number by Two Hundred Sixty-one Thousand Dollars, I
23 believe. He actually said he was responsible for getting
24 that raised.

25 Q. From your testimony, that is the extent of the work

MR. JORDAN ON CROSS

1 that you did in analyzing the appropriateness of the One
2 point Five Eight Million, but you did undertake to do
3 research and make conferencing calls to California in or-
4 der to offer a number of One point Five Eight as an appro-
5 priate price?

6 A. No, my memorandum and the research I did related to
7 that was to the point of whether or not -- if an estate tax
8 return were to be filed, would the Internal Revenue Ser-
9 vice recognize the buy and sell agreement price.

10 Q. In other words, it might not have been an actual fair
11 market value there but you wanted to make sure the One
12 point Five Eight would be recognized by the IRS?

13 A. Yes.

14 Q. And, in fact, you billed five and a half hours for
15 a Seventeen Hundred and Eighty-seven Dollar figure on May
16 10, 2010?

17 A. Correct. I think there is another time in there for
18 the firm where another lawyer, Mr. Jolly, looked at this
19 concern.

20 Q. Your concern was whether or not they could get it past
21 the IRS?

22 A. Not really, but that that was the most the trust could
23 have gotten under the terms of the buy and sell agreement.

24 Q. I have yet to have anybody tell me there was an error
25 in the CPA's calculation. You didn't look at it, did you?

MR. JORDAN ON CROSS

1 A. No, sir.

2 Q. Do you know approximately how many billable hours a
3 year you have averaged over the last five years?

4 A. It would be a guess -- probably in the neighborhood
5 of fifteen hundred a year.

6 Q. So that would be probably about Five Hundred to Five
7 Hundred Fifty Thousand a year?

8 A. That's probably a gross number, yes.

9 Q. Have you had the experience, Michael, of any lawyer
10 taking a stand and questioning or looking into your bills?

11 A. No.

12 Q. Have you had the experience at times of clients com-
13 plaining about their bills?

14 A. Oh, absolutely. Especially in this field. It is
15 common and I have had a client to argue about it.

16 Q. And I believe you told me at deposition that if you
17 take on an estate and begin to do this administrative work
18 it is kind of like peeling back an onion, is that correct?

19 You don't really know what you're going to find and
20 what you're going to get?

21 A. That's a fair analogy. The caveat I would give you
22 to that is that in this case Mr. Mullinax started doing the
23 estate planning work sometime shortly before Mrs. Orlosky
24 passed away, so he knew he would probably be called upon to
25 develop that process. So I think he certainly did not

MR. JORDAN ON CROSS

1 come in cold to the probate administration.

2 Q. Michael, your firm, the McNair Firm, only takes cases
3 like this by the hour. Is that correct?

4 A. That is generally correct.

5 Q. Would you tell the jury in general what is the neces-
6 sary and appropriate thing that would have to be done to
7 open up and proceed to take on and take through an estate
8 such as Debora Orlosky's?

9 A. The first question you have to ask the surviving
10 spouse or the personal representative is what are the assets
11 that are there, and then comes identifying what those assets
12 are. Then you take those assets and determine the value
13 of the estate at the date of death.

14 You determine any debts or obligations that need to
15 be satisfied, and then ultimately you deal with the Probate
16 Court on the administration in accordance with the will
17 and trust.

18 Q. Is it, generally speaking, your paramount goal to effect
19 the desires and the wishes of the decedent?

20 A. Yes.

21 Q. In fact, on your web site one of the main things that
22 you acknowledge is about this?

23 A. Yes.

24 Q. Michael, did you have anything to do with writing the
25 web site?

MR. JORDAN ON CROSS

1 Q. Have you ever filed any gift tax returns for the
2 Estate?

3 A. No.

4 Q. Are you familiar with the basic parameters under IRS
5 230? IRS circular 230?

6 A. Yes.

7 Q. What are they?

8 A. Circular 230 is a Treasury Department circular that
9 details the standards of practice if you practice and do
10 work in front of the Internal Revenue Service.

11 Q. And what standards are enforced upon a lawyer as far
12 as truthfulness and candor in presenting the financial
13 statements that are made?

14 A. I'd have to go back to read circular 230 to tell you
15 what the requirements are. Every government document is
16 very -- you basically have to be straight-up when you file
17 or do a form 706 with any type of evaluation of stock.

18 Q. Are you making a representation at that point in time
19 that you as a practicing attorney with the IRS -- you're
20 authorized to practice . .

21 A. Yes.

22 Q. Under 230 are you making a representation by filing
23 any documents with the IRS you are indicating in good
24 faith them to be correct?

25 A. Form 230 I think requires me to exercise appropriate

MR. JORDAN ON REDIRECT Examination by Mr. Bowen

1 Dollars, and if you add some number for the work Mr. Mullinax
2 from the beginning -- if you add somewhere in the -- say,
3 another Ten Thousand, so if I were looking at that total
4 thing I would say the bill for the work he did on this Es-
5 tate -- we probably would have had a bill of somewhere around
6 Thirty Thousand Dollars.

7 That would be okay and be reasonable.

8 Q. And was it reasonable for Mr. Mullinax to want to be
9 paid a Hundred or a Hundred and Thirty-two Thousand Dollars
10 based on the work that had been done?

11 A. I don't think it was reasonable.

12 Q. Now, Mr. Taylor asked you about whether or not you dis-
13 cussed with Mr. Orlosky the wishes of his wife or whether it
14 was important for him to carry them out.

15 Now, did you have any -- did you review the trust and
16 the Estate?

17 A. I did review the trust in the administration of the
18 Estate, yes..

19 Q. Do you remember any provision in the trust regarding
20 the sale of the stock?

21 A. There was a provision back in the administrative set-
22 ting that was basically an attempt to hold the trustee
23 harmless in his fiduciary duty, and I'm clearly doing a
24 short paraphrase of the clause, but something like the
25 trustee is empowered to continue, even if it is not a

MR. JORDAN, ON REDIRECT

1 prudent thing to do, even if it is too great a concentra-
2 tion, if it is not providing appropriate income he can sell.

3 The other part of the thing or the back part says
4 this is not a requirement if facts change or circumstance
5 change. That the stock can be sold, clearly.

6 Q. And you, in fact, assisted in the completion of that,
7 did you not?

8 A. Yes, I did.

9 Q. Did you think it was a prudent thing to do, what he
10 was trying to do, to sell the stock?

11 A. Yes, and this was a prudent number. If you value the
12 Manor Development stock and the two pieces of real estate
13 in California, probably they represent somewhere between
14 -- if you value the Manor stock and the fractional interest
15 in the two pieces of real estate in California, probably
16 they represent somewhere between seventy-five and maybe as
17 high as eighty percent of the total value of the Estate and
18 trust.

19 This was a prudent number, and I think it would be
20 imprudent for a trustee to retain such a concentration of
21 assets without diversification. I think that would scare
22 me if I were the trustee.

23 Q. So from what you just told me, not only did you be-
24 lieve it was prudent for him to sell the stock, but it
25 would have been imprudent not to do so?

MR. JORDAN ON REDIRECT

1 A. That's what I said.

2 MR. BOWEN: I don't believe I have any further ques-
3 tions for Mr. Jordan.

4 RECROSS EXAMINATION

5 BY MR. TAYLOR:

6 Q. How often do you recommend to your clients to sell
7 family assets such as a closely-held corporation?

8 A. Not often, no.

9 Q. Is it just in this particular case because of these
10 circumstances?

11 A. I may not see it ever again. I don't know.

12 Q. You are not asserting that all family businesses are
13 something that a trustee should sell?

14 A. No.

15 Q. Michael, in this case, you don't really know anything
16 about Manor other than what is in these documents that
17 you looked at, correct?

18 A. Correct.

19 Q. You don't know the history?

20 A. Right.

21 Q. And you don't know exactly what they own or what
22 the last five years have brought in as far as revenue?

23 A. Right.

24 Q. All of that being said, Michael, you really can't tell
25 me, can you, that you would make a recommendation to sell

MR. JORDAN ON RE-CROSS Examination by Mr. Taylor

1 over a valid trust that was preferred to be kept on that
2 basis?

3 A. I would hate to have a trust that was heavily invested
4 in one stock because the family had always been connected
5 and they hadn't become reckless, but with the professional
6 trustees I deal with, some being small banks, some of them
7 have very fixed rules on concentration, and most of the time
8 those rules are probably no more than five percent or ten
9 percent of the value of any individual asset. It is pru-
10 dent to diversify.

11 Q. It is not unusual though to see in a family where a
12 parent or grandparent in their testamentary devices say I
13 want my child to have the benefit of the family business?

14 A. Yes.

15 Q. It happens all the time, doesn't it?

16 A. Yes.

17 Q. You talked about an incident a few minutes ago, but
18 how about the case with some Apple stock. Would you have
19 recommended selling that just because you thought there
20 was a high concentration of it?

21 A. Well, if I had I'm sure I would have wished to have
22 kept it. I use an investment manager for what few pennies
23 I have invested and he sold some of my Apple stock a couple
24 of years ago, and he said, you know, it got too high of
25 percentages so he pared some of it down. I would have

Discussion as to Charge

1 charges, I would have an additional request. I don't know
2 if you would find it appropriate or not, Your Honor, but
3 it is part of Ervin's (inaudible) case on accountability
4 where the jury found as they did, an instruction to the
5 jury on unjust enrichment. I brought a copy of the case
6 which I'd hand up as well.

7 THE COURT: All right.

8 MR. TAYLOR: On behalf of the Defendants, as far as
9 the jury charges a couple of things, and looking at your
10 proposed form, I would ask that the Court consider on the
11 first page, the second box where it says, we, the jury,
12 find for the Defendant against the Plaintiff -- I would
13 suggest that you strike against the Plaintiff as I think
14 it might be a little confusing, and more so than if you
15 just would say, we, the jury, find for the Defendant.

16 Then in the second box it says, we, the jury, find for
17 the Plaintiff.

18 This is just a suggestion and we'd ask that you con-
19 sider that.

20 As to the jury charges, Your Honor, there is a typo-
21 graphical error on page two. If you read the first para-
22 graph, it should be comma and . .

23 THE COURT: Yes.

24 MR. TAYLOR: Finally, Your Honor, I would request on
25 the last page -- on behalf of the Defendant, I think it

1 can be made a little more clear in two and three if they
2 were changed to read, keeping what you said in your instruc-
3 tion as to the measure of damages be given only for your
4 guidance in the event you should find in favor of the Plain-
5 tiff. I would suggest that you add against the Defendant
6 or find for the Defendant against the Plaintiff, by a pre-
7 ponderance of the evidence

8 I want to make sure they don't think or infer from
9 your charges that you are only suggesting they can find for
10 the Plaintiff, and I think they could think that was some-
11 thing that was intended when you just say for the Plain-
12 tiff.

13 I think instead of saying any damages you may award
14 in this case must be based on evidence exhibited in the
15 case or based on your analysis of damages, if any, sustained
16 by one party as a result of the other party's wrongdoing.
17 This is instead of sustained by the Plaintiff as a result
18 of the Defendant's wrongdoing.

19 THE COURT: Give me a minute.

20 MR. TAYLOR: Judge, I would . .

21 THE COURT: I think I know what you're saying. Judge
22 Anderson's charge. Section 19.7 relating to two contracts
23 executed at different times.

24 MR. TAYLOR: The April first and and June 23, 2009,
25 engagement letters we believe must be read together.

1 MR. BOWEN: If Your Honor please, I'm taken aback by
2 that. I don't know that I object, but I might need to
3 ask Your Honor at the end of the trial to consider the award
4 of attorney fees.

5 The April letter provides for the award of attorney
6 fees and the June letter does not.

7 THE COURT: I think they protect two different subject
8 matters to begin with. One is the preparation of a will
9 and trust.

10 MR. TAYLOR: Which engagement Mr. Mullinax will tes-
11 tify was completed and paid for. The other has to do with
12 events following her death.

13 MR. BOWEN: I think it would confuse the jury to ask
14 them to consider both of those things. However, if Your
15 Honor wants to, I would ask you to consider attorney's
16 fees.

17 THE COURT: Okay. Anything else?

18 MR. TAYLOR: Not from the Defendant.

19 MR. BOWEN: No, sir.

20 THE COURT: Then let's bring the jury in.

21 MR. BOWEN: Your Honor, we are going to call Mr. Duke
22 Lange by way of deposition.

23 (Discussion off the record between counsel as to who
24 will read the deposition)

25 MR. TAYLOR: Your Honor, the rules provide that I be

Motions -- Discussions between Counsel and Judge

1 matter on the grounds that all of the necessary elements
2 of contract have been proven, as has the breach, as well
3 as the fact that the Plaintiff has proved its claim for
4 unjust enrichment based on the evidence that has been sub-
5 mitted so far.

6 Thank you.

7 THE COURT: Mr. Taylor?

8 MR. TAYLOR: I don't really know how to address a di-
9 rected verdict by the Plaintiff at this point. Obviously,
10 we have not had the opportunity to submit our evidence.

11 I do not dispute the fact that certain facts are in
12 evidence at this point in time, but clearly we have a de-
13 fense to put up. Mr. Mullinax needs to be heard.

14 On the directed verdict motion by the Plaintiff, it
15 would be inappropriate at this time.

16 THE COURT: I'll let you put your case up and he can
17 renew his motion.

18 Do you have any motions you want to make?

19 MR. TAYLOR: I do, Your Honor.

20 THE COURT: Okay.

21 MR. TAYLOR: First off, can we point out for the re-
22 cord the Court's earlier ruling as to Count Three of the
23 Amended Complaint which is Count Two, the unfair trade
24 cause of action.

25 I just want to make sure the record is clear that Your

1 Honor had informed us off the record that we were not going
2 to be going forward that issue.

3 I would move for record purposes for directed verdict
4 as to Count Two of the Amended Complaint.

5 THE COURT: I grant you that I did forget to put that
6 on the record at the start of the trial, but I have granted
7 a directed verdict in favor of the Defendant on the unfair
8 trade practices cause of action.

9 I did make that ruling and told you I would put that
10 in the record when we started.

11 MR. BOWEN: If Your Honor please, I think you granted
12 -- I don't think it was a directed verdict.

13 THE COURT: I granted summary judgment.

14 MR. TAYLOR: To continue, the Defendant would move for
15 a directed verdict as to the third cause of action, the re-
16 quest for quantum meruit, in the Complaint. We believe
17 that the evidence has shown that there is clearly a con-
18 tract, and that is the nature of where we are going to the
19 jury.

20 It is a breach of contract claim that was brought un-
21 der quantum meruit instead of breach of contract. This is
22 a claim for a quasi contract and was inappropriate when it
23 came up in earlier motions and when it came up in Chambers.

24 You had asked to amend your Complaint. I haven't
25 seen it, and I don't think you can interchange or

1 quantinize or adjust for that change to unjust enrichment,
2 and I don't think it does raise quantum meruit or unjust
3 enrichment.

4 MR. BOWEN: If Your Honor please, I believe that it
5 also requests relief for unjust enrichment, and to the ex-
6 tent that it doesn't I'd like to conform my pleadings to
7 . . .

8 THE COURT: It sounds like a housekeeping matter, and
9 it should be unjust enrichment, not quantum meruit.

10 MR. TAYLOR: It still raises the same issues. It's
11 a quasi contract, not a contract.

12 THE COURT: It's a point I'm going to do a bit of re-
13 search on during our recess. I'll deny it right now and
14 will allow you to renew it at the end of the trial, but I
15 agree in part.

16 I need to do a bit more research on it.

17 MR. TAYLOR: If you would look at the charge and what
18 I've presented along with the case, I'd appreciate that
19 too.

20 THE COURT: That is part of my lunch-time reading.

21 MR. TAYLOR: As a final matter, the Defendant would
22 move for a directed verdict as to the primary allegations
23 of the Complaint based upon the defenses tendered.

24 First, as to the estoppel claim, I believe we have
25 shown that the valuation provided by the Plaintiff disturbed

1 -- the information provided by the Plaintiff disturbed the
2 gross estate value, and the Plaintiff is estopped from al-
3 leging or attempting to prove valuation that varies.

4 I would remind the Court that Mr. Orlosky did identify
5 what is in the record as Defense Exhibit 1 which includes
6 the Manor Development stock valuation at Two point Six Mil-
7 lion Dollars.

8 That is a part of the Complaint and we, therefore,
9 move for directed verdict on that.

10 We also have raised a waiver argument, and we would
11 move for directed verdict on the premise that the Plaintiff's
12 Complaint should be dismissed because it is a violation of
13 Rule 13 A of the Rules of Civil Procedures, in that the
14 allegations of the Complaint arose out of a transaction or
15 occurrence that was the subject matter of an original
16 Probate Court file, Case Number 2009 ES 07 5112. It was
17 a mandatory counterclaim.

18 We move for directed verdict on all of those grounds,
19 Your Honor.

20 MR. BOWEN: May it please the Court? Addressing the
21 second argument, the Probate Court dismissed that Complaint
22 and transferred the matter or removed the matter to the
23 Circuit Court.

24 In other words, the Complaint was filed in the Probate
25 Court. I can give you that information.

1 There isn't any waiver for a Rule 13 argument.

2 As to the estoppel argument, Your Honor, I think the
3 evidence shows many different valuations and many differ-
4 ent numbers were put in front of Mr. Mullinax to be consid-
5 ered, and by Mr. Orlosky and others.

6 So I don't think that would be an appropriate ground
7 at this point.

8 THE COURT: I'm not sure I understand your estoppel
9 argument. Do you want to elucidate on that a little bit
10 more?

11 MR. TAYLOR: Your Honor, the estoppel argument is
12 premised entirely on the representations being made by Mr.
13 and Mrs. Orlosky that the Manor stock was valued at Two
14 point Six Million Dollars.

15 That's what Mr. Mullinax, I think by anybody's obser-
16 vations, based the Two point Five percent of the valuation
17 which is the specific number that Mr. Jordan reduced to One
18 point Five.

19 In other words, Your Honor, if the Two Point Six Mil-
20 lion Dollars is used, then Mr. Mullinax's bill at Two
21 point Five percent is accurate, which we argue is what they
22 represented to him and what he had to rely upon when he
23 signed the contract for the representation.

24 MR. BOWEN: He kind of ignores the fact also that
25 their position is not all based on valuation and should have
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1 been based on hourly. It looks like Mr. Mullinax was
2 charging valuation and hourly.

3 It was kind of like the maximum that no one should
4 have charged.

5 MR. TAYLOR: If, as it sounds, there is still some
6 question in your mind, Judge, about it, I would simply reer
7 you to Exhibit 5 under charges for legal services -- I
8 will bill you for charges based on the time devoted to
9 the Estate or a minimum of Two and one half percent of the
10 value of the Estate.

11 That is the language we were just talking about, and
12 I believe Mr. Mullinax will certainly speak to this more.
13 As I have said, if you include the Two point Six Million
14 Dollar figure represented by the Orloskys as being the
15 value of the Manor stock, that would be accurate.

16 THE COURT: Those motions are denied.

17 MR. TAYLOR: Nothing further from the Defendant.

18 THE COURT: Okay, we will come back at one thirty.

19 (Discussion between counsel and the Court concerning
20 scheduling time off the record)

21 (Whereupon, the Court stood in recess until 1:30
22 P.M.)

23 THE COURT: Okay, are we ready to go?

24 (No audible response)

25 THE COURT: Bring in our jury, please.

Mr. Mullinax -- Direct Examination by Mr. Taylor

1 (Jury returned to Courtroom)

2 THE COURT: Okay, folks, welcome back.

3 We're going to resume now with the Defense calling
4 their first witness.

5 Mr. Taylor?

6 MR. TAYLOR: We'd call Jay Mullinax to the stand.

7 JAY MULLINAX, being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TAYLOR:

11 Q. Jay, good afternoon. Would you begin by telling the
12 jury a little bit about yourself? Where you were born,
13 what did you do in your young life and everything?

14 A. I was born in Anderson, South Carolina, the upstate
15 country of South Carolina.

16 I was raised here in South Carolina and in North Carolina
17 as well my entire life, and then later on went to college.

18 Would you like me to continue?

19 Q. I would. Tell us where you went to college.

20 A. I went to a small local arts college (portion not aud-
21 ible on disc) and Clemson University. I graduated with a
22 commission in the United States Army from Clemson Univer-
23 sity.

24 I went into active duty following that, and in 1989
25 I was trained in the Army to help with estate administration
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1 for soldiers and their families, those that were deceased
2 in the line of duty.

3 My office was in charge of training individuals who
4 would assist families for a year or two during the estate
5 administration process of soldiers.

6 I was also trained by the IRS while in the military,
7 around 1990, and I have been authorized to practice for
8 the last twenty-one years or so as someone who could rep-
9 resent individuals before the Internal Revenue Service.

10 After my initial active duty with the Army, I went to
11 law school. I went to Richmond University in Virginia where
12 I graduated with a Juris Doctor Degree, a law degree, and
13 I also got a Masters in public policy.

14 I finished law school a semester early because I
15 wanted to go on for further training, specifically in estate
16 planning. I went to the University of Miami School of Law
17 in Florida, which is the only institution that awards a law
18 degree specifically in estate planning. It is a second de-
19 gree in law for attorneys.

20 Q. Jay, let me ask you about that. You heard Mr. Jordan
21 talking yesterday, and I want to make sure that I under-
22 stand. You had your regular law degree from Virginia?

23 A. Yes.

24 Q. And as to your second degree, when you went to Miami
25 did you focus on any one area?

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1 A. Yes, exclusively in estate planning. It's called an
2 LLM. It's a Masters of Law in estate planning. There are
3 approximately fifteen in the State of South Carolina, about
4 fifteen of the attorneys in South Carolina with degrees in
5 estate planning.

6 Q. Jay, when did you graduate from Miami?

7 A. That was in 2001.

8 Q. Did you take the South Carolina Bar?

9 A. I did and passed it.

10 Q. And where did you begin your practice?

11 A. Right here in Hilton Head. However, I did practice
12 in Virginia prior to that after and while in law school.
13 In Virginia, they have a very unique rule there, that if you
14 take two national tests and do certain course work and do
15 well in the course work you can actually practice law in
16 Virginia prior to your graduation from law school, which I
17 did.

18 I was authorized to practice law subsequent to that,
19 and I was subsequently authorized to practice in New York
20 and Maryland as well. There were specific estate planning
21 cases where I was asked to participate because there were
22 some sophisticated estate planning matters.

23 So I got admitted by their State Supreme Courts to
24 practice in those two states as well.

25 Q. Jay, and you did practice mainly in South Carolina as

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1 Paragraph two of my engagement letter says with regard
2 to what is necessary and appropriate that I'm going to bill
3 you a minimum of two and a half percent of the value of
4 the estate, because I knew generally what was going to be
5 required under South Carolina law, after pouring through
6 the eight hundred pages of the South Carolina Probate Code
7 and working with it for years.

8 After working with it and changing it for the South
9 Carolina Legislature, I am very familiar with what is ne-
10 cessary and appropriate for the administration of an estate
11 and in this case I knew generally the minimum I could
12 charge.

13 In this case to fulfill the obligations under South
14 Carolina law, it was approximately two and a half percent
15 based on the information that I had at the time I met with
16 the client, so that is what I did.

17 Q. On June 23rd, when this letter was signed by you and
18 Mr. Orlosky, did you have a discussion with Mr. Orlosky and
19 did you all discuss this fee?

20 A. Yes, and at this point we were absolutely certain as
21 to the value of the Estate and that was used as a guide,
22 because this was information Mr. and Mrs. Orlosky had given
23 me, and it was used as a guide to calculate the fee on.

24 Let me say at this point that I attempted to ask for
25 less fee than what the two point five percent might be,

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1 because I wanted to make sure that the values given to me
2 were roughly accurate.

3 So I billed for Twenty-five Thousand Dollars in order
4 to commence the estate administration.

5 I'll be happy to explain to you why I did that.

6 Q. I would like for you to do that and would you also
7 explain the issue of a retainer?

8 We've heard a lot of testimony about how you billed
9 Twenty-five Thousand Dollars every week or so. Tell the
10 jury what happened in regard to the billing?

11 A. At this point in time . .

12 Q. Answer the first question first. When you accepted
13 the case, did you intend to complete the work?

14 A. Yes. When you administer an estate for a client in
15 the State of South Carolina, even if your client can't pay
16 your bills, a lot of times the Court will not allow you
17 to be relieved of your duties. You're required to continue.
18 In some cases an estate may take two to three years to
19 administer. That doesn't mean that work is taking place
20 on it every day. Sometimes you are just waiting for the
21 Court to respond to things, and there are creditor claims
22 and things of that nature.

23 I have cases right now, as I'm sure other attorneys
24 do, where the Probate Court will not allow you to be re-
25 lieved of your duties and basically you are working for

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1 running down certain scenarios for the administration of
2 estates in those specific courts.

3 There are some courts in which you can ask for addi-
4 tional things and we identify those of the forty-six. We
5 have a page that indicates items that have to be filed in
6 estate administration for a particular Probate Court.

7 Q. And considering your work that you did perform before
8 your services were terminated by Mr. Orlosky, I want to
9 refer to engagement letter number one.

10 It says the following list includes a list of services
11 that may be provided. A, prepare and complete all notices
12 of appointment of personal representative and other notices
13 with respect to creditors as are required by the laws of
14 the State of South Carolina in the court having jurisdic-
15 tion of the estate. Did you do that?

16 A. Yes, I did.

17 Q. And what did that entail?

18 A. Well, I'd like to refer to the letter or my copy of
19 it.

20 Q. Okay.

21 A. With regard to Paragraph A as it relates to the ap-
22 pointment and other notices, when you are going to probate
23 an estate in South Carolina you are required to provide a
24 Petition which was filed by my office in the Estate.

25 Q. Under 4 A and 4 B of the Petition?

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1 A. Yes. With regard to creditors, when you open or pro-
2 bate an estate, you are required to provide that. It lists
3 the actual heirs to the estate and you also have to list
4 those that would have gotten property if there had not been
5 a Last Will and Testament or a Trust.

6 Q. And is that called intestate?

7 A. Yes, and you are required then under the laws of South
8 Carolina -- you have to identify them within thirty days
9 of the fact that an estate has been opened, and you have
10 to mail that out with the notices to those particular in-
11 dividuals, and we have that.

12 Additionally, we had to provide notices to the credi-
13 tors in accord with the probate handbook. You have to also
14 identify people you don't know about and we had what we
15 call publication in South Carolina.

16 So we filed those notices in the newspaper. We noti-
17 fied creditors by the paper and in Beaufort County the Court
18 actually sends that to the newspaper in Beaufort County that
19 is of record, the Beaufort Gazette or the Island Packet or
20 both, and that takes care of that notice.

21 However, some county courts don't do that so you have
22 to do it yourself.

23 In addition to that, we also had to provide notice
24 under the trust instrument in South Carolina within sixty
25 days. You also have to notify beneficiaries of the trust

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1 that someone holding the trust has passed away, and that is
2 what we call irrevocable.

3 In other words, we have to notify them and they have
4 a right to certain information. So one was sent to Mr.
5 Orlosky since he was a beneficiary under the trust, and we
6 also sent one to Mrs. Orlosky's daughters, their two
7 daughters.

8 One of Mrs. Orlosky's daughters is a minor. She was
9 under eighteen at the time, and so we sent that notice to
10 her parent, Mr. Orlosky.

11 In other words, that notice went to him and we did
12 prepare that shortly sometime after the estate probate
13 was opened, one under the Will and one under the Trust
14 which is totally different, to describe what their rights
15 are under the trust.

16 Q. All right. Jay, Paragraph B says you will assist the
17 personal representative in preparing a complete inventory
18 of all assets of any kind and nature that are subject to
19 probate, and any non-probate sets which as life insurance,
20 retirement benefits, and all other assets.

21 Did you do that for the Debora Orlosky Estate?

22 A. We sure did.

23 Q. What did you do?

24 A. We sent letters to all of the financial institutions
25 and a part of it was based on the spread sheet showing the

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1 assets that was just shown. We gathered account information
2 from these different entities. Schwab, for example, and
3 there were other entities which are described in the cor-
4 respondence sent to all these different places, because it
5 is the responsibility of the personal representative under
6 South Carolina law.

7 One responsibility the personal representative has
8 under South Carolina law is to marshall the assets of the
9 estate or to gather up the assets and discover their values
10 specifically.

11 Specifically that is under Section 62-3-706. We had
12 to file what is called an inventory and appraisalment with
13 the Probate Court within ninety days of opening up the es-
14 tate and getting the personal representative appointed.

15 So whatever information we had available within those
16 ninety days we were required under South Carolina law we had
17 to provide to the Court.

18 Section 62-3-708 actually says if you get this infor-
19 mation later you have to update the Court with this addi-
20 tional information.

21 We didn't have all of this information within ninety
22 days because it wasn't provided to us by the Manor Develop-
23 ment Company so we intended to supplement that once we had
24 all the values later on, but we did file the inventory and
25 appraisalment and that as within ninety days.

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1 Q. I hand you what's marked Defendant's Exhibit 79.

2 Can you tell us what these are?

3 A. These are letters or correspondence with various en-
4 tities with regards to information for the estate which is
5 required of the personal representative.

6 Q. And are those required under South Carolina law?

7 A. Yes. For example, I sent one to the Bank of America,
8 Harborside Community Bank, and many others. One thing I
9 would mention is that each asset is not identical certainly
10 so the valuation and the way you value assets are very
11 unique to a particular asset.

12 I'll give one example in this particular State or maybe
13 two -- a CD. Everyone is familiar with a CD. Certificates
14 of deposit usually come due on a particular day, so if you
15 buy a CD and it is a year before it comes due, there is
16 interest that has been accumulating on that certificate of
17 deposit.

18 When someone dies in the year before that is to be
19 redeemed, there is a value on that particular day for that
20 particular certificate of deposit. So we had to write to
21 the bank as we needed to know what was the interest and
22 principal on those CDs were, for example, on June 17, 2009.

23 For example, if you had a Fifty Thousand Dollar CD,
24 we don't need the Fifty Thousand Dollar number. We need
25 the Fifty Thousand plus the interest that has accumulated.

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1 Another thing I'll mention is because each item, like
2 I said, is very unique, they have what they call a 529
3 plan which is an educational plan, and I need to refer to
4 my letter here and who I wrote to about that.

5 It is August 27th that I wrote about what Mrs. Orlosky
6 maybe had set up for Mr. Orlosky under that 529. This
7 did not have to appear on the federal estate tax return,
8 but we still had to identify that particular asset. We
9 also had to identify whether she gave money in advance.
10 You can give so much to a 529 plan each year by law.

11 You can also give five years worth. Well, if she
12 were to give five years worth, that changes her estate ad-
13 ministration somewhat, so I was asking how much did she
14 give; did she give one year worth or three years worth, and
15 what is the value of that.

16 So these are all letters that we sent out to all that
17 type entity.

18 MR. TAYLOR: Your Honor, move for admission of what
19 has been marked as Defendant's Exhibit 79.

20 BY MR. TAYLOR:

21 Q. Jay, the third paragraph, C, regards other actions that
22 must be taken by the personal representative, and did you
23 do those?

24 A. We did it through the period that we were engaged,
25 and particularly concerning the financial condition of the

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1 estate. To determine the financial condition of the es-
2 tate and advise the personal representative of that and any
3 other actions which must be taken by the personal represent-
4 ative to protect the assets and provide for the discharge
5 of liabilities, including death taxes of the estate.

6 Q. Did you do that?

7 A. We did it through the period that we were engaged and
8 particularly concerning the financial condition of the Es-
9 tate, and we found there was plenty of liquidity although
10 you had to handle the debt issue too. In Beaufort County
11 we've handled estates worth Fifty Million Dollars, and
12 sometimes those are upside down because of different rea-
13 sons.

14 So we had to evaluate whether any assets needed to be
15 held or be sold, for example, if there are any debts to be
16 paid.

17 In this case, I believe in Exhibit 2, it shows assets
18 and there was plenty of liquidity. There was no need or
19 no necessity to sell any assets. There wasn't much debt
20 in this Estate, but we did all that.

21 The one thing that held us up was that myself and the
22 personal representative were in disagreement with regard to
23 the fair market value of the Manor Development stock. Be-
24 cause of that, we were impeded from actually filing the
25 706.

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1 We completed everything that we could . .

2 Q. Jay, since you've mentioned that, let's explore this
3 for a moment. Tell me when there was this disagreement,
4 if you recall?

5 A. It was roughly December 16 when we became really at
6 loggerheads on the issue of the Manor stock with regard
7 to the value. I had written to find the fair market value
8 but the buy and sell agreement contained a selling price,
9 that you could sell it for whatever number that the part-
10 ies decided upon.

11 It was a family transaction, and in family transac-
12 tions sometimes you might sell things to family members
13 cheaper than you would if you were selling them outside.
14 You could sell something for One Thousand Dollars for --
15 you could do that. That's what families do.

16 Q. Had you received a valuation or was that the first
17 time? Could you kind of focus on that because it's been
18 such a big topic?

19 A. On June 23rd I -- yes, I did. I was contacted the
20 day before his wife passed away and there certainly was a
21 lot of correspondence between myself and Mr. Orlosky over
22 the Manor stock.

23 Mr. Orlosky as the trustee could do what the trust
24 allowed for him to do. Six days of his wife's death and
25 before she was even buried in California, he came in to see

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1 me about trying to get appointed by the Court so he could
2 have the power over the Manor stock.

3 Q. And did the discussion of the Manor stock continue
4 through the fall, and at what point was a direction given
5 to you that the Estate should sell the stock?

6 A. Well, that was ongoing, and Mr. Orlosky soon expressed
7 himself. We had several conversations about it, and he
8 very much wanted consultations, lengthy consultations at
9 times, and at times he said, I don't want all the details.

10 He even told Mr. Njordstrum, Mr. Mullinax is my at-
11 torney; deal with him, and there were other times when he
12 wanted a lot of information with regard to what I was
13 doing, which I provided adequately, as much as possible.

14 I have had many different cases in regard to sale of
15 stock, but I did try to keep him reasonably informed. I
16 think it was probably in an end of December Email that
17 Mr. Orlosky told me he didn't care what the sale price
18 was; he just wanted to sell the stock.

19 Q. And in regard to paragraph D, kind of go through this
20 and what you did?

21 A. I had to report to the Court and the beneficiaries
22 as required in the administration of an Estate.

23 Q. Did you or your office do that?

24 A. We did. As a matter of fact, I have an Exhibit if you
25 want to use it. In 2005 Court Administration, which is

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1 the administrative body that sets the rules for South
2 Carolina courts, sent a letter out to the Probate Judges
3 which they in turn sent to the probate attorneys.

4 So Judge Simon sent me a letter along with about
5 thirty other attorneys in Beaufort County and said that the
6 new court rule is that you have to file interim account-
7 ings each year.

8 The reason for that is that we've had issues in
9 Beaufort County of great significance where people have
10 used trust assets inappropriately, and so the Court wanted
11 to keep pretty good tabs on what is going on with estates
12 and trusts.

13 So they wanted an accounting each year and we had to
14 file actual assets. They wanted an update nine months
15 later to find out what have you done with those assets or
16 what's going on with those, to make sure you were doing the
17 right thing.

18 I was hired in June of 2009 to administer the estate.
19 The first interim report would have been due a year later
20 and I didn't reach the year point with the Estate. If I
21 had continued with it, I would have, but I think they had
22 asked the McNair Firm in December of 2010 for an interim
23 report that wasn't filed in December of 2010 and then again
24 in February. I think it was February 24th they asked for
25 another -- excuse me. They asked for the same interim

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1 report. At that point it was maybe nine months overdue,
2 and the McNair Firm never filed the interim report.

3 Q. Paragraph E, prepare or assist in preparation of tax
4 returns for the estate, including federal estate tax, state
5 inheritance tax or any local or state property tax returns,
6 federal or state income tax returns -- did you do that for
7 the Estate?

8 A. We prepared the estate tax return, the 706, or had all
9 the numbers gathered. I do have an Exhibit as to that, and
10 this was a continued point, as I've said, between myself
11 and my client, and based on my assessment we believed that
12 a fifty page tax return was now required. Mr. Orlosky ap-
13 parently agreed with that or he never agreed with me per-
14 sonally that one was due after February. Before February he
15 did but after about February 2010 Mr. Orlosky didn't want to
16 file the return because somewhere in my correspondence I had
17 advised Mr. Orlosky on estate tax.

18 Remember that estate tax is tax on the value of an
19 estate at death, and so estate tax is about forty-one per-
20 cent and it slowly creeps up to about fifty percent or
21 fifty-five due to the circumstances, and that is a bit tax
22 to pay.

23 Now, the tax plan that I did for Mr. and Mrs. Orlosky
24 in their original trust document delayed the possible tax
25 for Mr. Orlosky, so it didn't prevent the tax but it just

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1 delayed the potential of the tax, and so the estate plan I
2 drew up for him-- I found out later that Mr. Orlosky actu-
3 ally filed an extension of the tax return, so he did in
4 fact agree that an estate tax return was due because I was
5 provided a copy by him on March 15, 2010.

6 And so he believed that a 706 estate tax return was
7 due but to my knowledge none was ever filed, and I can
8 mention now or later my requirements under the Internal
9 Revenue Code as a practitioner.

10 This is extremely significant. I've been in practice
11 for over twenty years, and I can lose my law license and
12 my ability to practice in front of the Internal Revenue
13 Service by not filing tax returns that should be filed
14 based on my knowledge and understanding of what should be
15 filed.

16 And so in this case again no tax would have been due
17 immediately but it was my obligation -- and I can refer
18 to Circular 230 which governs all people who practice be-
19 fore the Internal Revenue Service . .

20 Q. Jay, do you need to see a copy of Circular 230, or
21 are you . .

22 A. I would like to see a copy because it has the percent-
23 age provisions in there that are rather critical. I had
24 to deal with integrity with the Internal Revenue Service,
25 and that is why I make sure tax returns that are due based

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1 on the knowledge I have, and, like I said, I can lose my
2 license or be disbarred from the practice of law if my
3 clients avoid a tax return.

4 Q. Were you concerned about your responsibilities and
5 your obligations as a lawyer under 230 when you were advis-
6 ing Mr. Orlosky?

7 A. Sure, I was extremely concerned with the situation
8 because I fundamentally believed based on my application of
9 the law that a fifty page tax return was going to be -- in
10 this case it was not going to be due with regard to the
11 payment of tax at that particular time, but I was not going
12 to assist in the avoidance by my client of filing a tax
13 return, nor would I have done that with Mr. Orlosky.

14 Q. Would you have assisted the personal representative
15 with any post-death planning such as alternate asset eval-
16 uation, use of disclaimers, funding of trust, as provided
17 for in estate plans? Timing and distribution of assets
18 that are beneficial to the assets, or any relation of in-
19 come tax benefits to the estate beneficiaries?

20 Did you do that?

21 A. We did. You can choose when the evaluation date will
22 be. You can either choose the date of death and the value
23 of the estate drops significantly and you would save taxes.

24 In this case, no tax was due anyway. You can pay six
25 months after the date of death, but in this case that was

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1 immaterial.

2 As to disclaimers, there was no need for disclaimers.
3 That is when someone in the estate is going to receive
4 property and for whatever reason they don't want the prop-
5 erty, so they can disclaim, but that wasn't necessary.

6 The funding of the trust is provided in the estate
7 plan. Because of the value of the Manor stock, it was im-
8 possible to -- I'd like to refer to the actual trust docu-
9 ments, if I could, to Article five point two.

10 (Brief pause)

11 We talked yesterday about the fact that there is a --
12 there is a trust called a revocable trust, and that is not
13 what is created here. Upon her death, the trust is divided
14 up according to what the trust says is to go to the bene-
15 ficiaries, which in this case is by a formula because peo-
16 ples' estates can change throughout time.

17 And so we put a formula in instead of saying a dollar
18 figure. There are about six formulas that estate planning
19 attorneys use. I put one in here -- excuse me -- that has
20 to do with estate tax savings upon Mrs. Orlosky's death,
21 and then it leaves everything up to the trustee. The form-
22 ulation is called pre-pecuniary/ distress, and what that means is
23 that there is a dollar amount -- in this case we put Five
24 Million Dollars that effectively would be left over in the
25 administration.

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1 Another thing I will mention is that after Mrs. Orlosky
2 passed away if any of the estate assets depreciate in value
3 the formula may go over to the marital trust.

4 The assets again were valued at a certain amount upon
5 her death but if they dropped in value before they were
6 put over into the trust, the marital trust would have got-
7 ten property.

8 The claim in this case is that the value of the estate
9 was high although Mr. Orlosky claimed later that it was
10 low. There would be more assets then in the marital trust.

11 The funding of the trust was principal because Mr.
12 Orlosky would not agree to the fair market value, so it was
13 impossible to make a disbursement under that paragraph be-
14 cause you don't have a value in the pecuniary interest.

15 The estate tax exclusion is Three point Five Million
16 Dollars -- just short of that, so it was impossible to
17 fund the trust.

18 Mr. Orlosky would not agree to the value, so we did
19 as much as we could.

20 Q. Paragraph G -- plan for the payment of those taxes as
21 to a source of funds -- did you stop the payment of any
22 taxes ever?

23 A. No, because Mr. Orlosky refused to sign the fifty page
24 tax return that I suggested and that he had actually agreed
25 to until some time in December, and the correspondence

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1 reflects that.

2 Q. Plan a distribution of assets of the estate either
3 outright or -- did you do that?

4 A. We did it through the date that we were terminated,
5 and again if there is no value or sale of the Manor stock
6 there was no way to disburse the assets. It was an impos-
7 sibility.

8 Q. Paragraph I, prepare all reports, notices to close
9 the estate and discharge the personal representative as
10 required by the Code. Did you do that?

11 A. I did not do that. I would like to refer, if I could,
12 to the table of contents of the Probate Code. The Probate
13 Code specifies what is required under South Carolina law.

14 If there is any unfinished matters, you have to finish
15 that before you can close it. I have a copy of the Probate
16 Code with a table or contents, and I was going to show them
17 the different code sections under 62-3-1001. That is one
18 particular code section and it refers to all the reports,
19 notices, procedures to be followed.

20 We couldn't do that within a year, 62 3 101 within a
21 year, and you had to file certain things with the Court in
22 order to close the estate. We weren't employed by the
23 Estate within a year, so we couldn't have closed it if we
24 wanted to.

25 Q. Paragraph J . .

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1 A. One other thing I would mention is that one of the
2 reasons to leave an estate open for a year is to because
3 of creditor issues. It is good to keep the estate open for
4 an entire year because if you keep it open for a year and
5 you file the closing documents after you have waited, no
6 creditor can come back and file a claim with regard to the
7 estate administration.

8 So it is good to keep an estate open for a year. It
9 was impossible for us to file what was necessary to close
10 the estate.

11 Q. Paragraph J -- counsel to advise as to matters or
12 questions arising out of the estate or administration of the
13 estate.

14 Let me ask you this. Was Mr. Orlosky an active player
15 between the two of you?

16 A. He was at one point quite a bit. It was kind of a
17 sporadic thing. He would give me specific case law to
18 research that he had found or something he wanted me to
19 look into regarding some legal conclusions or cases to read
20 which he wanted my opinion on, which I did.

21 The cases he asked me to review were no longer rele-
22 vant or were already incorporated in my decisions.

23 However, we did continually keep him posted on things,
24 and Mr. Orlosky did at one point not want to be bothered
25 with specific details.

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1 Then later on he asked me to specifically set out
2 time communications that we had, and I did do that. I
3 can go through all my various letters and point all of
4 that out.

5 Q. That won't be necessary.

6 A. Based on my background and experience, I believe those
7 would set out the things done which were necessary and
8 appropriate to administer the Estate, and as a matter of
9 fact I would like to refer to Section 20 53 of the Internal
10 Revenue Code and the regulations that are contained therein.

11 Under Internal Revenue Code 20 53, under estate ad-
12 ministration, expenses that are necessary -- that's the
13 word in the Internal Revenue Code -- that are necessary
14 for the administration of the estate.

15 Those are tax deductible, and, as Mr. Jordan testi-
16 fied to yesterday, he is keeping a separate billing or re-
17 cord of the things he is doing for Mr. Orlosky with regard
18 to this situation, things that are not tax deductible.

19 That is the same thing I did in this case. The sale
20 of the stock was not necessary in order to pay any debts
21 under the treasury regulations. The Internal Revenue Code
22 is a code of about ten thousand or eleven thousand pages
23 in length.

24 MR. BOWEN: If Your Honor please, I would object to
25 the relevance of any of this testimony.

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1 MR. TAYLOR: Your Honor, Mr. Mullinax is explaining
2 his professional services which have been attacked by the
3 Plaintiff's expert who said he didn't do very much.

4 He is explaining what he did for the Estate and what-
5 ever other concerns he had to do with. I think he is cer-
6 tainly entitled to do that.

7 THE COURT: I'll allow it, but very briefly.

8 WITNESS: I'll try to keep it as brief as I can.

9 A. Very briefly, the Code has a separate portion which
10 explains what the Code means as far as estate administration,
11 the necessary explanations as well as explanation of the
12 things that are tax deductible. Section 20 53 says gener-
13 ally what that means and for further explanation you look
14 at one through four -- I believe it is -- specifically it
15 gives an example.

16 If property does not need to be sold to pay debts and
17 expenses in the estate administration, it is not necessary
18 that those assets be sold, and that is what I used as my
19 guide. So that does not necessitate taking a deduction,
20 even if you wanted to, and it does not allow you to take
21 a deduction.

22 Obviously, if you took a deduction for everything you
23 could keep an estate open for -- so the law does not allow
24 you to do so under the law.

25 Q. We haven't concentrated on the Manor stock yet, and

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1 I mean, we don't have that but we do have this.

2 THE COURT: You would be able to put that in then if
3 you want to show there is a difference.

4 MR. BOWEN: I'm just saying I don't think he's say-
5 ing or representing that that's a copy of this document.
6 This is what Mr. Mullinax produced for us, not that.

7 If Mr. Taylor has the original of this, that will be
8 great.

9 THE COURT: You will be able to show that as well.

10 MR. BOWEN: Thank you, Your Honor.

11 (Whereupon, the Court took a brief recess and the
12 matter continued at 3:08 P.M.)

13 THE COURT: Okay, folks, we will proceed. That docu-
14 ment is admitted over objection.

15 Bring in the jury.

16 (Jury returned to the Courtroom)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. TAYLOR:

19 (Defense Exhibit 80 admitted over objection)

20 Q. Mr. Mullinax, I hand you what's been admitted as
21 Defense Exhibit 80, and also handing you 12, 13 and 20.

22 I ask you, did you earlier contend that the Estate
23 of Debora Orlosky is further indebted to your professional
24 firm, and you said yes?

25 A. Yes.

MR. MULLINAX ON DIRECT

1 Q. I ask you now to tell me how you arrived at the num-
2 ber that is shown here?

3 A. I calculated the value of the Estate in this chart
4 which has been blown up for everyone to see.

5 If we take the values I used from all the letters and
6 correspondence that I previously referred to, which I will
7 refer to specifically in a minute, and every reply to that
8 from the different banks and financial institutions -- what
9 we have in the first column here is the fair market value
10 on the 706, the estate gift tax return.

11 Now, you have here according to the Code -- and I can
12 cite to it over there in the regs -- the 706 value is fair
13 market value which is what a willing buyer and a willing
14 seller, knowing all of the relevant facts, would take for
15 the particular item or sell it for. That is what fair
16 market value means, and that's the way the government de-
17 termines estate values.

18 This is Code Section 21 and specifically in the regs
19 as well.

20 So we plugged in all the information, and if you'll
21 notice here at the top it specifically says Manor assets.
22 I don't know if you can see that, but at the top of this
23 section is the Manor assets.

24 Then just below that we implimented some discounts
25 or what they call discounts in the buy and sell agreement

MR. MULLINAX ON DIRECT

1 under the different scenarios that were possible under
2 the buy and sell agreement.

3 Down here, starting with real estate, we plugged in
4 the numbers that we got on values from all the different
5 appraisers, etcetera, and on the second page -- it does
6 roll over -- there are retirement accounts, specific prop-
7 erty, life insurance.

8 Again, we used this as a working document and the
9 asset value came in, as we talked about earlier and as you
10 can see down here, and there is a grand total of assets,
11 and, by the way, marital trust -- there is nothing there
12 except for Nine Hundred Thousand -- that was just the
13 formula issue I was talking about earlier.

14 The total value of all the assets for purposes of the
15 estate is Four point Four Million grossly. That is what
16 I calculated on these bills that I sent to Mr. Orlosky.
17 This was in January of 2010.

18 I sent him a bill based on the minimum payment due,
19 based on the adjustment and the estate value. Again, we
20 don't know the exact fair market value at the time but we
21 had a rough idea.

22 We didn't know precisely, so we collected the inform-
23 ation and billed him accordingly.

24 If you can recall, up front I originally asked for
25 Twenty-five Thousand increments for the payment. Well,

MR. MULLINAX ON DIRECT

1 once we had gathered all the different information from
2 all the different entities we adjusted that, which is
3 exactly what we intended to do, and once we determined
4 what the actual value of the Estate was -- that's how I
5 calculated that.

6 I want to be more specific though. In the other two
7 exhibits, Number 13 which is a cover letter going to Mr.
8 Orlosky, with a bill dated February 12, 2010, and after he
9 paid the One Hundred Thousand Dollars that he had already
10 paid, he owed me an additional Eleven Thousand and some
11 change based on this Four point Four Million Dollars at two
12 point five percent.

13 Two point five percent of Four point Four Million is
14 approximately One Hundred Seven Thousand Dollars, so that
15 is what I billed him for.

16 Additionally, Mr. Orlosky in the correspondence be-
17 tween he and I, he made a request to me in approximately
18 December of 2009 that he did not want to pay additional
19 fees associated with the sale of the Manor stock until he
20 got paid for the Manor stock.

21 I don't think we talked about the additional fees
22 in December. He just talked about the two point five per-
23 cent.

24 Q. So you came up with an additional sum of Eleven
25 Thousand Dollars, is that correct?

MR. MULLINAX ON DIRECT

1 A. Yes.

2 Q. In addition to that, do you take the position that
3 you are owed further money for professional work that you
4 did?

5 A. Yes.

6 Q. And how much?

7 A. Because it was not necessary for the administration
8 of the Estate, which is the way the engagement letter reads,
9 whatever is necessary -- it was not necessary to sell the
10 stock to pay for the debt that's listed here of about
11 Seventy Thousand Dollars. It was not a need as there was
12 plenty of bank account money in order to pay Seventy-two
13 Thousand Dollars worth of debt

14 I mean, you didn't have to sell Three Million Dollars
15 worth of stock to pay for Seventy-two Thousand Dollars
16 worth of debt.

17 Again, back to the Internal Revenue Code which is per-
18 tinent in this case, it says necessary things, and it was
19 not necessary. It says it is done for payment of things
20 that were necessary and appropriate under the laws of South
21 Carolina and in the engagement letter.

22 So that is how I calculated that for the additional
23 fees or extra work which I certainly did. I would certainly
24 pay my employees to work extra.

25 We had numerous conversations and Emails and much

MR. MULLINAX ON DIRECT

1 Ninety-seven?

2 A. Yes.

3 Q. And is that the number you are requesting this jury
4 award you for your professional fees?

5 A. There's the claim I filed, and I want to mention one
6 other thing with regard to that. Since the first bill was
7 actually filed, we discovered that the value -- and we ex-
8 pressed this to him in Email and correspondence -- that
9 the value of the Estate was greater than the Four point
10 Four Million Dollars, and I will explain that.

11 From the buy and sell agreement, the value of the
12 Estate is Five point Three Million Dollars, not Four Mil-
13 lion Four.

14 I made a determination, even though I billed him the
15 Thirty-two Thousand Dollars that Mr. Taylor just referred
16 to, that I would not in fact add to my fee based on the
17 new information that we received through further corre-
18 spondence. Roughly, the difference is Nine Hundred Thous-
19 and Dollars between Four point Four Million and Five point
20 Three, and that is a lot of money that I haven't asked for
21 in my claim.

22 I would hope that the jury would consider that.

23 Q. Now, Jay, would you say your actual claim -- tell us
24 how the claim did start?

25 A. The way it started was under probate laws you can

MR. MULLINAX ON DIRECT

1 file a claim for probating an estate. We had an estate
2 administration, and we were subsequently terminated. For
3 the services for which we had not been paid, we filed a
4 claim.

5 In the Probate Court there is a time you can wait be-
6 fore you file that claim. I was corresponding with Mr.
7 Jordan and that time frame was about to go by, so we filed
8 a claim to make sure we were protected for payment of the
9 services to Mr. Orlosky.

10 So I'm the one who made the claim first, although they
11 are called the Plaintiff. I made the claim for not being
12 paid and then he brought this action.

13 As you probably saw from the testimony of Mr. Jordan
14 and the documents that he admitted.

15 Q. Jay, will you direct your attention to Exhibits 25
16 and 26, and I ask if you recognize those?

17 A. Yes, I do.

18 Q. Start with the 706, and tell the jury exactly what
19 that is and where that information came from on those?

20 A. . .

21 MR. BOWEN: Your Honor, I'm not sure how this witness
22 is competent to say where the information came from or . .

23 MR. TAYLOR: I will rephrase the question.

24 BY MR. TAYLOR:

25 Q. Would you look at the 706 and tell us where that

MR. MULLINAX ON DIRECT

1 information came from?

2 A. That is the form 706, and the information was col-
3 lected by my office.

4 The form 706 Mr. Jordan put here was information I
5 had provided. It is just replicated here on this 706, and
6 I believe he got that information from me with one excep-
7 tion which is the value of the Manor stock.

8 Q. We'll focus on that in a minute, but let me ask you
9 this first. You heard Mr. Jordan testify. Is Mr. Jordan
10 a competitor?

11 A. Absolutely.

12 Q. How competitive is the profession?

13 A. It is very competitive. As I mentioned before, there
14 is only a handful of estate planning attorneys in Beaufort
15 County but there are a lot of people who want to do this
16 business but, frankly, aren't very qualified to do it.

17 Q. Now, Jay, Mr. Jordan testified he authored a memo as
18 applies to the application of IRS rules on the matter of
19 the Manor stock. Have you read that memo?

20 A. Yes.

21 Q. Is it accurate?

22 A. No, it's not, and I have a big blow-up of the Internal
23 Revenue Code 27 03 and 27 02. Basically, chapter 14 of
24 the Code. Either 27 02, 27 03 or 27 04, and it has been
25 updated since this information that Mr. Jordan provided.

MR. MULLINAX ON DIRECT

1 I'd be happy to show the Court the provisions that I
2 have referred to. Section 27 03 and 27 02 -- they have
3 three criteria for a family business in order to consider
4 a buy and sell agreement to determine value or a sale price.

5 There's a big difference between the term a sale price
6 for the 706 purposes for estate tax value. The IRS has
7 three criteria in order to consider the buy and sell agree-
8 ment or actual fair market value of the property.

9 There are three criteria, and one is for certified
10 business purposes. Mr. Jordan referred to the (portion
11 not audible on disc)

12 Secondly, it specifically says in 27 03 it cannot be
13 a device to pass property to family members at less than
14 the property value. The Manor stock, which I think from
15 the records is 1975 on was nothing but a family business.
16 Each generation, including the father or the parents of the
17 decedent, Mrs. Orlosky, and passing it on to six other gen-
18 erations.

19 Under the second criteria, it means that you cannot
20 use the buy and sell agreement in determining the value
21 of the stock, and then, the third criteria, 27 03, which
22 I don't think was met in this particular case -- I'd be
23 happy to pull it up.

24 It has to be a business arrangement with strangers,
25 and that is not there. We have talked earlier about

MR. MULLINAX ON DIRECT

1 that family members treat each other differently and they
2 might give a big discount, as in this case.

3 My contention is that the stock gave away almost
4 Three Million Dollars, being sold at a huge discount, and
5 this is not referred to, 27 03, in Mr. Jordan's memo.

6 They would not consider the buy and sell agreement in
7 this case as they did not meet the three criteria. The buy
8 and sell agreement sales price is not something that can
9 be taken into account for fair market value. Unless they
10 abide by the letter of the law, even if they met these
11 three criteria, under the regulations of 27 03. If they
12 make a substantial modification the IRS says you cannot
13 consider the buy and sell agreement in determining actual
14 fair market value for estate tax purposes.

15 That's what the regulations say, and in this case
16 they disregarded the rule; they didn't pay any attention to
17 it.

18 They talked about the hundred and eighty day rule and,
19 therefore, the IRS is not going to recognize it either.

20 Q. Under Exhibit 2, the buy and sell agreement, let's
21 focus as briefly as we can on trying to take the jury
22 through your imput and your professional services relat-
23 ing to the proposed sale of the Manor stock, on whatever
24 occurred between you and Mr. Orlosky, and whether that had
25 anything to do with your leaving.

MR. MULLINAX ON DIRECT

1 is what we end up with, and it would cost realtor fees
2 to sell real estate.

3 So they calculated that six percent would be owed if
4 they sold everything. The problem is, first of all, they
5 were not planning to liquidate their business, number one,
6 and, number two, under the Internal Revenue Service --
7 ironically, in their buy and sell agreement there was no
8 selling expenses that were to be deducted.

9 The CPA firm that they relied on took selling expen-
10 ses and deducted One point Two Million Dollars that were
11 not allowed in the buy and sell agreement.

12 You can't take One point Two Million Dollars out to
13 determine sales price of stock because, number one, it is
14 not in the buy and sell agreement, and, number two, the IRS
15 doesn't allow it.

16 So I wrote back to Manor, and two months later they
17 wrote back and said, you're right. That got Mr. Orlosky
18 an additional Hundred and Fifty-six Thousand there that he
19 otherwise would not have gotten if I had not called them
20 on the error.

21 It was not just the error but the CPA missed that it
22 was not in the buy and sell agreement. Mr. Orlosky profited
23 by that Hundred and Fifty-six Thousand Dollars that he hasn't
24 paid me for yet for negotiating a higher sale price on the
25 Manor stock.

MR. MULLINAX ON DIRECT

1 sure I had all the information I needed on Manor Develop-
2 ment, and this was six days or seven days after his wife
3 died.

4 MR. BOWEN: No objection.

5 BY MR. TAYLOR:

6 Q. I show you Defendant's Exhibit 20 and ask if you can
7 identify that?

8 A. This is Email from myself dated June 24, 2009, and
9 it talks about a couple of things here.

10 One is I told him that I would be calling him to co-
11 ordinate a time for him to sign documents after his wife
12 died.

13 We also . . .

14 Q. And this was part of the work you were starting to
15 do?

16 A. Yes, the necessary things that needed to do to begin
17 the estate work, and it also refers to the tax identifica-
18 tion numbers which were separate from anything else. So
19 we had all of that before.

20 As a matter of fact, in a later letter after that,
21 shortly after this, we gave that to him and also noticed
22 him that we were researching the value of the real estate.

23 We noticed that according to Beaufort County he had
24 need to pay taxes on the Orlosky residence, his and Mrs.
25 Orlosky's residence.

MR. MULLINAX ON DIRECT

1 Q. Did you bring that to his attention?

2 A. Yes, we did. I did that by Email, that the tax re-
3 cords of Beaufort County indicate that the taxes on the
4 residence for 2008 had not been paid; that I believed the
5 records were incorrect and he might want to look into it.
6 We notified him of that and copied him with a notice show-
7 ing the taxes weren't paid.

8 MR. BOWEN: No objection, Your Honor.

9 BY MR. TAYLOR:

10 Q. I show you Defendant's Exhibit 21 and ask if you can
11 identify this document?

12 A. Yes, this is dated June 24th, the same date as the
13 Emails, and this is from myself to Mr. Orlosky giving him
14 the specific information or information that was specific
15 to the Estate.

16 It also tells him what he should be doing for that
17 in maintaining records. These were necessary things, as I
18 said, for estate administration and tax. I informed him
19 what those things were in this letter and that in fact he
20 needs to keep records on the estate, expenditures of the
21 estate, and all the records with regard to that.

22 MR. BOWEN: Without objection, Your Honor.

23 BY MR. TAYLOR:

24 Q. I hand you what's marked as Defendant's Exhibit 22
25 and ask if you can identify that?

MR. MULLINAX ON DIRECT

1 (S. C. Revenue bulletin admitted without objection
2 as Defense Exhibit 41 A.

3 BY MR. TAYLOR:

4 Q. Jay, I hand you now what's been marked for identifi-
5 cation and ask you to identify that?

6 A. Yes, this is dated September 29, 2009, from Mr.
7 Orlosky to me, and he's asking about the Manor stock, and
8 he's saying I'd like to do it now.

9 Q. I hand you 43 and ask if you can identify that?

10 A. This is dated October 9, 2009, a letter -- this is a
11 letter from me to Duke Lange who was one of the partners
12 in Manor Development. It says that my client would like
13 to consider sale of the stock, the Manor stock, under the
14 shareholder agreement, which is the buy and sell agreement.

15 We asked him to advise us as to his company's calculated
16 fair market value with itemized stipulations as outlined
17 in Article Four, and this is dated October 9 of 2009.

18 Q. Did Mr. Orlosky instruct you to begin discussions
19 with Manor at that point in time about selling the stock?

20 A. Yes, sir, and before this.

21 Q. Can you identify Exhibit 44?

22 A. Yes, this is a letter dated October 9, 2009, and it is
23 in regard to a piece of real estate we needed the value on.
24 It's dated the same day as the one on the issue of the
25 Manor stock.

MR. MULLINAX ON DIRECT

1 This had to be separated for tax deduction purposes
2 because I was charging separately for this item, and this
3 one asking about the real estate was not a part of the
4 Manor stock matter.

5 I needed to separate them purely as an administrative
6 matter.

7 Q. Jay, I hand you Exhibit 45 and ask if you can iden-
8 tify that?

9 A. Yes, this is dated October 9, 2009, to Mr. Bjordstrum
10 who was knowledgeable about the estate owned by Mrs.
11 Orlosky's father. That's what this is about.

12 Q. Is that a part of the work that you were doing for
13 Mr. Orlosky?

14 A. Oh, yes.

15 Q. I hand you Exhibit 46 and ask if you tell us what
16 this is?

17 A. This is dated October 15th and it encloses the first
18 copy of the inventory and appraisalment which was due within
19 ninety days of the appointment of the personal representa-
20 tive.

21 It also indicates to the Probate Court that there
22 were several items we did not have a value for yet.

23 MR. TAYLOR: Move for admission of 46, Your Honor.

24 MR. BOWEN: Without objection.

25 THE COURT: Yes, sir.

MR. MULLINAX ON DIRECT

1 Q. Hand you Defense Exhibit 48. What is that?

2 A. Number 48 is an Email from Mr. Orlosky to me dated
3 November 12, 2009, and it is indicating that he's done some
4 research on estate tax and is confused about the estate
5 tax and what that means.

6 He also says I shouldn't have to worry about any es-
7 tate taxes as all is coming to me except for the two
8 trusts going to the girls. Please explain. Thanks.

9 The two trusts I believe he's referring to are the
10 Canal Trust and the San Francisco Trust, but according to
11 this Email of November 12th he thinks everything else is
12 going to him.

13 Q. Jay, did you do research in response to receiving
14 this Email?

15 A. My response was actually the November 11th letter that
16 we just reviewed.

17 MR. TAYLOR: Move 48 in evidence.

18 MR. BOWEN: Without objection.

19 THE COURT: Admitted without objection.

20 (Orlosky Email admitted in evidence without objec-
21 tion as Defense Exhibit 48)

22 BY MR. TAYLOR:

23 Q. The work that you were doing when Mr. Orlosky asked
24 you, was that work Mr. Jordan was concerned about yester-
25 day?

MR. MULLINAX ON DIRECT

1 -- the family trusts will dissolve and payouts will be
2 made. The girls will stand to get well over One Million
3 Dollars each, so I am not too worried about their long
4 term financial situation.

5 Q. Thank you, Jay. Now, showing you what's marked for
6 identification as Defendant's 56, can you identify what
7 this is?

8 A. Yes, this is an Email from Mr. Orlosky to me talking
9 about contact with Mr. Nordstrum, the Manor attorney, and
10 he says he had called to discuss this. It's dated Decem-
11 ber 17, 2009.

12 It also says in order to help him understand could
13 I tell him the court case cited that does allow for the
14 capital gains tax deduction on an asset-based evaluation,
15 or I could Email that to him.

16 Q. Did you do that research he asked you to do?

17 A. Yes, I did.

18 Q. And did you give him a response?

19 A. Yes, I did. The fact is there was no court case that
20 I could provide to him as far as what he had talked about.

21 Q. And then were you written to by Mr. Orlosky on Decem-
22 ber 13th?

23 A. Yes.

24 Q. Refer to the last paragraph?

25 A. This is from Mr. Orlosky to me, and he says that

1 regardless of where we end up on the price, I want to sell.

2 Because of the six months timing we need to do it . .

3 Q. Please read that again. I believe you mis-read it.

4 A. Regardless of where we end up on the price, I want
5 to sell so if we have to make a written notice to Manor
6 today because of the six months timing we need to do it.

7 Thanks, Ron.

8 MR. TAYLOR: Offer Defense 56.

9 MR. BOWEN: No objection.

10 THE COURT: Without objection.

11 (Orlosky Email of December 17, 2009, admitted in evi-
12 dence without objection as Defnese Exhibit 56)

13 BY MR. TAYLOR:

14 Q. What is Exhibit 57 if you recognize it?

15 A. Mr. Njordstrum is telling me he doesn't believe there
16 is a big problem under Chapter 14 referred to, but he also
17 goes on to say obviously you're going to have to make the
18 call on behalf of your client.

19 Q. Tell us about Chapter 14 that is being discussed here?

20 A. Chapter 14 is a chapter in the Internal Revenue Code,
21 a specific chapter, and it describes the rule that applies
22 to a family business, and Chapter 14 does apply.

23 The issue was that the penalties are very severe for
24 estate tax purposes if they do not abide by the rules as
25 to the purchase price in the buy and sell agreement.

MR. MULLINAX ON DIRECT

1 I wasn't going to identify the particular transaction but
2 give some examples.

3 I know some Internal Revenue agents who work in this
4 State in the gift tax department who manage certain things,
5 and I was going to talk to them about the situation where
6 a buy and sell is an issue.

7 I was going to hopefully examine and investigate the
8 IRS position.

9 Q. I would show you what's marked Exhibit 69 and ask you
10 if you can identify that?

11 A. Again, this is an Email dated January 25, 2010, de-
12 lived to me by Mr. Orlosky. It is actually from Manor
13 Development to Mr. Orlosky, and I am the subject of the
14 Email.

15 It says, I have attached a copy of the letter from
16 Jay. Why can't he just make a straight counter-offer, and
17 what I can do is put together a counter-offer as per the
18 terms you and I last discussed. Give me a call when you
19 get a chance to.

20 Q. Jay, I thought there were only certain ways you could
21 sell under the buy and sell agreement?

22 A. There certainly were.

23 Q. Does that include making a counter-offer?

24 A. There is no counter-offer provision under the buy and
25 sell.

MR. MULLINAX ON CROSS Examination by Mr. Bowen

1 You wouldn't want the IRS to get a return that showed
2 she got a Hundred Thousand Dollars for stock on the day
3 she passed away and also have that same transaction show
4 on her estate income tax return for the Hundred Thousand
5 because they would be looking for tax on two different tax
6 returns.

7 Q. So you are saying that you might put a different date
8 than the date she really died?

9 A. It's possible, yes.

10 Q. Number 10 I think is the same thing, and on Number
11 12 I think you testified for about five or ten minutes on
12 what you to do to figure out the closing date of the es-
13 tate in there for this form?

14 A. Yes, and there is one thing I left out that is pretty
15 significant actually that I would like to bring your at-
16 tention to, and that is, expenses that support the estate
17 are generally deducted on the income tax return.

18 There are some exceptions to that, but generally the
19 necessary and appropriate administration expenses are de-
20 ductible on the income tax return for the estate.

21 So in this case if Mr. Orlosky had paid for services
22 that are necessary under Code Section 20 53 for the ser-
23 vices I provided or a CPA had provided -- if he wanted to
24 get that tax deduction under 20 53 for the services I pro-
25 vided, my firm provided or a CPA had provided -- if he had

MR. MULLINAX ON CROSS

1 wanted to get that tax deduction for a calendar year or a
2 tax year, he could do that, but he would have to choose
3 December as the closing month to get all those tax deduc-
4 tions.

5 If he was going to have significant administration
6 expenses in 2010, then he would want to potentially choose
7 the fiscal year in that particular block so he could get
8 a tax deduction earlier on those expenses.

9 In fact, your office provided us with the 1041 that
10 he filed, and he completely deducted on the 1041 of the
11 2009 tax return, block number 14. He deducted one hundred
12 percent of what he paid me, the Hundred Thousand Dollars.
13 He deducted that on his 1041.

14 Q. What he paid the CPA he got that deduction the 1041
15 for the estate, and that's because you put December on the
16 IRS form and that was the right thing to do?

17 A. You have to base a decision from the information that
18 you have. At that particular point in time he took the
19 full deduction in the first income tax return for the
20 whole Hundred Thousand Dollars. That was a deduction on
21 the first tax return he filed for the Estate, and he swore
22 under penalties of perjury that those were necessary under
23 20 53 for the administration, but he didn't deduct anything
24 that was unnecessary for administration of the Estate,
25 which is a part of this litigation.

MR. MULLINAX ON CROSS

1 Q. And so he did deduct the Hundred Thousand that he
2 paid to you?

3 A. That's right, and for 2009 he swore under penalty of
4 perjury that that was necessary in order to administer the
5 Estate, and he did that full deduction for CPA expenses
6 of about Five Thousand Dollars.

7 Q. You didn't tell this jury yesterday that the work you
8 did was necessary?

9 A. I believe it was.

10 Q. It was very impressive about the eight-seven thousand
11 pages of the IRS Code and Regulations, and didn't you just
12 try to tell the jury just now that you had to understand
13 that to figure out what was necessary?

14 A. It was actually in Code Section 20 53 and it's also
15 in two different Treasury regulations, 20.53 and 25.3.
16 It is where -- it specifically says what is necessary to
17 administer an estate, and it specifically says that for
18 the sale of property it is not necessary to pay debts of
19 the estate, and it is not a deductible expense.

20 Q. Did you or did you not tell this jury that there were
21 eighty-five thousand or eighty-seven thousand pages of
22 Regulations and so forth that you could encapsulate for
23 them so they would understand what was necessary?

24 A. No, I specifically referred to 20.53.

25 Q. You didn't tell them there were eighty-seven thousand

MR. MULLINAX ON CROSS

1 Q. And it gives a telephone number. Is that your tele-
2 phone number on there?

3 A. It is and was.

4 Q. And it gives a fax number or what was your fax number
5 at the time?

6 A. It was.

7 Q. And it gives the advocate's phone number. Is that
8 Mr. Orlosky's number?

9 A. . .

10 Q. Ronald Joseph Orlosky, is that right?

11 A. According to this form you gave me, yes.

12 Q. And how long do you think it took you to fill this
13 out?

14 A. I don't have any time records for the time dedicated
15 to filling that form out.

16 Q. Do you have any time records for any of the times
17 indicated to do the things that were necessary to admin-
18 ister the Estate?

19 A. No, I don't.

20 Q. Is it correct that if you fill this out on line it
21 takes about a minute or two to fill it out?

22 A. I guess it wouldn't be very long. I don't know how
23 long it would take to consider the things I've just ex-
24 pressed to you.

25 It is possible for someone familiar with the form to

MR. MULLINAX ON CROSS

1 do it a lot quicker than somebody who is trying to analyze
2 the situation.

3 Q. Did you fill that form out?

4 A. I don't believe I did personally, no. Probably one
5 of my staff but I would have reviewed it.

6 How long it would take I don't know.

7 Q. You don't have any time records so you couldn't tell
8 us anyway?

9 A. I don't have any time records from which to find that
10 out.

11 Q. Do you remember telling the jury yesterday that no
12 accounting has been filed by Michael Jordan.

13 A. Yes, the accounting that was due the Probate Court in
14 2011 -- it was my understanding from the Probate Court,
15 because my Firm filed a creditor claim on this Estate --
16 we also filed a demand for notice of any transactions rel-
17 ative to the Estate -- the McNail Law Firm had not filed
18 an interim accounting by mid-July of 2010, but it was a
19 requirement since 2005 that each year the estate remained
20 open that an interim accounting be filed for probate.

21 Again, I have a notice or a demand for notice with
22 the Probate Court -- when Mr. Jordan files anything with
23 the Probate Court that it sends a copy to me.

24 In July of 2011 he had not provided with such proof
25 and I corresponded with the Probate Court about that in

MR. MULLINAX ON CROSS

1 I answer appropriately.

2 When you refer to value I assume you are talking about
3 the purchase price under the buy and sell agreement. Okay,
4 if I understand your question -- I'm going to try to rephrase
5 it.

6 Q. No, don't rephrase it. I want you to assume Mrs. Orlosky
7 is not dead, okay, and she wants to sell her stock. Is the
8 procedure and the formula for determining the sale price of
9 that stock the same as it would be if she were dead?

10 A. If she were living, yes. Under three point one three
11 the formula would be the same as it would be for one hun-
12 dred eighty days after her death.

13 Q. Okay, thank you. That was my question.

14 Would you agree with me, Mr. Mullinax, that you did not
15 complete the job of administering the Estate?

16 A. I did not complete it but it could not be closed while
17 a claim or litigation is pending.

18 Q. You have a claim against the Estate?

19 A. Yes, I do.

20 Q. And as far as you know, nobody else has a claim?

21 A. I don't have any idea.

22 Q. And that's as far as you know?

23 A. As far as I know.

24 Q. I'm going to ask you to please -- I'm going to hand
25 up what is Plaintiff's Exhibit 5 for you to take a look

MR. MULLINAX ON CROSS

1 at, which is the contract between you and Mr. Orlosky for
2 handling his wife's Estate and for handling the Trust.

3 It is my understanding that on page three, paragraph two,
4 it says a minimum of two and a half percent of the value
5 of the Estate?

6 A. Yes, that is a part of the agreement and that refers
7 to the issues that are necessary and appropriate for handling
8 of the Estate under the laws of South Carolina, commencing
9 with petition to probate the Will and the personal repre-
10 sentative qualifying, and such services as needed.

11 Q. It is my understanding from your testimony that you
12 elected to bill a minimum charge which according to that
13 letter is two point five of the value of the Estate?

14 A. I did bill a minimum charge for the estate administra-
15 tion and for those things.

16 Q. Did you maintain time and billing records?

17 A. I need to clarify -- I billed the minimum amount that
18 I was aware of based on the value that we knew at the time
19 we billed him, which I believe was in December of 2009.

20 Subsequent to that, I determined that the Estate --
21 in December of 2009 I thought the Estate was worth Four
22 point Four Million Dollars, but soon thereafter I discovered
23 it was actually worth Five point Three Million Dollars. I
24 never billed on that minimum basis.

25 Q. And you never filed prepared and filed tax returns or

MR. MULLINAX ON CROSS

1 Q. As to the tax deduction in 2009, where did you
2 keep those details?

3 A. For what?

4 Q. For the things that were done?

5 A. On paper in my office. It is a spread sheet. To create
6 a bill we pull that spread sheet.

7 Q. Do you keep it on a computer?

8 A. We eventually put it on a computer when we create the
9 bill. We keep it handwritten.

10 Q. Handwritten?

11 A. Until it can be entered into the computer.

12 Q. Did you enter it into the computer on June 10, 2010?

13 A. It was prior to that. It covered several months and
14 was several pages of billing.

15 Q. Is it your testimony as we sit here today that as of
16 the date of your termination in March of 2010 that you had
17 earned the entire Two point Five percent even though the
18 Estate hadn't been closed and even though the sale had not
19 . . .

20 A. I did not earn Two point Five percent. I don't believe
21 I earned Two point Five percent. The estate value had been
22 thought to be Four point Four Million based on what I knew
23 in December of 2009.

24 I did not close the Estate because it was impossible
25 to do. You can't close an estate when a claim is filed.

MR. MULLINAX ON CROSS

1 All matters are preserved at that point. It wouldn't have
2 been due until June of 2010.

3 Q. That one paragraph 62 three 1001 for closing of an es-
4 tate, that paragraph in that big book you have for the Trust
5 and Probate Code in South Carolina, . . .

6 A. That one paragraph I did not complete, if that is
7 what you're asking.

8 Q. I'm looking at your previous testimony, and we'll talk
9 about that in a moment. Is it your testimony today that
10 you deserve a two point five percent fee of the value of
11 the Estate as of the time you were terminated?

12 A. I think the context of that was with the Four point
13 Four Million Dollar figure which was subsequently supple-
14 mented to Five point Three Million Dollars. I believe that
15 I am due the full amount of what I billed which was One Hun-
16 dred Eleven Thousand Dollars for the services that I pro-
17 vided, which is approximately Twenty Thousand Dollars less
18 than the two point five percent.

19 So I billed close to the two point five percent of the
20 value of the Estate even though the job wasn't completed in
21 that one paragraph in the Code, 62 3 1001, which was not
22 completed. We did not file those closing documents. We
23 couldn't do it.

24 Q. Is it your testimony your entire fee plus the additional
25 work is due even though the job still isn't complete?

MR. MULLINAX ON CROSS

1 Q. I would ask you to read paragraph Four A.

2 A. Paragraph 4 A, termination of engagement. (Witness
3 reading paragraph 4 A from Plaintiff's Exhibit 5)

4 Q. How would you calculate under paragraph 4 A the value
5 of the services rendered at this time?

6 A. Based on the circumstances that in this case I did
7 not complete one paragraph of the Probate Code, which I be-
8 lieve Mr. Jordan testified is all that is needed to close
9 this Estate -- based on the work that I completed which is
10 everything else in the Probate Court except for that one
11 thing, I would have to roughly estimate that my fee should
12 be -- again, I didn't bill the client nor did I file a
13 claim for the full fee but only filed a claim for the
14 balance due, it is about Thirty Thousand Dollars, and I did
15 that according to this paragraph that says I can also
16 charge for the transfer of file to Mr. Jordan which I never
17 billed.

18 I never billed for that even though this gives me the
19 opportunity. I never billed for that time to gather and
20 get him that information.

21 Q. Do you remember giving a deposition on Wednesday, April
22 11, 2012?

23 A. I gave a deposition but I can't say the date.

24 Q. When I asked you that question, how would you calculate
25 under Paragraph 4 A the value of services rendered up to

Motions -- Discussions between Counsel and Judge

1 BAILIFF: The jury is clear, Your Honor.

2 THE COURT: Anybody want to make any motions at
3 this time?

4 MR. BOWEN: Your Honor, for directed verdict.

5 MR. TAYLOR: Your Honor, the Defendant would
6 renew the motion for directed verdict earlier made.
7 We would move to renew our directed verdict motion
8 as to the third cause of action seeking recovery quan-
9 tum meruit.

10 We have discussed this, and the Defendant's
11 position is that what we have here is an absolute
12 agreed upon contract that is in evidence.

13 I believe that is the only thing that should go
14 to the jury and not any other type of demand under a
15 cause of action for quantum meruit.

16 In addition, Your Honor, we would renew our di-
17 rected verdict motion on the estoppel, and we would
18 now make a directed verdict motion for directed verdict
19 in favor of Jay Mullinax, individually. He has been
20 sued individually as well as the office of Jay A.
21 Mullinax, LLC.

22 Your Honor, there is not the first bit of evi-
23 dence that Mr. Mullinax, individually, as we sit here,
24 ever acted as an individual in the contract with the
25 Plaintiff. In fact, the contract itself is in the name

1 of the Law Office.

2 MR. BOWEN: May it please the Court?

3 With respect to estoppel, I believe we have al-
4 ready dealt with that argument yesterday, and I would
5 just renew the comments which I made before.

6 With respect to Mr. Mullinax individually -- I'd
7 have to get you the cite for this case. It just
8 came down from the Supreme Court about two weeks ago.
9 It's a case that may turn LLCs on their heads.

10 It's a case, as I understand it, and my under-
11 standing admittedly comes from a meeting with John
12 Massalon who told me about it -- that the -- that
13 if you are actively engaged in the LLC and if you are
14 actively engaged as a part of the LLC, such as with
15 the subject Manor in the lawsuit, then the individual
16 member of the LLC may be held liable along with the
17 LLC without the need to get a judgment to pierce the
18 veil.

19 I did not find that case today and I need to find
20 it for a number of reasons, but I just found out about
21 it.

22 THE COURT: Was that in a contract case or a
23 tort claim?

24 MR. BOWEN: Sir?

25 THE COURT: A contract claim or tort claim?

1 MR. BOWEN: I haven't read the case so I'm not really
2 sure. I need to find the case.

3 THE COURT: You don't have a copy of it?

4 MR. BOWEN: No, sir.

5 THE COURT: Well, you are putting me in a bind here.
6 It is not a case you have just read, and you are not
7 sure what it stands for.

8 MR. BOWEN: As I said, I have just found out about
9 it this week.

10 THE COURT: Well, I think it has been the law
11 that an individual is responsible for their torts, so
12 irrespective of whether they are acting in behalf of an
13 LLC, if they committed a tort they could be held lia-
14 ble for that and so could the principal, the LLC.

15 MR. BOWEN: As to the contract claim, I don't know
16 if there is vicarious liability an individual who may
17 have signed a contract in behalf of the LLC, and I don't
18 know whether that law has changed.

19 I don't know what the case says, and I apologize
20 for that.

21 MR. TAYLOR: I don't know what the case says that
22 he's talking about, but if they contract with Jay A.
23 Mullinax, LLC, that is who they would sue under a contract
24 theory.

25 MR. BOWEN: If Your Honor please, in light of the

1 fact that you have said already that we could not pro-
2 ceed under the unfair trade practices act and that was
3 the claim that was against Mr. Mullinax individually,
4 so I guess we would agree.

5 THE COURT: Then you agree to dismiss it?

6 MR. BOWEN: Yes, individually.

7 THE COURT: So what is your point about piercing
8 the corporate veil? Why did you cite me that case if
9 you did not intend to pierce the corporate veil?

10 MR. BOWEN: Well, I don't know if it's a contract
11 or tort case.

12 (Portion not audible)

13 THE COURT: I guess I'm missing the point.

14 MR. BOWEN: The point was that you could sue the
15 individual as well as the LLC. I don't want to argue it
16 any more.

17 THE COURT: I didn't know you ever were. So right
18 now we are going with a claim of breach of contract by
19 your clients against the LLC, and the LLC has counter-
20 claimed against your client.

21 That is what is going to the jury. Everything
22 else has been granted summary judgment or under directed
23 verdict or withdrawn.

24 MR. TAYLOR: Just for the purpose of the record
25 I would like to also renew my motion for directed

1 verdict on the contract claim, which I'm sure Your Honor
2 will obviously not grant.

3 THE COURT: You're right. You both have interpreta-
4 tions of it.

5 MR. TAYLOR: Your Honor, there were offers of judgment
6 in this case . . .

7 THE COURT: We don't need to do that now.

8 MR. BOWEN: Mr. Taylor has just put in evidence a new
9 contract which provides for attorney's fees. Therefore, I
10 would ask to amend my pleadings to seek attorney's fees in
11 the event we prevail on the claim.

12 MR. TAYLOR: It does not authorize attorney's fees to
13 the other party. It authorizes attorney fees to Mr.
14 Mullinax should he have to go and collect it through another
15 party.

16 MR. BOWEN: There is an engagement letter he just
17 put into evidence, Your Honor.

18 THE COURT: Are you claiming anything at all under
19 the original contract between your client and Mr. and
20 Mrs. Orlosky?

21 MR. TAYLOR: The counterclaim makes a claim based on
22 our allegations that the contract was breached and that
23 he performed additional work; that Mr. Orlosky asked him
24 to do that work and he did it.

25 He has testified that Mr. Orlosky paid him just for

Court addressing Jury on Closing Statements (begins line 11)

1 the Estate.

2 Mr. Bowen asked him on the stand if he could point to
3 anything that allowed him to do it, and he pointed to
4 that.

5 MR. BOWEN: I was referring to the new contract he
6 just put into evidence.

7 THE COURT: Thank you. Now, can we take a break? Let's
8 take about ten minutes.

9 (Court stood in recess until 1:27 P.M.)

10 (Jury returned to the Courtroom)

11 THE COURT: All right, folks, welcome back.

12 We are now going to the final phase of the case in
13 which you will now hear closing arguments and my charge
14 on the law.

15 Closing arguments are the lawyers getting up and
16 reviewing the evidence and maybe giving a little preview
17 of what the law may be, in an attempt to persuade you
18 to their side of the matter.

19 I ask you to remember again that the lawyers are not
20 witnesses and they are not testifying. What they say is
21 not to be considered as evidence. It is merely argument.

22 Under the procedural rules, since the Plaintiff has
23 the burden of proving his case, he will have the first ar-
24 gument and he may also have a right to close. So you will
25 hear from Mr. Bowen and then from Mr. Taylor, with a short

Mr. Bowen -- Closing Statement

1 You will recall that he told you that in his opinion
2 if his Firm had billed for the work that Mr. Mullinax did
3 up to the time he took it over (portion not audible). He
4 also told you that in the two years that his Firm has been
5 handling this matter they have only billed Thirty Thous-
6 and Dollars -- a little more than Seven Thousand I think
7 he told you, and Seven Thousand of that was due to the
8 claim Mr. Mullinax filed against the Estate claiming he was
9 due more fees.

10 The evidence has shown you that within a day of two
11 after he was hired, Mr. Mullinax received Twenty-five
12 Thousand Dollars. When you go back to the jury room you
13 will see his letter written a week later where he asked
14 for another Twenty-five Thousand Dollars. He said in
15 that letter that was to replenish the retainer.

16 Does that mean he had already spent Twenty-five Thous-
17 and and needed the Twenty-five Thousand after a week?

18 Then in October he filed an inventory and appraise-
19 ment and you will see that. I want you to look at that
20 document too because at the top of it -- you've heard
21 for a day or day and a half about tax codes and regulations,
22 tax returns that are necessary; you have to do a 706.

23 Yet at the top of the form he writes federal tax
24 return not required, and on that report he lists all the
25 assets.

1 When you get back in the jury room you can look at
2 that and you will be able to see what his reasoning was.
3 Of course, Mr. Mullinax doesn't agree with Mr. Jordan,
4 who has been certified by the South Carolina Supreme Court
5 as a specialist in taxation.

6 Mr. Mullinax basically said that Mr. Jordan hadn't
7 done his job. I don't know. Here we are almost two
8 years later and the Estate is still open. It isn't yet
9 closed.

10 I want you to read the engagement letter to see
11 what the triggers are for the fees.

12 Of course, there's another question about whether
13 or not, regardless of what the triggers were, (portion not
14 audible)

15 In every contract are the duties of good faith and
16 fair dealing between the parties. I ask you -- you just
17 heard Mr. Mullinax testify. Maybe the Estate was worth
18 over Five Million. Maybe he really ought to bill a lot
19 more. You got numbers between Two point Seven Million and
20 Five Million. The numbers kept changing. I want you to
21 look at that.

22 Mr. Mullinax tells you as he sits here today that he
23 can't tell you the time he spent on the case. He can't
24 tell you the dates he did anything. He can't tell you
25 how much he billed for anything because he did not keep

1 any time records for the things he said were necessary
2 and appropriate for administering the Estate. Yet he
3 claims that it's worth a Hundred and Eleven Thousand
4 Dollars, or that it's worth some higher number.

5 When we talked today about the paragraph which al-
6 lowed (portion inaudible) If you read that, you will
7 see he is only entitled if he is fired to bill for the
8 work he has done up until that time.

9 How do you figure how what that's worth? How do
10 you figure out how much time was spent on it if you have
11 no time and billing records?

12 Mr. Mullinax would have you believe that he is entit-
13 led to charge one hundred percent of his fee even though
14 he was terminated two years ago.

15 Again, good faith and fair dealings -- you will hear
16 about and have to consider that Mr. Orlosky refused to
17 file the tax return. Yet today on the witness stand when
18 I asked him if he had prepared the -- if he prepared the
19 return he said, no, it wasn't yet due. Where is the 706?

20 You have to consider whether or not you believe,
21 based on the evidence, that Mr. Orlosky was refusing -- I
22 think quite to the contrary when you look at the evidence.
23 He was asking Mr. Mullinax to prepare the tax return.

24 Why do you think Mr. Mullinax didn't prepare the tax
25 return? Well, he testified frequently that he didn't

Mr. Taylor -- Closing Statement

1 anybody who is rational would sell stock because it
2 would be the least valuation at that time.

3 He said he was afraid of an earthquake. The Manor
4 holdings had been fine to that point in time.

5 He admitted -- I know you all caught this -- he ad-
6 mitted to my direct question -- Mr. Lange, isn't it true
7 that the Manor Corporation would benefit by selling the
8 stock at the lowest possible number, and he said, well,
9 of course.

10 And I said, isn't it true that the Debora Orlosky
11 Trust will benefit by getting the highest possible number
12 for the stock, and he said again, of course.

13 Mr. Lange got lucky because his brother in law was
14 delighted to do it at the lowest possible number, and he
15 did.

16 He ultimately found a lawyer who would do it, and he
17 fired Jay Mullinax because he wouldn't get it done, and
18 he found someone who would.

19 When you look at the credibility of witnesses, I ask
20 that you really judge them, and then I ask that you
21 really think about this, that no one asked you to leave
22 your common sense at home. As you can tell, this case
23 has been well prepared by the Plaintiff. They took five
24 hours of deposition of Mr. Mullinax and we've seen plenty
25 of other depositions.

1 Hundred Forty-four Dollars equals a Hundred and Eleven
2 Thousand Dollars and Seven Cents.

3 This is the sheet that Jay Mullinax testified he had
4 computed and talked to Mr. Orlosky about it in the June 6/
5 January time frame. Mr. Orlosky's memo has in it the fig-
6 ure Four Million Four Hundred Thousand which is the amount
7 on this sheet.

8 There is no other way the two things could have come
9 together except for this all happening in the same time.
10 The assertion is that somehow Mr. Mullinax never told him
11 of these numbers until sometime much later.

12 You will have the contract that they made, and the
13 question you have to decide is who breached the contract.
14 Did Mr. Mullinax breach it or was he doing everything he
15 could in a reasonable manner in his professional capacity?

16 Then with Mr. Orlosky staying in the same role, was he
17 doing everything he could in his professional capacity as
18 the trustee of the Estate?

19 Jay drafted the trust documents for Mr. and Mrs.
20 Orlosky. Mr. Orlosky came in and asked him to handle the
21 Estate six days after Mrs. Orlosky's death. He clearly had
22 been pleased with his work up until then. Jay endeavored
23 to do everything necessary and appropriate for the work.

24 He knew who his client was and he always remembered
25 who his client was.

Charge on the Law

1 You again are the judges of the facts, and as the
2 judges of the facts you determine the weight and the
3 credibility to give to the witnesses.

4 You decide whether or not a witness has a bias, a
5 prejudice, or an interest in the outcome of the lawsuit,
6 and you can judge such things as the demeanor and appear-
7 ance of the witness, any statements of the witness. You
8 are not bound to decide this case on the number of the
9 witnesses each side produced.

10 You can believe one witness over another or many
11 against one. You can accept all of a witness' state-
12 ments, or you can reject it in its entirety. You can
13 accept it or reject it. You can accept a part of a wit-
14 ness' testimony, you can reject a part of it.

15 Now, in a civil case -- we talked about the burden
16 of proof. The Plaintiff has the burden of proof in the
17 case. We have a claim and a counterclaim, so the Plain-
18 tiff has the burden of proof in proving his claim that
19 the Defendant breached their agreement by overcharging
20 the Estate for the work that he performed under their
21 agreement.

22 The Defendant has denied this claim, and on his
23 counterclaim the Defendant has the burden of proving his
24 counterclaim, that the Plaintiff owes him additional
25 sums for work he has performed on behalf of the Estate.

1 The Plaintiff denies the counterclaim.

2 Now, the burden of proof in a civil case is by what
3 is called the preponderance of the evidence or by the
4 greater weight of the evidence, or it is sometimes said
5 that it is the evidence which shows the facts are proven
6 to be more likely true than not true.

7 The number of witnesses does not determine the
8 preponderance of the evidence. It must be proven by
9 the greater weight of all the evidence.

10 Now, there are certain things that are not evi-
11 dence in this case, and you should not consider them as
12 evidence. Those are such things as arguments and state-
13 ments by the lawyers. I told you that is not evidence.
14 They are not witnesses, and what they have said during
15 their opening and closing statements and other times is
16 simply to help you interpret the evidence, but this is
17 not evidence.

18 If the facts are remembered by you to be dif-
19 ferent from the way the lawyers have stated them, your
20 memory of it controls.

21 Questions and objections by the lawyers are not
22 evidence. The attorneys have a duty to their clients
23 to do what is proper and you should not be influenced
24 by the objections that may have been made.

25 You should disregard evidence that has been excluded

1 or restricted, so when you have been instructed
2 to disregard evidence it must not be considered. In
3 addition, anything that you have seen or heard when the
4 Court is not in session is not evidence.

5 You have heard about deposition evidence here at
6 trial. Again, that was testimony that was taken out-
7 side of the Courtroom and was taken under oath. It is
8 to be considered as any other testimony or evidence in
9 the case.

10 Now, the parties have admitted that there was a
11 binding contract, so I will not instruct you that you
12 are to determine if there was a contract. In this
13 case both parties agree there was a contract, but there
14 is a claim that both have breached the contract that
15 existed between the parties.

16 In a breach of contract a party is only entitled to
17 recover if you find that it has been proven by the pre-
18 ponderance of the evidence or the greater weight of the
19 evidence that the other party unjustifiably breached the
20 contract.

21 The word breached means the failure without legal
22 excuse to perform a promise that forms a part of the
23 whole of the contract. A party breaches a contract when
24 that party does not perform as agreed under a contract
25 or fails to carry out the terms or the issues of the

1 contract.

2 In interpreting the contract, you must determine
3 the intentions of the parties. In interpreting the
4 intentions of the parties, you may consider only the
5 outward expressions of the parties. You cannot consider
6 the expression by others of secret intentions of the
7 parties.

8 A contract should be liberally construed to carry
9 out the intentions of the parties, and it is the substance
10 of the agreement and not the form which should be taken
11 into consideration.

12 In interpreting a contract it is not limited to its
13 literal meaning as to the terms of the contract (por-
14 tion inaudible) The contract is to be interpreted by
15 looking at its subject matter, its nature and its purpose
16 and in light of its purposes.

17 When a contract is in writing, the intentions of
18 the parties must be determined by looking at the entire
19 agreement, not by one clause or provision, and it must
20 be determined by the contents of the document alone.

21 When a written contract is clear, it must be inter-
22 preted by the terms of the document alone. If the cir-
23 cumstances warrant, terms which do not contradict the
24 written language of the contract may be implied in the
25 carrying out of the intentions of the parties.

1 given after an analysis of the extent of the damages
2 caused to one party by the other party's wrong. Remember
3 caprice, passion, prejudice or improper sympathy for or
4 against either of the parties to this case is not allowed,
5 and that you have no friends to reward or enemies to punish.

6 Both parties are entitled to a fair and impartial
7 trial at your hands. Under your oath, your verdict must
8 be unanimous. In other words, all twelve of you must
9 agree.

10 Now, Madam Foreman, I'm going to go over the verdict
11 form with you, and there is no magic to this.

12 As to the Plaintiff's claim that the Defendant breached
13 the contract, if you find the Plaintiff has proven his
14 claim and is entitled to an award for damages, your ver-
15 dict would be this form where it says, we, the jury,
16 find for the Plaintiff. You would check the first part
17 which says you find for the Plaintiff and write out the
18 damages you award. Then you would sign it and date it.

19 On the other hand, if you find that the Plaintiff
20 did not meet the burden of proof that the Defendant has
21 breached the contract, you check the second block where
22 it says you find for the Defendant. Then you would
23 sign and date it.

24 Then you would go and look at the second cause of
25 action for the Defendant's counterclaim, and if you find

1 the Defendant met the burden of proof and is entitled to
2 an award for damages, you would check the part of the
3 form where it says, we, the jury, find for the Defendant
4 against the Plaintiff in the amount of blank Dollars
5 actual damages. After you fill that in, you would sign
6 and date it.

7 On the other hand, if you find the Defendant has
8 not met the burden of proof on his counterclaim, then you
9 would find for the Plaintiff on the second form, we, the
10 jury, find for the Plaintiff against the Defendant, and
11 then sign and date it.

12 There must be a unanimous verdict as well as to the
13 counterclaim. You would then let the Bailiff know that
14 you have reached a verdict, and we will bring you in to
15 receive your verdict.

16 Now, before you begin to deliberate on your ver-
17 dict I must give the attorneys an opportunity to tell me
18 if I have left something out of my charge or stated some-
19 thing incorrectly.

20 We must also geot the evidence together and when I
21 send it back to your jury room with the verdict form, the
22 Bailiff will tell you that the Judge says you can begin
23 deliberations.

24 This will just take a couple of minutes and please
25 do not begin your deliberations until you get the evidence

Verdict

1 and the verdict form.

2 (Jury excused from Courtroom at 2:36 P.M.)

3 BAILIFF: Jury is clear, Your Honor.

4 THE COURT: Anything from the Plaintiff?

5 MR. BOWEN: Nothing for the Plaintiff, Your Honor.

6 THE COURT: Anything from the Defendant?

7 MR. TAYLOR: No, Your Honor.

8 (Jury received the evidence and verdict form to begin
9 deliberations at 2:40 P.M.)

10 (The Court stood in recess until the matter resumed
11 at 4:00 P.M., when the jury returned to the Courtroom)

12 THE COURT: All right. On the breach of contract
13 claim, we, the jury, find for the Plaintiff against the
14 Defendant in the amount of Eighty Thousand Dollars, ac-
15 tual damages. Signed and dated by the Foreman.

16 On the counterclaim, we, the jury, find for the Plain-
17 tiff against the Defendant.

18 If this is your verdict, please raise your hands.
19 Let the record show all jurors have raised their right
20 hand.

21 All right, I want to thank you for your work this
22 week.

23 (Jury excused by the Court)

24 MR. BOWEN: If Your Honor please, I believe there was
25 a proper judgment in this case but I need to make a motion

1 the appraisals were completed, I then brought the
2 information to our accountants to establish the
3 valuation of the corporation as per the terms of the Buy
4 sell Agreement that was -- that the three stockholders
5 had agreed to in -- I'm not sure what the date we signed
6 the Buy Sell Agreement. I believe it was in March 2008,
7 and that's --

8 From there on the process began of trying to
9 come up with -- we came up with the valuation, Ron
10 expressed his interest in selling his stock to the 10:22
11 corporation, and we -- from there we proceeded to try
12 and -- try and accommodate that.

13 Q. All right. Let me ask you, if in trying to
14 accommodate that, if you met with any road blocks or if
15 there were any difficulties to your knowledge?

16 A. Yeah. Yes, at certain points there were
17 difficulties, mostly in regard to the communications
18 between Mr. Orlosky and his attorney. That's where I
19 found the -- there were problems. I attempted to deal
20 strictly through my attorney and Ron's attorney, but 10:23
21 after a while discovered that Ron was not receiving the
22 information that I was receiving. And so I ended up
23 contacting Mr. Orlosky and providing him with the
24 information that I was receiving from my attorney
25 regarding conversations between his attorney and my

Verbatim ■

1 attorney.

2 Q. Was there any time that it became apparent to
3 you that you actually had communications from Ron's
4 attorney that Ron didn't have?

5 A. Yes, it seemed -- that happened, yes, yes.

6 Q. I'm going to ask you, if you would please,
7 look at the document consisting of three pages which has
8 been marked as Plaintiff's Exhibit No. 1.

9 Do you have that in front of you?

10 A. Yeah, I have it right here. Exhibit No. 1, 10:24
11 the heading is Smith Ranch Homes?

12 Q. Yes, sir.

13 A. Yeah.

14 Q. Can you identify that document for us and tell
15 us what it is?

16 A. That was the valuation of my father's home at
17 751 Deer Valley Road in San Rafael.

18 Q. Now, that document bears a date of
19 November 2nd, 2009?

20 A. That is correct. 10:25

21 Q. Is that one of the valuations you were
22 referring to when you said that you had various things
23 appraised or valued --

24 A. Well --

25 Q. -- having to do with Manor Development?

Verbatim ■

1 The 180-day thing, it didn't really make any difference
2 from the way I read the document. I've reread the
3 document and not really positively sure what the 180
4 days does, as Ron says here in his -- in his e-mail,
5 where he says suppose it was to be 181 days. His sale
6 of the stock would be under the same terms.

7 Q. So as far as you understood it, that provision
8 didn't make any difference?

9 A. Yes.

10 Q. You agree with me that whatever doesn't make 10:38
11 any difference doesn't matter?

12 MR. TAYLOR: Object to the form.

13 THE WITNESS: I agree to that.

14 BY MR. BOWEN:

15 Q. Take a look at Exhibit No. 6 consisting of two
16 pages.

17 A. Yes, I remember this one.

18 Q. Did you author this e-mail, Exhibit No. 6?

19 A. I did author this e-mail.

20 Q. And was the letter from Mr. Mullinax to 10:39
21 Mr. Bjornstrom attached?

22 A. It was.

23 Q. Did you have any discussion with Mr. Orlosky
24 concerning whether or not he had ever seen this letter?

25 A. Yes, that was the nature of this e-mail, was I

Verbatim ■

1 didn't understand Mr. Mullinax's response to
2 Mr. Bjornstrom; and after my conversations with
3 Mr. Orlosky, and then subsequently learned that
4 Mr. Orlosky had not been party to the correspondence
5 between David Bjornstrom and Mr. Mullinax. And so since
6 Mr. Orlosky was not aware of the communications between
7 his attorney and Mr. Bjornstrom, I forwarded the
8 attached letter.

9 Q. And did you -- what did you mean in your
10 e-mail to Mr. Orlosky when you said "I'm just not 10:40
11 feeling the love"?

12 A. Well, I wasn't expecting this to come back.
13 In the letter -- in the response from
14 Mr. Mullinax, from what I remember, was that Mr. -- the
15 letter from Mr. Mullinax did not relate to my
16 communications and my understanding that I had with
17 Mr. Orlosky about the sale -- about the sale of the
18 stock. In fact, it seemed completely, as I look at the
19 letter from Mr. Mullinax where he makes the comment "My
20 client has not yet determined whether to sell the 10:41
21 stock," that right there is -- is sort of -- you know, I
22 was confused, as Ron and I had already discussed that
23 this was going to happen.

24 Q. Well, the statement that you refer to in
25 Mr. Mullinax's letter to Mr. Bjornstrom that "my client

Verbatim 

1 has not yet" -- "although my client has not yet
2 determined to sell the stock," was that contrary to what
3 you and Mr. Orlosky had been talking about?

4 A. Completely.

5 Q. Now, when you sent this to Mr. Orlosky, did
6 you all have any conversation as to whether or not that
7 statement had been authorized by him or was correct or
8 incorrect?

9 A. From what I recollect, that Mr. Orlosky agreed
10 that that statement was incorrect and that the main -- 10:42
11 the main reason for the e-mail was the confusion on my
12 part in not understanding why Mr. Orlosky's attorney was
13 not including him on the correspondence between my
14 attorney and himself and Mr. Mullinax. I think it was
15 at this point that I sort of discovered that
16 Mr. Mullinax was not including Ron in his correspondence
17 with Mr. Bjornstrom, and I was confused by that. I
18 didn't understand -- I didn't understand that. And that
19 was why my comment in the e-mail, as it is
20 Mr. Mullinax's position was not consistent with the 10:43
21 understanding that I had with Mr. Orlosky.

22 Q. Okay. Would you please take a look at Exhibit
23 No. 7, Plaintiff's Exhibit No. 7, e-mails also
24 consisting of two pages.

25 A. Yes, I'm looking at it.

Verbatim ■

COPY

DEBORA LAURA ORLOSKY REVOCABLE TRUST

May 20, 2009

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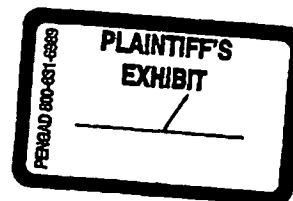


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DEBORA LAURA ORLOSKY REVOCABLE TRUST

I, Debora Laura Orlosky, as Grantor, hereby create the Debora Laura Orlosky Revocable Trust ("the Trust") on May 20, 2009. My husband and I are the trustees of this Trust and, in that capacity, we and our successors are collectively referred to in this Trust as the "Trustees."

ARTICLE 1 FAMILY

I am married to Ronald Joseph Orlosky, who is referred to as "my husband" in this Trust. My husband has been previously married and has two children from that marriage, Daniel J. Orlosky and Kevin C. Orlosky, whom I have not adopted. References to "my husband's children" mean only his children named above. My husband and I have two children, Alexis J. Orlosky and Valerie M. Orlosky. References to "my children" mean all of my and my husband's children named above; references to "my descendants" mean my children named above and their descendants.

ARTICLE 2 TRANSFERS TO TRUST

I hereby convey to the Trustees Ten Dollars (\$10), which together with any assets later added to this Trust are referred to as the "Trust Estate." Any person may transfer assets to the Trust Estate, if the Trustees agree to accept them. Unless otherwise specified in writing at the time of the transfer, those assets will be held as provided in this Trust. The Trustees accept the responsibility of the Trustees, acknowledge receipt of the current Trust assets, and agree to hold the Trust Estate as set forth in this Trust.

ARTICLE 3 RESERVED RIGHTS

I reserve the following personal rights with respect to the Trust during my lifetime:

- To amend or revoke this Trust;
- To remove a Trustee and to designate a new Trustee;
- To withdraw assets, whether income or principal, from the Trust Estate;
- To require changes in the investments of the Trust Estate, but investments made by me are not subject to review by the Trustees unless my personal rights are suspended under Section 3.2;
- To direct the Trustees to perform any act of administration, whether or not contrary to the terms of the Trust; and

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- To direct the Trustees to make distributions during my lifetime to any person named by me.

3.1 By Whom Exercisable. Except as provided below, all rights described above may be exercised only by me personally, from time to time, subject to the following: all exercises of these powers must be evidenced by a written instrument I have signed, the existence of which has been communicated to the Trustees, and any amendment of the Trust that contains "testamentary aspects" or a revocation of the Trust must be executed with the formalities of a Will in South Carolina. These powers, and any others powers conferred by law on a trust grantor, may not be exercised by any guardian who may be appointed for me or by my attorney-in-fact, except that either of those persons may amend (but not revoke) this Trust only to the extent necessary to preserve a tax deduction, exemption, or credit consistent with my beneficial intentions as stated in this Trust. The Trustees are to be held harmless and indemnified from any liability for any of their actions or omissions made in reliance on my actions or instructions under this article.

3.2 Suspension of Rights. My personal rights under this article will be suspended immediately if I become disabled. For these purposes, my disability is determined as follows:

(a) **Court Decision.** If I am determined to be incapacitated by a court having jurisdiction, my personal rights reserved in this article will be suspended until my legal capacity is restored.

(b) **Private Decision.** In the absence of a judicial determination, if my husband reasonably believes that I am suffering from any mental or physical incapacity that would affect my judgment concerning management of the Trust, and if my husband obtains written confirmation of that opinion from my physician, my husband may give me written notice to that effect. Upon delivery to me of that written notice, my personal rights reserved in this article will be suspended immediately until my legal capacity is determined by a court or until my husband rescinds such written notice. If my husband is disabled, the Trustee may act in his place.

(c) **Other Facts.** My personal powers will be suspended if my husband gives written notice to the Trustees (or the successor Trustees, if applicable) that he has received credible and timely evidence that I have disappeared, am unaccountably absent, or am being detained under duress so that I am unable to look after my financial interests.

(d) **HIPAA.** For purposes of this Section 3.2, I appoint each of the persons named above as my personal representative under 45 CFR § 164.502(g), a portion of the regulations implementing the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), to demand, obtain, review, and release to others medical records or other documents protected by the patient-physician privilege, attorney-client privilege, or any similar privilege, including all records subject to, and protected by, HIPAA.

3.3 Homestead Rights. Despite any other provision of this Trust, I reserve the right to reside on any real property owned by the Trust during my lifetime. I will be entitled to claim

any available homestead tax exemption for any real property in the Trust, and, for purposes of that exemption, my interest in such property will be deemed an interest in real property and not an interest in personal property. This provision does not restrict the Trustees from selling, leasing, or encumbering that property without my joinder in any deed or other instrument.

ARTICLE 4 PAYMENTS DURING MY LIFETIME

The Trustees shall pay to or apply for my benefit (without obligation to any guardian who may be appointed for me) whatever income or principal that the Trustees in their discretion deem necessary or advisable for my best interests. The Trustees are authorized to provide for the finest available support and health care for me, even if this leaves no assets of the Trust remaining for other beneficiaries.

ARTICLE 5 DISTRIBUTIONS AFTER MY DEATH

Upon my death and after making provision for the payments under Article 18, the Trustees shall distribute the remaining Trust Estate as follows:

5.1 Specific Gifts. The Trustees shall distribute the following specific gifts:

(a) **Gifts Under Will.** If my Will makes a gift of a specific asset that is held in this Trust when I die, and if this Trust does not make a specific gift of that asset, the Trustees shall distribute that asset to the beneficiary named in my Will. If my Will gives my residuary probate estate to this Trust, and if my probate estate is insufficient to satisfy any other preresiduary gift under my Will, the Trustees shall satisfy the balance of that gift from the Trust.

(b) **Specific Gift of Cash.** The Trustees shall distribute Fifty Thousand Dollars (\$50,000) to Daniel J. Orlosky, for his thoughtfulness and kindness over the years, if he survives me.

5.2 If Husband Survives. If my husband survives me, the Trustees shall make the following distributions:

(a) **Marital Gift.** The Trustees shall set aside, as a separate trust (the "Marital Trust"), the following:

(1) **Formula Gift.** The smallest pecuniary amount necessary to eliminate or reduce to the lowest possible sum the federal estate tax liability of my estate. This amount will be calculated by taking into account my applicable exclusion amount and all other tax credits, deductions, and other preferences allowed to my estate, based on the assumption that an election is made to qualify all of the property in the Marital Trust for the marital deduction. The amount of this gift, however, is not conditioned upon such an election being made, and will not be readjusted because of a disclaimer by my husband. Values finally determined for federal

estate tax purposes are to be used in determining the amount of the Marital Trust. The Trustees shall administer the Marital Trust as provided in Article 6.

(b) **Residuary Estate: Bypass Trust.** The Trustees shall hold all remaining assets of the Trust Estate as a separate trust (the "Bypass Trust"). The Trustees shall administer all property of the Bypass Trust as provided in Article 7.

5.3 If Husband Does Not Survive. If my husband does not survive me, the Trustees shall distribute all the remaining Trust Estate as provided in Section 7.2.

ARTICLE 6 ADMINISTRATION OF MARITAL TRUST

The Trustees shall hold, administer, and distribute the Marital Trust in accordance with the powers granted under this Trust as follows:

6.1 Distribution of Income. The Trustees shall pay to my husband, or apply for his benefit, all income of the trust at least annually during his lifetime. Any accrued income at his death is to be paid to his estate.

6.2 Distribution of Principal. The Trustees may pay or apply such sums from principal as, in the Trustees' discretion, are necessary or advisable for my husband's health, education, support, and maintenance.

6.3 Distribution of Remaining Assets. After my husband's death and after making provision for the payment of estate taxes on the Marital Trust, the Trustees shall distribute all remaining trust assets as provided in Section 7.2, subject to Article 9.

ARTICLE 7 ADMINISTRATION OF BYPASS TRUST

The Trustees shall hold, administer, and distribute the Bypass Trust in accordance with the powers granted under this Trust as follows:

7.1 During Husband's Lifetime. During my husband's lifetime, the Trustees shall make the following distributions.

(a) **Payments to Husband.** The Trustees shall pay to or apply for the benefit of my husband all income of the Bypass Trust in quarterly or other convenient installments. In addition, the Trustees may pay to or apply for the benefit of my husband any of the principal of this trust that the Trustees in their discretion deem necessary or advisable for his health, education, support, and maintenance. Despite the foregoing, the Trustees may make no distributions of principal from the Bypass Trust to my husband until the assets of the Marital Trust have been fully distributed, unless compelling circumstances require otherwise.

(b) **Payments to Family.** In addition to payments to or for the benefit of my husband during his life, and after being reasonably assured that he has sufficient means for his continued support in his accustomed manner of living, the Trustees in their discretion also may pay any principal that they deem advisable or necessary for the health, education, support, and maintenance of my children.

(c) **Use of Residence by Husband.** If any residence formerly owned by me is held in the Bypass Trust, my husband will have the exclusive use and benefit of that residence during his lifetime, or until the Trustees determine that the residence is no longer needed for such purposes. No rent or other costs are to be charged to my husband, and the Trustees shall pay all expenses for maintaining the residence, including mortgage payments, property taxes, assessments, insurance, maintenance, and repairs. Unless my husband is disabled, the Trustees may not sell the residence without his consent. If the residence is sold, the Trustees may purchase or build a suitable replacement residence, to which this paragraph then will apply.

7.2 At Death of Survivor. Upon the death of the survivor of me and my husband, the Trustees shall divide all remaining assets of the Bypass Trust into separate shares for my then living descendants, per stirpes. The Trustees shall distribute the shares for my children Daniel J. Orlosky and Kevin C. Orlosky to them outright and shall hold the share of each other beneficiary as a separate trust under Article 8. If I have no descendants living at the time for termination of the Bypass Trust, the Trustees shall distribute the remaining assets of the Bypass Trust as provided in Article 10.

ARTICLE 8 TRUSTS FOR DESCENDANTS

The Trustees shall hold, administer, and distribute any trust created for a descendant of mine as follows:

8.1 Discretionary Distributions. The Trustees may pay or apply such sums of income or principal from each beneficiary's separate trust as in the Trustees' discretion are necessary or advisable for that beneficiary's health, education, support, and maintenance.

8.2 Income Payments. When the beneficiary for whom a separate trust was established reaches age 25, the current income of that trust is to be distributed thereafter to the beneficiary or applied for his or her benefit quarterly or more frequently.

8.3 Further Distribution. Upon the death of the beneficiary, the Trustees shall divide the trust assets into shares for that beneficiary's descendants, per stirpes; or if there are none, for the then living descendants, per stirpes, of that beneficiary's closest ancestor in degree who is also a descendant of mine; or if there are none, for my then living descendants, per stirpes. The Trustees shall hold the shares for those descendants as separate trusts as provided in this article. If any assets are then being held in trust for that descendant, the assets passing to that descendant under this paragraph are to be added to the trust held for that descendant. If any trust has terminated, its share of those assets will be distributed to the persons who would then have been the beneficiaries of that trust had it not terminated.

5

DEBORA LAURA ORLOSKY REVOCABLE TRUST

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8.4 Alternative Distribution. If none of the beneficiaries under the preceding provisions survive to receive full distribution of the Trust Estate, the Trustees shall distribute all remaining assets as provided in Article 10.

ARTICLE 9 STANDBY TRUST

If any assets are distributable under this Trust (other than by exercise of a power of appointment) to a person other than my husband who has not then reached age 21, or who in the judgment of the Trustees is under a disability, the Trustees will hold that person's share in trust for his or her benefit. In determining a person's disability, the Trustees may rely conclusively upon the opinion of a medical doctor retained by them to make such a determination. The Trustees may apply so much of the income and principal of this separate trust that they consider necessary or desirable for the person's health, education, support, and maintenance. When the person reaches age 21 or when that person's disability, in the judgment of the Trustees, ceases to exist, the Trustees shall distribute the remaining assets of this separate trust to that person. If that person dies before complete distribution of this separate trust, the remaining trust assets are to be distributed, subject to this article:

- (a) to that person's then living descendants, per stirpes; or if none,
- (b) to the then living descendants, per stirpes, of that person's closest ancestor in degree who is also a descendant of mine; or if none,
- (c) to my then living descendants, per stirpes; or if none,
- (d) as provided in Article 10.

This article is to be effective only and is limited in duration to the extent that it does not result in any violation of any applicable rule against perpetuities or similar law.

ARTICLE 10 ALTERNATIVE DISTRIBUTION

If any property is subject to this article under another provision of this Trust, the Trustees shall distribute that property to my heirs at law, determined at that time as if I had died unmarried and intestate under South Carolina law then in effect, subject to Article 9.

ARTICLE 11 APPOINTMENT OF INDEPENDENT CO-TRUSTEE

After my death or disability, my husband may designate an Independent Co-Trustee to serve with him. While my husband serves as sole Trustee, he may not invade principal nor make discretionary payments of income to or for his own use or benefit. If an Independent Co-Trustee is then acting, it shall participate fully with my husband in the administration of the Trust, including any decision to make the distributions described above.

ARTICLE 12
PROVISIONS GOVERNING TRUSTEES

The following provisions apply to all Trustees appointed under this Trust, including me while I serve as Trustee:

12.1 Successor Trustees. If there is ever a vacancy in the office of Trustee of any trust created in this Trust and no successor is appointed as provided in this instrument, I appoint the following persons to serve as successor Trustees, in the order of priority listed:

(a) Daniel J. Orlosky;

(b) Boyd Richard Lang, Jr.

If all of these persons fail or cease to serve, the persons designated in Section 12.4 will nominate a successor Trustee. If those persons do not appoint a successor Trustee within a reasonable time, the terminating Trustee shall, or any beneficiary may, petition a court of competent jurisdiction to appoint a successor Trustee.

12.2 Incapacity of Trustee. If my personal rights are suspended as provided in Article 3, I will cease to serve as Trustee while those rights are suspended.

(a) **Disability.** If any other Trustee becomes disabled (as defined in this Trust), he or she will immediately cease to act as Trustee.

(b) **Suspension.** For purposes of this Section 12.2, if a Trustee fails to sign a release of relevant medical information necessary to determine his or her capacity, that Trustee will be suspended 30 days after the request for such a release is delivered to him or her by the named successor Trustee, or if none, by the persons then entitled to appoint successor Trustee.

(c) **Reinstatement.** If a Trustee who ceases to serve because of a disability, or who is suspended as provided above, thereafter recovers from that disability or consents to the release of relevant medical information, he or she may elect to become a Trustee again by giving written notice to the then serving Trustees, and the last Trustee who undertook to serve will then cease to be a Trustee until another successor Trustee is required.

12.3 Resignation. Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to me if I am then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

12.4 Power to Name Other Trustees. Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust, a sole Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, my husband, if he is then living and not disabled, shall appoint a successor Trustee (who may be my husband). The appointment will be by a written document (including a testamentary

instrument) delivered to the appointed Trustee and to me, but if I am deceased or disabled, to all other persons specified in this Section 12.4.

12.5 Removal of Trustees. I reserve the right to remove any Trustee by giving written notice to that Trustee. After my death, or if my personal rights are suspended as provided in Article 3, the right to remove Trustees may be exercised as follows:

(a) **Right to Remove.** The persons then entitled to appoint successor Trustees may remove any Trustee for any reason by giving 30 days' written notice to that Trustee and to the permissible current income beneficiaries, including the natural or legal guardians of any beneficiaries who are then disabled.

(b) **Acceptance Required.** If there are no successor Trustees named in this Trust who are eligible and willing to serve, a removal notice must name a successor Trustee, and a qualified successor Trustee must accept appointment within the period of the removal notice.

(c) **Exceptions.** Despite the foregoing, no person proposed to be removed as Trustee may participate in exercising this removal power, and no person to whom distributions have been suspended under Article 16 may participate in exercising this removal power during that suspension and for two years after that suspension is no longer in effect. Any such persons will not be counted in determining the required votes for removal.

12.6 Powers of Successor Trustees. Successor Trustees will have all powers granted to the original Trustees, except that only an Independent Trustee will succeed to the powers vested exclusively in the Independent Trustee. Unless a Co-Trustee continues to serve, a Trustee ceasing to serve for any reason has the duties and powers necessary to protect the Trust Estate until it is delivered to a successor Trustee.

12.7 Accountings. Unless waived, accountings must be given to Qualified Beneficiaries at least annually (quarterly if a Corporate Trustee is serving). The written approval by a beneficiary (individually or by representation) of an accounting will be final and binding upon that beneficiary and all persons represented by him or her as to all matters disclosed in that accounting. In any event, if a beneficiary (or his or her representative) fails to object to an accounting within six months of receiving it, that beneficiary's approval is conclusively presumed. A successor Trustee may require the prior Trustee to render a full and final accounting. The Trustee shall provide all other information required under South Carolina law.

12.8 Acts by Other Fiduciaries. The Trustees shall take reasonable steps to compel a former Trustee or other person to deliver trust property to the Trustee, but otherwise are not required to question any acts or failures to act of the fiduciary of any other trust or estate, and will not be liable for any prior fiduciary's acts or failures to act. The Trustees can require a beneficiary who requests an examination of another fiduciary's actions or omissions to advance all costs and fees incurred in the examination, and if the beneficiary does not, the Trustees may elect not to proceed or may proceed and offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

12.9 Court Supervision. I waive compliance by the Trustees with any law requiring bond, registration, qualification, or accounting to any court.

12.10 Compensation. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the Trust. Reasonable compensation for a Corporate Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a Corporate Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustees' fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing.

12.11 Indemnity. Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustees shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed upon it because of its actions or omissions while serving as Trustee. This protection, however, does not extend to a Trustee's negligent actions or omissions that clearly and demonstrably result in damage or liability. A prior Trustee may enforce these provisions against the current Trustees or against any assets held in the Trust, or if the prior Trustee is an individual, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.

12.12 Multiple Trustees. If there are two or more Trustees serving at any time, the following will apply:

(a) **Authority.** If only two Trustees are serving, any power or discretion of the Trustees may be exercised only by their joint agreement. If more than two Trustees are serving, and unless unanimous agreement is specifically required by the terms of this Trust, any power or discretion of the Trustees may be exercised only by a majority. Despite the foregoing, if a Co-Trustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the Trust or to avoid injury to the Trust property, the remaining Co-Trustee if only one, or a majority of the remaining Co-Trustees if more than one, may act for the Trust.

(b) **Delegation.** The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. Despite the above, only an Independent Trustee may exercise the powers and discretions vested exclusively in Independent Trustees.

(c) **Dissents.** A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only

at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE 13

FUNDING AND QUALIFICATION OF MARITAL TRUST

The following provisions will apply with respect to the administration of the Marital Trust:

13.1 Qualifying Assets. Only assets that can qualify for the marital deduction are to be used in funding the Marital Trust.

13.2 Preference of Funding. If other assets are available to fund the Marital Trust, the Trustees should (but are not required to) use those assets first before any of the following assets:

- Property for which a tax credit is allowable for estate tax purposes;
- Property that constitutes income in respect of a decedent;
- Any life insurance policy insuring my husband;
- Appreciated property received from my husband within one year before my death; or
- Shares of stock that qualify for redemption under Section 303 of the Internal Revenue Code.

13.3 Tentative and Final Allocations to Marital Trust. The Trustees may tentatively allocate assets to the Marital Trust. The Trustees shall make final adjustments as necessary when my estate tax liability is finally determined.

13.4 Allocation of Assets. The Trustees may allocate assets to the Marital Trust in cash or in kind. If assets other than cash are used, the Trustees shall use assets having an aggregate fair market value at the date or dates of distribution equal to the amount of the marital gift as finally determined for federal estate tax purposes.

13.5 Investment of Trust Assets. My husband may require the Trustees to invest the Marital Trust so that it is productive as a whole, as contemplated by the Treasury Regulations, despite any other provisions of this Trust.

13.6 Partial Election. If an election is made to qualify only a portion of the Marital Trust for the marital deduction, the Trustees shall divide that trust on a fractional basis according to its fair market value on the date of division, so that the qualifying and nonqualifying portions will be held as separate trusts. Unless compelling circumstances require otherwise, all

distributions of principal are to be made first from the trust that is elected to qualify for the marital deduction, and after that trust is exhausted, from the trust that is not elected to qualify for the marital deduction.

13.7 Payment of Estate Taxes. If any portion of the Marital Trust is included in my husband's gross estate for federal estate tax purposes, unless my husband specifically directs to the contrary in his Last Will, the Trustees shall pay from that portion the amount certified by my husband's Personal Representatives that state and federal estate taxes (including penalties and interest) for his estate are increased over the amount of those taxes computed as if that portion were not included in his gross estate (as provided in Section 2207A of the Internal Revenue Code). The Trustees may pay those taxes directly or to the Personal Representatives of my husband's estate, and the Trustees are to be held harmless from any liability for making payments in reliance on that certification.

13.8 Retirement Plans. If the Trustees of the Marital Trust are named as the beneficiaries of any retirement plan, or if the Trustees allocate the benefits of any such plan to the Marital Trust, the Trustees must administer those benefits subject to the following rules:

(a) **Definition.** For purposes of this paragraph, "retirement plan" means my interest in any pension, profit-sharing, or a similar plan, or in any individual retirement account or similar arrangement, as described in Sections 401(a), 408, or 408A of the Internal Revenue Code.

(b) **Required Distributions.** The Trustees must direct the retirement plan custodian, trustee, or administrator to make annual distributions to the Trustees of an amount equal to the greater of (i) the minimum required distribution under the Internal Revenue Code, and (ii) the amount of income of the retirement plan for that year that my husband, in a signed written instrument delivered to the Trustees, directs the Trustees to withdraw from the retirement plan.

(c) **Allocation of Distributions.** For trust accounting purposes, the Trustees must allocate to income from payments received in any calendar year an amount equal to the income earned by the retirement plan in that year, and any excess must be allocated to principal. Expenses attributable to principal distributions from the retirement plan are to be allocated to principal.

(d) **Default Beneficiary.** If my husband survives me and the Trustees are named as the beneficiary of any retirement plan without reference to a specific trust, and if those benefits could be allocated to a trust whose beneficiaries would not be treated as "designated beneficiaries," the Marital Trust will be the beneficiary of that retirement plan.

ARTICLE 14 SURVIVAL PROVISIONS

If my husband and I die under circumstances in which there is insufficient evidence to determine the order of our deaths, my husband will be treated as if he survived me for all

purposes, including the determination of ownership of all nonprobate assets (to the extent not otherwise prohibited by law). If any beneficiary (other than my husband) is required to survive me or another person to receive a distribution, and if the beneficiary does not survive me or that other person by 90 days, or if that beneficiary cannot be located within one year after my death despite reasonable attempts by the Trustees to locate that beneficiary, the beneficiary will be treated as if he or she died before me or that other person.

ARTICLE 15 PROTECTION OF INTERESTS

The interest of any beneficiary under this Trust, in either income or principal, may not be anticipated, alienated, or in any other manner assigned by the beneficiary and will not be subject to any legal process, bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

ARTICLE 16 SUBSTANCE ABUSE

If the Trustees reasonably believe that a beneficiary of any trust:

- routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or
- is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustees reasonably believe that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions will apply:

16.1 Testing. The Trustees may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustees of the results of all such examinations, as well as of all opinions and suggested treatments by the beneficiary's treating physician, on an ongoing basis. The Trustees shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustees may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustees.

16.2 Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will

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DEBORA LAURA ORLOSKY REVOCABLE TRUST

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determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustees. If the beneficiary consents to the treatment, the Trustees shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this article.

16.3 Resumption of Distributions. The Trustees may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustees in their discretion determine that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

16.4 Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustees shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust.

16.5 Exoneration. No Trustee (nor any doctor retained by the Trustees) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustees have no duty to inquire whether a beneficiary uses drugs or other substances as described in this article. The Trustees (and any doctor retained by the Trustees) are to be indemnified from the Trust Estate and held harmless from any liability of any nature in exercising their judgment and authority under this article, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

16.6 Tax Savings Provision. Despite the provisions of this article, the Trustees cannot suspend any mandatory distributions that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustees elect for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

ARTICLE 17 GENERATION-SKIPPING TAX PROVISIONS

If GST exemption is to be allocated to any separate trust and the allocation would cause that trust to have an inclusion ratio greater than zero, then before the allocation is made, the Trustees are authorized to divide the trust into two separate trusts representing fractional shares of the assets being divided, so that the GST exemption can be allocated to give one such separate trust an inclusion ratio of zero (an "exempt trust") and the other separate trust an inclusion ratio of one (a "nonexempt trust"). Except as may otherwise be specifically provided in this Trust, the separate trusts will be governed by the same provisions that would apply if the trust had not been divided.

17.1 Protection of Exempt Status. No assets are to be added to a trust that would change the inclusion ratio of that trust to a number greater than zero. Instead, the Trustees shall

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hold those assets as a separate trust under the terms and conditions specified in this Trust, but with a separate inclusion ratio. If a trust has already been divided into exempt and nonexempt trusts, and assets are added to the trust that are either wholly exempt or wholly nonexempt, the assets to be received are to be added to the separate trust of the same character, or if none, held as a separate trust retaining their exempt or nonexempt status.

17.2 Operation of Separate Trusts. If a trust is divided into separate trusts, the Trustees may make different decisions with respect to the separate trusts concerning tax elections, the exercise of the Trustees' discretionary powers and authority (including decisions whether to make discretionary distributions), investment decisions, and any other actions consistent with treatment as separate trusts, except that, as between an exempt trust and a nonexempt trust, the Trustees shall pay all taxes, expenses, and other charges allocable to those trusts first from the nonexempt trust and, only after that trust is exhausted, from the exempt trust.

17.3 Adequate Interest. If GST exemption is allocated to a residuary gift and a pecuniary gift is not entitled to income or interest under state law, the Trustees must allocate to that pecuniary gift a pro rata share of the income of the Trust Estate between my date of death and the date of payment, unless that pecuniary gift is paid in full (or irrevocably segregated and held in a separate account pending distribution) within 15 months after my death.

ARTICLE 18

PAYMENTS OF OBLIGATIONS, EXPENSES, AND TAXES

The Trustees shall pay all of my obligations, expenses, and taxes as follows:

18.1 Obligations. I direct that my legally enforceable obligations (except those secured by mortgages or other security instruments) be paid in the order and manner prescribed by law.

18.2 Expenses. The term "expenses" includes all estate transmission or management expenses of my probate estate, all administrative expenses of this Trust, and all costs of my last illness and funeral. I direct that all expenses be paid first from the Bypass Trust and, to the extent insufficient, then from that portion of the Marital Trust that does not qualify for the federal estate tax marital deduction. If any expenses remain, the balance is to be paid from the remaining portion of the Marital Trust. Payments may be made from and charged to either income or principal, at the discretion of the Trustees. The Trustees shall not seek reimbursement from any party for expenses that they pay.

18.3 Taxes. The term "estate taxes" means all state and federal estate, inheritance, or transfer taxes payable by reason of my death (including the generation-skipping transfer tax on any direct skip created by the express terms of this Trust rather than by disclaimer), plus any related interest and penalties attributable to these taxes, but excluding any other generation-skipping taxes.

(a) Specified Transfers. The Trustees shall pay all estate taxes charged with respect to my gross estate for estate tax purposes (including estate taxes on assets that do not

pass under this Trust), but with the following exceptions. The Trustees shall not pay estate taxes charged on each of the following assets (collectively referred to as the "Specified Transfers") if the value of a Specified Transfer exceeds One Hundred Thousand Dollars (\$100,000):

(1) assets that I jointly own with someone else and that pass by survivorship to that other person;

(2) assets held in what is known as a "Totten Trust," a "Pay On Death Account," an "In Trust For Account," or similar arrangement;

(3) death benefits included in my gross estate under Sections 2035 (which governs transfers made within three years before death), 2039 (which governs taxes on annuities and qualified retirement plans), or 2042 (which governs taxes on insurance benefits) of the Internal Revenue Code, unless those death benefits are paid to this Trust;

(4) any assets over which I have a taxable power of appointment under Section 2041 of the Internal Revenue Code, unless those assets are appointed to this Trust;

(5) qualified terminable interest property described in Section 2044 of the Internal Revenue Code (which governs QTIP trusts and similar arrangements);

(6) any other assets not held in trust under this Trust that are included in my gross estate under Sections 2035 through 2038 of the Internal Revenue Code (governing transfers made by me in which I retained an income interest, revocable transfers, and other transfers), unless those assets are paid to this Trust.

(b) **Remaining Taxes.** The Trustees shall pay all other estate taxes from that portion of the Marital Trust that does not qualify for the federal estate tax marital deduction, and, to the extent insufficient, from the Bypass Trust. If any estate tax remains unpaid, the balance is to be paid from the remainder of the Marital Trust. Despite any provision of this instrument to the contrary, however, the following will apply in allocating and paying estate taxes:

- No estate taxes are to be charged to any interest if that would diminish the aggregate estate tax deductions available.
- The Residuary Trust Estate is not to be charged with any additional estate taxes imposed pursuant to Sections 2032A(c) and 2057(f) of the Internal Revenue Code, relating to the recapture of taxes on qualified real property and qualified family business interests.
- If any credit under Sections 2012 (relating to credit for gift taxes paid) or 2014 (relating to credit for foreign estate taxes paid) of the Internal Revenue Code is attributable to the property described in this paragraph, that credit is to be applied against the tax apportioned to the property as to which the credit is attributable.

(c) **Reimbursement.** I waive all rights of recovery under Sections 2206, 2207, and 2207B of the Internal Revenue Code, except to the extent of the Specified Transfers. I direct the Trustees to exercise all rights of recovery of estate taxes granted by Section 2207A of the Internal Revenue Code as in effect at my death, to the extent that the Trustees determine that exercising those rights is economically justifiable.

(d) **Interest on Tax.** All taxes apportioned under this article also are to include interest from 30 days after my Personal Representatives or the Trustees make a written demand for payment upon the recipient of the property against which tax has been apportioned until the tax is paid, provided that the federal estate tax return has already been filed. This interest is to be calculated at the same rate and in the same manner as for the underpayment of taxes under Section 6621 of the Internal Revenue Code. For the purposes of such demand and the payment by the recipient, the amount of the estate taxes shown on the federal and state estate tax return initially will be deemed to be correct, subject to appropriate adjustment when the estate taxes are finally determined and paid. If the amount so apportioned (together with any interest) is not paid within three months of the final determination of tax, it will become an offset against any amount otherwise due to the beneficiary under this Trust. To the extent that the amount so apportioned (together with the interest) is fully offset by the amounts due the beneficiary, interest is to cease at the end of the three month period. Alternatively, the beneficiary may notify my Personal Representatives or the Trustees of his or her desire to offset a portion (or all) of that beneficiary's interest under this Trust to pay those taxes. In that event, interest will not be charged against that beneficiary for the amount offset.

(e) **Method of Payment.** The Trustees may rely on a written statement signed by my Personal Representatives as to the amount of those expenses and taxes. The Trustees may make payment directly or to my Personal Representatives, as my Personal Representatives request. The Trustees will be held harmless from any liability in making payments as so directed.

(f) **Excluded Property.** If any funds become available to the trustees of any trust, including without limit, life insurance, qualified employee benefit plans, individual retirement accounts, or other property from sources specified in Section 2039 of the Internal Revenue Code, and those funds are not otherwise included in my gross estate for federal estate tax purposes, then none of those funds may be used to pay, directly or indirectly, any debts, taxes, or expenses of mine or my estate.

ARTICLE 19 FIDUCIARY POWERS

I grant to the Trustees full power to deal freely with any property in the Trust. The Trustees may exercise these powers independently and without the approval of any court. No person dealing with the Trustees need inquire into the propriety of any of their actions or into the application of any funds or assets. The Trustees however, shall exercise all powers in a fiduciary capacity in good faith, as a prudent person would using reasonable care, skill, and caution, for the best interest of the beneficiaries of any trust created in this Trust. Without limiting the

generality of the foregoing, the Trustees are given the following discretionary powers in addition to any other powers conferred by law:

19.1 Type of Assets. Except as otherwise provided to the contrary, to hold funds uninvested for such periods as the Trustees deem prudent, and to invest in any assets the Trustees deem advisable even though they are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive, as long as the Trustees act in good faith.

19.2 Original Assets. Except as otherwise provided to the contrary, to collect and retain the original assets they receive for as long as they deem best, and to dispose of those assets when they deem advisable, including any interests in Manor Development Company or other affiliated or successor entities, as more specifically set out in Article 21, even though such assets, because of their character or lack of diversification, would otherwise be considered improper investments for the Trustees.

19.3 Tangible Personal Property. To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without either the Trustees or beneficiaries incurring any liability for wear, tear, and obsolescence of the property.

19.4 Financial Accounts. To deposit trust money in one or more accounts in regulated financial service institutions, including but not limited to banks, savings institutions, and brokerage houses, and to draw checks, drafts, or other forms of withdrawal, including electronic transfers, from those accounts.

19.5 Specific Securities. To invest in assets, securities, or interests in securities of any nature, whether obtained in domestic or foreign markets, including (without limit) commodities, options, futures, precious metals, and currencies; to invest in mutual or investment funds, including funds for which the Trustees or any affiliate performs services for additional fees, whether as manager, custodian, transfer agent, investment advisor or otherwise, or in securities distributed, underwritten, or issued by the Trustees, their affiliates, or syndicates of which they are a member and I specifically authorize the Trustee to invest in these instruments without notice to or consent from any beneficiary; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust Estate for that purpose.

19.6 Property Transactions. To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustees deem advisable; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to grant, acquire, or exercise options; to abandon or dispose of any real or personal property in the Trust which has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, restrictions, and covenants as the Trustees see fit. An instrument described in this section will be valid and binding for its full term even if it extends beyond the full duration of the Trust.

19.7 Borrow Money. To borrow money from any source (including the Trustees in their nonfiduciary capacity), to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

19.8 Maintain Assets. To expend whatever funds they deem proper for the preservation, maintenance, or improvement of assets. The Trustees in their discretion may elect any options or settlements or exercise any rights under all insurance policies that they hold. However, no fiduciary who is the insured of any insurance policy held in the Trust may exercise any rights or have any incidents of ownership with respect to the policy, including the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke any assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. All such power is to be exercised solely by the remaining Trustees, if any, or if none, by a special fiduciary appointed for that purpose by a court having jurisdiction.

19.9 Insurance. To obtain property, casualty, liability or any other insurance for the Trust, including insurance for the Trustees and their agents against damage or liability arising from administration of the Trust.

19.10 Advisors. To employ and compensate attorneys, accountants, advisors, financial consultants, managers, agents, and assistants (including any individual or entity who provides investment advisory or management services, or who furnishes professional assistance in making investments for the Trust) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the Trust Estate even if the services were rendered in connection with ancillary proceedings. The Trustees may serve in any of these capacities and be compensated separately for their services in each.

19.11 Indirect Distributions. To make distributions, whether of principal or income, to any person under age 21 or to any person the Trustees reasonably believe is incapacitated according to the terms of this Trust by (i) making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustees or others for that person under an applicable Uniform Gift to Minors Act or Uniform Transfers to Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; (ii) managing the amount as a separate fund on that person's behalf, subject to his or her continuing right to withdraw that amount; or (iii) applying any distribution for the benefit of that person in any manner the Trustees deem proper. The receipt of the person to whom payment is made will constitute full discharge of the Trustees with respect to that payment.

19.12 Non-Pro Rata Distribution. To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property. Any division will be binding and conclusive on all parties.

19.13 Nominee. Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

19.14 Custodian. To employ a custodian or agent ("the Custodian") located anywhere within the United States, at the discretion of the Trustees but at the expense of the Trust, whether or not such Custodian is an affiliate of the Trustees or any person rendering services to the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as the Trustees may direct. While such securities are in the custody of the Custodian, the Trustees will be under no obligation to inspect or verify such securities nor will the Trustees be responsible for any loss by the Custodian.

19.15 Administer Claims. To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, including paying those claims in full; to agree to any rescission or modification of any contract or agreement; and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

19.16 Corporate Rights. To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock (including shares or fractional shares of stock of any Corporate Trustee), securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to write and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

19.17 Business Interests. To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all rights in connection with such interests as the Trustees deem appropriate, including any powers applicable to a non-admitted transferee of any such interest.

19.18 Self-Dealing. To exercise all their powers even though they may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustees, however, shall exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries of the Trust. Despite any other provision of this Trust, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. No Trustee who has made a disclaimer, either individually or as a Trustee, may exercise any discretion in determining the recipient of the disclaimed property, except pursuant to an ascertainable standard. All power to make such unlimited distributions, or to determine recipients of disclaimed property, will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

19.19 Elections. If no Personal Representative is serving for my estate, and to the extent permitted by law, to perform in a fiduciary capacity any act and make any and all decisions or elections under state law or the Internal Revenue Code on behalf of me or my estate, including but not limited to, joining in the filing of income and gift tax returns with my husband, claiming the whole or any part of the expenses of administration as income tax deductions for my estate or this Trust, electing the marital deduction in whole or in part, making allocations of my exemption from the federal generation-skipping transfer tax, adopting alternate values for estate tax purposes, and selecting taxable years and dates of distribution. The Trustees are specifically excused from making equitable adjustments among beneficiaries because of any election.

19.20 Qualified Property. To manage any qualified real property or qualified family-owned business interests so as to avoid imposition of the additional estate tax under Sections 2032A or 2057 of the Internal Revenue Code, and to furnish security for the payment of any additional estate taxes imposed under those sections.

19.21 Expenses. To pay all expenses of administration for the Trust Estate, including all taxes, assessments, compensation of the Trustees and their employees and agents, and reimbursements for expenses advanced (with interest as appropriate). An Independent Trustee may determine how expenses of administration and receipts are to be apportioned between principal and income.

19.22 Terminate Small Trusts. After my death, to exercise their discretion, without court approval, to refrain from funding or to terminate any trust whenever the value of the principal of that trust would be or is less than Five Hundred Thousand Dollars (\$500,000), and to distribute the remaining principal and all accumulated income of the trust as provided in Section 19.11 to the beneficiaries then entitled to receive income in proportion to their shares of that income (or on a per capita basis if their shares are not fixed) in a manner consistent with the purposes of the Trust. The Trustees shall exercise this power to terminate in their discretion as they deem prudent for the best interest of the qualified beneficiaries at that time.

19.23 Allocations to Income and Principal. To treat premiums and discounts on bonds and other obligations for the payment of money in accordance with either generally accepted accounting principles or tax accounting principles and, except as otherwise provided to the contrary, to hold nonproductive assets without allocating any principal to income, despite any laws or rules to the contrary. The Trustees in their discretion may exercise the power to adjust between principal and income, as appropriate, and, in addition, may convert any income interest into a unitrust interest, or a unitrust interest to an income interest, as they see fit.

19.24 Use of Income. Except as otherwise provided in this Trust, and in addition to all other available sources, to exercise their discretion in the use of income from the assets of the Trust to satisfy the liabilities described in this Trust, without accountability to any beneficiary.

19.25 Sever or Join Trusts. To sever any trust on a fractional basis into two or more separate trusts, and to segregate by allocation to a separate account or trust a specific amount

from, a portion of, or a specific asset included in any trust. The Trustees may consolidate two or more trusts (including trusts created by different transferors) having substantially the same beneficial terms and conditions into a single trust. The Trustees may take into consideration differences in federal tax attributes and other pertinent factors in administering any separate account or trust, in making applicable tax elections, and in making distributions. A trust created by severance or consolidation will be treated as a separate trust for all purposes from the date on which the severance or consolidation is effective (which may be before the exercise of this power), and will be held on the same beneficial terms and conditions as those before the severance or consolidation. Income earned on a consolidated or severed amount, portion, or specific asset after the consolidation or severance is effective will pass with that amount, portion, or specific asset.

19.26 Consolidated Funds. Unless inconsistent with other provisions of this Trust, to hold two or more trusts or other funds in one or more consolidated funds, in which the separate trusts or funds have undivided interests, except that an accounting must be rendered to each trust showing its undivided interests in those funds.

19.27 Valuations. In making distributions or allocations under the terms of this Trust to be valued as of a particular date, the Trustees may use asset valuations obtained for a date reasonably close to that particular date (such as a quarterly closing date before or after that date) if, in the Trustees' judgment, obtaining appraisals or other determinations of value on that date would result in unnecessary expense, and if in the Trustees' judgment, the fair market value as determined is substantially the same as on that actual date. This paragraph will not apply if valuation on a specific date is required to preserve a qualification for a tax benefit, including any deduction, credit, or most favorable allocation of an exemption.

19.28 Incorporation. To incorporate any business or venture, and to continue any unincorporated business that the Trustees determine to be not advisable to incorporate.

19.29 Delegation. To delegate periodically among themselves the authority to perform any act of administration of any trust.

19.30 Loans; Advances. To make loans to anyone under commercially reasonable terms, and to make cash advances or loans to beneficiaries, with or without security. The Trustees may retain a lien on future distributions to a beneficiary to repay those loans.

19.31 Election of Benefits. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under such plan, annuity, or insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

19.32 Investment Manager. To employ any investment management service, financial institution, or similar organization to advise the Trustees and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. If the Trustees are individuals, these costs may be paid as an expense of administration in addition to fees and commissions.

19.33 Depreciation. To deduct from all receipts attributable to depreciable property a reasonable allowance for depreciation, computed in accordance with generally accepted accounting principles consistently applied.

19.34 Disclaim Assets or Powers. To disclaim any assets otherwise passing or any fiduciary powers pertaining to any trust created hereunder, by execution of an instrument of disclaimer meeting the requirements of applicable law generally imposed upon individuals executing disclaimers. No notice to or consent of any beneficiary, other interested person, or any court is required for any such disclaimer, and the Trustees are to be held harmless for any decision to make or not make such a disclaimer.

19.35 Related Parties. To enter into any transaction on behalf of the Trust despite the fact that another party to that transaction may be: (i) a business or trust controlled by the Trustees, or of which the Trustees, or any director, officer, or employee of the Corporate Trustees, is also a director, officer, or employee; (ii) an affiliate or business associate of any beneficiary or the Trustees; or (iii) a beneficiary or Trustee under this Trust acting individually, or any relative of such a party.

19.36 Additional Powers for Income-Producing Real Estate. In addition to the other powers set forth above or otherwise conferred by law, the Trustees have the following powers with respect to any income-producing real property which is or may become a part of the Trust Estate:

- To retain and operate the property for as long as they deem advisable;
- To control, direct, and manage the property, determining the manner and extent of their active participation in these operations, and to delegate all or any part of their supervisory power to other persons that they select;
- To hire and discharge employees, fix their compensation, and define their duties;
- To invest funds in other land holdings and to use those funds for all improvements, operations, or other similar purposes;
- Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes that they deem advisable in conformity with sound and efficient management; and
- To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the land holdings.

19.37 Winding Up. On termination of a trust, to exercise the powers appropriate to wind up the administration of that trust and distribute the remaining assets to the persons entitled to them, and to retain a reasonable reserve for the payment of debts, expenses, and taxes.

ARTICLE 20 ENVIRONMENTAL PROVISIONS

The following rules govern administration of the Trust with respect to assets that could cause the Trustees to incur liability for environmental contamination or hazardous wastes.

20.1 Vesting of Title. Title to the following types of assets will not vest in any Trustee (including a successor Trustee when it begins to serve) until the Trustees execute a written instrument accepting title to those assets:

- Real property or any interest of any nature in real property (including mortgages secured by real property), and
- Any interest in a partnership, limited liability company, or closely held corporation which owns real property or an interest in real property and in which the Trustees would have the ability to vote or otherwise participate in the management and control of the entity's operations.

If the Trustees refuse to accept title to an asset that has never been part of this Trust, title to that asset will revert to the transferor or pass to such other persons (other than the Trustees) as may be provided by applicable law. If a successor Trustee refuses to accept title to such an asset accepted by the prior Trustees, the prior Trustees (or their Personal Representatives) will continue to hold title to and administer that asset until it is distributed, sold, or otherwise disposed of, or until other relief is granted by a court having jurisdiction over the Trust. Until they accept title to such an asset, the Trustees will have no fiduciary duty with respect to that asset.

20.2 Audits. The Trustees may require environmental audits acceptable to them to be made at any time at the expense of the Trust.

20.3 Liability. The Trustees will not be liable to any beneficiary for any claims against or losses incurred by the Trust because of compliance with laws regulating environmental contamination or hazardous wastes, including reporting or abating contamination, cleaning up property, incurring expenses in connection with administrative or judicial proceedings, and establishing reserves for such payments, even if amounts expended exceed the value of the property. The Trustees may require indemnities or other arrangements satisfactory to them that will protect and hold them harmless from liability that might be incurred for environmental contamination or hazardous substances.

20.4 Other Laws. These provisions are in addition to other remedial powers and rights given to fiduciaries under applicable law.

ARTICLE 21
SPECIAL BUSINESS PROVISIONS

The following provisions apply to any closely-held stock or other business interests held in this Trust.

21.1 Subchapter S Stock. Despite any other provisions of this Trust, if a trust created in this instrument is to become the owner of, or already owns, stock in a corporation that has an election in effect (or one that proposes to make an election) under Section 1362 of the Internal Revenue Code (an "S Corporation"), and that trust would not otherwise be permitted to be an S Corporation shareholder, the following provisions will apply:

(a) **Electing Small Business Trust.** The Trustees in their discretion may elect for the trust to become an Electing Small Business Trust ("ESBT") as defined in the Internal Revenue Code.

(b) **Qualified Subchapter S Trust.** If the Trustees do not cause the trust to become an ESBT, the Trustees shall set aside the S Corporation stock in a separate trust for the current income beneficiary of such trust, so that a Qualified Subchapter S Trust ("QSST") election under Section 1361 of the Internal Revenue Code can be filed with respect to that trust. If a trust has more than one permissible current income beneficiary, the following will apply. If my husband is a permissive beneficiary, he will be the sole beneficiary of the QSST. Otherwise, the Trustees shall divide that S Corporation stock into shares so that there is an equal share for those permissible current income beneficiaries, per capita. The Trustees shall hold each share as a separate QSST for the persons described above, and each such person will be the sole beneficiary of his or her QSST. To the greatest extent possible, the Trustees shall administer each QSST under the terms of the trust from which it was derived, but subject to the following overriding provisions:

(1) **Consent.** The Trustees shall notify the beneficiary of each separate trust promptly that a QSST election must be filed with the Internal Revenue Service. Thereafter, each beneficiary shall file a timely and proper QSST election with the Internal Revenue Service. If a beneficiary fails or refuses to make the QSST election, the Trustees shall make an ESBT election for that trust. If the beneficiary does make the QSST election, then his or her separate trust will be administered as set forth below.

(2) **Income Payments.** During the beneficiary's life, the Trustees shall pay all net income of the trust to the beneficiary (and only to that beneficiary) in quarterly or more frequent installments. The beneficiary's income interest in the trust will terminate on the earlier of his or her death or the termination of the trust under its terms.

(3) **Principal Invasions.** If the beneficiary is otherwise entitled to receive principal distributions, the Trustees may distribute principal from that separate trust during the beneficiary's life only to or for the benefit of that beneficiary (and no one else).

(4) **Final Distribution.** If the QSST is terminated during the beneficiary's life, the Trustees shall distribute all remaining assets of that separate trust to that beneficiary. If the beneficiary dies before that trust's termination, all remaining assets of the QSST are to be distributed as provided in the original trust, but subject to this Section 21.1.

(5) **Termination of QSST Status.** If a separate trust would cease to qualify as an S Corporation shareholder, the Trustees in their discretion may: (i) make an ESBT election for that separate trust, or (ii) distribute all S Corporation stock to the beneficiary. The Trustees in their discretion also may convert a QSST to an ESBT, whether or not the beneficiary has consented to QSST treatment and, if the beneficiary consents, may convert an ESBT into a QSST.

21.2 Management and Sale of Business Interests. I anticipate that a great percentage of the Trust Estate will consist of an interest in various closely held corporations, partnerships, and limited liability companies (all collectively referred to as the "Business Entities," whether one or more). If the disposition of these Business Entities has not otherwise been provided for at my death, then, in addition to any other authority granted by this Trust, the following will apply:

(a) **Operation and Sale.** The Trustees shall use their discretion in participating in the operation of the Business Entities and in selling the interest in the Business Entities. The Trustees are specifically authorized to sell an interest in the Business Entities to any partner, officer, or employee of the business, to any individual Trustee, or to any beneficiary of this Trust.

(b) **Partnerships.** In addition to the powers described above, the Trustees are directed to determine whether the effecting of any measures with respect to any partnership interests would be of benefit to the beneficiaries of the Trust or of my estate. If it is determined that one or more measures should be effected, the Trustees shall take such actions as are required to effect these measures. The measures that may be effected include, but are not limited to:

- the continuation of the Trust as a partner in any of the partnerships;
- the distribution of selected property by the partnerships to the Trust or its beneficiaries;
- the acquisition of any additional ownership interest in the partnerships;
- the liquidation of any interest in the partnerships;
- the filing by the partnerships of a timely election under either Sections 754 or 732(d) of the Internal Revenue Code to adjust the basis of partnership property.

(c) **Supplemental Powers.** In addition to the powers previously given and the powers enumerated in Article 19, I give the Trustees the following additional powers with regard to any transactions relating to the Business Entities:

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(1) **Employment of Personnel.** To hire and discharge officers and employees for the Business Entities, fix their compensation, and define their duties, including the right to employ any beneficiary (or individual Trustee) in any capacity.

(2) **Investment in Business.** To invest other trust funds in the Business Entities; to pledge other assets of the Trust as security for loans made to the Business Entities; and to loan funds from the Trust to the Business Entities.

(3) **Sale or Purchase of Offerings.** To participate as seller or purchaser in public or private offerings for the sale of any securities or partnership interests in the Business Entities; to enter into any related agreements containing representations, warranties, and indemnity provisions; and to incur liabilities in connection with these transactions.

(4) **Change of Business Form or Scope.** To convert any corporation into a partnership, sole proprietorship, or limited liability company, and to diminish, enlarge, or change the scope or nature of any business.

(5) **Business as Separate Entity; Accountings.** To treat the Business Entities as an entity separate from the Trust. In their accountings, the Trustees may report the earnings and condition of the Business Entities in accordance with standard business accounting practices.

(6) **Retention of Earnings.** To retain in the business such net earnings for working capital and other purposes as the Trustees deem advisable.

(7) **Additional Fees.** To receive additional compensation for their extra efforts and expertise relating to the Business Entities. Such compensation may be paid as a director's or manager's fee or as a guaranteed payment, all of which will be remitted to the Trustees, or may be charged directly as a management consultation fee by the Trustees.

(d) **Standards of Risk and Trustees' Liability.** I am aware that certain risks are inherent in the operation of any business and expect that the Trustees will be required to make decisions using a "reasonable business risk" standard in keeping with the "prudent investor" rule. Therefore, I direct that the Trustees will not be held liable for any loss resulting from the retention and operation of any business unless such loss results directly from their bad faith or willful misconduct. In determining liability for losses, it should be considered that the Trustees are engaging in a speculative enterprise at my express request.

21.3 Retention of Stock. I authorize the Trustees to retain the assets that they receive, including shares of stock or other interests in Manor Development Company, or its successors in interest, or any other company or entity carrying on or directly or indirectly controlling the whole or any part of its present business (collectively referred to as "Manor Company"), for as long as the Trustees deem best, and to dispose of those assets when they deem advisable. I prefer that the Trustees not sell shares of stock or other interests in Manor Company because I believe that the best interests of the beneficiaries will be served by retention of those interests in the Trust's portfolio. I intentionally excuse the Trustees from the duty to diversify investments by the sale

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or other disposition of interests in Manor Company that ordinarily would apply under the prudent investor rule, and I direct that the Trustees not be held liable for any loss or risk (even so-called "uncompensated risk") incurred as a result of this failure to diversify. I realize, however, that circumstances may change, and that the Trustees may determine it to be advisable to sell some or all of the interests in Manor Company, and nothing in this paragraph will be interpreted in any manner to limit the Trustees' authority to do so.

ARTICLE 22 INSURANCE PROVISIONS

Any insurance policies acquired by or payable to the Trustees as an asset of this Trust are to be administered as follows:

22.1 Payment of Premiums. The Trustees may pay from the net income or principal of the Trust any premiums or assessments upon any insurance policies that they hold under the terms of this instrument.

22.2 Collection of Policy Proceeds. Upon the death of an insured, the Trustees shall process all claims for payment of death benefits payable to the Trustees. If payment of any policy is contested, however, the Trustees will not be obligated to begin legal proceedings for collection unless they are indemnified to their satisfaction for all costs, including attorney's fees. The Trustees may repay any person, including themselves, from the Trust for any advances or expenses incurred in attempting to collect death benefits on such policies.

22.3 Trustee Protection. The Trustees will have no liability or responsibility for any loss resulting from the failure of any insurance company and its inability to pay a claim under any insurance policy acquired by the Trustees. The Trustees will be under no obligation to invest any cash value accumulated in any life insurance policy owned by the Trust, regardless of the investment yield on such value within the policy as compared to the net investment yield which could be obtained outside the policy. The Trustees will not be liable or accountable to anyone for the exercise or nonexercise of any rights, benefits, options, or privileges under any policy held in this Trust, including the option to borrow against the cash values to obtain a higher investment yield outside the policy.

22.4 Responsibilities of Insurance Companies. No insurance company will be responsible for the application of any insurance proceeds by the Trustees. Payment to the Trustees of the benefits due with respect to any insurance policy held as part of the Trust will completely discharge the insurance company from any further liability under that policy.

ARTICLE 23 SAVINGS CLAUSES

23.1 Perpetuities Provision. Despite any contrary provisions of this Trust, the share of each beneficiary will vest (in the beneficiary or his or her estate) immediately prior to the expiration of 90 years after my death.

23.2 Marital Savings Clause. In conferring discretion in this Trust to make elections under state law or the Internal Revenue Code, I intend that the Trustees produce the greatest tax benefit for my and my husband's combined estates (whether or not my husband is then living) and our beneficiaries, considering both income tax and transfer tax consequences to our estates and beneficiaries, but regardless of the effect such an election might have on any gift made under this Trust. I authorize the Trustees to elect to treat all, part, or none of the Marital Trust as property qualifying for the marital deduction, based on the criteria stated above. Without limiting the Trustees' discretion to make these elections, I intend that my estate be entitled to claim the optimum available marital deduction for federal estate tax purposes, as may be elected by my Personal Representatives, if my husband survives me. All provisions of this Trust are to be interpreted and limited accordingly.

23.3 Withdrawal Power for Marital Property. Despite the provisions of Article 3, if my personal rights over this Trust have been suspended as provided in that article, and transfers are made to the Trust that would qualify for a federal estate or gift tax marital deduction but for that suspension, my power of withdrawal will remain in effect as to those transferred assets.

23.4 Qualified Plan Proceeds. If any funds from qualified employee benefit plans, individual retirement accounts, or other property from sources specified in Section 2039 of the Internal Revenue Code (collectively referred to as the "Accounts") become available to the Trustees of any trust created under this Trust, then none of those Accounts may be used to pay, directly or indirectly, any debts or expenses of mine or of my estate. I intend that the Accounts be payable to trust beneficiaries who are identifiable and who are treated as "designated beneficiaries" within the meaning of the minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code and applicable regulations. Therefore, except to the extent permitted or required under applicable law, (i) the Accounts will not be liable for any share of estate taxes payable from this Trust or chargeable to my estate, and (ii) any power of appointment over the Accounts exercisable by my husband may be exercised only in favor of individuals who are younger than my husband.

23.5 Productive Property. If any trust is otherwise eligible to qualify for the federal or any state marital deduction, but would not qualify because my husband does not have the right to require the Trustees to make the trust property productive or to convert it to income producing property, I specifically give my husband that right.

ARTICLE 24

ADMINISTRATION AND CONSTRUCTION

24.1 Rules for Distributions. In making distributions to beneficiaries under this Trust, the Trustees must use the following criteria.

(a) **Other Resources.** Whenever the Trustees have the authority to decide how much to distribute to or for the benefit of a beneficiary, the Trustees can make decisions without taking into account any information about the beneficiary's other available income and

resources. The Trustees can make payments directly to a beneficiary or to other persons for the beneficiary's benefit, but they do not have to make payments to a court appointed guardian.

(b) **Trustees' Decision.** Absent clear and convincing evidence of bad faith, the Trustees' decisions as to amounts to be distributed will be final.

(c) **Standard of Living.** Distributions to a beneficiary for health, education, support, or maintenance are to be based on his or her standard of living, determined as of the date of the distribution.

(d) **Unequal Distributions.** For any trusts having multiple beneficiaries, distributions may be unequal among them due to differences in their resources, age, health, needs, educational inclinations, and talents. The Trustees may make unequal distributions to or for those beneficiaries without making equalizing adjustments among them, unless specifically provided to the contrary in this Trust.

24.2 Funding Gifts. The following rules will apply to funding gifts under this Trust.

(a) **Pecuniary Gifts.** All pecuniary gifts under this Trust that are paid by an in-kind distribution of assets must use values having an aggregate fair market value at the date or dates of distribution equal to the amount of this gift as finally determined for federal estate tax purposes.

(b) **Fractional Gifts.** Any allocation of a fractional share of assets need not be pro rata nor include any particular asset, and may be made subject to encumbrances, pre-existing or newly created, as the Trustees in their discretion determine.

(c) **Adjustments.** The Trustees shall select one or more dates of allocation or distribution for purposes of satisfying gifts and funding shares or trusts. The Trustees may make allocations before the final determination of federal estate tax, with those allocations being based upon the information then available to the Trustees, and may thereafter adjust properties among the shares or trusts if it is determined that the allocation should have been made differently.

24.3 Accumulated Income. Any income not distributed to the beneficiaries pursuant to either a mandatory direction or a discretionary power is to be incorporated into principal, at such intervals as the Trustees deem convenient.

24.4 Estate Tax on Included Property. Except as provided for the Marital Trust, if assets of any trust created under this agreement are included in a beneficiary's estate for federal estate tax purposes, the following will apply.

(a) **Appointed Assets.** If the beneficiary exercises a power of appointment over those assets, the Trustees are authorized to withhold from those assets the amount of estate taxes apportioned to them by applicable law, if the beneficiary does not make provisions for the payment of those taxes from other sources.

(b) **Other Assets.** If the beneficiary does not have or does not exercise a power of appointment over those assets, the Trustees will pay the estate taxes attributable to those assets. The estate taxes attributable to those assets will be the amount that the beneficiary's estate taxes are increased over the amount those taxes would have been if those assets had not been included in the beneficiary's gross estate.

(c) **Certification and Payment.** The Trustees may rely upon a written certification by the beneficiary's personal representative of the amount of the estate taxes, and may pay those taxes directly or to the personal representative of the beneficiary's estate. The Trustees will not be held liable for making payments as directed by the beneficiary's personal representative.

24.5 Transactions With Other Entities. The Trustees may buy assets from other estates or trusts, or make loans to them, so that funds will be available to pay claims, taxes, and expenses. The Trustees can make those purchases or loans even if they serve as the fiduciary of that estate or trust, and on whatever terms and conditions the Trustees think are appropriate, except that the terms of any transaction must be commercially reasonable.

24.6 Coordination With Guardian. If a separate trust is created for a beneficiary who is under a legal disability, I request the Trustees to consult with the guardian of the person for that beneficiary, or if none, the person having custody of the beneficiary, and to

- establish a reasonable budget to provide for the needs of the beneficiary;
- conduct a financial analysis of the beneficiary's needs and determine the amounts reasonably required for his or her care; and
- implement procedures for disbursing funds to the guardian for those purposes.

The Trustees are authorized to make distributions that provide some incidental or indirect benefit to the beneficiary's guardian, but only if the expenditure is for the primary benefit and needs of the beneficiary.

ARTICLE 25

APPLICABLE LAW; TRUST SITUS

All questions regarding the law to be applied or the appropriate situs of any trust will be governed by the terms of this article as follows:

25.1 Validity; Construction. All matters involving the validity, interpretation, construction, and meaning (or effect) of every trust created under this instrument are to be governed by the laws of South Carolina, which is currently my domicile.

25.2 Principal Place of Administration. All matters involving the administration of every trust created under this instrument are to be governed by the laws of South Carolina, which

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is currently my domicile and the initial principal place of administration (the "situs") of those trusts. The Trustees may change the principal place of administration of any trust as provided below.

25.3 Determining Situs. The Trustees will have a continuing duty to administer the trust at a place appropriate to its purposes and its administration. In exercising this duty, the Trustees should consider the factors and the impact of a change to a different situs on the following: state and local taxes; compensation of fiduciaries; investment authority; duties, responsibilities, and liabilities of the Trustees; and any other factor appropriate to the new jurisdiction.

25.4 Transferring Situs. The Trustees, acting from time to time and without court approval, may transfer the situs of any trust to any jurisdiction within the United States.

25.5 Substitute Trustees. If the Trustees are unable or unwilling to serve in the new trust situs, the Trustees may: designate substitute Trustees to act with respect to that property in the new situs; delegate to the substitute Trustees any or all of the powers given to the Trustees; elect to act as advisor to the substitute Trustees and receive reasonable compensation for that service; and remove any acting substitute Trustees and appoint another, or reappoint itself, if appropriate, at will.

ARTICLE 26 MISCELLANEOUS PROVISIONS

26.1 Definitions. As used in this Trust, the following terms have the meanings set forth below:

(a) Trustees.

(1) **Independent Trustee** means a trustee of a particular trust, either individual or corporate, who is not me or a beneficiary, and who is not a Related Person as to me or a beneficiary (if I or the beneficiary, respectively, is living and participated in that person's appointment). For purposes of this definition a beneficiary is a person who is a permissible distributee of income or principal, or someone with an interest in the trust in excess of five percent (5%) of its value, assuming a maximum exercise of discretion in his or her favor. Whenever this Trust requires an action be taken by, or in the discretion of, an Independent Trustee but no such Trustee is then serving, a court may appoint an Independent Trustee to serve as an additional Trustee whose sole function and duty will be to exercise the specified power.

(2) **Corporate Trustee** means a trustee that is a bank, trust company, or other entity authorized to serve as a trustee under the laws of the United States or any state thereof that is not a Related Person to me. A bank or trust company that does not meet this requirement cannot serve as Trustee.

(b) Internal Revenue Code Terms.

(1) **Internal Revenue Code** means the federal Internal Revenue Code of 1986, as amended from time to time, or successor provisions of future federal internal revenue laws.

(2) **Gross estate** means gross estate for federal estate tax purposes as defined in Section 2031 of the Internal Revenue Code.

(3) The terms **health, education, support, and maintenance** are intended to set forth an "ascertainable standard," as described in the Internal Revenue Code and its associated Regulations. To the extent not inconsistent with the foregoing, "health" means a beneficiary's physical and mental health, including but not limited to payments for examinations, surgical, dental, or other treatment, medication, counseling, hospitalization, and health insurance premiums; "education" means elementary, secondary, post-secondary, graduate, or professional schooling in an accredited institution, public or private, or attendance at other formal programs in furtherance of the beneficiary's spiritual, athletic, or artistic education, including but not limited to payments for tuition, books, fees, assessments, equipment, tutoring, transportation, and reasonable living expenses.

(4) **Related Person** as to a particular individual is someone who is deemed to be "related or subordinate" to that individual under Section 672(c) of the Internal Revenue Code (as though that individual was a grantor).

(c) Other Terms.

(1) **Residuary Trust Estate** means the Trust Estate (including assets added to the Trust by reason of my death) left after paying all pre-residuary gifts in this Trust and all expenses and charges (other than estate taxes).

(2) **Qualified Beneficiary** means a living beneficiary who, on the date his or her qualification is determined: (i) is a distributee or permissible distributee (a "distributee") of trust income or principal; (ii) would be a distributee if the interests of the distributees described in (i) above terminated on that date without causing the trust to terminate; or (iii) would be a distributee if the trust terminated in accordance with its terms on that date.

(3) Distributions that are to be made to a person's descendants, *per stirpes*, will be divided into equal shares, so that there will be one share for each living child (if any) of that person and one share for each deceased child who has then living descendants. The share of each deceased child will be further divided among his or her descendants on a *per stirpes* basis, by reapplying the preceding rule to that deceased child and his or her descendants as many times as necessary.

(4) **Disabled or under a disability** means (i) being under the legal age of majority, (ii) having been adjudicated to be incapacitated, or (iii) being unable to manage properly personal or financial affairs because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending

physician confirming that person's impairment will be sufficient evidence of disability under item (iii) above, and all persons may rely conclusively on such a certificate.

(5) Removal of a Trustee for cause includes, without limitation, the following: the willful or negligent mismanagement of the trust assets by that individual Trustee; the abuse or abandonment of, or inattention to, the trust by that individual Trustee; a federal or state charge against that individual Trustee involving the commission of a felony or serious misdemeanor; an act of theft, dishonesty, fraud, embezzlement, or moral turpitude by that individual Trustee; or the use of narcotics or excessive use of alcohol by that individual Trustee.

(6) The words will and shall are used interchangeably in this Trust and mean, unless the context clearly indicates otherwise, that the Trustees must take the action indicated; as used in this Trust, the word may means that the Trustees have the discretionary authority to take the action but are not automatically required to do so.

26.2 Powers of Appointment. The following provisions relate to all powers of appointment created by me at any time and to any power exercisable by or under this Trust.

(a) A general power of appointment granted to a person is one that can be exercised in favor of any one or more of the following: that person or his or her estate, his or her creditors, or the creditors of his or her estate.

(b) A special power of appointment is any power that is not a general power; it may be exercisable in favor of a specified class or, if no class is specified, in favor of any person or entity (other than the appointees specified in subsection (a) above).

(c) A testamentary power of appointment (either general or special) is exercisable upon the powerholder's death by his or her Last Will or by a revocable trust agreement established by that person, but only by specific reference to the instrument creating the power. A testamentary power of appointment may not be exercised in favor of the person possessing the power.

(d) In determining whether a person has exercised a testamentary power of appointment, the Trustees may rely upon an instrument admitted to probate in any jurisdiction as that person's Last Will, or upon any trust agreement certified to be valid and authentic by sworn statement of the trustee who is serving under that trust agreement. If the Trustees have not received written notice of such an instrument within six months after the powerholder's death, the Trustees may presume that the powerholder failed to exercise that power and will not be liable for acting in accordance with that presumption.

(e) I expressly refrain from exercising any power of appointment that I may possess at my death.

26.3 Notices. Any person entitled or required to give notice under this Trust shall exercise that power by a written instrument clearly setting forth the effective date of the action

for which notice is being given. The instrument may be executed in counterparts. Notice of my exercise of any power under this Trust need be given only to the affected Trustees.

26.4 Certifications.

(a) **From Personal Representatives.** For some purposes, the Trustees are authorized to rely on a certificate from my Personal Representatives as to certain facts. That certificate must be in writing and witnessed by two impartial persons, but need not be notarized. It is to be delivered to the Trustees in the same fashion as provided for other notices.

(b) **Facts.** A certificate signed and acknowledged by the Trustees stating any fact affecting the Trust Estate or the trust agreement will be conclusive evidence of such fact in favor of any transfer agent and any other person dealing in good faith with the Trustees. The Trustees may rely on a certificate signed and acknowledged by any beneficiary stating any fact concerning the Trust beneficiaries, including dates of birth, relationships, or marital status, unless an individual serving as Trustee has actual knowledge that the stated fact is false. Knowledge of all other facts will be determined as provided in South Carolina law.

(c) **Copy.** Any person may rely on a copy of this instrument (in whole or in part) certified to be a true copy by me; by any person specifically named as a Trustee (or successor Trustee); by any Corporate Trustee whether or not specifically named; or, if there are none of the above, by any then serving Trustee.

26.5 Adopted Children. A legally adopted child (and any descendants of that child) will be regarded as a descendant of the adopting parent only if the petition for adoption was filed with the court before the child's thirteenth birthday.

26.6 Infant in Gestation. For all purposes of this Trust, an infant in gestation who is later born alive will be deemed to be in being during the period of gestation for the purpose of qualifying the infant, after it is born, as a beneficiary of this Trust.

26.7 Gender and Number. Reference in this Trust to any gender includes either masculine or feminine, as appropriate, and reference to any number includes both singular and plural where the context permits or requires. Use of descriptive titles for articles and paragraphs is for the purpose of convenience only and is not intended to restrict the application of those provisions.

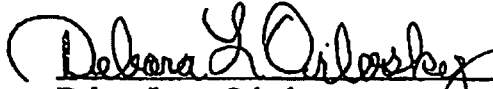
26.8 Further Instruments. I agree to execute such further instruments as may be necessary to vest the Trustees with full legal title to the property transferred to this Trust.

26.9 Acknowledgments. Acknowledgments of this trust agreement and matters affecting the administration of the Trust may be given for purposes of recording such instruments, but the absence of an acknowledgment does not affect the validity of those instruments.

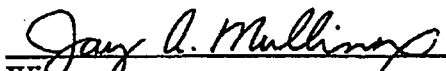
26.10 Binding Effect. This trust agreement extends to and is binding upon my Personal Representatives, successors, and assigns, and upon the Trustees.

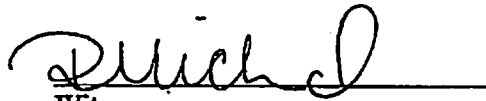
IN WITNESS WHEREOF, I, Debora Laura Orlosky, as Grantor and as Trustee, have on the date first above written, at Hilton Head Island, South Carolina, signed my name at the end of this instrument of 34 pages (including the signature page), and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Revocable Trust and that I sign it willingly, (or have willingly directed another to sign for me), and that I sign as my free and voluntary act for the purpose therein expressed and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Grantor and Trustee


Debora Laura Orlosky

I, Jay A. Mullinax, and I, Rachel Michaud, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, do hereby declare to the undersigned authority that each of us sign and execute this instrument as the Grantor's Revocable Trust and that each of us sign it willingly, (or each has willingly directed another to sign for him/her), and that each of us, in the Grantor's presence and hearing, hereby signs this Agreement as witness to the Grantor's signing, and that to the best of our knowledge the Grantor is eighteen years of age or older, of sound mind, and under no constraint or undue influence.


Witness


Witness

32 OFFICE PARK Rd., #211
Address

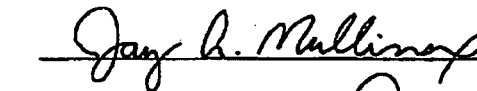
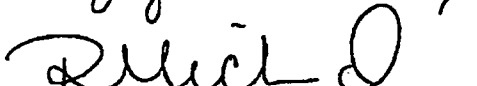
10 marblehead Rd.
Address

Hilton Head, SC 29928

Hilton Head, SC 29926

Signed in the presence of:

Trustee



Two witnesses as to Ronald Joseph Orlosky


Ronald Joseph Orlosky

35

DEBORA LAURA ORLOSKY REVOCABLE TRUST

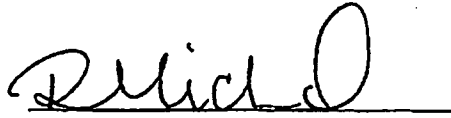
JAY A. MULLINAX, J.D., LL.M.
LAW OFFICE OF JAY A. MULLINAX, LLC
THE COURTYARD BUILDING, 32 OFFICE PARK ROAD, SUITE 211, HILTON HEAD ISLAND, SOUTH CAROLINA 29928
(843) 785-6101

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ACKNOWLEDGMENT

Subscribed, sworn to and acknowledged before me by Debora Laura Orlosky, the Grantor, and subscribed and sworn to before me by Jay A. Mullinax a witness, this 20th day of May, 2009.


Notary Public for South Carolina
My Commission Expires: 7/8/2015
(NOTARY SEAL)

**MANOR DEVELOPMENT CO.
SHAREHOLDER AGREEMENT**

This *Shareholder Agreement* ("Agreement") is entered into as of the 15 day of March, 2009, by and among MANOR DEVELOPMENT CO., a California corporation (the "Company"), and PAMELA JEAN MILES, DEBORA L. ORLOSKY, and BOYD R. LANG, JR., the parties identified on Exhibit A attached hereto (collectively referred to herein as the "Shareholders" and individually as "Shareholder").

RECITALS

A. The Shareholders own all of the outstanding shares of the Company's capital stock as set forth on Exhibit A attached hereto (the "Shares").

B. The parties realize that a transfer of Shares to outsiders by a Shareholder occasioned by the death of a Shareholder or a spouse or by the sale or other inter vivos disposition by a Shareholder might disrupt the business, management, and harmonious control of the Company.

C. The parties desire to avoid such problems by providing for the optional or mandatory purchase of a Shareholder's Shares by the Company or the other Shareholders upon the occurrence of certain events.

NOW, THEREFORE, in consideration of the foregoing and mutual promises herein contained, the parties agree as follows:

ARTICLE I

RESTRICTIONS ON THE TRANSFER OF SHARES

1.1 Transfers Restricted. To accomplish the purpose of this Agreement, any transfer, sale, assignment, hypothecation, encumbrance or alienation of any of the Shares by a Shareholder other than according to the terms of this Agreement is void and transfers no right, title or interest in or to such Shares, or any of them to the purported transferee, buyer, assignee, pledgee or encumbrance holder.

1.2 Share Legend. Each stock certificate representing the Shares shall have conspicuously endorsed on its face or reverse side the following statement:

THE OWNERSHIP, SALE, TRANSFER, ASSIGNMENT, OR HYPOTHECATION OF THE SHARES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY THE PROVISIONS OF AN AGREEMENT AMONG THE CORPORATION AND ITS SHAREHOLDERS, A COPY OF WHICH MAY BE INSPECTED AT THE PRINCIPAL OFFICE OF THE CORPORATION, AND ALL THE PROVISIONS OF WHICH ARE INCORPORATED BY REFERENCE IN THIS CERTIFICATE.



1.3 Inspection of Agreement. A copy of this Agreement duly executed by the Company and each of the Shareholders shall be delivered to the Secretary of the Company and held by the Secretary at the principal office of the Company, and shall be shown to any person making reasonable inquiry regarding its terms and conditions.

ARTICLE 2

PERMITTED TRANSFERS

2.1 Written Permission to Transfer. Notwithstanding Section 1.1, a Shareholder may transfer all or any Shares covered by this Agreement if such Shareholder first obtains the written permission of all other Shareholders and the Company or if such transfer is otherwise permitted under this Article. As a condition to the validity of a Shareholder's transfer of ownership of Shares hereunder (including, without, limitation any pledge or hypothecation of any Shares), the transferee ("Permitted Transferee") and his or her spouse, if any, shall agree in writing to hold such Shares subject to all the terms and provisions of this Agreement (or any amended agreement necessitated by the transfer, which amended agreement shall be included in the term Agreement) as if they were Shareholders, and shall agree to make transfers thereof only as required and permitted for a Shareholder and his or her spouse under this Agreement unless the Company and all of the Shareholders agree otherwise. For purposes of this Agreement, the term Shareholders shall also mean a Permitted Transferee.

2.2 Transfer to a Revocable Trust. A Shareholder (Transferor Shareholder) may transfer all or a portion of Shares, without the written permission of the other Shareholders, or the Company, to a revocable trust for the sole benefit of the Shareholder, his spouse or his lineal descendants, provided prior written notice (together with a copy of the relevant portions of the trust agreement) is given the Company not less than thirty (30) days before the transfer of the shares is to be recorded by the Company. The trustee shall execute a copy of this Agreement and hold such Shares subject to all the provisions hereof, and shall make no further transfers other than as provided herein prior to the Company recording the transfer.

2.3 Transfer to an Irrevocable Trust. A Shareholder may transfer all or a portion of Shares, without the written permission of the other Shareholders, or the Company, to an irrevocable trust for the benefit of (i) the issue of the Transferor Shareholder, or (ii) a life interest for the Shareholder's spouse with a remainder interest to the issue of the Transferor Shareholder, provided prior written notice (together with a copy of the relevant portions of the trust agreement) is given the Company not less than thirty (30) days before the transfer of the shares is to be recorded by the Company. The trustee shall execute a copy of this Agreement and hold such Shares subject to all the provisions hereof, and shall make no further transfers other than as provided herein prior to the Company recording the transfer.

2.4 Transfer upon Death. For one hundred eighty days following the death of a Transferor Shareholder, the successor trustee or any co-trustee (and any subsequent transferee) may sell all of said Shares for purchase as provided herein, for the price as determined under Article 4 and on the terms hereafter set forth as if such successor trustee and subsequent transferee were the Transferor

Shareholder. All references herein to Shares shall be deemed to include Shares owned by any such successor trustee or subsequent transferee, except that payment for such trustee and transferee Shares shall be made to the trustee and transferee instead of to the Transferor Shareholder or his estate.

2.5 Transfer to Another Shareholder. Any Shareholder may transfer any amount of Shares to another Shareholder after thirty (30) days prior notice to the Secretary and all other Shareholders. No consent is required from any non-recipient Shareholder or Company.

2.6 Interest in Shares Created by Law. By operation of law, a community property, dower, courtesy, or like interest ("Spousal Interest") may be created in the spouse or domestic partner of a Shareholder. Such Spousal Interest shall be subject to the provisions of this Agreement as provided herein. The term Shareholder includes the Shareholder's spouse or domestic partner with respect to the spouse's or domestic partner's Spousal Interest, and reference to the Shares of a Shareholder shall include the Spousal Interest of the Shareholder's spouse or domestic partner therein.

2.7 Required Sale to Company. Upon the vote of two-thirds of the Shares, the Company shall purchase all of the Shares of a Shareholder. If the Shareholder is a Transferor Shareholder the Company must also purchase all shares of his or her transferees. The purchase shall be at the price determined under Article 4 except the Section 4.5(b) shall not apply. Unless otherwise agreed by the selling Shareholder the purchase price shall be paid in cash or immediately available funds at the closing.

In the event a Shareholder is required to sell all of his or her Shares to the Company, and if within one (1) year the remaining Shareholders ("Sellers") sell all of their Shares in the Company to an unrelated party, the Sellers shall pay to the Shareholder who was required to sell additional compensation for the Shares required to be sold. The amount of the additional compensation shall be:

<u># Shares required to be sold</u>	X Seller's sale price
Total Shares outstanding immediately before required sale	

Less amount paid at time of required sale

The additional compensation can not be a negative amount. The amount of additional compensation apportioned to each Seller shall be a fraction equal to that Seller's number of Shares sold divided by the number of Shares sold by all Sellers.

2.8 Issue Defined. As used in this instrument, the term "issue" or "descendants" or similar terms refer to each shareholder's children and to all of their lineal descendants of all generations, and shall include those issue who have been legally adopted who resided during their minority with their adoptive parents from or through whom their right to inherit or to take is determined or derived.

ARTICLE 3

LIFETIME DISPOSITIONS AND INVOLUNTARY TRANSFERS

3.1 Restriction on Transfer. Except as may be permitted by Article 2, no Shareholder shall transfer, assign, hypothecate, encumber, pledge or otherwise alienate any of the Shares owned by said Shareholder or any right or interest therein without the prior written consent of the Company and each other Shareholder (the "Non-Offering Shareholder") unless such Shareholder shall have previously complied with all provisions of this Article 3.

3.2 Notice of Proposed Sale. In the event a Shareholder elects to transfer, assign, hypothecate, encumber, pledge or otherwise alienate any of his Shares of stock in the Company or any right or interest therein, such Shareholder first shall give written notice of his intention to do so to the Secretary of the Company. The notice of intention shall constitute an irrevocable offer to sell ("Offer to Sell") the Offered Shares during the Company and Shareholder Option Periods, as defined below. Any person who has agreed to buy Shares under this Agreement shall impose no conditions other than performance and delivery by the seller(s) and other conditions required by law, regardless of the purchase price determined for the Shares.

3.3 Requirements of Notice. The Offer to Sell from such Shareholder ("Offering Shareholder") must name the proposed transferee and specify the number of Shares, right or interest, ~~to be transferred, assigned, hypothecated, encumbered, pledged or alienated ("Offered Shares")~~, the price, and the terms of payment and all other terms of the proposed transaction.

3.4 Failure to Serve Notice. Any such transfer, assignment, hypothecation, encumbrance, pledge or other alienation not made in accordance with this Article 3 shall be null and void and the Company shall not be obligated to treat the transferee in such transaction as a shareholder of record or for any other purpose.

3.5 Company Option Period. For sixty (60) days following receipt of the Offer to Sell by the Secretary ("Company Option Period"), the Company shall have the option to purchase all of the Offered Shares, or a portion of the Offered Shares (provided, however, that the balance of the Offered Shares are purchased by the Non-Offering Shareholders pursuant to this Article 3) at the price and on the other terms stated in the Offer to Sell, or if there is no price (e.g. a hypothecation), at the price as determined by Article 4. The option may be exercised by a written election signed by a majority of the board of directors of the Company provided that such exercise complies with the provisions of the General Corporation law of California (including California Corporations Code Section 500 *et seq.*) and such other pertinent governmental restrictions as are now or may hereafter become effective. With respect to any hypothecation, encumbrances or pledge, the Company may elect to extend the Company Option Period until sixty (60) days after the receipt of notice of any default which would enable the holder of the lien to execute against the Shares or on any attempted execution against the shares. In the event of such an extended Company Option Period, the purchase price shall be the lower of the price as of the date of the original offer to sell or the date of the event triggering the sixty (60) days for the extended Company Option Period.

3.6 Shareholder Option Period. If the Company fails to exercise said option as to all of the Offer Shares, the Secretary shall give written notice thereof immediately after the expiration of the Company Option Period to all of the Non-Offering Shareholders who shall have the option to purchase the remaining Offered Shares at the same price and on the same terms. For thirty (30) days following the mailing of such notice by the secretary ("Shareholder Option Period"), each Non-Offering Shareholder shall have the option to acquire all or any part of the remaining Offered Shares as provided herein.

3.7 Exercise of Option by Shareholders. A Non-Offering Shareholder may exercise the option to purchase any or all of the remaining Offered Shares by delivering to the Secretary a written election within the Shareholder Option Period. If the total number of Shares specified in such elections exceeds the number of remaining Offered Shares, each Non-Offering Shareholder shall have priority up to the number of Shares specified in such Shareholders written election, to purchase such proportion of the remaining Offered Shares as the number of the Company's shares which such Shareholder holds bears to the total number of the Company's Shares held by all the Non-Offering Shareholders electing to purchase.

3.8 Payment by Purchasers. Promptly after the expiration of the Shareholder Option Period, or, if the Company has elected to purchase all of the Offered Shares, after the Company Option Period, the Secretary shall notify the Shareholders and the Company of the outcome of the option election(s). The Company and each Shareholder electing to purchase shall, within thirty (30) days of mailing of said notice, deliver to the Offering Shareholder the consideration set forth in the Offer to Sell.

3.9 Option to Purchase All Shares. Neither the Company nor any Non-Offering Shareholders have the right to purchase any portion of the Offered Shares pursuant to this Article 3 unless all Offered Shares are so purchased.

3.10 Failure to Purchase All Shares. In the event all of the Offered Shares are not purchased by the Company and the Non-Offering Shareholder hereunder, said Shares or interest therein may be transferred at any time within a sixty (60) day period commencing ninety (90) days from the date of the Offering Shareholder's Offer to Sell to the proposed transferee on the terms stated, provided, however, that in no event shall such transfer include less than all of the Offered Shares; and provided further that any transferee of ownership hereunder and his or her spouse first agree by execution of a copy of this Agreement to hold such Shares subject to all the provisions of this Agreement (such transferee holding Shares subject to this Agreement to be included in the term Shareholder herein), unless Company and the other Shareholder agree otherwise, and on the terms specified therein, provided that immediately upon such transfer, the proposed transferee executes and becomes bound by this Agreement and any amendments or revisions hereto. Such proposed transferee shall receive and hold said Shares subject to all of the provisions herein contained. If such transfer is not made during such sixty (60) day period on the terms specified in the Offer to Sell, the Offered Shares shall again become subject to all the restrictions of this Agreement.

3.11 Reorganization. Any rights to purchase the Shares of the Company pursuant to this Article 3 shall not apply with respect to any proposed transfer necessary to accomplish any merger, reorganization, business combination or sale of at least two-thirds of the outstanding stock of the Company. The conversion of the Shares to other securities pursuant to a reorganization in which the Company is the surviving corporation shall not constitute a transfer of the Shares within the meaning of this Agreement, but the Shares as converted shall continue to be subject to this Agreement. If the parties to this Agreement do not own at least two-thirds (2/3) of the equity and vote of the surviving corporation, this Agreement shall be terminated upon such merger. Securities received pursuant to any stock dividend, stock split or other recapitalization shall be subject to this Agreement to the same extent as the Shares with respect to which they were issued.

3.12 Involuntary Transfers. In the event of any (i) receivership, bankruptcy, stay or creditors proceeding regarding a Shareholder, or (ii) taking of any Shares of a Shareholder by legal process (such as levy of execution), all or any of the Shares owned by such Shareholder (or a trust for his benefit) shall be subject to purchase pursuant the terms of this Agreement at the price provided in Article 4. In an event pursuant to a judicial order or action (the "Order"), all of the terms of the options under this Article 3 shall apply, with the following modifications: Instead of the Offer to Sell being delivered by the Offering Shareholder, a copy of the Order shall be delivered to the Company and the non-offering Shareholders by the proposed transferee, which copy shall state the name and address of the proposed transferee and specify the number of Shares to be transferred or sold, the consideration per share if any, and the terms of the transfer. For all other purposes of this Article 3, ~~the delivery of the Order shall be treated as delivery of the Offer to Sell. Any purported transfer in contravention of this Section 3.12 shall be null and void and shall pass no title to the purported transferee.~~

3.13 Voluntary Sale to Company. A Shareholder may at any time require the Company to buy all, but not less than all, of his, her, or its Shares, according to the terms of purchase provided in Article 5, and at the purchase price determined under Article 4, so long as such sale does not violate California law or cause a default under any then existing Company loan agreements. Each Shareholder may exercise the rights under this Section 3.13 only after providing written notice to the Company and to each of the non-offering Shareholders. The Company shall buy all of the Offering Shareholder's and such Shareholder's transferees Shares pursuant Article 5 no later than thirty (30) days after a final determination of the purchase price under Article 4.

ARTICLE 4

PURCHASE PRICE

4.1 Agreed Upon Value. The purchase price of Shares to be sold, where there is not a valid third party offer to purchase at a stated price, shall be fair market value. Fair market value shall be Adjusted Book Value as determined in this Article less appropriate discounts for lack of marketability and lack of control.

4.2 Adjusted Book Value. The "Adjusted Book Value" of the company shall be the Shareholders' equity as reported in the company's balance sheet prepared as of the month end preceding the valuation date, adjusted by:

(a) adjusting the book value of the Company's interest in any land, buildings, and improvements (the "Real Property"), to the fair market value of the Real Property (as defined in Section 4.4);

(b) adding to Shareholders' equity an amount equal to any existing unrecorded assets of the Company (including the mark up of Real Estate under Section 4.4) but excluding future lease revenue, less the federal and state corporate income tax effect (calculated pursuant to Section 4.3) that the Company would have experienced during the fiscal year in which the valuation date occurs, if all such unrecorded assets had been recognized for tax purposes by the Company as of the valuation date;

(c) deducting from shareholders' equity an amount equal to any existing unrecorded liabilities of the Company (e.g., unrealized loss on swap contract, but excluding future lease obligations), less the federal and state corporate income tax effect (calculated pursuant to Section 4.3) that the Company would have experienced during the fiscal year in which the valuation date occurs, if all such unrecorded liabilities had been recognized for tax purposes by the Company as of the valuation date;

(d) ~~adding or deducting an amount equal to the federal and state corporate income tax (calculated pursuant to Section 4.3, and limited to the extent that such tax effect has not already been reflected in Shareholders' equity at the valuation date) that the Company would have realized during the fiscal year in which the valuation date occurs if all assets, liabilities and reserves reported on the Company's financial statements that were not proper accruals for income tax purposes prior to such fiscal year end but that will be recognized at some future date when paid or ascertainable for tax purposes (e.g., accruals for pension liabilities and accruals for compensation owed to employees for earned but unused vacation days), had been recognized by the Company at the valuation date; and~~

(e) reducing for any distributions to the Shareholders between the valuation date and the date of closing of the sale.

(f) Company owned life insurance on a deceased Shareholder whose Shares are being purchased shall be valued at cash surrender value immediately before death and not at policy proceeds.

The Adjusted Book Value shall be determined by the Company. If a Shareholder disagrees with such determination and so notifies the Purchaser in writing within thirty (30) days of receipt of the Company determination, the Parties shall use their best efforts to resolve their disagreement during the following sixty (60) days. If parties fail to agree on the determination, they shall mutually appoint a certified public accountant ("CPA") to make a determination of Adjusted Book Value within sixty (60) days of its appointment. The determination of the Adjusted Book Value by the CPA shall be binding on the Parties.

4.3 Tax Computations. All tax computations required by Section 4.2 shall be made as though the Company were a Subchapter C corporation paying federal and California corporate income taxes, but with such taxes calculated as though the federal and California corporate income taxes were imposed at the maximum effective rates applicable at the valuation date.

4.4 Fair Market Value of the Real Property. The fair market value of the real property owned by the Company shall be determined by appraisal in accordance with the provisions of this Section 4.4.

(a) Selection of Appraiser. If the parties are unable to agree on the selection of an appraiser within sixty (60) days after the valuation date then within ninety (90) days from the valuation date the Company and the selling Shareholder shall each appoint a qualified real estate appraiser to appraise the Company's real property. Each party shall provide the other party with written notice of the name of the appointed appraiser. The two appraisers so appointed shall then have a period of ninety (90) days after both have been appointed to appraise the fair market value of the real property. The failure of either the Company or the Shareholder to appoint an appraiser within the ninety (90) day period shall be deemed to be acceptance of the other's appraiser, in which case the opinion of that single appraiser shall be the fair market value of the real property and shall be binding on the Parties.

(b) Failure of Appraiser to Provide Report. The failure of one appraiser to provide its written report within the ninety (90) day period shall be deemed to be that appraiser's acceptance of the value of the real property rendered by the other appraiser, in which event the other appraiser's opinion shall be the fair market value of the real property.

(c) Determination of Fair Market Value. Each appraiser shall determine the fair market value of the real property within ninety (90) days of appointment. The appraisal shall consider each property and a sum of the value of all properties. There shall be no discount to value due to the hypothetical sale of a large number of properties in the same market. The sum of the values of all of the Company's properties shall be the "Aggregate Value of Real Property."

(d) No Agreement Among Appraisers - Values Within Ten Percent. If (i) the appraisers cannot agree upon a fair market value of the Aggregate Value of the Real Property within the ninety (90) day period; (ii) both appraisers have rendered an opinion of the fair market value of the real property; and (iii) the Aggregate Value of the Real Property determined by the appraiser providing the lower opinion of value is not less than ninety percent (90%) of the Aggregate Value of the Real Property amount determined by the appraiser providing the higher opinion of value, then the fair market value of the real property shall be the average of the two appraisals and such value shall be binding on the Parties.

(e) No Agreement Among Appraisers - Values Outside Ten Percent. If the appraisers cannot agree upon an Aggregate Value of the Real Property within the ninety (90) day period, and the Aggregate Value of the Real Property determined by the appraiser with the lower opinion is less than ninety percent (90%) of the Aggregate Value of the Real Property determined by

the appraiser providing the higher opinion of value, then upon the request of either the Company or the Shareholder, the appraisers shall immediately and jointly appoint a third appraiser, who shall be certified as a MAI appraiser, to determine the Aggregate Value of the Real Property within ninety (90) days of the appointment of the third appraiser. The third appraiser shall determine which of the Aggregate Value of the Real Property determined by the initial two appraisers is closer to the third appraiser's determination. Such Aggregate Value of the Real Property determined by one of the initial two appraisers shall be the fair market value of the real property and shall be binding on the Parties. The cost of the third appraiser shall be shared equally between the Company and the Shareholder. In all other cases, the Company shall pay the cost of the appraisals.

4.5 Applicable Discounts. In determining fair market value, the following discounts shall apply:

(a) Lack of Marketability. In every sale there shall be a discount for lack of marketability of twenty percent.

(b) Lack of Control. In every sale, except in the case of a required sale to the Company pursuant to Section 2.7, there shall be a discount for lack of control of twenty-five percent applied to the net value after the discount for lack of marketability.

ARTICLE 5

TERMS OF PURCHASE

5.1 Terms. Except as otherwise provided in this Article 5, the payment of the purchase price for Shares purchased under this Agreement shall be made to the selling party on the purchase date as follows:

(a) a certified or bank cashier's check payable to the order of the selling party in the amount of the greater of ten percent (10%) of the purchase price, or the proceeds of any insurance received by the Company or a purchasing Shareholder as a result of the event triggering the purchase but in no event shall the down payment exceed the purchase price; and

(b) a promissory note in substantially the form attached hereto as Exhibit B representing the balance, if any, of the purchase price, with interest thereon at a rate equal to the long term applicable federal rate in effect on the date of the event giving rise to the purchase, per annum, principal and interest payable in sixty (60) equal quarterly installments of principal and interest (subject to CGCL §§500-503). The interest rate and payment amount shall reset at the beginning of the calendar quarter following the third anniversary of the event giving rise to the purchase, and on every third anniversary thereafter until the promissory note is paid in full.

(c) Any purchase by the Company or other Shareholders is contingent upon concurrent execution of a security agreement in substantially the form of Exhibit "C," and pledge agreement in substantially the form of Exhibit "D," which shall designate a pledgeholder as agreed

by the buyer and seller, pursuant to which the Shares purchased will be held in pledge by such pledgeholder in order to secure all payments due under the promissory note described in Section 5.1(b) above.

5.2 Offsets. In any purchase hereunder by the Company, the Company may offset against its first payments all amounts owed to the Company by the seller, whether or not such amounts owed by seller are yet due.

5.3 Insurance Proceeds. The purchase price per share shall be paid in cash if the Company or purchasing Shareholder receives insurance proceeds from a life insurance policy on the life of a Shareholder in an amount equal to or greater than the total purchase price for all Shares being purchased. If the net amount of insurance proceeds is less than the total amount to be paid for the Shares required to be purchased under this Agreement, the Company shall make a down payment equal to the greater of (i) the amount of such insurance proceeds which the purchaser does receive, or (ii) ten percent (10%) of the purchase price. The balance shall be paid by a promissory note in accordance with Section 5.1(b).

ARTICLE 6

SPOUSAL PROPERTY OWNERSHIP

6.1 Ownership. Shares of the Company shall be deemed to be owned exclusively by the owner of record. Any outright transfer by gift, will, dissolution of marriage or otherwise, except as provided in Article 2, shall be deemed a disposition of the Shares to a non-permitted transferee, subject to the provisions of this Agreement.

6.2 Disposition at Death of Spouse. In the event the spouse of a Shareholder shall predecease such Shareholder, all of the Shares then owned by such Shareholder's spouse or a trust in which he or she is a trustee or a beneficiary, and which under the terms of the trust or the laws of testate or intestate succession would pass to someone other than (i) the Shareholder, (ii) a Permitted Transferee, or (iii) a trust under which the Shareholder or a Permitted Transferee is entitled to receive all income from the Shares, (and, in any event, a trust which could qualify as a "qualified Subchapter S trust") shall be subject to an option in favor of the surviving Shareholder to purchase the interest of the predeceased spouse, exercisable during the period ending on the earlier of 180 days immediately following receipt by the surviving Shareholder of notice of such attempted disposition or 18 months from the date of death of such spouse and at the value determined in Article 4, including 4.5(b), and on the terms provided in Article 5 of this Agreement.

6.3 Dissolution of Marriage. If, upon the dissolution of a Shareholder's marriage or the legal separation of a Shareholder and his spouse, any Shares would be owned as separate property of such Shareholder's spouse or otherwise transferred to said spouse, then that Shareholder shall have an option to purchase said interest, exercisable for one year after the date of notice of dissolution or legal separation, at the value determined in Article 4, and on the terms provided in Article 5 of this Agreement.

6.4 Failure to Exercise Option. If such Shareholder described in Sections 6.2 or 6.3 fails to exercise said option to purchase within the stated period, the options and administrative provisions set forth in Article 3 hereof shall apply as to those Shares except that the sixtieth (60th) day following the lapse of the option period under 6.2 or 6.3 shall be the date upon which the Secretary received an Offer to Sell from such Shareholder. The price and terms of the Offer to Sell under this Section 6.4 shall be a price per share determined under Article 4, and on the terms provided in Article 5 of this Agreement.

6.5 Involuntary Transfer. Any attempted involuntary transfer of either beneficial or record title of Shares from a Shareholder to his or her spouse shall be subject to the terms of Section 6.3.

ARTICLE 7

INSURANCE

7.1 Insurance Policies. Each Shareholder and spouse hereby agree that, at the option of the Company, application for a purchase of life insurance policy or policies on the life of any Shareholder or any Shareholder's spouse may be made by the Company or other Shareholder(s) in order to fund in whole or in part any purchase of Shares allowed to be made by the Company hereunder on the death of any such persons. The purchaser shall designate the beneficiary under any such life insurance policy. Each Shareholder and spouse further agree to cooperate fully in the application for and purchase of all life insurance policies acquired hereunder.

7.2 Disbursement of Insurance Proceeds. If, by reason of an event triggering a purchase option, and the Company or a purchasing Shareholder receives proceeds from a life insurance policy on the life of the deceased Shareholder, such proceeds (the "Proceeds") must be held in an account with a bank, savings and loan association or similar financial institution, under which the Proceeds may be withdrawn on thirty days' notice, until (i) the option to purchase Shares which was triggered by the event is fully exercised by the Company and the Shareholders, in which case the Proceeds may be used to fund such a purchase by the Company, (ii) the person who would be required to sell the Shares if the option was exercised consents in writing to unrestricted use of the Proceeds, or (iii) two (2) years from the event triggering the option, whichever is earlier.

ARTICLE 8

SUBCHAPTER S STATUS OF COMPANY

8.1 Continuation of S Status. The Company has elected to be taxed under Subchapter S of the Internal Revenue Code of 1986, as amended, and Treasury Regulations promulgated thereunder and the parties hereby acknowledge their intention to continue such election unless they shall terminate it by a vote of a majority of the Shares. Therefore, the parties agree that they will do nothing, directly or indirectly, which will cause an inadvertent or wrongful termination of the Company's S election. In addition, the parties agree to take such action as may be required to continue such election and to prevent its termination.

8.2 Prohibition Against Shareholder Transfers That Result in Termination of S Status. In order to prevent an inadvertent or wrongful termination of the Company's Subchapter S election, no Shareholder shall transfer any Shares owned by such Shareholder to:

(a) A person who, when added to the other shareholders of the Company, would cause the total number of shareholders of the Company to exceed the number permitted by Internal Revenue Code section 1361(b)(1)(A);

(b) An individual who is a nonresident alien;

(c) A trust which fails to satisfy the requirement of Internal Revenue Code sections 1361(c)(2) or (d) or other requirements for permitted shareholders of an S corporation;

(d) A personal representative, unless the personal representative is directed by the governing instrument or enters into an agreement not to revoke the Company's S election (except for a revocation permitted in accordance with this Agreement);

(e) Any person, whom the Shareholder knows, or has reasonable grounds to believe, will take action which will cause the Company's S election to terminate; or

(f) Any other person or entity which is not an eligible S corporation shareholder, or the result of which would cause the Company's S election to terminate, for example, a transfer to a partnership, or a corporation.

The Company shall not record on its books or otherwise recognize any such transfer (whether by operation of law or otherwise), and such transfer shall be null, void and of no effect. The purported transferor shall remain the beneficial and record owner of the Shares subject to such transfer.

8.3 Restriction on Disposition of Shares. No Shareholder shall at any time, directly or indirectly, voluntarily or involuntarily, by law, by judicial or other government process, order or proceeding, or otherwise, transfer or otherwise dispose of all or part of his or her Shares without the written opinion of the Company's legal counsel that the transfer will not cause a termination of the Company's S election or a waiver by the Company of this requirement. The term "transfer or otherwise dispose" as used in this Agreement shall include the sale, assignment, transfer, conveyance, gift, encumbrance, pledge, bequest, devise, hypothecation, or other disposition of shares, including permitting a levy or attachment on the shares. In the absence of such written consent and favorable opinion by counsel, any such disposition is null, void and of no effect.

8.4 Termination of S Status. If any Shareholder causes a termination of the Company's S election, the Company may request the Service to waive the terminating event under Internal Revenue Code section 1362(f), if the termination could be considered inadvertent, or request the Service to permit the Company to file a new S election under Internal Revenue Code section 1362(g). Each Shareholder agrees to consent to any adjustments required by the Service to avoid an inadvertent termination of the Company's S election.

8.5 Indemnification. Each Shareholder agrees that should such Shareholder violate this Agreement and cause a termination of the Company's S election, such Shareholder will indemnify and hold harmless the other Shareholders with respect to any damages that result from the termination, including any tax liabilities and interest thereon which are incurred as a result of such termination (but would not have been incurred except for such termination).

ARTICLE 9

BRING-ALONG RIGHT

9.1 Proposed Transfer. Notwithstanding anything to the contrary herein, if one or more Shareholders ("Sellers") propose to transfer (in a sale consummated in a single transfer or a series of related transfers to a single purchaser or a group of purchasers as part of a single transaction or group of related transactions) any Shares representing sixty-six percent (66%) or more of the then outstanding Shares (the "Transfer"), and provided that the Transfer is not an Exempt Transfer (as defined in Section 9.5), then such Sellers shall have the right ("Bring-Along Right"), but not the obligation, to cause each of the other Shareholders ("Other Shareholders") to tender to the third party offeror(s) ("Third Party") for purchase, at the same price per Share as applies to such Sellers, a number of Shares held by such Other Shareholders equal to the total number of Shares held by such Other Shareholders, provided that the consideration paid by the Third Party shall be cash and shall be paid in full immediately at closing.

9.2 Bring-Along Notice. If the Sellers elect to exercise their Bring-Along Right under this Article 9, then such Sellers shall notify the Company and the Other Shareholders in writing ("Bring-Along Notice"). Each Bring-Along Notice shall set forth (i) the name of the Third Party to which the Sellers propose to transfer Shares and the number of Shares proposed to be transferred, (ii) the address of the Third Party, (iii) the proposed amount and form of consideration and terms of payment offered by the Third Party, ("Third Party Terms"), and (iv) that the Third Party has been informed of the rights provided for in this Article 11 and has agreed to purchase Shares in accordance with the terms hereof. The Bring-Along Notice shall be given at least thirty (30) days before closing of the proposed Transfer.

9.3 Consummation. Upon the giving of a Bring-Along Notice, each Other Shareholder shall be obligated to sell all of the Shares owned by such Shareholder to the Third Party on the Third Party Terms; neither the Sellers nor any Other Shareholder shall be obligated to consummate the sale of any Shares if the Third Party does not purchase all Shares which the Shareholders are entitled to sell pursuant thereto.

9.4 Closing. At the closing of any Transfer pursuant to this Article 9, the Third Party shall remit to each Shareholder the consideration for the total sales price of the Shares of such Shareholder sold pursuant hereto, upon delivery by such Shareholder of certificate(s) for such Shares duly endorsed in blank for transfer or accompanied by stock power(s) duly executed in blank, and the compliance by such Shareholder with all other conditions to settlement generally applicable to the Sellers and all Other Shareholders; provided that the Other Shareholders shall not be required to give

any representations and warranties other than that they can convey the Shares free of any liens or encumbrances.

9.5 Exempt Transfer. The following transactions shall constitute "Exempt Transfers" as that term is used in this Agreement: (i) a Transfer to the Company, (ii) a Transfer by will or intestate succession to such Shareholder's executors, administrators, testamentary trustees, legatees or beneficiaries, or (iii) a Transfer permitted by Article 2.

ARTICLE 10

TAG-ALONG RIGHT

10.1 Proposed Transfer. If one or more Shareholders ("Sellers") propose to transfer (in a sale consummated in a single transfer, or a series of related transfers to a single purchaser or a group of purchasers as part of a single transaction) Shares representing thirty-three and one-third percent ($33\frac{1}{3}\%$) or more of the then outstanding Shares ("a Transfer"), and provided that the Transfer is not Exempt Transfer (as defined in Section 9.5), then each of the Shareholders other than the Sellers ("Tag-Along Shareholders") shall have the right ("Tag-Along Right") to require the proposed purchaser(s) to purchase from such Tag-Along Shareholder up to the number of whole Shares not to exceed the number derived by multiplying the total number of Shares to be purchased by the proposed purchaser(s) in such transaction(s) by a fraction, the numerator of which is the total number of Shares owned by such Tag-Along Shareholder, and the denominator of which is the total number of Shares owned by the Sellers and all Tag-Along Shareholders. Any Shares purchased from Tag-Along Shareholders pursuant to this Section shall be paid for at the same price per Share and upon the same terms of payment as such proposed Transfer by the Sellers ("Transfer Terms").

10.2 Tag-Along Notice. The Sellers shall promptly notify the Tag-along Shareholders in the event they propose to make a Transfer giving rise to Tag-Along Rights, and shall furnish the Tag-Along Shareholders with the Transfer Terms and a copy of any written offer or agreement pertaining thereto. The Tag-Along Right may be exercised by any Tag-Along Shareholder by delivery of a written notice to each Seller proposing to sell Shares ("Tag-Along Notice") within fifteen (15) days following such Tag-Along Shareholder's receipt of such notice from Sellers. The Tag-Along Notice shall state the number of Shares that such Tag-Along Shareholder proposes to include in such Transfer to the proposed purchaser (not to exceed the number determined in accordance with Section 10.1). In the event that the proposed purchaser does not purchase the specified number of Shares from the Tag-Along Shareholders on the Transfer Terms, then the Sellers shall not be permitted to sell any Shares to the proposed purchaser in the proposed Transfer.

10.3 Closing. At the closing of any Transfer pursuant to this Section, the proposed purchaser shall remit to each selling Shareholder the consideration for the total sales price of the Shares of such Shareholder sold pursuant hereto, upon delivery by such Shareholder of certificate(s) for such Shares duly endorsed in blank for transfer or accompanied by stock power(s) duly executed in blank, and the compliance by such Shareholder with all other conditions to settlement generally applicable to the Sellers and all other Tag-Along Shareholders selling Shares in such transaction (including the

provision by the Tag-Along Shareholders to the proposed purchaser of representations and warranties covering the same subject matter as those provided by the Sellers).

ARTICLE 11

MISCELLANEOUS

11.1 Conformance with California Law. When the Company is required or permitted to purchase Shares under this Agreement, if the Company desires or is required to purchase such Shares, but it is not lawful under California law to purchase all or any of such Shares, then the Company shall purchase that number of Shares which the Company can lawfully purchase within the applicable time period as set forth herein, and, notwithstanding any provision to the contrary in this Agreement, the Company shall be permitted to subsequently purchase the balance of such Shares at the time or times it is lawful under California law for the Company to purchase such Shares, upon the terms and conditions as provided herein.

11.2 Termination of Agreement. This Agreement shall terminate:

(a) At any time upon the written agreement of the Company and all the Shareholders of the Company then signatory to this Agreement as amended or revised;

(b) Immediately upon the dissolution, bankruptcy or insolvency of the Company;

or

(c) Upon the acquisition of the Company by merger, sale of assets, sale of stock or otherwise, in a tax-free or taxable transaction in which all holders of the Company's shares as such fail to obtain or hold fifty-one percent (51%) of the voting power of the surviving entity.

11.3. Further Assurances. Each party hereto shall, from time to time at and after the date first set forth above, execute and deliver such instruments, documents and assurances and take such further actions as any other party may reasonably request to carry out the provisions of this Agreement.

11.4 Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties. Notwithstanding the foregoing, no Shareholder may assign his right to purchase Shares hereunder without the unanimous written consent of all other then Shareholders.

11.5 Parties of Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third party to this Agreement. No provision of this Agreement shall give any third persons any right of subrogation or action over or against any party to this Agreement.

11.6 Amendment; Waiver. This Agreement shall not be changed or modified, in whole or in part, except by supplemental agreement signed by all the parties. Any party may waive compliance by any other with any of the covenants or conditions herein, but no waiver shall be binding unless executed in writing by the party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

11.7 Specific Performance. The parties hereby declare that it is impossible to measure in money the damages which will result from a failure to perform any of the obligations under this Agreement. Therefore, each party hereto waives the claim or defense that an adequate remedy at law exists in any action or proceeding brought to enforce the provisions hereof.

11.8 Attorneys' Fees. In the event litigation should be initiated to enforce or interpret any term or provision of this Agreement, the prevailing party in such litigation shall be entitled to recover all costs incurred in connection therewith, including, without limitation, reasonable attorney's fees.

11.9 Notice. Any and all notices or any other communication provided for herein shall be given in writing delivered personally, by registered or certified mail, or by courier service which shall be addressed, in the case of the Company, to its principal office, and in the case of any Shareholder, to such Shareholder's address appearing on the books of the Company or to such other address as may be designated by such Shareholder pursuant to this Section 11.9. Notices may be given by fax or email to a party who has provided such contact information and requested notice by that means.

11.10 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

11.11 Governing Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of California.

11.12 Entire Agreement. This instrument constitutes the entire agreement of the parties relating to the purchase of stock or redemption of stock of the Company. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are hereby rendered void and of no force or effect.

11.13 Captions and Headings. The captions or headings of the Articles and Sections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement.

11.14 Legal Counsel. Curtis & Arata a Professional Corporation has served as counsel to the Company in the preparation of this Agreement which includes the terms as agreed by the parties. Each of the undersigned Shareholders has either been advised by legal counsel of his or her own choosing as to the significant effect which signing this Agreement has on his or her property rights or has freely chosen not to seek such advice.

11.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. A party may deliver this Agreement by transmitting a facsimile copy of the signed signature page to the other party or parties.

IN WITNESS WHEREOF, the undersigned have executed or caused this Agreement to be executed as of the date first written above.

COMPANY:

MANOR DEVELOPMENT CO.,
a California corporation

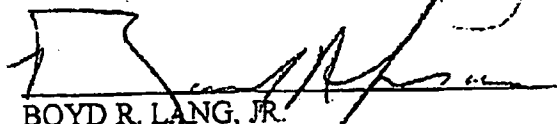
Signature: 
BOYD R. LANG, JR., President

Signature: 
PAMELA J. MILES, Secretary

SHAREHOLDERS:


PAMELA J. MILES


DEBORA L. ORLOSKY


BOYD R. LANG, JR.

LAW OFFICE OF JAY A. MULLINAX, LLC
THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com

RECEIVED BY
BEAUFORT COUNTY
PROBATE COURT
10 OCT 19 PM 4:28

June 23, 2009

VIA US POSTAL SERVICE

Mr. Ronald Joseph Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate/Trust Administration Engagement Letter

Dear Mr. Ronald Joseph Orlosky:

I extend my sincere sympathy to you and your family in the loss of your wife, Debora Laura Orlosky. It was truly a pleasure to know and work with her and I deeply regret your loss. Please be assured that I will make every effort to answer any questions you have and to assist you in completing all of the tasks involved in the estate administration.

The purpose of this letter is to confirm my representation of you as the named Personal Representative of the Estate of Debora Laura Orlosky and the trustee of the Debora Laura Orlosky Revocable Trust and to set forth the terms of engagement. At this time I ask that you please sign and return to me the enclosed "Authorizations to Release Information" which allows me to obtain information from various sources on your behalf.

I appreciate your confidence and trust in my firm to represent you in these matters of this estate. In any event, all questions should be directed to me or to my Legal Assistant to provide for continuity of communication. Estate administration is normally a process that takes between one and three years. I will make every effort to provide efficient services as we work together to administer the estate.

1. Summary of Services to be Performed for the Estate. I will provide services that are necessary and appropriate to administer the estate under the laws of South Carolina, commencing with the petition to probate the Will and have the Personal Representative qualified.

The following list includes the types of services that may be provided:

(a) Prepare and complete all notices of appointment the Personal Representative and other notices with respect to creditors as are required by the laws of the State of South Carolina and rules of court having jurisdiction of the estate.



(b) Assist the Personal Representative in preparing a complete inventory of all assets of any kind or nature that are subject to probate, and any nonprobate assets such as life insurance, retirement benefits, and other assets.

(c) Help Personal Representative make a thorough search for all debts, obligations and contingent liabilities of the estate in order to determine the financial condition of the estate and advise the Personal Representative regarding other action which must be taken by the Personal Representative to secure, reinvest, or protect the assets and provide for the discharge of liabilities, including death taxes of the estate.

(d) Prepare and complete all interim reports to the Probate Court and the beneficiaries as required during the course of the administration of the estate.

(e) Prepare, assist, or coordinate for the preparation of all tax returns for the estate, including federal estate tax and generation-skipping tax returns, state inheritance tax, or any local or state property tax returns, as well as federal and state income tax returns.

(f) Review and consider with the Personal Representative/Trustee any post-death planning, such as alternative asset valuation options, use of disclaimers, funding of trusts as provided for in the estate plan, timing the distribution of assets that are beneficial to the estate and any beneficiaries, and election of income tax benefits to the estate and beneficiaries.

(g) Plan for the payment all death taxes and the source of funds to be used in payment of any obligations, along with any elections for installment payment of taxes if available.

(h) Prepare a plan of distribution of assets held in the estate, either outright or to separate continuing trusts, for the beneficiaries.

(i) Prepare all reports, notices, consents, receipts, and accountings for closing the estate and discharge as the Personal Representative.

(j) Counsel and advise on any related questions or matters arising out of the administration of the estate.

As the named Personal Representative and Trustee you should understand that we represent you as the named Personal Representative of the estate, until such time that the Court qualifies the Personal Representative. At that time we will continue to represent the Personal Representative of the estate and trustee. My representation of the Personal Representative or the estate does not include the representation of the beneficiaries of the estate, even though we will, from time to time, provide them with information about the administration of the estate.

2. Charges for Legal Services and Out-of-Pocket Costs. I will bill you for charges based on the time devoted to the estate or a minimum of two and a half percent (2.5%) of the value of the estate. However, there is no method by which I can determine how much time will be necessary for the estate administration. My current hourly billing rate is \$285.00 per hour, but may be adjusted periodically. The charges of my paralegal will be billed at an hourly rate of \$110.00. I will generally bill the estate on a monthly basis. However, one third (1/3) of the minimum charge will be billed by the filing of the Petition, one third (1/3) of the minimum will be billed by the filing of the Inventory, and one third (1/3) of the minimum will be billed by the filing of the estate closing documents. If the bills are not paid reasonably soon after they are rendered, I reserve the right to stop work until your account is brought current.

I will also bill the estate for out-of-pocket expenses, such as probate and filing fees, travel expenses, delivery charges, duplicating, express mail, faxing and toll telephone calls. I will expect reimbursement of such costs upon presentation of periodic disbursement bills.

A retainer equivalent to one third (1/3) of the minimum charge should be maintained at all times. The firm may draw on the retainer during our representation and the remainder will be applied to the final statement. Any unused portion will be returned to you.

3. Conflicts of Interest and Confidentiality. Any relationship between an attorney and a client is subject to the Rules of Professional Conduct. In estates, ethical rules applicable to conflicts of interests and confidentiality are of primary concern because of the close relationship of the parties. Full disclosure to me at all times will assist me in the administration of this estate and will help to avoid problems that may arise in these areas.

As a condition of this representation, I require that, notwithstanding normal rules of confidentiality, I am authorized to notify the Probate Court, creditors, and beneficiaries of the estate, as the case may be, of any actions or omissions on the Personal Representative/Trustees part that have a material effect on their interests in the estate, including acts or omissions that may constitute negligence, bad faith or breach of the Personal Representative/Trustees fiduciary duties.

Because you are a potential beneficiary of the estate, I must advise you that I represent you as Personal Representative/Trustee currently, and can only represent you as a beneficiary if there is no conflict of interest by reason of such relationship. For example, a conflict could arise in the distribution of assets to you, or if one of the other beneficiaries should object to your individual ownership of the partial interest in an estate asset; or by reason of the amount of compensation which you may claim. In the event of such a conflict, consideration may have to be given by you to the employment of independent counsel to represent your personal interests.

4. Termination of Engagement

(a) The Personal Representative/Trustee, once determined, may terminate this engagement at any time by notice in writing to me. Upon receipt of such notice, subject to such court approval, as maybe necessary in the context of the situation, I will promptly cease providing any service to the estate or trust as allowed by law. The estate or trust will be responsible for paying for my services rendered up to the time I receive such notice and for such reasonable services that I provide thereafter in connection with the transfer of responsibility for the matters I am providing to new counsel.

(b) I may terminate this engagement by giving written notice to the Personal Representative. Upon termination of my representation, the estate will be responsible for paying for my services rendered up to the time I terminate our engagement and for such reasonable services that I provide thereafter in connection with the transfer of responsibility for matters I am then providing to new counsel.

(c) We agree to represent you as Personal Representative and Trustee under the terms of this agreement. At the conclusion of your role in one capacity, this agreement will continue to control our relationship as to your remaining roles.

If you find the above arrangement acceptable, please sign the enclosed copy of this letter and return it to me in the envelope provided, along with your check in the amount of \$25,000.00 to serve as a retainer. The retainer will be applied to your last billing statement and any amount not due will be returned to you at the conclusion of this matter.

Should you have any questions regarding the contents of this letter, please give me a call. We welcome and look forward to the opportunity to be of further service to you.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, LL.M., J.D.


Ronald Joseph Orlosky

Dated: 6/23/09

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE PROBATE COURT

CASE NUMBER: NOT YET ASSIGNED

IN THE MATTER OF: THE ESTATE)
OF DEBORA LAURA ORLOSKY,)
DECEASED)

APPLICATION FOR

(check any that apply)

INFORMAL

☒ PROBATE OF WILL

☒ APPOINTMENT

PETITION FOR

FORMAL

☐ TESTACY

☐ APPOINTMENT

Applicant/Petitioner: Ronald Joseph Orlosky

Address: 1 Marshview Drive

Hilton Head Island, SC 29928

Telephone: (843) 671-6756

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding:

Personal Representative nominated in Last Will and Testament of Decedent

2. Decedent Information:

Name:	Debora Laura Orlosky
Social Security Number:	Last Four Digits: 2264
Date of Birth:	09-25-1955
Date of Death:	06-17-2009
Age at date of death:	53
Domicile at date of death:	Beaufort County, South Carolina

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐ Decedent has a right to take legal action in this county because: _____

- 4a. Names and addresses of devisees in the will, including dates of birth of minors. If there are no minors then so state.

<u>Name</u>	<u>Date of Birth</u>	<u>Address</u>	<u>Relationship to Decedent</u>
Ronald Joseph Orlosky	Adult	1 Marshview Dr Hilton Head Island, SC 29928	Spouse/Trustee of Debora Laura Orlosky Revocable Trust dated 5/20/09



II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:
☒ the original is attached
☐ the original is in the Court's possession
☐ an authenticated copy of a will probated in another jurisdiction is attached
☐ an authenticated copy of a will not probated in another jurisdiction is attached
☐ the will is lost, destroyed, or otherwise unavailable; however a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☒ YES ☐ NO If no, please explain:
3. The date of execution of the Will: May 20, 2009
Codicil was dated: N/A
4. Are you aware of any instrument or document amending or revoking the will?
☒ NO ☐ YES If yes, please explain:
5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?
☒ YES ☐ NO If no, please explain:
6. Do you believe the will defined in 1 above is the decedent's last will?
☒ YES ☐ NO If no, please explain:

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name and address of the proposed Personal Representative is: Ronald Joseph Orlosky
1 Marshview Drive, Hilton Head Island, SC 29928
2. Priority for this appointment is:
☒ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☐ named as nominee of Primary and/or Alternate Personal Representative
☐ other devisee of decedent, or nominee (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent or nominee of said spouse
☐ other heir of decedent or nominee of said heir (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above
3. List below the names of any other persons, if any, having a prior or equal right of appointment:
NONE

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

{PRIVATE } Signature: *Ronald Joseph Orlosky*
Name: Ronald Joseph Orlosky
Address: 1 Marshview Drive
Hilton Head Island, SC 29928
E-mail: orlo2468@roadrunner.com
Telephone(O): (717) 805-7924
(H): (843) 671-6756

Sworn to before me this 24 day
of June, 2009.

Richard

Notary Public for South Carolina
My Commission Expires: 7/8/2015

LAW OFFICE OF JAY A. MULLINAX, LLC

By: *Jay A. Mullinax*
Jay A. Mullinax, Esquire
32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
843-785-6101

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be [] GRANTED
[] DENIED informally this _____ day of _____, 2009.

Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE:

TIME:

PLACE:

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 2009.

Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that:

☐ the decedent died testate. ☐ the decedent died intestate. The heirs are:

IT IS THEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, be admitted formally to probate.

Executed this _____ day of _____, 2009.

Probate Court Judge

☐ SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, 2009.

Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of the Estate of Debora Laura Orlosky.

{PRIVATE } Signature: *Ronald Joseph Orlosky*
Name: Ronald Joseph Orlosky
Address: 1 Marshview Drive
Hilton Head Island, SC 29928
E-mail: orlo2468@roadrunner.com
Telephone(O): (717) 805-7924
(H): (843) 671-6756

Sworn to before me this 24 day
of June, 2009.

Richard
Notary Public for South Carolina
My Commission Expires: 7/8/2015

LAW OFFICE OF JAY A. MULLINAX, LLC

By: *Jay A. Mullinax*
Jay A. Mullinax, Esquire
32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
843-785-6101

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE COURT

IN THE MATTER OF THE ESTATE OF DEBORA LAURA ORLOSKY
CASE NUMBER: NOT YET ASSIGNED

AFFIDAVIT

The undersigned attorney hereby certifies that the forms to be filed by his office from time to time in this matter shall be in compliance with statutory mandates and substantially similar in form, substance, and content to the court approved forms.

LAW OFFICE OF JAY A. MULLINAX, LLC

By:

Jay A. Mullinax

Jay A. Mullinax, Esquire

32 Office Park Road, Suite 211

Hilton Head Island, SC 29928

843-785-6101

Attorney for the Estate

Sworn to before me this 24 day
of June, 2009.

Richard D. [Signature]

Notary Public for South Carolina

My Commission Expires: 7/8/2015

LAW OFFICE OF JAY A. MULLINAX, LLC
THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com

June 30, 2009

VIA U.S. POSTAL SERVICE

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

Dear Mr. Orlosky:

Enclosed please find a bill for professional services rendered through the month of June 2009. We thank you for your most recent payment. Please note that your payment was placed into our trust account as a retainer and drawn upon to satisfy the charges due upon the filing of the Petition. Please remit a payment of \$25,000.00 to replenish the retainer as detailed in our engagement letter.

Also, please be advised that we are currently preparing the Inventory and Appraisement for filing. Upon the Inventory's completion, a bill will be forwarded to you for any amount owed towards the second minimal one-third payment.

If you have any questions or require anything further, please do not hesitate to contact my paralegal, Rachel Michaud or myself. Thank you for your time and attention to these matters.

Sincerely yours,

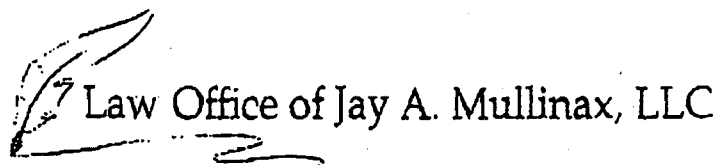
LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax
Jay A. Mullinax, Esquire

/Enclosures
JAM:rkmm



32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com



FOR PROFESSIONAL SERVICES RENDERED

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Billing Date: June 30, 2009

Date	Description	Quantity	Rate	Total
				\$
6/9/2009	One-Third minimum charge for services pertaining to the following: •Administration of Debora Laura Orlosky Estate •Administration of Debora Laura Orlosky Revocable Trust	1	\$ 25,000.00	\$ 25,000.00
				\$
6/30/2009	Costs and Expenses: Filing Fees			\$70.00

REMITTANCE

Client Name: Ronald Orlosky
Client matter #: 1052-03 Estate of Debora Laura Orlosky
Date Billed Through: 30-Jun-09
Funds Held in Trust: \$ -
Subtotal: \$25,000.00
Previous Payment Received:
(Via Trust Transfer): (\$25,000.00)
Retainer Due: \$25,000.00
Balance Due Upon Receipt: \$25,070.00*

*A 1% charge will be applied to any outstanding balance after 15 days of statement disbursement.

Law Office of Jay A. Mullinax, LLC
THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928

October 2, 2009

VIA U.S. POSTAL SERVICE

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

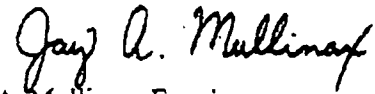
Dear Mr. Orlosky:

Enclosed please find a bill for professional services rendered through the month of September 2009. We thank you for your previous payments. Please note that your payment was placed into our trust account as a retainer and drawn upon to satisfy the charges due for the preparation of the estate inventory. Please remit a payment of \$25,000.00 to replenish the retainer as detailed in our engagement letter. We anticipate that soon, we will begin the preparation of the documents to close the probate estate. In the interim, we will continue to work on the other matters we discussed.

If you have any questions or require anything further, please do not hesitate to contact my paralegal, Rachel Michaud or myself. Thank you for your time and attention to these matters.

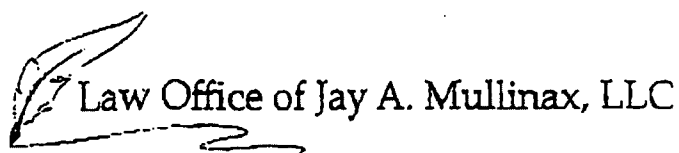
Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC


Jay A. Mullinax, Esquire

/Enclosures
JAM:lnk

32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
Tel (843) 785-6101 Fax (843) 785-6104
rw.sc-estateplanning.com



FOR PROFESSIONAL SERVICES RENDERED

r. Ronald Orlosky
Marshview Drive
Hilton Head Island, SC 29928

Billing Date: October 2, 2009

Item	Description	Quantity	Rate	Total
				\$
9/30/2009	One-Third minimum charge for services pertaining to the following: •Administration of Debora Laura Orlosky Estate •Administration of Debora Laura Orlosky Revocable Trust	1	\$ 25,000.00	\$ 25,000.00
				\$

Bill To:	Ronald Orlosky
Bill Address:	1052-03 Estate of Debora Laura Orlosky
Bill Date:	30-Sep-09
Amount Due:	\$25,000.00
Amount Paid:	\$25,000.00
Amount Due (Net):	\$25,000.00

1% charge will be applied to any outstanding balance after 15 days of statement disbursement.

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: DEBORA LAURA)
ORLOSKY)

IN THE PROBATE COURT

MOTION FOR EXTENSION

CASE NUMBER: 2009-ES-07-00512

- ☒ INVENTORY AND APPRAISEMENT
☐ ACCOUNTING/PROPOSAL FOR DISTRIBUTION
☐ PERIOD FOR ACTION ON CLAIMS
☐ OTHER: _____

Applicant: Jay A. Mullinax, Esquire

1. Nature of interest of undersigned:

Attorney representing estate

2. Ronald Joseph Orlosky is/are the duly qualified and acting Personal Representative(s) of the above estate.

3. I request an extension of 60 days to allow the Personal Representative(s) to complete and/or file the above referenced document or action for the following reason(s):
We are still in the process of gathering the values of certain assets.

Executed this 22nd day of Sep., 2009

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

Signature: Jay A. Mullinax
Name: Jay A. Mullinax, Esquire
Address: 32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
Telephone (O): 843-785-6101
(H): _____

ORDER FOR EXTENSION

IT IS HEREBY ORDERED that the Personal Representative(s) in the above estate be ☒ GRANTED ☐ DENIED
a 60 day extension in this matter. The filing is now due on the 24 day of Nov., 2009

Executed this 24 day of Sept, 2009

Francis M. Simon
Francis M. Simon

Francis M. Simon
Probate Court Judge



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE MATTER OF: THE ESTATE OF DEBORA LAURA ORLOSKY
CASE NUMBER: 2009-ES-07-00512

FILED
IN THE PROBATE COURT
2009 OCT 19 AM 11:50
BEAUFORT COUNTY, SC

INVENTORY AND APPRAISEMENT

☒ ORIGINAL

☐ SUPPLEMENTAL # 1

Personal Representative:	Ronald Joseph Orlosky
Decedent's Social Security Number:	Last four digits: 2264
Was there a Last Will and Testament?:	☒ YES ☐ NO
Decedent's Date of Death:	June 17, 2009
Decedent's Domicile at Death:	Beaufort County, South Carolina

The undersigned, being sworn, states:

That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; and

That he has estimated and appraised all listed property at its fair market value, according to the best of his knowledge and ability.

Ronald Joseph Orlosky
Ronald Joseph Orlosky, Personal Representative of the
Estate of Debora Laura Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

SWORN TO before me this 15th day
of October, 2009.

R. Mulichand
Notary Public for South Carolina
My Commission Expires: 7/8/2015

LAW OFFICE OF JAY A. MULLINAX, LLC

By: Jay A. Mullinax
Jay A. Mullinax, Esquire
32 Office Park Road, Suite 211
Hilton Head Island, South Carolina 29928
(843) 785 - 6101



For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised. Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	<u>Non-Probate</u>	<u>Probate</u>
Schedule A - Real Estate	\$0.00	\$0.00
Schedule B - Stocks and Bonds	\$0.00	\$0.00
Schedule C - Mortgages, Notes and Cash	\$0.00	\$41,398.23
Schedule D - Insurance on Decedent's Life		
Part 1 - Payable to Estate	\$0.00	\$0.00
Part 2 - Payable to Beneficiary	\$0.00	Not Required
Schedule E - Jointly Owned Property	\$0.00	\$23,556.67
Schedule F - Other Miscellaneous	\$0.00	\$20,000.00
Schedule G - Transfers during Decedent's Life	\$0.00	Not Required
Schedule H - Powers of Appointment	\$0.00	\$0.00
Schedule I - Annuities	\$0.00	Not Required
Subtotal	\$0.00	\$84,954.90

TOTAL GROSS WORTH	\$84,954.90

ENCUMBRANCES	\$0.00

TOTAL NET VALUE	\$84,954.90

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship.) (If none, so state.)
(For jointly owned property with right of survivorship, see Schedule E.)

<u>Item No.</u>	<u>Description</u>	<u>Tax Assessor's</u>	<u>Appraised Value</u>	<u>Appraised Value of</u>
		<u>Fair Market</u> <u>Value for year of</u> <u>Decedent's death</u>		
1	1/3rd interest as Tenant in Common, of 3301 Dardenella, Dollar Point Unit No. 2, Tahoe City, CA			TBD
2	1/3rd interest as Tenant in Common, of 751 Deer Valley Road, San Rafael, CA			TBD

TOTAL SCHEDULE A (Also enter under recapitulation.)

TBD

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see Schedule E.)

<u>Item No.</u>	<u>Description</u>	<u>Face Value</u>	<u>Appraised Value</u>
1	1/3rd interest in Manor Development Company, a California Corporation. (Closely held company)		TBD

TOTAL SCHEDULE B (Also enter under recapitulation.)

TBD

SCHEDULE C - Mortgages, Notes and Cash (If none, so state.) (For jointly owned property with right of survivorship, see Schedule E.)

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1	CD- Harbourside Community Bank Account	\$41,398.23

TOTAL SCHEDULE C (Also enter under recapitulation.)

\$41,398.23

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
NONE		

TOTAL SCHEDULE D, Part 1 (Also enter under recapitulation.)

\$0.00

Part 2 - Life Insurance Payable to Beneficiaries

<u>Item No.</u>	<u>Description</u>	<u>Beneficiary</u>	<u>Value</u>
NONE			

TOTAL SCHEDULE D, Part 2 (Also enter under recapitulation.)

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.) NOTE: You must complete Schedule E if the decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is includable in the gross estate.

Percentage includable:

1. Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2. Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate.

However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

<u>Item No.</u>	<u>Description</u>	<u>Surviving Joint Tenant</u>	<u>Percentage Includible</u>	<u>Appraised Value of Decedent's Interest</u>
1	Coastal States Bank Demand Deposit Account # 9670	spouse	50%	\$21,675.08
2	Coastal States Bank Demand Deposit Account # 0314	spouse	50%	\$856.46
3	Coastal States Bank Savings Account # 3638	spouse	50%	\$1,025.14
4	Tangible Personal Property	spouse	50%	TBD

TOTAL SCHEDULE E (Also enter under recapitulation.)

\$23,556.67

SCHEDULE F Miscellaneous Personal Property (Tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property, see Schedule E.)

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1	2006 Toyota Sienna	\$20,000.00

TOTAL SCHEDULE F (Also enter under recapitulation.)

\$20,000.00

SCHEDULE G - Transfers During Decedent's Life Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers, lifetime transfers of real property in which Decedent retained a life estate or other incidents of ownership. (If none, so state.)

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1	Debora Laura Orlosky Revocable Trust dated May 20, 2009.	Not Required
2	Charles Schwab Account #9910 (custodian account)	Not Required
3	Charles Schwab Account #7331 (custodian account)	Not Required

TOTAL SCHEDULE G (Also enter under recapitulation.)**Not Required****SCHEDULE H - Powers of Appointment** - Property over which Decedent possessed a Power of Appointment both real and personal, whether Testamentary or otherwise.Did Decedent possess a Power of Appointment? ☐ YES ☒ NOIf "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate.

(If more space is required, insert additional sheets of same size.)

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
NONE		\$0.00

TOTAL SCHEDULE H (Also enter under recapitulation.)**\$0.00****SCHEDULE I - Annuities and retirement** (IRA's, 401(k), etc.)Did Decedent own any accounts as described above? ☒ YES ☐ NOIf "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☒ NO

If "yes", please describe and list total amount payable to estate.

(If more space is required, insert additional sheets of same size.)

<u>Item No.</u>	<u>Description</u>	<u>Beneficiary</u>	<u>Value</u>
1	Changing Parameters IRA Account #0321	Debora Laura Orlosky Revocable Trust dated May 20, 2009	Not Required

TOTAL SCHEDULE I (Also enter under recapitulation.)**Not Required****ENCUMBRANCES** (E.g., mortgages, liens, judgements, etc., but not general debts of the estate) - List specific assets encumbered.

<u>Item No.</u>	<u>Schedule and Item Number</u>	<u>Encumbered Thereby</u>	<u>Description</u>	<u>Amount</u>
NONE				

TOTAL ENCUMBRANCES (Also enter under recapitulation.)**\$0.00****MANIFESTLY NON-TAXABLE**

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this County, such estate is not reportable to the South Carolina Department of Revenue.

Executed this _____ day of _____, 2009.

Probate Court Judge

(If more space is required, insert tax schedule or additional sheets of same size.)

 Law Office of Jay A. Mullinax, LLC

THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928

December 11, 2009

VIA U.S. POSTAL SERVICE

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

Dear Mr. Orlosky:

Enclosed please find a bill for professional services rendered through December 11, 2009. Based on the revised value of the estate, we are enclosing a bill for the adjusted payments for services rendered. Please note that your previous payment was placed into our trust account as a retainer and drawn upon to satisfy the charges due for the preparation of the estate inventory.

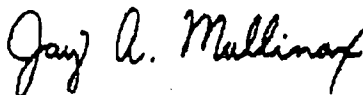
As you are aware, we previously billed you based on an estimate of the estate value of \$3,000,000.00. Now that we have received valuations on all of the property, the value of the estate appears to be \$4,444,148.03. As agreed, we adjusted your minimum charges of two and a half percent (2.5%) of the value of the estate.

Based upon the difference in the estate value, we are enclosing an invoice adjustment in the amount of \$36,103.70. However, we are currently requesting that you only remit a minimum payment of \$25,000.00 toward this balance. We anticipate significant work to be done on your file within the next several days.

Please contact us if you have any questions. We thank you in advance for your prompt attention to these matters.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, Esquire

/Enclosures
JAM:lnk

Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com





Law Office of Jay A. Mullinax, LLC

32 Office Park Road, Suite 211
Hilton Head Island, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104

Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Billing Date: December 11, 2009

Re: 1150-02 Estate of Deborah Orlosky

FOR PROFESSIONAL SERVICES RENDERED				
Date	Description of Service	Quantity	Rate	Total
12/11/2009	Minimum payment due based on the adjustment in the estate value.			\$ 36,103.70
	Total:			\$ 36,103.70

REMITTANCE			
Client Name:	Ronald Orlosky		
Date Billed Through:	11-Dec-09		
Funds Held in Trust:	\$ -		
Subtotal	\$	36,103.70	
Previous Payment Received:	\$	-	
Retainer Due now:	\$	25,000.00	
Retainer Due at a later date:		\$11,103.70	
Balance Due Upon Receipt:	\$	25,000.00	



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

January 8, 2010

VIA U.S. POSTAL SERVICE

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

Dear Mr. Orlosky:

Enclosed please find a bill for professional services rendered through January 8, 2010. Please note that your previous payment was applied to your account to satisfy the charges due for the preparation of the estate inventory.

As mentioned previously and based upon the difference in the estate value, we are enclosing an invoice adjustment in the amount of \$36,103.70. However, we are currently requesting that you only remit another minimum payment of \$12,500.00 toward this balance. We anticipate significant work to be done on your file within the next several weeks.

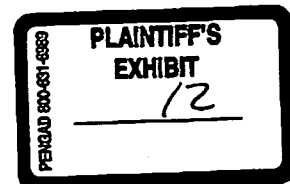
Please contact us if you have any questions. We thank you in advance for your prompt attention to these matters.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

/Enclosure
JAM:rkm



 Law Office of Jay A. Mullinax, LLC

2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104

Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Billing Date: January 8, 2010

Re: 1150-02 Estate of Deborah Orlosky

FOR PROFESSIONAL SERVICES RENDERED

Date	Description of Service	Quantity	Rate	Total
1/8/2010	Minimum payment due based on the adjustment in the estate value.			\$ 36,103.70
				\$ -
	Total:			\$36,103.70

REFERENCE		
Client Name:	Ronald Orlosky	
Date Billed Through:	8-Jan-10	
Funds Held in Trust:	\$ -	
Subtotal	\$	36,103.70
Previous Payment Received:	\$	(12,500.00)
Balance Due now:	\$	12,500.00
Retainer Due at a later date:		\$11,103.70
Balance Due Upon Receipt:	\$	12,500.00



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

February 12, 2010

VIA U.S. POSTAL SERVICE & ELECTRONIC MAIL

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

Dear Mr. Orlosky:

Enclosed please find a bill for professional services rendered through January 31, 2010. Please note that your previous payment was applied to your minimum charges, leaving a remaining balance of \$11,103.70.

Additional charges above the minimum charges reflect an increase of 3.5/100 % (or .0035%). However, we are currently requesting that you only remit the \$11,103.70 to satisfy your minimum charges. The balance of the enclosed charges, \$15,000, is due upon receipt of the down payment for the sale of the Manor stock.

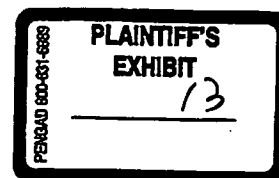
We anticipate significant work to be done on your file within the next several weeks in order to finalize the sale of estate assets and in preparation of the Estate Tax Return. Please contact us if you have any questions. We thank you in advance for your prompt attention to these matters.

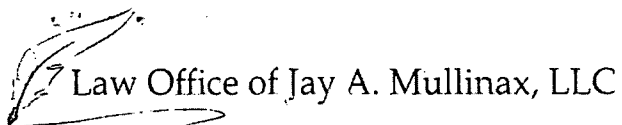
Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

Enclosure





Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104

Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Billing Date: February 12, 2010

Re: 1150-02 Estate of Deborah Orlosky

FOR PROFESSIONAL SERVICES RENDERED

Date	Description of Service	Quantity	Rate	Total
2/12/2010	Remaining balance due on the adjustment to minimum payment.			\$ 11,103.70
2/12/2010	Additional charges. (represents less than 3.5/100%).			\$ 15,000.00
	Total:			\$26,103.70

REMITTANCE

Client Name:	Ronald Orlosky
Date Billed Through:	31-Jan-10
Funds Held in Trust:	\$ -
Subtotal	\$ 26,103.70
Previous Payments Received:	\$ (25,000.00)
Payment due upon receipt of down payment on sale of Manor stock, but no later than March 5, 2010:	\$15,000.00
Balance Due Upon Receipt:	\$ 11,103.70

Please be advised that as of February 1, 2010, our attorney's rate has increased by \$10/hr and our paralegal's rate has increased by \$20/hr.

A 1% charge will be applied to any outstanding balance after 15 days of statement disbursement. For any questions regarding your bill, please contact our office.

 Law Office of Jay A. Mullinax, LLC
2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

February 25, 2010

VIA U.S. POSTAL SERVICE & ELECTRONIC MAIL

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: February Invoice – Minimum Charges
Estate of Debora Laura Orlosky

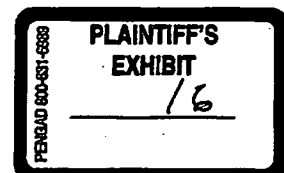
Dear Mr. Orlosky:

We are in receipt of your recent email requesting additional information dated February 24, 2010. We welcome the opportunity to meet with you and to answer your questions. We regret that you feel we have not kept you informed to your satisfaction. However, prior to your most recent correspondence, it was our understanding from you that you did not want to meet nor did you want extensive correspondence from us. We have made all efforts thus far to keep you reasonably informed and regret any misunderstanding regarding this matter.

In your most recent correspondence, you requested an appointment with us. Prior to scheduling an appointment, a minimum payment of \$11,103.70 must be made and applied to your balance of \$26,103.70. As you know, although the minimum payment was due in December, we delayed our request for your minimum payment until February. I am sure you can appreciate our need to be compensated for our services rendered in a timely fashion. Please contact our office to schedule a time to make your minimum payment in person in order to avoid any delay in the mail service.

The balance of the charges on your most recent bill continues to be due upon receipt of the down payment for the sale of the Manor stock or no later than March 5, 2010. At your request, we are in the process of preparing additional and itemized billing information concerning the charges above the minimum payments due.

There remains significant work to be done on your file within the next several weeks in order to finalize the sale of estate assets and in preparation of the Estate Tax Return. If you have



any questions or require anything further, please do not hesitate to contact us. Thank you in advance for your prompt attention to these matters.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

A handwritten signature in cursive script that reads "Jay A. Mullinax". The signature is written in black ink and is positioned above the printed name.

Jay A. Mullinax, Esquire

JAM:rkm

March 4, 2010

Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928

Dear Jay,

It seems that we have reached a logjam in the handling of the estate of Debora Laura Orlosky. In order to address the issues and take steps to move forward, please provide me with the following information:

- Status of the Estate – please provide a listing of the activities that have been accomplished to date.
- Remaining Activities – please provide a listing of the activities that remain to be done to complete all required estate tasks up to and including the estate closing process.
- Expenses – please provide a detailed accounting of all expenses related to the handling of the estate from day one until today. This accounting should include the date, time spent, description of activity, and who performed the task (attorney or paralegal).
- Expected Future Costs – please provide me with your best estimate of the expenses involved to complete all remaining activities and close the estate.

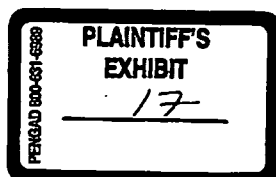
I would request that you provide me with this information no later than March 15, 2010.

Thank you for your attention to this matter.

Yours truly,



Ronald J. Orlosky
Personal Representative
Estate of Debora Laura Orlosky

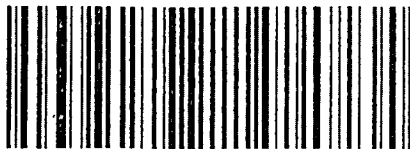




Ronald J. Orlosky
1 Marshview Drive
Hilton Head SC 29928-3111

RETURN RECEIPT
REQUESTED

7009 2820 0002 2307 3157



1000



29928

U.S. POSTAGE
PAID
HILTON HEAD ISL. SC
29928
MAR 04, 10
AMOUNT

\$5.54
00075709-08

LAW OFFICE OF JAY MULL...

2 PARK LANE SUITE 303

HILTON HEAD ISLAND, SC

29928

NAME
1st NOTICE
2nd NOTICE
RETURN
321

HAND DELIVERED TO

JAY'S ASSISTANT 3/15/2010
9:40 AM MON



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

March 16, 2010

VIA U.S. POSTAL SERVICE

Mr. Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Estate of Debora Laura Orlosky

Dear Mr. Orlosky:

We are in receipt of your recent correspondence that you delivered by hand on March 15, 2010, wherein you requested additional information. We regret that until now we did not hear from you since our correspondence of February 25, 2010. In that correspondence we asked that you contact our office to schedule a time to meet. We welcome the opportunity to meet with you and to answer your questions.

However, as noted to you in earlier correspondence, we must discuss and resolve the outstanding balance on your account. In particular, we must discuss and resolve the issue with regard to your delinquent minimum payment of \$11,103.70 to be applied to your balance of \$26,103.70. As you know, although the minimum payment was due in December, we delayed our request for your minimum payment until February. I am sure you can appreciate our need to be compensated for our services rendered in a timely fashion. Please contact our office to schedule a time to make your minimum payment in person in order to avoid any delay in the mail service. Alternatively, if you have questions concerning your minimum payment, please schedule a time for us to meet and discuss it. Also, please note that at your request, we are in the process of preparing the itemized billing information concerning the charges not covered by the payments due for the estate administration.

It is our sincere hope that we can resolve the issues with your account and take steps to move forward. As previously mentioned, although we have completed all of the required estate tasks over which we had control, there remains significant work to be done on your file. We look forward to hearing from you soon. Thank you in advance for your prompt attention to these matters.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax
Jay A. Mullinax, Esquire

JAM:rkm



March 19, 2010

Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928

Dear Jay,

Effective today, March 19, 2010, I am terminating your engagement as the attorney for the Estate of Debora Laura Orlosky.

I expect your full cooperation with new counsel during the transition process.

Considering that a final complete inventory, the IRS 706 form, the Manor stock sale, any estate closing documents, as well as other estate-related documents have not been finalized or filed, the estate work is very much incomplete. Therefore, I again ask for you to please provide me with a detailed summary of the hours worked and expenses incurred prior to March 19, 2010, so that the financial matters may be settled. You have already received \$100,000 and I suspect that I will be entitled to a refund.

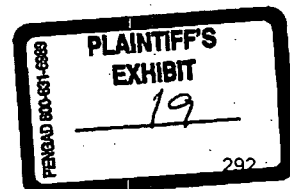
Thank you for your attention to this matter.

Yours truly.


Ronald J. Orlosky

Executor

Estate of Debora Laura Orlosky





Date: Wednesday, February 24, 2010 4:57 PM
From: orlo2468@roadrunner.com
To: Jay Mullinax <jay@mullinax-law.com>
Subject: RE: Estate of Debora Orlosky

Jay, thanks for the reply, however you did nothing to enlighten me on current activities and the "state of the estate". I need information in a summary form, but do need some specifics with respect to the activities that have been completed, what are being worked on, and what are the planned steps. You are not keeping me adequately informed to the level that I require.

What is going on with the Manor sale? Bjornstrum sent you the Note and other documents last Thursday. When are we going to meet and get the Note signed and transaction completed?

When can I pick up a copy of the Letter of Testamentary so I can change the title of the Sienna?

Please advise about the inventory filing? The initial one was only a partial, with a significant part of the estate assets missing. What is holding up filing a complete one?

What stands in the way of filing the 706, now that all assets have been identified? I am not in favor of an extension and there only remains 3 weeks to complete within the 9 month period.

What are the steps in the process that you are following?

I suggest we set up a time next week to complete the Manor stock sale and address the above questions as well as some others I have.

Thanks for your prompt attention to these matters.

--

Ron Orlosky
843-671-6756 (h)
717-805-7924 (c)
orlo2468@roadrunner.com

---- Jay Mullinax <jay@mullinax-law.com> wrote:
Ron,

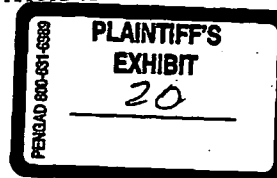
I'm sorry I couldn't address your questions sooner, but I recognized your questions as more extensive than they appear and I wanted to fully address your questions as soon as I had the opportunity. I considered providing you with detailed pages of explanation, but I realize that you like brevity in my communication with you, so I will try to be brief and summarize. I assure you that everything is up to date with regard to the estate and trust administration. We have addressed things "in a particular order" according to the requirements, the estate plan and your input. An inventory has been filed, the 706 preparation is as far along as possible given the circumstances and information is still being formulated based on the process.

Very truly yours,

Jay A. Mullinax

Jay A. Mullinax, Esquire
The Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101 (Telephone)
(843) 785-6104 (Facsimile)
<http://www.sc-estateplanning.com>

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April 1, 2010

**Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928**

Dear Jay,

Enclosed is a signed Application to Withdraw.

Michael Jordan of McNair Law Firm in Hilton Head will serve as the attorney for the Debora Orlosky estate.

I take issue with your billing for the following reasons:

- **Work on the estate is nowhere near completed. In fact, according to the Letter of Engagement, Section 1, points c, d, e, f, g, h, i, j, have not been completed. I do not agree that the 2.5% minimum is valid when this much work has yet to be done.**
- **I continue to disagree with your valuation of the inventory with respect to Manor stock, 1 Marshview Drive property, and the furnishings of 1 Marshview Drive and Tahoe City property.**
 - **My research along with advice from two CPAs and an attorney leads me to believe that if there is a bona fide Buy/Sell agreement, the value determined by the formula contained within the Buy/Sell is valid. The Buy/Sell price is \$1,585,000. You did not provide me with a hard copy of the inventory values, so I believe your valuation price of Manor stock was approximately \$2,670,000. A difference of ~ \$1,085,000 from your value.**
 - **The value of the 1 Marshview Drive property at the time of Deb's passing was ~\$800,000, not the \$950,000 you are used which was the purchase price in April 2007. A difference of \$75,000 (50% was Deb's)**



- The actual value of the furnishings at 1 Marshview are much closer to \$100,000 than the \$200,000 replacement cost that you used. A difference of \$50,000 (50% was Deb's)
- The value of the furnishings at the Tahoe City property are jointly owned by Deb and her two siblings. The value should be \$20,000 or 1/3 of the \$60,000 you utilized. A difference of \$40,000.
- This totals a difference of \$1,250,000 or an estate value of \$3,195,000.
- 2.5% of \$3,404,000 is \$79,850. You have already received \$100,000 from me. Even utilizing your minimum method, I have overpaid by \$20,000.

In summary, you have completed far less than the services required to settle the estate, and your valuation of the estate is \$1,040,000 too high. Even by your approach of utilizing a minimum, I have over-paid by \$20,000.

Again, I ask you to provide me with a detailed listing of the hours worked and expenses incurred on the case up until March 19, 2010. Based upon these expenses, we can settle the financial considerations.

Thank you for your attention to this matter.

Yours truly.



**Ronald J. Orlosky
Personal Representative
Estate of Debora Laura Orlosky**

TO: File
CC: Ronald J. Orlosky
FROM: Michael L.M. Jordan
RE: Estate of Deborah L. Orlosky
DATE: May 12, 2010
Client# 053505-00001

Debora L. Orlosky died on June 17, 2009. At her death she owned approximately thirty (30) shares on Manor Development Company, a California corporation. These shares equaled one-third of the outstanding shares of the corporation. These shares of stock are included in both her probate estate and her gross estate for federal estate tax purposes. The other two-thirds (2/3's) of the stock in the corporation was held by her siblings. At issue is the valuation of the those shares for both inventory and estate tax purposes.

The primary question posed for estate administration and federal estate tax purposes is:

What is the proper value to be placed on the 1/3 stock interest in Manor Development Company stock owned by the decedent, Debora Orlosky?

The secondary questions raised by that primary question are:

Is there a valid binding shareholder's agreement?

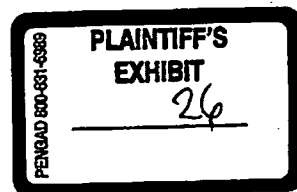
Was the shareholder's agreement established for a valid business purpose rather than a tax avoidance testamentary scheme?

Does the Shareholder Agreement establish a binding value?

Discussion

It is my understanding that the Manor Development company Shareholder Agreement was entered into by the three family members shareholders on March 15, 2009. It is my further understanding that this version of the shareholder's agreement was the result of a fairly extensive drafting process and was the successor agreement to earlier agreements of a similar nature covering the company's stock. The agreement was entered into after the death of their father. These three individuals received the company stock from the estate of their deceased father. All three of the shareholders (children) were approximately the same age. Finally, it is

HILTONHEAD 720098-v2



my understanding that at the time of the execution of the agreement (3/15/09) that nobody had any idea of the future medical issues that would result in the death of Debora Orlosky some two months later. The primary purpose of the Shareholder Agreement was to protect both the business and its management. The agreement was not entered into in anticipation of the death of any of the shareholders.

The desire to prevent an excessive estate tax valuation for a business interest, whether corporate or partnership, may be one of the reasons for entering into a buy-sell or other restrictive agreement or option contract. It is, however, rarely the only reason, and frequently it is not the principal one, even where the parties to the agreement are members of the same family. Securing the continuity of the concern and of experienced management, preventing the loss and waste incident to a liquidation, anticipating dissensions and litigation within the family, protecting the estate against excessive claims of some family members, inducing qualified personnel to join the company, and a variety of other non-tax motives may account for the agreement. These may be valid business reasons for having a shareholder agreement.

For estate tax valuation purposes "buy- sell" and similar arrangements must be taken into account. The decisions have recognized that an option or contract price in the agreement will set the estate tax value, even though the fair market value of the business interest is then actually higher than the agreed price, provided:

- The market for the business interest in question is restricted so effectively that at no time (during the owner's lifetime and upon the owner's death) can it be disposed of, wholly or in part, without bringing into operation the restrictions of the agreement, and
- The agreement is an arm's length deal concluded in good faith and supported by adequate and full consideration in money or money's worth.

Even if the agreement doesn't fix the estate tax value, the option or contract price is one of the factors to be considered in determining fair market value. That "fall-back" position isn't relevant in this case, since I believe that the facts support the position the Shareholder Agreement definitively sets the value of the stock. This means that, at worst, the agreement is a factor that determines the value.

A beginning point in the discussion is whether the Manor Development Company Shareholder Agreement was effective on the date of death. The restrictions in the buy-sell agreement must be effective on the valuation date. If, as of the valuation date, the agreement has terminated, the stock originally subject to the agreement is properly valued at fair market value. It is my understanding that there is no question about the validity and execution of the agreement.

To be controlling, the agreement must be definite in its terms and leave no "loopholes." If it takes effect only if the executor, heir or legatees of the deceased shareholder or partner decides to sell the business, it does not limit IRS to the option price in valuing the estate. The

agreement appears to be well drafted and leave no "loopholes." The company's CPA¹ was able to easily calculate the agreement price based on the language of the Shareholder Agreement.

If the agreement operates in all events, it makes no difference whether the restriction is based on a buy-sell agreement between co-shareholders, partners, or other business associates, or merely by a right of partners to veto inter vivos dispositions (without obliging them to purchase), or by a provision incorporated in the charter of a corporation or in a contract between the corporation and a shareholder to whom it issues stock. The option price at which the corporation in its discretion may repurchase the stock before it can be otherwise disposed of by the shareholder through a sale or other transfer, including a legacy, will be accepted as the fair market value at the date of death.

As I noted in the "bullet points" as a requirement, a shareholder agreement cannot just be a testamentary device to pass decedent's property to natural objects of his bounty for less than adequate and full consideration. It must have a real business purpose. The scope and effectiveness of the restrictions on marketability are only one part of the determination necessary for estate tax purposes. A restrictive agreement, as a matter of state law, may be valid and enforceable as between the parties to the agreement, and it may be operative in all events, including inter vivos gifts, and yet that does not of necessity mean that IRS in its valuation is bound as though it were a party to the agreement.

Even if the decedent was not free to dispose of the interest in his lifetime at other than the option or contract price, the price will be disregarded in determining the value of the interest unless it is determined, under the circumstances of the particular case, that the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth.

Where a buy-sell agreement is entered into among members of a family, it generally becomes necessary to convince IRS and the courts that the agreement was a valid business arrangement, not just an estate tax saving maneuver.

If a parent is determined to bequeath his partnership interest to his children who are his partners and are also made his residuary legatees, it is difficult to determine whether a purchase price fixed in the partnership agreement and based on book value only, as against a higher fair market value, is based on adequate and full consideration. The courts have held that complete reciprocity, which would make the agreement equally applicable if the younger partner unexpectedly died before the older partner, is enough to spell out adequate and full consideration, even if the price is as low as one-half the net value of the assets. Our facts are much better. This shareholder agreement is not between a senior generation and a junior generation. It is between members of the same generation.

Close family ties between the deceased shareholder and the surviving shareholders will always call for a thorough examination of whether the shareholder agreement was supported by the kind of full and adequate consideration, which would characterize a deal between strangers.

¹ Cal B. Kimes, Pisenti & Brinker LLP, CPAs

But, by itself, family relationship is no conclusive reason for brushing aside the valuation set by the agreement, particularly where the arrangement is fully reciprocal, that is, equally operative in the event the sequence of withdrawals by reason of death runs contrary to normal life expectancy expectations.

In some cases the courts have upheld agreements, even when one shareholder was in failing health, when the agreement was signed. But the Tax Court held that a price agreed upon by a shareholder in a buy-sell agreement with his brothers and co-shareholders was binding on IRS, even though it was concluded at a time when he was afflicted with an incurable ailment. Theoretically, there was a possibility for one of the co-shareholders to die first and this factor, which would have given the ailing shareholder the benefit of the agreement, may have imparted to the agreement the reciprocity necessary to indicate adequate and full consideration. IRS agreed to follow this decision. This case is almost directly on point, since it deals with siblings.²

All of these factors being considered, it is still possible for either the IRS or a court to disregard the valuation clause in a shareholder agreement, when it is obvious that estate tax avoidance, not business purpose, was the over-riding reason for the agreement. But the formula price contained in a buy-sell agreement entered into with respect to a family- owned cosmetics company, Estee Lauder Inc, didn't control the valuation of the stock for estate tax purposes despite the fact that the agreement had a valid business purpose of preserving family control of the corporation. The use of an adjusted book value formula to value the stock rendered the agreement a device to pass the decedent's shares to his family members for less than adequate and full consideration under, where the valuation formula didn't bear a reasonable relationship to the unrestricted fair market value of the stock subject to the agreement.³ The court said that there were "compelling circumstances" suggesting that the decedent, who was more than 70 years old when the agreements were signed, entered into the agreements as a substitute for a testamentary disposition to pass his interest in the business to the members of his family for less than adequate consideration. The most compelling circumstance was the arbitrary manner in which the shareholders adopted the adjusted book value formula for determining the purchase price of the stock under the agreements. The formula was chosen without an appraisal of the company's assets and without considering the specific trading prices of comparable cosmetic companies. No significant professional or expert advice was sought in determining the formula, other than that of the family's personal financial advisor. Furthermore, the formula excluded the value of all intangible assets held by the company. The Tax Court said that this was particularly inappropriate in valuing a cosmetic company, because intangibles such as trademarks and trade names represent a significant component of the aggregate value of the total assets of such companies. Finally, the Tax Court pointed out that the other shareholders adopted the adjusted book value formula without negotiation, in apparent recognition of the fact that an artificially low price would provide estate tax benefits for all. The Tax Court further concluded that the adjusted book value price in the agreement didn't reflect adequate and full consideration as of the date that the agreement was executed.

² Littick, Estate of Orville, 1958, 51 TC 181.

³ Lauder, Estate of Joseph, (1992) TC Memo 1992-736

Manor Development is no Estee Lauder! If for no other reason than the fact that the valuation formula in Manor Development requires that assets like real estate be adjusted up to fair market value from book value for the purpose of establishing the transfer price.

Conclusion.

The Manor Development Company Shareholder Agreement appears to be well drafted and prepared by an experienced attorney. It defines a business purpose, which appears to be the most valid reason for the execution of the agreement. The valuation formula appears to be reasonable and an attempt to reflect fair market value. The agreement appears to be equally binding on all the shareholders to the company. The shareholders are all of the same generation, thereby reducing the possibility of the argument that the primary purpose of the agreement was testamentary in nature.

Based on the above analysis, I believe that the estate can reasonably take the position that the Shareholder Agreement controls the valuation of the stock owned by Debora L. Orlosky.

McNair Law Firm, P.A.



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

June 14, 2010

VIA COURIER

Mr. Ronald Orlosky
c/o Michael L. M. Jordan, Esquire
McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938

Re: Estate of Debora L. Orlosky – Manor related itemized Bill

Dear Mr. Orlosky:

Pursuant to your request, please bring your attention to the enclosed itemized bill which reflects the itemized billable time devoted to your pursuit of the optional sale of the Manor stock from the above referenced estate. As you are aware, these charges were for the additional services rendered that were not necessary in order to administer the estate or trusts under the laws of South Carolina, and therefore not included in our charges for those necessary administration expenses.

It appears from our records that our efforts resulted in an increase of the Manor stock sale price by \$261,320.00. It is our understanding that you agreed to the sale of the stock and we hope you found our efforts in negotiating for the additional \$261,320.00 beneficial. Pursuant to your earlier correspondence, it was our understanding that you wanted to pay the enclosed amount out of the down payment from the Manor Stock. We expect that you have received the down payment by now. Regardless, the itemized bill you requested is enclosed and is now due.

We would appreciate your prompt attention to the payment of this bill by June 30th. The estimated charges of \$15,000.00 billed to you on February 15, 2010 are included in the enclosed charges.

If you have any questions or require anything further, please do not hesitate to contact my paralegal, Rachel Wisnefski or myself. Thank you for your time and attention to this matter.

Very truly yours,

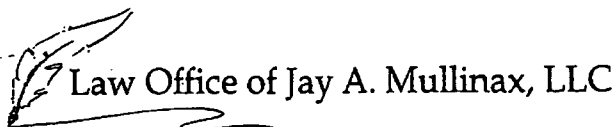
LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax

Jay A. Mullinax, Esquire

/Enclosures
JAM:rkW





2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104

Ronald Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Billing Date: June 14, 2010

Re: 1150-02 Probate

FOR PROFESSIONAL SERVICES RENDERED				
Date	Description of Service	Quantity	Rate	Total
7/15/2009	Review stock agreement for Manor Development. Review email correspondence with client. Review previous email from client and attorney from California who is administering Mrs. Orlosky's late father's estate. Draft correspondence to client. Telephone consultation with client.	2.5	\$ 285.00	\$ 712.50
10/2/2009	Draft correspondence to California attorney.	0.25	\$ 285.00	\$ 71.25
10/8/2010	Draft correspondences regarding legal notice, request for stock valuations, and real property valuation. Review deeds, appraisals, and stock agreement.	5.5	\$ 285.00	\$ 1,567.50
10/9/2009	Prepared and sent letters to Manor Development Company and Attorney for Estate of Lang (4).	1.75	\$ 110.00	\$ 192.50
10/9/2010	Draft additional correspondence to California attorney and corporation president. Telephone consultation with client.	2.5	\$ 285.00	\$ 712.50
10/13/2010	Review of Manor Development information received from client.	0.25	\$ 110.00	\$ 27.50
10/15/2009	Review correspondence from California attorney.	0.25	\$ 285.00	\$ 71.25
10/20/2009	Prepared email response to attorney for Lang estate and Manor Development.	0.5	\$ 110.00	\$ 55.00
10/27/2009	reference documentation for reply. Draft correspondence to California attorney.	1	\$ 285.00	\$ 285.00
10/29/2009	Review correspondence from California attorney.	0.25	\$ 285.00	\$ 71.25
12/4/2009	Review correspondence from client in regard to Manor and real property valuations.	0.25	\$ 285.00	\$ 71.25
12/7/2009	Review correspondence from client. Do preliminary calculations on estate matters. Draft correspondence to client. Preliminary review of valuations.	2	\$ 285.00	\$ 570.00
12/8/2009	Review of valuation information. Legal research. Calculate alternative valuation results.	5.75	\$ 285.00	\$ 1,282.50
12/9/2009	Review buy sell agreement. Calculate estate tax and income tax ramifications of various outcomes. Calculate various valuations on property. Legal research with emphasis on IRC 2701-2704 and discounting case law. Interoffice	2.5	\$ 285.00	\$ 712.50
12/10/2009	Interoffice conference with attorney. Preparation of valuation information. Review of valuation information received from California attorney.	2	\$ 110.00	\$ 220.00

12/11/2009	Review of Manor Buy/Sell options. Create plan to increase the estate's sale price (by over \$500k). Consultation with Personal Representative/Trustee.	5	\$	285.00	\$	1,425.00
12/15/2010	Review client correspondence in regard to sale of Manor stock. Draft correspondence to client.	0.25	\$	295.00	\$	73.75
12/16/2010	Consultation with client in regard to Manor Buy/Sell Agreement and purchase options.	1.5	\$	285.00	\$	427.50
12/17/2009	Review of buy sell options. Create plan to increase the Manor Stock sale price (by over \$250,000.00). Consultation with Personal Representative/Trustee. Telephone call to California attorney.	5	\$	285.00	\$	1,425.00
12/29/2009	Review shareholder agreement. Legal research. Review Corporation's purchase price information. Interoffice conference with paralegal.	5	\$	285.00	\$	1,425.00
1/8/2010	Draft correspondences to client in regard to Manor purchase.	1	\$	285.00	\$	285.00
1/13/2010	Interoffice conference with paralegal.	0.5	\$	295.00	\$	147.50
1/14/2010	Preparation for consultation. Consultation with client in regard to sale of Manor and tax ramifications.	2.5	\$	295.00	\$	737.50
1/15/2010	Prepared letter to attorney for Manor Development Corporation.	0.75	\$	130.00	\$	97.50
1/21/2010	Preparation of correspondence to be sent to attorney for Manor Development Corporation.	0.75	\$	130.00	\$	97.50
1/23/2010	Legal research. Review documentation. Draft correspondence to California attorney. Draft correspondence to client.	0.5	\$	295.00	\$	147.50
1/25/2010	Legal research. Review case law pertinent to Manor sale in estate administration. Interoffice conference with paralegal.	3.5	\$	295.00	\$	1,032.50
1/26/2010	Legal research. Meet with Internal Revenue agents from estate and gift tax region and appeal level offices.	3	\$	295.00	\$	885.00
1/27/2010	Review client correspondence. Draft correspondence to client. Legal research.	1.5	\$	295.00	\$	442.50
1/28/2010	Review documentation. Draft correspondence to client. Review correspondence from California attorney.	1.25	\$	295.00	\$	368.75
2/2/2010	Review letter from California attorney. Interoffice conference with paralegal. Review formula calculations. Legal research. Draft correspondence to California attorney. Draft correspondence to client.	6.5	\$	295.00	\$	1,917.50
2/3/2010	Interoffice conference with attorney. Telephone call to client. Preparation and review of correspondence to client. Review of letter from attorney for company.	1	\$	130.00	\$	130.00
2/3/2010	Cursory review of letter from Manor Development. Review shareholder agreement.	1	\$	295.00	\$	295.00
2/4/2010	Review client correspondence. Review opposing attorney's correspondence. Gather information and research. Draft correspondence to client. Telephone conference with California attorney.	4	\$	295.00	\$	1,180.00
2/5/2010	Legal research. Review recent information collected. Draft correspondence to client.	2.5	\$	295.00	\$	737.50
2/8/2010	Prepared letter to Personal Representative/Trustee re: recommendation of appraisal.	0.5	\$	130.00	\$	65.00

2/9/2010	Review correspondence from Manor Development attorney. Review Shareholder Agreement. Review decedent's estate planning documents. Legal research. Draft correspondence to Manor Development Corporation attorney.	3	\$	295.00	\$	885.00
2/24/2010	Review correspondence from client in regard to Manor.	0.5	\$	295.00	\$	147.50
Total:						\$20,997.50

REMITTANCE

<i>Client Name:</i>	Ronald Orlosky
<i>Date Billed Through:</i>	22-Mar-10
<i>Funds Held in Trust:</i>	\$ -
<i>Subtotal</i>	\$ 20,997.50
<i>Previous Payment Received:</i>	\$ -
<i>Retainer Due:</i>	\$ -
<i>Balance Due Upon Receipt:</i>	\$ 20,997.50

COPY

M C N A I R
ATTORNEYS

June 15, 2010

Michael L. M. Jordan

mjordan@mcnair.net
T (843) 765-2171
F (843) 688-6991

Jay A. Mullinax, Esq.
Law Office of Jay A. Mullinax
2 Park Lane, Suite 303
Hilton Head Island, SC 29928

Re: Estate of Debora L. Orlosky
Our File No. 053505.00001

Dear Jay:

I am in receipt of your letter to Ron Orlosky dated June 14, 2010. Enclosed with that letter was a supplemental bill dated February 12, 2010 with an original amount stated due of \$26,103.70. Also enclosed with that letter was a supplemental detailed bill dated June 14, 2010, which reflected \$20,997.50 due. Ron Orlosky has asked that I reply to you with regard to that letter.

It is my understanding that Ron Orlosky engaged your law firm to provide legal services with regard to the estate of Deborah L. Orlosky. That engagement was evidenced by a retainer letter dated June 23, 2009. I have a copy of that letter which appears to have been signed by both you and Ron Orlosky. Presumably, that June 23 letter represents the agreement between you and Mr. Orlosky concerning your services with regard to the "Estate/Trust administration." Paragraph 2 of that letter sets forth the basic agreement pertaining to your compensation. As I interpret that paragraph, it was agreed that you would be billing based on the time involved in the administration of the estate subject to a minimum fee. The relevant language is:

"I will bill you for charges based on the time devoted to the estate or a minimum of two and a half percent (2.5%) of the value of the estate. . . . My current hourly billing rate is \$285 per hour Charges of my paralegal will be billed at an hourly rate of \$110 per hour."

Several other paragraphs of the agreement appear to be relevant for the discussion. Those paragraphs deal with the retainer payment. That language includes the following:

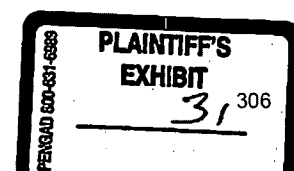
"A retainer equivalent to one-third (1/3) of the minimum charge should be retained at all times. The firm may draw on the retainer during our representation and the remainder will be applied to the final statement.

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29928

mcnair.net

ANDERSON BLUFFTON CHARLESTON CHARLOTTE COLUMBIA GREENVILLE HILTON HEAD MYRTLE BEACH PAWLEYS ISLAND



Any unused portion of the retainer will be returned to you."

"If you find the above arrangement acceptable, please sign the enclosed copy of this letter and return it to me . . . along with your check in the amount of \$25,000 to serve as a retainer. The retainer will be applied to your last billing statement and any amount not due will be returned to you at the conclusion of this matter."

It is my understanding that Mr. Orlosky delivered to you the original "retainer" checks in the cumulative amount of \$25,000 at the time the retainer agreement was signed. As a result of that payment and subsequent payments, it is my understanding that Mr. Orlosky has paid to you the total of \$100,000. Those payments are as follows:

June 24, 2009	\$25,000
July 24, 2009	\$25,000
October 20, 2009	\$25,000
December 19, 2009	\$12,500
January 17, 2010	<u>\$12,500</u>
Total	\$100,000

Mr. Orlosky has asked me to address a couple of points in this letter to you. I would state that I am specifically not commenting on and reserving any judgment or conclusion about two points. The first point is the reasonableness of the minimum fee set forth in your letter or the totality of the charges that you have billed to Mr. Orlosky. Second, the statement by you in your letter of June 14 which purports to show that your efforts resulted in an increase in the buyout price for the Manor stock sale and whether that work, to the extent that it was undertaken, could be deemed to be work outside of what was contemplated in the administration of the estate. My sense is that both of these topics might need to be addressed later.

I would like to address the following issues in this letter.

Detailed Time and Billing Records. As noted above, the retainer agreement states that you will bill on the basis of "time devoted" to the matter. It is my understanding that Mr. Orlosky has asked you on several occasions for a detailed record of all of your time that was incurred in your legal representation of this matter. I again request that Mr. Orlosky receive that detailed time and billing record from the period of the commencement of your work on or about June 23, 2009 until the termination of your services. Specifically, that time and billing report should include the following:

Date
Description of services
Quantity (amount of time)
Rate
Total (charge for the activity).

The format that you used in your June 14, 2010 statement is sufficient. Given that the primary basis of billing is an actual time-based charge, there can really be no discussion of what amount is due to you until that detailed cumulative billing is known.

Estate Administration-Manor Development. As noted in the introductory paragraph of this letter, you forwarded to Mr. Orlosky through me a June 14, 2010 bill for what you refer to as File "1150-02 Probate." In this bill you appear to have segregated into a separate file time and billing charges from July 2009 through March 24, 2010 for discussions dealing with Manor Development. Is it your assertion that these charges are not covered by the retainer agreement and not part of the administration of the estate? Is there a separate retainer agreement for correspondence from you indicating that the work dealing with this particular asset of the estate was not part of the administration of the estate? I would appreciate your thoughts and discussion on this.

Retainer Payment. It would appear from both your retainer agreement and subsequent information I received that there should be a minimum of \$25,000 currently being held by you as a retainer. Since Mr. Orlosky terminated the legal engagement pursuant to paragraph 4.a. of your agreement, I would assume that the retainer payment would be returned to Mr. Orlosky. This discussion, as noted above, ultimately cannot be resolved until you have supplied the detailed time billing for all of your work on the estate and refund to him the unused portion of the retainer.

Late Payment Penalty. I note that your statement provides that "a 1% charge will be applied to any outstanding balance after 15 days of statement disbursement." In looking at your retainer agreement, I do not see where you and Mr. Orlosky agreed that such a late payment charge could be made on the account. I question whether you can appropriately apply that late charge absent a contractual agreement to do so.

Value of the Estate. The retainer agreement states that you presumably are entitled to "a minimum of two and a half percent (2.5%) of the value of the estate." The retainer letter does not define the word "estate." I would therefore assume that the term "estate" would apply to the probate estate as that term is defined in the South Carolina Probate Code, since this engagement letter dealt primarily with the administration of the probate estate. At this point I do not have a value for what I believe is the "value of the estate." Once I have determined that, I will be glad to share that number with you, as well as the methodology that I used to calculate it.

Jay A. Mullinax, Esq.
June 15, 2010
Page 4

MCNAIR
ATTORNEYS

Jay, I look forward to hearing from you on this at your earliest convenience. Clearly, the first thing that is needed is a detailed billing on all of the work that both you and your paralegal did with regard to this estate. Please send that to my attention.

With best personal regards, I am

Very truly yours,

Michael L. M. Jordan

MLMJ:ng

CIRCULAR 230 DISCLOSURE

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent. To read more about this disclosure, please see <http://www.mcnaair.net/230.pdf>

HILTONHEAD 722230v1 053505-00001

Law Office of Jay A. Mullinax, LLC

**2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928**

July 27, 2010

VIA U.S. POSTAL SERVICE

Devan Kociuruba, Deputy Clerk
Probate Court for Beaufort County
102 Ribaut Road, Room 100
Beaufort, SC 29902

Re: Estate of: Debora Laura Orlosky
Probate File No.: 2009-ES-0700512

Dear Ms. Kociuruba:

Enclosed please find an original and one (1) copy of Statement of Creditors Claim (Form #371PC) in regard to the above referenced estate. Please file the original and return a clocked copy to me in the self-addressed stamped envelope provided for your convenience.

If you have any questions or require anything further, please do not hesitate to contact my paralegal, Rachel Wisniewski or myself. Thank you for your time and attention to this matter.

Sincerely yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax

Jay A. Mullinax, Esquire

/Enclosures
JAM:rkw



STATE OF SOUTH CAROLINA)

COUNTY OF: BEAUFORT)

IN THE MATTER OF: ESTATE OF DEBORA L.)
ORLOSKY)

IN THE PROBATE COURT

STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2009-ES-07-00512

Decedent's Date of Death (if known): June 17, 2009

Decedent's Last Mailing Address: 1 Marshview Drive
Hilton Head Island, SC 29928

FILED
2010 JUL 29 AM 10:56
PROBATE COURT, SC
BEAUFORT COUNTY, SC

Creditor: Law Office of Jay A. Mullinax, LLC

Address: 2 Park Lane, Suite 303

Hilton Head Island, SC 29928

Telephone: (843) 785-6101

Basis of claim:

Amount due from professional services rendered in connection to administration of estate.

Amount of claim \$ 32,101.20 + interest

Date claim will become due (if not already due): , 20

Nature of uncertainty as to amount of claim and due date, if any:

n/a

Description of any security as to claim:

n/a

Signature: Jay A. Mullinax

Title: Jay A. Mullinax, Esquire

Date: July 27, 2010

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page.)

LAW OFFICE OF JAY A. MULLINAX, LLC

**THE COURTYARD BUILDING
32 OFFICE PARK ROAD, SUITE 211
HILTON HEAD ISLAND, SC 29928
Tel: (843) 785-6101 Fax: (843) 785-6104
www.sc-estateplanning.com**

April 1, 2009

VIA HAND DELIVERY

Mr. and Mrs. Ronald J. Orlosky
1 Marshview Drive
Hilton Head Island, SC 29928

Re: Engagement Letter as Counsel

Dear Mr. and Mrs. Ronald J. Orlosky:

On behalf of the firm, I thank you for engaging my firm to represent you as legal counsel. We look forward to working with you with regard to your estate planning matters and appreciate the confidence you have placed in us.

It is the policy of the firm to require an engagement letter to avoid misunderstandings as to the scope of the matter, the fees to be charged, and the possibility of conflicting representation. Enclosed with this letter is a summary of our standard terms of engagement that will apply to our representation, except to the extent of any conflict with this letter, in which case the terms of this letter will control. Because this language is designed to be used for a broad spectrum of clients, it may appear somewhat formal and complicated; unfortunately, that is necessary to cover all of the relevant areas. Thank you for your understanding and cooperation.

You have asked me to advise you in planning and preparing Wills and Revocable Trusts for each of you and pursuant to our discussion at the meeting, related estate planning documents such as Health Care Powers of Attorney and Durable Powers of Attorney. I quoted you a fee range of Five Thousand Two Hundred Dollars (\$5,200.00) to Six Thousand Dollars (\$6,000.00) for the Wills, Revocable Trusts, Health Care Powers of Attorney, Durable Powers of Attorney, and Quit Claim Deed based on your situation as I understood it. Barring significant changes or additions, this would be my fee for preparing these documents. I also agreed to charge you \$275.00 per hour for my consultations and any other work in regard to your file. The initial consultation is included in your fee range listed above. Based on our initial meeting, I do not anticipate that additional consultations will be necessary.

I anticipate no additional costs other than the court cost, of \$44.00, for recording the Durable Powers of Attorney and Quit Claim Deed with the Beaufort County Register of Deeds Office.

