

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas
John C. Hayes III, Circuit Court Judge

Appellate Case No. 2015-001053

Majorie Cato Burton as Trustee
the Sloan Marvin Burton and
Majorie Cato Burton, AB Livir
Trust by and through David A
Burton as Attorney-in-Fact,
Individually and in the right an
on behalf of T.E. Cato Estate,
LLC,

Appellant,

v.

Carroll M. Pitts, Jr., Esq. and
Robinson Bradshaw &
Hinson, P.A.,

Respondents.

RECORD ON APPEAL VOLUME 3 OF 5

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February __, 2016

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3
4 Marjorie Cato Burton,)
5 et al.,) TRANSCRIPT OF RECORD
6) 2010-CP-46-02267
7 Plaintiffs,)
8 -vs-)
9 Carroll M. Pitts, Jr.,)
10 et al.,)
11)
12 Defendants.) October 9, 2013
13 York, South Carolina
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B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE

A P P E A R A N C E S:

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Attorney for the Defendants

COPY

Margaret A. Woods
Circuit Court Reporter

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1 THE COURT: Alright, next matter is a motion to amend the
2 complaint to add parties in the Cato Bur -- I mean, Burton vs.
3 Carroll Pitts and law firm, I'll let the movin' parties go
4 first.

5 MR. MCMASTER: Your Honor, may it please the Court. I am
6 George Hunter McMaster, I work with my daddy in the law firm
7 of Tompkins & McMaster. I have not had the opportunity to
8 file this brief yet but I shall and I'll present a copy to
9 Mr. Outten and a copy to the Court and I'll give a copy to
10 you.

11 (Whereupon, counsel handed the document to the Court.)

12 MR. MCMASTER: I'm sorry, I'm Geor -- George ---

13 THE LAW CLERK: Ben ---

14 MR. MCMASTER: --- McMaster.

15 THE LAW CLERK: --- Ben Leader. Good to meet ya. Thank
16 you, sir.

17 MR. MCMASTER: And we'll be addressing of course the
18 issue of the motion to amend today and I'll subsume in my
19 motion to amend many of the objections Mr. Outten has cited in
20 his memorandum in his opposition to our motion to amend, uh,
21 I'm not sure I've ever had a opposition to a motion to amend
22 but here we stand. I would first note that, uh, we stand here
23 today and our motion is an order to amend the complaint to add
24 some additional allegations that arise out of the settlement
25 of of the attendant litigation in recently in 2013 and ---

1 (Whereupon, a discussion was held off the record.)

2 MR. MCMASTER: --- what I call the attendant litigation,
3 there was three other cases that were settled.

4 THE COURT: I I'm I'm familiar ---

5 MR. MCMASTER: Yeah, you ---

6 THE COURT: --- with those.

7 MR. MCMASTER: --- got -- I'm sure you are. I'm sorry,
8 Your Honor, I hate to re-chew my food to somebody's been
9 already tortured.

10 THE COURT: That's alright, I'll be glad to ---

11 MR. MCMASTER: Alright, ---

12 THE COURT: --- listen.

13 MR. MCMASTER: --- and those ---

14 THE COURT: I just -- I was just ---

15 MR. MCMASTER: --- have been now settled and so some of
16 the allegations do arise out of our assignment of the co --
17 the causes of action at Cato, LLC but as to particularly
18 Mr. Pitts, there's really nothin' new here about which he has
19 to complain. The the opposition to the motion to amend arises
20 out of prejudice under Rule 15 and prejudice is really pretty
21 simple, Your Honor, and it's cited by actually the the
22 opponent here is *Duncan vs. CRE Sirrine Engineers* which is
23 cited in Mr. Outten's brief and it simply doesn't stand for
24 the proposition that he thinks it does and I can encapsulite,
25 I can give you the facts of that case or I can encapsulite --

1 encapsulate what the law is. Prejudice only arises when you
2 don't have time to refute the new allegations against you. If
3 you have time to do discovery, which I don't believe we have a
4 particular limit on our discovery now, we can put it on a
5 rocket dock and probly finish it, but the -- there's no
6 particular limit on discovery so there's no particular
7 prejudice. Mr. Outten complains that we're starting all over
8 and we're not. Most of the allegations of Mr. Pitts except
9 for those some in one cause of action arising out of Cato, LLC
10 are the same stuff that we've alleged in every complaint.
11 We've we've set 'em out in more detail because I tend to be a
12 lot more verbose than my colleague Mr. Mr. Jellenik so I
13 replicate everything in the same detail and I'll go through
14 that in a minute 'cuz I wanna be definite, um, and all -- and
15 the allegation that all of the written discovery has taken
16 place in the Pitts case is not correct. We have plenty of
17 written discovery. We have pending a thoroughly detailed
18 motion for a 30(b)(6) discovery of RBH now filed by me arising
19 out of the ruling of Judge Alford.

20 THE COURT: You ca -- go ahead, I'm ---

21 MR. MCMASTER: Okay.

22 THE COURT: --- I'm li ---

23 MR. MCMASTER: The ruling of Judge Alford and the
24 stipulation of Mr. Outten that only Mr. Pitts will stand as
25 the 36 de -- represented -- 30(b)(6) representative for

1 Robinson, Bradshaw & Hinson but he has all the knowledge in
2 this case and we were further limited to the practices,
3 procedures and policies of RBH so we had to go through an
4 extensive re-draft of the 30(b)(6) deposition notice which we
5 did and we have recently finished that, completed it, served
6 it, so we have plenty of discovery left to do, plenty of
7 extensive discovery left to do, this case is not over by any
8 means and we have plenty of time to complete it as far as I
9 know.

10 Now now we recognize that there's a new case against
11 Mr. Joshua Vann. Now just like this case I wanna make it
12 clear to the Court that I don't bring these things lightly, I
13 don't walk around suin' lawyers and I don't particularly like
14 lawyers that do, uh, I hesitate to even mention any a the case
15 to daddy but he's 99 and in Still Hopes and I don't think
16 he'll come at my throat if I stay away, but I don't make a
17 habit a this and it was only in the Pitts case after I
18 investigated that that we had sought the assistance of
19 Mr. Pitts, we had done everything in the world not to sue him
20 and we couldn't get anywhere and we had to sue him before time
21 ran out, that was as simple as that. Now in conjunction with
22 that as in the fact that there was a a delay in anything in
23 bringing this complaint or that the statute of limitations has
24 run, uh, please remember our allegations at this point which
25 it should be taken as fact because they are, our client

1 Mrs. Burton who was 91-years-old when we brought this
2 complaint in 2010 was shut outta the negotiations, she wasn't
3 told what was goin' on 'cuz she didn't agree with 'em and
4 that's the basic part of the complaint that they acted without
5 her authority, so all this stuff was goin' on 2007, the
6 transfer of this land in 2007, uh, the sale without the
7 consent of all the members, that sorta thing, uh, and that's
8 what happened. She didn't know a lotta stuff in 2007 but in
9 any event as to any a statute a limitation problem we have
10 discovered through beginning in the ca -- the deposition of
11 Tommy Cato in Jan -- in, uh, it's in 2010, ---

12 MR. JELLENIK: November.

13 MR. MCMASTER: --- November of 2010, we discovered
14 Mr. Vann and we discovered these other matters relating to
15 things that Mrs. Cato, excuse me, Mrs. Burton should have
16 known that she did not know and under Rule 15(c), our
17 amendment relates back to the original complaint so we hadn't
18 violated any statute a limitations, it was brought as soon as
19 we had the information that we actually were of which we were
20 deprived in 2007, we can't give you the particular date she
21 found it which we knew by 2010 and we sued for it, uh, after
22 taking every chance we could not to bring it, uh, so that is
23 with respect to the statute of limitations.

24 Now and in any -- so our complaint in May 10, 2010 which
25 under 15(c) our allegations relate back we don't have a

1 statute problem.

2 THE COURT: Well you say that, I I -- do ya have any law?
3 I I've I've always thought the relation back did not act as a
4 tole on statute of limitations.

5 MR. MCMASTER: Your Honor, I think it relates back but in
6 any event if if there there's a problem with 15(c), uh, I
7 believe we're in the statute a limitation as to discovery 'cuz
8 we didn't start discovering it until the deposition of Tommy
9 Cato the particulars of every particular element here.

10 THE COURT: Well I, and I'm not tryin' to telegraph, I'm
11 not, I'm not -- just thinkin' out loud ---

12 MR. MCMASTER: Um-hum.

13 THE COURT: --- well if if if you don't have a statute
14 limitations problem, what would be -- why would would your
15 clients not be able to bring just a separate lawsuit rather
16 than combine it with this lawsuit, bring a separate lawsuit
17 against Mr. Vann, ---

18 MR. MCMASTER: That ---

19 THE COURT: --- let this suit go forward?

20 MR. MCMASTER: Your Honor could could -- you mean against
21 Mr. Vann?

22 THE COURT: Well, yeah, I thought that's who you talkin'
23 about suin' ---

24 MR. MCMASTER: Well we're talking about ---

25 THE COURT: --- Josh ---

1 MR. MCMASTER: --- suin' Mr. Vann.
2 THE COURT: --- Vann and Morton & Gettys.
3 MR. MCMASTER: Well here -- well ---
4 THE COURT: I thought that's who you're tryin' to add.
5 MR. MCMASTER: --- well actually, uh, uh,
6 Mr. Mr. Outten's objection of course, I'm getting to Mr. Vann
7 and I'll, and I'll discuss that now. We are attempting to add
8 Mr. Vann and the reason we wanna add him is, uh, yes, and we
9 we could sue him in a separate complaint but he's only sued in
10 this complaint as an alternative if Pitts doesn't work. He's
11 not, he's not -- he i -- that is an alternative cause of
12 action, uh, so we're trying to add Mr. Vann and they're -- and
13 so that so he's only sued as a, as an alternative and
14 secondarily, uh, bringing a complaint in mis -- Mr. against
15 Mr. Vann now would abrogate exactly what you just suggested.
16 Arguing of the complaints that arguing two cases that arise
17 outta the same circumstances, uh, continuous representation
18 first by Pitts then by Vann and sometimes apparently by both
19 and two different contrary verdicts on the basic underlying
20 facts now we we think is a better better way to go at it and
21 we've thought about it and believe it or not this case against
22 Joshua Vann was very considered. We thought about it, we
23 argued about it, we didn't rush into it willy-nilly and in a
24 lotta ways, uh, I didn't wanna bring it anymore than I wanted
25 to sue Mr. Pitts but ya sometimes ya get hired to do things

1 and you're a trial lawyer and ya dance with the one that
2 brought ya and that's what the facts are.

3 THE COURT: Well I didn't, I didn't mean to interrupt ya,
4 just these things pop in my mind.

5 MR. MCMASTER: Oh, that's quite alright, Your Honor, it's
6 I'm glad things pop into your mind, they quit poppin' into
7 mine a long time ago, uh, I'm just glad to get outta this here
8 alive.

9 Uh, now as to the allegations that we had brought, uh, up
10 different causes of action in our new complaint that were
11 never addressed before, I can go through those in detail and I
12 hesitate to do so but let me just run through a few of 'em if
13 I might.

14 THE COURT: Okay.

15 MR. MCMASTER: In looking at the amended complaint and
16 the original complaint from 2010, uh, I can begin with the
17 allegation of the facts and of course they're, they are now
18 intermingled with with, uh, Pitts and, uh, Cato L -- and Pitts
19 and, uh, Vann; the facts now join so they're not exactly the
20 same and of course there is an impact due to the assignment of
21 the causes of action are belonging to A -- Cato, LLC by virtue
22 of the settlement and that is one difference but not a
23 substantial difference as it relates to Mr. Pitts although it
24 does make a difference but I would simply refer the Court to
25 almost every paragraph in the allegations are the same, almost

1 every paragraph excepting I'll begin on paragraph 17 which was
2 the derivative action paragraph which references 33, 44,
3 101-1. All those allegations are precisely the same except
4 for C which mentions the assignment to the plaintiff of the
5 underlying causes by virtue of the settlement, that's the
6 change, and as that paragraph C that causes the various
7 changes throughout here because of the underlying chain --
8 underlying assignment but they're not subs -- substantive as
9 as much as Mr. Outten would have us to believe, the opponent
10 to the motion would have you believe, I don't wanna accuse
11 Mr. Outten of anything. Um, the, uh, for example, paragraph
12 19 used to be 18, paragraph (a) is the same one and the same
13 allegations we've had except for one allegation that is
14 replicated every time these same allegations are ---

15 THE COURT: That's 19(a)?

16 MR. MCMASTER: Yes, sir. It is the same as in the old
17 complaint except that preparing the deed into Cato, LLC in a
18 manner that it correctly identified the grantors and describe
19 the areas, that is one change that whenever you see a
20 paradigm going down, uh, throughout many of these paragraphs
21 that I'll go through, that's it, that's the change and I
22 believe we got that sometime during Mr. Pitts's deposition.
23 Paragraph (b), uh, same paragraph, paragraph ni -- now 19,
24 subparagraph (b) same thing. There is one change and I
25 believe it's in the affidavit of Michael Virzi that's attached

1 in paragraph (b) there might be a new item number 4 but I
2 think that is clearly set out in the affidavit of Michael
3 Virzi the -- which is attached specifically in paragraph 27 of
4 the old complaint. Paragraph 20 is new because it pleads in
5 the alternative. Paragraph, uh, 21 is the old paragraph 20,
6 it has exactly the same allegations except we talk about the
7 assignment of the case in section C as we do throughout and we
8 have a a supporting affidavit now for Professor Freeman who
9 relates to John Freeman and Professor Virzi and that's the
10 only change in the next paragraph.

11 Uh, as to the second cause of action which is
12 professional negligence, the only thing we've done there, uh,
13 instead of incorporating everything as we did before and again
14 course this is, I tend to be verbose, uh, is to replicate the
15 same paradigm over and over again hopefully so I can either
16 bore everybody to death -- death or drill it into their minds
17 but again, subparagraph (a) is the same except for paragraph 1
18 preparing a deed into Cato, LLC which is replicated. Now what
19 we're talking about in paragraph (b) we add other members of
20 Cato, LLC instead of just Cato, LLC so that is a change,
21 course we now have a right against the individual members as
22 well and we have, we have, uh, set that out again but, Your
23 Honor, I can go through this page by page by page. There are
24 some minor changes, uh, there's one on, uh, in the third
25 pau -- cause of action for professional negligence, excuse me,

1 if I'm doing it in detail, there's a change in paragraph 30
2 which references paragraph 17, again, we're just setting in
3 the assignment in Cato, LLC.

4 The third cause of action, uh, is is the same exact
5 allegations except for number 5 advising Mr. Cato as general
6 manager, uh, as general manager as to the requirements and
7 obligations upon him as Cato, LLC in accordance with the
8 applicable sections of 34-41-404(c)(12), uh, which I think
9 might have arisen from an earlier order drafted by this
10 court, but again, going on to (b) we have one addition, the
11 same addition. There might have been a change in item 4,
12 paragraph 32, uh, that there was a failure to communicate with
13 any member and there was a a failure to advise Mr. Cato, his
14 general managers correctly as to the requirements incumbent on
15 him -- under him -- on him pursuant to 34-44-404(c). And the
16 real change and a lotta this comes by virtue of the amendment
17 and an earlier order issued in this court, uh, excuse me, the
18 settlement in an earlier or -- order issued in this court
19 related to KL -- Cato, LLC and the failures of actions of
20 Mr. Cato, a combination of the two, so there i -- there is
21 nothing stunning here: the causes of action 28-CP-4631, 4728,
22 4637 that's replicated throughout all these complaints, that
23 was the earlier partition action or the earlier action that
24 required the third and forth party complaints, excuse me, but
25 this is nothin' new. It might be bothersome to Mr. Vann, uh,

1 and I expect it would be, if I were he, I wouldn't like it
2 either but I will tell you this: I extended the courtesy with
3 Morton Gettys, I called him before I amended his complaint, I
4 sent him a copy, I've talked to their lawyer, I talked to
5 Mr. Gettys personally and we've done the best we can to give
6 absolute notice everybody. I don't know why that this -- I
7 believe we're saving the Court time, we're not replicating
8 effort, Mr. Vann is joined only in the alternative and we need
9 to move this case along. It might take more time in this case
10 but ultimately we're savin' the Court two trials and two
11 appeals. Your Honor, I've had cancer this year, I wanna, I'd
12 like to die before daddy and get outta this case alive and
13 with your assistance I believe I shall do that. Thank you.

14 THE COURT: Thank you. Mr. Outten.

15 MR. OUTTEN: May it please the Court, Your Honor, Sam
16 Outten on behalf of Carroll Pitts, Robinson, Bradshaw &
17 Hinson.

18 (Whereupon, a discussion was held off the record.)

19 MR. OUTTEN: Your Honor, the plaintiffs' motion to amend
20 should be denied because the facts underlying the allegations
21 in the proposed amended complaint have been known to the
22 plaintiff for almost six years. Plaintiffs' claims arise from
23 a closing which occurred on December the 12th 2007. The
24 plaintiffs want to add the closing attorney Josh Vann and his
25 law firm Morton Gettys as defendants, they also want to add

1 additional claims against Mr. Pitts and Robinson, Bradshaw
2 but, Your Honor, the plaintiff has known or should have known
3 who the closing attorney was on this transaction, which law
4 firm he worked for for six years. In thinking about this
5 motion, Your Honor, we need to keep in mind that the plaintiff
6 objected to this transaction before the closing. They
7 objected to this transaction beginning at least by November of
8 2007 so we're going back a long, long way. There's some
9 emails Your Honor that I'd like to hand up, have the Court
10 consider which were sent leading up to the closing. May I
11 approach, Your Honor?

12 THE COURT: Certainly.

13 (Whereupon, counsel handed the document to the Court.)

14 MR. OUTTEN: This an email, Your Honor, which is dated
15 November 24th 2007 from Sloan M. Burton to several parties,
16 uh, and it's about this real estate transaction and I'm not
17 gonna take the court's time reading through the entire email
18 but if you look to -- at the fourth paragraph, the paragraph
19 beginning "Given the current knowledge", you'll see three
20 lines down that says, "We now are questioning whether or not
21 T.E. Cato Estates LLC has the legal right to act in our behalf
22 on this matter, that's an allegation that they want to make
23 now, Your Honor. The last sentence in this paragraph of this
24 email says, "T.E. Cato Estates does not have the proper
25 authorization or legal right to negotiate contract or proceed

1 with final negotiations with Mr. Thomasson for Area B of Cato
2 Estates without the LLC having full and legal rights to
3 ownership of all the land within Area B." Point I'm tryin' to
4 make, Your Honor, is these are objections which were raised
5 back in November of 2007 and they're part of the proposed
6 amended complaint that you have before you this morning.
7 There's another email I'd like Your Honor to consider which is
8 dated, uh, November the 30th 2007 also sent to Tommy Cato.
9 May I approach, Your Honor?

10 THE COURT: Yes.

11 (Whereupon, counsel handed the document to the Court.)

12 MR. OUTTEN: And I'd like to ask the Court to consider
13 the second paragraph of this email, again from Sloan M. Burton
14 and the second paragraph says, "However, I'm opposed to
15 selling it without first addressing the needs of those
16 individuals that are in the most need. I will agree to sign
17 over the last quitclaim deed for the South Carolina State
18 Department of Transportation if we address the following
19 issues," and then you see, Capital gains number 1,
20 remuneration number 2 and then number 3, uh, talks about other
21 agreements with Mr. Thomasson, again, Your Honor, issues which
22 they seek to raise in their amended complaint, issues they've
23 known about, uh, for more than six years. And this is the
24 last one, Your Honor, may I approach and hand you this ---

25 THE COURT: Yeah.

1 MR. OUTTEN: --- email?

2 (Whereupon, counsel handed the document to the Court.

3 THE COURT: Now the -- these all have exhibit numbers on
4 'em so I presume they're part a the record through discovery.

5 MR. OUTTEN: Yes, Your Honor, and I'm gonna, I'm gonna
6 have 'em marked at the conclusion of the hearing so that the
7 record will be clear on this that this is an email from from
8 David Burton who's now a named plaintiff in this case to Tommy
9 Cato and again I'm not gonna go through the whole thing but
10 the first paragraph says, "We have looked over the new
11 quitclaim deed that you sent and we have likewise looked into
12 several of the emails that you sent over the past year and we
13 have found some disturbing discrepancies. The following is a
14 list of problems that prevent us from signing this quitclaim
15 deed and we need for you to resolve these issues and
16 questions." Again, Your Honor, these are the same allegations
17 that they want to assert in their amended complaint, so the
18 bottom line is plaintiffs have known about all these alleged
19 problems, about the facts underlying the allegations of this
20 amended complaint since giving them every benefit of the doubt
21 December of 2007 and in fact, Your Honor, Mr. McMaster handed
22 me his brief before -- at the, at the, uh, beginning of his
23 argument and in plaintiffs' brief on the first page paragraph
24 2 says, "Facts. The allegations in the complaint and the
25 amended complaint relate to a series of real estate

1 transactions in 2007." Your Honor, if you look at, for
2 example, paragraphs 12 to 15 of the proposed amended
3 complaint, what you'll see is a series of dates in 2007
4 starting in June, May or June of 2007 through December of
5 2007. Your Honor, Carroll Pitts and his law firm are entitled
6 to have this matter resolved so that they can move on. In
7 Mr. Pitts' case he's entitled to have this case resolved so he
8 can close out this chapter and enjoy his retirement after, I
9 might add, a distinguished career. There is no justifiable
10 reason why the plaintiffs have waited so late to try to add
11 Mr. Vann and Morton Gettys as defendants in this case. The
12 plaintiffs have delayed far too long to be allowed to amend
13 this complaint. The motion to amend must be denied, Your
14 Honor. It is true that we need to look at Rule 15(a) of the
15 South Carolina Rules of Civil Procedure as the applicable
16 standard and it says, "A party may amend its pleading only by
17 leave of court or by written consent of the adverse party,"
18 and then it says, "and leave shall freely be given when
19 justice so requires and it does not prejudice the other
20 party," so 15(a) gives us two standards to look at to apply
21 the proposed amendment, I'd like to take into reverse order.
22 The first is "does not prejudice the other party". Let's keep
23 in mind, Your Honor, the complaint in this matter was filed on
24 May 27th 2010 and that complaint centers around the same real
25 estate transaction I have been discussing. Inexplicably the

1 plaintiffs have waited over three years to try to amend since
2 the filing of this complaint to try to amend it to add
3 Mr. Vann and Morton & Gettys based on facts they knew when the
4 complaint was originally filed. The Court simply cannot
5 permit this. Mr. Pitts and Robinson, Bradshaw are entitled to
6 have this matter resolved in a reasonable time through
7 settlement or a trial.

8 Let's think for a minute, Your Honor, about what would
9 happen if you permitted this amendment. Well first I think we
10 would all agree that Mr. Vann and Morton & Gettys are entitled
11 to defend the allegations plaintiffs' counsel proposes to make
12 against them, I don't think Mr. Mac -- McMaster would dispute
13 that, and so they will be allowed to engage in written
14 discovery, depositions, whatever discovery that these two new
15 proposed defendants think is appropriate. This case would
16 effectively start over, we're gonna start this case over, a
17 case filed on May 27th 2010 we're gonna start it over with
18 this proposed amend, uh, amended complaint even though it's
19 already been pending for three years. Mr. Pitts and Robinson,
20 Bradshaw would be forced to engage in additional discovery.
21 Realistically, Your Honor, my experience tells me and I think
22 Your Honor would probably agree that if you allow this
23 amendment then this case will resolve -- will not resolve
24 until after it's been pending for five years. Is that
25 prejudice to Mr. Pitts? Is that prejudice to Robinson,

1 Bradshaw? absolutely. As a practical matter, Your Honor, I
2 disagree with Mr. McMaster and I believe that if we had a
3 status conference in this case, you deny this motion to amend
4 and we have a status conference, we can finish discovery in
5 this case in three or four months and then be ready for trial
6 in less than six months and get this case tried and get it
7 resolved, get it off the docket in York County.

8 One thing I wanna mention to the Court about this this
9 issue of whether or not Mr. Vann and Morton & Gettys would be
10 joined has been discussed among the lawyers for over two
11 years. I was in a deposition two years or maybe longer where,
12 uh, Mr. Jellenik, I don't remember Mr. McMaster bein' there,
13 but Mr. Jellenik and other of the lawyers were discussing this
14 possibility so it's not like this was something that just
15 occurred to them, this has been something that has been
16 discussed among the lawyers in the partition action and in
17 this case for a long, long time. The point is this proposed
18 amendment has been considered or shoulda been considered by
19 plaintiffs' counsel for many years and neither my client nor I
20 know the reason why they waited so long to file this motion
21 but their delay should not prejudice Mr. Pitts. The *Duncan*
22 against *Sirriner* case that Mr. McMaster cited says, "The power
23 to amend shall not be used indiscriminately or to prejudice or
24 surprise another party," that's what the case says. Now
25 allowing this amendment would violate 15(a), Your Honor, and

1 the cases interpreting it because of the clear prejudice which
2 would result to Mr. Pitts.

3 Now let's talk about the other part of the 15(a) standard
4 "justice so requires". Well as we stated in our memorandum in
5 opposition to this motion justice requires this amendment be
6 denied, Your Honor. Typically as we know a motion to amend
7 comes about as follows: During discovery there are new facts
8 which come about in depositions or documents which are
9 exchanged between the parties and as a result of that a party
10 decides that based upon these facts, uh, an additional, uh,
11 theory of liability or an additional defense is supported by
12 these facts and they come to the Court and they ask the Court
13 to amend to add that defense or to add that claim to the
14 complaint and in that instance that motion is timely and
15 should be granted. We understand the rule says it should be
16 freely granted but in that instance it doesn't result in this
17 extreme delay in the, in the party ha -- parties having the
18 case, the defendants here havin' the case resolved. Parties
19 are required to act promptly when they, uh, discover new facts
20 that that they say prompt an amendment additional defense. We
21 have a completely different situation here, one that is
22 outside of what the Rules of Civil Procedure contemplate. Now
23 I heard Mr. McMaster argue, Well the the the the partition
24 action has been settled and that gave ri -- that somehow a --
25 allows us to move to amend, well there's absolutely no law to

1 support that. There's not one case which I'm aware that says
2 a party's unreasonable delay in moving to amend can be excused
3 because the settlement of a related case, that doesn't exist,
4 there's no case that says that, at least none that I can find.
5 More importantly there were no new facts learned in the
6 settlement of the partition action. My understanding in
7 talking to the lawyers involved in the partition action is
8 they had a very difficult time reaching a settlement and I
9 think that's true, probly all would agree, but in the process
10 of tryin' to settle a partition action, they didn't learn
11 anything new about Mr. Vann's role in the closing or or Morton
12 & Gettys's role or frankly what Mr. Pitts allegedly did or
13 didn't do. There's nothing new, no new facts which would
14 allow them to come to the Court and ask to amend at this late
15 date. Partition action was settled based upon facts that all
16 parties knew six years ago. Also heard Mr. McMaster refer to
17 the assignment. Well we got an assignment, Judge, and in in
18 the process of settling the, uh, partition action, we got an
19 assignment somehow that allows us, uh, to to to amend our
20 complaint now after, uh, anyone would say was a reasonable
21 time, well that's that's just not the case. Uh, an assignment
22 doesn't restart the statute, there's no case or statute that
23 says that and an assignee only takes what the assignor can
24 give, can assign, so if the statute's already run on the
25 assignor's claim then if he assigns it then the statutes run

1 on the, on whatever claim he assigned so the fact that there
2 was assignment is is irrelevant to the issue before the Court.
3 The assignment like the settlement of the partition action's a
4 red herring, it doesn't affect the Court's decision on this
5 motion to amend.

6 Now respectfully, Your Honor, I know that today you're
7 not ruling on a defense based on the statute a limitations or
8 laches, I know that, but it may be worth the Court considering
9 the fact that the cl -- the plaintiffs' claims are clearly
10 beyond the statute of limitations and that the doctrine of
11 laches clearly prohibits the plaintiffs from bringin' these
12 claims. Again, the emails that I handed up to the Court and
13 there's a lot more detail in it that I didn't go into, uh, in
14 respect of the Court's time but those emails contain many, if
15 not most, of the claims they seek to assert now. There can be
16 absolutely no doubt that that Dr. Burton and Sloan Burton knew
17 about these alleged problems before the closing occurred six
18 years ago yet they waited and waited and waited and didn't
19 assert these claims. I apologize for having said this so many
20 times, Your Honor, but there no new facts which have come to
21 light to justify these proposed amendments this late in the
22 game.

23 Mr. McMaster suggested that he found out some new facts
24 in Tommy Cato's deposition, well, Your Honor, uh, the fact
25 that the lawyers may have learned some new facts in Tommy

1 Cos -- Cato's deposition doesn't save 'em either. The
2 discovery rule is pretty clear. The discovery rule doesn't
3 say when you have actual knowledge of something that triggers
4 the statute, it doesn't say that, we all know it doesn't say
5 that. Says, The statute begins to run when a person could or
6 should have known through the exercise of reasonable diligence
7 that a cause of action might exist in his or her favor rather
8 than when a person obtains actual knowledge of either the
9 potential claim or the facts giving rise thereto, and that
10 quote is *Burgess against American Cancer Society*. In *Gibson*
11 *against Bank of America*, the Court said the clock starts
12 running when the facts and circumstances of an injury would
13 put a person of common knowledge and experience on notice that
14 some claim against another party might exist. Well, Your
15 Honor, we already know that they were objecting to lots of
16 different aspects of this, of this closing before it occurred.
17 Is it really credible to suggest to you that they could not
18 find out the name of the lawyer who was conducting the closing
19 and they could only find that out by asking Mr. Cato in a
20 deposition? Frankly, frankly, Your Honor, that's absurd. All
21 they would have had to do was ask Tommy Cato if they didn't
22 know and I'm not sure that they didn't know because the
23 quitclaim deed that they received had Morton Gettys's the firm
24 name on it but they could have discovered that information,
25 that's what the, uh, discovery rule says. The -- Ms.

1 Burton's claim that both the malpractice action and the
2 partition action was that she received insufficient
3 consideration for her interest in this family property, that's
4 what she's claimin', that's what she claimed in the partition
5 action, that's what she wants to claim in this malpractice,
6 uh, case. She claims about the way, complains about the way
7 the transaction was handled. She believed that she had a
8 claim at the time closing occurred though, Your Honor. In
9 other words, the facts make it clear the clock began to run in
10 2007, the alleged wrongful conduct according to them and
11 according to their client's own words. I'm not depending upon
12 something that Mr. Pitts wrote or Robinson, Bradshaw wrote or
13 something that Josh Vann wrote, what they said, they complain
14 about several things about the closing in December of 2007.
15 So here we are, Your Honor, we're before you, it's October the
16 9th 2013 and we're -- you are being asked to consider whether
17 or not you should grant an amendment based on facts known to
18 the plaintiff for almost six years, you're being asked to
19 decide whether or not at this late date for no justifiable
20 reason which has been provided to this court you should allow
21 them to amend their complaint even though they've known all
22 these facts for six years, we think this is a clear case, Your
23 Honor. This is one of those rare circumstances where a motion
24 to amend should be denied.

25 Your Honor, in conclusion Rule 1 of the South Carolina

1 Rules of Civil Procedure says, These rules shall be construed
2 to secure the just, speedy and inexpensive determination of
3 every action. If the plaintiffs' amendment is granted,
4 Mr. Pitts and Robinson, Bradshaw will certainly be denied that
5 right. Mr. Pitts retired from the practice of law in 2010, he
6 wants this case decided. It looks like it's going to have to
7 be tried and it can be tried within the next four to six
8 months, Your Honor. He wants this last open item from his
9 legal career put behind him so he can move into retirement.
10 If the plaintiffs' motion is granted then this case will go on
11 for another year, year and a half which significantly
12 prejudices Mr. Pitts and his law firm as I have described.
13 The plaintiffs' motion to men -- to amend, Your Honor, should
14 be denied. Thank you.

15 THE COURT: Thank you.

16 MR. WHITE: Your Honor, ---

17 THE COURT: Mr. White.

18 MR. WHITE: --- may I I approach, I'd like to respond.

19 MR. MCMASTER: I'm sorry.

20 THE COURT: Okay, yes, you may.

21 MR. WHITE: Your Honor, my name's Mark White Spencer &
22 Spencer. I've been retained by Morton & Gettys and Josh Vann
23 to represent their interests in this motion and then whatever
24 may follow. With the Court's indulgence, I request that I be
25 heard.

1 THE COURT: Any objection, Mr. McMaster?

2 MR. MCMASTER: I object to a non-party being heard, Your
3 Honor.

4 THE COURT: Alright. Okay, well I I I really -- you're
5 you're you're you're not at the dance yet so, uh, ---

6 MR. WHITE: Your Honor, ---

7 THE COURT: Well for whatever val -- whatever value it
8 may have, I I'll I'll go ahead and hear ya. I I'm not gonna
9 base any ruling on anything that you present.

10 MR. WHITE: Very good, ---

11 THE COURT: Uh, the the, ---

12 MR. WHITE: --- that that ---

13 THE COURT: --- uh, ---

14 MR. WHITE: --- I rise for two reasons, uh, one would be
15 to try to provide some, uh, benefit to the Court that it can
16 rule based on the record before it and the second is to create
17 a record for what may come next. Your Honor, actually we've
18 we've stood here before on similar circumstances, uh,
19 Rule 15(a) has two parts, I'm not gonna argue, I'm not gonna
20 mention anything about prejudice, it does allow this court,
21 this court is not constrained so tightly that it it has to or
22 it's mandated to create a result. The first part of 15(a) is
23 "justice so provides". In this case the way this complaint is
24 constructed and the way this is happening six years after a
25 closing, there's a fundamental unfairness to Morton & Gettys,

1 there's a fundamental unfairness to Josh Vann and it comes in
2 two parts; number one, it comes through just a simple delay.
3 Talkin' about a clo -- commercial closing and everything I'm
4 gonna mention to you, I'm not gonna leave the complaint for
5 any fact, everything I've mentioned to you by way of fact is
6 coming straight from this complaint. A commercial closing in
7 2007, a case somehow still exists from 2010. I mean, I don't
8 have, I don't think I've ever seen a case that I've had make
9 it three years into its life without somebody yelling at me
10 but this case is old enough as it is but to drag Morton &
11 Gettys into this case and then with being disingenuous and to
12 stand up here and say on behalf of plaintiffs, Hey, we're
13 ready to put it on a rocket docket, we've had three years to
14 cogitate and crank and just enjoy life and handle this case
15 leisurely but we're ready to put it on a rocket docket now
16 that new pl -- defendants are coming in. No, no, we get to
17 take our time developing our facts but they have to hurry,
18 that is fundamentally not required by justice. How is it
19 just? You you've already heard how it's unjust to Mr. Pitts,
20 why would justice require a plaintiff in a commercial
21 transaction to be able to sit around and then try to bring in
22 a law firm six years after that closing? If this court is
23 gonna proceed with this motion and grant it, I would ask this
24 court before you do so to to require plaintiff to state
25 specifically what was learned in the deposition of Mr. Cato,

1 which I've read, what was learned that it did not know before.
2 See, I think we're hiding behind generalities. I think this
3 complaint is hiding behind its obfuscation, we'll get to that
4 in a second, but the complaint skips over, there's a lacuna,
5 there's a gap in the body. The complaint, you know, is 40
6 pages, plenty a time to say what you wanna say. Plaintiffs'
7 counsel gets up here and says he's verbose, he likes to write
8 lots of stuff but nowhere is it written how in a commercial
9 transaction that counsel for the buyer mutated into counsel
10 for the seller. We're in South Carolina state court, this is
11 not federal court, it's not in their pleading. They have to
12 plead ultimate facts. Show me in this complaint where they've
13 pled the ultimate fact of how Mr. Vann became not the counsel
14 for the buyer which is stated in the complaint not less than
15 four times. What's clear in the complaint there's a
16 commercial transaction, buyer had counsel, according to the
17 complaint seller had counsel. It never states how Mr. Vann
18 was mutated or how when he agreed or when he was requested or
19 how he became the lawyer for the bu -- seller, it -- they they
20 skip over it. In South Carolina you're required to have an
21 affidavit filed shows a negligent act. Mr. Freeman very
22 conveniently takes as true the part in the complaint where
23 they said there were duties owed for Mr. Vann paragraph 15, he
24 assumed as being truths paragraph 7 through 17, so the
25 gatekeeper statute was circumvented, they waited too long, get

1 to the statute a limitations in a second, the affidavit is
2 defective. Wha -- how is this justice? Why why would this
3 court be required to do that to a law firm? So I would ask if
4 this court is to allow this thing to go forward and you're
5 gonna grant it, pull plaintiffs' counsel up here and make them
6 put on this record what they learned in Cato's deposition they
7 didn't know before. Written discovery was exchanged prior to
8 that deposition. I submit it's easy to stand up here and say,
9 Woa, Your Your Honor, we we learned something new and we're
10 here within three years of that date so we're good. Let's
11 have a, let's get some specifics, the devil's in the details.
12 I'd like to know what they learned in that deposition that
13 they didn't know before and that's gonna reveal the lie,
14 that's gonna reveal why this court should deny this motion
15 because justice doesn't require it. Then you were told, Oh,
16 well it relates back. Well, Your Honor, that's not even a
17 open question in South Carolina. I believe you're familiar
18 with *Jackson vs. Doe*, a case from, it was decided by the
19 Supreme Court in or, excuse me, the Court of Appeals in
20 September 25th of 2000. In that case there was a lawsuit
21 against a John Doe driver that was brought within the statute
22 a limitations. They discovered who the John Doe driver was
23 and tried to amend adding the name of of the driver after the
24 expiration of the statute. The Court noted Rule 15(c) does
25 not allow the adding of a party, only the substituting of a

1 party then only under two conditions. That case which may be
2 found at 537 S.E.2d at 567 was picked up again in *Gause vs.*
3 *Smithers* which states because the addition of a party is not
4 contemplated by Rule 15(c), we need not address whether it was
5 proper under the rule, it go -- it cites your case from *Doe*.
6 The language of 15(c) clearly speaks to a change in party, not
7 the addition of a party, to an already existing defendant. In
8 our view the addition of a party is not the same as the
9 substitution or change of a party. Rule 15(c) does not allow
10 a plaintiff to add a party to a negligent action after
11 termination of statute of limitations when the plaintiff
12 discovered additional party with and why they added it. You
13 cannot, 15(c) does not apply to Morton & Gettys, it does not
14 apply to Josh Vann and that's as clear as the podium in front
15 my my my face, so you have no relation back, so here we are on
16 a, on a motion to amend six years after the closing and you
17 have to ask yourself could they bring a new lawsuit. Why put
18 Morton & Gettys and Josh Vann through further machinations,
19 through further having to notify their counsel, having to go
20 through all that trouble and expense and frankly irritation
21 and anguish when there's no way the statute is still running?
22 It ran out, it's it alr -- it's already in your record. So
23 the critical issue before the Court is whether justice is
24 requiring that Jo -- Morton & Gettys and Josh Vann be added to
25 an already 3-year-old case and in this case the answer is no

1 because; number one, it cannot relate back as a matter of law;
2 number two, the Court has ample evidence in front of it that
3 any such claim is gonna be barred by the statute a limitations
4 and on that front I will note and for the record I will state
5 you will be doing plaintiff and plaintiffs' counsel a favor I
6 submit by denying this motion. I've attempted to communicate
7 with plaintiffs' counsel, in the event -- well let me start
8 this way: Plaintiffs' counsel has lived with this file, these
9 facts for more than three years, I've known about these facts
10 for three or four weeks, it is clear to me based on everything
11 that I can find that there's a very real possibility that if
12 any claim goes against Morton & Gettys or Josh Vann that a,
13 that a summary judgment or early disposition may result. In
14 the event that results, and for the record I will state now
15 that plaintiffs' counsel has already been forewarned and I
16 tried to discuss it with 'em, if that happens under, if the
17 circumstances warrant, the law firm will proceed for abuse of
18 process, for a frivolous proceeding, a Rule 11 violation.
19 There are sufficient facts here that they know then that it
20 leads to my final piece where is the link over? If you look
21 at the complaint, they allege on at least five times that Josh
22 Vann represented the s -- the buyer at this commercial
23 closing, they have ultimate statements of fact that he owed
24 duties to either the seller or constituents of the seller.
25 Where's the allegation that supports the conclusory fact,

1 statement of law? The complaint has to state that. The
2 affidavit of Mr. Freeman has to state that. How did in a
3 commercial closing if Mr. Freeman's gonna take the position
4 that a lawyer who shows up at a closing, in a commercial
5 closing where both sides are represented as is alleged in the
6 complaint, if he's gonna take the position that the lawyer
7 that shows up for the closing representative of a seller
8 becomes the lawyer for everyone in the room then he needs to
9 say that expressly rather than hiding behind inference,
10 implication and innuendo. He hasn't done that.

11 THE COURT: You you you mean the buyer.

12 MR. WHITE: The buyer, excuse me. To let a complaint go
13 that has non-ambiguity, has holes in its factual recitation,
14 allows these plaintiffs, this plaintiff, and allows these
15 frankly their counsel to try to ride this train without
16 culpability, I wanna see them allege it, I wanna see later in
17 discovery if this goes forward what they based it on because
18 under Rule 11 they had a duty to apprise themselves reasonably
19 for the law under the facts. We've already had one
20 misstatement of law. You've already heard that it can relate
21 back, that's just blatant false so I'd like at least outta
22 this hearing to get where these facts are from Cato and what
23 are the facts that made Josh Vann in a commercial closing
24 become the lawyer for the seller or the constituents of the
25 seller and; finally, there's one other thing that I cannot

1 find, I've read the complaint at least six times, if it's pled
2 in the alternative I cannot find it, this complaint has four
3 causes of action against this law firm and has four causes of
4 action against Josh Vann, as best I can tell it seeks joint
5 and several liability, that is not in the alternative and so,
6 Your Honor, my request to you is under the equity granted to
7 you by the rules to look at this matter deeper than you
8 normally would under a Rule 15, I don't show up for these
9 things very often, they're handled by consent, this is not
10 being handled by consent 'cuz it's flat wrong, I ask that you
11 look at it under the justice of this case and as respect to
12 Morton & Gettys and Josh Vann and I ask if you somehow wish to
13 proceed and let this happen that you require the the the
14 specifics on the two issues: what triggered and what outta
15 Cato's deposition triggered this that wasn't known before and
16 I'll say for the record I'm gonna take whatever they tell you,
17 I'm gonna go find in that record and we're gonna be back up
18 here dealing with that misrepresentation later if it happens
19 and; number two, where in this complaint, on what basis do
20 they say in a commercial closing the the representation of the
21 buyer becomes representation of seller in handling the matters
22 in taking one to closing as is done every day, I ask that you
23 at least make them be specific so that I can deal with it
24 later. Thank you.

25 THE COURT: Well the the -- so -- your your point about

1 requiring them to at this time, uh, substantiate their their
2 theory, uh, wouldn't that be under Rule 12, if if your clients
3 are brought in, wouldn't that be a real Rule 12 matter as
4 opposed to a matter at this stage?

5 MR. WHITE: In a normal course it would be but why would
6 a failure to -- they're required under South Carolina law to
7 plead ultimate facts, why would you shift the burden six years
8 after the fact, three years after this lawsuit was filed to
9 Morton & Gettys and Josh Vann to go to that trouble when
10 Rule 15(c) -- Rule 15(a) requires that you only allow it's
11 amended if justice requires. If they can't plead it right
12 now, why would justice require that we come back later and
13 ask, Oh, please, you know, after seven years please tell us
14 why this is? Why why would justice require that? Why
15 wouldn't justice put the onus on them to get it right before
16 they come to you?

17 THE COURT: Alright. Now reserving your objection, uh,
18 Mr. McMaster, do you wanna comment?

19 MR. MCMASTER: Well, Your Honor, just very quickly. I
20 had, I I didn't catch this young man's name, I do know him,
21 uh, he didn't introduce himself first time he called but the
22 second time, uh, he talked about summary judgment and, uh,
23 Rule 11 and I suggested we talk about somethin' substantive
24 and, uh, we planned to have a meeting and that's where it
25 ended up, uh, but to say I don't think, I'm 63-years-old, I've

1 never been called a liar, been told that I'm gonna have a
2 summary judgment granted against me and come out to ever have
3 a Rule 11, uh, granted against me all in one argument in my
4 life. I wouldn't say anything like that 'cuz I don't think it
5 has any basis and it doesn't belong within the gracious
6 confines of the South Carolina Bar or our courts so take that
7 in the spirit in which it is intended because I don't believe
8 that's appropriate. Uh, you can say you're gonna win a case
9 but calling opposing counsel a liar, sayin' I'm gonna get
10 summary judgment and come after Rule 11 before the complaint
11 has e -- even been amended, uh, I think might be a little bit
12 premature and in this case widely off base.

13 Now let me turn to some of the more substantive arguments
14 made by or many substantive arguments made by my colleague
15 Mr. Outten. He points out the 2007 email that went between,
16 went among the parties in this case and I will submit to you
17 that there a plethora of emails and about this deal and all of
18 that, the problem being is that when Mrs. Burton flatly
19 refused, they just went on without her and didn't necessarily
20 tell her anything because she was against it. She refused to
21 fin -- assign the amendment, uh, she refused to to sign the
22 subsequent LLC agreement, she just wasn't interested in doing
23 anything 'cuz she didn't think it was a good deal, so to say
24 that these three closing emails about getting the surveys and
25 appraisals done and all of that, the objections that the

1 Burtons had, uh, they were called at some point, uh, the
2 recalcitrant Burtons and maybe they were but they just quit
3 communicating with 'em and and went forward, uh, on their
4 merry way and closed the deal and left 'em essentially in the
5 dark.

6 Now as to Josh Vann, uh, he first came on the radar in
7 the testimony of Tommy Cato in 2010. Now he really came on
8 the radar -- radar on the testimony of, uh, Thomasson, a Matt
9 Thomasson who is Thomasson, it's called TAL in the brief, it's
10 Thomasson Apartments, Ltd., uh, they were a buyer, uh, and
11 that deposition finally ended, started in two thou -- or late
12 2011 and ended in April 2012. He really brought Josh Vann
13 into the picture so I'm not violating any statute with respect
14 to Josh Vann as he no -- as far as I know of.

15 Now my comments that we put it on a rocket docket we
16 can't do that but I'm willing to have a status conference, I'm
17 willing to have a scheduling order, I don't mind doing
18 anything, I'm the soul of compatibility to get this case done
19 but to suggest that I'm meandering around trying to find true
20 north and delaying anything when in fact I'm trying to avoid
21 two trials. I believe I've sued in the alternative and
22 that's what I'm trying to do which I think is ultimately in
23 the best interest of this court, our judicial system,
24 attorney's fees cost and the Supreme Court won't drop on us
25 for having too many trials, uh, that are unnecessary 'cuz we

1 don't have any money.

2 Uh, 15(c) I'll concede. Uh, alright, when you make an
3 error you might as well you say made a mistake. The Court was
4 right, my colleague was right and I didn't re -- be reminded
5 after the Court told me it was inapplicable anyway so, Your
6 Honor, uh, I believe that in the interest of justice, uh,
7 these emails aside that we should be allowed to amend, that
8 we're gonna avoid two trial, avoid two cases arising outta the
9 same circumstances, that Josh Vann was called to our attention
10 in 2010, 2012 and I apologize to Mr. Vann, I I didn't like
11 suing him anymore than like suing Mr. Pitts but when you're
12 litigating you get tried to try cases and that's what I do.
13 Thank you.

14 THE COURT: Alright, Mr. Outten, you have any brief
15 follow-up?

16 MR. OUTTEN: First, Your Honor, as a housekeeping matter
17 I believe that I need to have marked the three emails that I
18 handed up to Your Honor so that the record is clear. I have
19 three additional copies ---

20 THE COURT: Okay, ---

21 MR. OUTTEN: --- I can hand to the court reporter ---

22 THE COURT: --- that would be, that would be ---

23 MR. OUTTEN: --- so that you can keep those, Your Honor.

24 (Email dated 11/24/07 marked Defendants' Exhibit No. 1,
25 email dated 11/30/07 marked Defendants' Exhibit No. 2 and

1 email dated 12/26/07 marked Defendants' Exhibit No. 3 for
2 identification.)

3 MR. OUTTEN: Your Honor, other than that I have one very
4 brief comment. In Mr. McMaster's comments that he just made,
5 he said these emails talked about the objections the Burtons
6 had, so if the Burtons had objections to the closing in 2007,
7 it is clear, cases are clear, that that's when the clock would
8 start ticking, that's when they're on notice with regard to
9 who they wanna sue and that's where no -- they're on notice
10 about what claims they wanna assert. This court under Rule
11 15(a) should not allow them to amend their complaint this late
12 date of three years after the complaint has been filed to
13 assert additional allegations based on facts they've known for
14 over six years, justice requires the amendment be denied. If
15 you allow the amendment, Mr. Pitts and Robinson, Bradshaw will
16 be prejudiced. Thank you.

17 THE COURT: Alright, I'm gonna take -- Mr. Jellenik,
18 let's ---

19 MR. JELLENIK: May I be heard briefly, Your Honor?

20 THE COURT: Briefly 'cuz, uh, ---

21 MR. JELLENIK: I'll be brief ---

22 THE COURT: --- we need -- we got other people in
23 this ---

24 MR. JELLENIK: I agree. The case that we're talking
25 about here is Burton v. Pitts, it's not the cases that went by

1 the Court but the facts of the two cases are very similar and
2 in terms of what we're doing in here with respect to the
3 amendment that's proposed, there are basically two things
4 going on; one, there was one claim entered at the end of the
5 complaint, amended complaint, that grew outta the assignment
6 claims in the settlement, it didn't -- the plaintiff didn't
7 have the right to bring that claim that way before the
8 settlement 'cuz that's where he got the right to do it so he
9 wasn't delaying for some peculiar reason; the second thing was
10 that the question of Mr. Vann. I have to say that as to the
11 facts of, uh, related to bringing Mr. Vann in not only did we
12 not know then, we don't know now because what came out in the
13 deposition testimony was that the principals didn't know who
14 was representing who so when you went to the closing, for
15 example, you will see on the closing sheets that there's a POC
16 entry for Mr. Pitts which would ---

17 THE COURT: Well ---

18 MR. JELLENIK: --- suggest ---

19 THE COURT: --- what's P.O.C.?

20 MR. JELLENIK: Paid outside of closing.

21 THE COURT: Oh.

22 MR. JELLENIK: That he was represented but he was paid
23 separately from the closing documents and from the financial
24 statement of those documents but as we understand Mr. Pitts'
25 view of things, he did not represent, uh, the LLC, Cato, LLC,

1 from and after the time that the deeds into that LLC were
2 recorded I think on July 10th of 2007, the closing have
3 occurred, the closing for Thomasson, having occurred on
4 December 12th 2007, so we have Mr. Pitts on the one side and
5 the closing documents on the other suggesting he was still
6 involved. We have uh, a comment that if Mr. Pitts was not
7 involved, Mr. Vann was the sole closing attorney and we would
8 respectfully submit under those circumstances he had certain
9 obligations to both sides which is part of what's in the
10 amended complaint. Now that being said there's been some
11 reference to in the alternative and I wanna clear that up.
12 What we're saying is we don't know which attorney because
13 we've had conflicting testimony from the various depositions.
14 We've had conflicting testimony between Mr. Pitts's set up and
15 the closing documents and Mr. Thomasson's testimony and Mr.
16 Cato's testimony, that said to the ex -- one of these lawyers,
17 if our allegations are proven at trial, one of these lawyers
18 we respectfully submit has a responsibility, maybe both of
19 them do, but we don't know how much goes with one and how much
20 goes with the other because a this conflicting evidence but we
21 know that between the two of them is where the issues lie.
22 Now if the defendants win, okay, fine, there's a trial,
23 somebody wins, somebody loses; if the plaintiff wins, same
24 result, but if the plaintiff wins, part a the findings are
25 gonna have to be what attorney played what role and that's the

1 point of the alternative. We're not submitting that Mr.
2 Pitts, for example, is necessarily liable for everything that
3 went wrong in this set a transactions, we don't know, but
4 between these two attorneys somewhere there's a balance of
5 liability and there's a balance of damages. The only
6 alternative we have is, which maybe we shoulda done it this
7 way, is to file the two suits separately and then move to join
8 them because they're the same facts, they're the same claims,
9 they're the same damages. If that's what the Court wants us
10 to do, that's what we'll do but it seems to us that we wanted
11 to avoid the potential for taking up two separate trials with
12 potential inconsistent findings and appeals and a whole bunch
13 of other stuff so with respect to that, uh, the only other
14 comment I wanna make has to do with delay. If my arithmetic
15 is right, November 19th 2010 which is when Mr. Cato's
16 deposition was first taken, that was the first part a his
17 deposition, uh, is within the three years of now and that's
18 when we learned some of the stuff that I'm laying out in front
19 of ya now. The second session of his deposition which was
20 November 22nd produced some more and deposition sessions, uh,
21 with Mr. Matt Thomasson, you know, 2011 or I think 2012 which
22 again later produced more. There are specifics in those
23 depositions, they will come in. If the Court wants 'em, I
24 don't care, we'll produce 'em but in any event all a this said
25 we respectfully submit that we haven't unreasonably delayed.

1 We wanted to make sure we're we were on the ground that we
2 seemed to be on before we moved so in any event, Your Honor, I
3 I'm gonna stop talking now.

4 THE COURT: Alright, well I ---

5 MR. JELLENIK: Thank you.

6 THE COURT: --- I'm gonna take it under advisement. I'll
7 I'll try to get to it promptly as possible. Thank you both,
8 all of you ---

9 MR. MCMASTER: Thank you, Your Honor.

10 THE COURT: --- and, uh, I I would like to say I'm
11 delighted to see ya but I really can't.

12 (Laughter.)

13 THE COURT: No, thank you, it was good to see ya'll.

14 MR. MCMASTER: Thank you.

15 MR. OUTTEN: Thank Your Honor.

16 MR. MCMASTER: Good to see you.

17

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 9, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 44, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

October 13, 2013

Margaret A. Woods 3/21/14

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

State of South Carolina.,)
)
)
)
)
)
County of York.)
_____)

In the Court of Common
Pleas of York

Case No.: 2010-CP-46-02267

Marjorie Catoe Burton.,)
)
Plaintiff.,)
)
-vs-)
)
Carroll M. Pitts Junior.,)
et al.,)
_____)
Defendant.)

Transcript of Record

December 16-18, 2014
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, judge.

A P P E A R A N C E S:

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Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To The Honorable John C. Hayes, III

1 I'm not sure who some of these people are so forgive
2 me. But one of these things goes to Marvin and Marjorie
3 from a lady named Tammy and it's being held on the basis of
4 attorney client - Marvin and Marjorie are the parents who
5 set up with the plaintiff trust. They are obviously not at
6 the time that was written, which was 2009, Mr. Pitts was
7 suing them. So I'm not sure why whomever Tammy is, again a
8 written letter to Marvin and Margie by way of illustration
9 would be subject to attorney client privilege on behalf of
10 petitioner's in the action.

11 So in any case, we would ask that this be done. We
12 cannot tell because we don't know what impact these
13 communications would have on this case.

14 THE COURT: What's the date of the privilege log?

15 MR. JELLENIK: The date of the privilege - again, the
16 privilege log as far as I know does not bear a date
17 specifically. It is again our - it is Bates stamped. It
18 was in RBH's file. It was evidently if I'm reading the
19 bottom of these pages correctly, I think it was also in
20 Womble Carlyle's file which was the law firm Mr. Outten was
21 with when this case started. As far as I can tell just
22 from these few pages which is what I was made aware of late
23 last week, it doesn't seem to bear a date.

24 THE COURT: Let's make a copy of that a Court's
25 Exhibit.

1 go forward. We've had the case set in September and I
2 moved it to today's date with this term based on the
3 exhibits created by Mr. McMaster's situation. And so since
4 sometime in August, I don't have a date for that, everyone
5 has known this case would go forward this date. And I
6 behooved everybody to - I'm not saying anybody did not work
7 diligently but it behooved the parties to as my grandmother
8 used to say get all your ducks in a row before this point
9 so I'm going to deny the motion to compel on matters set
10 forth in the privilege log.

11 And my saying that that's without my - The usual
12 method had this been what I would call or say timely made
13 would be for me to review the documents and determine
14 whether they were protected by privilege log but I'm not
15 even gonna take that step because I find the motion comes
16 too late.

17 What else?

18 MR. JELLENIK: The remaining motion that we have is -
19 and you may have already addressed it - is our motion for a
20 continuance based upon not that we did not know that there
21 was a plan to try the case here in this term of court, not
22 that we did not know that there was a plan to try to case
23 on September 3rd, but simply trying to get sufficient time
24 to be able to prepare the case. And we have been working
25 diligently yes in order to present it fairly on behalf of

1 our client.

2 And I - Let me put it this way. I take no pleasure
3 whatsoever in asking the court to stretch this date out
4 because I think like everyone involved in this case, I will
5 be very happy when we finish it but I have an obligation to
6 my client to prepare and present --

7 THE COURT: We got so many papers up here I'm trying
8 to find something. I'm listening while I got my clerk
9 looking. Go ahead.

10 MR. JELLENIK: What I said is we have an obligation
11 to present this case on behalf of our client properly and
12 we just simply haven't had the time because of the way the
13 files came to us. We simply have not had time to do that.
14 We are still finding documents that we are going through
15 and it don't fulfill the criteria I laid out before
16 including documents that don't have anything to do with the
17 case.

18 So in any event, we have ask for a continuance until
19 the term of court January 26th and we believe we can be
20 properly ready by then, but it is to put it mildly
21 difficult today. We are not convinced we can do this the
22 way it ought to be done.

23 THE COURT: All right. This action was brought --

24 MR. OUTTEN: It was brought May 27th I think 2010.

25 THE COURT: Your Sloan says dated May 26 filed May

1 27th. The complaint alleged these are malpractice on
2 behalf of Mr. Pitts and Robinson Bradshaw. I can't put my
3 hands on it but it should have been and I'm sure it was
4 cause I've seen it before - an affidavit from an expert.

5 MR. JELLENIK: Exhibit K, Your Honor. The last
6 exhibit in the back.

7 THE COURT: Michael Versey?

8 MR. JELLENIK: All right. So as of the date of his
9 affidavit and incidently this one I have the reason I - it
10 goes through Page 5 and apparently it is at least Page 6
11 cause this one is not signed so I don't know at least they
12 predated the dates - I just don't know them - indicates
13 that at - in May of 2010 plaintiff's felt there was a claim
14 for legal malpractice and I know its not an ideal world but
15 at that time the plaintiff had some theory that supported
16 by a expert and I know discovery fleshes out - theories.

17 I'm not saying everybody has to be a hundred percent
18 ready the day they win the case but that's over four years
19 ago and I just believe that when the suit was brought the
20 Burton Trust felt there was a claim and not that they have
21 to rely on all the facts existing and all the discovery
22 that existed prior to that time but that there was plenty
23 of time for discovery regardless of which attorney had been
24 in the driver's seat on the plaintiff's behalf. And I'm
25 not gonna continue the case.

1 MR. JELLENIK: All right, Your Honor. Thank you.

2 THE COURT: Okay. Anything else before we start with
3 the testimony?

4 MR. OUTTEN: Your Honor, on behalf of Mr. Pitts and
5 Robinson Bradshaw, we filed two motions *in limine* but it
6 suits us for the court to decide those issues when they
7 come up during the trial. In other words, even if we asked
8 you to rule upon them now, you have the right to change
9 your ruling and so we're not asking the court to rule upon
10 those motions at this time.

11 THE COURT: All right. Mr. Jellenik, are you ready to
12 call your first witness?

13 MR. JELLENIK: Thank you, Your Honor. A moment, Your
14 Honor, please.

15 Thank you, Your Honor. We call James Thomas Catoe.

16 THE COURT: All right. Mr. Catoe, if you would please
17 come up and be sworn.

18 MADAM CLERK: Mr. Catoe, if I can have you stop here
19 and place your left hand on the Bible and raise your right.

20 (WHEREUPON, JAMES CATOE, BEING
21 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 MADAM CLERK: Thank you, sir. Just come around and
23 have a seat and just watch your step.

24 THE COURT: All right.

25 MR. JELLENIK: Your Honor, I'm gonna hand up also

1 complete copies of including Mr. Hersey's signature page.

2 THE COURT: With all the paper being shuffled around
3 it may be actually eight pages of Mr. Versey's so six,
4 seven, and eight were missing. They're probably in just
5 some mass of paperwork that they got attached. I'm sure
6 they were on there at the time so I feel comfortable now,
7 thank you.

8 DIRECT EXAMINATION

9 JAMES CATOE BY MR. JELLENIK:

10 Q. Good morning, Mr. Catoe.

11 A. Good morning.

12 Q. Mr. Catoe, have you ever heard of the areas?

13 A. Yes, sir.

14 Q. What are they?

15 A. They were the four unplatted pieces of property
16 purchased by Thomas & Clarks.

17 Q. And where are they located?

18 A. In Ebenezer community, South Carolina.

19 Q. Is that in Rock Hill?

20 A. Yes.

21 THE COURT: And you called them what? Heirs?

22 MR. JELLENIK: The Areas.

23 THE COURT: Areas. Okay.

24 Q. And do the four areas consist of Area A, Area B, Area
25 C, and Area D?

1 A. Yes, sir.

2 Q. Did you ever -- Did you individually have any ownership
3 interest in the Areas?

4 A. Yes.

5 Q. To what extent?

6 A. I inherited the ownerships after the death of my
7 father.

8 Q. And what amount of ownership did you inherit?

9 A. A third.

10 Q. A third.

11 A. My father died in testate ---

12 Q. I see.

13 A. --- leaving my brother and my mother and myself..

14 Q. Okay. A third. Okay. And your father was -- the name
15 of your father.

16 A. James Carson Catoe..

17 Q. All right. And do you know how much of an interest he
18 inherited?

19 A. Twenty percent.

20 Q. Much of this case deals with what happened in the
21 2000's. By that time, how much of an interest did you own
22 in the Areas?

23 A. After the death of my mother, my brother and I each
24 inherited ten percent ---

25 Q. All right.

1 A. --- of the estate.

2 Q. Is it - Try to save time. Is it correct that all of
3 this flowed from the death of T.E. Catoe?

4 A. Yes.

5 Q. And was that in 1957?

6 A. Yes.

7 Q. So by 2007, how long had these interests been within
8 the family?

9 A. 2007? 50 years.

10 Q. And is it true that other family members had varying
11 amounts of interest in the Areas as well?

12 A. Yes.

13 Q. During that period of time, during the fifty years,
14 did the heirs ever considering selling the areas?

15 A. Yes.

16 Q. And did it happen before 2007?

17 A. No.

18 Q. Is there a reason why - That you are aware of - is
19 there a reason why that didn't happen?

20 A. There was significant dissension among the members of
21 the family, the heirs in this case, and that initiated with
22 the death of the original executor, Mr. Heath Lewis Catoe,
23 known as Luie, that would be Uncle Luie, and he was -
24 initiated the development of the property but he was
25 threatened with a law suit by one of the heirs and

1 basically under a lot of pressure and anxiety, resigned as
2 executor.

3 Q. And it was after that did people continue to try to
4 sell the areas?

5 A. Under I believe Judge Nunn and he was advised by Mr.
6 Charlie Spencer. He resigned as executor and some sort of
7 document was entered I think by probate eliminating him as
8 executor and all the property went back to ownership in
9 common.

10 Q. All right. What I'm trying to ask and I might not be
11 doing a particularly good job of it, forgive me, but what
12 I'm trying to ask is whether over the fifty year period
13 leading up to 2007, there were repeated attempts to
14 consider the sale of the Areas among the family?

15 A. Approximately sixty percent of the owners back in that
16 period of time you refer to in the 1990's offered to sell
17 their ownership in the property to anybody that wanted it,
18 in particular Mr. and Mrs. Burton. That would be Marvin
19 Burton and Margaret Burton. And our suggestion is they buy
20 us out and own a hundred percent of it was not acceptable.
21 There was never any negotiation on the price but they just
22 didn't accept.

23 Q. All right. Was there any - All right. With respect
24 to 2007, did there come a time when the family members
25 agreed that it was time to try to sell the Areas?

1 A. Yes. That was lead up by a lot of complaints by some
2 of the ownerships, in particular the three Jones trustees
3 of Helen Catoe Jones' estate and as well as Don Johnson who
4 owned a twenty percent share. Jane Catoe West, Kathy Catoe
5 Evans, myself and my brother Robert Catoe, all were
6 threatening to stop paying taxes on the property because
7 they had agonized over that for years and some were like
8 that they would never end that thing.

9 I was assisting Marjorie Burton at that time in
10 collecting taxes from everybody and that was a Herculean
11 task. So leading up to 2007, nothing had have been done
12 for fifty years and there was significant dissension in the
13 family about who did what to who when, and some of the
14 heirs were threatening not to pay any more taxes and just
15 let the stuff be taken by the state, which of course would
16 damage all of us, in particular me.

17 My brother actually consulted counsel and a judge I
18 think in Lenior County about filing petitions to turn it
19 over to somebody, get rid of it. For that reason, I had
20 conversations with all of the heirs and at that time I had
21 a good relationship with each and every one of them, so it
22 seemed appropriate for me to be the peacemaker, which I
23 attempted.

24 Q. Did you take the lead in --

25 A. That's what I'm leading to. Yes, sir. So toward the

1 end of 1999, I was prepared to get permission or assignment
2 by everyone of the people to go ahead and sell the
3 property. So I met with the various heirs toward the end
4 of 1999 and early 2007 and had a hundred percent agreement
5 that they all wanted to sell and get rid of the stuff; stop
6 paying taxes and get something out of it.

7 So I met with each and every one of them several times
8 and listened to their complaints about this dormant
9 property of fifty years and offered to accept their charge
10 that I would take over, sell the property, get as much
11 money as I could out of it and distribute it for the two
12 reasons I named, a little bit of money and no taxes.

13 Q. All right. Now was this - You talked about two dates
14 and I just want to clarify this. Are you talking about
15 1999 or are you talking about 2007?

16 A. Both.

17 Q. Okay. And I'm going to focus on 2007 because I think
18 that's the relevant part of years.

19 A. Yes, sir.

20 Q. At the time that - Well, let's do it this way. When,
21 roughly, when in 2007 did you begin the effort on behalf of
22 the family to try to figure out what to do with trying to
23 sell the Areas?

24 A. The charge from each of the areas was solidified in
25 conversation with them in January of 2007.

1 Q. Okay. And moving forward from there, how were you
2 communicating with these folks?

3 A. Personal visits and telephone calls and email.

4 Q. And how many people are we talking about?

5 A. Ten, I believe. I will enumerate them if I may. Jane
6 Catoe West, Kathy Catoe Evans, Robert Lee Catoe, Don S.
7 Johnson, Helen Catoe Jones and her three child trustees,
8 Doctor Albert Jones in Richmond, Doctor Douglas Jones in
9 Memphis, and Ms. Sara Jones in California and myself.

10 Q. Is it true that there were seven owners of interest in
11 the Areas?

12 A. Yes.

13 Q. I'd like to change the subject for a moment before we
14 go on. Have you ever heard of something called the Big
15 White Book?

16 A. Yes. I'm the originator of that phenomenon.

17 Q. Would you please tell the court what it was and is?

18 A. I intended to be fully transparent to everything I did
19 with each of the heirs, and so every piece of paper that I
20 came across that applied to them or to me or my counsel or
21 the perspective buyers, everything that was pertinent, I
22 put in this big white book and distributed it to each and
23 every one of them.

24 MR. JELLENIK: Just a moment please.

25 Your Honor, may I approach?

1 turns up in the book its safe to presume that's you?

2 A. Yes, sir.

3 Q. And sloanmburton@hotmail.com?

4 A. That was Marjorie and Marvin Burton's email address.

5 Q. All right, and if you wanted to address something that
6 had to do with the Burton trust, that's the email address
7 that you would use for that purpose?

8 A. Yes, sir.

9 Q. All right. Now, Mr. Catoe, as you began your work did
10 you have occasion to begin discussions with potential
11 buyers?

12 A. Yes.

13 Q. And did you find anyone interested?

14 A. Oh, yes.

15 Q. Did potential buyers have any concerns about dealing
16 with the seven owners?

17 A. Yes.

18 Q. Could you please elaborate?

19 A. One of the local builders primary worker, a gentleman
20 by the name of Will Jerden, works for the Tuttle Company,
21 and I had seen him early in January at the recommendation
22 of Sloan Marvin Burton, Junior, known to the family as Bud
23 who had assumed responsibility for disposal of the property
24 in the mid-nineties at the direction of his parents. And
25 he had dealt with Tuttle Company a lot and recommended them

1 as one of the people I should solicit to do a market
2 appraisal bidding for the property. And Will Jerden said
3 that he would not deal with a gang of owners; that he
4 preferred to deal with one entity so that was important
5 information.

6 Also some of the real estate people that I happened to
7 know in Rock Hill also mentioned that it would be wise to
8 have one person in charge of everything that prospective
9 buyers could deal with. Did I answer your question?

10 Q. Yes. What did that - What action did you take as a
11 result of hearing that advice?

12 A. I contacted an attorney in Rock Hill by the name of
13 Carroll Pitts with Robinson Bradshaw & Hinson to advise me
14 since I was going to go around everybody with this proposal
15 of having one entity, which incidentally coincide with the
16 efforts of Marjorie and Marvin Burton over a period of
17 probably ten or fifteen years, to encourage the heirs to
18 form some kind of organization.

19 As a matter of fact, corporation - setting up a
20 corporation, and that was unsuccessful for emotional
21 reasons. But - So I went to see Carroll Pitts and told him
22 what I was about to do and I asked for his advice in
23 setting up an organization that would take care of our
24 objectives. That was in January of '04. Everybody agreed
25 to give me sole responsibility.

1 Q. Why Carroll Pitts as opposed to any other attorney?

2 A. Carroll Pitts has a state wide, perhaps national,
3 reputation for knowing a lot about real estate. I've also
4 known Mr. Pitts for approximately seventy years. We went
5 to school together. So I as well as all of his associates
6 can testify as to his integrity and experience so that's
7 why he was selected. I also had dealt with him in the
8 past.

9 Q. I was about to ask you that. Thank you. All right.

10 Did you in fact hire Mr. Pitts as an attorney?

11 A. Yes, I did.

12 Q. And when did you actually hire him if you recall?

13 A. I don't recall. But the association began in January
14 and I think that it was shortly after that, probably the
15 end of January or February, after I was certain of the
16 cooperation of all the heirs in disposing of the property,
17 that I asked him to file the necessary papers. We
18 discussed different kinds of corporations and the winner
19 was the LLC ---

20 Q. When you say - - -

21 A. --- with me the general manager.

22 Q. I'm sorry, forgive me. When you say we discussed, who
23 is we?

24 A. My attorney and I, Mr. Pitts.

25 Q. You can go ahead. I just wanted to clarify.

1 A. And he was also charged with filing all the papers
2 drawing up the LLC and the state charter, or whatever it
3 was, and the deed from each person to transfer all the
4 assets into the LLC.

5 Q. All right. Go ahead, I'm sorry.

6 A. Yes. I - His charge also before he began to draw all
7 that up was that I asked him to make sure that each of the
8 heirs were protected from whatever the thing I might do
9 wrong and vice versa. Also to shield them from anything
10 that I might do with the LLC. And after discussing with
11 all the heirs to make sure that I was the general manager,
12 because I had been given that responsibility by each of the
13 heirs and to make all the decisions.

14 Q. And did - In following up on the conversations that
15 you've just summarized, did Mr. Pitts prepare Articles of
16 Organization for a Limited Liability Company?

17 A. Yes.

18 Q. And did Mr. Pitts also prepare an Operating Agreement
19 ---

20 A. Yes.

21 Q. --- to go along with that?

22 A. Yeah.

23 Q. And did he also prepare a Deed conveying the heirs,
24 the all family members, that inherited originally from Mr.
25 T.D. Cato? Did he also prepare a Deed conveying the heirs'

1 interests into the Limited Liability Company he formed?

2 A. Yes. Yes, sir. And applied for the I.D. number,
3 Federal I.D. number also.

4 Q. Okay. And did Mr. Pitts' documents and advice make
5 your job easier?

6 A. Yes.

7 Q. All right. Now, I think you've already mentioned that
8 you hired Mr. Pitts - and make sure I say this right - part
9 of your charge to him was to make sure that he protected
10 all of the members I guess, and from whatever you might do,
11 is that what you --

12 A. Uh --

13 MR. OUTTEN: I object. That's leading, Your Honor.

14 THE COURT: Rephrase the question.

15 MR. JELLENIK: All right.

16 Q. You mentioned something a little while ago about your
17 charge to Mr. Pitts. Would you please repeat that or
18 restate it?

19 A. I asked him to draw up a document that would delineate
20 my responsibilities and my authority. That's a summary.

21 Q. Did you ask him to do anything with respect to the
22 other heirs, the other members to be of the Limited
23 Liability Company?

24 A. Not really. I asked him to - to prepare a document
25 that would do that, to protect them from me and vice-versa.

1 Q. All right.

2 A. To prepare the document.

3 Q. And in terms of his advice - Well, let's do this way.

4 So you ask him to prepare documents that would protect
5 all the members?

6 A. Yeah, that I could - that I - I could refer to yes,
7 sir, because I intended to copy - give everybody a copy in
8 the Big White Book.

9 Q. And did you, in fact, do so?

10 A. Yes, sir.

11 Q. Did you --

12 A. Incidentally ---

13 Q. Yes, sir.

14 A. --- when I went around to all -- each of the heirs, I
15 gave them copies of those and left them copies of those
16 documents you referred to.

17 Q. All right. As you understood it who was Mr. Pitts
18 hired to represent?

19 A. Me.

20 Q. Individually?

21 A. Yes, sir.

22 Q. If he was hired to represent you individually, did you
23 also hire him after the Limited Liability Company was
24 formed to represent it?

25 A. No, sir.

1 MR. OUTTEN: I object, Your Honor. It's leading.

2 THE COURT: Well, I over - I overrule the objection.

3 He answered no.

4 MR. JELLENIK: I'm sorry. I couldn't hear. I didn't
5 hear - Your Honor, I apologize.

6 A. Well repeat the question.

7 MR. JELLENIK: I didn't hear you or him.

8 A. I'm sorry, Your Honor.

9 Q. Whom - whom did you - When you hired Mr. Pitts, okay,
10 you stated you were hiring him to represent you
11 individually?

12 A. Yes, sir.

13 Q. And not in any other capacity?

14 A. No, 'sir.

15 Q. All right.

16 A. To advise me.

17 Q. To advise you individually, not in any other capacity?

18 A. Well, that's correct, me individually.

19 Q. All right.

20 A. Now, I had - There was me as an individual, and then I
21 was the general manager of the thing - of the LLC, but I -
22 he worked for me.

23 Q. Did you expect him also to recognize the LLC as his
24 client?

25 A. No.

1 Q. No. Okay.

2 MR. JELLENIK: I believe that the exhibits in this
3 have been pre-marked, am - Am I correct?

4 MADAM COURT REPORTER: I haven't had any.

5 MR. JELLENIK: The - The white book that you have.

6 MR. CATO: That's mine.

7 MR. JELLENIK: Oh, you have a white book.

8 REPORTER: This?

9 MR. JELLENIK: I - Yes, ma'am.

10 REPORTER: No, sir. You haven't given it to me to
11 enter it into evidence.

12 MR. JELLENIK: No. No. I'm not entering it into
13 evidence. I'm just asking if it - if there are --

14 REPORTER: No, sir. I have not pre-marked nothing. I
15 am not aware of anything, Mr. Jellenik. I'm sorry.

16 MR. JELLENIK: Okay. Okay.

17 Q. With respect to the exhibit book that was given to you
18 a little while ago?

19 A. Yes, sir.

20 Q. Would - Would you, please -- Do you have that handy?

21 A. Yes, sir.

22 Q. Would you please turn - and I -- And I apologize. The
23 - the sequence of this is not going to make any sense
24 whatsoever and I apologize for that.

25 A. I have heard that before.

1 A. I believe in this case, this was a hard document
2 mailed to them, because I don't see an email address at the
3 top.

4 Q. All right. So --

5 A. Matter of fact that's exactly what happened.

6 Q. All right. That's fine.

7 A. Well, excuse me. Yes, right. I don't think I had an
8 email address for them at that time and so that's why there
9 are no email addresses for several of the heirs.

10 Q. But it was forward to them as part of the Big White
11 Book?

12 A. So I hard-mailed - I hard-mailed to those that I did
13 not have an email address for, yes, sir.

14 Q. But it was forwarded to them as part of the Big White
15 Book as an exhibit?

16 A. Well, it was - It was mailed to them before I
17 consolidated everything else and mailed them this in the -
18 in the Big White Book, so they got two types.

19 Q. That's fine. Mr. - Well, first of all, on February
20 8th - you see the entry for February 8th?

21 A. I do.

22 Q. Could you please read the first sentence, that first
23 line of that, please, aloud?

24 A. "Meet with attorney in Rock Hill to review property
25 history and options. Meet with Will Jordan of" - I'm

1 sorry. That - that was a short sentence.

2 Q. Could you also - Further down the page, you will see
3 an entry for 3/30/07?

4 A. I - yes, sir.

5 Q. Do you see that?

6 A. Yeah.

7 Q. Could you look at the last, I guess, two sentences of
8 that and could you read them aloud, please?

9 A. "Review implications of LLC to each heir with the Rock
10 Hill Attorney Pitts. Was assured LLC is best vehicle to
11 protect and empower the heirs."

12 Q. All right. Would you turn the page, please? Do you
13 see --

14 A. Page - I see Page Two of Four?

15 Q. Yes, sir. Do you see an entry for 5/10/07?

16 A. I do.

17 Q. And would you, please, read that entry?

18 A. "Telephone consultation with Margie and Marvin Burton
19 about" - excuse me - "with Margie and Marvin about course
20 to take and advisability of LLC" and so on. "Then
21 contacted et al.'s for input and suggestions. Phoned
22 attorney and told him to proceed with LLC, that et al's are
23 in agreement."

24 Q. Who are "et al's?"

25 A. Everybody else.

1 Q. Every - Everybody else?

2 A. All the heirs. Excuse me.

3 Q. Okay. So you had contacted all of the heirs?

4 A. Yes.

5 Q. And who is the attorney that's referenced here?

6 A. That would be Carroll Pitts.

7 Q. Okay. Would you please refer to the entry for
8 5/30/07?

9 A. "Pick up the LLC papers from attorney and drive them
10 to Mount Holly" -- that's near Rock Hill -- "to Mount Holly
11 for Kathy and Jane signatures and notary."

12 Q. All right. And you can finish if you want but that's
13 the part I wanted you to read. I should have made that
14 clear. If you feel that you need to finish it that's up to
15 you. All right. Who is the attorney mentioned in that
16 entry?

17 A. Carroll Pitts.

18 Q. Now, when you say "Pick up the LLC papers," are you
19 referring there to the Articles of Organization that Mr.
20 Pitts prepared?

21 A. Yes.

22 Q. And are you referring to the Operating Agreement that
23 Mr. Pitts prepared?

24 A. Yes.

25 Q. And are you referring to the Deed that Mr. Pitts

1 prepared?

2 A. Yes.

3 Q. Did you have occasion on that date to meet with Mr.
4 Pitts?

5 A. To pick up the papers, yes. Wait a minute. Excuse
6 me. Hold that. I don't know when I picked up the papers
7 from Mr. Pitts, but it - it would - I don't know when
8 exactly if I picked up the papers - well, I had to pick
9 them up before I went to Kathy and James, but I don't think
10 - I think it was before I drove down to Mount Holly.

11 Q. All right. Would it be fair to say you picked up the
12 papers in late May?

13 A. Yes.

14 Q. All right. Could I ask you, please, to turn to
15 Exhibit Twenty?

16 A. Just so we do not go through that again, is that my
17 Exhibit Fifty-nine?

18 Q. No. It's your Exhibit Sixty-five.

19 A. I got it.

20 Q. Would you identify the date of this?

21 A. August 20, 2007.

22 Q. And is this - Generally speaking, what is this
23 document? What - what kind of communication is it?

24 A. It's an answer to demands made by the Burtons.

25 Q. But what kind - is - is it an email or a hard copy,

1 MR. OUTTEN: No objection, Your Honor.

2 THE COURT: In without objection.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWENTY,
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Would you, please, look at the last paragraph of Item
6 Six? It's on page two of this document ---

7 A. Yes.

8 Q. --- that is 20-2. All right. With respect to that -
9 let me - I am going to read beginning I think it's with the
10 second - no. I guess it's with the first. It is the last
11 paragraph of Item Six, and I'm just going to read this
12 quickly. "I really appreciate your concern for liability
13 from exposure to developers but nothing I do is without
14 consultation with the corporation attorney and the
15 corporation CPA.

16 Since I am neither an attorney nor a CPA, their
17 oversight and involvement, as I have stated over and over
18 in letters to the heirs to seek their input and to seek
19 their advice, is necessary to protect the partners and to
20 protect the corporation. Continuing in ongoing
21 consultations take time and money but those consults
22 represent insurance against risks. Anyway, these
23 activities were outlined during all our planning letters,
24 meetings and phone calls as we all agreed on this present
25 course of action. I am trying to stay that course; be

1 him to do, the preparation of the documents to form the LLC
2 and the Deed to get the Areas into it, was that - how long
3 did that take?

4 A. About six months, I think. Yes.

5 Q. Do you recall when the - the Articles of Organization
6 were signed, roughly?

7 A. The last signature occurred in June - on June the 1st,
8 2007.

9 Q. Is that when the Burtons signed it?

10 A. I went -- I ---

11 Q. Margie Burton?

12 A. --- I drove to Raleigh and visited with them and spent
13 ten hours, and they basically were giving me instructions
14 on how I should handle the estate. But at that - June - So
15 June the 1st, 2007 was the final signature and that was
16 Marjorie Burton ---

17 Q. All right.

18 A. --- on the documents, I believe.

19 Q. The 2nd?

20 A. Yes, sir.

21 MR. JELLENIK: Forgive me for a moment.

22 Q. Would you please look at Exhibit Six in the book that
23 you have?

24 A. Is that an Affidavit?

25 Q. No, Exhibit --

1 Q. That's correct.

2 MR. JELLENIK: We would also ask that this be marked
3 for identification, 17-B.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER SEVENTEEN B,
5 PREMARKED FOR IDENTIFICATION.)

6 Q. Mr. Cato, as part of - and - and take as much time as
7 you need to look at this to be sure. But are there
8 references to your dealings with Mr. Pitts from February
9 8th through December 24th in these expense reports; in
10 other words, you were dealing with him during this period
11 of time? Take your time.

12 A. Yes.

13 Q. Is that correct?

14 A. Of course.

15 Q. Okay.

16 A. And other attorneys.

17 Q. I'm sorry, I couldn't hear you.

18 A. Closing attorney is mentioned in this report.

19 Q. Okay. And who is that?

20 A. That would be Mr. Joshua Vann.

21 Q. And - And the LLC attorney that you refer to in here?

22 A. Probably - Well no, certainly, it would be Carroll
23 Pitts.

24 Q. Okay. Mr. Cato, let us go back to late May, when we
25 pick up the documents.

1 A. Okay.

2 Q. All right. Did you then take those documents around
3 to the various heirs?

4 A. Except the California heir and the Memphis heir and
5 the Richmond heir.

6 Q. I couldn't hear the last one.

7 A. Richmond.

8 Q. Were they heirs or were they trust - Was one of them a
9 trustee for the Memphis heir?

10 A. They were trying for ---

11 Q. Yeah.

12 A. --- trustees for Helen Cato Jones.

13 Q. And she was the lady in Memphis?

14 A. Yes.

15 Q. Okay. Did you take them to Marjorie Cato Burton?

16 A. Yes.

17 Q. And that's the ten-hour meeting you referred to
18 earlier?

19 A. June the 1st, 2007.

20 Q. June 1st. Did you explain the documents to Ms.
21 Burton?

22 A. Yes. And Mr. Burton was there also. It's Marvin.

23 Q. And did she sign them?

24 A. Yes, sir.

25 Q. Did you explain to her that she would be signing a

1 General Warranty Deed?

2 A. That I would be signing it?

3 Q. No, that she would be?

4 A. Yes.

5 Q. And did you explain to her what a General Warranty
6 Deed was?

7 A. I do not recall, and I - and I think that Margie, Aunt
8 Margie ---

9 Q. That's Mrs. Burton?

10 A. --- knew what it was?

11 Q. That's Ms. Burton? Beg your pardon.

12 A. Mrs. Burton; yes, sir. Aunt Margie. And Marvin was
13 knowledgeable about those documents, but we went over them
14 anyway and they read them, and I left them a copy.

15 Q. I couldn't hear the very --

16 A. I left - I left them copies.

17 Q. Did you discuss the legal description with Aunt
18 Margie?

19 A. Of the thinking. Of the property?

20 Q. Yes, sir.

21 A. I do not recall there was a discussion about that,
22 because they were very familiar with it, because that's
23 where Aunt Margie used to live.

24 Q. Did you discuss with her her potential liability if
25 there was a problem with that Deed or the legal

1 description?

2 A. No.

3 Q. Mr. Cato, are you a lawyer?

4 A. I don't have that privilege, sir.

5 Q. Did you hire Mr. Pitts because he knows more about the
6 legal aspects of this than you do?

7 A. Yes, sir.

8 Q. Was Mr. Pitts with you?

9 A. No.

10 Q. All right. Let me move along to the Exhibits Six and
11 Seven we talked about a little while ago, then I want to
12 focus on - on Seven, the Operating Agreement.

13 A. Please repeat that number, I?

14 Q. I'm sorry. Exhibits Six and Seven. Six was the ---

15 A. Yes.

16 Q. --- Articles of Organization, but I'm gonna be looking
17 with you at more - more at seven. We have already
18 discussed the stuff on the top of the statement.

19 A. Are we looking at the Operating Agreement?

20 Q. Yes, sir.

21 THE COURT: Okay. Let's take a real short refresher
22 break at this point. We just take about a five-minute
23 refresher break.

24 MR. JELLENIK: Thank you, Your Honor.

25 THE COURT: You can step down and have some water or

1 use the restroom if you need to.

2 (COURT IN RECESS AT 11:53 A.M..)

3 (COURT BACK IN SESSION AT 12:02 P.M..)

4 THE COURT: Thank you. Everybody may take their seats
5 and continue.

6 All right. You may proceed.

7 DIRECT EXAMINATION

8 JAMES CATOE BY MR. JELLENIK:

9 Q. Mr. Cato, would you turn please to Exhibit Seven which
10 I think has already been admitted into evidence?

11 A. Yes, sir. I have it.

12 Q. And that's - Am I correct, that's the Operating
13 Agreement, is that what you're looking at?

14 A. Yes, sir.

15 Q. All right. Let me ask you first, who has authority to
16 make decisions for the LLC?

17 A. The General Manager. That would be me.

18 Q. All right. So as far as you are concerned, you had
19 the authority to make decisions ---

20 A. Yes.

21 Q. --- for the LLC? Well - Okay. Who gave you or what
22 gave you that authority?

23 A. The Operating Agreement.

24 Q. All right.

1 A. Naming me as General Manager. Incidentally, that was

1 agreed on by all the heirs when we had discussions of the
2 approximate six months leading up to this --

3 Q. And I - I apologize, but I am having trouble hearing
4 you. I don't think it is your fault. It's just that I -
5 Probably my ears, but could you speak just a little bit
6 louder, please?

7 A. I said the - The original authority was charged from
8 each of the heirs.

9 Q. Is there a document that says that?

10 A. Only the Operating Agreement to my knowledge.

11 Q. All right. Could I ask you to turn in the Operating
12 Agreement to, I think it's around page 6 or 7. Hang on
13 just a second. I believe it's Exhibit Seven.

14 A. You said page 7.

15 Q. Yeah. I will be with you in just a second. It is on
16 page 7 of the document and it's on Seven, Six, I think, the
17 exhibit number. Go one page later. Go back one page. All
18 right. I'm going to read 6.1 and I would like you to tell
19 me if I read it correctly. Oh, yeah, this has been
20 admitted into evidence already.

21 "All power" - and this is entitled "Management and
22 Control." "All power and authority of the company shall be
23 exercised by or under the direction and control of the
24 members in a manner consistent with this agreement and the
25 Act. By virtue of their status as such, the members shall

1 Q. I am going to read that out loud in the manner of
2 acting. "Except as otherwise provided in this agreement or
3 required by the Act or other applicable law, the approval
4 at a meeting of a majority in interests of the members
5 shall be the act of the members provided, however, no such
6 act of the members not expressly authorized by this
7 agreement may enlarge the obligations of any member,
8 including requiring any additional contribution, assessment
9 or payment by a member without the written consent of such
10 member." So have I read that correctly?

11 A. Yes, sir.

12 Q. And that, in other words and make - See if you agree
13 with what I am about to say. Normal things were to be
14 decided be a majority in interests of the members unless
15 required otherwise in this agreement or by the Act or other
16 applicable law?

17 MR. OUTTEN: Your Honor, I object to the extent he's
18 asking for his legal opinion of what the Operating
19 Agreement does. If he asks him what his understanding is,
20 then -- then -- then I think that is a proper question ---

21 MR. JELLENIK: But I am not asking him --

22 MR. OUTTEN: --- but he can't seek a legal opinion
23 from Mr. Cato.

24 MR. JELLENIK: I am not asking him - I don't think I
25 asked him for a legal opinion but, certainly, what - I

1 agree with what ---

2 THE COURT: Okay.

3 MR. JELLENIK: --- has been said and what I'm asking
4 is what is your understanding is, sir?

5 A. My understanding is that the General Manager - Well,
6 any manager according to this, but it happens that the
7 General Manager should only do things that were approved by
8 the other members, that being in this case the heirs, and
9 that the lacking any objection of the charge that I was
10 given, then I would continue to do what I was told to do.

11 Q. All right. And am I correct that a majority normally
12 would rule, does it say that as you understand it?

13 A. According to this paragraph certainly ---

14 Q. And the only except ---

15 A. --- if they raise an objection I think it says here.

16 Q. Excuse me. And is that true except - and I'm looking
17 at the first introductory phrase now, "Except as otherwise
18 provided in this agreement or required by the Act or other
19 applicable law." I just read that back.

20 A. That's what it says, yes.

21 Q. All right. Thank you. Now, I - I would like next to
22 go to 6.4 right after it.

23 A. Yes.

24 Q. And I am going to read the - the opening I am going to
25 read. "The approval of all members shall be required to

1 constitute the Act of the members with respect to each of
2 the following matters," and it is referred to collectively
3 as "major decisions," right?

4 A. That is what it says, yes, sir.

5 Q. Did I read that correctly?

6 A. I understand that.

7 Q. And did you understand that to mean that what follows
8 has to be decided unanimously; is that correct?

9 A. Yes.

10 Q. Okay. I am not going to read each of these things,
11 but I am going to ask you with respect to the first one to
12 see if I read this right: "Subject members to personal
13 liability." "Knowingly perform any act that would subject
14 the members to liability in their capacity as members."

15 A. The question is?

16 Q. Is - First of all, have I read it correctly?

17 A. Yes, sir.

18 Q. And second of all, is that a major decision that would
19 require a unanimous consent under 6.4 as you understand it?

20 A. Yes.

21 Q. All right. Thank you. If you would look at 6.5, and
22 I want to give you a moment, I don't intend to read this
23 out loud, but I would like you to read it if you would,
24 please?

25 A. Which paragraph?

1 Q. 6.5, all of it.
2 A. A, B, C?
3 Q. Yeah.
4 A. 6.5 is "Meetings."
5 Q. You don't have to read it aloud. You can just ---
6 A. Oh.
7 Q. --- I am just asking you to read it, so you can get
8 familiar with it.
9 A. You want me to read all of the paragraphs?
10 Q. Yes, sir. Just - And just the subsections of 6.5.
11 A. I have read it.
12 Q. Did you have enough time? You - You feel comfortable
13 moving ---
14 A. Yeah.
15 Q. --- forward? All right.
16 A. Yes.
17 Q. Was a meeting ever called in line with 6.5(a), 6.5(b)
18 and so forth? Was any meeting ever called of this Limited
19 Liability Company?
20 A. No.
21 Q. Is there any minute book kept by this company
22 recording the results of any - any meeting?
23 A. No, no meeting notes.
24 Q. Was there ever - you know, if you can draw your
25 attention to 6.5(g) on page 9 which is 7-8?

1 corporation that could be formed by the State as opposed as
2 I was dealing with buy - possible buyers who didn't want to
3 deal with a gang up relatives.

4 Q. And I think you've - You've explained that.

5 A. That's why I did that. Okay.

6 Q. You've explained it. Thank you. I would like now if
7 you - if - Hang on a second and let me make sure what I
8 think this is is what it is and no, it is not. Hold on
9 just a moment, please.

10 All right. Mr. Cato, you have also testified that Mr.
11 Pitts prepared for you, I think, the Deed conveying the
12 heirs' interest into the LLC; is that correct?

13 A. That is correct.

14 Q. Thank you. What was the purpose of doing that?

15 A. To relieve each of the heirs of the assets and to put
16 it into the LLC so that the prospective buyers, if any,
17 would have one entity to deal with.

18 Q. All right. And what property was supposed to be put
19 into the LLC?

20 A. All of the property originally owned by Mr. T.E. Cato

21 ---

22 Q. All right.

23 A. --- that was still not disposed of by other buyers.

24 Q. All right. Right. I would now like to ask you if you
25 would be so kind to turn to Exhibit Thirty-four. And when

1 A. Is it zero eleven or just 11?
2 Q. Zero eleven.
3 A. I have 34 A-011.
4 Q. Yeah.
5 A. Okay.
6 Q. Would you look please at paragraph eight?
7 A. And - Yes, I see it.
8 Q. Look at both - yeah. Look at both the question or the
9 interrogatory and the response, please.
10 A. Yes, I see it.
11 Q. Have you had a chance to read it?
12 A. Yes.
13 Q. Okay. Is it correct that the interrogatory, the
14 question asks for the identification of the attorney who
15 prepared the Deed, the client for whom it was prepared and
16 the purpose for which it was prepared?
17 A. I did.
18 Q. Is that correct?
19 A. That is correct.
20 Q. Would you please read the response?
21 A. Response, you want me to read it out loud?
22 Q. Yes, please.
23 A. "Carroll Pitts prepared the RBHD for T.E. Cato Estate,
24 LLC. The purpose of the Deed was the convey property owned
25 by the Cato heirs into the LLC so that at a subsequent time

1 the property could be conveyed to a buyer."

2 Q. And is that substantially what you just testified to
3 before we went into this exhibit?

4 A. Yes.

5 Q. Okay. All right. One moment, please.

6 All right. Mr. Cato, what was the Road Bed Tract?

7 A. Sometimes referred we in the family as "The Gaza
8 Strip." The Road Bed Tract, the old Road Bed Tract was
9 what - where the old road was before a new road was cut
10 through between Areas A and B on the Cato Estate. They
11 moved the road bed approximately fifty feet to the east in
12 order to square up the intersection there at, I believe
13 that's Hollis Lakes Road.

14 Q. Did the old road bed, was that an area - is that in
15 one of the Areas?

16 A. The old road bed was - formerly was the barrier of
17 Area B.

18 Q. I'm sorry. I couldn't hear the begin - the middle of
19 what you.

20 A. The old road bed was formerly the - one of the
21 boundaries of Area B. Since they moved the road fifty -
22 approximately fifty feet to the east in the direction of
23 the Ebenezer Cemetery, then the old road bed was plowed up
24 by the State and the asphalt was hauled away.

25 Q. Okay.

1 A. The State then, I think, Quitclaim Deed or something
2 the old road bed back to the --

3 Q. Well, I - We'll come to that. Was the Road Bed Tract
4 suppose - What you are referring to as the "Old Road Bed,"
5 was that supposed to be part of Area B?

6 A. Yes, sir.

7 Q. And when you say that, was that supposed to be part of
8 what you were trying to sell to developers?

9 A. Yes.

10 Q. Did the Deed prepared by Mr. Pitts, in fact, turn out
11 to include the Road Bed Tract?

12 A. I'm not qualified to answer that question because the
13 Deed listed Area B, in the opinion of everybody in the
14 family including myself, was that that has always been
15 considered part of Area B and everyone - Here it is - All
16 the heirs, including myself, assumed that Area B included
17 where the old road bed had been or the old road had been,
18 so I don't know if I answered your question correctly.

19 Q. Well, you've - You've answered what you understood and
20 that's what I was asking you so that's fine.

21 We're going to come back to this a little bit later,
22 but what I would like to ask at this point is, to your
23 knowledge, was a title search ever performed with respect
24 to the Areas?

25 A. Yes.

1 Q. Was a title search ever performed with respect to the
2 Areas at the time that you and the other heirs were
3 executing the General Warranty Deed into the LLC?

4 A. No.

5 Q. If you know, do you know why it wasn't performed at
6 that time?

7 A. I do not know. I think that's a question I'm not
8 qualified to answer.

9 Q. All right. That - That's fine. As time went on, and
10 we will get into this in more detail later, but as time
11 went on, is it correct that you made a deal with one of the
12 developers you had been talking to?

13 A. Yes.

14 Q. And as time went on, did that - Did that developer, if
15 you know, conduct a title search with respect to the Areas?

16 A. They did.

17 Q. Did that developer indicate to you as General Manager
18 of T.E. Cato Estate, LLC, that he was concerned that there
19 was a title problem with the Road Bed Tract?

20 A. Yes.

21 Q. And that the Road Bed Tract, as they understood it,
22 didn't appear to be part of Area B?

23 A. Yes.

24 Q. And that the Deed that they were looking at - The Deed
25 that was put into the LLC that was what they were looking

1 at for a reference was suppose - as they understood it was
2 - it was supposed to include the Road Bed Tract?

3 MR. OUTTEN: Your Honor, I object. That'S - That's
4 testimony ---

5 THE COURT: Yeah. I - I --

6 MR. OUTTEN: --- and leading.

7 THE COURT: Yeah, and I don't understand the question.

8 MR. JELLENIK: All right. And I - I - I will try to
9 do better with that one. I agree.

10 Q. So the developer you were talking to at that point in
11 time said that they had a concern about the title to the
12 Road Bed Tract?

13 A. Yes.

14 Q. And that it was supposed to be in Area B?

15 A. Yes.

16 Q. But they weren't convinced it was?

17 A. Correct.

18 Q. And they asked you to do something about that?

19 A. Yes.

20 Q. Was anybody able to convince them that they were
21 wrong?

22 A. No.

23 Q. All right. So if they were right, the Deed that all
24 the heirs executed to put the property into the LLC ---

25 A. Correct.

1 Q. --- did not convey all the land - Well, I am sorry.
2 Withdraw that. I apologize.

3 Is it correct that there was a - You've already
4 indicated that there was another road bed in addition to
5 the old, what you have called the old road bed?

6 A. Well, the new road bed.

7 Q. Okay.

8 A. The old one was destroyed by the State and a new one
9 built fifty feet to the east, approximately fifty feet to
10 the east.

11 Q. All right. By 2007, was that new road bed owned by
12 the heirs or by the Department of Transportation?

13 A. DOT.

14 Q. Do you know, and you may not, whether the Deed into
15 the LLC from the heirs and Mr. Pitts prepared, whether that
16 Deed did or did not include the new Road Bed Tract that DOT
17 owned?

18 A. The - Let me make sure I understand the question.

19 Q. Please.

20 A. The question is, did the heirs deed to the LLC the new
21 road bed as part of the Area B? Is that the question?

22 Q. Yes.

23 A. I do not - I - I'm not qualified to answer that
24 question. I don't know that.

25 Q. That's fine.

1 A. I don't know - I don't know the relationship when DOT
2 decided to build new roads, which I would like to comment
3 on by the way, how that affects the adjoining property
4 owners. I - I don't understand that.

5 Q. All right. That's fair.

6 A. But my assumption is that the new road was not used at
7 the discretion of individual property owners, but I don't
8 know. I don't know how that's handled.

9 Q. All right.

10 A. The - The new road bed was negotiated by Mr. Burton in
11 the mid-nineties.

12 Q. Which Mr. Burton?

13 A. Sloan Marvin Burton, Junior, who was serving as
14 General Manager at the direction of Marvin and Margie
15 Burton, his parents.

16 Q. All right. You said --

17 A. He negotiated with the State the movement of the new
18 road, because initially the State had planned and were
19 beginning to cut Area B half-in-two by making a straight
20 road right through it and Bud, the family calls him, Mr.
21 Burton, Junior, Bud, did a marvelous job in negotiating
22 with the State in order to save part of Area B, because
23 they were going to - the State was going to destroy it by
24 putting a road right straight down the middle. And Bud
25 Burton negotiated with them to make an S-curve out of that

1 road to save Area B, for the most part, except for the old
2 road bed which the State ground up.

3 Q. All right. So the purpose of - I want to see if I'm
4 understanding. Are you saying that the purpose of Aunt
5 Margie's and Marvin's son, Bud, in renegotiating with DOT
6 was to swap out road beds so that they could clear up Area
7 B and not lose?

8 A. Yes.

9 Q. Is that right?

10 A. To save ---

11 Q. Area B?

12 A. --- the value of Area B, yes.

13 Q. Thank you.

14 A. To some degree.

15 Q. All right. So as a result of those negotiations, did
16 the heirs transfer some land to DOT?

17 A. Yes.

18 Q. And --

19 A. The new road bed.

20 Q. Okay. And with respect to the new road bed, let me
21 ask you to look if you would at Exhibit Five and ask that
22 it be marked for identification.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIVE, PREMARKED
24 FOR IDENTIFICATION.)

25 MADAM COURT REPORTER: Wait a minute, Mr. Jellenik.

1 MR. JELLENIK: Your Honor, I move to - -

2 THE COURT: Wait. She's not finished.

3 MR. JELLENIK: Oh, I'm sorry.

4 I'd ask to introduce - Before we go on, I would ask to
5 introduce Exhibit Thirty-four into evidence. We admit that
6 into evidence.

7 MR. OUTTEN: No objection, Your Honor.

8 THE COURT: In. In without objection.

9 MR. JELLENIK: All right.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THIRTY-FOUR,
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 MR. JELLENIK: All right.

13 Q. And I would like to refer to Exhibit Five.

14 A. I'm - I'm looking at Title to Real Estate.

15 Q. Yeah. Hang on and you are looking at, but I am not
16 there yet.

17 A. Oh.

18 Q. Just a moment.

19 A. I'm getting better at this.

20 Q. Okay. Take a moment. I would like you to look at
21 this, and the question I have is, are these Deeds, to the
22 extent you are aware of it, what conveyed the new road bed
23 into DOT?

24 A. Yes.

25 Q. And the - Without getting overly detailed, the year in

1 which this occurred was what?

2 A. Recorded in the County Assessor's Office as May 7,
3 2004.

4 Q. Okay. Now, that said, the grantors, if you look at
5 the top paragraph, "Known all in by these presents."

6 A. Yes, sir.

7 Q. As you read through the list of grantors, would you
8 please read out loud how Marjorie Cato Burton's interest
9 was identified?

10 A. It says that "Marjorie Cato Burton, Trustee of the
11 Marjorie Cato Burton Revocable Trust."

12 Q. All right. Thank you. And does it then go on to list
13 all of the other heirs?

14 A. Yes.

15 Q. All right. Okay. Now, if we then go on - if I can
16 find it. Hold on a moment.

17 MR. JELLENIK: Excuse me for a moment, please.

18 Q. If I could refer you back to exhibit - Well, before we
19 do this.

20 MR. JELLENIK: Move to admit or - Exhibit Five into
21 evidence..

22 MR. OUTTEN: No objection, Your Honor.

23 THE COURT: In without evidence.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIVE,
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

1 Q. And I would like to refer you back to Exhibit Three.

2 A. I'm looking at a Deed dated 11/15/06.

3 Q. That is correct.

4 MR. JELLENIK: I would like to have this marked for
5 identification as Exhibit Three, please.

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THREE,
7 PREMARKED FOR IDENTIFICATION.

8 Q. You mentioned earlier, Mr. Cato, that what Bud Burton,
9 Marjorie's and Marvin's son, had negotiated was basically a
10 swap-out to save the value of area B; is that correct?

11 A. Yes.

12 Q. Is this the second half of the swap? Does this Deed
13 convey back to the heirs the old road bed tract after they
14 got - after DOT got the new road bed tract? Take a minute
15 and look at it.

16 A. Yes.

17 Q. All right. Would you please - You've already
18 mentioned the date on this. Would you please look at the
19 grantees? It's in the same paragraph, "Known all in by
20 these presents," but the grantor, am I correct, is the
21 South Carolina Department of Transportation?

22 A. Yes.

23 Q. Would you please read the name of the grantee as
24 identified here as Marjorie Cato Burton ---

25 A. Yes. Oh, read them.

1 Q. --- for her interest?

2 A. Out loud?

3 Q. Yes, just - Just for her?

4 A. Quitclaim: "Leaves Quitclaim Deed unto Marjorie Cato
5 Burton, Trustee of the Marjorie Cato Burton Revocable
6 Trust."

7 Q. That's the same trust. Right?

8 A. Yes, sir.

9 Q. Okay. Now - Give me a minute. Would you please go to
10 Exhibit Two?

11 MR. JELLENIK: Oh, I'm sorry, we move to admit - I
12 will get this yet. Move to admit Exhibit Three into
13 evidence.

14 MR. OUTTEN: No objection, Your Honor.

15 THE COURT: In without objection.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THREE,
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 Q. I would like to have - What is the document you see?

19 A. I'm looking at Revocation of Living Trust ---

20 Q. All right. And --

21 A. --- recorded on 10/19/06.

22 Q. All right.

23 MR. JELLENIK: I would like to have this marked as
24 Exhibit - Plaintiff's Exhibit Two.

25 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWO, PREMARKED

1 FOR IDENTIFICATION.)

2 Q. You've read the title already. Could I ask you to
3 look at just above the signatures; what's the date on this
4 document?

5 A. Signed on October 16, 2006.

6 Q. Okay. And this was filed for record when?

7 A. October 19, 2006.

8 Q. All right. Now, if we go back - Forgive me, but if we
9 go back to the Deed that we were talking about just a
10 minute ago, Exhibit Three.

11 A. Yes.

12 Q. Okay. I would like you, if you would be kind enough
13 to do so, to turn to the last or the last page of the Deed,
14 but page 3-3. If you look at the lower right-hand corner
15 there, PX003-003?

16 A. Yes.

17 Q. What is the date that that Deed was executed?

18 A. Signed on October the 5th two-thousand-and --

19 Q. No, you are on a different page than I am, sir.

20 A. I'm looking at PX003-003.

21 Q. Where are you seeing - And I apologize. Where are you
22 seeing - Oh, I see. No, that's when the notary's
23 commission expires.

24 A. I'm sorry.

25 Q. I'm asking when the date of the signatory.

1 A. Oh, I see "Sworn to?"

2 Q. Say again? It's just above it.

3 A. I see it says, "Sworn to before me."

4 Q. Yes, sir.

5 A. 24th day of October, 2006.

6 Q. So that was eight days after the revocation of the
7 trust? Go back to Exhibit Two and check to see if I'm
8 right.

9 A. Revocation was executed on October 16, two-thousand --

10 Q. That was eight --

11 A. Huh?

12 Q. Is that eight days before the Deed?

13 A. Yes.

14 Q. All right. If you would go back again to Exhibit Two.

15 A. Two?

16 Q. Yeah, that's the revocation.

17 A. Yeah.

18 MR. JELLENIK: I would like to move to have this
19 admitted into evidence.

20 MR. OUTTEN: No objection, Your Honor. I can't see
21 the relevance of all of this, but no objection.

22 THE COURT: In without objection.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWO, IDENTIFIED
24 AND MARKED, RECEIVED INTO EVIDENCE.)

25 Q. If you look at the upper right-hand corner of that

1 revocation.

2 A. Yes, sir.

3 Q. What do you - Do you see a stamp there?

4 A. Yes.

5 Q. What does it say, just the top line?

6 A. "File for record, 10/19/2006."

7 Q. So that was also before the date of the Deed that you
8 just looked at in Exhibit Three; is that correct?

9 A. That is correct.

10 Q. Okay. So is it correct on the basis of these
11 documents to say that the trust that was identified as the
12 source of Marjorie's twenty percent interest and this strip
13 of land that we are talking about, the - the old Road Bed
14 Tract, was identified as - as being deeded to a revoked
15 trust?

16 MR. OUTTEN: I - I - I object, Your Honor, ---

17 THE COURT: I - I --

18 MR. OUTTEN: --- to asking him to interpret these
19 legal documents.

20 THE COURT: I sustain the objection. The documents
21 speak for themselves. He's not an attorney so.

22 MR. JELLENIK: All right. And that - That was going
23 to be my next question anyway. So all right, that's fine.

24 Q. All right. Mr. Cato, who are the Thomasons?

25 A. They are a very fine family in the Rock Hill area who

1 have been in the land development business and ownership
2 business for a number of years. Mr. Broadus Thomason is
3 the father of three fine boys who are all active in their
4 company acquiring, developing, building, real estate.

5 Q. Back in 2007, were the Thomasons one of the groups you
6 were talking to about possibly buying the Areas?

7 A. Yes.

8 Q. Did their come a time when you made a deal with the
9 Thomasons to buy ---

10 A. Yes.

11 Q. --- the Areas?

12 A. Yes, sir.

13 Q. I would like you to turn to Exhibit Nine.

14 And I would ask that this be marked for identification
15 as Plaintiff's Exhibit Nine.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER NINE, PREMARKED
17 FOR IDENTIFICATION.)

18 A. Yes, sir.

19 Q. Okay.

20 A. That's my Exhibit Fifty-four?

21 Q. Yes, sir. Mr. Cato, what is the title of this
22 document?

23 A. "Letter of Intent."

24 Q. And what is the date at the upper left-hand corner
25 that it was written?

- 1 A. July 25th, 2007.
- 2 Q. All right. Mr. Cato, what is this document ---
- 3 A. It is a letter of --
- 4 Q. --- as you understand it?
- 5 A. Hum?
- 6 Q. As you understand it?
- 7 A. It's a Letter of Intent notifying whoever wants to
- 8 know that Thomason Apartments and the Cato Estate, LLC, are
- 9 in the process of negotiating a contract for the purchase
- 10 of the land listing here, A, B, C and D Area.
- 11 Q. All right. And who signed it for the Thomasons?
- 12 A. Two. Mr. Matt Thomason and Mr. Broadus Thomason.
- 13 Q. And who signed it and - And were they identified as
- 14 the buyer?
- 15 A. The buyer is identified as Thomason Apartments, LLC.
- 16 Well, the prospective buyer.
- 17 Q. And the Thomasons who signed this signed on their
- 18 behalf - on that - I'm sorry, on its behalf?
- 19 A. Yeah, they are - they're of course, the owners and
- 20 operators of the Thomason Apartments.
- 21 Q. And who signed on behalf of the LLC?
- 22 A. I did.
- 23 Q. As General Manager?
- 24 A. Yes, sir.
- 25 Q. Okay. Now, did you view this as a binding contract,

1 this document?

2 A. No, sir. I saw this as a Letter of Intent that was
3 requested be done by the Thomasons in order to secure
4 financing for the apartment complex they were selling to
5 use in a 1031 Exchange, I think, for the purchase of the
6 Cato Estate property, the four Areas ---

7 Q. The areas.

8 A. --- and there was some urgency in getting this done,
9 because the entire real estate market was collapsing and
10 banks were going down - failing, and I was told by the
11 Thomasons that negotiating with the banks and the buyer of
12 the apartments was delicate and they needed to proceed
13 before the whole world - financial world went to pot.

14 So I understood that and I understood the need of the
15 Letter of Intent, because I had dealt with those in my
16 past, and it was a notice to the rest of the world that we
17 were going toward a contract. And also that for any reason
18 that the Letter of Intent could be - because it's a letter,
19 its intent according to the dictionary. Incidentally, the
20 LLC attorney told me I wasn't allowed to have a Barron's
21 Law Dictionary.

22 Q. And now was that Mr. Pitts?

23 A. I'm sorry?

24 Q. Was that Mr. Pitts?

25 A. No, the LLC attorney, Lucy McDow.

1 Q. All right. Let me come to a halt here for a moment.

2 Was Lucy McDow representing the LLC during this period
3 of time.

4 THE COURT: I think he's talking about Thomason LLC.

5 Q. Who - Who was Lucy McDow representing?

6 A. Lucy McDow represents the LLC.

7 Q. What LLC?

8 A. I'm sorry.

9 Q. I 'm sorry. What --

10 A. Oh, I see. The T.E. Cato Estate, LLC.

11 THE COURT: Okay. All right.

12 Q. All right. At that time in 2007?

13 A. No.

14 Q. You're talking about the partition action?

15 A. Oh, right - Well, up until the dissolution of the T.E.
16 Cato Estate, LLC, she was the LLC attorney.

17 Q. So that was in 2013 that it dissolved?

18 A. That it dissolved, yes, sir.

19 Q. And am I correct that she got into it in 2010 during
20 the partition action?

21 A. It may - It's either 2009 or 2010. I'm sorry, I don't

22 --

23 Q. But she was not involved at the time you were
24 negotiating with the Thomasons was she?

25 A. No. No. No, no.

1 Q. Just let me clarify. All right. Did there come a
2 time after the execution of the Letter of Intent when the
3 Thomasons expressed concern to you about the Road Bed
4 Tract?

5 A. Yes.

6 Q. I promised you we would come back to this.

7 A. Thank you.

8 Q. Why were they concerned?

9 A. Mr. Joshua Vann had done a title search and discovered
10 that the old road bed Deed was not part of Area B. I
11 believe that's my interpretation, the best I can come up
12 with.

13 Q. And did he feel on behalf of the Thomasons that it was
14 supposed to be?

15 A. That it was what supposed?

16 Q. I'm sorry. Did Mr. Vann feel on behalf of his
17 clients, the Thomasons, that it was - the old road bed was
18 supposed to be part of Area B?

19 MR. OUTTEN: Objection, Your Honor. How can Mr. Cato
20 testify --

21 THE COURT: Yeah, he can't - Mr. Cato can't decide ---

22 MR. JELLENIK: I'm sorry.

23 THE COURT: --- what Mr. Vann felt.

24 MR. JELLENIK: I will rephrase.

25 Q. Did Mr. Vann communicate to you why it was important

1 to deal with the issue that he was telling you about?

2 A. Yes.

3 Q. What did he tell you about that?

4 A. I don't remember his precise words but, in general, I
5 shared his concerns and everybody else did that the old
6 road bed was still not deeded to the T.E. Cato Estate and,
7 in fact, was still owned by the individual heirs. And that
8 old road bed runs from the south side of Area B, which is
9 Ebenezer Road, all the way through the edge of that area
10 which I think is six acres and, of course, would deny
11 access to the rest of it and would in effect damage the
12 value ---

13 Q. So --

14 A. --- if it was not included.

15 Q. So is it your understanding that the Thomasons
16 expected it to be part of Area B, the old road bed tract?

17 A. Not only the Thomasons but everybody else.

18 Q. So what did they ask you to do - Oh, wait a second.
19 What did they ask you to do about it?

20 A. To consult with them and - and let's decide what we're
21 gonna about it.

22 Q. Okay.

23 A. That they couldn't proceed with the purchase because
24 of that old road bed Deed issue.

25 Q. And what was the outcome of those consultations?

1 A. The Contract for Purchase with Thomason Apartments was
2 renegotiated because the sellers, that would be the heirs
3 of the T.E. Cato Estate, and the Thomasons and the banks
4 involved, and the finance company and the buyers of the
5 apartment complex, were concerned with consummating the
6 delicate deal that they had negotiated, all of us, each of
7 us.

8 Q. Before you got to that part of the negotiation, was
9 there any reference to a Quitclaim Deed?

10 A. I do o' recall.

11 Q. All right. Let me refer you if I may to Exhibit
12 Twenty-two.

13 A. That would be my Exhibit Seven-seven ---

14 Q. Yes, sir.

15 A. --- dated 10/22/07?

16 Q. Yes.

17 MR. JELLENIK: And I would like to have this marked
18 for identification as Plaintiff's Exhibit Twenty-two,
19 please.

20 (WHEREUPON: PLAINTIFF'S EXHIBIT NUMBER TWENTY-TWO,
21 PREMARKED FOR IDENTIFICATION.)

22 Q. What's the date on this letter?

23 A. October 22, 2011.

24 Q. I should not say on this document. And what is this
25 document?

1 A. It's a letter to each of the heirs asking them to sign
2 a Quikclaim Deed and explaining what the problem was with
3 the old road bed/new road bed, so on and so forth, and
4 enclosing a Quitclaim Deed to have - to take care of that
5 problem since nobody had known about it, to my knowledge.

6 Q. And --

7 A. And to - And urge some urgency.

8 Q. And was this because of the Thomasons' concern over
9 the road bed tract?

10 A. Everyone's concern over it. Yes, sir.

11 Q. Well, everyone's concern.

12 A. So --

13 Q. You were asking - Is it correct that this was asking
14 all of the heirs to sign over on a Quitclaim Deed any
15 interest that they might have in the old road bed tract?

16 A. Yes.

17 Q. And they were to sign, is it correct, that you were
18 asking them to sign that over to the T.E. Cato Estate, LLC

19 ---

20 A. Correct.

21 Q. --- so that it would later ---

22 A. Transfer it to Thomason Apartments.

23 Q. --- convey it to the Thomasons?

24 A. Yes, sir.

25 Q. All right. Thank you.

1 MR. JELLENIK: Now, we would like to introduce this
2 letter into evidence. We would move to introduce it into
3 evidence as Exhibit Twenty-two.

4 MR. OUTTEN: No objection, Your Honor.

5 THE COURT: In without objection.

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWENTY-TWO,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 MR. JELLENIK: Thank you, sir.

9 Q. All right. Did everybody sign the Quitclaim Deed?

10 A. No, sir.

11 Q. Who didn't?

12 A. The S.M. Burton and Marjorie Cato Burton A.B. Trust.

13 Q. Did everyone else sign it?

14 A. Yes.

15 Q. Did everyone else, therefore, deed their - Well, I
16 don't want to ask you that. You're not a lawyer. Did
17 everyone else - Everyone else signed the Quitclaim Deed;

18 ---

19 A. Yes.

20 Q. --- is that correct? I'm sorry. And where did those
21 Deeds go? Were you taking them around or collecting them
22 or?

23 A. I don't recall.

24 Q. All right. And if Marjorie did not sign for her

25 interest, that meant twenty percent was not signed for; is

1 THE COURT: Nine, ten and now we're on - Fourteen is
2 not in?

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER NINE,
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 MR. JELLENIK: Fourteen, please.

6 THE COURT: Yeah.

7 A. To confirm my books - Is this a document PX014 down at
8 the bottom right?

9 Q. PX014-1?

10 A. Yes.

11 Q. Okay.

12 A. I got it.

13 Q. And is this document the petition that was filed by
14 you and the other heirs against Marjorie's Trust, Marjorie
15 as trustee of her Trust?

16 A. Yes.

17 Q. And the stamp that is on this document, what is the
18 date that it was filed?

19 A. August the 13th, 2008.

20 Q. All right. Thank you. Why did you and the other
21 heirs file this suit?

22 A. To solve the dilemma of the unknown old road bed Deed.

23 Q. And - All right. Would you turn to the back of this
24 document? Toward the back you will see an attachment or an
25 exhibit called "Amendment to Contract?" It's 14-006.

1 prior testimony is.

2 THE COURT: Okay. Just ask it a different way.

3 Q. Was there any other document that you understood to be
4 a contract that was signed before this and after the Letter
5 of Intent?

6 A. Yeah, the Contract of Purchase.

7 Q. Is that in the Big White Book?

8 A. I would - I would think so.

9 Q. All right.

10 A. The million dollar contract to buy the four Areas is
11 what preceded this amendment.

12 Q. Is there any - Hang on just a second. May I direct
13 your attention to the first "Whereas" clause in the
14 Amendment to Contract? Would you read that aloud?

15 A. "The Buyer and Seller entered into a certain contract
16 for the sale of real property" - called the Contract -
17 "dated August the 3rd, 2007"

18 Q. And what is - Do you know what that document was?

19 A. The date that something was signed on August the 3rd
20 was the Letter of Intent.

21 Q. Now, in order for this to be - Was the Letter of
22 Intent as far as you understood it a contract?

23 A. No.

24 Q. So this is an Amendment to Contract that's referring
25 to the Letter of Intent which was not a contract. Am I

1 interpreting what you're saying correctly?

2 A. Again --

3 MR. OUTTEN: Objection to leading.

4 A. I'm not qualified to answer that, but my opinion is --

5 Q. What was your understanding?

6 A. My understanding is this is probably a typo, because
7 my understanding of a Letter of Intent is an intent to let
8 financiers, for examples, always used in banks to let them
9 do their paperwork prior to closing, and so whatever
10 happened on August the 3rd the only thing that happened on
11 August 3rd was the signing of the Letter of Intent.

12 Q. Okay.

13 A. A band in other words to let the world know that we
14 are in serious negotiations.

15 Q. If you --

16 A. If anybody wanted to outbid us, they should jump in
17 there and offer us a million-and-a-half or anything.

18 Q. If we look at the top of this document, who were the
19 parties to this document?

20 A. The parties to the document were the eighty percent
21 heirs of the estate, T.E. Cato Estate, and the Thomasons
22 who signed the Letter of Intent and subsequently signed the
23 Purchase Agreement.

24 Q. Well, I'm - I'm gonna to read the top paragraph for a
25 moment, and I would like you tell me if I do it correctly.

1 MR. JELLENIK: I did not intend to. I apologize.

2 Q. What I was asking is that is who's marked here as the
3 parties?

4 A. I'm sorry. Repeat that.

5 Q. I apologize. Is that who is marked - Those entities
6 that I just mentioned, are they marked here as the parties
7 to this agreement?

8 A. In this first paragraph?

9 Q. Yeah.

10 A. Only incidentally that they were part of the T.E. Cato
11 Estate, LLC.

12 Q. All right. If we turn to page 2 of 5 --

13 A. In the first paragraph.

14 Q. Just turn over.

15 A. Page 2 of 5?

16 Q. Yes.

17 A. Okay.

18 Q. And there are going to be more signatures on the next
19 page, but who's - who has signed here?

20 A. Me, general manager of the L - Cato Estate, LLC.

21 Q. Has anyone signed this for the buyer?

22 A. Not this copy here. I don't have a signature here.

23 Q. Okay. But you signed it for the seller?

24 A. I'm sorry?

25 Q. I - I'm sorry. You signed it for the - you signed it

1 as the general manager of the seller, T.E. Cato Estate,
2 LLC?

3 A. Yes.

4 Q. Now, there are some - I want - I want you - Have you
5 had a chance to go through this?

6 A. This letter?

7 Q. Yeah, the Amendment to Contract?

8 A. I have in the past, but go ahead and ask me a
9 question.

10 Q. If you look at paragraph 3 at the bottom of page 1 ---

11 A. Yes.

12 Q. --- does that identify the other eighty percent heirs,
13 if you will, as the undivided owners of their interests as
14 tenants in common of the Road Bed Tract? Look at that
15 sentence and see if that is what it says.

16 A. Yes.

17 Q. Okay. Now, the owners in that regard are further
18 agreeing, if you turn the page ---

19 A. Yes.

20 Q. -- that they shall cause the Road Bed Tract to be
21 conveyed to the seller?

22 A. Yes.

23 Q. Is that correct?

24 A. Yes, at conclusion of the partition action.

25 Q. Yes. Yes. And the buyer is going to pay the first

1 Q. When you signed the Letter of Intent, what was your
2 understanding at that time of the amount of money that was
3 to be paid for the Areas?

4 A. One million dollars.

5 Q. And is that set forth in the Letter of Intent?

6 A. Yes, sir.

7 Q. What is the price for the areas here?

8 A. A Million Dollars with conditions.

9 Q. Please.

10 A. So it's \$900,000 at closing and the remainder of the
11 \$100,000 at the resolution of the old road bed matter.

12 Q. And the total, therefore, was still a million dollars?

13 A. Yes, sir.

14 Q. All right. Excuse me for a second. If I can - Wait a
15 minute now.

16 MR. JELLENIK: I would like to move to admit Exhibit
17 Fourteen into evidence, please.

18 MR. OUTTEN: No objection, Your Honor.

19 THE COURT: In without objection.

20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FOURTEEN,
21 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 Q. All right. If I could call your attention back now,
23 sir, to Exhibit Seven. That is the Operating Agreement.

24 A. I have it.

25 Q. If you would look at page 8 which is seven seven on

1 the bottom right. It's the document that's page 8.

2 A. Yes, sir.

3 Q. Again, I am - and I'm not asking you for an opinion on
4 this, but I'm simply pointing out to you that six point
5 four (a) which we looked at before which subjects - any
6 decision that subjects to members to personal liability,
7 and looking at the major decisions in our introduction
8 there, is it possible that that decision as you understand
9 it might have been affected by six point four and six point
10 four (a)?

11 MR. OUTTEN: I object, Your Honor. Again --

12 THE COURT: I sustain the objection.

13 MR. JELLENIK: All right.

14 Q. With respect to - Did the closing take place on
15 December - did - Did the closing of the sale of the Areas
16 take place?

17 A. Yes in December.

18 Q. And what date?

19 A. I - It was December of that year. I think it was
20 December the 7th as I - but I'm not sure about the exact
21 date.

22 Q. All right.

23 A. I think.

24 Q. We - we can - We can look at the closing documents, I
25 guess, but ---

1 A. December of 2007.

2 Q. --- does December 12th ring a bell?

3 A. Sounds reasonable.

4 Q. And did the Amendment to Contract that we just looked
5 at require the partition action to be filed against the
6 Burton Trust thereafter, as you understood?

7 A. Well, the amendment said resolution of the conflict
8 with it and I would assume that success with the partition
9 would meet that requirement.

10 Q. Did --

11 A. The other requirement and again, I am not an attorney,
12 I'm sorry, would be for the Burtons to agree to sign the
13 Quitclaim Deed.

14 Q. But as it happened?

15 A. They did not.

16 Q. Suit was filed against them?

17 A. I'm sorry?

18 Q. I'm sorry. The partition action was filed against
19 them; is that correct?

20 A. Yes, to my knowledge.

21 Q. And did Mr. Pitts file that suit on behalf of the
22 petitioners in there?

23 A. I recall so, yes.

24 Q. And represented the petitioners as that action went
25 forward?

1 A. I'm sorry?

2 Q. And did he continue for some period of time to
3 represent the petitioners as that action got prosecuted?

4 A. No.

5 Q. I understand - Oh, well, let me ask again. Between
6 the time that it was filed - - Let me do it this way.

7 A. Yes, sir.

8 Q. After the - After that petition was filed, did there
9 come a time when Mr. Pitts withdrew?

10 A. Withdrew?

11 Q. From - As your attorney? As the attorney for the
12 people who sued?

13 A. He - Well, yeah, after he filed the petition he took
14 no further --

15 Q. Do you recall how long after?

16 A. I guess the same month, because the deal was done.

17 Q. All right. We will talk about that later. We will -
18 We will deal with that --

19 A. The activity of - of Mr. Pitts, I think, ended with
20 that petition.

21 Q. All right. Did the partition action go as smoothly as
22 you expected it to?

23 A. Excuse me. The - Nothing went smoothly but, in
24 particular, your question about the partition, smoothly. I
25 do not know how to answer that question. Now, it - It

1 that went as expected?

2 A. And the answer is no. I recall that yes, sir. The
3 answer was no. I recall that conversation.

4 Q. Was the result of that what you had expected? Was the
5 result of the partition action what you had expected?

6 A. No, I expected it to be signed unanimously.

7 Q. And I think the question I was asking when we broke
8 was what was spent on your side in the action amount to
9 more than what you expected?

10 A. Yeah, I recall you asking me that yes, sir.

11 Q. And the - I'm sorry, the answer?

12 A. Well, it was less.

13 Q. And - And in other words, the legal fees and costs
14 were less than you expected them to be?

15 A. Yes.

16 Q. Okay. Do you recall a mediation?

17 A. Yes.

18 Q. And do you recall as part of the mediated - And the
19 case settled as a result of that mediation?

20 A. There - Of course, there were two mediation's and
21 neither one settled the issue as I recall. The two
22 mediation's that were held in Columbia?

23 Q. Yeah.

24 A. Yeah.

25 Q. And you don't recall either of those mediation's

1 settling ---

2 A. No.

3 Q. --- the case?

4 A. No, sir.

5 Q. Okay. You've already testified, I think, that Mr.
6 Pitts did not invoice the LLC for his legal fees related to
7 that, related to the partition action; is that correct?

8 A. The only bill I got from Mr. Pitts, I believe, was in
9 July of 2007 and that's - was for preparing the documents
10 for me to run the LLC.

11 Q. All right. And - and was the - Excuse me for a
12 minute.

13 MR. JELLENIK: Excuse me for just a moment, please.

14 All right.

15 Your Honor, at this point, I'm going - I'm
16 anticipating Mr. Outten. At this point, I'm going to
17 present or I'm leading up to presenting the witness with
18 some invoices, but I believe that Mr. Outten may want to
19 make a comment about that before I do it.

20 MR. OUTTEN: I don't know what invoices that he's
21 going to present.

22 THE COURT: All right. Let's move forward and if he
23 has any objection, he'll object to them as they come in.

24 MR. JELLENIK: All right.

25 Q. Mr. Cato, do you recall an attorney by the name of

1 Brian McCoy?

2 A. Yes, sir.

3 Q. And do you recall an attorney by the name of Lucy
4 McDo?

5 A. Yes, sir.

6 Q. After Mr. Pitts left your lawsuit, were they in it?

7 A. The question was after Mr. Pitts left the lawsuit?

8 Q. Left the partition action. When he withdrew, did Mr.
9 McCoy and Ms. McDowell come into the suit at that time?

10 A. Take -- they - Well, let me just tell you what I know
11 about 'em. Lucy McDow became the LLC attorney, and Brian
12 McCoy became the attorney representing the heirs as
13 individuals.

14 Q. And did they present invoicing?

15 A. Yes.

16 MR. OUTTEN: Your Honor, I object. The invoices which
17 were paid have nothing to do - have no relevance to this
18 case.

19 THE COURT: All right. Well, subject to the
20 objection, I'll take that under consideration, but I'll
21 allow you to go ahead and present them.

22 MR. JELLENIK: Thank - Thank you, Your Honor.

23 Q. I'm sorry, Mr. Cato. I did not know if you had a
24 chance to answer?

25 A. Your question as I recall it just now was, did the

1 attorneys McCoy and McDow submit invoices to me ---

2 Q. For --

3 A. -- and the answer was yes.

4 Q. Okay. And were those invoices paid?

5 A. Yes.

6 Q. And were they paid basically either by or reimbursed
7 by or to you by the LLC, T.E. Cato Estate, LLC?

8 A. And - In this particular example of McCoy and McDow,
9 checks were written to them without me fronting.

10 Q. Okay. So this was directly by the LLC?

11 MR. OUTTEN: Your Honor, forgive me for interrupting,
12 but I need to make sure the record reflects that my
13 objection is that the Burton Trust cannot pursue a
14 derivative action on behalf of Cato Estate, LLC. That is
15 the reason why these invoices are not relevant, Your Honor,
16 and there are a number of legal reasons for that and - and
17 the first one is if you look at their complaint, they say
18 two things.

19 One they say, well, the Deed was executed before the
20 LLC was formed. And they say the statute regarding all or
21 substantially all of the assets was violated. Those are
22 the only two allegations they made at bringing this
23 derivative action.

24 Your Honor's already ruled on the effectiveness of the
25 conveyance into the LLC. There's an Order, and I believe

1 partition litigation and did not participate in discovery
2 relating to those claims."

3 And so when the Burton Trust made a Motion to Amend
4 they were trying to do several things. They were trying to
5 add Josh Vann and Morton & Gettys and they were trying to
6 add claims that they say they have as a result of this
7 Assignment Agreement. Your Honor ruled that they - denied
8 their motion to add those claims, so based upon this
9 ruling, and I'll be glad to have - Do you want me to hand
10 this up?

11 THE COURT: Yeah, you can hand it up. I do remember
12 that now. Now --

13 MR. OUTTEN: May I approach, Your Honor?

14 THE COURT: Yeah. And we'll let Mr. Jellenik have his
15 turn.

16 All right. Yes, sir.

17 MR. JELLENIK: Thank you, Your Honor. The motion that
18 Mr. Outten had mentioned originally was a different motion.
19 I agree that what he just read was part of the motion to
20 join, but his argument in opposition to that motion as I
21 recall was the prejudice argument that he just mentioned.
22 But that's a different topic than whether the LLC has a
23 right to recover for its expenses and it's attributable to
24 the extent they're shown to be attributable to legal
25 malpractice or professional negligence. It's a different

1 issue.

2 THE COURT: All right. Proceed.

3 MR. JELLENIK: All right. Thank you, Your Honor.

4 All right. In - In view of Mr. Outten's agreement to
5 not contest authentication or any of that sort of thing,
6 I'm going to proceed directly to see if we can do this as
7 Exhibit Thirty-two. Thirty-two.

8 Do you want to look at the exhibit book?

9 MR. OUTTEN: Your Honor, I want to make sure the
10 record is clear that these were never produced to me in
11 discovery. I'm - I'm seeing these for the first time
12 despite proper requests for production of documents asking
13 for all documents related to damages despite
14 interrogatories asking them about their damages.

15 The only interrogatory that they served regarding
16 damages said something like they had \$140,000 in costs and
17 had never even mentioned legal fees, so they've not
18 complied with their discovery obligation and that's another
19 objection.

20 I've never seen Ms. McDow's bills or summary of her
21 bills and the same with Mr. McCoy.

22 THE COURT: Okay.

23 MR. JELLENIK: And if I may, Your Honor?

24 THE COURT: Yes.

25 MR. JELLENIK: With respect to that, that may well be

1 true and I'm not necessarily contesting whether Mr. Outten
2 has ever seen these before, but in discovery proceedings,
3 Mr. McMaster, as I understand it, responded to discovery
4 indicating that opposing counsel was invited to inspect and
5 make copies of anything in his file, and I don't think that
6 ever happened. And that if need be, I can --

7 Go ahead. You obviously want to say something.

8 MR. OUTTEN: Well, I don't -- I don't remember that,
9 but, Your Honor, we have yet another situation where
10 Robinson Bradshaw and Carroll Pitts are being presented
11 with documents that they say they want to claim as damages
12 for the first time during the trial of the case and that's
13 prejudicial to us and we object to them on that basis.

14 THE COURT: Go ahead.

15 MR. JELLENIK: I'm sorry. This -- As far as I know,
16 the Complaint in this matter, I've been asked the reason
17 this suit was brought was -- originally, was to recover the
18 legal fees involved in the partition action and that's what
19 we're talking about. We're not talking about anything in
20 this case. We're talking about the partition action.

21 And again, I can direct Your Honor to the exhibit if
22 you'll give me a moment. I've got to find it, but I think
23 this is it and -- and if I can direct you to Exhibit Thirty-
24 four? Yeah. Exhibit 34 -- And I apologize, there are three
25 different discovery documents that's in here and it's the

1 them for I.D. only at this point subject to my ruling.

2 MR. JELLENIK: All right. Thank you, Your Honor.

3 MR. OUTTEN: Yes, sir.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THIRTY-TWO,
5 PREMARKED FOR IDENTIFICATION.)

6 Q. Mr. Cato, - Oh, I'm sorry, go ahead. Take your time
7 and --

8 A. Sorry. I was doing two things at once. Sorry.

9 Q. And these are the invoices, the McCoy and the McDow
10 invoices and Mr. Pitt's initial invoices? These are the
11 ones that were paid by the LLC; is that correct?

12 A. Yes, eventually.

13 Q. Okay. Thank you.

14 MR. JELLENIK: Now, do you have Exhibit Thirty-three?

15 A. May I correct that answer to you? There's some detail
16 about the Pitts' invoice. There were no - there's no money
17 in the LLC at that time, no cash.

18 Q. Are we talking about the \$2,169.30 or are we talking
19 about something else?

20 A. Two thousand. The only invoice I ever got from Pitts,
21 the two thousand ---

22 Q. So was that --

23 A. --- two thousand ---

24 Q. Take your time.

25 A. --- \$2,169.30. I paid that out of my personal check

1 Mr. Cato, what is that document as you're - as - as
2 you're looking at it?

3 A. It says, "Exhibit Thirty-two. Cato vs. Burton Legal
4 Fees and Costs."

5 Q. All right. And do you see listings for Ms. McDow ---

6 A. Yes.

7 Q. --- and Mr. McCoy?

8 A. Yes.

9 MR. OUTTEN: The same objection on the grounds stated,
10 Your Honor.

11 THE COURT: Yes, sir. Noted.

12 MR. JELLENIK: And - And we accept the objection. You
13 know, we understand the objection.

14 THE COURT: Just running throughout the ---

15 MR. JELLENIK: Yeah.

16 THE COURT: --- presentation ---

17 MR. JELLENIK: Yes.

18 THE COURT: --- regarding these attorney's fees.

19 MR. JELLENIK: Obviously, we disagree with it, but we
20 understand the - the objection is there.

21 Q. With regard to Ms. McDow, Mr. McCoy and Mr. Pitts is
22 down lower and there's - there's nothing - I'll visit him
23 directly, but Ms. McDow and Mr. McCoy, are those in - those
24 are a breakdown of their fees and costs and total invoiced
25 as I understand it from your testimony, is it correct that

1 those invoices were paid?

2 A. Yes, sir.

3 Q. All right. And am I - Oh, I'm sorry.

4 Am I also correct that Mr. McCoy and Ms. McDow's
5 efforts on this lasted from roughly mid-2010 until the case
6 was settled in - in May of 2013, the year May of 2013?

7 A. Until the dissolution of the LLC yes, sir.

8 Q. That would have been June of 2013, if I remember
9 correctly. I think Mr. - Mr. Outten was correct on that.

10 Somewhere ---

11 A. May --

12 Q. --- somewhere in mid-2013?

13 A. --- May of - I think it was May yes, sir.

14 Q. Okay. All right.

15 MR. JELLENIK: Your Honor, in view of that, two of the
16 witnesses, understanding that it's subject to Mr. Outten's
17 objection and your decision on that, two of the witnesses
18 that we had intended to call, mainly Mr. McCoy and Ms.
19 McDow, I'm not sure there's a reason to call anymore, so we
20 can save some time that way.

21 THE COURT: All right.

22 MR. JELLENIK: All right. All right.

23 Excuse me for just a moment, Your Honor. Let me just
24 look at something. I need to look at a couple of things
25 and I'll be right there.

1 happened?

2 THE COURT: Aware of what?

3 A. Yes, sir.

4 THE COURT: Aware of it. Aware of it.

5 A. Yeah.

6 MR. JELLENIK: Amendment to Contract.

7 A. I don't recall.

8 Q. Okay. That's fine. And was she aware of the closing
9 on December 12 before December 12?

10 A. I had sent her documents suggesting that we were going
11 to have to modify the sale contract, and the question was
12 did I notify her of the final closing date? What was your
13 question?

14 Q. If you - Now we can do this I guess. I'm sure it
15 won't take long.

16 A. I think that was a double question, too.

17 Q. But - yeah. I'm going to give you a - an exhibit
18 number in a minute if I can find it.

19 Do you recall sending Mrs. Burton and email on
20 December 12, the day of the closing?

21 A. I don't recall at this time but ---

22 Q. Well, let me help you a little bit.

23 A. --- you could refresh my memory. Thank you.

24 Q. Take if you would, look at the exhibit book and refer,
25 if you would, to Exhibit Twenty-seven?

1 A. Yes, I have it.

2 Q. Okay. And it's - is that labeled Exhibit 107.1 in the
3 upper right-hand corner?

4 A. Yes, sir.

5 Q. Is that from the Big - Big White Book?

6 A. The Big White Book yes, sir.

7 Q. All right. Would - Would you take a moment and --

8 MR. JELLENIK: First, we'd ask that this be marked for
9 identification as Exhibit Twenty-seven, Plaintiff's Exhibit
10 Twenty-seven.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWENTY-SEVEN,
12 PREMARKED FOR IDENTIFICATION.)

13 Q. And, secondly, sir, I would ask that you take - take
14 your time and take a look at this document so you can
15 testify about it.

16 A. Yes, I've read it again.

17 Q. All right. What is the impasse that you were
18 referring to in the first line?

19 A. The refusal of the Burtons to sign the Quitclaim Deed
20 for the old roadbed.

21 Q. Okay. And does this - Is this the communication you
22 referred to a moment ago when you said you sent her
23 something telling her you were going to be doing it?

24 A. Well, it's certainly one of them, but I don't know
25 what - I don't know about any others, because I think one

1 of the questions you asked me was had I informed her prior
2 to the renegotiation.

3 Q. Had you informed her prior to the Amendment to
4 Contract or prior to the closing other than this email
5 approaches the day of the closing?

6 A. Well, I - As I said, I didn't talk to her. I wasn't
7 able to get in touch with her ---

8 Q. Okay.

9 A. --- for almost six months.

10 Q. All right.

11 A. The - But I sent a mail - email. I don't know the
12 answer to your question.

13 Q. All right. That's fair enough.

14 A. But I'm - I'm sure that everybody, each and every one
15 of the heirs knew that - that the contract had fallen
16 through because of the old roadbed issue of eighty - eighty
17 percent signing and twenty percent not. So the
18 renegotiation of the purchase contract and the acceptance
19 of \$900,000 instead of one million was communicated to each
20 and every person, but I don't know - recall how I did it or
21 when I did it.

22 Q. Okay. After sometime that day, but after this email
23 was sent, Exhibit Twenty-seven was sent, did the purported
24 sale or the closing for the purported sale of the Areas
25 occur?

1 A. Yes.

2 Q. Okay. And who's the closing attorney for that?

3 A. Josh Vann.

4 Q. Was there any other attorney present at that time?

5 A. No, sir.

6 Q. All right. Now you had testified earlier, and I want
7 to make sure I'm saying this right, so if I'm not, let me
8 know. I believe you testified earlier that Mr. Pitts had
9 worked with you throughout 2007?

10 A. Yes.

11 Q. Okay. Was Mr. Pitts involved with you during the
12 negotiation and at least during the period of time
13 reflecting the closing and the Amendment to Contract?

14 A. No.

15 Q. When did he not work with you?

16 A. Well, I - I consulted him from time to time to make
17 sure I was doing the right thing. The specifics about the
18 negotiation, he was not there and I didn't discuss that
19 with him in detail, because it occurred on-the-spot.

20 Q. You're talking about --

21 A. With the final negotiation for the - through the
22 backing off of the - the retention of the \$100,000 by the
23 Thomason interest.

24 Q. Had you had an opportunity to consult with him about
25 the Amendment to Contract?

1 A. I think. I'm not sure. I - I probably would have to
2 tell him that we were going to try to renegotiate that, so
3 I think so.

4 Q. And that would have been part of what you disused with
5 him pursuant to the representation that you'd started back
6 at the beginning of the year?

7 A. Yeah. I - I tried to keep him informed either by
8 emails - copies of emails as you can see about what was
9 going on.

10 Q. All right. And with respect to - to the - Do you know
11 whether or to what extent he was involved in the closing
12 itself?

13 MR. OUTTEN: Your Honor, I object. He's - He's
14 answered this question that Mr. Pitts wasn't involved in
15 the closing three separate times, and he's answered
16 questions about when he consulted with Mr. Pitts and he
17 wasn't consulting with him - consulting with him at this
18 time. He keep asking the same question again and again. I
19 object.

20 MR. JELLENIK: I believe that I asked whether Mr.
21 Pitts attended the closing.

22 THE COURT: All right. Go ahead.

23 MR. JELLENIK: And - And what I'm asking him is do you
24 know whether he ever reviewed any closing documents.

25 THE COURT: Well, that's two questions.

1 Quitclaim Deed, then the closing which occurred on December
2 the 12th, 2007 could have closed the sale to Thomason
3 completely and there would have been no partition action
4 and probably we wouldn't be here this afternoon.

5 So the Burton Trust only represents twenty percent
6 interest in the LLC. They can't bring a derivative action.
7 That is an additional ground to the fact that the grounds
8 they allege are - have - have been mooted.

9 Now, we briefed this issue and with Your Honor's
10 permission, I'd like to approach the bench, we have a bench
11 brief on this issue we'd like the Court to consider. We
12 have one for Plaintiff's Counsel, as well, but we'd like
13 you to look at it because depending upon Your Honor's
14 ruling on this issue, it could cut short a lot of the
15 presentation of evidence. May I approach --

16 THE COURT: You may approach, and I'll take it under
17 advisement, but I'm going to allow him to make a proffer.

18 But that's in any event, so I've taken it under
19 advisement.

20 MR. OUTTEN: Your Honor, one final issue ---

21 THE COURT: Okay.

22 MR. OUTTEN: --- that I want to get on the record is.

23 THE COURT: Okay.

24 MR. OUTTEN: The LLC is dissolved sometime in June of
25 2013. If I have the date wrong, it's not on purpose. The

1 Articles of Dissolution, I think, have been introduced.
2 This LLC is dissolved. There is no LLC to bring a
3 derivative action on behalf of, and so for all those
4 reasons, Your Honor, they don't have a derivative claim on
5 behalf of the LLC.

6 And what you'll see Your Honor is Judge Michelle
7 Childs wrote a long opinion on this, and one of the things
8 that she said is, you can't bring a direct action and a
9 derivative action, you got to choose. You're either a
10 member bringing a direct action or you're bringing a
11 derivative action, but you can't do both. And that's what
12 they're trying to do in this case, and Judge Child's
13 opinion is attached to our trial brief and - and I would
14 ask Your Honor to read it when you have a moment and
15 consider it, because you can't do procedurally what they're
16 trying to do in this case.

17 So for all of those reasons, Your Honor, we object to
18 introduction of evidence regarding the bills of Ms. McDow
19 and Mr. McCoy. And in order to cut short this
20 presentation, I'm not going to ask that the bills be
21 authenticated or - I'm not objecting to whether or not the
22 services were reasonable and necessary. I know Mr. McCoy
23 and Ms. McDow are both fine lawyers, so I don't have any of
24 those issues if that helps move it along. Thank you.

25 THE COURT: The only issue is they're not relevant?

1 And if memory serves me correctly, the derivative
2 action was brought pursuant to a specific division of the
3 LLC Act. So that's my comments on that for the moment and
4 it was our understanding what would be compliant with the
5 Act. This is the --

6 THE COURT: That - You did reference the statutory
7 provision?

8 MR. JELLENIK: Yeah. And this is the first time I've
9 heard anything about this.

10 THE COURT: Well, go ahead.

11 MR. JELLENIK: Yeah. The fact that the LLC was
12 dissolved, again, it wasn't dissolved when this whole thing
13 started, but in addition to that, as part of the settlement
14 agreement, and I believe the Court is aware of this, but as
15 part of the settlement agreement, what assets and
16 everything else except cash that the LLC had was
17 transferred by the combination of the settlement agreement
18 and the assignment agreement and whatever other papers were
19 signed at the time to - to the Burton's Trust.

20 THE COURT: Are you saying that the - the assignment
21 predated the dissolution of the LLC ---

22 MR. JELLENIK: Oh, yes.

23 THE COURT: --- so it survived the dissolution?

24 MR. JELLENIK: It had to predate the dissolution of
25 the LLC, because ---

1 THE COURT: I - I know ---

2 MR. JELLENIK: --- they signed the settlement
3 documents, but yes.

4 THE COURT: --- but - but the point is that because of
5 that, it survived. That - That cause of action survived
6 ---

7 MR. JELLENIK: Uh-huh.

8 THE COURT: --- not as an asset of the LLC ---

9 MR. JELLENIK: Yes.

10 THE COURT: --- but as an assignment to the Trust.

11 MR. JELLENIK: Yes. And of a then pending action;
12 that's correct.

13 THE COURT: Go ahead.

14 MR. JELLENIK: All right.

15 MR. OUTTEN: Your Honor, forgive my interruption, but
16 but again, I need to make - I need to make a record. Here,
17 I'm reading from your Order dated 10/22/2013 - and we
18 discussed this in Chambers - and you say in the second to
19 last paragraph, "In regard to the Assignment Agreement
20 assigning relative claims, the Court finds that allowing
21 these claims would also prejudice Mr. Pitts and Morton and
22 Gettys, because these parties were not involved in the
23 partition litigation and did not participate in discovery
24 relating to those claims."

25 And so when the Burton Trust made a Motion to Amend

1 they were trying to do several things. They were trying to
2 add Josh Vann and Morton & Gettys and they were trying to
3 add claims that they say they have as a result of this
4 Assignment Agreement. Your Honor ruled that they - denied
5 their motion to add those claims, so based upon this
6 ruling, and I'll be glad to have - Do you want me to hand
7 this up?

8 THE COURT: Yeah, you can hand it up. I do remember
9 that now. Now --

10 MR. OUTTEN: May I approach, Your Honor?

11 THE COURT: Yeah. And we'll let Mr. Jellenik have his
12 turn.

13 All right. Yes, sir.

14 MR. JELLENIK: Thank you, Your Honor. The motion that
15 Mr. Outten had mentioned originally was a different motion.
16 I agree that what he just read was part of the motion to
17 join, but his argument in opposition to that motion as I
18 recall was the prejudice argument that he just mentioned.
19 But that's a different topic than whether the LLC has a
20 right to recover for its expenses and it's attributable to
21 the extent they're shown to be attributable to legal
22 malpractice or professional negligence. It's a different
23 issue.

24 THE COURT: All right. Proceed.

25 MR. JELLENIK: All right. Thank you, Your Honor.

1 indicating that opposing counsel was invited to inspect and
2 make copies of anything in his file, and I don't think that
3 ever happened. And that if need be, I can --

4 Go ahead. You obviously want to say something.

5 MR. OUTTEN: Well, I don't - I don't remember that,
6 but, Your Honor, we have yet another situation where
7 Robinson Bradshaw and Carroll Pitts are being presented
8 with documents that they say they want to claim as damages
9 for the first time during the trial of the case and that's
10 prejudicial to us and we object to them on that basis.

11 THE COURT: Go ahead.

12 MR. JELLENIK: I'm sorry. This - As far as I know,
13 the Complaint in this matter, I've been asked the reason
14 this suit was brought was - originally, was to recover the
15 legal fees involved in the partition action and that's what
16 we're talking about. We're not talking about anything in
17 this case. We're talking about the partition action.

18 And again, I can direct Your Honor to the exhibit if
19 you'll give me a moment. I've got to find it, but I think
20 this is it and - and if I can direct you to Exhibit Thirty-
21 four? Yeah. Exhibit 34 - And I apologize, there are three
22 different discovery documents that's in here and it's the
23 second one, and they didn't have time make 34 A, B and C
24 which would have made this easier, so I apologize.

25 But what would have been B is a March 15, 2012 letter

1 from Mr. McMaster's office, March 15, 2012, to Mr. Outten
2 at Womble Carlyle and it includes Plaintiff's responses to
3 Defendant's Request for Production. The general response
4 is, "Unless otherwise specified and in answer to the
5 specific request, all documents requested to the extent
6 they exist, are available for inspection and copying at the
7 offices of Tompkins & McMasters," with an address, "and
8 will be produced for such inspection in the manner in which
9 they are kept in the usual course of business."

10 MR. OUTTEN: That doesn't relieve the Plaintiff of
11 their obligation, number one, Judge, to produce them and
12 number two, to identify them in the Interrogatories.

13 Again, I'm seeing this for the first time in trial.. I
14 don't dispute if George says he sent me that letter, then -
15 then - then I don't dispute it but, nevertheless, these
16 documents were never produced to me. And I've got a
17 Request for Production that I'm happy to find and hand up
18 to the Court that says produce all documents which you
19 allege support your claim for damages, and I don't have
20 'em. If I had 'em, then I would not be making this
21 objection.

22 And the other thing is this summary they put up
23 apparently includes \$139,000 of - of fees from Mr.
24 Jellenik. I've never seen one bill from Mr. Jellenik. I
25 told - I've told - I told him that again and again and

1 again during discovery, "Roger, if you're going to claim
2 your fees, then you need to send me copies of your bills"
3 and I have a right to review them, and then I have a right
4 to defend. Maybe I have a right, although it'd be very
5 unusual to depose someone about their fees, but I've never
6 seen any of this. This letter doesn't relieve Mr. McMaster
7 of his obligation to respond to discovery.

8 THE COURT: All right. Well, let's go forward with
9 the presentation of these and we'll - I'll digest them.

10 MR. JELLENIK: Just very, very briefly, I believe that
11 rule - I think Mr. McMaster's response is consistent with
12 Rule 34. That's all I'm gonna say. All right.

13 And, again, I'm going to apologize to everybody, but
14 because of the - what we've been doing --

15 Do we have this in the database?

16 I've got copies and let me show 'em to - Just a
17 second, let me make sure. I've got to show 'em to him.

18 Q. Mr. Cato, I'm bringing you a lot of paper.

19 A. Oh, thank you.

20 Q. I knew you'd wonder. Would you please look at these
21 invoices and let's start, if I may, is there an invoice on
22 top of one of those stacks from Mr. Pitts for \$2,169.30, I
23 think?

24 A. Yes, sir.

25 Q. Is - Is that an invoice that you recall being

1 submitted by Mr. Pitts?

2 A. Yes.

3 Q. And could you describe briefly to the Court what that
4 invoice was for?

5 A. It was for the services that I had asked him to
6 perform in setting up the three major documents for the
7 LLC.

8 Q. Okay. Did - You've indicated that Mr. Pitts
9 represented you throughout 2007. Were there any other
10 invoices? Before the lawsuit, were there any other
11 invoices submitted to you for work performed by Mr. Pitts
12 during the year 2007 other than the one you're holding?

13 A. No.

14 Q. All right. Thank you. If I can suggest you leaf that
15 one back and you should be looking at another stack, okay,
16 and you can see the clips on the top?

17 A. Yes, sir.

18 Q. And the next stack, I believe, is Mr. McCoy's
19 invoices?

20 A. Yes.

21 Q. And they are from two sets of - of people or two - two
22 sources I should say. One is for Horack Talley which was a
23 law firm that Mr. McCoy worked for when he started
24 rendering services in this case ---

25 A. I agree.

1 Q. And that would have been part of what you disused with
2 him pursuant to the representation that you'd started back
3 at the beginning of the year?

4 A. Yeah. I - I tried to keep him informed either by
5 emails - copies of emails as you can see about what was
6 going on.

7 Q. All right. And with respect to - to the - Do you know
8 whether or to what extent he was involved in the closing
9 itself?

10 MR. OUTTEN: Your Honor, I object. He's - He's
11 answered this question that Mr. Pitts wasn't involved in
12 the closing three separate times, and he's answered
13 questions about when he consulted with Mr. Pitts and he
14 wasn't consulting with him - consulting with him at this
15 time. He keep asking the same question again and again. I
16 object.

17 MR. JELLENIK: I believe that I asked whether Mr.
18 Pitts attended the closing.

19 THE COURT: All right. Go ahead.

20 MR. JELLENIK: And - And what I'm asking him is do you
21 know whether he ever reviewed any closing documents.

22 THE COURT: Well, that's two questions.

23 MR. JELLENIK: I'm sorry.

24 THE COURT: Break it down into two.

25 BY MR. JELLENIK:

1 ask Mr. Pitts to provide additional legal services other
2 than what you and I have just discussed?

3 A. To my knowledge, none of the heirs had any contact
4 with him for any reason.

5 MR. JELLENIK: Your Honor, I --

6 Excuse me. I need to object a little bit in here,
7 because what Mr. Outten is doing is leading Mr. Cato to
8 testify to the some extent to the opposite ---

9 THE COURT: Well, it's cross-exam --

10 MR. JELLENIK: --- of what he testified --

11 THE COURT: It's cross-examination.

12 MR. JELLENIK: No, I am not objecting to the leading,
13 but he's leading him to do exactly the opposite of what he
14 has already testified to twice during direct.

15 THE COURT: Well, it is - It's not unusual for us to
16 have witnesses whose testimony is not consistent. I always
17 instruct the juries that's one of the things they look for
18 when they consider the witness's testimony and that's one
19 of the things I'll consider also.

20 MR. JELLENIK: All right. Thank you, Your Honor.

21 BY MR. OUTTEN:

22 Q. In other words, Mr. Cato, the legal services that
23 Carroll Pitts provided were pursuant to your direction.
24 Correct?

25 A. Yes, sir.

1 Q. And no other member, no other member of Cato Estate,
2 LLC, and no other heir ever met with or communicated with
3 or asked Mr. Pitts to provide any legal services to your
4 knowledge. Correct?

5 A. Correct.

6 Q. All right. Now, Mr. Pitts accomplished the tasks that
7 you asked him to perform. Correct?

8 A. Yes, sir.

9 Q. And, Mr. Cato, you don't have any complaints about the
10 legal services which Carroll Pitts provided to you, do you?

11 A. No, sir.

12 Q. And Mr. Pitts was never asked to represent any other
13 heir. Correct?

14 A. No, sir. Not - not by me.

15 Q. And Mr. Pitts was never asked to represent any other
16 member of the LLC. Correct?

17 A. That's correct.

18 Q. All right. Now --

19 MR. OUTTEN: May I approach the witness, Your Honor.

20 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER ONE, PREMARKED
21 FOR IDENTIFICATION.)

22 Q. Let me hand you what's been marked as Defendant's
23 Exhibit One, Mr. Cato, and I believe you just looked at it
24 in response to one of Mr. Jellenik's questions.

25 A. Yes.

1 Q. But if you would, please, what is it?

2 A. It's a bill from Robinson, Bradshaw and Hinson for
3 services by Carroll Pitts ---

4 Q. All right.

5 A. --- to me.

6 Q. And the bill is sent to T.E. Cato Estate, LLC, care of
7 James Thomas Cato. Right?

8 A. Yes, sir. Yes, sir.

9 Q. All right. Now, we just talked about those legal
10 tasks you asked Mr. Pitts to perform. Do you remember
11 that?

12 A. Yes, sir.

13 Q. Is this a narrative consistent with that?

14 Take a minute and look at it, please.

15 A. Yes, sir.

16 Q. All right. It says, "Draft, revise and complete
17 Operating Agreement and Application for Articles. File
18 with Secretary of State. Research ownership of GIS.
19 Records of the Clerk of Court and Probate Court. Prepare
20 Deed. Receive and record. Retrieve, draft and forward EIN
21 application. Meeting and conversation with Tom Cato. Four
22 documents to Tom Cato." Did I read that accurately?

23 A. Yes, sir. That's exactly what it says.

24 Q. And in response to the first several questions I asked
25 you, is that what you told me earlier that Mr. Pitts was

1 asked to do by you?

2 A. Yes, sir.

3 Q. And that's what you got a bill for. Correct?

4 A. Yes, sir. This bill.

5 Q. All right. And if you turn over to the second page of
6 what we marked as Exhibit One, there is a check. Do you
7 see that?

8 A. Yes, sir.

9 Q. And is that drawn on your account?

10 A. Yes, sir.

11 Q. All right. And that's in payment of this statement
12 for \$2,169.30. Correct?

13 A. Yes, sir.

14 Q. And in the For column it says, "For T.E. Cato Estate,
15 LLC, 2/7/2007." Do you see that?

16 A. Yes, sir.

17 Q. All right. And, again, other than a few conversations
18 and keeping him in the loop, for instance CC'ing him on a
19 email, these things represented by this statement marked as
20 Defendant's Exhibit One represent what Carroll Pitts was
21 asked to do with regard to this commercial transaction; is
22 that right?

23 A. Yes, sir. This was what I asked him to do.

24 Q. And you were asked several times by Mr. Jellenik about
25 who Mr. Pitts represented, and I --I know you've been asked

1 a lot of legal questions today, so if I'm asking you
2 another one, then I apologize. You said individually, do
3 you remember that? You testified that Mr. Pitts
4 represented you individually?

5 A. Yes, sir.

6 Q. And now, again, I'm not trying to split hairs with
7 you, but is it fair to say individually as your - as
8 manager of the Cato Estate, LLC, as opposed to individually
9 handling your estate plan?

10 A. Correct. Yeah.

11 Q. All right.

12 A. Me being the general manager being one and the same,
13 me and the general manager.

14 Q. Right.

15 A. He - he was - He was tasked by me to do it.

16 Q. Right. And when you first came to him there was no
17 LLC formed, that's one of the reasons why you went to Mr.
18 Pitts' office. Right?

19 A. That is correct. But in the past, Marvin Burton had
20 sent out suggestions on formal corporations that nobody
21 took him up on ---

22 Q. Okay.

23 A. --- and - And several other kind of organizations, I
24 think. But the conversation I had with Mr. Pitts in early
25 2007 was of the different kinds of organizations to set up,

1 Yes, sir.

2 MR. JELLENIK: Objection.

3 MR. OUTTEN: I'm sorry.

4 MR. JELLENIK: First of all, I believe Your Honor
5 issued an Order on this. I may be off, but I want to say
6 January 20, 2012, but after - 2012. Somewhere in there, I
7 believe, that ruled that without settling the issue at all,
8 you know altogether, ruled that substantially all the
9 assets appeared to be involved in this. So this is not - I
10 understand why Mr. Outten is doing this. He has made the
11 point before that you have ruled on some issues and this is
12 one, but the question as far as we are concerned, and I
13 don't know a delicate to put this, but the question as far
14 as we are concerned is not whether Dale Dove was exactly
15 right or exactly wrong. The question is whether the
16 documents left the door open to people not knowing what was
17 supposed to happen.

18 In addition to that, if I remember correctly, the
19 Letter of Intent was for all remaining lands or all
20 remaining acreage or something of that nature, and then it
21 listed the Areas, but the introduction to that was all
22 remaining acreage, but in any event.

23 THE COURT: Did the Thomasons buy the five lots?

24 MR. OUTTEN: No, sir.

25 THE COURT: Okay. All right. Go ahead.

1 MR. OUTTEN: May I approach the witness?

2 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER THREE,
3 PREMARKED FOR IDENTIFICATION.)

4 Your Honor, I did not do this earlier. I move for the
5 admission of Defendant's Exhibit One which was the invoice
6 from Robinson, Bradshaw and Hinson and Defendant's Exhibit
7 Two which is a letter from counsel for Burton Trust into
8 evidence.

9 THE COURT: Any objection.

10 MR. JELLENIK: No objection.

11 THE COURT: Both in without objection.

12 WHEREUPON, DEFENDANT'S EXHIBITS NUMBER ONE AND TWO,
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 Q. Now, Exhibit - Defendant's Exhibit Three, do you
15 recognize that?

16 A. Yes.

17 Q. And do you see the part of the Deed where, again, I'm
18 not asking you for a legal opinion, where it talks about
19 the property that's going into the LLC?

20 A. Yes.

21 Q. Do you see the part where five lots are listed as
22 being conveyed into the LLC?

23 A. Yes, those were platted in individual lots and
24 restricted.

25 Q. And you knew at the time of the closing which occurred

1 on December 12th, 2007 that you were not selling those five
2 lots to Thomason. Right?

3 A. Yeah, Thomason's knew that also.

4 Q. Sir?

5 A. The Thomason's knew they were not buying those lots
6 also.

7 Q. Okay. Now, let me switch gears. As I understand it
8 the plan was to form an LLC, deed the property into it so
9 the property could be marketed and sold. Right?

10 A. Yes.

11 Q. Developers are reluctant to deal with several
12 different heirs to try to negotiate the sale of a piece of
13 property. Right?

14 A. Yes.

15 Q. And I believe I saw an email which was circulated
16 among the family members that used the phrase "herding
17 cats" to describe trying to market and sell property which
18 is owned by several different folks. Do you remember
19 seeing that?

20 A. That characterization of my work was underestimated.

21 Q. Okay. Now, Mr. Cato, the plan worked. Right?

22 A. Yes.

23 Q. The plan worked, because the property was sold to
24 Thomason Apartments, LLC, at a closing on December 12th,
25 2007. Right?

1 understanding is and you tell me if I got it right. The
2 net amount after payment of deed stamps and other costs was
3 \$886,000, does that sound right?

4 A. Yes, sir, it is.

5 Q. And as I understand it, you and your accountant had a
6 discussion about distributing some portion of those
7 proceeds and, ultimately, you decided to distribute seventy
8 percent; is that right?

9 A. The CPA, Mr. Martinson, cautioned me not to distribute
10 money at this time, because he was aware of dissension in
11 the family, and I insisted that it be done and I actually
12 exceeded his minimum - maximum recommendations when I
13 distributed seventy percent.

14 MR. OUTTEN: May I approach the witness, Your Honor?

15 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER FIVE, PREMARKED
16 FOR IDENTIFICATION.)

17 MR. OUTTEN: Your Honor, if I neglected to do so
18 earlier, I move for the admission of Exhibit Four, which is
19 the November 30th, 2007 email.

20 THE COURT: Any objection?

21 MR. JELLENIK: No.

22 THE COURT: In without objection.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER FOUR,
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 Q. Do you recognize what I just handed you which I think

1 we marked as Defendant's Exhibit Five?

2 A. Yes, sir.

3 Q. What is it?

4 A. It is the T.E. Cato Estate, LLC, check signed by me to
5 S.M. Burton and M.C. Burton A.B. Trust for \$124,200.

6 Q. As I understand it, this check for \$124,200 was sent
7 to Marjorie Cato Burton as trustee. Right?

8 A. Yes, sir.

9 Q. And this represented her twenty percent interest in
10 the proceeds; is that right?

11 A. Her twenty percent interest of the seventy percent
12 that was distributed.

13 Q. Right. And, Mr. Cato, Mrs. Burton negotiated this
14 check; that is, she cashed the check and kept the funds for
15 her twenty percent of those proceeds. Right?

16 A. That is correct, according to this on - Yes, because
17 that deposit thing's on here.

18 Q. Now, let me ask you about the settlement of the
19 partition action. As I understand it, Mr. Cato, the Burton
20 Trust received \$249,000 in settlement of the partition
21 action; is that right?

22 A. And also four building lots.

23 Q. Okay. Now, it's also my understanding that Cato
24 Estate, LLC, paid the Burton Trust a part of that 249, am I
25 right about that?

1 between what you have described as a market appraisal and
2 what an MI - MAI appraisal did?

3 A. I neglected an opportunity to comment on MAI. An
4 appraisal by someone not personally involved in the
5 property, that is spending their own capital and blah,
6 blah, blah, is a comparison of like properties adjusted
7 when there are dissimilarities to compare them to the
8 property being appraised done by a - usually on a chart
9 where value is taken away for this characteristic and - and
10 added by another characteristic in order to make them
11 comparable and I think the code word - the commonly used
12 term among real estate agents, if you will, is comparables.

13 Q. I'm sorry?

14 A. Comparables. And in the case of residential real
15 estate, they will go up and down the street in a
16 neighborhood of houses that have sold in the past and use
17 them as comparables and add or subtract for a fireplace or
18 a garage or whatever it is that one has and the other one
19 doesn't in order to get a comparable or comparable like
20 piece of property. And it's limited - limited, I think, in
21 residential real estate within things that are transferred
22 and titled in the last year or two.

23 In the case of - of a commercial property, I think it
24 would be a whole lot more complex, because they are
25 affected more by market conditions. In the example of the

1 property in Ebenezer, over the years, development has
2 bypassed that due to the build up on the Highway 161 known
3 - in that neighborhood known as the Celanese Bypass has
4 developed really well and the Dave Lyle Boulevard, I
5 believe, on the other side of that area. And they have
6 developed very well commercially, whereas Ebenezer Road
7 which used to be the main thoroughfare which is where this
8 property sits has been neglected over the years. And so
9 there are very - it's very difficult to find comparables
10 along there.

11 Now, when Bud Burton was the General Manager, he
12 discovered that the - there was a need for a sewage pumping
13 station in Area B, because the high point of sewage slope
14 is about six or eight blocks toward Rock Hill.

15 THE COURT: And I think we're getting a little --

16 Let's stop with the sewer and go to something else.

17 A. Yes, sir. Yes, Your Honor.

18 Q. Are you aware of the protocols of rules, if you will,
19 to be followed by MAI appraisers?

20 A. Not in detail.

21 Q. Are you aware that they exist?

22 A. Oh, certainly. I've seen it.

23 Q. Okay. When you get a market appraisal - When you got
24 the market appraisal ---

25 A. Yes.

1 Q. --- do you know whether those rules were followed?

2 A. There was no document, no pretty colored pictures in
3 it or anything, no. The - I asked the bidders who were
4 bidding against one another, in effect, to spend their own
5 money.

6 Q. And, in effect, were the bidders - Well, to the extent
7 that you understand what you were asking for ---

8 A. Yes.

9 Q. --- were they basically rating, in the cases of the
10 Thomasons, for example, ---

11 A. Yeah.

12 Q. --- were they basically evaluating the offer they were
13 making for the property?

14 A. Was I aware of what judgment they used?

15 Q. I'm sorry. I - I said given what you've said when you
16 asked the Thomasons for their number for this, were you
17 basically asking them to evaluate their offer on the
18 property versus what they felt that the property was worth?

19 A. Yes, sir. Well, what --

20 Q. And would you guess they have an interest in that?

21 A. Certainly they had an interest in it.

22 Q. So would you guess that that's not as objective as an
23 MAI independent appraisal might be?

24 A. Only in if they were forced to pay as much as they
25 could stand, because they were being bid - bidding against

1 can read it. Well, let me read it and maybe I can do this.

2 I 'm going to read part of it, okay? Well, just a moment.

3 Do you see the second entry, "Call to attorney" on

4 11/14/07?

5 A. Yes.

6 Q. Do you see that?

7 A. Tele --

8 Q. "Call to attorney re: Gaza Strip hold up."

9 A. Hold up a minute. I'm looking at - at your Exhibit
10 Number 17-B-003?

11 Q. Correct.

12 A. And what date?

13 Q. 11/14/07 --

14 A. It says --

15 Q. --- the third entry on the page.

16 A. It says, "Telecon Cathy."

17 Q. No, and - and - All right. Yes, it does. Now, go
18 down - Finish that line. You don't have to read it, but go
19 through that line and half the next line. Do you see in
20 the middle of the second line it starts out, "Call to
21 attorney?"

22 A. Yes.

23 Q. And did I read that correctly, "Call to attorney re:
24 Gaza Strip hold up?"

25 A. Yes.

1 Q. Is that correct?

2 A. Yes.

3 Q. And that's followed with "Telecon with buyers re: Gaza
4 Strip" and I guess that's, "possible lawsuit for specific
5 performance, et cetera.?"

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. "Telecon to LLC attorney about lawsuit liability" ;is
10 that correct?

11 A. Yes.

12 Q. Who is the LLC attorney that you were talking to?

13 A. Well, there was not an LL - an LLC - Well, let's see
14 when is that, November --

15 Q. The last line refers to the LLC.

16 A. Yeah, it refers - It refers to Carroll Pitts.

17 Q. And the call to attorney re: Gaza Strip hold up
18 starting in the second line was Carroll Pitts?

19 A. Call to attorney re: Gaza - the first one there was
20 probably to Josh Vann.

21 Q. Okay. So that was the Josh Vann?

22 A. I - I don't - Probably.

23 Q. Okay. But it was the one?

24 A. Yes.

25 Q. Okay. What about "LLC attorney" in the last line?

1 A. Well, there was no LLC attorney then but that was my
2 way of referring to it cause he was advising me but that
3 was most likely Carroll Pitts ---

4 Q. Okay.

5 A. --- cause Lucy McDow had not been hired yet.

6 Q. Okay. Yes, that's correct. All right. What was the
7 possible lawsuit you were talking about?

8 A. I had signed a contract with Thomason Apartments to
9 deliver four parcels of the T.E. Cato Estate and now in my
10 --I was told I couldn't complete the sale by the Thomasons'
11 attorney because of the discovery of the old road bed. And
12 in my mind, I thought that the whole thing was going up in
13 smoke and I was fearful that the Thomason's would be
14 unhappy, because they had already gone on and using a
15 Letter of Intent secured financing and 231 exchange and all
16 that stuff, so they were on the hook as I was and we were.

17 Q. And you have here, if I may, the call to attorney
18 which you're not sure whether that - I think is what you
19 said - as to whether that was Josh Vann or Carroll Pitts?

20 MR. OUTTEN: Your Honor, I - I ask that Mr. Jellenik
21 just ask a question and not - not testify himself.

22 THE COURT: Well, he's already testified he couldn't
23 remember which one it was but.

24 MR. JELLENIK: All I was trying to do is repeat it and
25 ask if that was correctly what he was doing. That's why he

1 ended up firing Pitts. My fault. I will reword it.

2 Q. Who is the attorney in the - In the second line, "Call
3 to attorney re: Gaza Strip hold up," who was that?

4 A. I would have to guess that that was Josh Vann.

5 Q. Okay. And the next entry, "Telecon with buyers re:
6 Gaza Strip and possible lawsuit for specific performance."
7 Who was that?

8 A. The buyers would have been the Thomason's.

9 Q. All right. So are you saying here that you needed to
10 talk with them because you were concerned about a possible
11 lawsuit from them and for specific performance?

12 A. That was one of the concerns I had, yes.

13 Q. Okay. Could I ask you to turn to the next page?

14 At the top, the first entry, "Teleconference with LLC
15 attorney and correspond to all heirs." Is - Is that LLC
16 attorney Mr. Pitts?

17 A. Yes.

18 Q. All right. And if we go to the next page, if you
19 would look at the entry at the top of that page for
20 12/4/07?

21 A. The top? Yes, okay.

22 Q. All right. And, again, if we go down halfway through
23 the second line, "Letters to buyers' attorney and LLC
24 attorney ---

25 A. Yes.

1 Q. --- to update both on Helen's signature." There was a
2 problem with losing her signature evidently?

3 A. Yes.

4 Q. Right?

5 A. Yes, sir.

6 Q. So all these were communications with Mr. Pitts during
7 this period of time; is that correct?

8 A. I usually referred to him this way through ignorance,
9 carelessness, and I didn't want to put down my attorney
10 because it sound - did not sound right.

11 Q. And by your attorney - I am sorry. I - I couldn't
12 hear you. I - I apologize.

13 A. And I did not want to refer to him in communications
14 as my attorney. It sounds pompous to me.

15 Q. Mr. Cato, I think you know we can refer to other
16 entries in here, but in the interest of trying to get you
17 home someday, is it fair to say that you were communicating
18 with Mr. Pitts during the period after, after, he recorded
19 the Deed and billed you for setting up the documents that
20 you hired him to set up?

21 A. Yes.

22 Q. And is it also fair to presume that Mr. Pitts - I
23 don't want to know what he said to you, but I want to know
24 is it reasonable to presume that he was saying something to
25 you during these conversations?

1 A. That is reasonable.

2 Q. And - And the things he was saying to you had to do
3 with these topics?

4 A. Yes.

5 Q. All right. So he was aware that there was a problem?

6 A. Yeah.

7 Q. Would you say he was aware at some point in this that
8 there was an impasse with the Burtons?

9 A. Oh, yes.

10 Q. Okay.

11 A. And he was involved with the partition action.

12 Q. I am sorry. I could not hear.

13 A. He was involved with the partition action which had
14 gone sour.

15 Q. The --

16 A. I'm sorry, the Quitclaim Deed --

17 Q. Okay. I - I'm sorry.

18 A. --- for the old road bed.

19 Q. All right. So he was involved with the Quitclaim Deed
20 for the old road bed trying to get that signed by the
21 Burtons I - or at least helping put it together ---

22 A. Yeah.

23 Q. --- or whatever?

24 A. Yeah, and that was supposed to been a done-deal.

25 Q. You consulted him on that and whatever his advice was,

1 he gave you advice on that?

2 A. Yeah.

3 Q. All right. Now, are you also - Hang on a minute. I
4 apologize. I got to find it.

5 Mr. Cato, would you do me a favor and turn to Exhibit
6 Twenty-four?

7 A. Yes.

8 MR. JELLENIK: I would like to have the - This exhibit
9 marked for identification as Plaintiff's Twenty - Exhibit
10 Twenty-four.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWENTY-FOUR
12 PREMARKED FOR IDENTIFICATION.)

13 Q. Mr. Cato, if you go to page two, 24-02, would you
14 please identify for the Court what this is?

15 A. It's a document - email document.

16 Q. Email?

17 A. Oh, you talking about 24-002?

18 Q. Yes, sir. Is that an email from Carroll Pitts?

19 A. From Carroll Pitts to me.

20 Q. Okay. And is it dated November 8, 2007?

21 A. Yes.

22 Q. Okay. And we can go through all this, but I would
23 like you to pay attention. You see his signature, his name
24 at the bottom. If you go up to the - not to the last
25 sentence there, but I'm going to start reading where it

1 Q. All right. So Mr. Pitts, basically, was saying you
2 ought to go ahead with the deal?

3 A. Several people did ---

4 Q. Uh-huh.

5 A. --- said that and - And matter of fact ---

6 Q. Okay.

7 A. --- some of the develop - most of the - Well, all of
8 the developers indicated that we were very fortunate to
9 find the Thomason people and they were - because they
10 wanted the property since they had adjacent property and
11 that would ---

12 Q. Now, did you not --

13 A. --- enhance both properties.

14 Q. I'm sorry. I thought you were finished. We've
15 already been over, I think, from the beginning of all of
16 this, didn't we not go over your instructions to Mr. Pitts?

17 A. I don't recall.

18 Q. All right. Do you --

19 A. Today, you talking about today?

20 Q. Yes. Do you recall my asking you questions about and
21 - and you answering having to do with Mr. Pitts protecting
22 everybody?

23 A. Oh, yes, yes, his charge, yes.

24 Q. Did he ever communicate with any of the other members
25 of the LLC?

1 A. Not to my knowledge.

2 Q. Okay. Now, you were the manager of the LLC, you've
3 made that quite clear and you - We've already been over the
4 emails where you've said - tell me if this is correct -
5 where you've said that you checked what you were doing with
6 Mr. Pitts. ---

7 A. I did.

8 Q. --- because that was part of his charge but --

9 A. Not everything but yeah. Many things.

10 Q. Yeah, and - But your emails said that - and do we need
11 to go back and look at those?

12 A. No.

13 Q. We - we okay? All right. Did you check with Mr.
14 Pitts the decision not to get an appraisal?

15 A. No, I did not.

16 Q. Did you check with Mr. Pitts about how to respond, and
17 we will get - we'll get to some of this tomorrow - but the
18 Burton - Were the Burtons happy with the Letter of Intent
19 that was signed?

20 A. Initially, I don't know but sometime after that, yes.

21 Q. All right. We'll - We'll have testimony on that
22 tomorrow. I'm not going to hold you to it now and lengthen
23 the day.

24 A. Did I hear that I am going to be testifying tomorrow?

25 Q. No, no, I am hoping - That's why I am trying to get

1 may not be.

2 A. Or C or D?

3 Q. No 38 is something else. Thirty - Try 32 if it's in
4 there, but it's not - I don't believe, sir, that it's in
5 there. At least it's not in there under that.

6 Yeah. I don't know if you can see the screen, but
7 that's the same thing I just showed you or was showing you.

8 A. Ah, that's better.

9 Q. Thank you.

10 A. Okay. The question is?

11 Q. All right. If I may, I'm asking you to look at this
12 entry here. Five - I'm sorry. I apologize. This entry up
13 here 5/27/07 ---

14 A. Yes.

15 Q. --- "Revise agreement and articles and draft Deed to
16 LLC."

17 A. Yes.

18 Q. Okay. Is that accurate?

19 A. That's what I got billed for.

20 Q. And "Research Probate records and titles." Is that
21 accurate? That's 5/21 - I'm sorry, it's 5/21/07?

22 A. That's accurate in the bill yes, sir.

23 Q. Okay.

24 A. I - I don't know what he did but that's what I got
25 billed for.

1 to inquire as to how the Christmas pageant went.

2 THE COURT: Your Honor, I - I appreciate your
3 consideration and the parties' consideration on letting me
4 go down there. It was very good. It was the first time I
5 actually saw him sing in public as a sheep so thank you.

6 THE COURT: Good. Good. Happy for you.

7 All right, call your next witness.

8 MR. JELLENIK: Thank you, Your Honor.

9 I call at this time the plaintiff David A. Burton.

10 THE COURT: All right. Mr. Burton - Doctor Burton, I
11 mean, will you please come forward?

12 MADAM CLERK: I'll have to step here to be sworn and
13 place your left hand on the Bible and raise your right.

14 (WHEREUPON, DAVID BURTON,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MADAM CLERK: Thank you, sir. You can have a seat and
17 watch your step.

18 DIRECT EXAMINATION

19 DOCTOR DAVID BURTON BY MR. JELLENIK:

20 Q. Good morning, Doctor Burton. How are you today?

21 A. I'm fine.

22 Q. You're the plaintiff in this case; is that correct?

23 A. Yes, I am.

24 Q. And you're the plaintiff in this case as trustee of
25 the Sloan Marvin Burton and Marjorie Cato Burton A.B.

1 Living Trust?

2 A. Yes.

3 Q. Are you also the plaintiff in the capacity of having
4 filed this as a derivative action on behalf of T.E. Cato
5 Estate, LLC?

6 A. Yes.

7 Q. Is there an exhibit book up there?

8 A. No.

9 Thank you, ma'am.

10 Q. Doctor Burton, if you would, would you please turn to
11 Exhibit Four?

12 MR. JELLENIK: And we'd like to have this Exhibit Four
13 in the book marked as Plaintiff's or marked for
14 identification as Plaintiff's Four.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FOUR, PREMARKED
16 FOR IDENTIFICATION.)

17 Q. Doctor Burton, are - Have you found that document?

18 A. Yes, I have.

19 Q. Do you recognize it?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's the - my parents' trust that my mother's twenty
23 percent interest was in ---

24 Q. All right.

25 A. --- of that year.

1 about there are two roadbed tracts, the old roadbed --

2 THE COURT: Well, no. The one - The one, the Gaza
3 Strip that's been referred to.

4 MR. JELLENIK: Yes.

5 THE COURT: The one that - The one that's caused all
6 the property.

7 MR. JELLENIK: My --

8 THE COURT: Was it - is it - Is it in the Trust?

9 MR. JELLENIK: My understanding is I don't think so
10 and the reason I don't think so is because when the 2006
11 Deed came out of DOT - we talked about this yesterday -
12 When that came out of DOT --

13 THE COURT: If it's not in the trust, how does the
14 trust have any standing to pursue the claim?

15 MR. JELLENIK: No.

16 THE COURT: I mean, I hate to interject stuff at this
17 point, but if this is so --

18 MR. JELLENIK: Well, let - Let me explain.

19 THE COURT: But I have to while it's on my mind.

20 MR. JELLENIK: Let me finish what I started to say and
21 then I'll get to the next ---

22 THE COURT: Okay.

23 MR. JELLENIK: --- question. But when DOT issued the
24 Deed, the Quitclaim Deed in 2006, it identified Marjorie
25 Cato Burton's interest in a Trust that was before this and

1 had already been revoked. That was discussed yesterday,
2 you may recall.

3 The concern that we had as part of why we brought the
4 suit was Marjorie is not a lawyer. She didn't know what
5 was in and out. She - She was unaware of this, okay. She
6 signed what was put in front of her. Now, what was put in
7 front of her, she didn't write, and what happened after
8 that related to the roadbed tract, but she did have title
9 to the rest of the Areas.

10 Now, the other issue in that regard is the Deed that
11 was put in front of her - and I'm going back to June 1 of
12 2007 - also included the new roadbed and the new roadbed
13 wasn't owned by then. It had been deeded over in 2004. I
14 mean, I'm talking about all the heirs here. So you're
15 correct, this is not neat and tidy. That's why we're here.

16 THE COURT: All right. Go ahead. That just popped
17 into my little --

18 MR. JELLENIK: I - I don't blame you.

19 THE COURT: As Pardon and Parole says, it popped into
20 my little brain cells. Go ahead.

21 MR. JELLENIK: All right. Thank you, Your Honor. I
22 got to find my notes.

23 THE COURT: I'll try to be quiet. I won't try to get
24 you off track.

25 MR. JELLENIK: No. No. No. I - If you have

1 questions, I'd rather you ask them than not ask them.

2 THE COURT: Okay.

3 Q. All right. And who owns - as - As you have always
4 understood or as you know - insofar as you know, who owns
5 the other interests in the Areas?

6 A. The other heirs of T.E. Cato.

7 Q. Okay. Now, you were here yesterday and you heard Mr.
8 Cato testify that he hired Mr. Pitts; is that correct?

9 A. Correct.

10 Q. Did your mom - Did your mom have any problem with Mr.
11 Cato taking the lead in trying to find a buyer?

12 A. No, sir.

13 Q. Did she at the time that was going on when the
14 decision was being made to have him take the lead, was she
15 objecting to that?

16 A. No, sir.

17 Q. All right. Were you objecting to that?

18 A. No, sir.

19 Q. All right. When Mr. Cato hired Mr. Pitts, did you or
20 your mother object to that?

21 A. No, sir.

22 Q. All right. That said, as has already been stated,
23 your mother had the interest in the areas. How did you get
24 involved?

25 A. Well, the way I got involved was my - my mom suffered

1 from an eye disease known as macular degeneration. She had
2 the dry type. There's a wet type and a dry type. The wet
3 type is treatable; the dry type is not, and she was
4 basically with macular degeneration, she was blind. So she
5 couldn't read things, so my father asked me if I would, you
6 know, help out and - and read to her and - the
7 correspondence and anything that they needed, so that's how
8 I got involved.

9 Q. All right. And were you therefore involved during the
10 course of the interactions between Mr. Cato and your mom,
11 and other heirs and your mom, and anything else that
12 related to this negotiations that went on during 2007 to
13 the extent that there was correspondence or things to read?

14 A. I was - Yeah, I was involved and not on June 1st when
15 he came to - Tommy came to my parents' house, I was not
16 involved with that.

17 Q. You were not there?

18 A. No, sir.

19 Q. With respect to all of the documents that are in the
20 Big White Book, are you familiar with the Big White Book?

21 A. Yes.

22 Q. And you were involved to the extent that the documents
23 in the Big White Book come into this, is that a fair
24 statement?

25 A. Yes.

1 It may have been one additional email, but we'll come to
2 that later. And you know these emails came in, because you
3 were reading them to your mom?

4 A. That's correct.

5 Q. All right. Excuse me for just a moment.

6 All right. To the best of your knowledge, okay, did
7 Mr. Cato ever communicate anything in any way that said
8 that the other heirs, including, but not limited to your
9 mom, were not clients of Mr. Pitts?

10 MR. OUTTEN: Objection, leading and hearsay?

11 THE COURT: I sustain the objection.

12 MR. JELLENIK: All right.

13 Q. Well, all right. Let's just go ahead. With regard to
14 the LLC formation documents that are already in evidence,
15 but you may want to look at Exhibits Six, Seven and Eight,
16 and in particular, I call your attention to Exhibit Seven.

17 A. Okay.

18 Q. All right. You ready?

19 A. Yeah, I'm ready.

20 Q. I think you've already testified that you were not
21 present when any of these were discussed with your mom?

22 A. That's correct.

23 Q. And I think you've already testified that your mom was
24 not capable of reading?

25 A. That's correct.

1 Q. All right. As far as you know, did anyone else
2 discuss these documents with your mom besides Mr. Cato?

3 A. Not that I'm aware of.

4 Q. All right. As far as you know, did - After the
5 discussion with Mr. Cato on June 1st of 2007, did your mom
6 or dad have copies of the documents that your mom signed
7 that were left with her?

8 A. No, they did not and the reason for that is because we
9 had been asking Mr. Cato to - you'll see in later
10 correspondence in the emails, my mother is asking him to
11 send documents.

12 Q. Okay.

13 A. Let me - let me add. She wants him to send the
14 documents that she signed on June 1st ---

15 Q. Okay.

16 A. --- yeah, 2007.

17 Q. And during this time to the best of your knowledge,
18 did Mr. Pitts or anyone from his law firm contact your mom
19 or you?

20 A. No, sir. Not that I know of.

21 Q. Did that worry you?

22 A. No, sir.

23 Q. Why not?

24 A. Well, because things were going along like we had
25 planned for them to. They were supposed to form an LLC.

1 Everything looked fine.

2 Q. Okay. And are you a lawyer?

3 A. No, I'm a dentist.

4 Q. Is your mother a lawyer?

5 A. No, she was a schoolteacher.

6 Q. All right. So as you - you understood it, what was
7 Mr. Cato supposed to do after those documents were signed
8 as you folks understood it?

9 A. He was supposed to do what Tommy told us he was doing.

10 Q. Which was?

11 MR. OUTTEN: Objection, hearsay.

12 THE COURT: Yeah, I sustain the objection.

13 Q. Was what Tommy told them - told them in emails and ---

14 A. Yes.

15 Q. --- in letters?

16 A. Yes.

17 Q. And --

18 A. That's how we were communicating through emails.

19 Q. All right. You were here yesterday during the
20 testimony ---

21 A. Yes.

22 Q. --- of Mr. Cato? And do you agree with what Mr. Cato
23 said as far as how he communicated that information to your
24 mother --

25 MR. OUTTEN: Your Honor, I object to one witness's

1 commenting on another witness's testimony.

2 MR. JELLENIK: I - I can go over it. I'm simply
3 trying to save time.

4 THE COURT: I overrule the objection.

5 MR. JELLENIK: It's a matter of record as to what that
6 stuff is.

7 Q. All right. All right. I would like to move forward
8 and ask you to turn to Exhibit Eighteen. And I would like
9 this --

10 MR. JELLENIK: Oh, by the way, I apologize. I would
11 like to move for admission to have Exhibit Four admitted.

12 MR. OUTTEN: No objection, Your Honor.

13 Q. And Exhibit Eighteen --

14 THE COURT: All right. Without objection, it's in.

15 WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FOUR, IDENTIFIED
16 AND MARKED, RECEIVED INTO EVIDENCE.)

17 MR. JELLENIK: Thank you, Your Honor.

18 Q. Exhibit Eighteen, Doctor Burton, have you found that
19 one?

20 A. Yes, I have.

21 Q. What is Exhibit Eighteen?

22 A. It's an email from Tommy to my parents and it's
23 offering the Areas for a million dollars to any of the
24 people named in this - the heirs.

25 Q. All right. And is it for a million - I'm looking at

1 the first line. The LLC is offering Areas A, B, C and D
2 for a million dollars or more; is that correct?

3 A. That's correct.

4 Q. All right. And if you read the last line before the
5 signature.

6 A. Yeah.

7 Q. Does that read, "Any bids must be into me before noon
8 on 8/3/07?"

9 A. Yes.

10 Q. Okay.

11 MR. JELLENIK: I would like to move to have this
12 exhibit admitted into evidence, please, Exhibit Eighteen.

13 MR. OUTTEN: No objection, Your Honor.

14 THE COURT: In without objection.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER EIGHTEEN,
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 Q. You will recall, or you may recall, yesterday - If I
18 could suggest you turn to Exhibit Nine, which I think is
19 already admitted into evidence. Is that the Letter of
20 Intent? I'm sorry ---

21 A. Yes.

22 Q. --- I thought you were there.

23 A. Yes. Yes, it is.

24 Q. Is that the Letter of Intent?

25 A. Yes.

1 this email?

2 A. Yes, I was.

3 Q. All right. What was the reason that this email was
4 written?

5 A. Basically, we had questions. We were kind of in the
6 dark. My mother didn't know what was going on.

7 Q. And that is a relate - That is a reference to the
8 August 1st email?

9 A. Yes.

10 Q. All right.

11 A. Yes.

12 Q. And without going through all of this, it's in the
13 record and I'm not going to read all of it into the record,
14 but is it fair to say that your parents were, or your mom
15 was, basically curious about what the context of the August
16 1 email was and where things were going?

17 A. Yes.

18 Q. Could I direct your attention to page 2 of that email,
19 and I'm - I'm going to read, excuse me, as fast as I can
20 clearly the content of paragraph six. "When you came to
21 visit us on Friday, June 1st, 2007, you asked me to sign a
22 letter that allowed you to be a spokesperson for T.E. Cato,
23 LLC, as the General Manager." And before I go on again,
24 this is written to Mr. Cato?

25 A. That's correct.

1 Q. Resuming my reading. "As I understood from your
2 explanation of the purpose of that letter at that time, the
3 letter allows you to act as a spokesperson for all of the
4 heirs so that we present a united front with any developers
5 that may be interested in purchasing or developing the
6 specified land. I personally thought this was a good idea,
7 and I just want to clarify that as General Manager all of
8 the heirs have granted you the ability to only negotiate
9 and record any offers from the land" - oh, I'm sorry - "for
10 the land on all the heirs' behalf.

11 However, any final decision" - and that's underscored
12 - "to sell or not sell the Areas A, B, C, and D or any of
13 the property jointly held by the heirs of T.E. Cato still
14 rest with all of the heirs coming to a unanimous decision
15 as to what should or should not be done with the property
16 and, obviously, doesn't rest solely with any one heir or
17 individual.

18 I'm not trying to be a pain or ruffle any feathers. I
19 just want to make sure that all of us are on the same page.
20 The email letter seems to leave open an unresolved answer
21 as to what may or may not" - I - I'm sorry - "as to what
22 may or may not be done with the land if any of the heirs do
23 not offer any bids. Without specifying the reason for the
24 negotiation" - hold on. "Without specifying the reason" -
25 I guess ---

1 A. "For the offer to the heirs."

2 Q. --- "for the offer to the heirs, I wanted to make sure
3 that by accident you don't mistakenly proceed too far in
4 the negotiating process without proper authorization from
5 all of the heirs." Excuse me. "I for one have no desire
6 nor do I cherish any legal problems or lawsuits from any
7 attorneys representing any developers thinking that somehow
8 you are speaking as the T.E. Cato, LLC, General Manager
9 somehow represents a legitimate offer on all of the heirs
10 behalves as it relates to the property. The last thing we
11 all need as a lawsuit from a developer's attorney that
12 misunderstands your authority."

13 Have I read that correctly, sir?

14 A. Yes, you have.

15 Q. All right. And then lastly paragraph 7, is it correct
16 that that asks for a copy of what was signed June 7? Is
17 that the intent of that one?

18 A. Yes.

19 Q. All right. Your mother also goes on to raise - I'm
20 not going to spend time on it now, I'm sure it will come up
21 later - but also spends time discussing at the very end
22 capital gains tax implications.

23 A. Yes.

24 Q. All right. Thank you. Now, was - Was there a reply
25 to this letter?

1 A. Yes. There was from Tommy, yes.

2 Q. Could I ask you please to turn to Exhibit Twenty?

3 A. Okay.

4 MR. JELLENIK: And I believe that's already been
5 admitted into evidence and - and, excuse me. I apologize.
6 I don't recall.

7 Did I - Have I asked to have the August 4 email - I
8 think that was already admitted into evidence also. Thank
9 you. Sorry.

10 Q. All right. As to the - As to Exhibit Twenty, that was
11 the August 20, 2007 email from Mr. Cato and it starts out,
12 "Dear Margie and Marvin." Have you found that?

13 A. Yes.

14 Q. All right. As you understood it, was this the reply
15 to the August 4 email?

16 A. Yes.

17 Q. Let me direct your attention to Item 4 of this email.
18 I'm - I'm going to read this very quickly.

19 "My intentions are to follow the consensus
20 instructions that I receive from each heir during surveys,
21 correspondence, emails, conference, telephone calls and
22 including personal visits like in our meeting including the
23 lunch you shared with me that you and Marvin and I had
24 going over all the documents of the LLC while at your
25 dining room table on June 1, '07."

1 Q. All right. And up top of the August 20 email, the
2 second paragraph says, "I'll try and answer your questions
3 and will follow your paragraph numbering so the six and the
4 one relates to the six in the other?"

5 A. Yes.

6 Q. All right. I'm going to read this paragraph 6 in the
7 August 20 email. "The same presentation of the LLC Deed
8 and SC - South Carolina License Application was given the
9 same way to each signatory. The percentages of ownership
10 were included in the LLC document that you and I and
11 Marvin" - I'm sorry - "document and you and I and Marvin
12 reviewed them. There was no questioning of ownership
13 percentages by any heir I met with. I guess it's pretty
14 straight forward. The implementation of a corporation is
15 what you and Marvin have been working on for thirty years.
16 I kept all of those typewritten copies all this time. Bud
17 Burton was ready to implement a LLC per his letter to Cato
18 family members and heirs dated April 23rd, '98 and March
19 25th, '99 and kept those, too. The March 25, '99 letter
20 from Bud promised LLC implementation. Everybody signed off
21 - everyone signed off and supported that. Dale Dove was to
22 set up the LLC and also was going to buy out property and
23 hoped for \$613,000 according to Bud's report. I have that.
24 Everyone agreed the Dave Deed - the Dale Dove deal. Now,
25 all the heirs have agreed that Tommy's turn has come to be

1 in charge and that interests in the corporation are the
2 same as percentages of ownership. In the corporation, no
3 one has veto power over the majority."

4 Have I read that correctly?

5 A. Yeah.

6 MR. OUTTEN: Your Honor, I - I object to this
7 continuing public publication of these exhibits. This is
8 an email written by someone else. In fact, Mr. Cato
9 testified yesterday and was on the stand all day long for
10 Mr. Jellenik to ask any question he wants and it's simply a
11 waste of time and improper for him to say turn to an email,
12 and then read the email and say, "Is that correct?"

13 THE COURT: Well, I can read what's on the paper which
14 is --

15 MR. JELLENIK: Well, the next - the next time --

16 THE COURT: I'm concerned about why we - why you're
17 reading it but --

18 MR. JELLENIK: Mr. Outten has raised on more than one
19 occasion, okay, certain issues having to do with, gee, why
20 didn't anybody ask any questions, and some of this is
21 intended to deal with that. He's also suggested that by
22 asking that that they didn't have any issues and the point
23 here is there sure are issues and that's the --

24 THE COURT: I guess - I guess ---

25 MR. JELLENIK: I'm sorry.

1 THE COURT: Well, the document speaks for itself ---

2 MR. JELLENIK: I can - I can read it all.

3 THE COURT: --- but I - I overrule the objection.

4 MR. JELLENIK: All right.

5 THE COURT: I can read it.

6 MR. JELLENIK: All right.

7 Q. Now, did your mom know anything about a revised
8 contract?

9 MR. OUTTEN: Objection, Your Honor. That - it calls
10 for hearsay.

11 THE COURT: I sustain. I sustain the objection. He
12 can't know what his mother knew.

13 MR. JELLENIK: Okay. Fair enough.

14 Q. Did you and your mother - All right. Was this email
15 the first occasion you had to learn of a closing coming up?
16 Is there any previous mention of this from Mr. Cato?

17 A. No, there is no previous mention.

18 Q. Did any of the previous communications from Mr. Cato
19 mention a revised contract?

20 A. No.

21 Q. Okay. And at this time may we look at Exhibit
22 Thirteen.

23 MR. JELLENIK: And I'd like to have this marked for
24 identification as Plaintiff's Exhibit Thirteen, please.

25 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THIRTEEN,

15 A. Yes, sir.

16 Q. And if I can direct your attention to Exhibit Thirty-
1 eight.

2 A. You said Thirty-eight?

3 Q. Thirty-eight, yes. There's a 38-A, B, C, D, E and F,
4 I think.

5 A. Right.

6 Q. Would you just take a quick look at those and tell me
7 whether those are the settlement documents that arose out
8 of that lawsuit?

9 MR. JELLENIK: And I'd like to have Exhibit - the
10 contents of Exhibits Thirty-eight-A through F marked for
11 identification.

12 (WHEREUPON, PLAINTIFF'S EXHIBITS THIRTY-EIGHT, A
13 THROUGH F PREMARKED FOR IDENTIFICATION.)

14 A. Yes, I believe they are. Yes.

15 Q. All right. And from a cash standpoint, what was the
16 result of that settlement?

17 A. Well I didn't get any cash, but I did get a check for
18 \$239,000.

19 Q. Two Hundred and Thirty-nine?

20 A. I believe, yeah.

21 Q. Two Hundred and Forty-nine ring a bell?

22 A. That's it. Two Hundred and Forty-nine, sorry.

23 Q. All right. And you mother - Is it correct that your

1 Q. All right. And ---

2 A. Right - Right before taxes were due, because she was
3 going to have to pay taxes on --

4 Q. How do you know that?

5 A. How do I know?

6 Q. How did you know? How do you know she was going to
7 have pay taxes on that?

8 A. Because that's what she received. She was going to
9 have to pay capital gains tax on.

10 Q. Did you ever have conversations with anybody at the
11 IRS or anyplace about that?

12 MR. OUTTEN: Objection, hearsay.

13 THE COURT: I -I sustain the objection.

14 MR. JELLENIK: I asked if he ever had.

15 THE COURT: Well, I - That's not relevant as to
16 whether he may have had a conversation with the IRS.

17 MR. JELLENIK: Okay. Fair enough.

18 THE COURT: So it's definitely hearsay. Well, he
19 could testify perhaps to what he asked the IRS but not what
20 they - not what they told him.

21 MR. JELLENIK: Okay.

22 THE COURT: I mean that would be obvious hearsay.

23 MR. JELLENIK: I - I thought I asked if he had
24 conversation with them, but let's ---

25 THE COURT: Okay.

1 MR. JELLENIK: --- move one. I'm -I'm fine.

2 Q. Was that money - Except for the payment of income
3 taxes on that money, is that money still in -in an account?

4 A. Yes.

5 Q. And it has not been spent. All right.

6 Excuse me for a moment. Was it correct that the
7 partition action cost - cost legal fees and costs, legal
8 fees and expenses ---

9 A. Yes.

10 Q. --- to - to the Trust? And with respect to that --

11 MR. JELLENIK: What's the exhibit number for that? Is
12 that Thirty-two in this? What was --

13 Has Exhibit Thirty-two been admitted?

14 Q. All right. Will you turn please --

15 THE COURT: Exhibit Thirty-two has the fee ---

16 MR. JELLENIK: Yeah.

17 THE COURT: --- breakdown.

18 Q. And I'm going to --

19 I think we've got 'em separated.

20 We've discussed the invoicing already that went to the
21 LLC, so what I'm addressing now is simply the invoicing to
22 the Trust.

23 A. Okay.

24 MR. OUTTEN: Your Honor, we object to this testimony
25 and to these documents. Once again, we're being presented

1 with documents for the first time. We've never seen these
2 despite my repeated requests to Mr. Jellenik that if you're
3 going to present evidence of attorney's fees, Mr. Jellenik,
4 please send them to me. We had a Request for Production,
5 we had a Interrogatory, and I'm seeing these for the first
6 time.

7 THE COURT: Well, his - The response to that in
8 yesterday, and I've looked at the rule again, Rule 34 it
9 is, that they said we got it, come look at 'em.

10 MR. JELLENIK: Exactly.

11 MR. OUTTEN: Well, you know, Judge, I - I want to - I
12 want to comment on that and put this on the record. Let -
13 Let's think about this case and what Mr. Jellenik has told
14 this Court. What Mr. Jellenik has told this Court is
15 because this file was in such utter' disarray, I couldn't
16 get ready to try this case in six months and he's told you
17 that in Chambers and he's told you that on the record again
18 and again, so is it really credible to now say, well, all
19 you had to do was take up Mr. McMaster on his offer to go
20 see the documents and he would have them ready.

21 In addition, what - what I think these are are
22 invoices from Mr. Jellenik, and there was absolutely
23 nothing to prevent him from sending these documents to me
24 and - And another thing. Leaving aside the Request for
25 Production of Documents, they've been served with

1 Interrogatories. Parties are required to supplement their
2 Interrogatories when their damages figures change. It
3 happens all the time.

4 They gave us one figure for damages, I believe, in
5 2012, but I'll check that, and it said \$134,000 in costs.
6 It didn't even mention legal fees. So even if you - even
7 if you grant them the Request for Production of Documents,
8 which I - I don't think their response is sufficient, but
9 even if you grant that, Judge, they never supplemented
10 their Interrogatory responses and said - On Exhibit Thirty-
11 two it says Mr. Jellenik wants to claim \$139,285.59 in
12 damages. That was never disclosed to us.

13 I'll read the - I'll read the response and the - and
14 the Interrogatories that we were served with. And,
15 incidentally, these went to Mr. Jellenik. The Certificate
16 of Service by Mr. McMaster went to me, Doctor Burton and it
17 went to Mr. Jellenik and it said "as of the date of these
18 answers, \$134,000 in costs"... Nothing about legal fees.
19 "Additional losses will be identified as to the additional
20 costs of experts and losses when known arising from the of
21 real estate and the attendant legal advice of Pitts due to
22 the sale and negligent legal advice which gave rise to this
23 cause."

24 There's nothing that I'm aware of that excuses the
25 Plaintiff from updating their discovery responses. And as

1 a matter of fact, Your Honor, they know they're supposed to
2 update their interrogatory responses, because they did it
3 to tell me about Professor Freeman and they did it to tell
4 me about a lawyer named George Hedgepath, I believe, who
5 they later withdrew as an expert. So they did provide some
6 updates on their Interrogatories, but even if you give them
7 the documents, Judge, they still have to send me an
8 interrogatory response that says we're going to claim
9 \$139,000 in legal fees.

10 Now, we've been concerned about damages the whole
11 time, and I think I'm going to show in a minute that there
12 - that there are no damages here, but we sent them a
13 supplemental interrogatory request just on damages and
14 said, basically, tell us - specify in detail how you've
15 been damaged and we served that on them a couple of years
16 ago. You know what the response to it was, Your Honor? No
17 response.

18 So again, even if - I - I understand and respect Your
19 Honor's view of the Request for Production yes, sir. But
20 that - Nothing excuses them from their obligation to say
21 here's what we're going to claim in damages. That's what
22 discovery is about. And that, in my mind, precludes his
23 claim for his own legal fees.

24 If he had disclosed that in interrogatories, then I
25 would have had a right, perhaps, to depose him; there might

1 have been a motion before Your Honor, but at least been
2 able to review and defend those so that my client is not
3 prejudiced by the repeated handing us of documents during
4 this trial.

5 So again, they don't - there is nothing that I'm aware
6 that excused them from their discovery obligations with
7 regard to updating the interrogatory responses. And as a
8 practical matter, I asked Mr. Jellenik six weeks ago, I
9 said, "Roger, if you're going to claim legal fees, you got
10 to send me your invoices. I haven't seen them." No
11 response.

12 THE COURT: All right.

13 MR. OUTTEN: So those - That's our objection to that.

14 THE COURT: Subject to the objection, I'll let you
15 proceed.

16 MR. JELLENIK: Thank you, Your Honor. And - and just
17 to clarify, I think you're aware of this, but it's not the
18 record I agree. I don't think it is anyway. All of my
19 files, aside from whatever was or wasn't sent to me, all of
20 my files were with Mr. McMaster and that was part of the
21 transfer. With regard to the invoicing, all of these
22 invoices were part of my files. And as far as the invoices
23 for Mr. McCoy and Ms. McDow, it took us quite a while to
24 find Mr. McCoy's. It's not his fault. I'm not trying to
25 suggest that. Ms. McDow's were on a little thumb drive,

1 and do I have to tell you that took a long time to find.

2 THE COURT: Well, I'm - I'm allowing it over the
3 objections.

4 MR. JELLENIK: All right. Thank you, Your Honor.

5 THE COURT: And everything in this case is taking a
6 long time, so I'll certainly concede that.

7 MR. OUTTEN: What'd you say, Your Honor.

8 THE COURT: He said it took him a long time to do
9 something and I said, well, everything in this case is
10 taking a long time ---

11 MR. JELLENIK: You, you got it.

12 THE COURT: --- so I'll certainly concede that.

13 MR. OUTTEN: Yes, sir.

14 MR. JELLENIK: I guess - Do you - I - You don't, I
15 guess. Could we have pre-marked for identification as
16 Exhibit Thirty-two, is it? Thirty-two. And this will be
17 part of Exhibit Thirty-two.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THIRTY-TWO,
19 PREMARKED FOR IDENTIFICATION.)

20 Q. All right. Doctor - Doctor Burton, would you please
21 take a look at that file? And, obviously, I don't expect
22 you to go through every document, but is it correct that
23 those are the invoices that were submitted in connection
24 with the partition action?

25 A. Yes.

1 Q. And were those invoices paid?

2 A. Yes.

3 Q. Okay. And the - Again, I don't expect you to add them
4 up, but do you recall - Well, let me do it this way.

5 May I?

6 A. Sure.

7 Q. Adding these up is it correct that they were over a
8 \$166,000 and that included both fees and costs?

9 A. Yes, sir.

10 Q. The fees were something over \$139,000 and the costs
11 would have been over \$27,000?

12 A. Yes.

13 Q. All right. Have you had an opportunity to check that
14 before today?

15 A. Yes.

16 Q. All right. And the total was \$166,724.81?

17 A. Yes, sir.

18 Q. All right. Thank you. All right. So I'd like to
19 move along now to discussion of land value. I think you've
20 already testified that your mother never got an appraisal?

21 A. Yes, sir. She never got one.

22 Q. Is it - All right. With respect to the amount of
23 money that she received, \$373,200, ---

24 A. Okay.

25 Q. --- did the Trust view that as - was that viewed as a

1 fair price to the extent --

2 MR. OUTTEN: To the extent - to the extent he's been
3 asked and - asked to offer an expert opinion about the
4 value of his property ---

5 MR. JELLENIK: No.

6 MR. OUTTEN: --- then I'd object.

7 MR. JELLENIK: I'm asking about the opinion in the
8 owner of the property.

9 THE COURT: All right.

10 A. She thought that the - the common --

11 MR. OUTTEN: Your Honor, he can't testify as to what
12 Mrs. --

13 THE COURT: I -- I sustain the objection.

14 MR. JELLENIK: I'm sorry?

15 THE COURT: He can't testify to what she thought.

16 MR. JELLENIK: I'm talking about the Trust. Was it
17 viewed by the Trust as a fair value of the property?

18 THE COURT: And he's the Trustee?

19 A. Yes, sir.

20 THE COURT: All right. I'll allow it.

21 MR. JELLENIK: Thank you.

22 A. She felt like the value that she received --

23 MR. OUTTEN: He just said that she felt like, Your
24 Honor.

25 MR. JELLENIK: I'm asking as trustee.

1 A. Right. Okay. As trustee then --

2 Q. Is that viewed as a fair value of the property?

3 A. It's a fair value of the -- yes.

4 Q. All right. Now, and if it's a fair - If in the
5 opinion of the trust it's a fair value, it would have been
6 viewed at least as a - Let me see if I can say this in
7 English - that would have reflected a higher value for the
8 sale of areas than was received; is that correct?

9 MR. OUTTEN: I - I object to the leading and it,
10 again, calls for his opinion about the value of the
11 property. He's already said what he wants to say about the
12 ---

13 THE COURT: Well, the --

14 MR. OUTTEN: --- Trust.

15 THE COURT: -- this -- This like I said there's very
16 few straight lines in this case. Generally, an owner of
17 the property can testify as to their value. It could be -
18 it could be a big pie - I'm not saying it's a big pie in
19 the sky, but even if it's a pie in the sky - and I know he
20 - he's a trustee and we - but I'm going to allow him to
21 testify subject to the objection.

22 MR. OUTTEN: I - Your Honor, I understand your ruling
23 and I'm not arguing with your ruling. I - My objection was
24 that wasn't the question. He didn't ask you're the
25 trustee, what do you think the value of the property was.

1 THE COURT: I --

2 MR. OUTTEN: It was some comparison to some other
3 value.

4 THE COURT: Well, I think - I think what the question
5 was was simple math. Is 124 - Was \$273,000 more than
6 \$124,000, but I - I under ---

7 MR. OUTTEN: Yes, sir.

8 THE COURT: --- I understand. Go ahead.

9 MR. OUTTEN: Yes, sir.

10 MR. JELLENIK: Yes, sir.

11 MR. OUTTEN: All right.

12 THE COURT: Subject to objection.

13 MR. JELLENIK: Maybe it would be simpler if we put
14 some of this up. Is this going to show up?

15 Now, let's see if I can do this.

16 Q. So we've got - So we've got the \$124,200 plus the
17 \$249,000 and that was \$373,200; is that correct?

18 A. Correct.

19 MR. JELLENIK: Your Honor, may I - may I approach the
20 witness? This calculator might be --

21 Q. Doctor Burton, would you hold onto that for a minute.
22 I'm going to ask you to do a calculation.

23 A. Okay.

24 Q. That reflected - In the opinion of the Trust, that -
25 that reflected the value of your mother's interest?

1 A. Yes.

2 Q. And your mother had a twenty percent interest?

3 A. That's correct.

4 Q. Would you please divide that number by point two?

5 A. Okay.

6 Q. What is the number that you get?

7 A. One million, Eight Hundred and Sixty-six Dollars.

8 Q. One million, Eight Hundred and Sixty-six Thousand.

9 A. Six thousand.

10 Q. Is that what you said?

11 A. Yes, sir.

12 Q. All right. And was that the opinion of the Trust as
13 to the value of the Areas?

14 A. Yes.

15 Q. And the Areas, in fact, were --

16 MR. JELLENIK: I don't know what I touched, but I
17 obviously touched something. Power? I'm sorry about that.

18 Q. And my question before is - Well, it's not a question.

19 That's what she thought it was worth ---

20 A. Yes, sir.

21 Q. --- as opposed to what it sold for?

22 A. This - yes.

23 Q. The Trust ---

24 A. Trust, yes.

25 Q. --- thought it was worth? All right. Okay.

1 A. Yes, it is.

2 Q. Is it an email from, I guess, your mom to some of the
3 other heirs and including Mr. Cato?

4 A. That's correct.

5 Q. And was it dated November 24, 2007?

6 A. Correct.

7 Q. Okay. Now, take a look at it if you would?

8 A. Okay.

9 Q. Doctor Burton, without going into detail, what was the
10 purpose of this email?

11 A. Well, my mom is basically saying that she's in the
12 dark. She wants to know information about what's been
13 going on, and she's questioning whether or not T.E. Cato
14 Estates had the right to sell the land without her consent.

15 Q. Is she questioning whether the price is reasonable?

16 A. Yes.

17 Q. And in that regard - Sorry. Excuse me. I'm sorry?

18 A. Can I?

19 Q. Go ahead. I didn't mean to cut you off.

20 A. Okay. What this is is since we didn't have an
21 appraisal, what we tried to do is work with what we had
22 because --

23 MR. OUTTEN: Your Honor, forgive me for interrupting
24 the witness. I object. Now we're going into a methodology
25 to appraise the property. That's what this is. I've

1 A. Yes.

2 Q. And was the Trust's opinion of the fair value of - for
3 the areas at that time lower, the same, or higher than the
4 million dollars?

5 A. Higher.

6 Q. All right. And in that regard in terms - Let me put
7 it this way. Was the - Was the purpose of this email
8 simply to communicate that possibility?

9 A. Yes, that's exactly what it was for.

10 Q. So you're not necessarily - Well, let me do it this
11 way. Was part of the basis for that opinion that the value
12 was higher than the million a prior appraisal?

13 MR. OUTTEN: I object, Your Honor. Now, we're getting
14 into expert opinions --

15 THE COURT: Yeah.

16 MR. OUTTEN: What are you --

17 THE COURT: I do sustain - I sustain the objection.

18 MR. JELLENIK: All right.

19 THE COURT: We're sort of building on ---

20 MR. JELLENIK: I believe this came --

21 THE COURT: --- on one thing.

22 MR. JELLENIK: I believe it came up yesterday.

23 THE COURT: Well, I know Mr. Haley's --

24 MR. JELLENIK: That's - And we're not trying to - you
25 know, we're simply using that not as - First of all, it

1 didn't cover everything. It only covered one area, but
2 we're only - the only purpose of this is to show why the
3 Trust felt that the value ought to be higher. We're not
4 arguing at exactly what Mr. Haley said or be accepted as -
5 as the Bible.

6 THE COURT: Subject to - over - subject to the
7 objection, which I'm taking all of these objections under
8 consideration, I'll be glad to let you go forward.

9 MR. JELLENIK: All right. I appreciate it. I
10 understand.

11 Q. So with respect to this communication that was
12 written, and we're just discussing Exhibit Forty-eight, was
13 part of the reason why the Trust felt that the land value
14 was higher than the million dollars, not arguing whether
15 it's right or not right, ---

16 A. Yeah.

17 Q. --- but the previous appraisal that Mr. Cato had
18 secured from Mr. Haley?

19 A. Yes. Since we didn't have anything else, yes.

20 Q. All right. Thank you. All right.

21 MR. JELLENIK: Excuse me for just a moment.

22 Q. Did the Trust ever receive a communication from
23 anybody that Mr. Pitts was representing only Mr. Cato?

24 A. No.

25 MR. JELLENIK: Your Honor, at this time, I have no

1 at page two. Tell me when you're there.

2 THE COURT: Page 2 or line 2?

3 Q. Page 93, Line 2.

4 A. Okay.

5 Q. My question was, "Well, that's why they brought the
6 partition action wasn't it because the Burton Trust refused
7 to sign the Quitclaim Deed. Right?" And what was your
8 answer?

9 A. "Yeah."

10 Q. And then Mr. McMaster objected to the form, and then
11 you answered again at line 8 on page 93 and what did you
12 say?

13 A. Line 8, "Yes, sir."

14 Q. Excuse me?

15 MR. JELLENIK: Your Honor.

16 A. It says, "Yes, sir."

17 MR. JELLENIK: Your Honor, I - the fact - Objections
18 are reserved for the depositions, and I've already objected
19 to this.

20 THE COURT: Well --

21 A. I'd like to add to that.

22 THE COURT: Well, just one second ---

23 A. Okay.

24 THE COURT: --- and let me think a minute, because
25 we've got a difference in impeachment and . . .

1 I overrule the objection. Go ahead and --

2 A. I was going to say as you can tell, this - this is
3 very, very confusing what does what when?

4 THE COURT: You think so?

5 A. Yes, sir.

6 THE COURT: I can believe it. All right.

7 A. But even though I - I said yes here, you know, the -
8 and I'm not trying to contradict my statement under oath.
9 The full understanding that I have as of even yesterday was
10 that my mother signing or not signing the Quitclaim Deed
11 did not cause the lawsuit. What caused the lawsuit was the
12 roadbed tract not being titled properly. That was from
13 yesterday's testimony.

14 Q. Doctor Burton, we can look through and find, but there
15 were several times in your deposition, both the one taken
16 in 2010 and the one taken in 2014, where you said the
17 partition action resulted from my mother's failure to sign
18 the Quitclaim Deed. Didn't you testify to that over and
19 over again in your two depositions, sir?

20 A. I see it here, yes.

21 THE COURT: I -- I sustain --

22 Q. And weren't there other --

23 THE COURT: Well, I - I sustain the objection.

24 Q. Is this the only time that you've testified to this?

25 A. I - I haven't gone back and reread my entire, so I -

1 I'd have to - I don't know the answer to that.

2 Q. Do you recall that there were other times in your
3 deposition taken both in 2014 and 2010 where you agreed
4 that the partition action resulted from your mother's
5 failure to sign the Quitclaim Deed; isn't that right?

6 MR. JELLENIK: Your Honor, do I have to - I - I don't
7 --

8 THE COURT: I sustain the objection.

9 MR. JELLENIK: Thank you.

10 THE COURT: Let --

11 MR. OUTTEN: All right. May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER TWELVE,
15 PREMARKED FOR IDENTIFICATION.)

16 Q. Exhibit Twelve is the settlement agreement in the
17 partition action. Do you recognize it?

18 A. Excuse me. Yes, sir.

19 Q. Okay. Now, let's look at the caption. We look at the
20 caption and we see that all the heirs joined together as
21 petitioners to bring a lawsuit against the Burton Trust.

22 Right?

23 A. Yes, sir.

24 Q. All the heirs signed the Quitclaim Deed except the
25 Burton Trust. Correct?

1 A. That's correct.

2 Q. Look at page 23 of the settlement agreement, please.

3 A. Okay.

4 Q. Do you see - Well, there are - there are a number of
5 signature lines on page 23 but do you see where you signed
6 individually and as trustee on page 23?

7 A. Yes, sir.

8 Q. Right?

9 A. Yes, sir. I'm sorry.

10 Q. Okay. And look at page 2 if you would? Look at the
11 recital section. Do you see that?

12 A. Yes, sir.

13 Q. And, basically, the recital section says, "The
14 property involved in this case was that left by Mr. Cato in
15 1957. Right?

16 A. That's correct.

17 Q. And the next two paragraphs say, "The heirs executed
18 Articles of Organization. They executed a Deed." Do you
19 see that? Page 2, paragraph 4, do you see that?

20 A. I'm sorry. Say that one more time, page 2, paragraph.

21 Q. The fourth paragraph on page 2.

22 A. Okay. I see that, "Whereas the property involved in
23 this case was formerly owned by Thomas Edward Cato." Yes.

24 Q. Okay. And then the last paragraph, the last
25 "whereasof" on that page says ---

1 prior testimony was that you wrote this email. Right?

2 A. Yes, sir.

3 Q. Okay. And is there anywhere in this email where you
4 are telling - You sent it to Tommy Cato. Right?

5 A. Yes.

6 Q. Okay... Anywhere in this email where you say I'm
7 writing on behalf of my mother or anything like that?

8 A. No, sir.

9 Q. Okay. And this was about three months before you had
10 power of attorney, right, for your mom?

11 A. I believe so, yes, sir.

12 Q. And you were not a member of Cato Estate, LLC? Right?

13 A. No, sir.

14 Q. Okay. And the subject line at the very top says,
15 "Requirements for signing Cato SCDOT Quitclaim Deed."

16 Right?

17 A. Yes, sir.

18 Q. And do you see the second paragraph beginning with
19 "However," do you see that?

20 A. Yes, sir.

21 Q. It says, "I will agree to sign over the last Quitclaim
22 Deed from the South Carolina State Department of
23 Transportation if we address the following issues." I read
24 that correctly?

25 A. Yes, sir.

1 Q. And, Doctor Burton, we can all proceed under the
2 belief that you were being truthful and honest and - and
3 communicating in good-faith. Right?

4 A. Yes, sir.

5 Q. In other words, we can - when we look at this email,
6 we - we should proceed on the belief that you meant what
7 you said in this email. Right?

8 A. I'm - I'm sorry, she - she coughed.

9 Q. Okay. I'll - I'll try to ask it again. When we read
10 this email, we can proceed on the belief that you were
11 communicating in good-faith, that is ---

12 A. Yes, sir.

13 Q. --- you meant what you said. Right?

14 A. Yes, sir.

15 Q. And the party receiving the email, Tommy Cato, could
16 rely on what you said in this email. Right?

17 MR. JELLENIK: Objection, Your Honor. And again, as I
18 understand it, Doctor Burton, has already testified that he
19 wrote this email for his mother after discussing it with
20 his mother, and - and I don't want the record to reflect it
21 - it was only Doctor Burton that was involved and that
22 seems to be where we're going.

23 THE COURT: He just testified to that.

24 MR. JELLENIK: Huh?

25 THE COURT: He just testified to that.

1 MR. JELLENIK: And that's - I just wanted to make
2 sure, because the question is coming out a little
3 differently. Thank you.

4 THE COURT: Go ahead.

5 MR. OUTTEN: Thank you, Your Honor.

6 Q. And - and - and here what you're saying in this email,
7 what you're communicating, Doctor Burton, is you're saying
8 hey, listen, - we - we will sign the Quitclaim Deed, but here
9 are a couple of conditions; is that right?

10 A. Yes, sir. But --

11 THE COURT: Go ahead.

12 A. I want to - I - I had to sit down and talk with my
13 mother about every bit of this.

14 THE COURT: You can testify to that.

15 A. Okay. I - This is not coming directly from me. This
16 is - I am doing this because she can't read ---

17 Q. Okay. Well, I --

18 A. --- and she can't see - see to type anymore.

19 Q. I - I hear you, Doctor Burton, but however - however
20 the communication came to be, however the email was
21 composed, the question I'm asking you is, was it a
22 good-faith communication to Tommy Cato?

23 A. Yes.

24 Q. And did you intend for Mr. Cato to be able to rely on
25 the truthfulness and accuracy of what you put in this email

1 with the input of your mother? That's what I'm asking you.

2 A. Yes, sir.

3 Q. Is that fair?

4 A. Yes, sir.

5 Q. Am I being fair to you?

6 A. Yes, sir.

7 Q. Okay. And so once again you - you were saying here
8 are a couple of conditions that need to be met before I
9 sign the Quitclaim Deed, I being Marjorie Cato Burton.

10 Right?

11 A. Yes, sir.

12 Q. Okay. And there are four different paragraphs. The
13 first one is "Capital Gains Tax." Do you see that?

14 A. Yes, sir.

15 Q. And I - As I understand it, you were requesting that
16 the other heirs pay a part of the capital gains tax your
17 mother was going to incur because her basis was lower than
18 the other heirs. Is that - is that a fair description?

19 A. Yeah, but it wasn't just for my mother. You can see
20 here it says, "As you are well aware, Helen and I." Helen
21 was her sister.

22 Q. Right.

23 A. That's Helen Cato.

24 Q. Right.

25 A. Yeah.

1 Q. Right.

2 A. So she's - she's saying that she and Helen because
3 they inherited the land back in 1957 from their dad when -
4 T.E. Cato when he died, that the capital gains tax that
5 they would pay would be higher.

6 Q. Right.

7 A. Right.

8 Q. Right. Well, all I'm saying is this, number one was a
9 request from let's say you/your mother ---

10 A. Okay.

11 Q. --- to Tommy Cato saying because our basis is lower
12 than the other heirs, we want you to help pay or defray a
13 part of the capital gains taxes. Is that fair?

14 A. Yes, sir. But it was for her and her sister.

15 Q. Okay. But is that - is that --

16 A. Yes, sir.

17 Q. Part - part of the money that the heirs were going to
18 pay for the capital gains tax was going to go to your
19 mother. Right?

20 A. Yes, sir.

21 Q. And part to Helen?

22 A. Yes, sir. She felt it was not fair that her
23 generation should pay all of the tax and the other ones
24 where her brothers and sisters had died and those heirs had
25 inherited at a stepped up basis would pay less tax.

1 Q. All right. And then the second paragraph is,
2 "Remuneration," and I don't want to go through it, but what
3 it says in "Remuneration" is Marjorie Cato Burton served as
4 the administrator or headed up the family's efforts with
5 regard to this property for a while, and she didn't get
6 paid, so Tommy Cato if you're going to get paid, I want to
7 get paid. Is that - Is that a fair summary of what the
8 "Remuneration" paragraph said?

9 A. Yeah, she had done it for about thirty years.

10 Q. Okay. But - but that's what I'm saying, she was
11 requesting to be paid for the services she had previously
12 done with regard to this property. Right?

13 A. Well, she wanted people - she wasn't - she wasn't
14 saying this is what I expect to be paid. She was trying to
15 make them aware of the fact that she had been doing this
16 for a long time and yet, she wasn't being paid, so she just
17 thought they should take it as usual. They - Everything
18 was unanimous and take it under advisement and decide what
19 they think should be fair.

20 Q. I understand the factual basis for it, but it was a
21 request to be paid for services she had rendered in the
22 past?

23 A. Yes, sir.

24 Q. Okay.

25 A. You could say that I guess.

1 Q. And you testified that any decision regarding the sale
2 of the property had to be unanimous based on what the
3 family had done for decades. Right?

4 A. That is correct.

5 Q. Okay. And that is one reason why the family couldn't
6 come together on what to do with this property, because you
7 couldn't reach an agreement. Right?

8 A. Yes, but there - My oldest brother, Bud - I think
9 we've referred to him before - he's an architect and a
10 while back, he drew plans and - for Area B, shopping
11 center, got all of the people and they ended up eventually
12 voting on it and one of the sisters, Lib Cato, said no and
13 so that was not a unanimous vote, so it got shot down as I
14 think I expressed it that way. It was rejected ---

15 Q. Okay.

16 A. --- because it was not a unanimous vote.

17 Q. And I think you told me that because of this unanimous
18 decision issue, what to do with the property and how to
19 handle it, that dispute had been going on for years.
20 Right?

21 A. Yes, sir. But it was always the rule. I mean it was
22 just understood among the family members.

23 Q. And you said that this statement regarding a unanimous
24 decision was not based on the Limited Liability Company
25 documents. Right?

1 A. No, sir.

2 Q. It was based on history. Right?

3 A. Yes, sir. In my family yes, sir.

4 Q. Okay. And I think you testified that your mother
5 didn't sign - refused to sign the Quitclaim Deed, because
6 she couldn't get answers from Tommy Cato; is that right?

7 A. Yes, sir. I mean the emails that I think we've - that
8 have been presented here show a continuing request for
9 information, information and none was coming.

10 Q. But we did just go through an email where you said if
11 you do this, this and this, we will sign it. Right?

12 A. Yes, sir. We were trying to find answers. Yes, sir.

13 Q. Okay. Remember me asked about an email Mr. Pitts
14 wrote where he commented that he believed a million dollars
15 was a good price, words to that effect?

16 A. Yes, sir.

17 Q. Do you remember that?

18 A. Yes, sir.

19 Q. But, Doctor Burton, you didn't rely - you didn't rely
20 on an attorney's advice about the value of the property,
21 you wanted to see an appraisal. Right?

22 A. Yes, sir. Well, let me say this, I noticed in
23 yesterday's testimony that my cousin, Tommy, and you know,
24 he - he testified that he was afraid that an appraisal
25 would, you know, lower - be lower than what the buyers

1 might be willing to buying and then you came behind and you
2 kind of, you know, reiterated that point, but, you know,
3 that's - that's the glass half empty.

4 There's also a double-edged sword there. There's a
5 glass half full and that's the way we were looking at it
6 and we said well, what if it appraises for more? Well,
7 nobody knew. That's why I thought that everybody when they
8 sell land, they try to go get a professional appraisal to
9 try to figure out what the land's worth. Just like if a -
10 if you have a car. You go to kbb.com or Kelly Blue Book to
11 find out what the car is worth so you know approximately
12 what you should ask for. So that's what we were trying to
13 do, Mr. Outten.

14 Q. But this happened in 2007, this closing. Right? The
15 closing occurred in 2007. Right?

16 A. Yes, sir.

17 Q. And the first time you got an appraisal was 2014,
18 Doctor Burton.

19 A. Yes, sir.

20 Q. If an appraisal was so important, Doctor Burton, there
21 was nothing to stop you from getting an appraisal in 2007.

22 Right?

23 A. Uh-huh.

24 Q. 2008. Right?

25 A. Yes, sir.

1 THE COURT: You got to answer with words.

2 A. Oh. Well, let me - let me answer that, okay, if I
3 may?

4 Q. Yes, sir.

5 A. Tommy wrote an email to us saying that he needed
6 money, and I can't remember which email it is, but it's
7 back March-ish of 2007, somewhere around - somewhere around
8 there, that he was looking for money, because he testified
9 yesterday there was no money. So he was looking for money
10 to do appraisals and surveys with, et cetera.

11 And he wrote us an email and - and I forget the
12 amount. I'll say \$20,000 and for some reason that rings a
13 bell. He said send me \$20,000 and, you know, my mother
14 responded by saying, you know, we don't mind paying our
15 portion. That's not a problem. We'll pay the \$20,000. We
16 just want to know what the \$20,000 for? You know, is it -
17 you need - you need to give us, you know, invoices, I mean,
18 or something and not just to say I need money.

19 So my mother, she wasn't - she wasn't opposed to
20 paying her share to get an appraisal.

21 Q. Doctor Burton, I'm just asking you this question.

22 A. I thought I answered it.

23 Q. You've testified again and a - testified again and
24 again about the importance of an appraisal. I'm saying
25 this transaction closed in 2007. Right?

1 A. Yes, sir.

2 Q. And the first time you got an appraisal was seven
3 years later in 2014. Right?

4 A. Yes, sir.

5 Q. And there was nothing to stop you back in the summer
6 of 2007 from picking up a phone and calling an MAI
7 appraisal - appraiser and saying come appraise this
8 property. Nothing to stop you from doing that?

9 A. No, sir. But we thought that would be the job of the
10 LLC and all the members.

11 Q. And you said glass half full, glass half empty. You
12 remember just saying that?

13 A. Yes, sir.

14 Q. It's a judgment decision that Tommy Cato made. Right?

15 A business decision is what he testified to. Right?

16 A. Yeah, that's what he testified to, yes.

17 Q. Okay. Your mother believed that if she didn't sign
18 the Quitclaim Deed that none of the tracts would be sold.

19 Right?

20 A. Yes, sir.

21 Q. Now that - As I understand it, it was your thought and
22 your mother's thought at this point that you guys held the
23 cards and if you didn't sign the Quitclaim Deed, this deal
24 wasn't going through. Right?

25 MR. JELLENIK: Objection. Counsel is, as I understand

1 it --

2 THE COURT: Let's see what he's - let's refer to the
3 page and line.

4 MR. OUTTEN: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 Q. Maybe I should have given you a tool to make it
7 easier.

8 A. May I open this?

9 THE COURT: Yeah, go ahead, please.

10 A. It's like Christmas wrapping. Okay.

11 Q. It's page 99. The question begins on line 13. Please
12 tell me when you're there?

13 MR. OUTTEN: Your Honor, would you like a copy of the
14 deposition?

15 THE COURT: I think I can do without it.

16 MR. OUTTEN: Yes, sir.

17 A. Page 99. Okay.

18 Q. All right. Look at line - page 99, line 13 and let me
19 read the question to you. "Was it your understanding, was
20 it your position, was it your thought and your mother's
21 thought that at this point in time you guys held the cards?
22 If you didn't sign the Quitclaim Deed, then this deal
23 wasn't going to go through?" And what was your answer?

24 A. It says, "Yes, sir."

25 Q. Thank you. You don't dispute your mother received a

1 distribution from the sale which closed in December 2007.

2 Right?

3 A. No, sir.

4 Q. One -- 124.2, right?

5 A. No, sir.

6 Q. Now, in 2007, Lawyer Dale Dove expressed an interest
7 in acquiring the property. Do you remember that?

8 A. Yeah. Yes, sir.

9 Q. And I believe that you talked to Dale Dove a few times
10 about the property?

11 A. No, sir.

12 Q. Okay.

13 A. That was my brother that handled that.

14 Q. Okay. Turn to page 151, please. Tell me when you're
15 there, please.

16 A. I'm there.

17 Q. Okay. 151. Page 151, line 9. The question was, "Did
18 you have any conversations with Dale Dove about the
19 property," and what was your answer?

20 A. "Yes, ma'am."

21 Q. What was the rest of your answer?

22 A. It says I talked to him a few times.

23 Q. Okay. I interrupted you. Forgive me for that. Would
24 you read your answer, please?

25 A. It says, "I talked to Dale a few times."

1 Q. Okay. And, Doctor Burton, Dale Dove was paid for the
2 representation of your mother in late 2007 and 2008.

3 Correct?

4 A. Yes, sir.

5 Q. The closing occurred in late 2007. Correct?

6 A. Yes, sir.

7 Q. And the - excuse me - And the purpose of this
8 representation was to make heads or tails of all of this to
9 try to figure out what was going on. Correct?

10 A. Yes, sir.

11 Q. Both Dale Dove and Doug Gay represented your mother
12 until they hire - until she hired Mr. Jellenik; is that
13 right?

14 A. Yes, sir. But Dale Dove refunded his.

15 Q. I'm sorry?

16 A. Dale Dove refunded his payment to us.

17 Q. Your understanding was that Mr. Pitts was the attorney
18 for the LLC. Right?

19 A. Yes, sir.

20 Q. And, Doctor Burton, you don't claim that Mr. Pitts
21 represented your mother personally or individually at
22 anytime. Correct?

23 A. No, sir. He was not my mother's personal attorney;
24 no, sir. He was her attorney through LLC which she was a
25 member of, twenty percent member.

1 A. A lot of money.

2 Q. Was that the legal fees and costs that we talked about
3 before?

4 A. Yes.

5 MR. OUTTEN: Object. That's not relevant on the
6 issues of damages.

7 MR. JELLENIK: Excuse me, but --

8 THE COURT: I - I'll overrule the objection. Let's -
9 let's move on along now.

10 Q. All right. And the only other question I was going to
11 ask in this before I go to the next topic is, had the LLC
12 spent the money that it spent on that as well?

13 A. Yes.

14 Q. All right. Get to another subject. Did - We've
15 already discussed whether there were any communications
16 with Mr. Pitts of any kind.

17 A. Correct.

18 Q. Were there any -- any written communication and any
19 oral communications, any disclosures, any - any - any?

20 A. No.

21 Q. All right. Thank you. With regard to - There's some
22 discussion about the value of the lots. Mr. - Mr. Outten
23 indicated that the money received by the Trust didn't take
24 into account the additional four lots that were assigned
25 over.

24 A. Yes, sir.

25 Q. Where?

1 A. In Rock Hill, South Carolina.

2 Q. And what was your primary area of practice, sir?

3 A. Real Estate.

4 Q. Did you concentrate on transactions or litigation or
5 both in real estate?

6 A. Transactions.

7 Q. And how long ago did you retire, sir?

8 A. About - about three years ago.

9 Q. Do you know Doctor Burton, the plaintiff in this case?

10 A. Not personally.

11 Q. Did you know Marjorie Cato Burton, his mother?

12 A. Again, not personally. I don't think I ever met her.

13 Q. Have you ever heard of the T.E. Cato Estate, LLC?

14 A. Yes, sir.

15 Q. What was it?

16 A. That LLC was a Limited Liability Company formed
17 amongst the heirs of T.E. Cato.

18 Q. And were you the - the attorney that worked on
19 preparing the documents for that?

20 A. Yes, sir.

21 Q. Okay. And who asked you to do that?

22 A. James Thomas Cato, who I will call Tommy or Tom if
23 that's okay.

1 official organization and to prepare a Quitclaim Deed from
2 the then owning heirs into the LLC.

3 Q. Okay. Is that agreement in-writing anywhere?

4 A. I - I don't know if that's in-writing. I know the
5 results were in-writing.

6 Q. When you say the - I'm sorry?

7 A. The results of the document creating the LLC and the
8 Deed.

9 Q. Oh, in other words the documents that you were to
10 prepare exist. You prepared them; is that right?

11 A. That's correct.

12 Q. All right. What I'm asking is the agreement between
13 you and Mr. Cato as to who you were presenting and what you
14 were supposed to do, is there any kind of letter or other
15 written instrument that - that formalizes that or records
16 that?

17 A. Well, there - There's a statement for services
18 rendered that - which was rendered after that was
19 accomplished.

20 Q. That's the invoice that you sent out I want to say
21 around July 20 of 2007. Correct?

22 A. I - I don't remember a date to even talk about it.

23 Q. All right. I - I think that's in the record as I
24 understand it, so I'm not going to try to deal with that
25 right now, but that's the only thing that you recall?

1 A. What I was charged with doing was, again, getting the
2 property transferred over to an LLC rather than remain
3 vested in these tenants in common of which there were six
4 or seven or more and the statement that we were to protect
5 the individual members of the LLC, we took to mean that the
6 organizational documents would in themselves protect those
7 investors, in this case the heirs, as to their interest in
8 the property.

9 Q. All right. And did you recommend an LLC as the right
10 forum for --

11 A. I believe that Tom Cato and I discussed different
12 organizational structures that could apply and it was, in
13 my opinion, the LLC met what they needed better than
14 anything else ---

15 Q. Okay. Thank you.

16 A. --- and would offer that some protection to the
17 individual investors.

18 Q. All right. And were you aware that one of the other
19 heirs was the Burton Trust, Sloan Marvin Burton and
20 Marjorie Cato Burton, the A.B. Trust?

21 A. Well, I understood that Marjorie Burton was an owner
22 of, I guess, a twenty percent ownership interest having
23 been the daughter of Mr. T.E. Cato who started all of this
24 Cato property.

25 Q. All right. And - And you were aware the documents you

1 were preparing were intending to be signed by all of the
2 heirs; that that is the Articles of Organization, the
3 Operating Agreement and Deeds - the Deed?

4 A. That's my understanding yes, that all of them would
5 sign off.

6 Q. All right. And did Mr. Cato describe to you that he
7 was to be the manager of the LLC?

8 A. Yes. That's correct.

9 Q. Did you view this as a complicated transaction or a
10 simple transaction or something in between? Was this -

11 How did you view the --

12 A. It's fairly simple, straightforward.

13 Q. Was there --

14 A. Prepare the documents, open the documents, close the
15 sale and shut the documents up.

16 Q. Was it - Was it terribly uncommon to do something like
17 this?

18 A. No.

19 Q. And you understood that the - I apologize if this is
20 obvious, but you understood that the Articles of
21 Organization were to create the LLC for the members, that
22 the Operating Agreement was to set out the rules for how it
23 would run and that the Deed was to convey the properties
24 into it?

25 A. Sounds right.

1 Q. Is that right? I'm sorry I can't hear you, sir?

2 A. Yes.

3 Q. Thank you. And did you also understand that those
4 documents were intended to govern who would have what
5 powers and duties within the LLC?

6 A. Yes, sir.

7 Q. And would they also define how decisions were going to
8 be made within the LLC?

9 A. Well, the LLC was drawn in accord - in accordance with
10 the South Carolina Act that provides for the organization
11 of LLC's.

12 Q. Is that the Uniform Limited Liability Company Act?

13 A. I'm assuming that's right.

14 Q. All right. Thank you. And again, understanding that
15 they were drawn with reference to that act and I understand
16 that, was it intended to govern how decisions would be
17 made? The Operating Agreement was it intended to govern
18 how decisions would be made in the LLC?

19 A. Well, in the - In initially drawing those documents
20 and creating this LLC, they were prepared with the - I
21 don't know if instruction is the right word - but that Tom
22 Cato would be the manager of the property, I mean of the
23 LLC; that he would act as a executive officer would in
24 another type organization. I hope that answers the
25 question.

1 people.

2 Q. Had he seen the documents before the day he picked
3 them up as far as you recall?

4 A. I do not recall sending him the documents out by email
5 or otherwise.

6 Q. All right. Thank you. Did you offer - To the best of
7 your recollection, did you offer Mr. Cato any instructions
8 as to how to deal with the family members that he was
9 taking these papers to?

10 A. Not in any depth. I think, again, Mr. Cato is fairly
11 knowledgeable in business things and he - I think he could
12 without having any instructions see where they need to be
13 signed and by whom ---

14 Q. Okay.

15 A. --- and if witnesses were required to where that would
16 happen.

17 Q. All right. Did you ever have occasion to check
18 whether Mr. Cato -- well, let me strike that. Did you ever
19 have any - And I may have asked this before. I'm not sure
20 if I've asked it of you. Forgive me. Did you ever have
21 any communication whatsoever in any form with Mrs. Burton
22 or anybody associated with the Burton Trust?

23 A. No, sir.

24 Q. And that's true throughout 2007?

25 A. Well, I - Without some sheet of paper showing me what

1 entries I have and at what time, I'm not going to say that
2 I didn't have some conversation prior to the end of '07.
3 It may have been prior to the end of '08. I - I'm not
4 aware it doesn't happen.

5 Q. Do you recall any?

6 A. I had very limited contact with Dale Dove and Doug Gay
7 concerning Mrs. Burton, but that - I - I never spoke to her
8 or her family or anybody else.

9 Q. And my question was whether you ever spoke with her.
10 Let me - Let me put it this way. During the period of
11 formation of the LLC, your preparation of the documents and
12 the filing and so forth, and in the months that followed
13 related to the negotiations leading up to the closing on
14 December 12th, that's the period of time I was asking you
15 about whether you had had any contact with Mrs. Burton or
16 anybody related to the Burton Trust.

17 A. Not during the organization and not during the
18 preparation of the documents. I don't think I had any
19 contact with anybody representing the Burtons until we get
20 to the time the proposed Quitclaim Deed.

21 Q. And aside from people representing Mrs. Burton, my
22 question was did you ever have any contact directly with
23 her or with any of her family members, you know, her
24 husband or her son?

25 A. No, I - no.

1 Q. All right.

2 A. Never.

3 Q. You mentioned - So Mr. Cato picked up the documents
4 from your office. Was it your understanding he was taking
5 them out to have them signed?

6 A. I understood he was going to take them to be signed.

7 Q. All right. And you mentioned the Articles of
8 Organization, the Operating Agreement and Deed, those three
9 documents that you had prepared.

10 A. Yes.

11 Q. And I think you testified a few minutes ago that was a
12 Quitclaim Deed or was it supposed to be a Quitclaim Deed?

13 A. No, I - I got that confused. That was just a general
14 - I guess a General Warranty Deed from the heirs into the
15 LLC.

16 Q. All right. How do you - Well let me do it this way.
17 After formation, we've discussed the before formation, what
18 your role was; what about after the formation of the LLC,
19 what did you understand your role to be at that point going
20 forward?

21 A. I don't - I don't think I had a role going forward.
22 After the LLC was formed ---

23 Q. Yes, sir.

24 A. --- we were charged with getting a Deed prepared to
25 convey the property from the heirs into the LLC.

1 Q. Yes, sir.

2 A. That's going beyond this when it was organized. And
3 we did that and it's my remembrance is that all of the
4 necessary parties signed that Deed and --

5 Q. Yes, sir. When they did that --

6 MR. OUTTEN: Mr. Jellenik, I know you didn't notice
7 this, but Mr. Pitts was not through with his answer.

8 Q. Oh, I'm sorry.

9 A. No, no. I - Go ahead.

10 Q. Were you through with your answer?

11 A. I'm finished now.

12 Q. Thank you. With respect to - Were you present when
13 any of these family members signed any of these documents?

14 A. I don't believe so.

15 Q. All right. And you understood that Mr. Pitts - No, I
16 apologize. You understood that Mr. Cato was taking them
17 out to be signed by everybody?

18 A. That's my understanding. Either taking them to them
19 or mailing them if they were at some distance.

20 Q. So Mr. Cato was going to explain them to the different
21 family members and have them sign it - sign them and return
22 them to you?

23 A. I think generally that was the plan of Mr. Cato. Yes.

24 Q. All right. Now, you've indicated that after the
25 documents were signed, you were unaware of having a role

1 going forward from there; is that correct?

2 MR. OUTTEN: Your Honor, I object. That misstates the
3 testimony that Mr. Pitts gave. That question does.

4 THE COURT: Rephrase the question.

5 Q. Mr. Pitts, what was your role after formation of the
6 LLC?

7 A. Well, when you say after formation, I assume you're
8 talking with the regular filing fees?

9 Q. Yes. Let - Let's put it this way.

10 A. Excuse me.

11 Q. If I remember correctly, the documents that were
12 executed, were signed by everybody, were then, I guess,
13 brought back to your office; is that correct?

14 A. I believe so.

15 Q. Did you then file some of those documents with the
16 Secretary - the Articles of Organization, did you file
17 those with the Secretary of State's Office?

18 A. Yes.

19 Q. And you got a Certificate of Existence back ---

20 A. Yes.

21 Q. --- and you provided that, I guess, to - I guess to
22 Mr. Cato?

23 A. Right.

24 Q. Did you also record the Deed?

25 A. We did.

1 MR. JELLENIK: I - I was just going to ask.

2 A. I'm - I'm sorry, but this --

3 Q. That's fine.

4 A. The memory of people over my age gets faulty and
5 having to be on a witness stand in front of a court doesn't
6 help at all.

7 Q. Regrettably, I understand far better than I wish I
8 did.

9 A. It - Yes. I had gotten the documents back from the
10 recording or filing offices on 7/20 of 07 and about that
11 same time or just after that, Mr. Cato, I believe, sent me
12 a copy of the Letter of Intent and that kind of thing.

13 Q. So that would have had to be after July 25th since
14 that's the date on it; is that correct?

15 A. Right.

16 Q. Was the Letter of Intent signed or ready by Mr. Cato
17 or had it not yet been signed by Mr. Cato?

18 A. I don't - I don't know.

19 Q. I'm sorry?

20 A. I do not know the answer.

21 Q. All right. And was he - What was his intent in
22 telling you? What did you understand that he was talking
23 to you about regarding the Letter of Intent?

24 A. I understood that the Letter of Intent was to be
25 executed by the proposed selling LLC, addressed to

1 Thomason, saying when you intend to purchase this property
2 for such and such an amount and we intend to sell it to
3 you, and the purpose of that being so that Thomason could
4 go to whoever is necessary and says I - I've made a serious
5 offer on this property. Here is a Letter of Intent signed
6 by the owners of it given for us whatever we need.

7 Q. All right. And so is he basically seeking advice as
8 to whether he should proceed on that basis or?

9 A. At that point in time Cato was relying on Josh Vann
10 for advice on how to close and --

11 Q. And no - And again, you may be answering the question
12 absolutely right. I'm not sure, but I want to make sure
13 that you understand the question. This is the period of
14 time that I am trying to refer to is in late July, early
15 August, that kind of time frame of 2007. As you will
16 recall, the closing wasn't until mid-December, and I'm not
17 trying to discuss right now who was involved in that or
18 how. I'm asking with regard to the call or the meeting or
19 whatever the contact was that Mr. Cato came back to you on
20 regarding this Letter of Intent. I'm asking with regard to
21 that was he simply asking you what was - what was, if you
22 know, what was he asking you?

23 A. My notes show that on July the 30th, I had received an
24 email from Cato and I reviewed a Letter of Intent.

25 Q. All right. And at that time, since it wasn't signed

1 till August 3rd - You've answered that question, so thank
2 you. All right.

3 Did you have any further conversations about the
4 Letter of Intent? Do you recall having a conversation with
5 Mr. Cato about the Letter of Intent after you viewed it?

6 A. Not the Letter of Intent. I don't - I don't think
7 there were any questions on that other than the fact that
8 Josh Vann was going to - going to handle that closing if
9 they had one.

10 Q. Did you understand the Letter of Intent to be a
11 contract?

12 A. No. It's a preparation toward getting to a contract
13 and it's used generally to show that there is a good-faith
14 effort. I mean the parties agree in good-faith that there
15 will be a closing provided certain things happen, if any.
16 And it's a vehicle used to demonstrate to lenders or to
17 other necessary parties that if you lenders and all you
18 other folks come together and approve Thomason buying it,
19 you know these guys, they going to sell it to us because we
20 got a Letter of Intent that says they will.

21 Q. So did - Did you raise any questions with Mr. Cato as
22 a result of your review?

23 A. No.

24 Q. All right. With regard to that did - Did you receive
25 any correspondence or calls or whatever, any contacts or

1 MR. PITTS: I don't know if it'll do any good.

2 THE COURT: Okay. Well, we'll just get you some
3 water.

4 MR. PITTS: Okay.

5 THE COURT: Go ahead.

6 MR. JELLENIK: You all right?

7 MR. PITTS: I think so.

8 MR. JELLENIK: All right. Why don't - Why don't I
9 wait until you get some water, and then we'll move on.

10 You ready to proceed, Mr. Pitts?

11 MR. PITTS: Yes, sir.

12 MR. JELLENIK: All right.

13 Q. Could I ask you to turn to Exhibit Fifty-three in the
14 exhibit book, please?

15 MR. JELLENIK: And I'd like that marked for
16 identification as Plaintiff's Fifty-three.

17 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY-THREE,
18 PREMARKED FOR IDENTIFICATION.)

19 Q. Do you recognize that document, sir?

20 A. Is this a - lists - it's - It's a message from Martin
21 Burton - Marvin Burton ---

22 Q. Yes, sir.

23 A. -- to Tommy Cato dated August 4th, 2007.

24 Q. Yes, sir. And you see your name at the top of that
25 page?

1 A. I do.

2 Q. And does that reflect the fact that this is in your
3 files?

4 MR. OUTTEN: Your Honor, I - I object. I don't know
5 what he means by file. We responded to their document
6 request and during the sweep we picked up this email. Does
7 he mean an electronic file Mr. Pitts kept or in a paper
8 file?

9 A. I don't know --

10 MR. OUTTEN: Or I don't know if he knows the answer to
11 that.

12 THE COURT: Wait - Wait a minute. All right.

13 Well, just - Rephrase the question.

14 MR. JELLENIK: I'll try to rephrase.

15 Q. Mr. Pitts, does this indicate that this email was in
16 your possession?

17 MR. OUTTEN: I - I don't - I object to that question.

18 A. Mr. Jellenik, I - I - I'm not that --

19 THE COURT: Well, it's not so much what it may
20 indicate. I think - I mean, I'm not saying somebody did
21 it, but anybody can put the name Carroll Pitts on the top
22 of a document. Now, I'm not saying anybody did, but I
23 think the question needs to be not does the fact that his
24 name is there indicate it's his. I think you got to get
25 there another way. I mean it's got a RBH stamp down at the

1 bottom. I see that.

2 MR. JELLENIK: Yes, sir.

3 THE COURT: But I - I don't . . .

4 Q. Well, understanding, and obviously this was secured
5 from the RBH discovery, Mr. Pitts have - have you seen this
6 before? Do you recall whether you've seen this before?

7 A. I'm not sure.

8 Q. Okay. Let's go to - Excuse me.

9 Mr. Pitts, could I ask you to turn please to Exhibit
10 Twenty.

11 A. All right. I have.

12 Q. I beg your pardon?

13 A. Is that the one that's also marked Exhibit Sixty-five?

14 Q. Yes, sir, it is.

15 A. Okay. I have that.

16 Q. That's correct. Have you seen that document before,
17 sir?

18 A. Mr. Jellenik, I'm not going to say for sure yes or no.
19 I may have seen it.

20 Q. All right. If you would look at the upper part of
21 that page off toward the left. What does that say?

22 A. At the top of the - It says "final" in handwriting and
23 then it says, "Subject: Burton questions on T.E. Cato,
24 LLC."

25 Q. Do you see the - Do you see the handwriting that says

1 "CCC Pitts?"

2 A. Yes.

3 Q. Did you receive a copy of this, si? Do you know?

4 A. I believe I have seen a copy of this document.

5 Q. All right. Thank you, sir. And could you also turn -

6 Forgive me. We're hopping around a little and I

7 apologize. Could you turn to Exhibit Twenty-eight. I

8 believe these - And let me know when you're there.

9 A. Twenty-eight. Is that the privilege log?

10 Q. Yes, sir.

11 MR. OUTTEN: Your Honor, that one's been ruled by in a
12 case by you at the beginning.

13 THE COURT: Well, I --

14 MR. JELLENIK: My understanding is that - and I - I
15 may be wrong, I may be in error with this, but I thought
16 that was one of the things that sort of got put aside for
17 the time-being, but I may be wrong.

18 THE COURT: No, I don't believe I was going to go over
19 the privilege log. I believe I ruled that I was not gonna
20 go over the documents set forth in the privilege log.

21 MR. JELLENIK: And - And we're not - Yeah. The only
22 thing I'm going to ask - I'm - I'm not asking that those be
23 feared, that those documents be disclosed now. I'm - I
24 just wanted to review what it says. That's all.

25 MR. OUTTEN: Respectfully, that comes awfully close to

1 - to - to violating your ruling. You say he can't have the
2 - the documents on the privilege log if the Court's not
3 going to view them, and then he goes in and asks questions
4 about them, that seems ---

5 THE COURT: I --

6 MR. OUTTEN: --- inconsistent, Your Honor.

7 MR. JELLENIK: First of all, you're anticipating the
8 questions and you haven't heard them yet. And second of
9 all, I repeat I'm not going to ask what they are. I am
10 simply going to ask about what's written here.

11 THE COURT: Has this been --

12 This hadn't been put into evidence has it?

13 MR. JELLENIK: No, but if I may ask that it be when
14 we're done, but I'm not sure that it has.

15 THE COURT: Well, I - I think I'm going to sustain the
16 objection. I think the privilege log is something that's
17 allowed in our discovery in order to protect and place into
18 privilege certain documents for certain reasons whether it
19 be work product or attorney/client privilege. And I - I
20 know of no prohibition to using the log itself, but I think
21 that it is a - Not finding fault with what you're trying to
22 do which is allow - me allowing a misuse of a privilege log
23 to allow - again, I'm not finding fault with you. It's a
24 sort of backdoor way of getting into the record matters
25 that have not been viewed by the Court and may have

1 absolutely nothing to do with this case. It may have
2 privilege and the privilege would extend to them even being
3 discussed, not just the content.

4 So unless this privilege log - unless it has been
5 reviewed and the privilege either waived or the privilege
6 been - unless overruled by the Court, then it's privileged.
7 It's privileged until such time as the Court says it's not
8 and since the Court has not said that any of these are not
9 privileged, there's some privilege including that even
10 their existence other than for the purpose of the log.

11 MR. JELLENIK: And - And again, I apologize if I'm
12 being redundant, but I - I have - As I have indicated, our
13 intention is not to go into the content and, first of all,
14 you don't what the content is.

15 THE COURT: I understand. You're just gonna go back
16 and say you got on the privilege - attorney's privilege log
17 on August 2007 you got - and I know this is violating my
18 the rule, but I anticipate we'll say there is an indication
19 of some - something that may pertain to this case.

20 And I think that violates my rule, so you - You can
21 make the privilege log a Court's exhibit if you wish to
22 protect your rights on appeal, and I certainly reiterate I
23 want all of that done, but I think that that is a violation
24 of the privilege log even utilizing it in any fashion.

25 MR. JELLENIK: All right. In that case yes, we would

1 THE COURT: Okay.

2 MR. JELLENIK: I misunderstood you. Thank you, Your
3 Honor.

4 Excuse me for a moment, Your Honor.

5 (PAUSE.)

6 Q. Mr. Pitts, if you'll go back to Exhibit Fifty-three.

7 And, again, you've already - I'm sorry. Are you
8 there?

9 A. I am.

10 Q. You've already commented briefly on this email. On
11 the lower left-hand corner, would you read that date,
12 please?

13 A. 8/15/2007.

14 Q. And this was in RBH's files as shown by the Bates
15 stamped number; is that correct?

16 A. That appears, yes.

17 Q. And with respect to --

18 MR. JELLENIK: If I may approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q. Mr. Pitts, I have - and let me - Excuse me for just a
22 moment.

23 Mr. Pitts, I show you now a printout of an email and
24 it's Bates stamped RBH001069, lower right-hand corner; is
25 that correct, sir?

1 A. Yes, sir.

2 MR. JELLENIK: I'd like to have this marked for
3 identification as Plaintiff's Twenty-nine.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWENTY-NINE,
5 PREMARKED FOR IDENTIFICATION.)

6 Q. And do you see a date in the lower left-hand corner of
7 this item, sir?

8 A. 8/23/2007.

9 Q. All right. Thank you, sir. All right. Now, as time
10 went forward - I'm sorry, sir. Are you okay?

11 A. Yeah.

12 Q. We're - We're done with that. I - I can take that
13 back from you if you want.

14 A. Oh, that's okay.

15 MR. JELLENIK: Oh, you're actually - You want it?

16 MADAM COURT REPORTER: Yes, sir, I do. If it's in
17 evidence I do.

18 MR. JELLENIK: Your Honor, we would move that that be
19 admitted into evidence as Plaintiff's Twenty-nine.

20 MR. OUTTEN: I object. Not through this witness,
21 because if he wants to authenticate it, Judge, Mr. Pitts is
22 not copied on this. I - I know his name appears up here
23 and I know we produced it. The fact that we produced it
24 doesn't make it admissible. It's admissible if Mr. Pitts
25 has reviewed it, if he considered it and if there - there

1 issue?

2 A. At some point in time I became of aware of this - that
3 issue.

4 Q. Were you aware of the proposal to deal with that
5 through a Quitclaim Deed?

6 A. I - As I recall, there was - there was some direction
7 that it was gonna possibly take a partition action to clear
8 that up, but I believe that there was a Quitclaim Deed
9 prepared to do that to make it simpler and cheaper.

10 Q. And - And as you understood it, if the Quitclaim Deed
11 had been executed, would the partition action have been
12 needed?

13 A. Completely executed?

14 Q. Yeah. If - If Mrs. Burton had signed off on the
15 Quitclaim Deed and the other heirs had signed off on the
16 Quitclaim Deed, would there have been a need for a
17 partition action?

18 A. No, you wouldn't need it.

19 Q. And you were aware of that at the time?

20 A. Yes.

21 Q. And you - Were you also aware that Mrs. Burton had not
22 signed off?

23 A. I was made aware that she had not signed the Quitclaim
24 Deed.

25 Q. Okay. And I think Mr. Cato has already - Well, let me

1 do it this way. Did you and Mr. Cato discuss that at any
2 time?

3 A. I - Again, I'm not sure what particular day, but
4 certainly we discussed it and how are we going to - how he
5 going to get through this dilemma of not being able to
6 convey the full title.

7 Q. All right. So you were - he - he was ask - He was
8 telling you what was going on and asking you questions and
9 you were --

10 A. Asking me how to - to best approach getting that
11 cleared up.

12 Q. And you - And you were answering?

13 A. To the best of my ability, yeah.

14 Q. I understand. All right. Excuse me for just a
15 second.

16 If I could ask you to turn please to Exhibit Twenty-
17 four. And if you would go to page two, please?

18 I believe this has already been admitted into
19 evidence.

20 Sir, do you recognize this document?

21 A. You better identify it. I'm at --

22 Q. I'm sorry. It's Exhibit Twenty-four, second page.
23 It's an email from you to Mr. Cato with Charleston or
24 charlotteinsuranceoffice@aol.com.

25 A. Right.

1 Q. And it's --

2 A. Yes, I - I do recall that.

3 Q. And the date is November 8th?

4 A. Yes, sir. That's what it appears to be.

5 Q. 2007. All right. You do recognize this email; is
6 that correct?

7 A. Yes, I do.

8 Q. All right. Is this the email you referred to before
9 or is this one of the communications that you were talking
10 about before on this?

11 A. I think this is possibly just one of - of more than
12 one.

13 Q. All right. Mr. Pitts, did you play any role with
14 respect to the December 12, 2007 closing of the reported
15 sale of the Areas?

16 A. I - I didn't understand your question.

17 Q. I'm sorry. Let me repeat it. Are you aware that -

18 Do you recall that there was a closing for the sale of
19 the areas held on December 12th, 2007? All right. Let -
20 let me rephrase it.

21 A. Was that to the Thomason?

22 Q. Yes.

23 A. I'm aware of, yes, that there was a sale and then an
24 Amendment to a Contract.

25 Q. All right. And did you have any involvement with

1 respect to the Amendment to Contract. Do you recall?

2 A. No, I - I remember looking at - Documentation, let me
3 just put it that way, that Thomason was ready to proceed on
4 to the purchase of the property at a million dollars
5 provided, however, he was going to without \$100,000 until
6 such time as the quote roadbed tract end quote could be
7 conveyed whereby Thomason would then acquire all the
8 properties in the agreement.

9 Q. And did Mr. Cato consult you on that item?

10 A. Yes, I believe we did discuss that item.

11 Q. So you had a discussion about that?

12 A. Right.

13 Q. And following that came the closing. Were you
14 involved in any way with regard to the closing?

15 A. No, sir.

16 Q. I'm - I'm sorry, I apologize.

17 A. No.

18 Q. All right. And you mentioned that Mr. Vann was going
19 to handle that closing; is that right?

20 A. Right.

21 Q. And did you receive an email from Mr. Vann?

22 A. I believe that Mr. Vann sent me a copy of a proposed
23 settlement on that transaction.

24 Q. Hang on a second. Forgive me.

25 Exhibit Fifty, would you please turn the book to

1 Exhibit Fifty, sir.

2 THE COURT: Before we get another exhibit, let's take
3 a break. Let's take about a ten-minute break.

4 MR. JELLENIK: All right. That's fine, Your Honor.
5 Thank you.

6 THE COURT: Mr. Pitts, you can step down and have some
7 water or use the restroom.

8 MR. PITTS: Thank you, Your Honor.

9 (COURT IN RECESS AT 03:22 P.M..)

10 (COURT BACK IN SESSION AT 04:08 P.M..)

9 THE COURT: Thank you. You may take your seats.

10 For planning purposes for those of you are wondering
11 how late we'll go tonight, I really don't know. I will
12 tell you that I just took a shot of 5-Hour Energy, so
13 that's all I'm going to say at this point.

14 Go ahead, Mr. Jellenik.

15 MR. JELLENIK: Thank you, Your Honor.

16 Q. Mr. Pitts, would you please turn in the exhibit book
17 to Exhibit Fifty.

18 A. All right. And I think I - Yes, sir.

19 Q. Would you tell me what that is, please?

20 A. Well, it appears to be correspondence. I guess it's
21 an email from Joshua Vann to me.

22 Q. All right.

23 MR. JELLENIK: And we would like to have this marked

9 for identification as the Plaintiff's Fifty, please.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY,
11 PREMARKED FOR IDENTIFICATION.)

12 Q. And, Mr. Pitts, what's the date on this email that was
13 sent?

1 A. December the 12th, 2007.

2 Q. All right. And did you receive this email, sir?

3 A. My assumption is that we received it.

4 Q. And you received that - I'm sorry. You assume that
5 because of what?

6 A. That's just - That's from its appearance.

7 Q. Is it addressed to you, sir?

8 A. Yeah. Yes.

9 Q. So would it be reasonable to gather that you received
10 it?

11 A. That's what I'm doing is guessing.

12 Q. All right. And would have been part of your files for
13 this case or for what you were doing for Mr. Cato at the
14 time?

15 A. It looks like it would have been part of the file.

16 Q. And has - If you look at the lower right-hand corner,
17 it has the RBH Bates stamp on it; is that correct?

18 A. It does have that stamp on it.

19 Q. In the lower left-hand corner it has the date
20 12/12/07; is that correct?

1 A. That's correct.

2 Q. And in your office, isn't it correct that when
3 communications are sent in they get printed out and made
4 part of your files?

5 A. That would be typical, yeah.

6 Q. All right. Is that what this would be?

7 A. I would think so.

8 Q. All right. With respect to that, would you take a
9 moment, please, and read this email.

10 A. All right. I've --

11 Q. Take your time.

12 A. Yes, it appears to be a request from Joshua Vann for
13 certain information and/or copies of material to me. I -- I
14 mean, this is only seven-and-a-half years ago, but I assume
15 that typically would have -- we would have responded to that
16 and sent him what he asked for.

17 Q. All right. So do you recall any telephone
18 communication with Mr. Vann about this topic?

19 A. Not from seven years ago.

20 Q. All right. But you're saying in the normal course of
21 business you would have responded to this?

22 A. Typically, yes.

23 Q. All right. And in the normal course of business, how
24 would you have responded to this?

25 A. I believe that he asked that we email him a copy of

1 the Operating Agreement and the articles.

2 Q. So you would have done that?

3 A. So that would appear to be what we would have done.

4 Q. Now, just before that, he indicates, well, let me just
5 read the front part of this. "My client will be closing."

6 And his client I, is it correct that his client was the
7 Thomasons, is that accurate?

8 A. I think that's right.

9 Q. "On the largest portion of the Cato Estates probably
10 this afternoon. There is a new Ethics Opinion making it
11 clear that preparing a Deed, a closing attorney is
12 providing representation to the seller. The opinion
13 involved residential closing, but I like to play it safe.
14 I have prepared a Deed for today's closings. In your
15 capacity as counsel for T.E. Cato Estate, LLC, please
16 review and approve," and then he goes into please email me
17 the copy of the Operating Agreement and so forth.

18 A. Right.

19 Q. As part of your response, would you have reviewed and
20 approved or did you review and approve the Deed that is
21 being sent here? Take your time.

22 A. He's asking if, if he, apparently, he prepared a Deed
23 and he's asking for me to review it for the LLC. And
24 again, the normal course of action would have been to, to
25 do that.

1 Q. Okay. So in some communication, you would have
2 indicated to him whether that Deed was acceptable?

3 A. It would have been either by email I imagine. When he
4 asked me to send him a copy of the Operating Agreement and
5 articles, I would assume that we sent him those.

6 Q. All right. And as to the Deed?

7 A. Well, I believe he's saying he prepared the Deed and
8 we were just to approve it. I assume we did.

9 Q. Okay. So that's what happened?

10 A. That, that is my assumption. Again, we are seven
11 years out on that.

12 Q. Do you, do you know of anything that would contradict
13 that?

14 A. Nothing offhand at least.

15 Q. Thank you, sir. Hang on just a moment.

16 MR. JELLENIK: All right. Before we go to the next
17 item, we would move the Court to admit this Exhibit Fifty
18 into evidence.

19 MR. OUTTEN: No objection.

20 THE COURT: In without objection.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY,
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 MR. JELLENIK: Ms. Watson, is there anything that's
24 pending that hasn't been moved into evidence?

25 THE COURT: Nelson.

1 MR. JELLENIK: Thank you. We would move that they be
2 admitted into evidence.

3 MR. OUTTEN: Is that the Settlement Agreement and
4 attachments?

5 MR. JELLENIK: Yes.

6 MADAM COURT REPORTER: Settlement Agreement and Mutual
7 Release.

8 MR. OUTTEN: Thank you. No objection.

9 THE COURT: In without objection.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER THIRTY-EIGHT, A
11 THROUGH F, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 MADAM COURT REPORTER: Plaintiff Thirty-two again,
13 Summary Invoice and the Judge has already ruled on that.

14 Correct?

15 THE COURT: And we'll be able - The invoice summary of
16 who?

17 MADAM COURT REPORTER: Billed to David Burton. That's
18 how it's presented in that testimony.

19 MR. JELLENIK: Oh, you - You're talking about the
20 invoices now?

21 MADAM COURT REPORTER: Yes. Yes, the packet.

22 MR. JELLENIK: I'm talking about the actual invoice.

23 MADAM COURT REPORTER: Package.

24 THE COURT: Which invoices?

25 MR. JELLENIK: If I understood that correctly, the

1 ones that went to David Burton from ---

2 THE COURT: From whom?

3 MR. JELLENIK: --- which would have been mine.

4 THE COURT: Oh, and I think I - I think I -

5 You objected and I ruled.

6 MR. OUTTEN: I - I did object, Your Honor.

7 THE COURT: And I sustained the objection. I think,
8 I don't know, what --

9 MADAM COURT REPORTER: They're marked into evidence.

10 THE COURT: I'm getting confused because here --

11 Here's the problem, and I can take some responsibility
12 for this, but I don't believe it's completely my
13 responsibility. I'm not going to hint or prod or prompt
14 anybody or cue anybody if they haven't put their exhibit
15 in. I'm trying to keep up with this and that's - The
16 burdens is on those of you who are. So when we get three
17 hours later and we go back to something, I honestly --

18 You can't remember what I ruled on.

19 MR. JELLENIK: And -- and you are - I'm not trying to
20 debate that. I'm simply trying to clear up the fact that
21 we have some things - given what's been going on, we have
22 some things that need to be --

23 THE COURT: Well, we've hit one where I can't recall,
24 so let's move on and we'll deal with that.

25 MR. JELLENIK: All right.

1 THE COURT: That's your deal.

2 MR. JELLENIK: Yes.

3 MADAM COURT REPORTER: Plaintiff's Forty-eight, Mrs.
4 Burton's email as of 11/24/07, marked for ID under witness
5 Statement Burton.

6 MR. JELLENIK: All right. We'd asked that that be
7 admitted into evidence, Your Honor.

8 THE COURT: Which one again?

9 MR. JELLENIK: Eleven -- Exhibit Forty-eight, am I
10 correct?

11 MADAM COURT REPORTER: Yes, sir.

12 MR. OUTTEN: I - you know, I - I believe that I
13 objected to this email being admitted and I think Your
14 Honor admitted it over my objection. I believe that's what
15 happened, because we were having a --

16 THE COURT: That's the lengthy one with five or six
17 points in it?

18 MR. OUTTEN: No, sir. This was the one where the --
19 there were calculations done based on the '94 appraisal and
20 we were talking about whether or not --

21 THE COURT: I - I allowed it in. That's right.

22 MR. OUTTEN: And I think you did allow it in. Yes,
23 sir.

24 THE COURT: Any others while we're doing this?

25 MR. JELLENIK: I'm sorry?

1 THE COURT: Any others while we're doing?

2 MR. JELLENIK: And that's what I'm asking.

3 MADAM COURT REPORTER: Plaintiff's Fifty-three,
4 Plaintiff's Twenty-nine, Plaintiff's Fifty which just
5 marked for ID under Mr. Pitts.

6 MR. JELLENIK: All right. Fifty-three and Twenty-nine
7 are the next two?

8 MADAM COURT REPORTER: Yes, sir. And then Fifty is
9 the final one.

10 MR. JELLENIK: All right. And then that one's -- all
11 right. Hang on just a minute while I catch up with me. I
12 think Fifty - I thought Fifty was just admitted, but if it
13 hasn't been, then we'd move for Fifty, Exhibit Fifty to be
14 admitted. I thought it was.

15 THE COURT: That's --

16 MR. OUTTEN: I don't object to Fifty. That was the
17 email Mr. Pitts just testified about, I believe.

18 THE COURT: In ---

19 MR. JELLENIK: Yeah.

20 THE COURT: --- without objection.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY,
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 MR. JELLENIK: And Fifty-three, I think that's the one
24 that you had the issue with if I recall correctly. And
25 what --

1 myself and for the firm.

2 Q. And was your normal way to print them out as you have
3 indicated and placed them in the file unless they needed
4 immediate attention, then you'd give it immediate attention
5 and then place them in the file?

6 A. Well, that's basically correct unless it's a two, I
7 mean a two-word response, then it probably was not printed
8 out if it just said --

9 Q. I'm sorry. I couldn't hear the very last part.

10 A. Well, if it just said go next door and borrow this and
11 put it in the file, then I'd just do what it instructed and
12 not necessarily put that in the file. But, generally yes,
13 they're put in the file.

14 Q. All right. And when it's printed out from the file,
15 would the date that it'd be printed be on the document?

16 A. Would what be on the document?

17 Q. I'm sorry. So it, when it's printed out?

18 A. Right.

19 Q. The date that it's printed out would be on the
20 document?

21 A. I'm assuming that's true. I believe that is true.

22 Q. Is that the date in the lower left-hand corner?

23 A. Yeah, I think that's, that's, I think that's where
24 that date comes from.

25 Q. Thank you. And is it correct, to the best of your

1 A. When we started out with emails, it was very rare to
2 one. Now, it's pretty prolific the amount of them that
3 come into any file.

4 MR. JELLENIK: Excuse me for just a moment.

5 Q. Mr. Pitts, would you turn again to Exhibit 53?

6 A. Yes, sir. All right. Yes, sir.

7 Q. And is it correct that that's Bates stamped on the
8 bottom RBH001074?

9 A. Yes, it has that number.

10 Q. And it's correct that it was printed out on August 15,
11 2007?

12 A. , Yes, sir.

13 Q. So would it be correct that this was then placed in
14 your file? Would it normally have been placed in your file
15 unless it required immediate attention?

16 A. Mr. Jellenik, I'm not trying to be difficult, but I
17 don't know enough about emails and that type
18 correspondence. The original email apparently was from
19 Marvin Burton, Burton to Tommy Cato, and then this is a
20 name above those which is mine. I don't know who sent the
21 thing to me. I, I don't.

22 Q. And I'm not necessarily asking who sent it to you.
23 I'm simply asking isn't this the normal format for the
24 printouts that you normally as part of the daily conduct of
25 business?

1 REPORTER: I do not see it, Mr. Jellenik.

2 MR. JELLENIK: I beg your pardon?

3 REPORTER: It's not here.

4 MR. JELLENIK: All right. Let's do this.

5 A. Excuse me. I, I think I have located it and sort of
6 misplaced it.

7 Q. Okay. Thank you.

8 THE COURT: Go ahead. You got a question?

9 Q. Are you ready?

10 A. I have, I have that. 29 is what you wanted? I have
11 that.

12 Q. All right. Have you had a chance to look at it, sir?

13 A. Yeah, there's a lot to it, but I've glanced through
14 it.

15 Q. Now, again, this document has the RBH Bates stamp in
16 the lower right-hand corner, 001069, is that correct, sir?

17 A. That is correct.

18 Q. And it has the printout date of 8/23/2007 in the lower
19 left-hand corner, is that correct, sir?

20 A. That's correct.

21 Q. And, therefore, this would have been printed out in
22 your office on August 23, 2007?

23 A. I, it should have been.

24 Q. And then, and unless you had to do something
25 immediately but, otherwise, it would have normally been

1 placed in your file or placed in your file after you did
2 something that had to be done?

3 A. Mr. Jellenik, the, the contents of this email appear
4 to be informative, but not really deals with the issues
5 that we were representing Mr. Tom Cato on. I'm assuming
6 that this document was a copy was placed in the file. I
7 can't be sure, because it's not anything that required
8 immediate action. It, it's more or less just information.

9 Q. All right. So it would have been normally placed in
10 the file?

11 MR. OUTTEN: Your Honor, I object. How long are we
12 going to go through this --

13 MR. JELLENIK: We're going to go through this --

14 MR. OUTTEN: We, we've spent an hour on these two
15 emails. You've already made a ruling on them.

16 THE COURT: Well, I made a ruling based at, at that
17 time. I think he's got some other ammunition at this point
18 I think he's getting ready to fire across the bow ---

19 MR. JELLENIK: He is.

20 THE COURT: --- and but I wish you'd go ahead and do
21 it, because we are going very, very slow ---

22 MR. JELLENIK: I know and I --

23 THE COURT: --- and I hope that 5-hour Energy might
24 not end up being sufficient.

25 MR. JELLENIK: If you take more than one --

1 THE COURT: Go ahead.

2 Q. All, all I'm getting at is, as you have described it
3 in the normal course of business, these things would have
4 been printed out. It has the printout date on it and would
5 have been placed in the file either before or after you did
6 something that was immediately required; is that correct?

7 A. I am saying that the normal procedure with a email
8 coming in of this nature that it would have been run off on
9 the printer and directed towards going in the file.

10 Q. All right.

11 A. Whether that's a file that's on my desk or it's the
12 filing cabinet down the hall. I'm not saying. Well, all
13 I've said is that this particular email is more or less
14 information of what's, and not really concerned with what
15 I'm doing for these folks.

16 Q. I hear you.

17 MR. JELLENIK: Your Honor, we would ask to admit, we
18 would move to admit these two exhibits, Twenty-nine and
19 Fifty-three into evidence.

20 MR. OUTTEN: The same objection that the last --

21 THE COURT: Well, I'm going to go ahead and rule so we
22 can move on.

23 MR. OUTTEN: Certainly.

24 THE COURT: This, this Robertson, Bradshaw and Hinson
25 in addition to Mr. Pitts are defendants. It's got a Bates

1 stamp that indicates that RBH Bates stamp. It also has a
2 date that Mr. Pitts has testified as the way that printed
3 copies are receive, or are handled, so I'm going to allow
4 it in over objection.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS TWENTY-NINE
6 AND FIFTY-THREE, IDENTIFIED AND MARKED, RECEIVED INTO
7 EVIDENCE.)

8 MR. JELLENIK: Thank you, Your Honor.

9 Excuse me for just a moment, sir?

10 Q. Mr. Pitts, if I could direct your attention quickly to
11 Exhibit 53. That's the August 4 email.

12 A. Okay. I have that.

13 Q. You see that one. Did you, did you have a chance to
14 look at this before? Let me put it this way. Sir, would
15 you please read to yourself, just read over paragraph 6 on
16 page 2 of this email?

17 A. All right. I've sort of read through that.

18 Q. All right. Thank you, sir. Do you recognize that
19 paragraph as affecting the issues that you were dealing
20 with Mr. Cato about or with the LLC about?

21 A. I, I'm not sure what my personal reception to that
22 letter was. I think I have, I think I've seen it and I
23 think I've read it before about seven years ago and that
24 was the last time had reason to. My observation of that
25 letter when I received it was Marjorie Burton didn't write

1 this letter.

2 Q. I'm sorry, repeat that?

3 A. Marjorie Burton didn't write this letter.

4 Q. All right. But the question is is the issues raised
5 in paragraph 6, do you seem them as relating to what you
6 were doing with Mr. Cato and, and the T.E. Cato Estate,
7 LLC?

8 A. I took that paragraph, in light of the fact that I had
9 eight or nine more paragraphs all, they were just
10 complaining ---

11 Q. All right.

12 A. --- on behalf of Mrs. Burton who I don't think wrote
13 the letter.

14 Q. Whether Mrs. Burton wrote the letter or not --

15 A. Well, she's, that's whose name is on it.

16 Q. Yes, sir. I understand. My question is a very simple
17 question. Do the issues raised in paragraph 6 relate to
18 what you were doing with Mr. Cato and the Cato LLC? Let,
19 let me try it a different way.

20 A. Yeah, you going to have to. It's too broad.

21 Q. I'll, I'll try it in a different way. One of the
22 things that, well, let me do it this way. Isn't it true
23 that one of the things in paragraph 6 is questioning the
24 extent of Mr. Cato's authority?

25 A. I see that in there, yes.

1 Q. All right. Isn't it true that one of the things in
2 here has to do with whether there are majority or unanimous
3 decisions to be made? Well, let me ask you, let me, let me
4 try to help you, sir.

5 A. Well, I'm getting almost to the end of the paragraph.
6 Let me finish.

7 Q. It's in the middle. Look at the line that starts,
8 "Cato" and the part of the sentence that relates to this
9 is, "However, any final decision," and that's underlined
10 above it, "to sell or not to sell the areas A, B, C, and D
11 or any of the property jointly held by the heirs of T.E.
12 Cato still rest with all, underlined, of the heirs coming
13 to a unanimous decision as to what should or should not be
14 done with the property." Do you see that language, sir?

15 A. I do.

16 Q. So I'm going to ask again, is it true that this
17 paragraph related to the issues that you were dealing with
18 Mr. Cato and Cato, LLC, on at this time?

19 A. I, I'm not, I would normally assume that I would have
20 discussed this information with Tommy Cato. I, I do not
21 know that I did that.

22 Q. And, and I understand that you don't know that you did
23 it, but isn't it true that this questions Mr. Cato's
24 authority and questions his authority specifically to make
25 decisions without unanimous approval of the rest of the LLC

1 members?

2 MR. OUTTEN: I object to the leading and the compound
3 question.

4 THE COURT: Rephrase the question?

5 MR. JELLENIK: Huh?

6 THE COURT: He's your witness. Well, he's an adverse
7 party.

8 MR. OUTTEN: Yes, sir.

9 THE COURT: So he can actually lead there.

10 MR. JELLENIK: And that's what I did.

11 A. You'll have to --

12 MR. JELLENIK: I've been accused at times of being too
13 polite, and I'm trying to shift gears a little bit.

14 A. All right.

15 Q. Isn't it true, sir, that these issues are relevant to
16 the content of what you drew up as the Operating Agreement?
17 Don't these issues also relate to Mr. Cato's ability or
18 authority to execute the Letter of Intent without anybody
19 else involved?

20 A. They questioned that, yes.

21 Q. Did you communicate with anyone about this after you
22 got it?

23 A. Mr. Jellenik, I communicated from time to time with
24 Tom Cato. I do not know if I contacted him in regard to
25 answering this particular memo or not.

1 Q. All right. You've already testified much earlier,
2 you've already testified that you were aware that Mr. Cato
3 had told the members of the LLC that you were going to try
4 to protect it.

5 A. I am aware that he told them that, yes.

6 Q. So my question is in addition to whatever discussions
7 you may have had with Mr. Cato, did you do anything in
8 pursuit of that charge which is to protect it?

9 A. I, I don't think I understand what that question is.

10 Q. All right. Let me rephrase. Did you take any steps
11 whatsoever to communicate with Ms. Burton or anyone in her
12 family, her immediate family to discuss the authority of
13 Mr. Cato?

14 A. No, sir.

15 Q. Did you take any steps to communicate with Mrs. Burton
16 or anyone in her immediate family to discuss the question
17 of unanimous decisions?

18 A. And not with, I never discussed anything with Mrs.
19 Burton.

20 Q. Did you go back and look at the Operating Agreement to
21 see what it said with respect to these issues raised by
22 Mrs. Burton?

23 A. And that I may have done, because I did go back to
24 those, to the Act ---

25 Q. All right.

1 A. --- and the Operating Agreement.

2 Q. And do you recall, why don't we turn for a moment, if
3 you would, to Exhibit Seven which has already been admitted
4 into evidence.

5 A. Seven.

6 Q. And that shows the Operating Agreement.

7 A. Okay. I, I have that.

8 Q. Are you there?

9 A. I am.

10 Q. Would you please look at paragraphs, look, I'm sorry.
11 Hold on a minute. I think it starts with page 8, but give
12 me a moment. No, page 7. Let me know when you're there?

13 A. I am there.

14 Q. All right. Would you please read paragraph 6.1?

15 A. All right. I've read it.

16 Q. Doesn't that say that "All power and authority in the
17 company shall be exercised by or under the direction or
18 control of the members in a manner consistent with this
19 agreement and the Act," first sentence?

20 A. Yes, that's what it says.

21 Q. And that all members shall be managers?

22 A. Right.

23 Q. If you look, if I may ask you to do so, sir, at
24 paragraph 6.4, no, I'm sorry, 6.3?

25 A. All right. I see that.

1 that's the one that questions Mr. Cato's authority and
2 deals with unanimous decision. We've been over this
3 already just --

4 THE COURT: Yes, we have been over it. That's true.

5 A. They got legal other one's wrong.

6 Q. All right. With regard to Exhibit Twenty-nine --

7 A. Now, are we on Twenty-nine or Fifty-three?

8 Q. I - I just moved you to Twenty-nine, sir. I'm sorry.

9 A. So we are off of Fifty-three?

10 Q. All right. Forgive me, sir.

11 A. Twenty-nine, I have.

12 Q. Exhibit Twenty-nine was the RBH printout of the August
13 20th email.

14 A. August 20th.

15 Q. And this has Mr. Cato's response. If you would turn
16 to page 2 and look at the - the paragraph just above item
17 7, just read that quickly and I got one question and we'll
18 go on.

19 A. This "I really appreciate?"

20 Q. Yes, sir.

21 A. Okay. I've read it.

22 Q. Did you ever take any steps to communicate with or
23 check up on this - the issue related to that paragraph ---

24 A. No.

25 Q. --- which again deals with your role with respect to

1 Q. All right. And so is it true that that's the role you
2 were fulfilling?

3 A. Not necessarily. This is his thought on what he
4 wanted.

5 Q. So did you take any steps to communicate the
6 difference between what you understood and what Mr. Cato
7 represented to everybody? Did you take any steps to
8 communicate --

9 A. Not specifically, no.

10 Q. All right. Thank you, sir. When you gave Mr. Cato
11 advice, did you ever do anything to check whether he
12 followed it?

13 A. I don't know what you mean, sir.

14 Q. Well, if you gave him - If he sought your advice on
15 something to do with this transaction with the Thomason's,
16 did you ever check to see - Did you ever discuss with him
17 whether he followed your advice?

18 A. Well, the only thing that I can think of that would
19 fit into those - that sort of scenario would be we prepared
20 certain documents that had to be signed and - and those
21 signatures had to be witnessed and notarized and we gave
22 instruction on how that should be done and we sent them out
23 and, certainly, we checked to make sure that they were done
24 and done in accordance with the way we told him to get 'em
25 done.

1 Q. So that the things that he was doing - Is it correct
2 that the things that he was doing was in accordance with
3 your advice?

4 A. As far as I could tell, yeah. I mean, as far as these
5 ministerial things or things that we would advise him to
6 do.

7 Q. All right. Just a moment, sir.

8 Mr. Cato, - No, I'm sorry. I apologize.

9 Mr. Pitts, let's go back and talk for a minute about
10 the Deed that you prepared.

11 A. Okay.

12 Q. Wasn't it true that what you were supposed to do was
13 prepare a Deed to transfer the property that the family
14 owned into the LLC so it could be sold to a developer if
15 they found one they liked?

16 A. I believe that's an accurate statement.

17 Q. All right. Did you accomplish that purpose, sir?

18 A. A Deed into the LLC. Correct me if I'm wrong, but I
19 think we did accomplish that.

20 Q. All right. And then let's talk for a minute about the
21 --

22 A. Listen.

23 Q. I'm sorry, go ahead.

24 A. Excuse me. I'm - I'm sorry to be uncertain on that,
25 but there were several deeds that were required in this

1 transaction and I --

2 Q. I'm talking about the Deed from the individual family
3 members into the LLC that was part of the documents that
4 you prepared for them to sign. The articles --

5 A. Of the areas and lots?

6 Q. Yes.

7 A. I believe that's correct.

8 Q. It's - I'm only aware of - Is it correct there was
9 only one Deed but lots of signature pages?

10 A. Right. But I meant at a later date, we prepared a
11 Deed to the heirs to the LLC of the roadbed tract.

12 Q. Is that the Quitclaim Deed?

13 A. Yeah. I just want to make sure we're not talking about
14 the same --

15 Q. No, I'm just - I'm just talking about the first one.

16 A. Okay.

17 Q. All right. But you also prepared the Quitclaim Deed
18 as well?

19 A. I believe so.

20 Q. All right. Now, with respect to the Deed into the
21 LLC, not the Quitclaim Deed but the original Deed that you
22 prepared along with the Articles of Organization and the
23 Operating Agreement.

24 A. Right.

25 Q. All right. Where did you get the legal description

1 for that?

2 A. From Mr. Thomas - Tom Cato.

3 Q. All right. And is that the legal description that you
4 used in the Deed?

5 A. I believe so.

6 Q. And did that Deed correctly transfer all of the
7 property owned by the heirs into the LLC?

8 A. It correctly transferred all of the property that we
9 were aware of.

10 Q. Did you conduct a title search, sir?

11 A. No, sir.

12 Q. And was there a reason why you did not conduct a title
13 search?

14 A. We were not asked to do that by the Cato's or Mr.
15 Cato. That was not in what we were to do and typically in
16 these cases where you've got family-owned properties, it's
17 going to family owned other entity, you don't get a title
18 search, because if you've got a title problem you already
19 have it and you just pass it on to yourself as in an entity
20 rather than an individual.

21 Q. All right. You were - Were you aware that this -
22 Weren't you aware that this property had been in the family
23 for fifty years?

24 A. Yes, sir.

25 Q. And weren't you also aware that you prepared a General

1 Warranty Deed for signature by all these people?

2 A. Yes, sir.

3 Q. And weren't you aware that they were going to try -
4 Once it got into the LLC, they were going to try to sell
5 the areas to a developer?

6 A. Yes, sir.

7 Q. And if there was a title issue, wouldn't each of those
8 people be responsible under the General Warranty?

9 A. Well, if - If they were going to become subject to
10 title problems or whatever, they were already subject to
11 them.

12 Q. They were already subject to them. So if they were
13 already subject to them, why not use a Quitclaim Deed? Why
14 not use something other than a General Warranty Deed?

15 A. The main reason is generally a barely, barely
16 sophisticated buyer won't buy property if all he's getting
17 is a Quitclaim Deed.

18 Q. Well, wouldn't it have made sense then before you gave
19 them a General Warranty Deed to sign to check the title to
20 see if there was a problem?

21 A. No, sir. He - We were not authorized to do that. Was
22 not asked to do it and we weren't paid to do it, and a
23 seller normally and typically will not pay for a title
24 search. That is - That is up to the buyer and, generally,
25 any sophisticated buyer or unsophisticated buyer will have

1 Q. Yes, sir.

2 A. Does that begin with "Please identify the attorney?"

3 Q. Yes, sir, ---

4 A. Okay..

5 Q. --- it does.

6 A. All right. I've read that.

7 Q. All right. Is it correct, sir, that this response
8 states that you prepared the Deed into the Cato Estate and
9 that you did that for T.E. Cato Estate, LLC? It's the
10 first sentence in the response.

11 A. Yeah, I see that.

12 Q. Is that correct?

13 A. Well, I don't know. That - It's not real good English
14 and not that I'm an English major, but it's not very well
15 done. Yes, it's a correct statement in that we prepared
16 the Deed.

17 Q. And is it true that this says you prepared the Deed
18 for T.E. Cato Estate, LLC?

19 A. I don't think so. Again, we were attorneys for Tommy
20 Cato.

21 Q. But that's not what this says is it?

22 A. No, I don't know who took the liberty with the
23 language. It's --

24 Q. Well, let me clarify that for you. If you would turn
25 to page 10, there is a signature at the bottom. Would you

1 looking after the partners that we had done and fulfilled
2 that when we organized the LLC.

3 Q. All right. But what I'm asking you --

4 A. The partners lost --

5 MR. OUTTEN: Your Honor, I ask him to let the witness
6 finish.

7 MR. JELLENIK: I just done that.

8 A. Well, the partners lost their individual liability and
9 in that respect, they were being protected by what we had
10 drawn for that.

11 Q. And you finished drawing that in May and I guess in
12 May, because Mr. Pitts picked up the papers if I recall
13 correctly at your office on or about May 30th.

14 THE COURT: He - He is Mr. Pitts.

15 Q. I'm sorry.

16 A. I understand.

17 Q. I apologize. Is it correct that Mr. Cato picked up
18 the papers at your office, sir, on or about May 30th?

19 A. Somewhere around there.

20 Q. All right. And is it correct that the emails that
21 we've been talking about, that deal with the assurance to
22 the members, are in August and that he is referring not
23 only to what's going on then, but he's also referring back
24 to the time you're talking about, and he's saying
25 throughout this time, and there is another email on

1 property could be conveyed to a buyer. Did I read that
2 correctly, sir?

3 A. Yes, sir.

4 Q. All right. You've mentioned the roadbed tract. Do
5 you recall that?

6 A. Yes, sir.

7 Q. All right. To the best of your knowledge, sir, was
8 the roadbed tract included in this Deed that you prepared
9 in, I guess, May of 2007?

10 A. This would be the new road - roadbed tract?

11 Q. No, the old. I want - I'm - We're gonna to come to
12 the new one in a minute. What I'm asking is the old
13 roadbed tract included in the Deed that you wrote for the
14 LLC or for Mr. Cato?

15 A. I - I cannot be a positive of that. Again, I - I did
16 not do a title examination of that property ---

17 Q. All right. Did --

18 A. --- nor did I get surveyors out to determine.

19 Q. All right. You've also testified that you prepared
20 the Quitclaim Deed, that was designed to put the roadbed
21 tract into the LLC so the Thomason's could buy it; is that
22 correct?

23 A. No, I don't recall that. Prepared a Quitclaim Deed
24 for the roadbed tract?

25 Q. Yes, sir.

1 A. I thought we had just gotten to the roadbed tract in
2 this discussion.

3 Q. I understood you to testify to this sometime earlier.
4 Let me - Let me put it in a question. Isn't it true that
5 you prepared the Deed to quit claim the roadbed tract from
6 the individual - the old roadbed tract from the individual
7 heirs into the LLC?

8 A. I believe that's correct.

9 Q. All right. Thank you, sir. If the roadbed tract had
10 been in the Deed that you prepared initially into the LLC,
11 the one you did in May of 2007, would it have been
12 necessary to prepare the Quitclaim Deed from all of the
13 heirs putting that roadbed tract into the LLC? If the
14 first Deed was right, would the second Deed have been
15 needed?

16 A. I'm not sure that that property had been deeded back
17 from DOT to our client, whether the LLC, the estate or
18 individuals at the time that was done. I think there was
19 new - new - the old roadbed tract was still vested in South
20 Carolina Department of Transportation, but I could be mixed
21 up.

22 Q. All right, sir. If we presume that the old roadbed
23 tract had been deeded out of the South - and that a
24 Quitclaim Deed for that had been deeded out of the South
25 Carolina Department of Transportation in 2006, if coverage

1 of the old roadbed tract had been in your legal description
2 in the Deed that you prepared for the LLC in 2007 to put it
3 in there, put the Areas into the LLC, would there have been
4 any need for a Quitclaim Deed later that year to do the
5 same thing?

6 A. Well, I apologize that I'm not following very well. I
7 have some difficulty, because we were not charged with nor
8 did we do a title examination of this property.

9 Q. Yes, sir.

10 A. I think if I had known - if I had done that, I would
11 now where the old bed - roadbed tract, where it was and
12 where the new tract is - roadbed tract. And, quite
13 frankly, I get confused about which one the Highway
14 Department was giving us and which one they're taking back
15 and what are we left with.

16 Q. Yes, sir. Is it true - And again I'm - I'm asking a
17 very - I'm trying to ask a narrow question.

18 A. I understand and I thank you.

19 Q. If - Let's just call it the roadbed tract. We'll
20 worry about old or new in a minute. If the Thomason's -
21 Let me start over again. Forgive me. The roadbed tract
22 that the Thomason's expected, whatever it was, ---

23 A. Right.

24 Q. --- if that had been in the original Deed that you
25 wrote, would there have been any need for another Quitclaim

1 Deed on that tract?

2 A. If some magical way that roadbed tract would have
3 gotten included in - into these Areas by some sort of
4 magic, then perhaps we would not have needed a Quitclaim
5 Deed.

6 Q. And now the old roadbed tract, as I recall - oh, let's
7 not recall. Why don't we go to Exhibit Eight?

8 A. Eight.

9 Q. I believe this is already admitted into evidence.

10 A. Is that a Deed?

11 Q. Yes, sir.

12 A. Okay.

13 Q. Let me know when you're there.

14 A. I am there.

15 Q. All right. Is this the Deed that you've prepared to
16 transfer the title to the Areas from the heirs to the LLC?

17 A. I believe so yes, sir.

18 Q. All right. If you look at the description that you
19 wrote into this, okay?

20 A. Right.

21 Q. If I understand you correctly, you simply took the
22 description that Mr. Cato gave you; is that correct?

23 A. I believe that - I believe that's right, yes.

24 Q. And do you - Can you tell me whether this Deed
25 includes what we have been calling the roadbed tract?

1 MR. OUTTEN: May we approach, Your Honor.

2 THE COURT: Well, let's take a break. This is - it's
3 ten after 6:00. well, actually it's five after 6:00, so
4 this is probably good time to take a break anyway, get
5 refreshed and come on back. I need to talk about
6 scheduling anyway.

7 MR. JELLENIK: Thank you, sir.

8 (COURT IN RECESS AT 06:05 P.M..)

9 (COURT BACK IN SESSION AT 06:31 P.M..)

10 THE COURT: Carroll, you can go - -

11 Mr. Pitts, you can go and sit out here.

12 You can just have a seat back where you've been.

13 MR. PITTS: Okay. Thank you, Judge.

14 THE COURT: Not in that seat.

15 Have a seat. Those of you who are present and
16 obviously those who are not present can't hear me. You can
17 be seated. The way the case is going and the way the
18 schedule is set up for the next little bit of time for all
19 of us with a holiday next week, and another holiday in
20 January and protection for Mr. Jellenik, we're gonna work
21 tomorrow, get through as many witnesses' as we can and then
22 recess until January 20th and that date was not grabbed out
23 of a box - out of a hat. Mr. Jellenik has protection. I
24 originally thought we could back maybe the 5th and Mr.
25 Jellenik has a preplanned matter and excused, he's already

1 been excused from court the 6th through the 16th. The 19th
2 is the one with the King holiday. So we will do as much as
3 we can tomorrow.

4 And, Doctor Burton, I hate to interfere with your
5 dental practice. I hated it when my dentist called and
6 said I can't - But that's the way it works for us so we're
7 gonna stop for the day and start back at 9:30 in the
8 morning. Then have as pleasant a Christmas and bow season
9 as we can and then start back with this case on the 20th.
10 So we will see everybody at 9:30 in the morning and get as
11 much done tomorrow as we possibly can and then break.

12 And I appreciate everybody's accommodations. This
13 doesn't happen that often but we can make it work. Thank
14 you all for your courtesies.

15 MR OUTTEN: Thank you, Your Honor.

16 THE COURT: See you Thursday at 9:30.

17 (COURT IN RECESS AT 06:33 P.M..)

18 (COURT BACK IN SESSION THURSDAY, JANUARY 18, 2014 AT
19 09:30 A.M..)

20 THE COURT: Thank you. You may take your seats. I
21 apologize for running late. We were trying to - I had some
22 minor settlements that we've now taken care of and also
23 trying to juggle where we're going to be on the 20th of
24 January. You will be somewhere in this general area.

25 Mr. Pitts, if you'll come back up and take the stand

1 and --

2 MR. OUTTEN: Your Honor, I have a little matter I'd
3 like to take up ---

4 THE COURT: Okay.

5 MR. OUTTEN: --- or two matters for the Court.

6 THE COURT: All right.

7 MR. OUTTEN: And that is, Your Honor, yesterday, Mr.
8 Pitts was on the stand for three-and-a-half hours, and I
9 respectfully request that the Court limit the remainder of
10 the direct examination to an hour. That'll mean that
11 Plaintiff's Counsel had four-and-a-half hours to examine my
12 client. Mr. Pitts is retired. He's seventy-six years old
13 and doing his best to answer all of the questions that he's
14 being asked, but I think that's a reasonable limitation.
15 And, of course, Your Honor does have the authority to
16 control the presentation of evidence, the examination of
17 witnesses, so it's well within your authority to do that.
18 We ask you to consider doing that.

19 THE COURT: Well, I'm not going to limit. I would
20 like the case to move along and we have gone fairly slow
21 and I'm not finding fault with that, because different
22 people have different ways of structuring how they approach
23 the examination of witness, and so I would like to move
24 along and we've already decided if we can't finish the case
25 today, but I'm not going to do that and I know Mr. Pitts

1 Q. All right.

2 MR. JELLENIK: I'd like to have this marked for
3 identification as Exhibit Fifty-five, please.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY-FIVE,
5 PREMARKED FOR IDENTIFICATION.)

6 Q. And, Mr. Pitts, you had this in your file, is that
7 correct, it has the RBH stamp on the bottom

8 A. I believe so, yes.

9 Q. All right. And does it - is it correct that this
10 document gave you the contact information for each of the
11 heirs including their names and addresses, their telephone
12 numbers and even their ownership percentages; is that
13 correct? Take a moment to look at it.

14 A. Well, it has most of that information what - for what
15 appear to be all of the tenants in common or heirs.

16 Q. Is there something missing that you see or?

17 A. Well, I don't see a telephone number for Helen Cato
18 Jones.

19 Q. Okay. And that was actually Doctor Albert Jones as
20 the trustee?

21 A. Well, I'm just reading what's on this particular piece
22 of paper.

23 Q. Right. I understand.

24 A. It says Helen Jones, Cato Jones Trust.

25 Q. Okay. Do you see it for everyone else? Do you see an

1 entry for Marjorie Cato Burton?

2 A. I do.

3 Q. And does that have name, address, telephone number?

4 A. It does.

5 Q. All right. If I could ask you now to turn the page to
6 exhibit - I'm sorry.

7 MR. JELLENIK: Before we do that, we would move to
8 admit this into evidence.

9 MR. OUTTEN: No objection, Your Honor.

10 THE COURT: In without objection.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY-FIVE,
12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 Q. Would you please turn the page, sir, to Exhibit Fifty-
14 six and we would ask for this to be marked for
15 identification as Plaintiff's Fifty-six.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER FIFTY-SIX,
17 PREMARKED FOR IDENTIFICATION.)

18 Q. Take a moment, please, Mr. Pitts, and - and take a
19 look at that page, please? Do you recognize that document,
20 sir?

21 A. To be honest, I - I do not recall this document. I do
22 see it's RBH stamped, meaning it was probably in the file,
23 but as far as actually remembering that document, no I
24 don't.

25 Q. I'm - I'm sorry. I - I heard everything up in your

1 MR. JELLENIK: Thank you.

2 Q. Mr. Pitts, and could I ask you to look at that
3 invoice, please?

4 A. I am.

5 Q. And is it correct that this invoice itemizes the work
6 that you did on this file?

7 A. It - it - yes.

8 Q. Okay. You billed the file for your work in regard to
9 the formation of the LLC, is that correct, sir? Are you
10 okay?

11 A. Yeah. I - I didn't - I missed a word in your
12 question.

13 Q. All right. Is it correct that you billed for the work
14 you did in setting up the LLC ---

15 A. Yes, sir. That's --

16 Q. --- and that's included in this invoice?

17 A. It is.

18 Q. All right. Let - let Mr. Outten give you some water
19 and I'll wait.

20 A. I hate to be indolent here but.

21 Q. Thank you. You ready?

22 A. Yes, sir.

23 Q. Okay. And you also billed the LLC for the work you
24 did setting up the Deed and - and the title to the land and
25 so forth, is that correct, sir?

1 A. I believe it's all in this bill, and I fairly well
2 itemized.

3 Q. All right. If we look at page - I'm going to go by
4 the RBH pages 001328, which is the next page?

5 A. Right.

6 Q. Would you please look at the second item on that page,
7 sir, and that says completed Operating Agreement and
8 articles and then underneath that it says, "GIS Research,
9 Nations Bank NA Trustee Open File." Have I read that
10 correctly?

11 A. Yes, sir.

12 Q. What was the GIS Research?

13 A. Mr. Jellenik, I - I don't know. It was something that
14 was fairly common to me at that time to be identified that
15 way, but I've been out of practice for three-and-a-half
16 years, and I - I forgot what it - I think it's researching
17 the name, but I'm not sure.

18 Q. All right. If we go back and forgive me I'm -- go
19 back to page - the page before and look at the second line
20 in the summary that you have at the top underneath T.E.
21 Cato Estate care of James Thomas Cato?

22 A. Right.

23 Q. Do you see the words "Research Ownership with GIS?"

24 A. I see that.

25 Q. Would that be the ownership of the areas, sir?

1 A. I believe that's right, but I'm - I'm not going to.

2 Q. So on that basis, wouldn't it be correct to understand
3 that you did perform some title work on this?

4 A. Within the meaning of what the trade would say is
5 title work, that's - this would be such a slim part of a
6 piece of title work. If I've identified in my own mind
7 what a GIS research is, which I think it is just to
8 determine who supposedly owns the property but as far as
9 doing a title search that that's not much of it.

10 Q. If you - may I direct your attention, sir, to the
11 entry for - I'm - I'm on page two. Forgive me.

12 A. Right.

13 Q. May I direct your attention to the entry for 5/21/07?

14 A. Okay.

15 Q. That says "Research probate records and titles." Did
16 I read that correctly, sir?

17 A. You did.

18 Q. And you performed work on probate records and titles;
19 is that correct?

20 A. To a - to an extent that's right, and in order to have
21 a proper deed, it is required that you have certain
22 derivation information in that deed to tell where that
23 grantor or grantors, where they got the property. How did
24 they have an interest in and why are they there signing the
25 deed. So in order to - to have a derivation clause where

1 A. All right, sir. I'm there.

2 Q. Do you see in the middle of the page in uppercase or
3 capital letters, "ALL ABOVE PAID" and the amounts there?

4 A. Yes, sir.

5 Q. All right. If we look at the items that are entered
6 below that, there is an item for seven - July 30, '07,
7 August 1st, August 24th, August 25th.

8 A. Right.

9 Q. My - my point here is simply weren't you billing -
10 pardon me - weren't you billing for work performed after
11 you completed the work preparing the Deed and the articles
12 and the Operating Agreement and so forth and had them
13 filed?

14 A. No, not necessarily.

15 Q. All right.

16 A. This document you're looking at now and from 7/30/07
17 down and through the end of the page, this is a way I keep
18 my time, but I - I don't think that the work we had done
19 ripened into a billable matter, at least not at that point,
20 but in order to just serve as sort of an index as to what
21 went on over the next couple of years or so, I make just
22 some small entries and keep them chronologically so I know
23 where I'm going with it ---

24 Q. All right. So --

25 A. --- but not for billing purposes in this case.

1 Q. All right. So you weren't necessarily intending to be
2 paid for that at that time, anyway; is that correct?

3 A. It could ripen into that to being paid, but at that
4 point in time, it did not, it was not.

5 Q. But --

6 A. We were finished with what we were doing.

7 Q. But isn't it correct that these were activities that
8 you engaged in with respect to T.E. Cato Estate, LLC, or
9 Mr. Cato, it's General Manager?

10 A. It reflects my doing something in connection with the
11 T.E. Cato property.

12 Q. On - on these dates?

13 A. All those dates.

14 Q. All right. Thank you, sir. Give me just a moment,
15 please. Did you ever bill for the work performed either
16 with respect to the partition -- did you ever -- were you
17 ever paid - I think you testified to this, but I want to
18 make sure. Were you ever paid for the work you did on the
19 partition action?

20 A. I don't think so.

21 Q. Were you ever paid for the work you did during the
22 period after July - on or after July 30th of 2007 that's
23 itemized here?

24 A. I don't think so.

25 Q. All right. But this is a list of what you did?

1 A. Again, it's - it's a list. I think it's all
2 inclusive. I think it includes everything.

3 Q. All right.

4 A. But it is my way of keeping up with what I'm doing.

5 Q. I understand.

6 A. And, I mean, if you would ask me did I ever talk to
7 Dale Dove on 8/25, I can look at my records and say yes, I
8 did talk to him on that date.

9 Q. Thank you.

10 A. That's merely what it is, it's a memorandum for me to
11 keep up with what I'm doing.

12 Q. Were you involved in the details of negotiations
13 between the limited liability -- the T.E. Cato Estate, LLC
14 and the Thomason's?

15 A. No, sir.

16 Q. So do you recall specifically whether these phone
17 calls or other communications that you've entered here on -
18 on - that we just talked about, did any of that have to do
19 with the Thomason's as you recall it?

20 A. I don't think so.

21 Q. Do you know what it did have to do with?

22 A. Which phone calls are you referring to?

23 Q. Well, let's start with the August 1 call which was the
24 date that Mr. Cato - if you look at 8/01/07 on page 001329

25 ---

1 during those events, not why you - not why you kept up with
2 them, but do you recall what - what constituted the reason
3 you even made the entry.

4 A. Okay. That - that helps. It - I would say that that
5 is going to be on a case by case basis. Some I would
6 remember if it were called to my attention that I did
7 something on that particular day, but others -- these
8 things are six years old. I don't remember each thing.

9 Q. All right. Well, do you remember the August 1, do you
10 remember the substance of that?

11 A. Of August 1 of?

12 Q. The return call from T.E. Cato?

13 A. No, sir. I don't recall what that was for.

14 Q. And I'm only going to ask you two others. Do you
15 remember the August 24 emails from T. Cato and meeting? Do
16 you remember the substance of that?

17 A. I'd have to compare it with the file to see what
18 happened on that date. Offhand, no I don't remember.

19 Q. And 8/25/07 emails from T. Cato re: Dale Dove. Do you
20 remember what that was about?

21 A. Not - no, I - not enough to ---

22 Q. All right.

23 A. --- try to comment on it.

24 Q. Let's move along to the present. Mr. Pitts, and - and
25 we may have done this yesterday. I want to make sure. Did

1 you ever prepare any writing that documented the
2 understanding that you had with Mr. Cato for you to
3 represent him?

4 A. Did I --

5 Q. Did you ever write it down?

6 A. You mean write down that I represent Tom Cato?

7 Q. That - that you were asking him to sign or that you
8 issued with your signature documenting --

9 A. No, sir. I don't think so.

10 Q. All right. So there is nothing that documents
11 in-writing your - the - the attorney/client relationship
12 that you have described with him?

13 A. I'm not aware of anything in writing.

14 Q. All right. And would it also be true that there's
15 nothing that you wrote down at that time that described the
16 scope of services that you were to perform for him?

17 A. I don't know. I don't know the answer to that
18 question.

19 Q. Can you refer me to anything --

20 MR. OUTTEN: He was still answering your question.

21 Your Honor, asking Mr. Jellenik not to interrupt the
22 witness.

23 MR. JELLENIK: Didn't intend to. I thought he had
24 finished.

25 THE COURT: All right.

1 Q. Go ahead.

2 A. I - I - you - are you asking if there was a signed
3 engagement letter or?

4 Q. Yes, sir.

5 A. No, sir.

6 Q. All right.

7 A. I didn't operate - on that.

8 Q. Thank you. Did you ever obtain any waivers from any
9 of the heirs with respect to any conflicts or potential
10 conflicts that might exist with - with respect to Mr. -
11 your representation of Mr. Cato?

12 MR. OUTTEN: Your Honor, my objection to that is that
13 presupposes there is some need to get a conflict waiver.

14 THE COURT: No, I would agree with that.

15 Q. Do you want me to ask that again?

16 A. Yes, if you would, please.

17 Q. All right. Did you ever obtain or ask for any waivers
18 of conflicts or potential conflicts from any of the heirs
19 with respect to your representation of Mr. Cato as General
20 Manager of the LLC?

21 A. No, sir. I never had conversation with the other
22 members. I - I represented Mr. Cato as the General
23 Manager.

24 Q. Okay.

25 MR. JELLENIK: Your Honor, excuse me for just a

1 moment, please.

2 Q. Mr. Cato, you've mentioned an engagement letter or --

3 THE COURT: He's not Mr. Cato.

4 MR. JELLENIK: I'm sorry, Mr. Pitts. I caught myself
5 on that, but you were quicker.

6 Q. Mr. Pitts, you have already mentioned that there was
7 no engagement letter. Is it also correct that there was no
8 letter memorializing the fees that you were going to
9 charge?

10 A. Probably not.

11 Q. Okay. And with regard to - you've already indicated I
12 think that you had no communication with the other heirs;
13 is that correct?

14 A. That's correct.

15 Q. So you never mentioned to them that you were
16 representing Mr. Cato as - as --

17 A. I didn't have any conversations with them.

18 Q. Okay. And, finally, on this, did I understand you
19 earlier - well, were - a yes or no question. Were you
20 supervising the work of Mr. Cato?

21 A. Was I supervising the work?

22 Q. Yes, were you overseeing it?

23 A. What work?

24 Q. What he was doing with regard to the LLC, sir, trying
25 to find a buyer and negotiating and whatever.

1 documents for Mr. Pitts' documents seemed to be folded into
2 Mr. McCoy's grouping.

3 Q. In your preparation for formulating your opinions,
4 have you conducted the kind of investigation common for
5 experts in your field?

6 A. I have.

7 Q. Have you conducted an investigation concerning the
8 propriety of the behavior of Mr. Pitts in connection with
9 the real estate transactions at the center of this case?

10 A. I have.

11 Q. What did you conclude?

12 A. I have concluded that he - his conduct fell below the
13 appropriate standard of care. I concluded that he owed
14 duties to the - the Burton Trust. That he breached those
15 duties and the damages were proximately caused by his
16 breaches, and I'd like to explain my answer.

17 Q. Please do.

18 A. There's a big issue in this case. A battleground is
19 whether or not there was any attorney/client relationship
20 vies-a-vie Mr. Pitts and the Burton Trust with the Defense
21 view being no, no, no duty owed. He was just to do things
22 at the behest of Tommy Cato. Tommy -If anybody was a
23 client, it was Tommy as promoter. He didn't represent the
24 Burton Trust. He didn't owe them any duties. He didn't
25 breach any duties, and I disagree with all of that. I

1 consider - first of all, from day-one, there was no LLC.
2 There were just people who ended up taking interest in an
3 LLC that was later formed. To say that - to say that the
4 LLC is the client and the only client when it doesn't exist
5 for a good portion of this time, to me is very facile and
6 it doesn't work. To say Tommy Cato is the client maybe
7 gets you halfway where you're - where you need to be, to be
8 correct.

9 Because I read Tommy Cato's deposition and I read his
10 emails and - and the emails and his deposition were
11 consistent. What he said was that the job that he gave Mr.
12 Pitts was to protect the family from Tommy and to protect
13 Tommy from the family to see that everything was done right
14 so nobody could complain. If you accept that as the job,
15 and I do, that means he owed duties to those other people,
16 because he's supposed to be protecting them, and I don't
17 see how you can discharge a duty of protection to these
18 other people unless you actually understand what it is that
19 they expect, what it is that - that they believe this
20 transaction should do for them, how it should be done and -
21 and dot your I's and cross your T's, because you're not
22 just a scrivener out there taking orders like somebody at
23 the - at the drive-thru at the McDonald's.

24 You're somebody who's supposed to be a protector and I
25 ask the question, did it happen and the answer I give is

1 be some billing for checking title on his bill, which if
2 you didn't do it, then why are you billing for it or if you
3 did do it - do it, then why'd you do it wrong.

4 That's a problem, because when the property ends up
5 being conveyed to Thomason, Mr. Vann finds that the road -
6 there's a problem with the roadbed about which I'm sure
7 everyone in this room is sick of hearing about the roadbed
8 problem, but it got supposedly fixed, because we'll just
9 quit claim. Everybody gives a Quitclaim Deed now.

10 Why - why are we doing a Quitclaim? Why do we have to
11 go that far? Well, because it wasn't done right the first
12 time maybe and whose - on whose watch was that? That was
13 Mr. Pitts. Any other goose along the way. Yeah, there was
14 a problem because the property is deeded into the LLC
15 before the LLC exists.

16 Well, is that a problem? Yes, potentially that's a
17 legal problem which Judge Hayes dealt with at one point and
18 it's - there's case law on that. Just how does that work.
19 It's a good idea if you're going to convey property into an
20 entity to have the entity established first.

21 I think most lawyers would agree that that's a really
22 good idea. So it - so it's there to take title and you
23 don't have questions about do we ratify, do we adopt
24 family. A question as to how the LLC was to be operated,
25 unanimous vote or not, and you've got people at loggerheads

1 everybody else which shows he was aware of communications
2 about his views. One of the basic rules is that after
3 you're out, you don't attack or do anything to hurt your
4 clients and, of course, suing them is - is not consistent
5 with that. So from A to Z, I see duty owed, duty breached,
6 damages in the form of - of fees and the fees are
7 substantial. The --

8 Q. Professor Freeman?

9 A. Yeah.

10 Q. If I can refer you to Exhibit Thirty-two in your - in
11 that white binder?

12 A. You know, just a second. No, I got to breakdown the
13 fees.

14 Q. All right.

15 A. Jellenik - and I've looked over the bills for
16 Jellenik, the total is \$139,285.59; legal fees, \$27,439.22
17 for costs yielding, \$166,724.81 covering his work for more
18 than four years.

19 Brian McCoy, \$64,438 in legal fees and \$235.93 for
20 costs and the total there is \$64,673.93.

21 Lucy McDow, \$37,540 in legal fees; \$4,420.86 in costs
22 yielding a total of \$41,960.86. All of this - all of this
23 arising from a dispute that never should have happened in
24 the first place and if things had been handled properly and
25 competently, I am confident never would have happened.

1 for the Thomason transaction. He did handle the
2 transaction by which the property was transferred into the
3 LLC.

4 Q. By closing, I mean the closing between the LLC and
5 Thomason Apartments, Limited, Carroll Pitts was not the
6 closing attorney?

7 A. He was not as to that closing.

8 Q. Okay. And Carroll Pitts did not attend the closing.
9 Correct?

10 A. I don't believe he was there.

11 Q. Excuse me?

12 A. I don't believe he was there. The evidence is he may
13 have been consulted by Mr. Vann in advance of the closing.

14 Q. And I think it's correct that Josh Vann was the lawyer
15 hired by Thomason Apartments, LLC, to conduct the closing,
16 is that your understanding?

17 A. That's my understanding.

18 Q. Let me ask you a couple of questions about proximate
19 cause, okay?

20 A. Sure.

21 Q. Do you agree with this statement, had the Burton Trust
22 executed the Quitclaim Deed sent to it by Tommy Cato in
23 November/December of 2007 there would have been no
24 partition action?

25 A. On one level that's true.

1 Q. Okay. Do you recall reading the deposition of David
2 Burton that I took in May of 2014?

3 A. I - Yeah, I read that.

4 Q. Okay. And do you recall, Professor Freeman, that
5 David Burton testified to that, that is David Burton said
6 had the Burton Trust executed the Quitclaim Deed, there
7 would have been no partition action? Do you recall that
8 part of his testimony?

9 A. I believe that he did say that.

10 Q. Okay. And David Burton, on behalf of the Burton
11 Trust, executed a Quitclaim Deed to settle the partition
12 action. Correct?

13 A. Yes.

14 Q. And the partition action was settled by the Burton
15 Trust signing the same Quitclaim Deed they were presented
16 with just before closing in December of 2007. Correct?

17 A. I haven't matched them up, but - but I don't doubt
18 that.

19 Q. And they signed the Quitclaim Deed in settlement of
20 the partition action after they received a settlement of
21 \$249,000. Right?

22 A. I believe that's true.

23 Q. I think you testified on direct that you had had an
24 opportunity to review appraisals that had been done in this
25 case?

1 A. Yes.

2 Q. One - one hired by - by me and Robinson Bradshaw and
3 Mr. Pitts and one by the Plaintiff ---

4 A. True.

5 Q. --- am I right about that? Now, do you recall,
6 Professor Freeman, that the Burton Trust received a check
7 for \$124,200 as a distribution from the December 2007
8 closing, that sound right?

9 A. They got a - they got a check and cashed it, I
10 believe.

11 Q. Okay. And then we just talked about the fact that
12 they received \$249,000 in settlement of the partition
13 action, we know that. Right?

14 A. They got - they got that money, yes, sir.

15 Q. Now, and we can go through the math if we need to,
16 Professor Freeman, but according to the Plaintiff's expert,
17 the appraised value of this property was 1.348 million
18 dollars. Is that - is that consistent with what you
19 remember reading?

20 A. That's - I believe that's true.

21 Q. And we know the Burton Trust had a 20 percent interest
22 in the property. Right?

23 A. Yes.

24 Q. And if you divide 1.348 by five, you get \$269,000.
25 I'm happy to give you a calculator to do that.

1 A. Well, the Burtons were singing that song all the way
2 long. As for the other people who were -- who were out
3 there, they trusted - perhaps trust Tommy, unfortunately.

4 Q. Is it true that you don't know of anything that
5 prevented, somehow prevented the heirs from getting an
6 appraisal?

7 A. No, there was no law against it. There was nobody
8 holding a gun on them or any - any ---

9 Q. Right. Right.

10 A. --- threats of any sort.

11 Q. You're aware, Professor Freeman, that Mr. Jellenik
12 filed a motion to disqualify Mr. Pitts' counsel for the
13 Plaintiffs in the partition action?

14 A. Yes, sir.

15 Q. And, I believe, we looked at that motion at your
16 deposition, correct?

17 A. I know we looked at Judge Alford's Order. I don't
18 know if - if the Motion was there or not. I've seen the
19 motion. I've got the motion.

20 MR. OUTTEN: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 A. Okay.

23 MADAM COURT REPORTER: I think this is Fourteen, Mr.

24 --

25 MR. OUTTEN: Okay.

1 MADAM COURT REPORTER: Defense's Fourteen. Yes, sir.

2 (WHEREUPON, DEFENSE EXHIBIT NUMBER FOURTEEN, PREMARKED
3 FOR IDENTIFICATION.)

4 Q. Professor Freeman, Exhibit Fourteen is a Motion to
5 Disqualify. Have you seen that motion before ---

6 A. Yes.

7 Q. --- and did you review it as a part of your work in
8 this case?

9 A. Yes.

10 Q. Okay. I'm going to try to get through this as quickly
11 as I can. Here's what I understand the motion to say. Mr.
12 Jellenik is saying in this motion Mr. Pitts represented the
13 Burton Trust and because he represented the Burton Trust,
14 he cannot be adverse to it without their consent. Is that
15 a fair summary, Professor Freeman, of what's being
16 communicated in that motion and those attachments?

17 A. Yes, I think so.

18 Q. Okay. And we know what happened was there was a
19 hearing on June 1, 2009 before Judge Alford?

20 A. That's one of the things that happened.

21 Q. Okay. That's one of the things that happened. And so
22 this motion put before this Court the issue of did Mr.
23 Pitts represent the Burton Trust thereby requiring him to
24 get a consent to bring the partition action, is that fair?

25 A. That - well, put to - To me it puts before the Court

1 the issue of whether or not 1.7 had been violated.

2 THE COURT: Could I have a copy of that? Is there a
3 copy available for me?

4 MR. OUTTEN: A copy of what, Your Honor?

5 THE COURT: What you're talking about?

6 MR. OUTTEN: The motion?

7 MR. ROSBRUGH: Your Honor.

8 MR. OUTTEN: I have the motion and the order.

9 THE COURT: And the order.

10 MR. OUTTEN: I have them right here. May I approach,
11 Your Honor?

12 THE COURT: And I know they're not in the record, but
13 since you're asking about them or at least they're not in
14 the record in this case whether it's. Okay. Go ahead.

15 Q. All right. You said that the motion brought before
16 the Court, a rule 1.7 issue, did I get that right?

17 A. Yeah.

18 Q. Okay. And I think 1.7 is titled, "Conflict of
19 Interest Current Client;" is that right?

20 A. You know I'd have to look at the title I.

21 Q. I have - I have a rule book. Do you want to - I'm
22 happy for you to do that?

23 A. No. No. Let me - I can find it quick.

24 Q. I know you can, and I'm happy for you to do that.

25 A. Sure. It says, "Conflict of Interest Current

1 Pitts was the attorney for the Burtons.

2 Q. Well, let me help you. Turn over to the - the
3 attachments. It's RBH number 001585. It's a letter to Mr.
4 Pitts from Mr. Jellenik. Sort of the second half of the
5 page. Do you see it?

6 A. I see it there.

7 Q. It's dated Saturday, February 28, 2009. Do you see
8 it?

9 A. Yes.

10 Q. Okay. This is what I'm talking about. It says - the
11 second sentence says, "However, I recently learned that you
12 formerly represented both Petitioners and my client in
13 forming the T.E. Cato Estate, LLC."

14 A. Okay. Yeah. Thanks.

15 Q. All right. All right. So is my - is my
16 characterization fair that he's saying you had an
17 attorney/client relationship with the Burton Trust and
18 because of that relationship, you can't bring - you can't
19 serve as Plaintiff's counsel in this case without their
20 consent; is that right?

21 A. Yeah, I think that that's - that's fair.

22 Q. Okay. And as we discussed the - the motion came for a
23 hearing before Judge Alford on June 1, 2009?

24 A. That's when the Order is dated. The - that - that
25 Order, of course, coming on the heels of Judge Hayes' Order

1 A. At this point. And look ---

2 Q. Okay.

3 A. --- we discussed that at - at some length. That's
4 like a Motion to Dismiss, you know, with leave to - still -
5 still a - an Order granting dismissal without prejudice and
6 basically saying in so many words if you're really smart,
7 sir, you're going to get out of the case, which he did.
8 And I - we - we covered all that. You know where I am on
9 that.

10 Q. Well, what I'm saying is that Judge Alford wrote an
11 Order and he denied the Motion to Disqualify?

12 A. At this point, but I told you ---

13 Q. Okay. Right.

14 A. --- I have a quote from Mr. Pitts at his deposition
15 where he admitted under oath that in so many words the
16 judge was telling him to get out of the case, which he did.

17 Q. Well, we'll get to that in a minute. But there was
18 never an Order, a later Order of Judge Alford finding a
19 conflict, was there?

20 A. No, we covered that at my deposition, too.

21 Q. Okay. There was never an Order - another Motion to
22 Disqualify filed. Right?

23 A. No, only this one ruled on by two judges.

24 Q. All right. And you keep saying and you did at your
25 deposition, well, Judge Alford suggested that Mr. Pitts

1 THE COURT: Okay. Well, I - I'll let him go ahead on
2 this line.

3 MR. OUTTEN: I feel the need to put on the record I am
4 making no such effort and I - hopefully, I am respectful of
5 the role of Judge Hayes in this matter.

6 Q. Well, we've talked --

7 A. Let - let me put on the record that I'm with you as to
8 John Freeman.

9 Q. The - we - we keep alluding to this - this issue of
10 Judge Alford suggesting he might get out of the case, and
11 we've agreed that nothing like that appears in the Order.

12 Right?

13 A. No.

14 Q. Okay.

15 A. Now, wait, wait a minute. We've alluded that Judge
16 Alford suggesting that he might get out of the case and
17 nothing like that appears in the Order. No, I think it -
18 it's a - it's a strong suggestion to get out of the case,
19 right there. I think any reasonable lawyer reading that
20 knows that you should head for the exits, because there is
21 something the Judge doesn't like going on here.

22 Q. Well, let's try to be accurate about the testimony of
23 Mr. Pitts and I'll - and I'll read it to you and I can show
24 it to you if you want me to - to hand you the transcript.
25 What Mr. Pitts actually said, Professor Freeman, was "The

1 matter was heard in Court and the judge ruled. In fact, he
2 suggested that I think about withdrawing, but he did not
3 order it and did not find a conflict." That was Mr. Pitts'
4 testimony, right?

5 A. Just a minute.

6 Q. Okay.

7 A. I know he said that. I'm just checking to see if he
8 said something else, too.

9 Q. Okay. Sure.

10 A. Okay. You're correct. That's page 116, lines 20 to
11 117.1.

12 Q. That's the reference I have, too.

13 MR. OUTTEN: Your Honor, I move to have the Motion to
14 Disqualify and the Order of Judge Alford admitted into
15 evidence.

16 MR. ROSBRUGH: No objection, Your Honor.

17 THE COURT: In without objection.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER FOURTEEN,
19 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

20 Q. All right. Professor Freeman, let's - let's change
21 gears. You submitted an affidavit in this case on behalf of
22 the Plaintiff. Correct?

23 A. Yeah, I believe so.

24 Q. Okay.

25 MR. OUTTEN: May I approach, Your Honor?

1 Q. Okay. All right.

2 MR. OUTTEN: So hopefully, Your Honor, we've cleared
3 up that confusion. These, just to make sure the record is
4 clear, these are both affidavits, copies of affidavits that
5 you executed.

6 Q. Is that right?

7 A. Yes, sir.

8 Q. And they contain information about your opinions in
9 these cases. Right?

10 A. Yes.

11 Q. Okay. So what I want you to do if you would and, and
12 just to be clear, Fifteen is an affidavit in a case against
13 Pitts, Robinson, Bradshaw and Hinson; Josh Vann and Morton
14 & Gettys. That's Fifteen. Right?

15 A. Yes.

16 Q. Okay. And Sixteen is the affidavit attached to the
17 Complaint that was filed in this Court against Josh Vann
18 and Morton and Gettys; is that right?

19 A. Yes.

20 MR. OUTTEN: Okay. Your Honor, I apologize for that
21 confusion.

22 Q. I'd like you to turn if you would, Professor Freeman,
23 to paragraph 5(a) of the Complaint against Pitts, et al.

24 A. Yes.

25 Q. And then I'd like you to turn if you would to

1 paragraph 5(a) in the Complaint against Morton & Gettys.

2 A. Yes.

3 Q. Okay. Are they identical?

4 A. Yes.

5 Q. I've read them, Professor Freeman, and I may be wrong,
6 but 5(a) looked like they're exactly the same in each case?

7 A. Okay. And I'll say yes again, but I said yes the
8 first time.

9 Q. Okay. And 5(b) is exactly the same. Right?

10 A. Give me a second ---

11 Q. Sure. Yes, sir.

12 A. --- and I'll probably say yes.

13 Q. And 5(c) has, is the exact same wording in each of
14 these two affidavits; is that right?

15 A. Yes.

16 Q. And 5(d) has the exact same wording in each of these
17 two separate affidavits. Correct?

18 A. True.

19 Q. And 5(e) has the exact same wording in both of these
20 affidavits. Correct?

21 A. Yes.

22 Q. And 5(f) has the exact same wording in these two
23 affidavits. Correct?

24 A. True. Yes, sir.

25 Q. And 5(g) has the, is the exact same wording in both of

1 these affidavits?

2 A. Yes, sir.

3 Q. Okay. Now, let me ask you some questions if I could,
4 Professor Freeman, about the formation of the
5 attorney/client privilege, okay?

6 A. All right.

7 Q. Now, we know that there was at least a question from
8 the Plaintiff about whether an attorney/client relationship
9 existed, because they made an allegation in the Complaint
10 and they said, well, if an attorney/client relationship
11 doesn't exist, the lawyer still owed those duties, right?
12 Didn't they make that allegation?

13 A. I believe so.

14 Q. Okay.

15 A. And do you have a copy of the Complaint and I can
16 verify?

17 Q. I do; yes, sir.

18 MR. OUTTEN: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 Q. Do you recognize that, Professor Freeman, as the
21 Complaint in this lawsuit. Right?

22 A. Right, which was not revoked by any Motion to Amend,
23 because amend, the motion was denied.

24 Q. Okay. And then look at, it's paragraph 19 I'm
25 referring to. I'm, I'm not intending for you to read the

1 whole thing although if you want to, then please do.

2 A. Okay. I see it.

3 Q. Paragraph 19 says, "Alternatively, if Plaintiff was
4 not a client of Defendant's, nevertheless, Defendant had
5 those professional duties." Did I read that accurately?

6 A. Yes.

7 Q. So here we have an allegation in a Complaint that well
8 maybe the Plaintiff is not a client of the Defendant said
9 in this paragraph 19. Correct?

10 A. Yes. And I want to explain that they're pleading in
11 the alternative which is extremely common.

12 Q. Okay. Professor Freeman, when we were talking about
13 evidence in the record to support the, the allegation, the
14 contention that the Burton Trust believed Carroll Pitts was
15 their lawyer, when I asked you that question you responded
16 lawsuit. You remember that?

17 A. I think you're thinking of Mike Versey ---

18 Q. Okay.

19 A. --- who said that about six times.

20 MR. OUTTEN: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 Q. Look at if you would, please sir, page 39 and my
23 question that appears at line 1? Tell me when you're
24 there, please.

25 A. Yeah. Well, I see that and that's, that, it says

1 lawsuit, but it says a lot of other things and it goes on

2 ---

3 Q. Oh.

4 A. --- and I didn't just attribute it to the filing of
5 the lawsuit.

6 Q. Yes, sir. My, my question was where is the evidence
7 in the record that the Burton Trust believed that Carroll
8 Pitts was their lawyer and what was your answer of line 4?

9 A. It was lawsuit, and then the question was, "Anything
10 else," and I went on.

11 Q. Okay. And, Professor Freeman, I don't believe there
12 was an email from Marjorie Cato Burton or David Burton or
13 anyone on behalf of the Burton Trust to Mr. Pitts asking
14 him any questions about these transactions: Correct?

15 A. No. The emails were to Tommy who was serving as a
16 conduit between the family and, and Mr. Pitts with Mr.
17 Pitts using the same conduit to communicate with the family
18 as we know it.

19 Q. Well, I, I understand. Yes, sir. But I'm trying --

20 A. So to say that, to say that they never communicated
21 with, with Mr. Pitts when they're talking to the man he has
22 appointed as his kind of communications agent or messenger,
23 I think is misleading.

24 Q. Okay. I'm just asking you this question. Is there
25 any in, in this record and you've, you've brought a lot of

1 documents and reviewed a lot of documents. I'm asking you
2 but there is no email from Marjorie Cato Burton or David
3 Burton or anyone on behalf of the Burton Trust to Mr. Pitts
4 asking him any questions about the transaction?

5 A. Not directly. But that's why it's significant that
6 communications from Marjorie to Tommy and up in, in Pitts'
7 file and Pitts, evidently, in this case is admitting that
8 he got those things. So to say that he's, he's in the dark
9 or has no dealings or whatever is just wrong.

10 Q. And there was no email from anyone on behalf of the
11 Burton Trust asking Mr. Pitts for documents. Correct?

12 A. Not asking Mr. Pitts, asking Mr. Pitts' appointed
13 agent, Tommy, for documents, specifically among others, the
14 appraisal.

15 Q. And there was no email from anyone on behalf of the
16 Burton Trust asking Mr. Pitts for an explanation of the
17 documents executed. Correct?

18 A. I don't know of any such document.

19 Q. And I think we agreed, Professor Freeman, that there
20 was nothing to prevent David Burton or Marjorie Cato Burton
21 from sending an email or calling Mr. Pitts to ask him a
22 question or to request a meeting; is that true?

23 A. Nothing stopped them and the same is true vice-versa,
24 and there is evidence in the record that he had their
25 personal phone call, phone number for Marjorie.

1 Q. And they didn't do it and by that I mean, there was no
2 request for a meeting and there were no questions asked by
3 the Burton Trust of Mr. Pitts. Right?

4 A. Not directly. Only to him through Tommy.

5 Q. Mr. Freeman, let me ask you if you agree with the
6 following statement: "The partition action was filed so
7 that Thomason Apartments, LLC, could get title to the
8 roadbed tract."

9 A. On one level. Yes, that's true.

10 Q. Let me ask you if you agree with this statement,
11 Professor Freeman: "We don't know whether or not Marjorie
12 Cato Burton had a subjective belief that Mr. Pitts was her
13 lawyer before or after the closing took place in December
14 of 2007."

15 A. Well, I, you know, I don't know what's in Marjorie
16 Burton's head, okay, or was in her head and I don't presume
17 to be a mind reader.

18 Q. Do you agree with that statement or not?

19 A. I've got a pretty good idea what was in her head is
20 that she believed that she was forsaken by somebody that
21 she relied upon as a lawyer and that's why she sued him.

22 Q. Did you read Michael Versey's deposition?

23 A. I, I read his deposition and when you asked him many
24 different times what evidence is there that she thought or
25 the Burton Trust or Marjorie thought that Mr. Pitts was

1 Q. And the last sentence of this email if you would look
2 down there with me, please? It says, "Again, I am willing
3 to sign the last piece of area B Quitclaim Deed in order
4 for all the other heirs to finish this deal, but the above
5 issues will have to be ironed out first before that signing
6 occurs." Did I read that accurately?

7 A. Yes.

8 Q. Is there any mention, you talked a lot about an
9 appraisal today. Is there any mention in this email of an
10 appraisal?

11 A. Not in this particular email.

12 Q. Does it say anything in this email like there has to
13 be a MAI appraisal before I sign?

14 A. I've already answered your question. There is nothing
15 like that in this email.

16 Q. Okay. Is there anything in this email where the
17 Burton Trust expresses confusion about the terms of the
18 deal?

19 A. Yes. They want, they want certain needs met. They
20 are, they are insisting on certain terms. This capital
21 gains tax issue has been on the table and been a problem
22 for months.

23 Q. Well I'm asking, did the Burton Trust in this email
24 say we don't understand this or we don't understand that or
25 we want answers to this? Is there anything like that in

1 this email?

2 A. They say we, we want conditions met.

3 Q. Right.

4 A. That's what they are saying.

5 Q. And you, I agree with you, Professor Freeman. It
6 says, we want conditions met and the conditions are really
7 pay us money for the capital gains tax. If Tommy Cato's
8 going to get money for managing the property, we want
9 Marjorie Cato Burton to get money. We want assurance there
10 are no side deals and we want to purchase A and C, right?
11 Isn't that what they're saying?

12 A. It says they're willing to purchase.

13 Q. Okay. We've talked some in your, in your direct or
14 you talked some in your direct and some on cross about the
15 authority of Tommy Cato. Anything in this email which was
16 sent 12 days before closing about the authority of Tommy
17 Cato to act on behalf of the LLC? Do you see anything in
18 there about that?

19 A. Oh, yeah, ---

20 Q. Where --

21 A. --- may I explain my answer? Do you mind if I
22 explain my answer?

23 Q. I apologize for interrupting you.

24 A. Okay. What, what they are saying is that Tommy Cato
25 implicit in this is Tommy Cato has not listened to us, paid

1 attention to us, had our best interests at heart, solved
2 the problems that we have in connection with this
3 transaction and here, here are those issues. If we can get
4 that worked out, we're out of here. That's, that's how I
5 read that.

6 Q. Well, thank you, Professor Freeman. What I'm asking
7 you is in the expressed terms of the email, do they raise
8 any issues about the authority of Tommy Cato?

9 A. Yeah. Because they are saying we are not going along
10 with this unless you agree to this, these matters that have
11 been left for us to work out because Tommy has not seen fit
12 to extend his hand to us.

13 Q. Well, with regard to the capital gains tax, isn't what
14 David Burton asking, isn't he asking the other heirs to
15 help pay the capital gains tax, because his mother has a
16 lower basis in the property than the other heirs or some of
17 the other heirs? Isn't that what's being requested?

18 A. Well, first of all, what's being requested is black on
19 white and speaks for itself, but I want to answer your
20 question.

21 Q. Yes, sir.

22 A. The, the fact of the matter is that of these heirs of
23 the siblings, all but two of them have passed, okay? So
24 those heirs are going to get the benefit of a stepped up,
25 they have already got a stepped up basis in this property.

1 Unfortunately, well, fortunately, she hasn't passed away
2 but because of that, there, there isn't going to be a
3 stepped up basis if the property is sold before her death
4 and there is going to be a larger tax that has to be paid
5 by the Burton Trust as compared to most of the other heirs
6 and that's the point that he's talking about. You've
7 gotten the benefit by circumstance. We haven't gotten that
8 benefit. How about extending to us the same kind of
9 financial deal that you got?

10 Q. Is there anything in this email about the formation of
11 the LLC?

12 A. Only implicitly.

13 Q. Professor Freeman, my understanding is that before Mr.
14 Jellenik was hired in this case, the Burton Trust was
15 represented by Dale Dove and Doug Gay, is that your
16 understanding?

17 A. Yes, sir.

18 Q. In fact, have you seen testimony that David Burton
19 gave that he paid Dale Dove to represent the Burton Trust
20 in late 2007 or early 2008, did you see that testimony?

21 A. I probably did. I can't call it to mind right now.

22 Q. Okay. Fair --

23 A. It'd be some time ago.

24 Q. Fair enough. And there is nothing in the record in
25 this case that these lawyers, that is Dale Dove and Doug

1 Gay, ever raised any conflicts issue on the part of Mr.
2 Pitts that I've seen. Have you seen that those lawyers
3 raise this issue?

4 A. I don't remember seeing that one way or the other.

5 Q. Okay. And, again, in your, in your discussions with,
6 with Plaintiff's Counsel about this case about your
7 testimony, did you have any discussions with them about
8 David Burton's testimony about the Quitclaim Deed?

9 A. I can only answer probably and you're talking about
10 communications that have been sporadic over the last two or
11 three years.

12 Q. Okay. Fair enough. And David Burton, I don't believe
13 you were here, were you, when David Burton testified that
14 when the Quitclaim Deed came up he told his mother, "We
15 need to hire a lawyer," right? You didn't hear that?

16 A. No. Sir, as, as I have testified truthfully already,
17 I wasn't here in the courtroom, so I didn't hear that.

18 Q. Right.

19 A. But I'll accept that he said that if you tell me that
20 and I trust you, Mr. Outten.

21 Q. And then the facts are that, I'm sorry if I
22 interrupted you. Forgive me.

23 A. No, that's, I trust you. Go ahead.

24 Q. And then the facts are that what happened is after
25 David Burton said an issue's come up, we need a lawyer, he

1 the documents as attorney for the sellers?

2 A. Yes.

3 Q. And I think you've expressed this several times, but
4 why was there a need for the Quitclaim Deed?

5 A. Because of a goof up in the title or the failure to
6 check title, the casual reliance on some hope or dream that
7 all the documentation would, was, was correct from the
8 start without doing a title check, and I say that with some
9 question in my mind because of the, the bill that shows
10 some effort to check title either was done wrong or it
11 wasn't done and should have been done.

12 Q. And is there any magic to performing a title search?

13 A. No, there, there isn't and as Mr. Pitts testified it's
14 commonly done he says by the sell, by the buyer but, of
15 course, in the LLC transaction, the LLC was the buyer and
16 the family and it wasn't done or maybe it was, depending on
17 how you look at it.

18 Q. And we've talked a lot about Marjorie Burton and used
19 Marjorie kind of interchangeably. When you say Marjorie are
20 you --

21 A. I'm referring to the Trust.

22 Q. Okay. And Mr. Outten asked you about the other heirs'
23 belief and, and the regard to whether or not Mr. Pitts was
24 representing them. Does that matter in determining whether
25 there is an attorney/client relationship with Marjorie

1 Burton and the Trust?

2 A. No, I'm looking purely at, at the facts and
3 circumstances of record and the things from the Burton
4 Trust standpoint and that's the basis for my testimony.
5 Whether somebody else asked or didn't ask is, you know,
6 something I don't know about. I don't think it's in the
7 record other, other than, evidently nobody else asked.

8 Q. Is it material to determine whether or not there was
9 an attorney/client relationship with or between Marjorie
10 Burton as the Trust and Mr. Pitts?

11 A. Is what material?

12 Q. Is the fact that somebody else didn't think there was
13 such a relationship?

14 A. No, my assumption, the, the, it's not material to me.
15 Obviously, if you had five other people coming in in a
16 courtroom saying yeah, I thought he was our lawyer, too,
17 and sticking up for the Burton Trust, that would be maybe
18 highly material, but they're not here, but it doesn't
19 change my testimony.

20 Q. You were asked about whether or not anybody contacted
21 Mr. Pitts and you went through this several times with Mr.
22 Outten in regard to using Tommy Cato as a conduit, correct?

23 A. That's a, that's a, that was a choice he made and I
24 think it was a bad choice.

25 Q. And that was the choice that Mr. Pitts made or ---

1 A. Mr. Pitts.

2 Q. You were also asked about Judge Alford's Order at some
3 length.

4 A. Again, after my deposition. Go ahead.

5 Q. I just want to clarify there's no find, are there any
6 findings of fact or conclusions of law in that Order?

7 A. No, it speaks for itself. It's one line or one
8 sentence with six words basically saying without prejudice.

9 Q. And with the facts that you have before you having
10 examined this case for quite some time, do you believe that
11 there was a conflict with Mr. Pitts serving ---

12 A. It was a conflict. It was highly improper for him to
13 go out, go out and sue his own client over a transaction
14 that he had arranged supposedly for that client's benefit
15 and even if it wasn't a client, he's still an agent and,
16 and, and was just abusive.

17 Q. Who has the obligation to clarify the attorney/client
18 relationship?

19 A. The, the foremost person with that obligation that you
20 look, look to is the lawyer. The lawyer is supposed to be
21 the captain and the one, the one who makes the key
22 determinations and knows how important they are and knows
23 how to make them easily and knows how to explain things.
24 That's why there's a mandatory obligation under 1.7 to
25 clarify and on 1.2 as well and if somebody says, tells me

1 that I'm to protect everybody, the first thing I'm going to
2 do is communicate with everybody, make sure we're on the
3 same page and, and that we have teamwork from, from that
4 point on. It didn't happen here.

5 Q. In looking at the Operating Agreement, is the
6 Operating Agreement consistent with the articles?

7 A. The Articles of Organization? It's a mish-mash. You
8 got, it's, it's just like a traffic sign where you got two
9 signs pointing the opposite way in front of you each to
10 the, to the same destination.

11 Q. Is it within the standard of care for a lawyer in
12 South Carolina to draft a document like that?

13 A. They should be consistent and it's sloppy.

14 Q. And was the Burton Trust and the LLC injured as a
15 result of that?

16 A. Yeah, in part because of the, the fight and it just
17 opens another thing to, to point to. Was, was the, you
18 know, did Tommy have authority to convey. Does anybody
19 have authority to cram it down Marjorie's throat or, or the
20 Trust's throat not to mention what about a conveyance into
21 an enterprise that hasn't been established yet.

22 Q. You were also asked a lot about what is in the exhibit
23 book as Plaintiff's Twenty-five and you were handed up and
24 I think this may be Defendant's Sixteen or Seventeen, this
25 November 30, 2007 email.

1 Q. Did you ever deal with Mr. Pitts?

2 A. Yes, on a couple of occasions.

3 Q. All right. And did you deal with him as the attorney
4 for T.E. Cato Estate, LLC?

5 A. In my understanding, yes.

6 Q. All right. And this was during the period, well, let
7 me ask you, looking at the time when the Letter of Intent
8 was signed, which I think was August 3rd of 2007?

9 A. That sounds right.

10 Q. And the closing, I think, was December 12, 2007?

11 A. Right.

12 Q. Did you deal with him in that time frame with Mr.
13 Pitts?

14 A. Towards the end of that time frame, my client did not
15 come to me until probably sometime in October and had
16 provided me with a copy of the contract and asked that we
17 do the title work and indicated that they would close on it
18 before the end of the year. They indicated that they had
19 been dealing with Tommy Cato and he and I discussed the
20 transaction on a couple of occasions, and then we proceeded
21 to work towards a closing.

22 Q. All right. Excuse me for just a second. And what did
23 you understand Mr. Cato's role to be at that point in time?

24 A. I understood him to be the manager of the LLC.

25 Q. All right. And what did you understand his authority

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER ELEVEN,
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

3 MR. JELLENIK: All right.

4 Q. Would you be kind enough to summarize what this
5 document says?

6 A. Sure. As alluded to in earlier testimony, when we
7 searched title to the property which was the subject of the
8 contract, we discovered that the property that we'd been
9 referred to as "The Areas" was not vested in the selling
10 LLC but was rather still vested in the members. Because
11 Thomason wished to proceed to closing and that this was
12 replacement property in a like-kind exchange, the agreed
13 upon remedy or way of dealing with this title defect was to
14 escrow a portion of the purchase price until title could be
15 cleared on the areas and to institute a partition action.

16 Q. All right. Let me ask a question just to clarify one
17 item. You indicated and, and make sure I say this right.
18 You've indicated that the areas, the title to the areas
19 wasn't in the shape you expected, so you had to enter into
20 this arrangement to fix it?

21 A. Right.

22 Q. Did you intend and I, I don't care what the answer is,
23 I just want to make sure we understand it correctly. Did
24 you mean to say the areas or did you mean to say the
25 roadbed tract? And I don't care what the answer is, but I

1 --

2 THE COURT: Well, I need to know, because what he said
3 was the title in the areas which has not been defined yet.

4 MR. JELLENIK: I understand and that's why I'm asking
5 the question.

6 THE COURT: He said the title was defective. In
7 essence, the whole kit and caboodle.

8 A. We, we, I have not been here for the remainder of the
9 testimony in this case. I, I have thought that when the
10 word areas has been used that we've been talking about the
11 roadbed areas. So when I say areas, I'm referring to the
12 roadbed areas.

13 Q. All right.

14 THE COURT: Good.

15 MR. JELLENIK: That saves us about five days.

16 Q. All right. With respect to this document, does this
17 document then call for a closing on the rest of the Area or
18 the Areas not including the road bed tract?

19 A. It does.

20 Q. And does it call for a partition action to be filed
21 against the Burton Trust in order to clear title to the
22 roadbed tract to get in ---

23 A. It does.

24 Q. --- into the LLC and then get it sold to the
25 Thomasons?

1 A. It does.

2 Q. All right. Thank you. Sorry that went on so long,
3 but thank you for understanding. All right. Also this
4 document ratifies the provisions of the Letter of Intent,
5 so whether it was or wasn't a contract before this
6 document, the intent was that it be a contract with the
7 execution of this document; is that correct?

8 A. The intent was to ratify it in its current form.

9 Q. All right.

10 A. Ratification provisions are usually included in
11 amendments to contracts.

12 Q. All right. And the Thomason's, I gather, were willing
13 to pay the first \$10,000 in attorney's fees? I'm looking
14 at, on page 2 of 5, the continuation of paragraph 3?

15 A. That's right.

16 Q. They were going to pay the first \$10,000 in attorney's
17 fees and costs incurred by seller in, related to the
18 partition action?

19 A. That's right.

20 Q. Okay. And they had the right of approval, not, not
21 unreasonably withheld, but the right of approval over the
22 attorney to bring that partition action; is that correct?

23 A. That's right.

24 Q. Okay.

25 MR. JELLENIK: And if I can figure out where it is.

1 built?

2 A. Yes. I believe it would be the new roadbed area.

3 Q. All right. And then turning back one page, no, I'm
4 sorry, no, that's right, one page. Mr. Cato signed as
5 general manager on behalf of T.E. Cato Estate?

6 A. Correct.

7 Q. So this was the seller's deed to the Thomasons; is
8 that correct?

9 A. That's correct.

10 Q. And it's a General Warranty Deed?

11 A. That's correct.

12 Q. All right. Excuse me for just a moment. Did you write
13 an email, sir, dated December 12, 2007?

14 A. Yes, I believe you're referring to an email to Carroll
15 Pitts.

16 Q. Yes, sir. And could you please turn to exhibit, no,
17 hang on just a moment. I'm sorry. Could you please turn
18 to Exhibit Fifty? You there?

19 A. Yes.

20 Q. Okay. Is this the email that you sent at that time?

21 A. Yes, it is.

22 MR. JELLENIK: All right. I'd like this marked for
23 identification as Plaintiff's --

24 MADAM COURT REPORTER: It's already in ---

25 MR. JELLENIK: It's already in. All right.

1 MADAM COURT REPORTER: --- under Carroll Pitts.

2 Q. Mr. Vann, could you describe what the purpose of this
3 document was?

4 A. The purpose of this document was to have Carroll Pitts
5 to review the Deed of Conveyance prior to closing.

6 Q. And the reason for that?

7 A. The reason for that is that my understanding was that
8 he was representing the seller, LLC, in connection with the
9 closing.

10 Q. All right. And what led you to that understanding if
11 I may ask?

12 A. In conversations with Tommy Cato sometime after
13 receiving the file, I asked him who's your attorney, who do
14 I need to be dealing with on this and he said, "Well,
15 Carroll Pitts is my attorney, but we only engage him when
16 we need him." Certainly, they needed him in connection
17 with the closing and so prior to closing, I called Carroll
18 and asked him if he would like to prepare the Deed. He
19 said no, I'm fine with you, if you prepare it and you can
20 send it to me and I'll review it.

21 Q. All right. And December 12th I think you've already
22 indicated was the day that you were closing on the
23 transaction?

24 A. Right.

25 Q. And the date of this email, it's nine, and the date

1 and time are 9:58 a.m. on December 12; is that correct?

2 A. Yes, that appears to be the case.

3 Q. All right. So you were sending him this email for the
4 purpose, if I understand you correctly, is it correct that
5 you were sending him this email so that he could approve it
6 before the closing?

7 A. That's correct.

8 Q. All right. Did he return an email to you in response
9 to this or any other written correspondence?

10 A. He did not send me any written correspondence in
11 response to this.

12 Q. Did, did you get any other kind of response from him
13 prior, excuse me, prior to the closing?

14 A. Prior to the closing, yes. My recollection is that we
15 spoke on the phone and he said the Deed was fine.

16 Q. All right. So and that, if you recall, what time was
17 the closing?

18 A. I would gather that if I sent him the Deed at 10:00
19 o'clock in the morning, the closing must have taken place
20 in the afternoon, but it's, it's been seven years, so I
21 can't say for certain.

22 Q. And, and I can understand that.

23 A. Sure.

24 Q. All right. Okay. So between the time you sent this
25 email and the subsequent time that day that you closed, Mr.

1 Pitts, did you call him or did he call you?

2 A. I believe I called him.

3 Q. All right. And in that conversation, he approved the
4 seller's Deed and the other closing documents you asked him
5 to look at it?

6 A. Yes. As I recall, yes.

7 Q. All right. So was he present at the closing?

8 A. No, he was not present at the closing.

9 Q. All right. But his participation was as you've
10 described it?

11 A. Right.

12 Q. All right. And as you have understood it, he was
13 participating as the seller's attorney?

14 A. That was my understanding.

15 Q. All right. Did he raise any question as to the
16 authority of Mr. Cato to execute the Deed?

17 A. Not that I recall.

18 Q. Did he raise any question as to whether any members
19 needed to consent or whether anything had been done in
20 terms of a decision on the part of the LLC to take this
21 action?

22 A. Not, not that I recall, but I, I did not have a
23 question of authority on my end, so I don't recall that
24 coming up.

25 Q. All right. And that was going to be my next question

1 A. Okay.

2 Q. All right. And that's followed, of course, by 857 and
3 then there's an additional closing statement at 858 and
4 859. You see those?

5 A. I do.

6 Q. Now, looking at 856 and 857, let me ask again. Is
7 this intended to be for one particular party?

8 A. That is the seller's side of the closing statement.

9 Q. Okay. If I can direct your attention to item 3? Would
10 you please tell us what that item is about?

11 A. Yes. That indicates that attorney's fees to Robinson,
12 Bradshaw and Hinson on the seller side were paid outside of
13 closing.

14 Q. All right. So the fact that it was paid outside of
15 closing simply means you're not aware of what the fee was,
16 but it was not paid over the table with the closing?

17 A. That's correct.

18 Q. And as I understand the second line under Robinson,
19 Bradshaw and Hinson there, your understanding was the role
20 that Robinson, Bradshaw and Hinson played was the seller's
21 attorney; is that correct?

22 A. That's correct.

23 Q. All right. Pardon me for just a moment. With respect
24 to the Letter of Intent or with respect to the Amendment of
25 Contract, were there any contingencies? Were those

1 12th, 2007?

2 A. Not in connection with the closing and that was my
3 only involvement with him.

4 Q. A couple of questions about the email which is
5 Exhibit, hold on, I'll tell you. It's Exhibit 50. Just
6 look at it real quickly, and I'm almost through. Do you
7 see the part, Mr. Vann, in the email where you say that
8 Thomason Apartments is closing on the largest portion of
9 the Cato Estates?

10 A. Yes.

11 Q. And, and I think, did you know at the time of this
12 closing that the LLC still had five lots which were not
13 being conveyed to Thomason at this closing, did you know
14 that?

15 A. I, I believe I did know that there was some property
16 that was not a part of the transaction, yes.

17 Q. And, again, we touched on this earlier. You say in
18 the email in part, "so that I can be sure that Tom is the
19 general manager and has authority to consummate this
20 transaction for the LLC." Do you see that in that email
21 you sent to Mr. Pitts?

22 A. Yes.

23 Q. And that's what we talked about earlier, that was part
24 of your responsibility to make sure that he had the
25 authority on behalf of the LLC to consummate this

1 A. Yes.

2 Q. And if the Burton Trust had signed the Quitclaim Deed
3 that you prepared and send to Tom, then there would have
4 been no need for the partition action, would there?

5 A. No.

6 Q. Thank you, Mr. Vann. Those are all the questions I
7 have.

8 A. Thank you.

9 THE COURT: All right. Re-direct.

10 MR. JELLENIK: Yeah.

11 REDIRECT EXAMINATION

12 JOSHUA VANN BY MR. JELLENIK:

13 Q. Mr. Vann, I'll try to make this a little quick.
14 Regarding the subject we just discussed at the very end
15 here that there wouldn't have been a problem with a
16 Quitclaim Deed if the Burtons had signed it. Would there
17 have been a problem with the Quitclaim Deed if the original
18 Deed had had the roadbed tract in it?

19 A. You mean would there have been a need for a Quitclaim
20 Deed?

21 Q. Yes, sir.

22 A. No. But in my estimation, you would not include the
23 roadbeds in a General Warranty Deed.

24 Q. And the reason for that, sir?

25 A. Because the title was disputed. It had been conveyed

1 Q. All right. With regard to the Quitclaim Deed that was
2 prepared, pardon me for a moment.

3 MR. JELLENIK: I'm sorry, Your Honor.

4 Q. Could we turn to Exhibit Ten, please?

5 A. All right.

6 MR. JELLENIK: That's the wrong one. I'm sorry but I.

7 Q. Well, let's do it this way. Do you recall the
8 Quitclaim Deed that you prepared?

9 A. I do.

10 Q. With regard to the legal description in that Quitclaim
11 Deed, do you recall what was covered? What, what
12 description, what lands the description covered?

13 A. I do not. I don't recall if it was just the roadbed
14 areas or everything including the roadbed areas.

15 Q. If it were the latter, what would have been the reason
16 for that?

17 A. To make sure that no interest was left out.

18 Q. I'm sorry. Could you clarify that or elaborate on
19 that? I'm not sure what you mean. I need to make sure.

20 A. Yes. In the event that there were any undivided
21 interest in any property included within the overall area
22 that had not somehow been captured in the original Deed,
23 then a Quitclaim Deed for everything including the roadbed
24 area is what grant that additional interest.

25 Q. All right. But is that consistent, I guess I'm, all

1 THE COURT: --- to his knowledge. I mean ---

2 Q. Did, did Mr. ---

3 THE COURT: --- and that's what, that's why I don't
4 understand it. I mean all of this is good and well, but
5 nobody has attacked the title to this property.

6 MR. JELLENIK: All right.

7 Q. The question, the only question I'll ask with respect
8 to this then and you may have already testified to this is
9 whether Mr. Pitts communicated anything to you about the
10 content of the Operating Agreement regarding the authority
11 of Mr. Cato?

12 A. Did we have a specific discussion regarding the
13 Operating Agreement?

14 Q. Yes.

15 A. No.

16 Q. All right. Okay. With respect to this point, of
17 course, at this point. All right. With regard to, you
18 mentioned you had a meeting that you were at, I think you
19 mentioned one or two members of the Thomason family were
20 at, and Mr. Cato was there?

21 A. Yes.

22 Q. Was Mr. Pitts there?

23 A. No.

24 Q. All right. So was Mr. Cato getting legal advice from
25 someplace or what, what as being disclosed, what was being

State of South Carolina.,)
)
)
)
)
County of York.)

In the Court of
Common Pleas of York

Case No.: 2010-CP-46-02267

Marjorie Cato Burton.,)
 et al.,)
)
Plaintiffs.,)
)
-vs-)
)
Carroll Pitts, et al.,)
)
Defendants.)
)

Transcript of Record

January 26, 27, 2015
York, South Carolina

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The Honorable John C. Hayes, III, judge.

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For the Defendant

1 Q. The bankers want to see it before the loan. Right?

2 A. That's exactly right.

3 Q. Okay. All right. But that's what the proforma is
4 used for. And to complete the proforma, you would have
5 much more information that's on this sheet of paper, would
6 you not?

7 A. Yes. And once we - we delve - once we decided which
8 direction we were going, we would delve into it with a much
9 greater degree of detail.

10 Q. In other words, it wouldn't just be a one or two page
11 piece of paper, you would have lots of documents to back up
12 your projections, the numbers which appear with - with
13 regard to the lease values, construction costs, et cetera,
14 would all be backed up by documents that you or someone on
15 your behalf would research and submit to investors or
16 bankers or whoever?

17 A. That - that's correct. I - I threw this together as
18 an overview of - of this type of development.

19 Q. Now, you were asked about the - what Thomasson
20 Apartments paid for the property. You remember those
21 questions?

22 A. Uh-huh. Yes.

23 Q. The agreed upon price ultimately was a million
24 dollars; is that right?

25 A. Well, yeah. We initially offered I think Seven

1 Hundred and Fifty and ended up at One Million.

2 Q. Okay. Now, the negotiations occurred primarily
3 between you and Tommy Cato, am I right about that?

4 A. That's correct.

5 Q. And I think what happened is during the negotiations,
6 your initial offer of Seven Fifty was raised to a Million;
7 is that right?

8 A. That is correct.

9 Q. Okay. And that was after - I know you don't remember
10 the exact time frame - but weeks of negotiation with Tommy
11 Cato about what the heirs would sell the property for?

12 A. That is also correct.

13 Q. Is - is that fair?

14 A. Yes.

15 Q. Okay. Now, you talked about it changing a little bit.
16 My recollection is when this problem came up with the
17 roadbed tract, the price at closing was reduced to Nine
18 Hundred Thousand. Does that sound right?

19 A. That is correct.

20 Q. And then a Hundred Thousand Dollars was reserved for
21 the roadbed tract?

22 A. That's right. We wanted to hold back. It was no
23 valuation. It was just we wanted to hold back a sizable
24 amount of money until we - we cleared up the title issues.

25 Q. Right. In other words, Thomasson wanted the - the

1 sale to be completely closed. Correct?

2 A. Definitely.

3 Q. And the Hundred Thousand Dollars was held out -
4 incentive may be the wrong word, but a Hundred Thousand
5 Dollars was held out to say to Cato Estate, all right
6 listen, we'll hold a Hundred Thousand Dollars. We want the
7 sale completed and when you complete it, we're going to
8 give you this Hundred Thousand Dollars; is that right?

9 A. That's correct.

10 Q. Is that a fair description of the reason for that
11 Hundred Thousand Dollars?

12 A. That is also - yes, that's correct.

13 Q. Okay. And then in that Amendment to Contract, there's
14 a provision that says that Thomasson is going to help fund
15 the Partition Action for, I think, Ten Thousand Dollars.
16 Does that sound right?

17 A. Yes.

18 Q. Okay. And the purpose of that was that Thomasson
19 wanted the Partition Action for the simple reason that you
20 wanted the transaction completely closed?

21 A. That is correct.. If - if we closed without the
22 roadbed tract, it seriously damaged that piece of property
23 that we had intended to buy as a whole.

24 Q. Okay. Did Thomasson hire an appraiser to do an
25 appraisal on this property before you bought it?

1 Q. Okay. So did he take out more of the property in that
2 tract than you did?

3 MR. OUTTEN: Your Honor, I - our objection is that ---

4 THE COURT: Yeah, I think --

5 MR. OUTTEN: --- pitting one witness against the
6 other. If - if you're going to allow this, then - then
7 we'd just be asked to - that we have the same latitude when
8 Mr. Haskell takes the stand tomorrow.

9 THE COURT: Well, I - I think each - each needs to
10 stand on its own and what you're basically what -
11 ultimately where you're headed is, is yours better than his
12 or is his right or your - his wrong or yours right, so I'm
13 going to sustain the objection.

14 MR. ROSBRUGH: Thank you, Your Honor.

15 THE COURT: Let each opinion stand on its merits.

16 MR. ROSBRUGH: Thank you, Your Honor.

17 Q. What was the total value that you came to for the four
18 different areas?

19 A. It's a little over a million three. I think a
20 million, three sixteen.

21 Q. And do you hold the opinions that you've expressed
22 today within a reasonable degree of professional certainty?

23 A. Yes, sir. I do.

24 Q. Okay.

25 MR. ROSBRUGH: The Court's indulgence here just a

1 Q. And how did he do that?

2 A. By - Primarily by ascertaining what level of
3 protection the heirs wanted, whether they wanted Mr. Cato
4 to have sole authority to dispose of - of all of the
5 property and whether they wanted him to have a majority
6 vote review by the members whether - whether what he did
7 needed to be subject to a unanimous vote of the members.

8 They're - and - And if a majority vote, what level of
9 majority. There are - there are all sorts of levels of
10 protection that could have been put in place. And from
11 what I've seen, he - he drafted something that is
12 questionable as to whether it provides any protection and
13 certainly was interpreted by many to provide no protection.

14 Q. Mr. Virzi, would you turn to Exhibit Twenty-four in
15 that book?

16 A. Okay.

17 Q. It's a two-page exhibit and it's Bate stamped at the
18 bottom, PX024-001, PX024-002. If you'll refer to 002 for
19 me, please, first. Are you familiar with the November 8,
20 2007 email?

21 A. I am.

22 Q. Have you reviewed this email in formulation of your
23 opinions in this case?

24 A. Yes.

25 Q. And is it relevant to your opinions in this case?

1 this email said, Your Honor. I'm objecting to these
2 general references to other unmentioned - unidentified
3 documents.

4 THE COURT: I - I understand. I sustain the
5 objection.

6 MR. ROSBRUGH: Your Honor, he's - I can ask the
7 question again, but I mean we've got in evidence already
8 through Mr. Virzi a number of separate emails that he's
9 referred to and if you ---

10 THE COURT: Well, if it --

11 MR. ROSBRUGH: --- if the Court would like me to have
12 him list those, I can --

13 THE COURT: Well, it would be nice for the record,
14 because this case may go up on appeal, and then the Court
15 of Appeals will be scratching their head wondering. So I
16 think if - If the witness wants to rely on documentation,
17 then the record needs to reflect the extent of that
18 documentation. I know that's a longer way to do it, but I
19 think that's the proper way to do it.

20 MR. ROSBRUGH: Thank you, Your Honor.

21 Q. Mr. Virzi -

22 THE COURT: And aside from appeals, it's hard for me
23 to analyze general ---

24 MR. ROSBRUGH: I understand, Your Honor.

25 THE COURT: --- the - a bunch of emails or many emails

1 or other emails. I got to know what I'm supposed to be
2 looking at.

3 Q. When you used that phrase bunch of emails, what were
4 you referring to specifically?

5 A. Well, I'm not sure exactly what phrase I used at the
6 end of that last response but --

7 THE COURT: And I don't - I don't think he used the
8 word bunch.

9 A. But - but in - In my last response when I said just
10 feel to share my opinions adds to the pile. I wasn't
11 referring to - I was referring to the ones that we - we had
12 discussed earlier in my testimony here today.

13 Q. And that would be Exhibit Fifty, Exhibit Fifty-eight,
14 Fifty-three and Twenty-nine?

15 A. Yes.

16 THE COURT: Well, that - that's a leading question,
17 but I'll ---

18 MR. ROSBRUGH: I'm trying to speed this up, Your
19 Honor.

20 THE COURT: --- I - I - there was no objection.

21 Q. Mr. Virzi, have you formulated any opinions regarding
22 whether or not Mr. Pitts met the standard of care in his
23 preparation and formation of the LLC?

24 A. I have.

25 Q. What is your opinion regarding whether Mr. Pitts met

1 the standard of care in regard to the formation of the LLC
2 and the preparation of those documents?

3 A. My opinion is that his - he did not meet the standard
4 of care. He did not provide competent representation. His
5 charge was to protect all of the family members from Mr.
6 Cato, and he drafted instead articles in an Operating
7 Agreement that are at best vague as to Mr. Cato's authority
8 and at worst provided Mr. Cato with a level of authority
9 that resulted in no protection whatsoever to the other six
10 members from Mr. Cato's conduct, which is specifically what
11 he was hired to do.

12 Q. Are the documents prepared by Mr. Pitts for the
13 formation of the LLC internally consistent?

14 A. No, there's some inconsistency as to whether it's
15 member-managed or manager-managed and - and there is a lack
16 of clarity in the Operating Agreement about Mr. Cato's
17 authority as it related to the business of the LLC, which
18 was to dispose of this property.

19 Q. And what's the effect of that?

20 A. Well, at a minimum a big fight over whether Mr. Cato
21 had the authority to dispose of this property and at - at
22 worst, an interpretation of those documents that Mr. Cato
23 did have the authority to sell the property on his own on
24 behalf of the LLC which, again, if that's the correct
25 interpretation, left the trust with none of the protection

1 steeply sloping, so we also had to make an additional
2 adjustment to the remaining topography.

3 Q. And, Mr. Haskell, according to your appraisal, what
4 was the total value of Areas A, B, C and D at the time - on
5 December 12th, 2007?

6 A. The combined value of the tracts was
7 one-million-sixteen thousand dollars.

8 Q. And what was the sales price of Areas A, B, C and D
9 from the T.E. Cato Estate to Thomasson Apartments, LLC?

10 A. Now, it's my understanding based on the documents
11 supplied to me, it was one million dollars.

12 Q. Thank you, Mr. Haskell. Please answer any questions
13 that Mr. Rosbrugh may have.

14 CROSS-EXAMINATION

15 CORBIN HASKELL BY MR. ROSBRUGH:

16 Q. Good morning, again, Mr. Haskell?

17 A. Good morning.

18 Q. Mr. Haskell, I want to go through your report a little
19 bit and talk about it in some detail. Looking at Area A

20 ---

21 A. Yes, sir.

22 Q. --- correct, that's the irregularly shaped area?
23 Correct?

24 A. Yes, sir.

25 Q. And I think that you've got a diagram of it on

1 A. I don't recall whether I - I said it.

2 Q. But you would agree with it?

3 A. You said objective or subjective?

4 Q. I'll just take out those two words and I'll say it's
5 an indicator.

6 A. Well, yes. I would agree. I mean, presumably someone
7 doesn't bring a - doesn't make an allegation that it was a
8 client of someone if they don't believe that they were a
9 client of someone.

10 Q. And you'd agree with me that - agree with me rather
11 that if the Deed into the LLC was done correctly, in other
12 words, there was no roadbed issue, there would have been
13 one closing on all of the Areas for a million dollars?

14 A. Yeah, subject to my prior testimony that it would not
15 have worked to have included it in the single General
16 Warranty Deed. It would have been needed to be done as a
17 separate Quitclaim Deed.

18 Q. And that could have very easily been done on the front
19 end of this?

20 A. Sure, just as it could have been done on the back end.

21 Q. Well, let's talk about the timing of all this for a
22 second. You understand that the Letter of Intent was
23 signed by Mr. Cato on August 3rd. Correct?

24 A. I knew early August yeah, sure.

25 Q. And then as part of Mr. Vann's process preparing for a

1 closing to the Thomasson's, he conducted a title search.

2 Correct?

3 A. That is correct to my understanding, yes.

4 Q. And in that title search, he identified certain issues
5 that we've been talking about for quite a while now.

6 Correct?

7 A. That is correct, but I just want to be clear, the
8 certain issues are the old red - roadbed and the new
9 roadbed.

10 Q. Okay.

11 A. Okay.

12 Q. And then there were discussions about how to resolve
13 that issue. Correct?

14 A. Yes.

15 Q. And then Mr. Vann prepared an amendment to contract.

16 Correct?

17 A. My only hesitation is the - is the sequence, but yes,
18 he did. He did prepare an amendment to the contract.

19 Q. Okay. And then in December 2007 - Well, let me back
20 up. The amendment to contract was executed by Tommy Cato.

21 Correct?

22 A. Yes.

23 Q. And by the Thomasson's. Correct?

24 A. Yes.

25 Q. And have you seen that amendment to contract?

1 A. I have and what I'm struggling with is I don't
2 remember the date but yes, I've seen it.

3 Q. Okay. And under that amendment to contract,
4 obviously, the LLC was legally obligated in a contractual
5 arrangement with the Thomasson's at that point. Correct?

6 A. Correct.

7 Q. And then there's the December closing. Correct?

8 A. Yes.

9 Q. Until that amendment to contract - Well, let me - let
10 me ask you this, Mr. Higgins. The Letter of Intent is not
11 binding like a contract, is it?

12 A. You know, I don't know. There's a lot of law floating
13 around on that and this Letter of Intent doesn't have
14 nonbinding language. I'm not sure I - I haven't looked at
15 the Letter of Intent to consider that issue, so I - I don't
16 know the answer.

17 Q. But it certainly was binding at the time of the
18 execution of the amendment to contract?

19 A. Yes.

20 Q. And Mrs. Burton did not file a partition action, did
21 she, or the Burton Trust? I'm sorry, we keep using that
22 all kinds of interchangeably.

23 A. I - And I'm guilty of the same thing.

24 Q. Okay.

25 A. No, she or it did not file that partition action.

1 Q. Right.

2 A. You mean does it say we - We hereby waive section -

3 No, it doesn't nor would I expect it to.

4 Q. You'd agree with me that the Operating Agreement would
5 be much clearer as to that provision if it set it out
6 within the terms of the Operating Agreement?

7 A. Sure, but every Operating Agreement could be more
8 clear. If I knew now what somebody was going to complain
9 about, I could obviously go back and create a hundred page
10 Operating Agreement and try to anticipate every objection.

11 Q. Are you aware of this Court's prior Order from the
12 partition action, the "Thorny Issues" Order?

13 A. I - Yes.

14 Q. Okay. You've read that?

15 A. Not recently, but yes.

16 Q. Do you recall reading where the Court said that the
17 Deed into Thomasson did convey out of the LLC if not all,
18 and then a parenthetical - "the Court understands the
19 roadbed was never an asset of the LLC" - end parenthetical,
20 at the least substantially all of the LLC's property?"

21 A. I do recall that, but I'm not confident that anybody
22 had paid attention to the five lots being left.

23 Q. Is that in the record?

24 A. Well, I don't know that it's in the record that it was
25 - that that was an issue.

1 Q. Was that - Then that's just kind of speculation on
2 your part, isn't it?

3 A. Yes.

4 Q. You would agree with me that if an - if an action by a
5 lawyer is deemed the practice of law, it's the practice of
6 law regardless of who it's done for?

7 A. Yes.

8 Q. So, for example, if Buyer Services says drafting a
9 deed or abstracting title is the practice of law, then it's
10 the practice of law regardless of the type of client that
11 you have?

12 A. I do agree with that.

13 Q. And it's the practice of law regardless of whether the
14 property is commercial or residential?

15 A. I agree with that.

16 Q. And the future warranties contained in a General
17 Warranty Deed are the same regardless of whether the client
18 is sophisticated or not. Correct?

19 A. A General Warranty is a General Warranty? Yes.

20 Q. And the warranties are the same regardless of whether
21 the property is commercial or residential. Correct?

22 A. Typically, yes.

23 Q. And you've talked at some length about Defendant's
24 Exhibit Four which is the November 30, 2007 email.

25 Correct?

1 A. Yes, I have. Yes. Oh.

2 Q. I'll give you a minute to find it.

3 A. It's very - very clearly hidden right in front of me.

4 Q. Isn't this a settlement offer?

5 A. You know, certainly, that could be one
6 characterization of it.

7 Q. It's an offer to compromise, isn't it?

8 A. Again, that - that's one characterization.

9 Q. And in part of your review of materials number Twenty-
10 eight is the in re: Morgan case. Correct?

11 A. Yes.

12 Q. And it's your - Is it your opinion that that case is
13 instructive as to this matter?

14 A. No, sir.

15 Q. Why not?

16 A. It's just a completely different set of facts, and -
17 and I - Frankly, I barely remember the facts, but it's a
18 lawyer had a relationship with like a father and three
19 children and one of 'em was a minor and he was playing both
20 sides against the middle and clearly had one client and he
21 was taking a position adverse to somebody else. I can't
22 remember, but I - I pulled it and listed it solely because
23 it showed up in, I think, Professor Freeman's deposition.

24 I read it and didn't think it was relevant.

25 Q. And isn't it true that the Court found in that case

Revocation of Living Trust

On May 12, 2000, Marjorie Cato Burton created a revocable living trust, called "The Marjorie Cato Burton Trust Agreement Living Trust," with Marjorie Cato Burton as the grantor and trustee. Under the terms of the trust, the grantor reserved to herself the full power to revoke the trust.

According to the terms of the Declaration of Trust, and the laws of the State of North Carolina, the grantor hereby revokes the Declaration of Trust dated May 12, 2000 and titled as "The Marjorie Cato Burton Trust Agreement" Revocable Trust, and states that the trust is completely revoked. All property of The Marjorie Cato Burton Revocable Trust Agreement shall be returned to the grantor and legally owned by her as defined in the Declaration of Trust.

Dated: October 16, 2006.

Marjorie Cato Burton
Grantor and Trustee

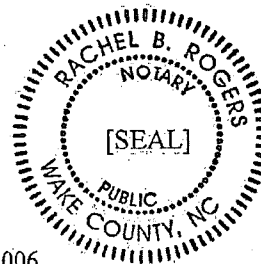
Marjorie Cato Burton
Grantor and Trustee

Notary's Acknowledgment

State of North Carolina
County of Wake

On October 16, 2006, before me, RACHEL B. ROGERS, a notary public in and for said state, personally appeared Marjorie Cato Burton, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person ~~(s)~~ whose name ~~(s)~~ is ~~/is~~ subscribed to the within Revocation of Living Trust, and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity ~~(ies)~~ and that by ~~his~~/her/~~their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed this Revocation of Living Trust.

Rachel B. Rogers
Signature of Notary RACHEL B. ROGERS



WITNESS Grantor handed this the 16th day of October, 2006

Signed, Sealed and Delivered in the presence of:

Marjorie Cato Burton
Grantor: Marjorie Cato Burton

Connie A Robertson
Witness #1 Signature

Connie A Robertson
Witness #1 (Print Name)

Candace L Bulebus
Witness #2 Signature

CANDACE L BULEBUS
Witness #2 (Print Name)

SCDOT RW Form 203 (11-01)

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

STATE OF SOUTH CAROLINA

COUNTY OF YORK

DATE 11-15-06
TAX MAP NO. ?
INITIALS TS / d/n000324182
RECORDED 11/14/2006 02:27:47PM
Bk:08577 Pg:00187 Pages:4
Fee:10.00 State:0.00
County:0.00 Exempt:
David Hamilton, Clerk of Court
York County, SC

QUITCLAIM DEED

WHEREAS, pursuant to Section 57-5-340, Code of Laws of South Carolina, 1976, as amended, the South Carolina Department of Transportation has authority to dispose of the premises hereinbelow described, which premises are no longer required for purposes of the South Carolina Department of Transportation; Now Therefore,

KNOW ALL MEN BY THESE PRESENTS, that the South Carolina Department of Transportation ("Grantor"), for and in consideration of the sum of One and No/100 Dollar (\$1.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby remise, release and quitclaim unto Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, Helen C. Jones, Donn S. Johnson, Robert Lee Cato, James Thomas Cato, Martha Jane Cato West, and Cathy Cato Evans ("Grantee"), 4300 Boxwood Road, Raleigh, North Carolina 27612, all its right, title, interest in or to the following described property:

All that certain piece, parcel or tract of land containing approximately 0.9 of an acre of land, situate, lying and being on the East side of SC Route 274 in the City of Rock Hill, in York County, State of South Carolina, and being shown on the South Carolina Department of Transportation Plans for SC Route 274, File 46.632A, Sheets 4 & 4A. Said property being more particularly described as follows:

Beginning at a point located on the Northwestern corner of the subject parcel on the new 33-foot right of way line of SC Route 274 and present 25-foot right of way line of old abandoned Road S-892, approximately 33 feet left of approximate survey station 606+30 of SC Route 274; thence in a Easterly direction for a distance of approximately 870 feet along the present 25-foot right of way line of old abandoned Road S-892 to a point on the new 33-foot right of way line of relocated Road S-892; thence in a Southerly direction for a distance of approximately 70 feet along the new 33-foot right of way line of relocated Road S-892 to a point on the present 25-foot right of way line of old abandon Road S-892; thence in a Westerly direction for a distance of approximately 440 along the present 25-foot right of way line of old abandoned Road S-892 to a point on the new 33-foot right of way line of relocated Road S-892; thence in a Westerly direction for a distance of approximately 360 along the new 33-foot right of way line of relocated Road S-892 to a point on the baseline of the new 25x25-foot triangle and transitional right of way line of relocated Road S-892; thence in a Northwesterly direction for a distance of approximately 33 feet along the baseline of the new 25x25-foot triangle and transitional right of way line of relocated Road S-892 to a point on the new 33-foot right of way line of SC Route 274, approximately 33 feet left of approximate survey

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station 606+72 of SC Route 274; thence in a Northerly direction for a distance of approximately 40 feet along the new 33-foot right of way line of SC Route 274 to the point of beginning. Being bound on the North by lands of the Grantee, on the East by relocated Road S-892, on the South by lands now or formerly of the Grantee and relocated Road S-892, and on the West by SC Route 274.

This being a portion of the property acquired by the South Carolina Department of Transportation from Thomas E. Cato Estate by Right of Way Easement dated October 13, 1965, and filed in the South Carolina Department of Transportation Deed Vault in Columbia, South Carolina under Road S-892, File 46.516.

This conveyance is being made subject to any and all existing public utility rights of user, reservations, easements, rights of way, control of access, zoning ordinances and restrictions or protective covenants, that may appear on record or on the premises, other than those hereby released.

RESERVING HOWEVER, unto the South Carolina Department of Transportation, its successors and assigns, the right to enter upon the aforesaid property for the purpose of maintaining the drainage, if any, on the property as deemed necessary by the South Carolina Department of Transportation.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, Helen C. Jones, Donn S. Johnson, Robert Lee Cato, James Thomas Cato, Martha Jane Cato West, and Cathy Cato Evans, Their Heirs, and Assigns forever.

WITNESS the hand and seal of the South Carolina Department of Transportation this 24th day of October, in the year of our Lord Two Thousand Six and in the Two Hundred and Thirty-first year of the Sovereignty and Independence of the United States of America.

SCDOT RAW Form 203 (11-01)

Signed, sealed and delivered
in the presence ofWendy S. WhitemanJeannie WhitenerSOUTH CAROLINA DEPARTMENT OF
TRANSPORTATIONBy: [Signature] (L.S.)
Executive DirectorBy: [Signature] (L.S.)
Acting Deputy Director of Finance and Administration

THE STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

Personally appeared before me the undersigned witness, who being duly sworn, says he/she saw the within named South Carolina Department of Transportation, by its duly authorized officers Elizabeth S. Mabry, Executive Director and Morgan F. Denny, Acting Deputy Director of Finance and Administration, sign, seal with its corporate seal, and as its act and deed deliver the within written instrument, and that he/she with the other witness whose name appears witness the execution thereof.

SWORN to before me this 24thday of October, 2006Wendy S. Whiteman
(above witness)Jeannie S. WhitenerNOTARY PUBLIC FOR THE STATE OF: South CarolinaMy Commission Expires: October 5, 2008

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BK08577PG0189

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

South Carolina Department)
of Transportation,)
Grantor)
to)
Marjorie Cato Burton Revocable)
Trust, Helen C. Jones, Donn S.)
Johnson, Robert Lee Cato, James)
Thomas Cato, Martha Jane Cato)
West, and Cathy Cato Evans)
Grantee.)

AFFIDAVIT OF TRUE CONSIDERATION

Personally appeared before me the undersigned Affiant, who being duly sworn, says that (s)he is an employee of the Grantor and is familiar with the deed above referenced dated October 24, 2006, and the true consideration for the transfer is One and No/ 100 Dollar (\$1.00).

To the best of Affiant's knowledge, this transfer is not exempt from the deed recording fee required by Section 12-24-10 of the S. C. Code of Laws, 1976, as amended. Pursuant to Section 12-24-20 of the Code of Laws, 1976, as amended, because this deed is a deed from the State, the deed-recording fee is the liability of the Grantee.

SWORN TO BEFORE ME
this 24th day of Oct, 2006

J. Eric Wassinger
(Signature)

Robert P. Capland
Notary Public for South Carolina
My commission expires: 8/11/16

J. Eric Wassinger
(Print or type name)

BK08577PG0190

*The
Sloan Marvin Burton and
Marjorie Cato Burton
AB Living Trust*

DECLARATION OF TRUST

The Sloan Marvin Burton and Marjorie Cato Burton
AB Living Trust (the "Trust")

This DECLARATION OF TRUST is made and executed on the date below
by and between the herein named Grantors and Trustees:

WITNESSETH:

1. TRUST PROPERTY

(a) Funding of Trust. The Grantors declare that they have set aside and caused the transfer of all of their rights, title and interest in and to the property described in Annex A, Annex B and Annex C to the Trust for the use, benefit and enjoyment of the Beneficiaries named herein. The Grantors, at any time hereafter, may transfer to the Trust any other real or personal property. This Trust may also receive property from any other source, including pursuant to either of the Grantor's Last Will and Testament.

(b) Character of Property. While both Grantors are alive, property transferred into this Trust, including any income that it generates, shall retain its original character (unless gifted from one Grantor to the other Grantor). The joint property contributed to this Trust is set forth in Annex A. The separate property of Sloan Marvin Burton contributed to this Trust is set forth in Annex B. The separate property of Marjorie Cato Burton contributed to this Trust is set forth in Annex C. Each annex may be amended and revised from time to time to reflect the contribution of additional property or the re-allocation or distribution of property. If this Trust is revoked, the Trustees shall distribute the Trust property to the Grantors based on the same ownership rights they had before the property was transferred to the Trust.

2. AUTHORITY, POWER and RIGHTS OF GRANTORS

(a) Amend and Revoke. Either Grantor has the authority, power and right to revoke the Trust hereby created. So long as both Grantors are alive, the Grantors may jointly amend or modify any provision of this Trust. If one

Grantor has deceased, the surviving Grantor alone may amend or modify any provision of this Trust. All amendments, notices or other documents and instruments affecting or furthering the purposes of this Declaration of Trust shall be in writing.

(b) Appointment of Trustee. The Grantors may at any time appoint, substitute or otherwise change the person designated to act as Trustee or Successor Trustee hereunder. No prior notice to, or consent of, any such Trustee, Successor Trustee or Beneficiary shall be required.

(c) Right to Income. The Grantors, during their lifetime, shall be exclusively entitled to all income accruing from, the Trust's property set forth in Annex A. During such Grantor's lifetime, Sloan Marvin Burton shall be exclusively entitled to all income accruing from the Trust's property set forth in Annex B. During such Grantor's lifetime, Marjorie Cato Burton shall be exclusively entitled to all income accruing from the Trust's property set forth in Annex C. No Beneficiary named herein shall have any claim upon such trust income or profits.

(d) Homestead. The Grantors reserve the right to reside in any real property conveyed or transferred to this Trust rent-free and without charge (except for taxes, insurance, maintenance and other related expenses) during each of their lifetimes, it being the intent of this provision to preserve the requisite beneficial interest and possessory right of each Grantor in and to such real property in accordance with the applicable provisions of state Homestead or similar laws.

3. APPOINTMENT OF TRUSTEE

(a) Sloan Marvin Burton and Marjorie Cato Burton (each also referred to as an "initial Trustee") shall each be a Trustee of this Trust and each subtrust of this Trust (if any), with all of the rights, privileges and responsibilities set forth herein. Either Trustee may exercise all of the powers and rights accorded to a Trustee under this Declaration of Trust, without the requirement of acting in unison. In the event of a physical or mental incapacity or death of one of the Trustees, the survivor Trustee shall continue as the sole Trustee with full authority to exercise all of the powers and rights accorded to a Trustee under this Declaration of Trust.

(b) If at any time both Sloan Marvin Burton and Marjorie Cato Burton cannot serve due to death, disability or incapacity, David Alan Burton shall be the successor Trustee. If such designee is unable or unwilling to serve for any reason, Sharon Harris Burton shall be the successor Trustee. The successor Trustee shall assume the active administration of this Trust in compliance with those provisions set forth herein.

(c) The successor Trustee's authority and power may be subsequently terminated by any Grantor without the consent of, or prior notice to, the successor Trustee if any initial Trustee has sufficiently recovered from any medical or mental impairment which prevented the initial Trustee from being able to fully and competently administer this Trust.

(d) As used in this Declaration of Trust, the singular term "Trustee" shall also include the plural. In addition, the terms "disability" and "incapacity" shall refer to a physical or mental inability to properly manage his or her own financial affairs, as established by the written opinion of two licensed doctors.

(e) Any health care provider shall be authorized to disclose to the "successor Trustee" any pertinent individually identifiable health information sufficient to determine whether the Trustee is physically or mentally capable of managing his or her own financial affairs. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or similar state laws, and each successor Trustee shall constitute a Trustee's "Personal Representative" as defined by HIPAA.

4. POWERS AND DUTIES OF TRUSTEE

(a) General Powers and Duties. The Trustee under this Declaration of Trust shall have all of the powers deemed necessary and appropriate to administer this Trust, including all powers granted under North Carolina law, to the maximum extent of the law, subject to the fiduciary duties to the Grantors and Beneficiaries and any restrictions or limits set forth under North Carolina law. The Trustee may exercise all powers without the approval or supervision of any court, the Grantor or any Beneficiary.

(b) Specific Powers. In furtherance of subsection (a) above, the powers of the Trustee include, but are not limited to; the powers to:

1. Collect, hold, manage and administer assets of the Trust as if the Trustee was the absolute owner of it;

2. Sell, trade, deal, encumber, mortgage, pledge, option, lease, lend or improve the assets of the Trust;
3. Invest, reinvest and make purchases with the profits and principal of the Trust in every kind of property, asset and investment;
4. Borrow money and purchase insurance;
5. Employ and pay reasonable fees to counsel, accountants, financial advisors and any other professional deemed necessary or advisable for the proper administration of the Trust;
6. Enter into contracts and otherwise sign and execute any instrument on behalf of the Trust;
7. Establish bank, brokerage and other financial and non-financial accounts for and on behalf of the Trust and to sign any and all documents on the Trust's behalf in relation thereto, including any resolutions, certification or certificate required for such account;
8. Distribute or divide the assets of the Trust in accordance with this Declaration of Trust (subject to any restrictions or limits set forth under North Carolina law), and to execute any documents necessary to administer any trust or subtrust created by this Declaration of Trust;
9. Receive additional property into the Trust.
10. Continue, operate, expand, manage and sell any business of the Grantor that is part of the Trust.
11. Commence, defend, arbitrate and settle legal claims or actions concerning the Trust or the assets and property in the Trust.
12. Exercise voting rights, give proxies and enter into voting agreements with respect to stock and other business ownership interests held by the Trust.

13. Prepare tax returns and take any necessary or desirable actions with governmental agencies.
14. Purchase and modify insurance.
15. Pay or disburse such sums from the assets of the Trust as may be required, necessary or desirable to maintain the comfort and welfare of the Grantor in the event the Grantor is unable to actively and competently exercise judgment over financial matters by reason of a medical illness or mental impairment.
16. Upon the death of the Grantor, to pay any just debts and expenses of the Grantor.

(c) Compensation. The Trustee may receive reasonable compensation for services under this Declaration of Trust.

(d) Payments to Grantors. The Trustee shall be fully authorized to pay over or disburse to the Grantors from time to time any amounts requested by the Grantors from the income or principal of the Trust.

(e) Resignation. Any Trustee may resign by providing 30 day's written notice to the Beneficiaries.

5. DEATH OF A GRANTOR

(a) Definitions. For the purposes of this Declaration of Trust, the following definitions apply:

"Property of Sloan Marvin Burton" means (i) the Trust property owned by Sloan Marvin Burton at the time it was contributed to the Trust, (ii) all property transferred by Marjorie Cato Burton to Sloan Marvin Burton, either by gift or through the provisions of this Declaration of Trust, and (iii) all accumulated income and profits on the foregoing property. The Property of Sloan Marvin Burton includes the property listed on Annex B, as well as Sloan Marvin Burton's share of the Trust property listed on Annex A.

"Property of Marjorie Cato Burton" means (i) the Trust property owned by Marjorie Cato Burton at the time it was contributed to the Trust, (ii) all property transferred by Sloan Marvin Burton to Marjorie Cato Burton, either by gift or through the provisions of this Declaration of Trust, and (iii) all accumulated income and profits on the foregoing property. The Property of Marjorie Cato Burton includes the property listed on Annex C, as well as Marjorie Cato Burton's share of the Trust property listed on Annex A.

"Property of the deceased Grantor" shall mean either "Property of Sloan Marvin Burton" or "Property of Marjorie Cato Burton" depending on which Grantor is the first to decease.

(b) Death of the First Grantor. Upon the death of the first of the Grantors, the surviving Grantor shall divide this Trust into two separate and distinct trusts. The Trustee shall be the trustee for all of the separate trusts created hereby.

The designation of each trust shall be as follows: (i) Trust A shall be a revocable trust, and (ii) Trust B shall be an irrevocable trust, also known as a "Credit Shelter Trust." For purposes of this Declaration of Trust, the term "Trust" shall include Trust A and Trust B.

The Trustee shall not be required to physically segregate the property placed into Trust A and Trust B.

1. Trust A Allocation. Trust A shall be allocated the Property of the surviving Grantor, plus any Property of the deceased Grantor transferred to the surviving Grantor in any specific bequest pursuant to Section 6(a)(1) or 6(b)(1), as the case may be. Trust A shall thereafter be continued as a revocable living trust incorporating all of the applicable authorities, powers, rights and provisions set forth in this Declaration of Trust.

2. Trust B Allocation. Trust B shall be allocated the Property of the deceased Grantor, including any property that may be subject to the applicable provisions of the deceased Grantor's Last Will and Testament, if any, or otherwise subject to an estate management proceeding, less any Property of the deceased Grantor transferred in any specific bequest pursuant to Section 6(a)(1) or 6(b)(1), as the case may be.

Trust B shall thereafter be continued as an irrevocable trust, specifically, terminating those authorities, powers, rights and provisions granted to the Grantors to amend, modify or revoke any beneficiary designation and Trust property contribution or distribution.

The surviving Grantor shall retain a life estate in the property in Trust B. The Trustee may pay to or spend for the surviving Grantor all or a portion of the income produced by the property included in Trust B. The Trustee may also pay to or spend for the surviving Grantor such sums from the principal of Trust B any amount necessary for the support and maintenance of the surviving Grantor's accustomed manner of living, including those amounts necessary to pay his or her medical expense.

The surviving Grantor may withdraw annually from the principal of Trust B an amount not exceeding \$5,000 or 5 percent of the principal value of the Trust Corpus, whichever is greater, without regards to any other sums withdrawn for the support and maintenance of Grantor's accustomed manner of living. All sums withdrawn under this provision shall be on a non-cumulative basis.

(c) Death of the Second Grantor. Upon the death of the second of the Grantors, the property in Trust A and Trust B shall be distributed as set forth in Section 6 below.

(d) Simultaneous Death of Grantors. In the event both Grantors die in, or as a result of, a common accident or disaster, or under such circumstances that the order of their deaths cannot be established by proof, then it shall be conclusively presumed that both died simultaneously, and neither shall be presumed to have survived the other for purposes of this Declaration of Trust.

6. BENEFICIARIES

(a) Beneficiaries of Sloan Marvin Burton. Subject to the creation of any children's subtrusts, upon the death of Sloan Marvin Burton, the Trustee shall distribute the Property of Sloan Marvin Burton to the Beneficiaries named below, at the time and in the manner provided below, after the payment of any just debts and funeral expenses:

1. Specific Bequests

The following specific bequests shall be made upon the death of Sloan Marvin Burton, regardless of whether Sloan Marvin Burton is the first or second of the Grantors to pass away.

Sloan Marvin Burton Junior, the Grantor's son, shall be given the specific sum of \$5.00 (five dollars) to be the total amount he receives from the Grantor's estate.

Philip Douglas Burton, the Grantor's son, shall be given the specific sum of \$5.00 (five dollars) to be the total amount he receives from the Grantor's estate.

2. Residual Property After Specific Bequests.

- i. If Sloan Marvin Burton is the first of the Grantors to decease, then all residual Property of Sloan Marvin Burton shall be distributed to Trust B. Upon the death of Marjorie Cato Burton, all of the property in Trust B shall be distributed to the Beneficiaries set forth in subsection (iii) below in the percentage set forth below.
- ii. If Sloan Marvin Burton is the second of the Grantors to decease, the Beneficiaries set forth in subsection (iii) below shall receive, in the percentage set forth below, all residuary Property of Sloan Marvin Burton.
- iii. Name: David Alan Burton
Relation: Son
Percentage: 100%

In case such Beneficiary does not survive the Grantor, then that share of the Trust Property which would have been given to such Beneficiary shall be distributed to: Sharon Harris Burton.

(b) Beneficiaries of Marjorie Cato Burton. Subject to the creation of any children's subtrusts, upon the death of Marjorie Cato Burton, the Trustee shall distribute the Property of Marjorie Cato Burton to the Beneficiaries named below, at the time and in the manner provided below, after the payment of any just debts and funeral expenses:

1. Specific Bequests

The following specific bequests shall be made upon the death of Marjorie Cato Burton, regardless of whether Marjorie Cato Burton is the first or second of the Grantors to pass away.

Sloan Marvin Burton Junior, the Grantor's son, shall be given the specific sum of \$5.00 (five dollars) to be the total amount he receives from the Grantor's estate.

Philip Douglas Burton, the Grantor's son, shall be given the specific sum of \$5.00 (five dollars) to be the total amount he receives from the Grantor's estate.

2. Residual Property After Specific Bequests.

- i. If Marjorie Cato Burton is the first of the Grantors to decease, then all residual Property of Marjorie Cato Burton shall be distributed to Trust B. Upon the death of Sloan Marvin Burton, all of the property in Trust B shall be distributed to the Beneficiaries set forth in subsection (iii) below in the percentage set forth below.
- ii. If Marjorie Cato Burton is the second of the Grantors to decease, the Beneficiaries set forth in subsection (iii) below shall receive, in the percentage set forth below, all residuary Property of Marjorie Cato Burton.
- iii. Name: David Alan Burton
Relation: Son
Percentage: 100%

In case such Beneficiary does not survive the Grantor, then that share of the Trust Property which would have been given to such Beneficiary shall be distributed to: Sharon Harris Burton.

(c) Inalienability of Beneficiary's Interest. The interest of the Beneficiaries under this Trust shall be inalienable. Such Beneficiaries cannot assign, sell, pledge, encumber or otherwise transfer their inalienable interest in the assets of the Trust to a third party. Nor can such interest be attached,

garnished, levied upon or otherwise subjected to any proceedings whether at law or in equity.

(d) Beneficiaries' Proportionate Liability for Estate Taxes. Each Beneficiary hereunder shall be liable for their proportionate share of any estate taxes that may be levied upon the total value of the Trust and distributed to said Beneficiary.

(e) Revocation of Beneficiary. The Grantors reserve the right to revoke, at any time, the designation of a herein named Beneficiary, without prior notice to or the consent of any such Beneficiary. In addition, at any time, the Grantors may designate a new Beneficiary to replace a previously revoked Beneficiary or designate an additional Beneficiary. No prior notice to or the consent of any other Beneficiary is required.

7. SPECIAL DIRECTIVES CLAUSE

Notwithstanding any other provision of this Trust, including those express directives in section 6 above, the Grantors further direct that:

Sloan Marvin Burton Junior is to receive ONLY \$5.00 (Five dollars) from the Grantors' estate. *+ WIFE (COMMON LAW)*

Philip Douglas Burton is to receive ONLY \$5.00 (Five dollars) from the Grantors' estate. *+ WIFE*

8. NON-LIABILITY OF THIRD PARTIES

(a) This Trust is created with the express interest and understanding that any third parties, including agents, employees or vendors, who, upon the written request of the Grantors, or under the color of authority granted to the Trustee in this Declaration of Trust, perform any duties or render any services in the furtherance of the purposes and intents of this Trust, absent any showing of fraud or bad faith, shall be under no liability for the proper administration of any assets or properties being the subject of the said third party's acts.

(b) This limitation of liability gives specific protection to any third party who acts, performs or renders any services pursuant to any notice, instrument or document believed (and represented) to be genuine, and to have been signed and presented by the proper parties.

(c) It is further the express intent of this Trust that the non-liability of all third parties be given broad and prospective application. In particular, a depository, custodial agent or financial institution, or any other person or entity acting in a fiduciary capacity with regards to any assets or property of the Trust, shall suffer no liability, nor incur any express or implied obligations when acting in the capacity of a transferor, upon proper request, of any assets or property either sought to be, or constructively comprising the assets or properties of the Trust.

9. MISCELLANEOUS

(a) Bonds. The Trustee under this Declaration of Trust shall service without bond.

(b) Governing Law. This Declaration of Trust shall be construed and enforced in accordance with the laws of the state of North Carolina.

(c) Severability. If a court of competent jurisdiction shall at any time invalidate or find unenforceable any provisions of this Declaration of Trust, such invalidation shall not be construed as invalidating the whole of this Declaration of Trust. All of the remaining provisions shall be undisturbed as to their legal force and effect. If a court finds that an invalidated or unenforceable provision would become valid if it is limited, then such provision shall be deemed to be written, deemed, construed and enforced as so limited.

(d) Perpetuities Savings. Despite any other provision of this Declaration of Trust to the contrary, the Trust shall terminate no later than 21 years after the death of the last surviving Beneficiary who is living at the time of the death of the Grantors.

IN WITNESS WHEREOF, the Grantors have executed this Declaration of Trust on the date written below.

Sloan Marvin Burton
Signature of Sloan Marvin Burton, as Grantor

Date: January 19 / 2007

Marjorie Cato Burton
Signature of Marjorie Cato Burton, as Grantor

Date: January 19, 2007

Sloan Marvin Burton
Signature of Sloan Marvin Burton, as Trustee
of The Sloan Marvin Burton and
Marjorie Cato Burton AB Living Trust

Date: January 19 / 2007

Marjorie Cato Burton
Signature of Marjorie Cato Burton, as Trustee
of The Sloan Marvin Burton and
Marjorie Cato Burton AB Living Trust

Date: January 19, 2007

Annex A

Shared Trust Property

All of the Grantors' interest in the following property is transferred into the Trust:

The real property located at:

TAX WA/PA #263
4300 Boxwood Road
Raleigh, North Carolina 27612
Type of Property: Home

The funds in the following bank accounts:

- Allied First Bank
387 Shuman Boulevard, Suite 290E
Naperville, Illinois 60563
Type: Certificate of Deposit
- State Employees Credit Union
2401 Blue Ridge Road
Raleigh, North Carolina 27607
Type: Share Account

The cash, funds and securities in the following brokerage accounts:

- AIM Investment Services, Inc.
P.O. Box 4739
Houston, Texas 77210-4739
- Scottrade
6308 Falls of Neuse Road, #107
Raleigh, North Carolina 27615

The following certificated stocks and/or bonds:

- 207 shares of stock issued by Mattel Corporation
Certificate Numbers: NYS 127357, 239487, 121271, 153708, 215948, ZQ16783
- 34 certificates, \$100.00 dollars each, of Series EE Savings Bonds issued by the United States Federal Government
Certificate Numbers: C2251069EE, C3872531EE, C15808926EE, C22275578EE, C26268314EE, C34738298EE, C35061190EE, C44253023EE, C49586561EE, C56599863EE, C56921168EE, C48749279EE, C77139114EE, C64511888EE, C91841088EE, C105151678EE, C110565533EE, C130436605EE, C133912456EE, C141487517EE, C161505195EE, C159244452EE, C180183864EE, C196442163EE, C207643525EE, C226392558EE, C238217255EE, C255601447EE, C268144319EE, C290385423EE, C3040711432EE, C330944901EE, C366980639EE, C345530390EE

Annex B

Separate Property of Sloan Marvin Burton

All of Sloan Marvin Burton's interest in the following property is transferred into the Trust:

The funds in the following bank accounts:

- State Employees Credit Union
2401 Blue Ridge Road
Raleigh, North Carolina 27607
Type: Share Account, Money Market

- Corus Bank
2401 North Halsted Street
Chicago, Illinois 60614
Type: Certificate of Deposit

*Needs to be on
Annex A*

- ING Direct
1 South Orange Street
Wilmington, Delaware 19801
Type: Money Market

The cash, funds and securities in the following brokerage accounts:

- Smith Barney
700 Spring Forest Road
Raleigh, North Carolina 27609

? was \$200,000 +

The following certificated stocks and/or bonds:

- 20 certificates, \$500.00 dollars each, of Series E Savings Bonds issued by the United States Treasury Department
Certificate Numbers: ED204552693, D204552694E, D204552695E, D204552696E, D204552697E, D204552698E, D204552699E, D204552700E, D204762320E, D204762321E, D204762322E, D204762323E, D204762324E, D204762326E, D204762327E, D204762328E, D204762329E, D204762330E, D204762331E, D204762333E

- 2431.3221 shares of Common Stock issued by Progress Energy
Certificate Number: 3511973 *SMB - M - MCB*

- 6 certificates, \$10,000.00 dollars each, of Series I Bonds issued by
the United States Treasury Department
Certificate Numbers: X001274363I, X001274364I, X001274365I,
X001274366I, X001274367I, X001274368I

- JMP*
- 4 certificates, \$100.00 dollars each, of Series E Savings Bonds issued
by the United States Treasury Department
Certificate Numbers: C2005152780E, C2064708795E, C2083281113E,
C2098803312E

JMB & ACB Trust.

Annex C

Separate Property of Marjorie Cato Burton

All of Marjorie Cato Burton's interest in the following property lying, being and situate in Ebenezer Township, York County, South Carolina is transferred into the Trust:

The real property located at:

- 592-02-01-042
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-043
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-052
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-059
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-062
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-089
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-10-117
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-124
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot

- 592-02-01-152
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot
- 592-02-01-153
Rock Hill, South Carolina 29732-9485
Type of Property: Vacant Lot

The funds in the following bank accounts:

- State Employees Credit Union
2401 Blue Ridge Road
Raleigh, North Carolina 27607
Type: Share Account, Money Market

The cash, funds and securities in the following brokerage accounts:

- Smith Barney
700 Spring Forest Road
Raleigh, North Carolina 27609

The following additional property:

- 20% share of all those certain pieces, parcels or lots of land, lying, being and situate in Ebenezer Township, York County, South Carolina, being held jointly by Grantor herein and other heirs of T. E. Cato, and being more particularly described as Lots 42 (TMS# 592-02-01-001), 14 (TMS# 592-02-01-069), 13 (TMS# 592-02-01-070), 98 (TMS# 592-02-01-093), 175 (TMS# 592-02-01-112), and Areas A (TMS# 592-02-01-063), B (TMS# 592-02-01-064), C (TMS# 592-02-01-164), and D (TMS# 592-02-01-110) as shown on that certain plat of property entitled "Composite Plat Showing Subdivision Of T.E. Cato Est.", drawn by R. H. Marett, RLS on December 20, 1967, as revised July 15, 1968 and recorded in Plat Book 33 at page 192 in the Office of the Clerk of Court for York County, South Carolina.

ACKNOWLEDGMENT

State of North Carolina

County of Wake

On this 19th day of January, 2007, before me, RACHEL WILSON, personally appeared Sloan Marvin Burton and Marjorie Cato Burton, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons executed the instrument.

WITNESS my hand and official seal.

Rachel Wilson RACHEL WILSON
Notary Public

My Commission Expires: March 25, 2009

ATTESTATION AND DECLARATION OF WITNESSES

In our presence the Grantors above named have declared or signified that this instrument is their Declaration of Trust and have signed and executed the instrument, and in the presence of the Grantors and each other we have hereunto subscribed our names on the date set forth under our signature.

1. Leticia J. Stanley
(Signature of witness)

Date: 01/19/2007

Felicia J. Stanley
(Print Name)

2401 Blue Ridge Rd
(Address)

Raleigh NC 27607
(City, State, ZIP)

2. Brooklyn Parrish
(Signature of witness)

Date: _____

Brooklyn Parrish
(Print Name)

2401 Blue Ridge Rd
(Address)

Raleigh NC 27607
(City, State, ZIP)

3. Candace L. Bullock
(Signature of witness)

Date: 01-19-07

Candace L. BULLOCK
(Print Name)

2401 Blue Ridge Rd
(Address)

Raleigh NC 27607
(City, State, ZIP)

SCDOT RAW Form 802EXH1 (03-03)

THE STATE OF SOUTH CAROLINA

COUNTY OF YORK

000184262
 RECORDED 05/07/2004 08:55:58AM
 BK:06242 Ps:00124 Pages:4
 TITLE TO REMIT STATE
 County: York State: SC
 Date: 05/07/2004
 York County: SC

Road/Route SC 274 W/S-196 & S-491
 File 46.632A
 Item _____
 Project CAO-CM46(010)
 PIN 25525

603+00 To 607+00 Left
 (SC 274)
 19+00 To 23+00 Left
 (S-196 Relocation)
 19+00 To 21+00 Right
 (S-196 Relocation)

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, 4300 Box wood Road, Raleigh, NC 27612, Helen C. Jones, Trezevant Manor, 177 N. Highland Street, Apt. 905, Memphis, TN 38111, Donn S. Johnson, 405 Poplar Ridge Road, Simpsonville, SC 29681, Robert Lee Cato, 2105 Sparre Drive, Kinston, NC 28501, James Thomas Cato, P. O. Box 11482, Charlotte, SC 28220, Martha Jane Cato West, 2311 Ablewood Road, Rock Hill, SC 29730, and Cathy Cato Evans, 2310 Ablewood Road, Rock Hill, SC 29730 in consideration of the sum of One and No/One Hundred Dollars (\$1.00), exchange of property and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute Intersection Improvements on SC 274 W/ S-196 & S-491, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated May 22, 2003.

SPECIAL PROVISIONS: The above consideration is for all that certain parcel of land containing 12,300 square feet/0.28 acres, more or less, and all improvements thereon, if any, owned by Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, etal. shown as the "Area of Acquisition" on Exhibit A, attached hereto and made apart hereof. Also it is understood and agreed that the portion of the existing roadway outside the right of way on the left between approximate survey stations 10+00 and 19+75 will be scarified during this construction where it can be abandoned. The South Carolina Department of Transportation agrees to Quit Claim to the Property Owner(s), Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, etal. that portion of the Present Right of Way of Plantation Road (Rd. S-892) and the Old Road Bed at the completion of the construction for this project. Also this being a portion of the property acquired from Marjorie Cato Burton by deed dated January 26, 2001 and recorded March 1, 2001 in Deed Book 3468, Page 9 in the records for York County. Also being a portion of the property acquired from Nations Bank, NA Trustee U/W of Elizabeth C. Johnson, as Successor to Citizens and Southern Trust Company (South Carolina, NA) by deed dated June 15, 1999 and recorded June 17, 1999 in Deed Book 2746, Page 55 in the records for York County. Also being a portion of the property acquired from Sarah H. Cato by deed dated September 22, 1994 and recorded September 13, 1995 in Deed Book 1338, Page 143 in the records for York County. Also being a portion of the property acquired by Will of Elizabeth C. Johnson, filed January 16, 1990, as reflected in Probate Roll No. 90ES4600046 in the Probate Court; also by Deed of Distribution recorded in Deed Book 167, Page 228 in the records for York County. Also being a portion of the property acquired by Will of Anne P. Cato, filed May 27, 1986, as reflected in Probate Roll No. 86ES4600252 in the Probate Court in the records for York County. Also being a portion of the property acquired by Will of Edgar Louis Cato, filed May 27, 1970, as reflected in Probate Book 531, Page 16229 in the Probate Court in the records for York County. Also being a portion of the property acquired from Edgar Louis Cato Executor of The Estate of T. E. Cato by deed dated August 15, 1968 and recorded August 23, 1968 in Deed Book 380, Page 449 in the records for York County. Also being a portion of the property acquired from Carson Cato who died intestate on March 30, 1966 as reflected in Probate Book 507, Page 15476 in the Probate Court for York County. Also being a portion of the property acquired from Clara M. Cato by deed dated January 12, 1959 and recorded May 5, 1959 in Deed Book 263, Page 73 in the records for York County. Also being a portion of the property acquired by Will of Thomas E. Cato, filed November 26, 1957, as reflected in Probate Book 403, Page 12633 in the Probate Court in the records for York County and as shown as Tax Map No. 592-02-01-064.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining.

And I (or we) do hereby bind myself (or ourselves), my (or our) heirs, executor and administrators, to warrant and forever defend all and singular said premises unto said South Carolina Department of Transportation, its successors and assigns, against myself (or ourselves) and my (or our) heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 5-7-04TAX MAP NO. 592-2-1-64INITIALS ac Rj

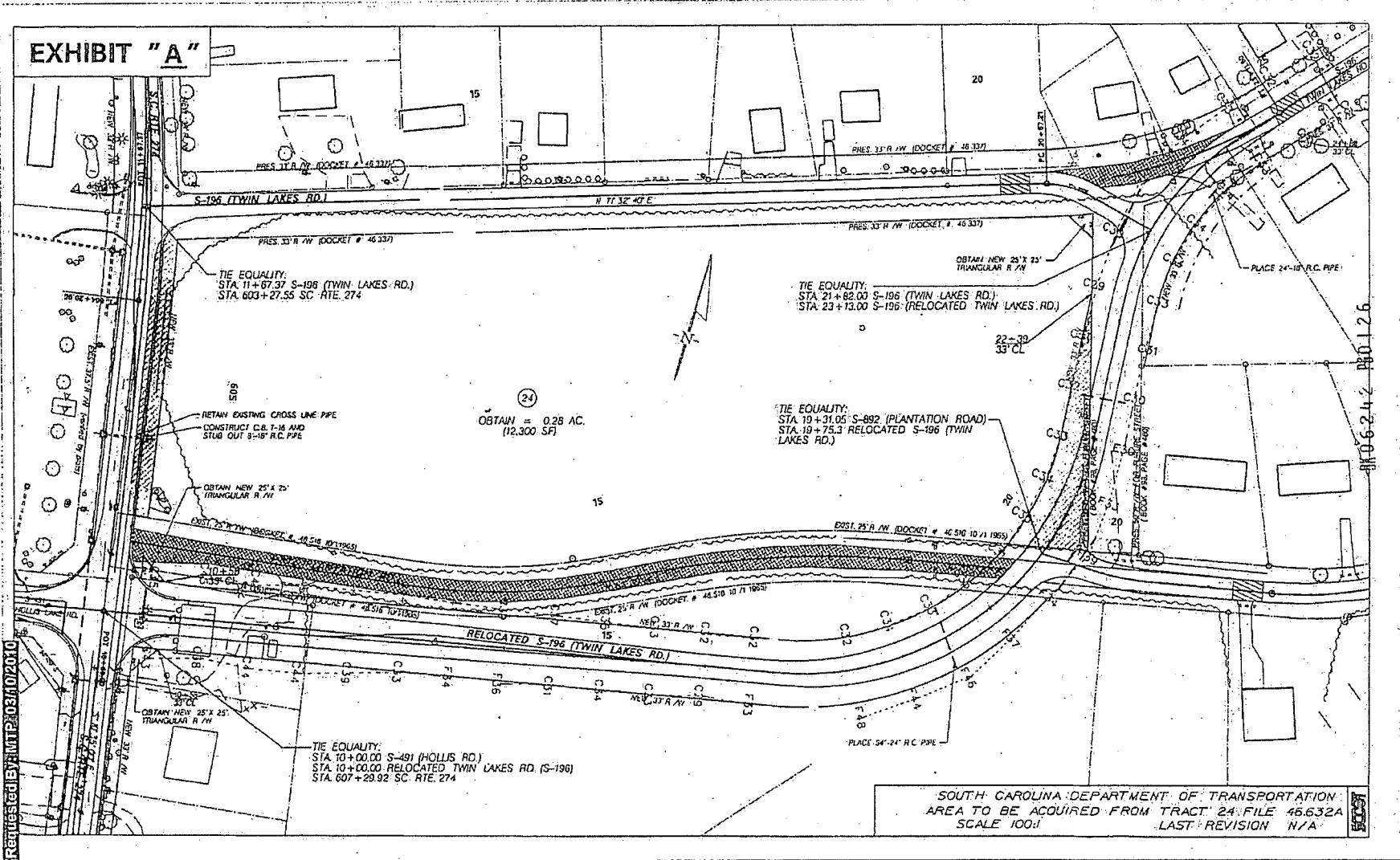
DIRECTOR RIGHTS OF WAY
 SCDOT P. O. BOX 191
 COLUMBIA, SOUTH CAROLINA 29202

Checked 4-2-04
 Recorded _____
 Project _____

By QJ
 By _____
 File No. _____

Tract 24

BK 06242 PG 0124



SCDOT RW Form 849 (06-01)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Road/Route SC 274 W/ S-196 & S-491)

File 46.632A)

Item)

Project CAQ-CM46(010))

PIN 25525)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, being duly sworn, deposes and says:

Property located on the above road or route, bearing York COUNTY, was transferred by S.M. Burton, Jr., POA to the South Carolina Department of Transportation on March 12, 2004.

The above transaction is exempt, or partially exempt from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is transferring realty to the State, its agencies and departments, and its political subdivisions, including school districts (Section 12-24-40(2).)

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Right of Way Agent for the South Carolina Department of Transportation.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Lucy K. Hester
Responsible Person Connected with the Transaction

SWORN to before me this 23rd

day of March, 2004

NOTARY PUBLIC FOR South Carolina

My Commission Expires: Dec. 17, 2009

File 46.632A - SC 274 W/ S-196 & S-491 - York County - Tract 24

JK06242 PG0127

090184263
RECORDED 05/07/2004 09:06:28AM
B#:06242 P#:00128 Pages:4
Fee:10.00 State:0.00
County:0.00 Exempt:
David Hassel
TITLE TO REAL ESTATE
Approximate Survey Station

10+00 To 20+00 Left
(S-196 Reloc.)
12+00 To 20+00 Right
(S-196 Reloc.)
To

Treat : 25

01297X005-004

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinafore granted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have herunto set my (or our) hand(s) and seal(s) this 12th day of March, in the year of our Lord, Two Thousand and Four.

Signed, sealed and delivered in the presence of:

Witness

Witness

Sloan M. Burton, Jr. POA for Marjorie (L.S.)

Cato Burton, Helen C. Jones, James Thomas Cato, Robert L. Cato aka Robert Lee Cato, Jane C. West aka

Martha Jane Cato West, Cathy C. Evans, (L.S.)

Don S. Johnson.

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF NC
COUNTY OF Wake

Personally appeared before me the undersigned witness and made oath that she/he saw the within named sign, seal and as their act and deed, deliver the within written instrument, and that she/he with the other witness whose signature appears above witnessed the execution thereof.

Witness

SWORN to before me this

day of

March, 2004

NOTARY PUBLIC FOR NC

My Commission Expires: July 2, 2008

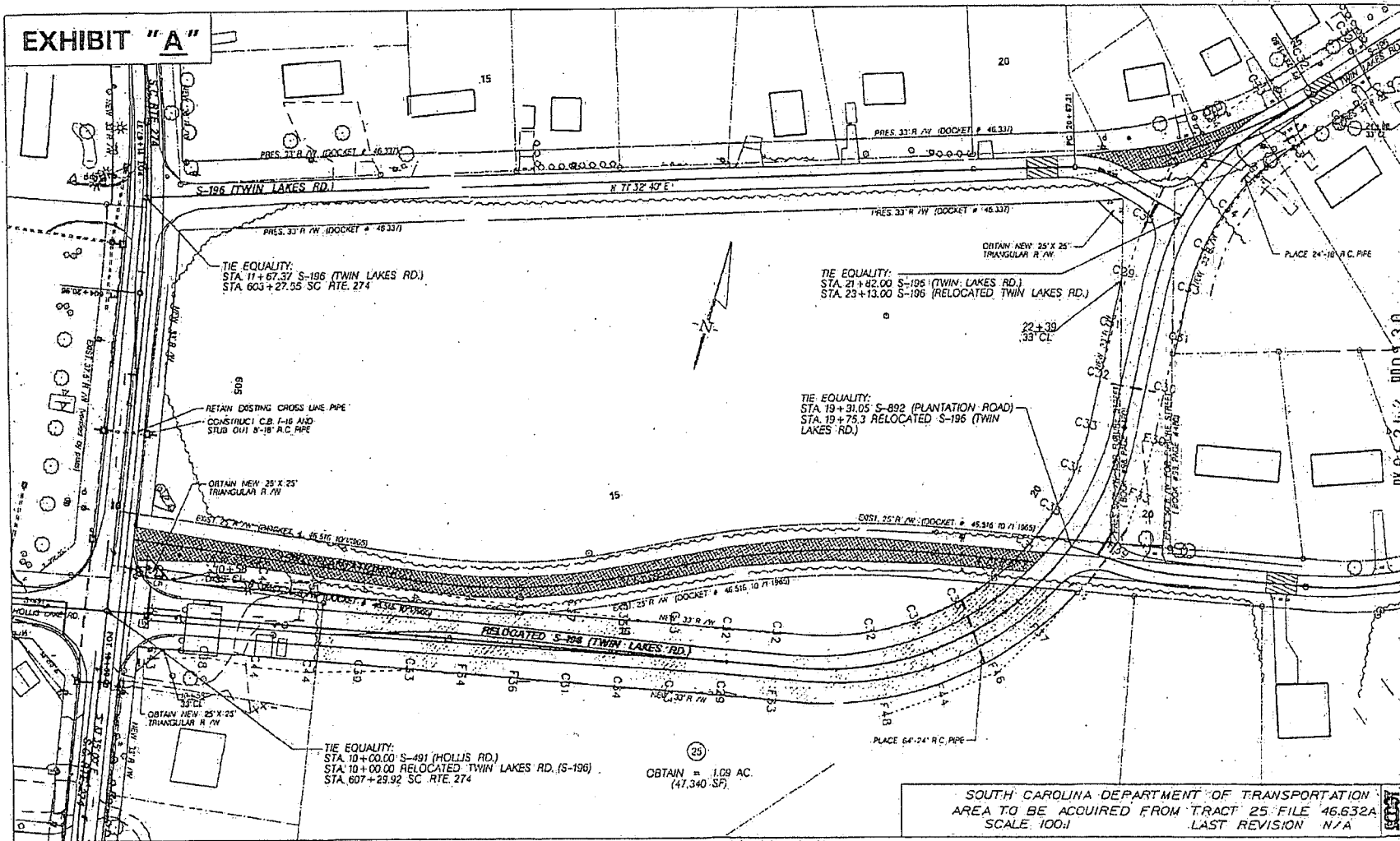
Checked _____
Recorded _____
Project _____

By _____
By _____
File No. _____

Tract 25

BK06242 PG0129

EXHIBIT "A"



Request 157411P203/02010

SCDOT RW Form 849 (06-01)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Road/Route SC 274 W/ S-196 & S-491)

File 46.632A)

Item)

Project CAQ-CM46(010))

PIN 25525)

AFFIDAVIT

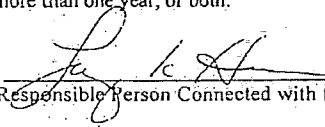
PERSONALLY appeared before me the undersigned, being duly sworn, deposes and says:

Property located on the above road or route, bearing York COUNTY, was transferred by S.M. Burton, Jr., POA to the South Carolina Department of Transportation on March 12, 2004.

The above transaction is exempt, or partially exempt from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is transferring realty to the State, its agencies and departments, and its political subdivisions, including school districts (Section 12-24-40(2).)

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Right of Way Agent for the South Carolina Department of Transportation.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 23rd

day of March, 2004

W. P. Hiffen
NOTARY PUBLIC FOR South Carolina

My Commission Expires: Dec. 17, 2009

File 46.632A - SC 274 W/ S-196 & S-491 - York County - Tract 25

BK 06242 PGO 131

SCDOT RAW Form 802EXH1 (05-03)

THE STATE OF SOUTH CAROLINA

COUNTY OF YORK

000184264

RECORDED 05/07/2004 09:07:44AM

Bk:06242 Ps:00132 Pages:4

Fee:10.00 State:0.00

County:0.00

TITLE TO REAL ESTATE

Approximate Survey Station

RECORDED

Road/Route..... SC 274 W/S-196 & S-491 YORK COUNTY 23+00 To 24+00 Left
 File..... 46.632A TAX ASSESSOR'S OFFICE (S-196 Relocation)
 Item..... 21+00 To 25+00 Right
 Project..... CAO-CM46(010) DATE 5-7-04 (S-196 Relocation)
 PIN..... 25525 TAX MAP NO. 592-2-1-1 To
 INITIALS ac Kj

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, 4300 Boxwood Road, Raleigh, NC 27612, Helen C. Jones, Trezevant Manor, 177 N. Highland Street, Apt. 905, Memphis, TN 38111, Donn S. Johnson, 405 Poplar Ridge Road, Simpsonville, SC 29681, Robert Lee Cato, 2105 Sparre Drive, Kingston, NC 28501, James Thomas Cato, P. O. Box 11482, Charlotte, SC 28220, Martha Jane Cato West, 2311 Ablewood Road, Rock Hill, SC 29730, and Cathy Cato Evans, 2310 Ablewood Road, Rock Hill, SC 29730 in consideration of the sum of One and No/One Hundred Dollars (\$1.00), exchange of property and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute Intersection Improvements on SC 274 W/S-196 & S-491, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated May 22, 2003.

SPECIAL PROVISIONS: The above consideration is for all that certain parcel of land containing 4,900 square feet/0.11 acres, more or less, and all improvements thereon, if any, owned by Marjorie Cato Burton, Trustee of the Marjorie Cato Burton Revocable Trust, 4300 Boxwood Road, Raleigh, NC 27612, Helen C. Jones, Trezevant Manor, 177 N. Highland Street, Apt. 905, Memphis, TN 38111, Donn S. Johnson, 405 Poplar Ridge Road, Simpsonville, SC 29681, Robert Lee Cato, 2105 Sparre Drive, Kingston, NC 28501, James Thomas Cato, P. O. Box 11482, Charlotte, SC 28220, Martha Jane Cato West, 2311 Ablewood Road, Rock Hill, SC 29730, and Cathy Cato Evans, 2310 Ablewood Road, Rock Hill, SC 29730 in consideration of the sum of One and No/One Hundred Dollars (\$1.00), exchange of property and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute Intersection Improvements on SC 274 W/S-196 & S-491, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated May 22, 2003.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining.

And I (or we) do hereby bind myself (or ourselves), my (or our) heirs, executor and administrators, to warrant and forever defend all and singular said premises unto said South Carolina Department of Transportation, its successors and assigns, against myself (or ourselves) and my (or our) heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinbefore granted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this 12th day of March, in the year of our Lord, Two Thousand and Four.

Signed, sealed and delivered in the presence of:

1st Witness2nd Witness

Sloan M. Burton, Jr. POA for Marjorie (L.S.)
Cato Burton, Helen C. Jones, James Thomas Cato,
Robert L. Cato aka Robert Lee Cato, Jane C. West aka
Martha Jane Cato West, Cathy C. Evans, Donn (L.S.)
S. Johnson

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF NCChecked 4-2-04

Recorded

Project

By ad

By

File No.

DIRECTOR RIGHTS OF WAY

SCDOT P.O. BOX 191

COLUMBIA, SOUTH CAROLINA 29202

Tract 31

BK 06242 PG 0132

COUNTY OF Wake

Personally appeared before me the undersigned witness and made oath that she/he saw the within named sign, seal and as their act and deed, deliver the within written instrument, and that she/he with the other witness whose signature appears above witnessed the execution thereof.

[Signature]
1st Witness

SWORN to before me this

day of

12th
March, 2004

NOTARY PUBLIC FOR

NC

My Commission Expires:

July 2, 2008

Checked _____

Recorded _____

Project _____

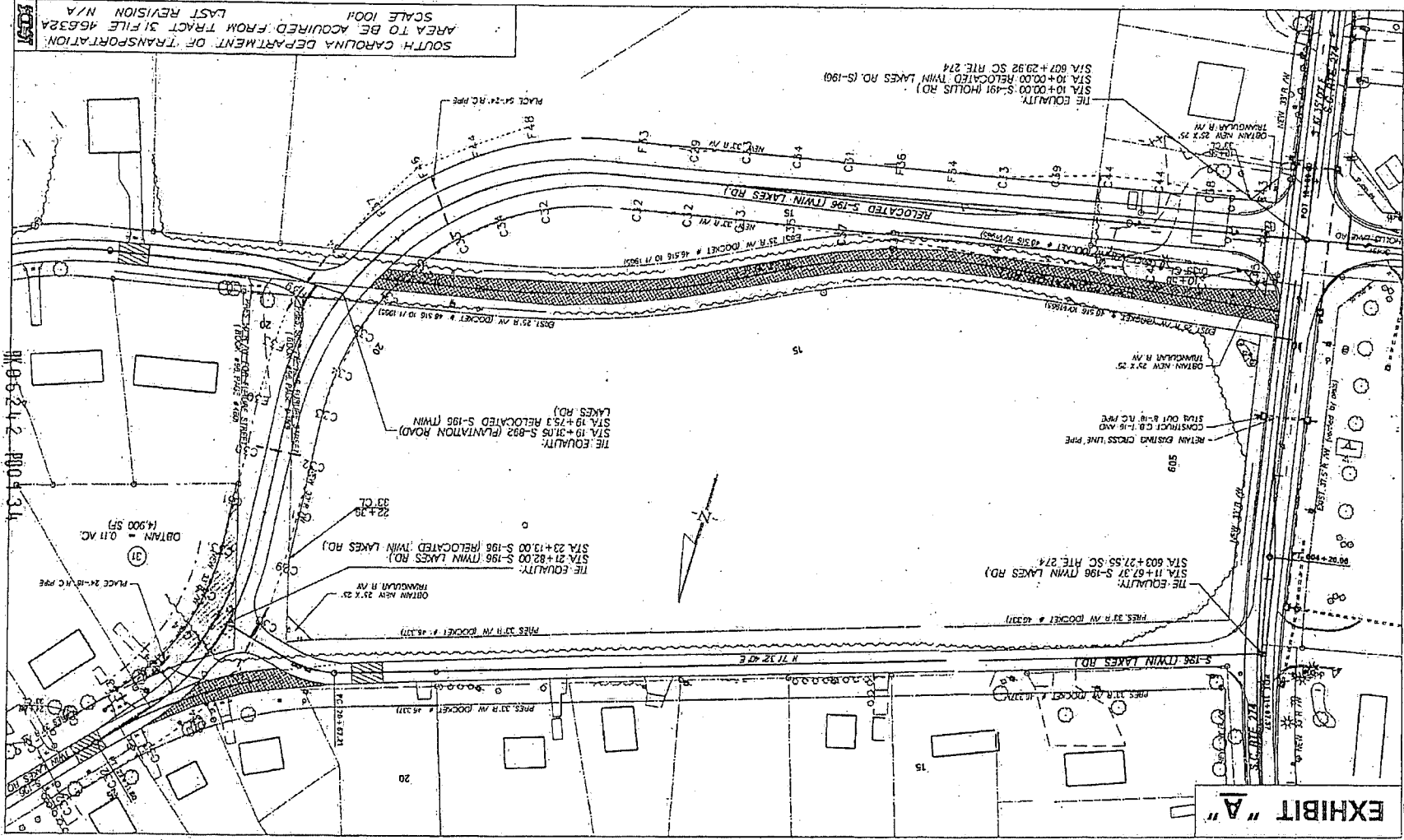
By _____

By _____

File No. _____

Tract 31

9K06242 PG0133



SCDOT RAW Form 849 (06-01)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Road/Route SC 274 W/ S-196 & S-491)

File 46.632A)

Item)

Project CAQ-CM46(010))

PIN 25525)

AFFIDAVIT

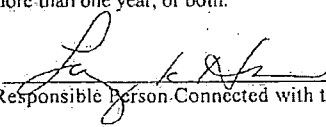
PERSONALLY appeared before me the undersigned, being duly sworn, deposes and says:

Property located on the above road or route, bearing York COUNTY, was transferred by S.M. Burton, Jr., POA to the South Carolina Department of Transportation on March 12, 2004.

The above transaction is exempt, or partially exempt from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is transferring realty to the State, its agencies and departments, and its political subdivisions, including school districts (Section 12-24-40(2).)

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Right of Way Agent for the South Carolina Department of Transportation.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 23rd

day of March, 2004

TEDA P. Giffin
NOTARY PUBLIC FOR South Carolina

My Commission Expires: Dec. 17, 2009

File 46.632A - SC 274 W/ S-196 & S-491 - York County - Tract 31

AK 06242 P00135

188

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

T. E. CATO ESTATE, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on June 26th, 2007, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
28th day of June, 2007.

A handwritten signature in cursive script that reads "Mark Hammond".
Mark Hammond, Secretary of State

#187

2007

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA **ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY**

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is T. E. Cato Estate, LLC
2. The address of the initial designated office of the Limited Liability Company in South Carolina is

1083 Valley Forge Road
Street Address

Lake Wylie
City

29710
Zip Code

3. The initial agent for service of process of the Limited Liability company is

James Thomas Cato
Name

James Thomas Cato
Signature

and the street address in South Carolina for this initial agent for service of process is

1083 Valley Forge Road
Street Address

Lake Wylie, SC
City

29710
Zip Code

4. The name and address of each organizer is

- (a) Marjorie Cato Burton, Trustee
Name

4300 Boxwood Road
Street Address

Releigh
City

NC
State

27612
Zip Code

- (b) Helen Cato Trust; by Albert M. Jones, Trustee

070627-0041

FILED: 06/26/2007

T. E. CATO ESTATE, LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

R-94777v1 50005.00001

PX006-002
01306

187.1

5. ☐ Check this box only if the company is to be a term company. If so, provide the term specified: _____
6. ☒ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(a) James Thomas Cato
Name

1083 Valley Forge Road Rock Hill
Street Address City
SC 29710
State Zip Code

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

Marysue Cato Burton
Marysue Cato Burton, Trustee

Helen C. Jones
Helen Cato Jones,

Donn S. Johnson
Donn S. Johnson

James Thomas Cato
James Thomas Cato

Jane Cato West
Jane Cato West

Robert Lee Cato
Robert Lee Cato

Cathy C. Evans
Cathy Cato Evans

Date June 16, 2007

T. E. Cato Estate, LLC
Name of Limited Liability Company

8910 Tolman Road Richmond
Street Address City
Virginia 23229
State Zip Code

(b) Donn S. Johnson
Name

400 Red Fern Trail Simpsonville
Street Address City
SC 29681
State Zip Code

(c) James Thomas Cato
Name

1083 Valley Forge Road Lake Wylie
Street Address City
SC 29710
State Zip Code

(d) Jane Cato West
Name

2311 Ablewood Road Rock Hill
Street Address City
SC 29730
State Zip Code

(e) Robert Lee Cato
Name

2105 Sparre Drive Kinston
Street Address City
NC 28504
State Zip Code

(f) Cathy Cato Evans
Name

2310 Ablewood Road Rock Hill
Street Address City
SC 29730
State Zip Code

37191

**OPERATING AGREEMENT
OF
T. E. CATO ESTATE, LLC
A SOUTH CAROLINA LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT for **T. E. CATO ESTATE, LLC**, a South Carolina limited liability company, is entered into, and shall be effective as of the date of the formation of the Company, by and among the undersigned parties and all other persons who hereafter shall become members of the Company pursuant to the provisions of the South Carolina Uniform Limited Liability Company Act of 1996. The Company filed Articles of Organization with the South Carolina Secretary of State on June 26, 2007. In consideration of the mutual promises made herein, it is agreed as follows:

ARTICLE I

DEFINITIONS

Capitalized words and phrases used herein shall have the meanings set forth below:

1.1 "Act" means the South Carolina Uniform Limited Liability Company Act of 1996.

1.2 "Additional Members" is defined in Section 3.3.

1.3 "Additional Units" means the Units issued pursuant to Section 3.3.

1.4 "Affiliate" of a specified Person means any other Person who directly or indirectly controls, is controlled by, or is under common control with such specified Person. For this purpose, "control" of a Person means possession, directly or indirectly (through one or more intermediaries), of the power to direct or cause the direction of management and policies of such Person through ownership of voting securities (or other ownership interests), contract, voting trust or otherwise.

1.5 "Agreement" means this Operating Agreement as amended from time to time.

1.6 "Approval" means, with respect to a Member, either the written consent of such Member or the affirmative vote of that Member at a meeting, as the case may be, to do that for which the Approval of such Member is given. "Approve" means, with respect to a Member, giving Approval for any such action. To be Approved by or receive the Approval of the Members requires the requisite level of Approval of the Members provided in Article VI of this Agreement or as otherwise expressly provided by this Agreement, the Act or other applicable law.

1.7 "Assignee" means a Person to whom all or part of a Member's Interest has been Transferred, but who has not been admitted as a Substituted Member.

1.20 "Person" means any natural person or organization. "Organization" means any corporation, partnership, joint venture, limited liability company, unincorporated association, trust, estate or other entity.

1.21 "Property" means all (or such lesser amount as indicated by the context used herein) property -- real, personal, tangible and intangible -- owned from time to time by the Company as a result of Capital Contributions, operations or otherwise.

1.22 "Pro Rata" means in proportion to the Members' respective Percentage Interests.

1.23 "Regulations" means the final and temporary regulations of the U.S. Department of the Treasury promulgated under the Code.

1.24 "Reserves" means funds or amounts set aside or otherwise allocated for working capital and to pay taxes, insurance, debt service, repairs, replacements, renewals, capital improvements and acquisitions, and future, anticipated, unforeseen and contingent obligations and all other costs and expenses incident to the Company's operations and ownership of the Property. The amount of Reserves shall be established by the Members from time to time based on their good faith estimates of the reasonable needs of the Company therefor.

1.25 "Substituted Member" means any Person who is admitted as a Substituted Member pursuant to Section 8.1(a).

1.26 "Transfer" means (a) as a noun, any voluntary or involuntary transfer, sale, assignment, alienation, gift, donation, grant, conveyance, lease, exchange, mortgage, pledge, encumbrance, hypothecation or other disposition of any kind, including dispositions by operation of law or legal process, and (b) as a verb, the act of making any voluntary or involuntary Transfer.

1.27 "Units" means the shares into which Interests are divided.

ARTICLE II

ORGANIZATION AND TERM

2.1 Company Purpose. The purpose of the Company is to engage in any lawful business for which a limited liability company may be organized under the Act.

2.2 Place of Business. The principal place of business of the Company shall be located at 1083 Valley Forge Road, Lake Wylie, SC 29710. The Members at any time may establish and close other offices and places of business and change the principal place of business of the Company to any other place.

2.3 Filings and Fees. The General Manager, or other appropriate officer, shall execute and file for recordation in the office of the appropriate authorities such reports (including the annual report to be filed with the Secretary of State in accordance with Section 33-44-211 of the Act), disclosures, certificates and other forms, schedules, instruments or documents as are required by applicable law or regulation or which otherwise may be necessary or appropriate

with respect to the formation of, and conduct of business by, the Company. The General Manager, or other appropriate officer, also shall cause the Company to pay all fees, taxes and other charges, including professional fees, incurred in connection with the preparation and filing of such reports, certificates, disclosures, forms, schedules, instruments or other documents (collectively, "fees"). Each Member may make, or cause to be made, any such filing and have the Company pay any of such fees.

2.4 Title to Property. The Property shall be owned by the Company as an entity and no Member shall have any ownership interest in the Property in that Member's individual name or right, and each Member's Interest shall be personal property for all purposes. The Company shall hold the Property in the name of the Company and not in the name of any Member.

2.5 Duty of Loyalty. Each Member acknowledges that, by operation of sections 33-44-409(b) and 33-44-603(b)(3) of the Act, such Member shall:

(a) Company Opportunities. Account to the Company and hold for it as trustee any property, profit or benefit derived by such Member in the conduct or winding up of the Company's business or derived from a use by such Member of the Company's Property, including the appropriation of an opportunity of the Company;

(b) Adverse Interests. Refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company;

(c) Noncompetition. Refrain from competing with the Company in the conduct of the Company's business before the dissolution of the Company; and

(d) Dissociation. Upon dissociation from the Company, continue to exercise the duties of loyalty listed in subsections (a) and (b) of this Section 2.5 with regard to matters arising and events occurring before such Member's dissociation, unless such Member participates in winding up the Company's business pursuant to section 33-44-803 of the Act. The duty of loyalty listed in subsection (c) of this Section 2.5 shall, upon dissociation, terminate in accordance with section 33-44-603(b)(2) of the Act.

The Members, however, further acknowledge that if not otherwise precluded by the Act, they would have elected not to have the restrictions under sections 33-44-409(b)(1), (2) and (3) and 33-44-603(b)(3) of the Act restated above in this Section 2.5 apply; and they hereby express their intent for each Member to be able to engage in any other investment and business activity (whether or not deemed in competition with or related to the business of the Company) to the fullest extent permitted under applicable law. Additionally, pursuant to section 33-44-103(b)(2)(ii) of the Act, the Members hereby agree that the Members may authorize or ratify, after full disclosure of all material facts, by a vote of a majority of the Members, a specific act or transaction that otherwise would violate the duty of loyalty as defined by the Act. Members hereby agree that an individual Member's participation in real estate investment or management other than that of the Company is not restricted by this Agreement or the Act.

2.6 Limitation of Liability. Except as otherwise expressly provided herein or required by applicable law, no Member, as such, shall be bound by, or be personally liable for, the

liabilities or obligations of the Company or other Members, or be required to lend any funds to (or provide any guarantees on behalf of) the Company, without the prior written consent of such Member. No Member shall have any obligation to make Capital Contributions to the capital of the Company except Capital Contributions required pursuant to Sections 3.2 and 3.3 or that may be required (a) to return the amount of any "wrongful distribution," within the meaning of section 33-44-406 of the Act, received by such Member; (b) under Section 3.4 with respect to the withholding by the Company of income taxes; or (c) under the circumstances described in Sections 6.7 and 6.8 for the indemnification of the Company by such Member.

2.7 Expenses. The Company shall pay all costs and expenses arising from the organization and operations of the Company. The Company shall reimburse the General Manager and other officers of the Company for reasonable out-of-pocket expenses so incurred by them on behalf of the Company.

ARTICLE III

MEMBERS' CAPITAL CONTRIBUTIONS AND UNITS

3.1 Names, Addresses and Percentage Interests of Members. The name, address, taxpayer identification number, number of Units issued to, and Percentage Interest of each Member as of the date of Schedule 1 hereto, as amended from time to time, are as set forth thereon. In the event of any change with respect to the information stated on Schedule 1 hereto, the General Manager shall promptly (a) amend Schedule 1 to reflect such change and (b) provide a copy of the revised Schedule 1 to each of the Members; provided, however, the failure of the Company to amend Schedule 1 or provide a revised copy of Schedule 1 to the Members shall not prevent the effectiveness of or otherwise affect the underlying adjustments that would be reflected in such an amendment to Schedule 1.

3.2 Initial Capital Contributions. Concurrently with the execution of this Agreement, each Member shall make the initial Capital Contributions provided in Schedule 2 hereto and shall be credited in exchange therefor with (a) the number of Units originally specified on Schedule 1 hereto and (b) the aggregate agreed net value of such Capital Contributions in the computation of such Member's Capital Account. Schedule 2 shall set forth the particular assets each Member is contributing to the Company, such Member's adjusted federal income tax basis in each such asset, the amount the Members agree to be the fair market value of such asset as of the date of its contribution to the Company, and the liabilities of such Member that the Company will assume or to which such assets contributed are subject.

3.3 Additional Capital Contributions. The Members may Approve the issuance or sale (or the contracting for the sale) of Additional Units and determine the price per Additional Unit, to whom they are to be issued (without the current Members having preemptive or similar rights), and other terms relative to the issuance or sale thereof (including whether payment for some or all such Additional Units may be made in the form of property other than cash or cash equivalents). Those Persons who were not previously Members who receive Additional Units pursuant to this Section 3.3 shall, upon satisfying such conditions that may be required by the Members to the issuance of such Additional Units, be admitted as Members ("Additional Members") with all rights, duties, privileges and obligations thereof.

3.4 Withholding of Income Taxes. If the Company is required to withhold and remit any federal, state, foreign or local income taxes levied on all or part of a Member's allocable share of net income and gains, such withholding by the Company shall be treated as a Distribution to the Member for whom such withholding is made and shall proportionately reduce the amount of Distributions to be paid directly to such Member. If the Members determine that the Company lacks sufficient funds to make Distributions in an aggregate amount that would allow for any such withholding, the Member for whom such withholding is to be made shall make Capital Contributions of cash or immediately available funds in the amount needed by the Company after said Distributions have been made to satisfy such withholding liability within 10 days after being so notified by the Company. Should a Member fail to timely make any such Capital Contributions, such Member shall be in default and shall indemnify and hold the Company and the other Members harmless for any costs, penalties, payments or damages incurred by the Company or the other Members as a result of such failure, and such Member shall pay the Company interest in respect to any disbursements by the Company as a result of such Member failing to timely make the Capital Contributions required by this Section 3.4 at the lower of 18% per annum, compounded monthly, or the highest rate of interest allowed by applicable law. The Company shall have the authority to apply any Distributions to which such defaulting Member would otherwise be entitled towards the satisfaction of the liabilities incurred by such Member under this Section 3.4 to the Company.

3.5. Capital Accounts. There shall be established on the books and records of the Company a separate Capital Account for each Member. The Capital Account of each Member shall be determined and maintained in the manner provided in section 1.704-1(b)(2)(iv) of the Regulations.

ARTICLE IV

ALLOCATION OF PROFITS AND LOSSES

The Company's net income, gains, losses, expenditures, deductions, or items thereof, for each Fiscal Year, shall be allocated Pro Rata to the respective Capital Accounts of the Members (including Persons who were Members during such Fiscal Year); provided, however, the General Manager is authorized and directed to make any adjustments to such allocations as the Company determines to be necessary or advisable to cause the Member's respective Capital Account balances, and the allocations made thereto, to conform (to the extent possible) to the principles of Section 704 of the Code and the Regulations promulgated thereunder or other applicable federal income tax principles.

ARTICLE V

NONLIQUIDATING DISTRIBUTIONS

5.1 Available Cash. Available cash shall be Distributed Pro Rata to the Members at such time and in such amounts as determined by the Members. For this purpose, "available cash" means all cash funds of the Company from operations, refinancings or otherwise at any particular time available for Distribution after the Members make reasonable provision for

(a) payment of all operating expenses of the Company as of such time, (b) payment of all outstanding and unpaid current obligations of the Company as of such time and (c) Reserves.

5.2 Non-Cash Distributions. Except as otherwise provided in this Section 5.2, each Member must look solely to the Property of the Company for the return of that Member's Capital Contribution and shall have no right or power to demand or receive Property other than cash from the Company. However, the Members may have the Company Distribute Property other than cash, provided that such non-cash Distributions, for each asset (or group of assets that are entirely fungible), are made Pro Rata among the Members and otherwise conform with the principles of Section 5.1.

ARTICLE VI

MEMBERS AND MANAGEMENT

6.1 Management and Control. All power and authority of the Company shall be exercised by, or under the direction and control of, the Members in a manner consistent with this Agreement and the Act. By virtue of their status as such, the Members shall be the "managers" (within the meaning of the Act) of the Company, vested with the exclusive control of the management of the business and affairs of the Company. Each Member may use the title of manager when transacting business on behalf of the Company in accordance with this Agreement.

6.2 Duties and Obligations of the Members.

(a) General. The Members shall take or cause to be taken all actions which may be necessary or appropriate for the conduct of the Company's business in accordance with this Agreement and applicable laws.

(b) Operation of Company as a Separate Enterprise. The Members shall cause the Company to conduct its business separate from that of any of the Members or their Affiliates (i) segregating Company assets and not allowing them to be commingled with the funds or other assets of a Member or any Affiliate of a Member; (ii) maintaining books and records of the Company separate from those of any Member and Affiliate of a Member; (iii) causing the Company to pay its liabilities from the Company's assets; (iv) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent legal entity; and (v) engaging in transactions with any Member or Affiliate of any Member only on arm's length terms.

(c) Time Devoted to Company Business; Standard of Care; Fiduciary Duty. The Members, in accordance with this Article VI, shall conduct the business of the Company in good faith and with the care that an ordinary prudent person would exercise in a like position, under similar circumstances, and in the manner that they reasonably believe to be in the best interests of the Company. The Members, however, shall not be required to devote their full time to the business of the Company, although the General Manager and other Company officers shall devote such time to the affairs of the Company as is necessary to manage and supervise the operations and business of, and otherwise discharge their responsibilities to, the Company. The Members may employ other Persons to operate and manage all or any portion of the Property or

to provide any service relating to the Company's business, subject to the control of such person by the Members.

(d) Bank Accounts; Investment of Company Funds. The Members shall cause one or more bank accounts to be maintained in the name of the Company in which shall be deposited all funds and receipts of the Company. The Members shall designate the individual or individuals upon whose signature or signatures withdrawals from such bank accounts may be made. The Members may invest the Company funds in any manner which the Members deem appropriate.

6.3 Manner of Acting. Except as otherwise provided in this Agreement or required by the Act or other applicable law, the Approval at a meeting of a Majority-in-Interest of the Members shall be the act of the Members; provided, however, no such act of the Members not otherwise expressly authorized by this Agreement may enlarge the obligations of any Member, including requiring any additional contribution, assessment or payment by a Member without the written consent of such Member.

6.4 Major Decisions. The Approval of all Members shall be required to constitute the act of the Members with respect to each of the following matters (collectively, "Major Decisions"):

(a) Subject Members to Personal Liability. Knowingly perform any act that would subject the Members to liability in their capacity as Members;

(b) Disproportionate Non-Cash Distributions. Make Distributions of an asset of the Company (or group of assets that are entirely fungible) in a manner that is not Pro Rata as provided in Section 5.2; and

(c) Certain Amendments to the Agreement and Articles of Organization. Amend, or alter the effect of, Articles IV, V, VI (other than Sections 6.5 and 6.6), VII and IX and Sections 2.5, 2.6, 3.3 of this Agreement and paragraphs 6 and 7 of the articles of organization of the Company, a copy of which is attached hereto as Exhibit A (the "Articles of Organization").

6.5 Meetings.

(a) Right of Members to Call a Meeting. A meeting of the Members may be called by any Member in accordance with this Section 6.5.

(b) Notice of Meetings. The Member or Members calling a meeting of the Members shall give notice thereof to the other Members. Such notice shall state the time, date and purpose or purposes of the proposed meeting and shall be given to the other Members in a manner that causes it to be received by the other Members no later than two (2) business days, and no earlier than sixty (60) calendar days, prior to the meeting. "Business day" for this purpose means any day other than Saturday, Sunday or any other day on which national banking associations in the State of South Carolina generally are closed for commercial banking business.

(c) Waiver of Notice. Any notice required to be given to any Member under the Act or this Agreement may be waived in writing by the Member entitled to such notice (whether before or after the meeting). A Member's attendance at a meeting shall also constitute a waiver

of any required notice to him or her of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting particular business at the meeting.

(d) Place of Meetings; Quorum; Organization; Costs. All meetings of the Members shall be held at the principal office of the Company unless the Members designate another place for the meeting. Persons representing a Majority-in-Interest of the Members, in person or by proxy, shall be required to constitute a quorum at all Members' meetings. Each meeting of Members shall be presided over by the General Manager or, in the absence or at the request of the General Manager, by such other Person as the General Manager may designate, or in the absence of the General Manager and such designation, by any Person selected to preside by a majority of the votes cast for such purpose by the Members at the meeting. The costs of calling and holding a meeting of the Members shall be paid by the Company.

(e) Voting; Proxies. Each Member shall be entitled to one vote for each Unit that such Member holds. At all meetings of the Members and for purposes of written consents executed in lieu thereof in accordance with Section 6.5(g), a Member may vote in person or by proxy executed in writing by the Member and exercised by that Member's duly authorized representative.

(f) Participation by Conference Telephone. Any one or more Members may participate in a meeting of the Members by means of a conference telephone or similar communication device that allows all persons participating in the meeting to simultaneously hear each other during the meeting, and such participation in the meeting shall be the equivalent of being present in person at such meeting.

(g) Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if one or more proposed written consents, setting forth the action so taken or to be taken, (i) is sent to all Members (in the manner provided in Section 11.1), (ii) is signed by those Members (or the duly authorized representative or representatives of any such Member or Members as provided by Section 6.5(e)) owning the voting interest required to Approve such action, and (iii) such signed written consent(s) is delivered to the General Manager to be included in the Company's permanent records. Action taken under this Section 6.5(g) shall be effective when all Members have been provided a copy of the proposed written consent in the manner provided in Section 11.1 and the Members (or such duly authorized representatives thereof) needed to Approve such action have signed the proposed written consent, unless the written consent specifies that it is effective as of an earlier or later date. The written consent on any matter pursuant to this Section 6.5(g) has the same force and effect as if such matter was voted upon at a duly called meeting of the Members and may be described as such in any document or instrument.

6.6 Officers.

(a) General. The Company may have the officers described in, and who shall have the authority and duties prescribed by, this Section 6.6.

(b) Appointment, Term, Compensation and Removal. The officers of the Company shall be appointed from time to time by the Members. The officers shall serve, subject to the

provisions of this Agreement, until their respective successors are duly appointed and qualified. Any officer may be removed by the Members at any time with or without cause; but such removal shall not itself affect the contractual rights, if any, of the officer so removed. The compensation of all officers shall be fixed by the Members or as prescribed by this Agreement.

(c) General Manager. Subject to the direction and control of the Members, the General Manager shall supervise and control the management of the Company and the conduct of its day-to-day operations and affairs, take such actions as may be necessary or appropriate to execute the policies, directives and requirements of the Members and this Agreement, and have such other authority and duties as are normally incident to the position of the chief executive officer of a corporation and such other authority and duties as may be prescribed from time to time by the Members. The General Manager may be given such title as the Members may prescribe. The initial General Manager shall be James Thomas Cato.

(d) Other Officers. The Members may appoint such other officers with such titles, powers, duties, compensation and other terms as they may determine to be necessary or appropriate.

(e) Reimbursement of Expenses. The Company shall reimburse each officer of the Company for all reasonable out-of-pocket expenses properly incurred by such officer in connection with the discharge of that officer's obligations in accordance with this Agreement or otherwise properly incurred on behalf of the Company.

6.7 Exculpation and Indemnification.

(a) Generally. The Members (including those serving as officers of the Company) shall, to the fullest extent permitted under the Act, be exculpated from and indemnified by the Company against any liability loss, damage, penalty, action, claim, judgment, settlement, cost, expense of any kind or nature whatsoever (including all reasonable attorneys' fees, costs and expenses of defense, appeal and settlement of any proceedings instituted against such Member or the Company and all costs of investigation in connection therewith) that in any way relates to or arises out of, or is alleged to relate to or arise out of, any action or inaction on the part of the Company or a Member acting on behalf of the Company.

(b) Indemnification Rights Limited to Company Assets. The satisfaction of the obligations of the Company under Section 6.7(a) shall be from, and limited to, the assets of the Company and no Member shall have any personal liability on account thereof.

(c) Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Section 6.7 shall not be exclusive of any other right which a Member may have or hereafter acquire under law or equity, provision of this Agreement, or otherwise.

6.8 Scope of Members' Authority. Except as otherwise provided in this Article VI to the contrary, no Member shall have any authority to act for, or to assume any obligation or responsibility on behalf of, the Company or any Member. Any act of a Member in violation of this Section 6.8 shall be null and void and without force or effect. Each Member shall indemnify and hold the Company harmless for any costs and damages incurred by the Company as a result

of, or which are wholly or partly attributable to, that Member's unauthorized action on behalf of the Company; and, in addition to any other remedies available to the Company, the Company may apply any Distributions to which such Member that acted without authority would otherwise be entitled towards the satisfaction of that Member's liability to the Company under this Section 6.8.

6.9 Maintenance of Entity Status. The Members and the officers of the Company at all times shall use their reasonable, best efforts (a) to cause the Company to comply with such conditions as may be required from time to time to cause the Company not to be classified as an association taxable as a corporation for federal income tax purposes, (b) to take all action which shall be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the laws of the State of South Carolina and any other jurisdiction in which it does business and (c) not to take any action which would adversely affect the limited liability of the Members.

ARTICLE VII

BOOKS AND RECORDS

7.1 Books and Records. The Company shall maintain at its principal place of business books of accounts for the Company which shall show a complete and accurate record of the assets, liabilities, operations, transactions and financial condition of the Company, in accordance with federal income tax accounting rules as provided in this Agreement. To the extent inconsistent therewith, the Members may also have the Company's books of account maintained in accordance with generally accepted accounting principles. Whatever accounting method or methods are adopted by the Members hereunder shall be consistently applied.

7.2 Annual Reports for Members. Within ninety (90) days after the end of each Fiscal Year and at such time as Distributions are made to the Members pursuant to Section 9.2(b) following the occurrence of a Dissolution Event, the Company shall cause to be prepared and furnished to each Member financial statements, in accordance with the Company's method of accounting including: (a) a copy of the balance sheet of the Company as of the last day of such Fiscal Year, (b) a statement of income or loss for the Company for such Fiscal Year, (c) a statement of each Member's Capital Accounts and changes therein for such Fiscal Year, and (d) a statement of the Company's cash flow for such Fiscal Year.

7.3 Audits; Right of Inspection. No formal independent audit of the books of account of the Company shall be required to be undertaken at the expense of the Company unless determined otherwise by the Members. Each Member or the authorized representative(s) thereof, however, shall have access to and may inspect and photocopy all books, records and materials of the Company. In addition, any Member may, at such Member's option and expense, conduct audits of the books, records and accounts of the Company. An audit by a Member may be conducted by any Person or Persons that such Member selects.

7.4 Tax Returns and Information. The Company shall cause all tax returns that the Company is required to file to be prepared and timely filed (including extensions) with the appropriate authorities. Within ninety (90) days after the end of each Fiscal Year, the Company

shall cause to be delivered to each Member information pertaining to the Company for the previous Fiscal Year that is necessary for the Members to accurately prepare their respective federal and state income tax returns for such Fiscal Year.

7.5 Annual Report for Secretary of State. Pursuant to the requirements set forth in section 33-44-211 of the Act, the General Manager shall cause to be delivered, between January 1 and April 1 of each calendar year (beginning the year following the calendar year in which the Company was organized), to the Secretary of State for filing an annual report that sets forth the following information, which information must be current as of the date the annual report is signed on behalf of the Company: (a) the name of the Company and the State or country under whose law it is organized; (b) the address of its designated office and the name and address of its agent for service of process in this State; (c) the address of its principal office; and (d) the names and business addresses of any managers.

ARTICLE VIII

TRANSFERS OF INTERESTS; WITHDRAWAL

8.1 Transfers of Interests.

(a) Restriction on Transfers. Except as provided in Sections 8.1(b) and 8.2 of this Article VIII, no Member shall Transfer any portion of that Member's Interest except upon the written consent of the Member or Members owning a majority of the outstanding Units, excluding the Member seeking to make the Transfer and all Units owned by such Member. Such written consent may specify the rights and obligations the transferee shall have, including whether the transferee is to be admitted as a Substituted Member or Assignee; if, however, the written consent does not specify otherwise, the transferee shall be admitted as an Assignee. The grant or denial of a Member's written consent to a proposed Transfer may be made in such Member's sole and absolute discretion.

(b) Transfers to Members. Notwithstanding the provisions of Section 8.2 of this Article VIII, a Member may freely Transfer to any other Member(s) all or part of that Member's Interest, and shall have the right to fully substitute the transferee Member(s) as the owner for all purposes and in all respects of the Transferred Interest (including conveying to the transferee Member(s) all rights denied an Assignee pursuant to Section 8.3).

(c) Rights and Obligations of Transferor and Substituted Member. A Substituted Member shall have all the rights and powers, and shall be subject to all the restrictions and liabilities, of the Member from whom the Transferred Interest was acquired relative to such Transferred Interest. The admission of a Substituted Member, without more, shall not release the transferor Member from any liability with respect to the Transferred Interest (or otherwise) that may have existed prior to the substitution of membership.

8.2 Unauthorized Transfers. Any purported Transfer (an "Unauthorized Transfer") of any Member's Interest which does not comply with the conditions set forth in Section 8.1(a) shall be null and void and of no force or effect whatsoever; provided, however, that if the Company is required by a court of competent jurisdiction to recognize an Unauthorized Transfer (or if the Member or Members owning a majority of the remaining outstanding Units, excluding

the transferor and all Units owned by the transferor at the time of such Unauthorized Transfer, elect to recognize such Unauthorized Transfer for the limited purposes provided in this Section 8.2), the Person to whom such Interest is Transferred shall have only the rights of an Assignee with respect to the Transferred Interest. Any Distributions with respect to such Transferred Interest may be applied (without limiting any other legal or equitable rights of the Company) towards the satisfaction of any debts, obligations, or liabilities for damages that the transferor or transferee of such Interest may have to the Company.

8.3 Rights of Assignees. An Assignee shall be entitled only to allocations pursuant to Article IV and Distributions in accordance with this Agreement with respect to the Units (and the interest in the Company that such Units represent) Transferred to such Assignee. An Assignee shall (a) have no right to vote or otherwise participate in company matters (including having no right to vote on the matters set forth in Article VI), (b) take no part in the management of the Company's business and affairs or transact any business on behalf of the Company, (c) have no right to any notices provided hereunder, (d) have no power to sign on behalf of, or to bind, the Company, (e) have no right to any information or accounting of the affairs of the Company, (f) not be entitled to inspect the books or records of the Company and (g) not have any other rights of a Member under the Act or this Agreement other than those described in the first sentence of this Section 8.3.

8.4 Withdrawal of Members. Except as provided herein or as required by section 33-44-601(6) of the Act, a Member shall have no right to dissociate, withdraw, or withdraw such Member's capital from the Company. This Section 8.4 is intended to apply in lieu of any withdrawal rights a Member might otherwise have under the Act.

ARTICLE IX

DISSOLUTION AND WINDING UP

9.1 Dissolution Events. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following (each a "Dissolution Event"):

(a) The close of the Company's business on the date, if any, specified in the Company's Articles of Organization as the latest date on which the Company is to dissolve;

(b) The sale or other disposition of all or substantially all of the Property (other than cash and cash equivalents);

(c) The written consent of a Majority-in-Interest of the Members;

(d) The withdrawal (as provided in section 33-44-601(1) of the Act) or death or dissolution of all Members;

(e) Pursuant to section 33-44-801(b)(4) of the Act, the occurrence of an event that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this Section 9.1(e); or

(f) The entry of a decree of judicial dissolution of the Company under section 33-44-801(b)(5) of the Act.

Dissolution of the Company pursuant to Subparagraphs (b), (c), (d), (e) or (f) of this Section 9.1 shall be effective on the date such Dissolution Event occurs, but the Company shall not terminate until the Property has been Distributed as provided herein. Except as provided in this Section 9.1, the Company shall not dissolve due to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member.

9.2 Winding Up. Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Members, and the Members shall not take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the Property has been distributed pursuant to this Section 9.2 and the Company is terminated in accordance with the Act. The General Manager (or liquidator, as the case may be) shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Property, shall cause the Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and Distributed in the following order and priority:

(a) Creditors. First, to the payment (or reasonable provision therefor) of all of the Company's debts and liabilities to creditors of the Company (including the Members who are creditors, if any) in the order of priority provided by law, whether by payment or the making of reasonable provision for payment thereof, which may include the setting up of such Reserves as the General Manager (or liquidator, as the case may be) may deem necessary, and the General Manager (or liquidator) may hold such Reserves for such period that she shall deem advisable for the payment of such obligations and liabilities as they become due and at the expiration of such period, the balance of such Reserves, if any, shall be Distributed as provided in this Section 9.2 and;

(b) Liquidating Distributions. The balance, if any, Pro Rata to the Members.

The costs and expenses relating to the winding up of the Company shall be borne by the Company.

9.3 Final Accountings. Upon both the dissolution and termination of the Company, a proper accounting shall be made by the Company from the date of the last previous accounting to the date of the dissolution or termination, as the case may be.

9.4 No Capital Account Deficit Balance Restoration Obligation. In no event shall any Member be liable with respect to, or be required to contribute capital to restore, a negative or deficit balance in such Member's Capital Account upon the dissolution or liquidation or at any other time of either the Company or such Member's Interest except to the extent such Member expressly agrees thereto in writing to the Company.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Each Member, for the benefit of the other Members and the Company, hereby makes each of the following representations, warranties and covenants:

10.1 Investigation. Such Member (a) is financially able to bear all the risks of holding the Units being acquired for an indefinite period of time; (b) has such knowledge and experience in financial and business matters to be able to evaluate the merits and risks of the acquisition of such Interest and of making an informed investment decision with respect thereto; (c) has been provided by (or has had access to) all information such Member has requested of the Company and its managers or promoters in connection with the acquisition of such Interest; (d) has been afforded the opportunity to ask questions of, and receive answers from, the managers or promoters of the Company concerning the terms and conditions of this Agreement and the purchase of such Interest; (e) has been given the opportunity to obtain any additional information necessary to verify the accuracy of the information furnished by the Company; and (f) is acquiring such Interest based upon such Member's own investigation of such relevant information (including the foregoing) that such Member deems to be necessary or desirable and in connection therewith has received the full cooperation of and assistance from the Company. The exercise by such Member of rights and the performance of obligations under this Agreement will be based upon that Member's own investigation, analysis and expertise.

10.2 Purchase for Own Account. Such Member's acquisition of said Units is being made for that Member's own account for investment, and not with a view to the sale or distribution thereof. Such Member acknowledges that the Units, and the Interests that they represent, have not been registered under the Securities Act of 1933 or any state or other federal securities laws, and, in addition to, the other restrictions contained herein, any Transfer or offer to Transfer thereof may require appropriate registration or the availability of an exemption from such registration under said laws and the regulations issued thereunder and, therefore, is aware that the financial risks of such investment must be borne for an indefinite period of time.

ARTICLE XI

MISCELLANEOUS

11.1 Notices. Any notice, payment, demand or communication (collectively a "notice") required or permitted to be given by this Agreement or applicable law shall be in writing, and sent by first class mail, overnight courier, hand delivery or telephone conversation or facsimile; except, unless waived by the recipient, if such notice is made by telephone conversation or facsimile, such telephone conversation or facsimile shall be followed within 24 hours thereof by written notice sent by first class mail, overnight courier or hand delivery. Charges for any notice hereunder shall be prepaid and addressed as follows, or to such other address as such Person may from time to time specify by notice to the Members or the Company, as the case may be:

(a) If to the Company, to the Company at the address of its principal place of business set forth in Section 2.2; and

(b) If to a Member, to the address set forth in Schedule 1 hereto unless the General Manager has been notified in the manner provided in this Section 11.1 by a Member of a change in such Member's address for receiving notices hereunder, then to the address most recently designated by such Member in the manner provided in this Section 11.1(b).

Unless otherwise indicated herein, any notice shall be deemed to be delivered, given and received for all purposes as of the date delivered, or if sent by first class mail, five (5) days after the date on which the same was deposited in a receptacle regularly maintained by the United States Postal Service for the deposit of mail, whichever occurs first.

11.2 Tax Matters.

(a) Tax Matters Partner. Should the unified audit rules of subchapter C of Chapter 63 of Subtitle F of the Code be applicable (at the election of the Members or otherwise), the General Manager shall be the "Tax Matters Partner" of the Company in accordance with section 6231(a)(7) of the Code.

(b) Elections. Except as otherwise provided herein, the Members shall make any and all elections and other determinations for federal, state, local and foreign tax purposes, on behalf of the Company.

11.3 No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Members and their respective successors and assigns, and no other Person, unless express provision is made herein to the contrary, shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

11.4 References to this Agreement; Headings; Scope. Unless otherwise indicated, "Articles," "Sections," "Subsections," and "Clauses" mean and refer to the Articles, Sections, Subsections, and Clauses of this Agreement. Words such as "herein," "hereby," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires. All headings in this Agreement are for convenience of reference only and are not intended to define or limit the scope or intent of this Agreement. This Agreement constitutes the entire understanding of the Members with respect to the subject matter hereof and supersedes all prior understandings and agreements in regard hereto. All exhibits, schedules, instruments and other documents referred to herein, and as the same may be amended from time to time, are by this reference made a part hereof as though fully set forth herein.

11.5 Construction. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person, Persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. Any reference to the Act, Code or other statutes, laws, or regulations (including the Regulations), forms or schedules shall include the amendments, modifications, or replacements thereof. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one or more," and "including" shall mean "including without limitation." Unless the context indicates otherwise, "member" or "members" and "limited

liability company" or "limited liability companies" shall be substituted in and for references to partner" or "partners" and "partnership" or "partnerships," respectively, in the Code, Regulations and any pronouncements by the Internal Revenue Service.

11.6 Construction Relative to Assignees. To the limited extent of the provision for the rights of Assignees as provided in Section 8.3, reference herein to Members shall be extended to include Assignees. For example, for purpose of allocations under Article IV, the references to Units shall include all Units Transferred to Assignees so that an Assignee's Percentage Interest for such purposes shall be that fraction, expressed as a percentage, having as its numerator the Units Transferred to such Assignee and having as its denominator the total outstanding Units.

11.7 Validity of Agreement; Severability. If any provision hereof is invalid or unenforceable for any reason whatsoever, such provision will be fully severable; this Agreement shall be construed and enforced as if such invalid or unenforceable provision were not a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Agreement. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be automatically, as part of this Agreement, a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

11.8 Further Action. Each Member, upon the request of either the Members or the General Manager, agrees to perform all further acts and execute, acknowledge, or deliver any instruments or documents and to perform such additional acts as may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

11.9 Governing Law. The internal laws of the State of South Carolina shall govern the validity, construction and interpretation of this Agreement.

11.10 Costs of Litigation. In any legal or arbitration proceedings, or other actions between the Members to enforce any of the terms or conditions of this Agreement or of any other contract relating to the Company, or any action in any other way pertaining to Company affairs or this Agreement, the prevailing party, in addition to any other damages or compensation received, shall be entitled to recover that party's litigation or arbitration costs, including reasonable attorney's fees, expenses and costs of any appeals.

11.11 Cumulative Remedies. Each right, power, and remedy of a Member provided herein or which exists at law or in equity shall be cumulative and in addition to every other right, power, or remedy such Member may have.

11.12 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if the Members had signed the same document.

11.13 Specific Performance. Each Member agrees that the Company and the other Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the Company and each Member may be entitled, at law or in equity, each Member shall

be entitled to injunctive relief to prevent or remedy breaches of the provisions, of this Agreement and to specifically enforce the terms and provisions hereof.

11.14 No Implied Waiver. The Members and the Company shall have the right at all times to enforce the provisions of this Agreement in strict accordance with the terms hereof, and no waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Members and the Company have entered into this Operating Agreement, as of the formation of the Company, and hereunto set their hand and seal.

MEMBER:

Marjorie Cato Burton [SEAL]
Marjorie Cato Burton, as Trustee

Helen C. Jones [SEAL]
Helen Cato Jones

Donn S. Johnson [SEAL]
Donn S. Johnson

James Thomas Cato [SEAL]
James Thomas Cato

Jane Cato West [SEAL]
Jane Cato West

Robert Lee Cato [SEAL]
Robert Lee Cato

Cathy Cato Evans [SEAL]
Cathy Cato Evans

COMPANY:

T. E. CATO ESTATE, LLC

By: James Thomas Cato
James Thomas Cato
Its General Manager

IN WITNESS WHEREOF, the Members and the Company have entered into this Operating Agreement, as of the formation of the Company, and hereunto set their hand and seal.

MEMBER:

Marjorie Cato Burton [SEAL]
Marjorie Cato Burton, as Trustee

Helen C. Jones [SEAL]
Helen Cato Jones

Donn S. Johnson [SEAL]
Donn S. Johnson

James Thomas Cato [SEAL]
James Thomas Cato

Jane Cato West [SEAL]
Jane Cato West

Robert Lee Cato [SEAL]
Robert Lee Cato

Cathy Cato Evans [SEAL]
Cathy Cato Evans

COMPANY:

T. E. CATO ESTATE, LLC

By: *James Thomas Cato*
James Thomas Cato
Its General Manager

SCHEDULE 1

_____, 2007
Member Information

<u>Names and Addresses of the Members</u>	<u>Taxpayer ID Number</u>	<u>Units</u>	<u>Percentage Interest</u>
Marjorie Cato Burton, Trustee 4300 Boxwood Road Raleigh, NC 27612-3612		200	20%
Helen Cato Jones 8910 Tolman Road Richmond, VA 23229		200	20%
Donn S. Johnson 400 Red Fern Trail Simpsonville, SC 29681-4959		200	20%
James Thomas Cato 1083 Valley Forge Road Lake Wylie, SC 29710		100	10%
Jane Cato West 2311 Ablewood Road Rock Hill, SC 29730		100	10%

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PX007-020
01328

SCHEDULE 1

Member Information, 2007

<u>Names and Addresses of the Members</u>	<u>Taxpayer ID Number</u>	<u>Units</u>	<u>Percentage Interest</u>
Marjorie Cato Burton, Trustee 4300 Boxwood Road Raleigh, NC 27612-3612		200	20%
Helen Cato Jones 8910 Tolman Road Richmond, VA 23229		200	20%
Donn S. Johnson 400 Red Fern Trail Simpsonville, SC 29681-4959		200	20%
James Thomas Cato 1083 Valley Forge Road Lake Wylie, SC 29710		100	10%
Jane Cato West 2311 Ablewood Road Rock Hill, SC 29730		100	10%

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Robert Lee Cato

100

10%

2105 Sparre Drive

Kinston, NC 28504

Robert Lee Cato

Cathy Cato Evans

100

10%

2310 Ablewood Road

Rock Hill, SC 29730

Cathy Cato Evans

TOTAL

1000

100%

AFTER RECORDING, MAIL TO:
Robinson, Bradshaw & Hinson, P.A.
Post Office Drawer 12070
Rock Hill, SC 29731
Attn: Carroll M. Pitts, Jr.

000362311
RECORDED 07/10/2007 11:40:55AM
BK:09248 Pg:00138 Pages:10
Fee:14.00 State:0.00
County:0.00 Exempt:-----
David Hamilton, Clerk of Court
York County, SC

RECORDED
YORK COUNTY

ROBINSON, BRADSHAW & HINSON, P.A.
Attorneys at Law

140 East Main Street, Suite 420
Rock Hill, South Carolina 29730

TAX ASSESSOR'S OFFICE

DATE 7/10/07

TAX MAP NO. 592-2-1-1

INITIALS TS Kj

THE STATE OF SOUTH CAROLINA

County of York

TITLE TO REAL ESTATE 592-2-1-1-1
70, 93, 112,
63, 64, 164,
110

KNOW ALL MEN BY THESE PRESENTS, That we, Marjorie Cato Burton, as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust; Helen Cato Jones; Donn S. Johnson; James Thomas Cato; Jane Cato West; Robert Lee Cato and Cathy Cato Evans in consideration of the sum of One Dollar to us in hand paid at and before the sealing of these presents by T. E. Cato Estate, LLC, 1083 Valley Forge Road, Lake Wyllie, SC 29710, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said T. E. Cato Estate, LLC, its successors and assigns, the following described property, to wit:

All those certain pieces, parcels or lots of land, lying, being and situate in Ebenezer Township, York County, South Carolina and being described as Lots 42, 14, 13, 98, 175, and Areas A, B, C, and D as shown on that certain plat of property entitled "Composite Plat Showing Subdivision of T. E. Cato Est." drawn by R. H. Maret, RLS on December 20, 1967, as revised July 15, 1968, and recorded in Plat Book 33 at Page 192 in the Office of the Clerk of Court for York County, South Carolina. (TMS#s 592-02-01-001, 069, 070, 093, 112, 063, 064, 164, and 110)

DERIVATION: Estate of T. E. Cato, filed in Case 403, File 12,633; Estate of Elizabeth Cato Johnson; Estate of Edgar Louis Cato filed in Case 531, File 16,229 in the Office of the Probate Court for York County, South Carolina; Estate of James Carson Cato who died in 1966 with the Estate being administered in Mecklenburg County, North Carolina with exemplified copies found in Case 507, File 15476; see also Record Book 9066 at Page 98 in the Office of the Clerk of Court for York County, South Carolina

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said T. E. Cato Estate, LLC, its successors and assigns forever.

And we do hereby bind ourselves and our successors, to warrant and forever defend all and singular the said premises unto the said T. E. Cato Estate, LLC, its successors and assigns

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10-94825V1 50005.00001

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PX008-001

01331

against us and our successors and against every other person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my hand and seal this 1 day of June in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Candace H. Bulechek
(Witness #1)

Sloan Marvin Burton and Marjorie
Cato Burton, AB Living Trust

BY Marjorie Cato Burton (SEAL)
Marjorie Cato Burton, As Trustee

Lorosa C. Reich
(Witness #2 who also signs as
Notary below)

STATE OF NORTH CAROLINA)
COUNTY OF Wake

The forgoing instrument was acknowledged before me this 1 day of June 2007 by Marjorie Cato Burton, as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, on behalf of the trust

Lorosa C. Reich Teresa C. Reich
Notary Public for North Carolina
My Commission Expires: Dec. 4, 2010

[NOTARIAL SEAL]

RBH 000838

R-94825v1 50005.00001

0139 PRO 139

PX008-002

01332

Witness my hand and seal this 16th day of June in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Bertha McSwain Jones
(Witness #1)

BY: Helen Cato Jones (SEAL)
Helen Cato Jones

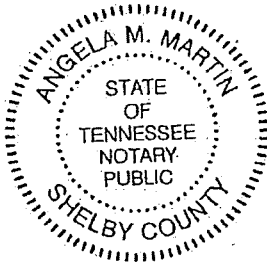
Angela M. Martin
(Witness #2 who also signs as
Notary below)

STATE OF TENNESSEE)
COUNTY OF Shelby)

The forgoing instrument was acknowledged before me this 16 day of June
2007 by Helen Cato Jones.

Angela M. Martin
Notary Public for Tennessee
My Commission Expires: Sept 28, 2010

[NOTARIAL SEAL]



RBH 000839

R-94825v1 50005.00001

RK09248 P00140

PX008-003

01333

Witness my hand and seal this 4TH day of June in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Shirley Beano
(Witness #1)

Donn S. Johnson (SEAL)
Donn S. Johnson

Lois Elizabeth Maloy
(Witness #2 who also signs as
Notary below)

STATE OF SOUTH CAROLINA)
COUNTY OF Durhamville)

The forgoing instrument was acknowledged before me this 4TH day of June
2007 by Donn S. Johnson.

Lois Elizabeth Maloy
Notary Public for South Carolina
My Commission Expires:

[NOTARIAL SEAL]

RBH 000840

R-94825v1 50005.00001

BK 09248 PG 0141

PX008-004

01334

Witness my hand and seal this 30 day of May in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Cathy Cato Evans
(Witness #1)

Tina S. Ludlam
Tina S. Ludlam
(Witness #2 who also signs as
Notary below)

James Thomas Cato (SEAL)
James Thomas Cato

STATE OF SOUTH CAROLINA)
COUNTY OF York

The forgoing instrument was acknowledged before me this 30th day of May
2007 by James Thomas Cato.

Tina S. Ludlam Tina S. Ludlam
Notary Public for South Carolina
My Commission Expires:

[NOTARIAL SEAL]

RBH 000841

R-94825v1 50005.00001

RK 09248 P00142

Witness my hand and seal this 30 day of May in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Cathy Cato Evans
(Witness #1)

Jane Cato West (SEAL)
Jane Cato West

Sina S. Lullam
(Witness #2 who also signs as
Notary below)

STATE OF SOUTH CAROLINA)
COUNTY OF York

The forgoing instrument was acknowledged before me this 30th day of May
2007 by Jane Cato West.

Sina S. Lullam
Notary Public for South Carolina
My Commission Expires:

[NOTARIAL SEAL]

RBH 000842

R-94825v1 50005.00001

RK 09248 P80143

PX008-006

01336

Witness my hand and seal this 31st day of MAY in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Bonnie Hornell
(Witness #1)

Robert Lee Cato (SEAL)
Robert Lee Cato

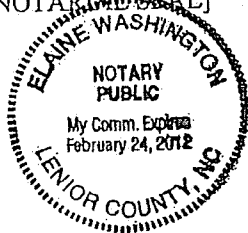
Elaine Washington
(Witness #2 who also signs as
Notary below)

STATE OF NORTH CAROLINA)
COUNTY OF Lenoir)

The forgoing instrument was acknowledged before me this 31st day of MAY
2007 by Robert Lee Cato.

Elaine Washington
Notary Public for North Carolina
My Commission Expires:

[NOTARY SEAL]



RBH 000843

R-94825v1 50005.00001

8K09248 P00144

PX008-007

01337

Witness my hand and seal this 30 day of MAY in the year of our Lord Two Thousand Seven (2007) and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

[Signature]
(Witness #1)

Cathy Cato Evans (SEAL)
Cathy Cato Evans

[Signature]
(Witness #2 who also signs as
Notary below)

STATE OF SOUTH CAROLINA)
COUNTY OF York

The forgoing instrument was acknowledged before me this 30th day of May
2007 by Cathy Cato Evans

[Signature]
Notary Public for South Carolina
My Commission Expires:

[NOTARIAL SEAL]

RBH 000844

R-94825v1 50005.00001

BK09248 PD0145

PX008-008

01338

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Rock Hill, SC bearing York County Tax Map Number 592-02-01-001, 069, 070, 093, 112, 063, 063, 164 and 110 was transferred by James Thomas Cato, et al to T. E. Cato Estate, LLC on June 16, 2007.
3. Check one of the following: The deed is
 - (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ exempt from the deed recording fee because (See Information section of affidavit): Contribution to limited liability company.
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or 3(b) above has been checked (See Information section of this affidavit.):
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - (b) ☐ The fee is computed on the fair market value of the realty which is
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrances existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here \$

RBH 000845

R-94825v1 50005.00001

AK 09248 PBO 146

(b) Place the amount listed in item 5 above here
(If no amount is listed, place zero here)

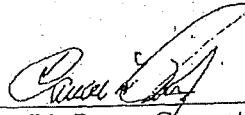
-0-

(c) Subtract Line 6(b) from Line 6(a) and place result here: \$

7. The deed recording fee due is based on the amount listed on Line 6(c) above and deed recording fee due is: \$

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Buyers Attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.



Responsible Person Connected with the Transaction

Carroll M. Pitts, Jr.
Print or Type Name Here

Sworn to before me this 9
day of July, 2007
Doreen Barber
Notary Public for S.C.
My Commission Expires: 4/15/2010

RBH 000846

R-94825v1 50005.00001

BK 09248 PCD 147

PX008-010

01340

Exhibit 54

LETTER OF INTENT

7-25-2007

J. T. Cato
1083 Valley Forge Road
Lake Wylie, SC 29710

RE: Remaining Acreage of Cato Estates

Dear Mr. Cato:

We are pleased to present to you this letter which sets forth the terms on which Thomasson Apartments, LLC ("Buyer") is willing to purchase the land commonly known as the remaining acreage of Cato Estates (the "Land") in Rock Hill, South Carolina 29732.

Land: The four parcels listed as Areas A, B, C & D on the attached plat.

Area "A" - 4.35 Acres having Tax Map Number 5920201063

Area "B" - 6.78 Acres having Tax Map Number 5920201064

Area "C" - 10.50 Acres having Tax Map Number 5920201164

Area "D" - 7.65 Acres having Tax Map Number 5920201110

Price: Thomasson Apartments, LLC is offering One Million Dollars (\$1,000,000.00) for the purchase of the four parcels of land described above with Fee Simple Title and free of any encumbrances, liens, subdivision restrictions or deed restrictions.

Contingency: This sale is dependent on the sale, closing & 1031 tax deferred exchange approval of Thomasson Apartments, LLC (d.b.a: Carriage Hills Apartments) in Rock Hill, SC.

This Proposal of Intent shall terminate, unless accepted by Seller, on or before August 3, 2007 at 5:00 p.m.

BUYER:

Matthew J. Thomason

Brenda L. Thomason

Accepted and agreed to this 3 day of August, 2007.

SELLER:

Name:

Title:

James Thomas Cato
General Manager
J.T. Cato Estate L.L.C.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

AMENDMENT TO CONTRACT

THIS AMENDMENT TO CONTRACT ("Amendment") is entered into as of this 6 day of December, 2007 by and between THOMASSON APTS., L.L.C. ("Buyer"), a South Carolina limited liability company, and T.E. CATO ESTATES, L.L.C. ("Seller"), a South Carolina limited liability company, and shall be binding on the parties and their respective heirs, successors, and assigns.

WITNESSETH:

WHEREAS, Buyer and Seller did enter into a certain contract for the sale of real property ("Contract") dated as of August 3, 2007; and,

WHEREAS, Buyer and Seller do agree that the Contract provided for the sale by Seller to Buyer of the real property described on Exhibit "A" hereto ("Property"), incorporated for this reference, and for the sale by Seller to Buyer of the real property described on Exhibit "B" hereto ("Roadbed Tract"), incorporated by this reference; and,

WHEREAS, Buyer and Seller agree that it has been determined that Seller does not hold good title to the Roadbed Tract, and Buyer and Seller have now agreed to amend the Contract.

NOW, WHEREFORE, Buyer and Seller, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, intending to be legally bound hereby, covenant and agree as follows:

1.0 The above recitals are incorporated herein by this reference as fully as if set forth here verbatim.

2.0 Buyer and Seller agree that Buyer will close upon its acquisition of the Property within fifteen (15) days from the full execution hereof by each of Buyer, Seller, and the Owners. Buyer and Seller agree that, of the purchase price ("Purchase Price") set forth in the Contract (being \$1,000,000.00), Buyer shall pay to Seller at its closing upon the Property the sum of Nine Hundred Thousand and no/100 Dollars (\$900,000.00), and that Buyer shall withhold the remainder of the Purchase Price to be applied and paid to Seller as set forth hereafter.

3.0 Seller agrees that it will promptly and immediately undertake good faith efforts to obtain good title to the Roadbed Tract, by, without limitation, causing certain of its members to bring a partition action in the York County Court of Common Pleas requesting the partition by private sale of the roadbed tract. The parties agree that HELEN CATO JONES, DONN S. JOHNSON, JAMES THOMAS CATO, JANE CATO WEST (a/k/a Martha Jane Cato West), ROBERT LEE CATO, and CATHY CATO EVANS are each undivided owners of interests as tenants-in-common in the Roadbed Tract (the "Owners"). The Owners join in the execution of this Amendment for the limited purpose of agreeing to undertake and participate in the partition action described by the foregoing, in which they shall seek the partition by private sale of the

Roadbed Tract. The Owners further agree that they shall cause the Roadbed Tract to be conveyed to Seller upon the successful conclusion of the partition action. Buyer agrees that it shall pay the first Ten Thousand and no/100 Dollars (\$10,000.00) in attorneys' fees and costs incurred by Seller and the Owners in connection with the referenced partition action, and the Owners and Seller agree that they shall bear the costs and attorneys' fees to be incurred in connection with the partition action above that amount. Seller and the Owners agree that such partition action shall be filed and prosecuted by counsel representing them but reasonably approved by Buyer.

4.0 Buyer agrees that it shall close upon its acquisition of the Roadbed Tract within thirty (30) days of the date upon which Seller obtains title to the Roadbed Tract. At the closing thereon, Buyer shall pay to Seller the then remaining portion of the Purchase Price, being One Hundred Thousand and no/100 Dollars (\$100,000.00).

5.0 Except as modified hereby, the parties ratify each of the terms and provisions of the Contract. The terms hereof shall survive Buyer's closing upon the Property. Buyer, by executing this Agreement, waives none of the remedies which it might otherwise have relating to Buyer's inability to convey and transfer title to the Roadbed Tract.

6.0 This Amendment shall be governed by the laws of the State of South Carolina, excluding conflicts of laws principles. In any action arising hereunder or relating hereto the non-prevailing party shall pay the attorneys' fees and costs incurred by the prevailing party in connection with any such action. This Amendment may be executed as one document by the signatories hereto or in any number of counterparts, and via facsimile of like method, none of which shall effect the validity or enforceability hereof.

WHEREFORE, this Amendment is duly executed as of the date and year first appearing above.

BUYER:
THOMASSON APTS., L.L.C.

By: _____
Its: Managing Member

SELLER:
T.E. CATO ESTATE, L.L.C.

By: James Thomas Cato
Its: General Manager

[Signatures of Owners to follow]

Roadbed Tract. The Owners further agree that they shall cause the Roadbed Tract to be conveyed to Seller upon the successful conclusion of the partition action. Buyer agrees that it shall pay the first Ten Thousand and no/100 Dollars (\$10,000.00) in attorneys' fees and costs incurred by Seller and the Owners in connection with the referenced partition action, and the Owners and Seller agree that they shall bear the costs and attorneys' fees to be incurred in connection with the partition action above that amount. Seller and the Owners agree that such partition action shall be filed and prosecuted by counsel representing them but reasonably approved by Buyer.

4.0 Buyer agrees that it shall close upon its acquisition of the Roadbed Tract within thirty (30) days of the date upon which Seller obtains title to the Roadbed Tract. At the closing thereon, Buyer shall pay to Seller the then remaining portion of the Purchase Price, being One Hundred Thousand and no/100 Dollars (\$100,000.00).

5.0 Except as modified hereby, the parties ratify each of the terms and provisions of the Contract. The terms hereof shall survive Buyer's closing upon the Property. Buyer, by executing this Agreement, waives none of the remedies which it might otherwise have relating to Buyer's inability to convey and transfer title to the Roadbed Tract.

6.0 This Amendment shall be governed by the laws of the State of South Carolina, excluding conflicts of laws principles. In any action arising hereunder or relating hereto the non-prevailing party shall pay the attorneys' fees and costs incurred by the prevailing party in connection with any such action. This Amendment may be executed as one document by the signatories hereto or in any number of counterparts, and via facsimile of like method, none of which shall effect the validity or enforceability hereof.

WHEREFORE, this Amendment is duly executed as of the date and year first appearing above.

BUYER:
THOMASSON APTS., L.L.C.

By: Bradley L. Thomasson
Its: Managing Member

SELLER:
T.E. CATO ESTATE, L.L.C.

By: James Thomas Cato
Its: General Manager

[Signatures of Owners to follow]

OWNERS:

Helen Cato Jones
Helen Cato Jones (by and through Donn S. Johnson, her son)

Donn S. Johnson
Donn S. Johnson

James Thomas Cato
James Thomas Cato

Jane C. West
Jane Cato West

Robert Lee Cato
Robert Lee Cato

Cathy Cato Evans
Cathy Cato Evans

EXHIBIT "A"
Description of Property

ALL that certain piece parcel or tract of land located in the State of South Carolina, County of York, Township of Ebenezer, shown as Tracts or Areas A, B, C, and D on that certain plat of survey entitled "Composite Plat Showing Subdivision of T.E. Cato Est.," drawn by R.H. Marrett, RLS on December 20, 1967, as revised July 15, 1968, and recorded in Plat Book 33, Page 192 in the Office of the Clerk of Court for York County, South Carolina (being TMS #s 592-02-01-063, 064, 164, and 110).

DERIVATION: being all or a portion of the property conveyed to the within Grantors by the following deeds or instruments, all of record in the York County, South Carolina Clerk of Court's Office: Estate of T.E. Cato, filed in Case 403, File 12,633; Estate of Elizabeth Cato Johnson; Estate of Edgar Louis Cato filed in Case 531, File 16,229 in the Office of the Probate Court for York County, South Carolina; Estate of James Carson Cato who died in 1966 with the Estate being administered in Mecklenburg County, North Carolina with exemplified copies found in Case 507, File 15476; see also Record Book 9066 at Page 98 in the Office of the Clerk of Court for York County.

EXHIBIT "B"

Description of Roadbed Tract

ALL of that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of York, Township of Ebenezer referenced in and quit-claimed by the South Carolina Department of Transportation in the deed recorded in the York County, South Carolina Clerk of Court's Office in Deed Book 8577, at Page 187, et seq., on November 14, 2006, to which deed reference is made for a more particular description as to the courses and distances of the real property conveyed thereby.

DERIVATION: Being the same property quitclaimed by deed of the South Carolina Dept. of Transportation, such instrument appearing in the York County, South Carolina Clerk of Court's Office in Book 8577, Page 187.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

AMENDMENT TO CONTRACT

THIS AMENDMENT TO CONTRACT ("Amendment") is entered into as of this _____ day of _____, 2007 by and between THOMASSON APTS., L.L.C. ("Buyer"), a South Carolina limited liability company, and T.E. CATO ESTATES, L.L.C. ("Seller"), a South Carolina limited liability company, and shall be binding on the parties and their respective heirs, successors, and assigns.

WITNESSETH:

WHEREAS, Buyer and Seller did enter into a certain contract for the sale of real property ("Contract") dated as of August 3, 2007; and,

WHEREAS, Buyer and Seller do agree that the Contract provided for the sale by Seller to Buyer of the real property described on Exhibit "A" hereto ("Property"), incorporated for this reference, and for the sale by Seller to Buyer of the real property described on Exhibit "B" hereto ("Roadbed Tract"), incorporated by this reference; and,

WHEREAS, Buyer and Seller agree that it has been determined that Seller does not hold good title to the Roadbed Tract, and Buyer and Seller have now agreed to amend the Contract.

NOW, WHEREFORE, Buyer and Seller, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, intending to be legally bound hereby, covenant and agree as follows:

1.0 The above recitals are incorporated herein by this reference as fully as if set forth here verbatim.

2.0 Buyer and Seller agree that Buyer will close upon its acquisition of the Property within fifteen (15) days from the full execution hereof by each of Buyer, Seller, and the Owners. Buyer and Seller agree that, of the purchase price ("Purchase Price") set forth in the Contract (being \$1,000,000.00), Buyer shall pay to Seller at its closing upon the Property the sum of Nine Hundred Thousand and no/100 Dollars (\$900,000.00), and that Buyer shall withhold the remainder of the Purchase Price to be applied and paid to Seller as set forth hereafter.

3.0 Seller agrees that it will promptly and immediately undertake good faith efforts to obtain good title to the Roadbed Tract, by, without limitation, causing certain of its members to bring a partition action in the York County Court of Common Pleas requesting the partition by private sale of the roadbed tract. The parties agree that HELEN CATO JONES, DONN S. JOHNSON, JAMES THOMAS CATO, JANE CATO WEST (a/k/a Martha Jane Cato West), ROBERT LEE CATO, and CATHY CATO EVANS are each undivided owners of interests as tenants-in-common in the Roadbed Tract (the "Owners"). The Owners join in the execution of this Amendment for the limited purpose of agreeing to undertake and participate in the partition action described by the foregoing, in which they shall seek the partition by private sale of the

Roadbed Tract. The Owners further agree that they shall cause the Roadbed Tract to be conveyed to Seller upon the successful conclusion of the partition action. Buyer agrees that it shall pay the first Ten Thousand and no/100 Dollars (\$10,000.00) in attorneys' fees and costs incurred by Seller and the Owners in connection with the referenced partition action, and the Owners and Seller agree that they shall bear the costs and attorneys' fees to be incurred in connection with the partition action above that amount. Seller and the Owners agree that such partition action shall be filed and prosecuted by counsel representing them but reasonably approved by Buyer.

4.0 Buyer agrees that it shall close upon its acquisition of the Roadbed Tract within thirty (30) days of the date upon which Seller obtains title to the Roadbed Tract. At the closing thereon, Buyer shall pay to Seller the then remaining portion of the Purchase Price, being One Hundred Thousand and no/100 Dollars (\$100,000.00).

5.0 Except as modified hereby, the parties ratify each of the terms and provisions of the Contract. The terms hereof shall survive Buyer's closing upon the Property. Buyer, by executing this Agreement, waives none of the remedies which it might otherwise have relating to Buyer's inability to convey and transfer title to the Roadbed Tract.

6.0 This Amendment shall be governed by the laws of the State of South Carolina, excluding conflicts of laws principles. In any action arising hereunder or relating hereto the non-prevailing party shall pay the attorneys' fees and costs incurred by the prevailing party in connection with any such action. This Amendment may be executed as one document by the signatories hereto or in any number of counterparts, and via facsimile of like method, none of which shall effect the validity or enforceability hereof.

WHEREFORE, this Amendment is duly executed as of the date and year first appearing above.

BUYER:
THOMASSON APTS., L.L.C.

By: _____
Its: Managing Member

SELLER:
T.E. CATO ESTATE, L.L.C.

By: James Thomas Cato
Its: General Manager

[Signatures of Owners to follow]

OWNERS:

Helen Cato Jones
Helen Cato Jones (by and through Douglas B. Jones, her son)

Donn S. Johnson
Donn S. Johnson

James Thomas Cato
James Thomas Cato

Jane C. West
Jane Cato West

Robert Lee Cato
Robert Lee Cato

Cathy Cato Evans
Cathy Cato Evans

EXHIBIT "A"
Description of Property

ALL that certain piece parcel or tract of land located in the State of South Carolina, County of York, Township of Ebenezer, shown as Tracts or Areas A, B, C, and D on that certain plat of survey entitled "Composite Plat Showing Subdivision of T.E. Cato Est.," drawn by R.H. Marrett, RLS on December 20, 1967, as revised July 15, 1968, and recorded in Plat Book 33, Page 192 in the Office of the Clerk of Court for York County, South Carolina (being TMS #s 592-02-01-063, 064, 164, and 110).

DERIVATION: being all or a portion of the property conveyed to the within Grantors by the following deeds or instruments, all of record in the York County, South Carolina Clerk of Court's Office; Estate of T.E. Cato, filed in Case 403, File 12,633; Estate of Elizabeth Cato Johnson; Estate of Edgar Louis Cato filed in Case 531, File 16,229 in the Office of the Probate Court for York County, South Carolina; Estate of James Carson Cato who died in 1966 with the Estate being administered in Mecklenburg County, North Carolina with exemplified copies found in Case 507, File 15476; see also Record Book 9066 at Page 98 in the Office of the Clerk of Court for York County.

EXHIBIT "B"

Description of Roadbed Tract

ALL of that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of York, Township of Ebenezer referenced in and quit-claimed by the South Carolina Department of Transportation in the deed recorded in the York County, South Carolina Clerk of Court's Office in Deed Book 8577, at Page 187, et seq., on November 14, 2006, to which deed reference is made for a more particular description as to the courses and distances of the real property conveyed thereby.

DERIVATION: Being the same property quitclaimed by deed of the South Carolina Dept. of Transportation, such instrument appearing in the York County, South Carolina Clerk of Court's Office in Book 8577, Page 187.

Prepared by and return to:

Joshua B. Vann, Esq.
MORTON & GETTYS, LLC
334 Oakland Avenue
Post Office Box 707
Rock Hill, South Carolina 29731

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED is made as of the 12th day of December, 2007, by and between T.E. CATO ESTATE, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, as party of the first part, hereinafter referred to as "Grantor," and THOMASSON APTS., L.L.C., a limited liability company organized and existing under the laws of the State of South Carolina having a principal mailing address of 1612 Ebenezer Road, Suite 203, Rock Hill, South Carolina, 29732, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the successors and assigns of each of the parties hereto.

WITNESSETH:

WHEREAS, Grantor and Grantee are each a party to that certain real estate purchase contract ("Contract") dated as of August 3, 2007, as subsequently amended, providing, in part, for the sale and conveyance by Grantor to Grantee of the real property ("Property") hereafter described, which such Contract, as amended, shall survive the execution and recordation hereof; and,

WHEREAS, Grantor and Grantee each agree that Grantor is now obligated to convey the Property to Grantee.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, Grantor has and hereby does grant, bargain, sell and convey unto Grantee and the heirs, legal representatives, successors and assigns of Grantee, all of Grantor's right, title,

1 of 4

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PX012-001
01353

and interest in and to the Property (being described in Exhibit "A," which is attached hereto and incorporated herein by this reference) and all improvements affixed thereto and lying thereupon (with such improvements being considered as a part of the Property), subject, however, to the terms and provisions of this General Warranty Deed.

The Property is hereby conveyed to the Grantee subject to easements, conditions, restrictions, exceptions, and other matters of record in the chain of title to the Property, other than and excepting monetary liens (including rollback taxes, if applicable), including, but not being limited to, those matters which are listed below, these and all such matters as may arise out there being matters to which the warranty of Grantor as contained herein shall not apply:

1.0 Taxes for the year 2008 and subsequent years, which constitute a lien but are not yet due and payable;

2.0 Matters of zoning and other ordinances governing the use and enjoyment of the Property;

3.0 Matters which would be revealed by a current survey or physical inspection of the Property.

TO HAVE AND TO HOLD the Property, subject to the above easements, restrictions, and exceptions, together with any and all of the rights, members and appurtenances thereof, the same being, belonging or in anywise appertaining to, the only proper use, benefit and behoof of the Grantee forever IN FEE SIMPLE, on the terms and conditions contained herein.

GRANTOR SHALL WARRANT and forever defend the right and title to the Property unto the Grantee against the claims of all persons whomsoever claiming by, through or under Grantor, or Grantor's successors and assigns, and against all others, subject to the limitations contained herein.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Grantor has signed and sealed this deed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Jess. Kimball (W-1)

[Signature] (W-2)

GRANTOR:

T.E. CATO ESTATE, LLC

By James Thomas Cato
James Thomas Cato

Its: General Manager

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw James Thomas Cato, as the General Manager of the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written General Warranty Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 12 th day
of December, 2007

[Signature]

Notary Public for South Carolina: Witness 2

My Commission Expires: 11/17/2014

[SEAL HERE]

Jess. Kimball
Witness 1

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

ALL that certain piece parcel or tract of land located in the State of South Carolina, County of York, Township of Ebenezer, shown as Tracts or Areas A, B, C, and D on that certain plat of survey entitled "Composite Plat Showing Subdivision of T.E. Cato Est.," drawn by R.H. Marrett, RLS on December 20, 1967, as revised July 15, 1968, and recorded in Plat Book 33, Page 192 in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is made for a more complete and accurate description as to the courses and distances of the property described herein (being TMS #s 592-02-01-063, 064, 164, and 110).

LESS AND EXCEPTING the following Deeds conveyed from the South Carolina Department of Transportation: Deed Book 6242, Page 124, Deed Book 6242, Page 128, Deed Book 3070, Page 254, Deed Book 3070, page 257, Deed Book 3070, Page 260, Deed Book 3070, Page 266, Deed Book 3070, Page 263, Deed Book 3144, Page 267, Deed Book 3070, Page 269, Deed Book

DERIVATION: BEING the same property conveyed to the within Grantor by the following deed, recorded in the York County, South Carolina Clerk of Court's Office: Book 9246, Page 148.

CLOSING STATEMENT

SELLER: T.E. Cato Estate, LLC

PURCHASER: Synovus Trust Company, NA, as Qualified Intermediary for Thomasson Apartments, LLC

TITLE COMPANY: Chicago Title Insurance Company

PROPERTY: Area "A" - 4.35 acres, TM# 592-02-01-063
Area "B" - 6.78 acres TM# 592-02-01-064
Area "C" - 10.50 acres TM# 592-02-01-164
Area "D" - 7.65 acres TM# 592-02-01-110

PURCHASE PRICE: \$900,000.00¹

CLOSING DATE: Wednesday, December 12, 2007

* * * * *

SELLER'S STATEMENT

<u>Purchase Price:</u>	\$900,000.00
1. Credit to Seller for Purchaser's share of 2007 Property taxes ²	558.62
<u>Purchaser's Total Credits:</u>	<u>\$558.62</u>
DUE TO SELLER	900,558.62
<u>Less Debits:</u>	
1. York County Clerk of Court ³ (South Carolina Deed Stamps)	3,330.00
2. Morton & Gettys, LLC (Preparation of Seller Documents)	250.00
3. Robinson, Bradshaw & Hinson, P.A. (Seller's Attorney Fees)	POC
4. York County Tax Collector (2007 Taxes / Map #592-02-01-063)	1,553.04
5. York County Tax Collector (2007 Taxes / Map #592-02-01-064)	3,106.08
6. York County Tax Collector (2007 Taxes / Map #592-02-01-164)	1,553.04

¹ See Amendment to Contract for calculation of Sales Price.

² See attached Exhibit A for proration of taxes.

³ South Carolina Deed Recording fee is \$3.70 per thousand.

RBH 000856

7. York County Tax Collector
(2007 Taxes / Map #592-02-01-110)

4,519.35

Seller's Total Debits:

(\$14,311.51)

FUNDS DUE TO SELLER AT CLOSING:

\$886,247.11

RBH 000857

CLOSING STATEMENT

SELLER: T.E. Cato Estate, LLC

PURCHASER: Synovus Trust Company, NA, as Qualified Intermediary for Thomasson Apartments, LLC

TITLE COMPANY: Chicago Title Insurance Company

PROPERTY: Area "A" - 4.35 acres, TM# 592-02-01-063
Area "B" - 6.78 acres TM# 592-02-01-064
Area "C" - 10.50 acres TM# 592-02-01-164
Area "D" - 7.65 acres TM# 592-02-01-110

PURCHASE PRICE: \$900,000.00⁴

CLOSING DATE: Wednesday, December 12, 2007

* * * * *

PURCHASER'S STATEMENT

Purchase Price: \$900,000.00

Plus Debits:

1.	Debit for Purchaser's share of 2007 property taxes ⁵	558.62
2.	York County Clerk of Court (Recording of Deed)	11.00
3.	Chicago Title Insurance Company (Premium for Owner's Title Policy)	1,575.00
4.	Moffatt Title Insurance (Title Insurance Binder)	150.00
5.	Morton and Gettys, LLC (Title Search Fee and Update)	250.00
6.	Morton and Gettys, LLC (Attorney's Fee)	1,550.00
7.	Morton and Gettys, LLC (Fax/Copy Fees)	15.00
8.	Morton and Gettys, LLC (Wire Fee - incoming funds)	20.00
9.	Synovus Trust Company, NA (Qualified Intermediary fee)	1,200.00

⁴ See Amendment to Contract for calculation of Sales Price.

⁵ See attached Exhibit A for proration of taxes.

RBH 000858

Purchaser's Total Debits:

5,329.62

DUE FROM PURCHASER AT CLOSING:

\$905,329.62

LESS: 10-31 Proceeds from Synovus Trust Company, LLC

\$905,329.62

TOTAL DUE FROM PURCHASER AT CLOSING

\$ 0.00

RBH 000859

Errors and Omissions

In the event this Closing Statement is hereafter determined to contain errors or omissions, Purchaser and Seller hereby agree that they will promptly enter into an appropriate amendment to this Closing Statement and will promptly make any necessary monetary adjustments to correct or compensate for such errors or omissions.

The undersigned parties acknowledge and agree that they have reviewed and approved the foregoing Closing Statement and that it is an accurate reflection of the subject transaction and that a facsimile of an executed signature page shall be as effective as an original counterpart.

* * * * *

SELLER: T.E. Cato Estates, LLC

James Thomas Cato (SEAL)
General Manager

BUYER: Synovus Trust Company, as Qualified
Intermediary for Thomasson Apts., LLC

BY: _____ (SEAL)

ITS: _____

READ AND APPROVED: Thomasson Apts., LLC

BY: Broaden L. Thomasson (SEAL)
ITS: MANAGING MEMBER

SETTLEMENT AGENT:
Morton and Gettys, LLC

Joshua B. Vann
Joshua B. Vann

RBH 000860

Errors and Omissions

In the event this Closing Statement is hereafter determined to contain errors or omissions, Purchaser and Seller hereby agree that they will promptly enter into an appropriate amendment to this Closing Statement and will promptly make any necessary monetary adjustments to correct or compensate for such errors or omissions.

The undersigned parties acknowledge and agree that they have reviewed and approved the foregoing Closing Statement and that it is an accurate reflection of the subject transaction and that a facsimile of an executed signature page shall be as effective as an original counterpart.

* * * * *

SELLER: T.E. Cato Estates, LLC

(SEAL)

BUYER: Synovus Trust Company, as Qualified
Intermediary for Thomasson Apts., LLCBY: George J. Deal (SEAL)ITS: Vice President

READ AND APPROVED: Thomasson Apts., LLC

BY: _____ (SEAL)

ITS: _____

SETTLEMENT AGENT:
Morton and Gettys, LLC_____
Joshua B. Vann

RBH 000861

Schedule 1
Summary of Receipts and Disbursements

RECEIPTS:

1.	Synovus Trust Company (10-31 Proceeds)	\$905,329.62

TOTAL RECEIPTS:	<u>\$905,329.62</u>

DISBURSEMENTS:

1.	Morton and Gettys, LLC (Attorney's Fee)	1,550.00
2.	Morton & Gettys, LLC (Preparation of Seller Documents)	250.00
3.	Morton and Gettys, LLC (Title Search Fee and Update)	250.00
4.	Morton and Gettys, LLC (Fax/Copy Fees)	15.00
5.	Morton and Gettys, LLC (Wire Fee - incoming funds)	20.00
6.	Robinson, Bradshaw & Hinson, P.A. (Seller's Attorney Fees)	POC
7.	York County Clerk of Court (South Carolina Deed Stamps)	3,330.00
8.	York County Clerk of Court (Recording of Deed)	11.00
9.	York County Tax Collector (2007 Taxes / Map #592-02-01-063)	1,553.04
10.	York County Tax Collector (2007 Taxes / Map #592-02-01-064)	3,106.08
11.	York County Tax Collector (2007 Taxes / Map #592-02-01-164)	1,553.04
12.	York County Tax Collector (2007 Taxes / Map #592-02-01-110)	4,519.35
13.	Chicago Title Insurance Company (Premium for Owner's Title Policy)	1,575.00
14.	Moffatt Title Insurance (Title Insurance Binder)	150.00
15.	Synovus Trust Company, NA (Qualified Intermediary fee)	1,200.00

RBH 000862

16. T.E. Cato Estates, LLC
(Seller's Proceeds)

886,247.11

TOTAL DISBURSEMENTS:

\$905,329.62

RBH 000863

PX013-008
01364

Exhibit A
Calculation of Property Taxes

\$1,553.04 (Taxes for 2007 on Map #592-02-01-063) / 365 = \$4.25490410958 per day x 19 days Buyer will own property in 2007 = \$80.84

\$3,106.08 (Taxes for 2007 on Map #592-02-01-064) / 365 = \$8.50980821917 per day x 19 days Buyer will own property in 2007 = \$161.69

\$1,553.04 (Taxes for 2007 on Map #592-02-01-164) / 365 = \$4.25490410958 per day x 19 days Buyer will own property in 2007 = \$80.84

\$4,519.35 (Taxes for 2007 on Map #592-02-01-110) / 365 = \$12.3817808219 per day x 19 days Buyer will own property in 2007 = \$235.25

\$80.84 + \$161.69 + \$80.84 + 235.25 = \$558.62 to be credited to Seller and debited from Buyer

RBH 000864

EXHIBIT "F"

NOTICE OF ASSIGNMENT

TO: T.E. CATO ESTATES, LLC (the "Seller")

DATE: 12/12/07

FROM: THOMASSON APTS., L.L.C. (the "Owner")

You are hereby notified that all of Owner's rights and interest in the real estate purchase contract between Owner and Purchaser dated August 3, 2007, as amended (the "Contract"), for the purchase of the property located at or near the intersection of Ebenezer Road and Twin Lakes Road, and Twin Lakes Road and Celanese Road, in or near the City of Rock Hill, South Carolina, have been assigned to Synovus Trust Company, N.A., as a qualified intermediary party to facilitate a like-kind exchange under Section 1031 of the Internal Revenue Code. Notwithstanding the foregoing, Owner's rights to acquire the Roadbed Tract, as described in the Contract, as amended, are reserved to Owner and may not be assigned to Synovus Trust Company, N.A.

THOMASSON APTS., L.L.C.

By: Brendon L. Thomasson
Name: Brendon L. Thomasson
Title: Managing Member

Acknowledgment:

The Seller does hereby consent to the assignment and acceptance of Owner's rights under the Contract. Notwithstanding such assignment, the Seller agrees that Owner shall remain solely liable to the Seller regarding any and all indemnities, representations, warranties, covenants, and other obligations under the Contract, and the Seller further agrees (i) to seek any remedy regarding a breach of the Contract only against Owner, and (ii) to enforce any and all indemnities, covenants, and other obligations in the Contract only against Owner, and not against Synovus Trust Company, N.A..

T.E. CATO ESTATE, LLC

By: James Thomas Cato
Name: JAMES THOMAS CATO
Title: GENERAL MANAGER
Date: 12/12/07

cc: Synovus Trust Company, N.A.
Attn: Donna Nesbitt

RBH 000865

FILED-RECEIVED
STATE OF SOUTH CAROLINA)
COUNTY OF YORK 2008 AUG 13 PM 4:38

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

C.A. No: 2008-CP46 3171

James Thomas Cato, Helen Cato)
Jones, Donn S. Johnson, Jane Cato)
West, Robert Lee Cato and Cathy)
Cato Evans)

Petitioner,)

v.)

Marjorie Cato Burton, as Trustee)
Of the Sloan Marvin Burton and)
Marjorie Cato Burton, AB Living)
Trust,)

Respondents.)

PETITION
(NON-JURY)

Petitioners above named, by and through their undersigned attorneys, hereby respectively show unto the Court and allege:

I. The below described real estate was conveyed by P. A. Partlow to Thomas E. Cato by deed dated February 5, 1921 and recorded February 23, 1921 in Deed Book 55 at Page 33 in the Office of the Clerk of Court for York County, South Carolina; and

Thomas E. Cato died testate on November 23, 1957 (Case 403, File 12,633, Office of the Probate Judge) and provided a direction that the Executor sell all of the Testator's real estate "at such time or times, within a period of five years from the date of my death, either in whole or in part at public or private sale, with or without notice, and to divide the net proceeds from said sale among my wife and five children, named in Article III, hereof, share and share alike; . . ." All the right, title and interest of the Testator's wife, Mrs. Clara K. Cato, was properly released by

instrument entitled "Release", dated January 12, 1959 and recorded May 9, 1959 in Deed Book 263 at Page 73; and

The five children of Thomas E. Cato, who inherited the property were Elizabeth Cato Johnson, Edgar Louis Cato, James Carson Cato, Marjorie Cato Burton and Helen Cato Jones.

II. Ownership interest:

A. Elizabeth Cato Johnson died in 1981 leaving her interest to Donn S. Johnson;

B. Edgar Louis Cato died in 1972 (Case 531, File 16,229 Office of the Probate Judge for York County), leaving his interest to Jane Cato West and Cathy Cato Evans;

C. James Carson Cato died in 1966 (Case 507, File 15476 Office of the Probate Judge for York County) leaving his interest to James Thomas Cato and Robert Lee Cato;

D. Marjorie Cato Burton conveyed her interest to Marjorie Cato Burton, as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust; and

E. Helen Cato Jones.

III. Based on the above, the real property is believed to be owned by the following persons, having the interest set forth:

1.	Donn S. Johnson	20.0%
2.	Jane Cato West	10.0%
3.	Cathy Cato Evans	10.0%
4.	James Thomas Cato	10.0%
5.	Robert Lee Cato	10.0%
6.	Marjorie Cato Burton, as Trustee	20.0%
7.	Helen Cato Jones	<u>20.0%</u>
		100.0%

II. The Real Property: The real property, the subject of the within actions is described as follows:

All that certain piece, parcel or tract of land lying being and situate in Ebenezer Township, York County South Carolina referenced in and quit-claimed by the South Carolina

Department of Transportation in the deed recorded in the York County South Carolina Clerk of Court's Office in Record Book 8577 at Page 187, et seq., on November 14, 2007, and being more particularly described therein as follows:

All that certain piece, parcel or tract of land containing approximately 0.9 of an acre of land, situate lying and being on the East side of SC Route 274 in the City of Rock Hill, in York County, State of South Carolina, and being shown on the South Carolina Department of Transportation Plans for SC Route 274, File 46.632A, Sheets 4 & 4A. Said property being more particularly described as follows:

Beginning at a point located on the Northwestern corner of the subject parcel on the new 33-foot right of way line of SC Route 274 and present 25-foot right of way of old abandoned Road S-892, approximately 33 feet left of approximate survey station 606+30 of SC Route 274; thence in a Easterly direction for a distance of approximately 870 feet along the present 25-foot right of way of old abandoned Road S-892 to a point on the new 33-foot right of way line of relocated Road S-892; thence in a Southerly direction for a distance of approximately 70 feet along the new 33-foot right of way line of relocated Road S-892 to a point on the present 25-foot right of way of old abandon Road S-892; thence in a Westerly direction for a distance of approximately 440 feet along the present 25-foot right of way line of old abandoned Road S-892 to a point on the new 33-foot right of way of relocated Road S-892; thence in a Westerly direction for a distance of approximately 360 feet along the new 33-foot right of way line of relocated Road S-892 to a point on the baseline of the new 25x25-foot triangle and transitional right of way line of relocated Road-892; thence in a Northwesterly direction for a distance of approximately 33 feet along the baseline of the new 25x25-foot triangle and transitional right of way line of relocated Road S-892 to a point on the new 33-foot right of way line of SC Route 274, approximately 33 feet left of approximate survey station 606-72 of Route 274; thence in a Northerly direction for a distance of approximately 40 feet along the new 33-foot right of way line of SC Route 274 to the point of beginning. Being bounded on the North by lands of the Grantee, on the East by relocated Road S-892, on the South by lands now or formerly of the grantee and relocated Road S-892, and on the West by SC Route 274; referenced in and quit-claimed by the South Carolina Department of Transportation in the deed recorded in the York County South Carolina Clerk of Court's Office in Record Book 8577 at Page 187, et seq., on November 14, 2006.

III. Petition: Petitioners and Respondents have owned and now own the real property (the "Property") as tenants-in-common and Petitioners no longer desire to continue to own undivided interests in the property and request that the Court partition the Property. Petitioners do not believe that the Property can fairly be partitioned in kind without manifest injury to some of the parties hereto.

Petitioners have entered a Contract of Sale (the "Contract"), a copy of which is attached as Exhibit "A" hereto, to sell the Property to the parties named therein in accordance with the

terms thereof and believe that it would be in the best interest of all of the parties hereto to consummate the sale and divide the proceeds thereof in shares relative to the respective interests in the Property.

Petitioners and/or Respondents may have paid the property taxes on the Property and request that, upon proof of payment, they be reimbursed the cost thereof as an expense prior to distribution.

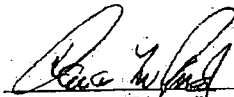
Petitioners have retained the services of attorneys to prosecute this action and will incur other costs as contained in the Contract, and request that the payment of same be made prior to the distribution of the proceeds.

WHEREFORE, having fully pled the Petitioners pray:

1. That the Court inquire into this matter to determine the ownership of the Property and the interests of the parties herein and make a determination of the ownership and interests.
2. That the Court order that the Property be partitioned by sale be consummated in accordance with the Contract and that the Property be sold and conveyed.
3. That the Court determine the costs and expenses that have been incurred by the parties and the costs and expenses to be incurred in closing the sale pursuant to the Contract and order that such costs and expenses be paid prior to determining the amount to be disbursed to the parties.
4. For such other and further relief as to the Court may seem just and proper.

Respectfully Submitted,

Robinson, Bradshaw & Hinson, P.A.



Carroll M. Pitts, Jr.
140 East Main Street, Suite 420

P. O. Box 12070
Rock Hill, S.C. 29731
803-325-2900

ATTORNEYS FOR PETITIONERS

July 6, 2008

STATE OF SOUTH CAROLINA

COUNTY OF YORK

AMENDMENT TO CONTRACT

THIS AMENDMENT TO CONTRACT ("Amendment") is entered into as of this _____ day of _____, 2007 by and between THOMASSON APTS., L.L.C. ("Buyer"), a South Carolina limited liability company, and T.E. CATO ESTATES, L.L.C. ("Seller"), a South Carolina limited liability company, and shall be binding on the parties and their respective heirs, successors, and assigns.

WITNESSETH:

WHEREAS, Buyer and Seller did enter into a certain contract for the sale of real property ("Contract") dated as of August 3, 2007; and,

WHEREAS, Buyer and Seller do agree that the Contract provided for the sale by Seller to Buyer of the real property described on Exhibit "A" hereto ("Property"), incorporated for this reference, and for the sale by Seller to Buyer of the real property described on Exhibit "B" hereto ("Roadbed Tract"), incorporated by this reference; and,

WHEREAS, Buyer and Seller agree that it has been determined that Seller does not hold good title to the Roadbed Tract, and Buyer and Seller have now agreed to amend the Contract.

NOW, WHEREFORE, Buyer and Seller, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, intending to be legally bound hereby, covenant and agree as follows:

1.0 The above recitals are incorporated herein by this reference as fully as if set forth here verbatim.

2.0 Buyer and Seller agree that Buyer will close upon its acquisition of the Property within fifteen (15) days from the full execution hereof by each of Buyer, Seller, and the Owners. Buyer and Seller agree that, of the purchase price ("Purchase Price") set forth in the Contract (being \$1,000,000.00), Buyer shall pay to Seller at its closing upon the Property the sum of Nine Hundred Thousand and no/100 Dollars (\$900,000.00), and that Buyer shall withhold the remainder of the Purchase Price to be applied and paid to Seller as set forth hereafter.

3.0 Seller agrees that it will promptly and immediately undertake good faith efforts to obtain good title to the Roadbed Tract, by, without limitation, causing certain of its members to bring a partition action in the York County Court of Common Pleas requesting the partition by private sale of the roadbed tract. The parties agree that HELEN CATO JONES, DONN S. JOHNSON, JAMES THOMAS CATO, JANE CATO WEST (a/k/a Martha Jane Cato West), ROBERT LEE CATO, and CATHY CATO EVANS are each undivided owners of interests as tenants-in-common in the Roadbed Tract (the "Owners"). The Owners join in the execution of this Amendment for the limited purpose of agreeing to undertake and participate in the partition action described by the foregoing, in which they shall seek the partition by private sale of the

Roadbed Tract. The Owners further agree that they shall cause the Roadbed Tract to be conveyed to Seller upon the successful conclusion of the partition action. Buyer agrees that it shall pay the first Ten Thousand and no/100 Dollars (\$10,000.00) in attorneys' fees and costs incurred by Seller and the Owners in connection with the referenced partition action, and the Owners and Seller agree that they shall bear the costs and attorneys' fees to be incurred in connection with the partition action above that amount. Seller and the Owners agree that such partition action shall be filed and prosecuted by counsel representing them but reasonably approved by Buyer.

4.0 Buyer agrees that it shall close upon its acquisition of the Roadbed Tract within thirty (30) days of the date upon which Seller obtains title to the Roadbed Tract. At the closing thereon, Buyer shall pay to Seller the then remaining portion of the Purchase Price, being One Hundred Thousand and no/100 Dollars (\$100,000.00).

5.0 Except as modified hereby, the parties ratify each of the terms and provisions of the Contract. The terms hereof shall survive Buyer's closing upon the Property. Buyer, by executing this Agreement, waives none of the remedies which it might otherwise have relating to Buyer's inability to convey and transfer title to the Roadbed Tract.

6.0 This Amendment shall be governed by the laws of the State of South Carolina, excluding conflicts of laws principles. In any action arising hereunder or relating hereto the non-prevailing party shall pay the attorneys' fees and costs incurred by the prevailing party in connection with any such action. This Amendment may be executed as one document by the signatories hereto or in any number of counterparts, and via facsimile of like method, none of which shall effect the validity or enforceability hereof.

WHEREFORE, this Amendment is duly executed as of the date and year first appearing above.

BUYER:
THOMASSON APTS., L.L.C.

By: _____
Its: Managing Member

SELLER:
T.E. CATO ESTATE, L.L.C.

By: James Thomas Cato
Its: General Manager

[Signatures of Owners to follow]

OWNERS:

Helen Cato Jones
Helen Cato Jones (by and through Douglas C. Jones, her _____)

Donn S. Johnson
Donn S. Johnson

James Thomas Cato
James Thomas Cato

Jane C. West
Jane Cato West

Robert Lee Cato
Robert Lee Cato

Cathy Cato Evans
Cathy Cato Evans

EXHIBIT "B"
Description of Roadbed Tract

ALL of that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of York, Township of Ebenezer referenced in and quit-claimed by the South Carolina Department of Transportation in the deed recorded in the York County, South Carolina Clerk of Court's Office in Deed Book 8577, at Page 187, et seq., on November 14, 2006, to which deed reference is made for a more particular description as to the courses and distances of the real property conveyed thereby.

DERIVATION: Being the same property quitclaimed by deed of the South Carolina Dept. of Transportation, such instrument appearing in the York County, South Carolina Clerk of Court's Office in Book 8577, Page 187.

Page 1 of 3
EXHIBIT 37

Subj: also U.S. Mail to: Marjie & Marvin, Jane, Cathy (this from tommy) re/ T.E. Cato Est
Date: 2/24/07 12:49:21 P.M. Eastern Standard Time
From: CharInsOff
To: bcato03@earthlink.net, treblard@comcast.net, teamjohnson@charterinternet.com

To all re/ T.E. Cato Estate

It seems that each of us is interested in disposing and re-investing under our own control. There are now, and have been recently, circumstances and opportunities that support that idea happening now:

- 1. Capital Gains Taxes are the lowest now than within recent times. We should act now.**
- 2. The new liberal congress has promised to increase taxes - especially Capital Gains Taxes- as soon as they can. We should act now.**
- 3. Our Real Estate Taxes will only get worse as we delay.**
- 4. The economy is strong and interest rates are low. Developers can thrive in this environment and will pay a good price.**
- 5. Developers are making inquiries.**
- 6. Time is our enemy.**

Within the last month I have received three serious offers to purchase some or all of the property. All of those want us to quote a price & I can't. One developer is a "slicker" who is pressing me to the point of aggravation and has made an insulting offer of \$10,000.00 per acre. I checked with attorneys in York County and found out that that developer is almost impossible to work with. Nevertheless, his money is green, too.

Another developer was recommended by a leading S.C. Real Estate Attorney and is interested - if we can all agree on one thing and have one entity for them to deal with.

Another developer, with whom I've also had several conversations, is unique. Unique in that he is anxious to spend

Saturday, February 24, 2007 America Online: CharInsOff

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several million dollars soon. His Rock Hill company is selling an apartment complex in the next few months and wants your property so he can do a Tax-Free-Exchange so he can "roll" his money and pay no taxes. That makes him amenable to paying a premium price! That developer already owns the "old Melvin Faile 5 acres" bounde by Dutchman Creek, Celanese By-pass, and our "AREA D". That 5 acres is adjacent to the 7-acre "Area D" at the intersection of Celanese By-pass and Tin Lakes Road.

1. He is a "motivated buyer"
2. He is considering buying "everything"
3. We have some power over him because he is "hot-to buy" and his 5 acres will be enhanced
4. He wants to close within 6 months (TaxFreeExch)

I need your approval to: (1) continue to discuss (2) continue to talk while stalling (3) have property appraised (4) have un-platted areas surveyed (chunks created by the "new road") (5) seek advice and guidance from some trustworthy attorney (6) ask attorney about a L.L.C. as arvin & Marjie tried to do over 25 years ago!

Please let me know your wishes. Any advice is appreciated. Personally, Bob & I would like to take any monies coming to us and invest, fund Mothers nursing-home care, or "roll-over" to some other real property via a TaxFreeExchange.

Thanks for an early reply,

Tommy

Dear Tommy,

Please _____

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3
RAN over

Ex. 49

Subj: Tommy's activities to Helen, SM&MCBurton A/B Trust, Donn, Jane, Cathy, & Bob
 Date: 7/12/07 1:53:51 P.M. Eastern Daylight Time
 From: CharInsOff
 To: teamjohnson@charterinternet.com, JONESCLIPPER, bcato03@sarthlink.net

T.E.Cato Estate L/L/C.
ACTIVITY REPORT TO PARTNERS : 2/8/07 - 7/11/07

2/08/07 Meet with attorney in Rock Hill to review property history and options. Meet with Will Jordan of Tuttle Development in Rock Hill. Go to York to verify tax appraisals and ownership listings at Clerk of Court records room. Mail 7 letters to "et al".

2/19/07 Telephone conference with attorney regarding 1031 Tax-Free Exchange and how that would affect sale if a lot on Cato Estate was "identified" to IRS as a "target" for a 1031 Exchange monies by a prospective buyer. No effect.

2/24/07 Prepare and mail letters to "et al" and large property map to Margie and others who were without plat maps.

2/26/07 Walk "common lots" and "Area A" at property. Try to identify lot lines.

3/19/07 Telephone conferences with "et al"s in Raleigh, Kinston, Memphis, Rock Hill, Greenville, and Richmond seeking their wishes on property and how to proceed.

3/30/07 Review property potential with Thomasson Developers in Rock Hill. Review LLC characteristics with Charlotte C.P.A. Louis Stables for any advice and assurance that LLC protects each partner and is best vehicle for moving property and avoiding tax complications. Review implications of LLC to each heir with Rock Hill attorney Pitts. Was assured LLC is best vehicle to protect and empower heirs. Reviewed tax implications - none.

4/09/07 7 letters and reports to "et al"s.

4/14/07 Sail to Mexico. Return 4/21/07.

4/22/07 Cookie's only brother dies. Funeral and visitations to 4/26/07.

4/26/07 N.C. Real Estate Licensing continuing education.

5/01/07 Meet with Thomasson Development to allow them to understand LLC being set up and to understand other input and bids were being sought. LLC was not rushing to commit to accept any early offer. Discovered their cash would not be available until late June or early July anyway.

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5/09/07 Visit County Courthouse in York. Met with Zoning Dept., Planning Dept., and Wetlands Regulation people about restrictions and inhibitions placed on property by myriad Federal, County, and State Regulations. One bizarre regulation with severe penalties is the "Grand Tree Protection" law!

5/10/07 Telephone consultation with Marjie and Marvin about course to take and advisability of LLC, etc. Then contacted "et al"s for input and suggestions. Phoned attorney and told him to proceed with LLC - that "et al"s are in agreement.

5/14/07 Trip to York County Courthouse to research the type of ownership by each "et al". Only one heir has a Trust. Had previously been told that two heirs had Trusts. This information necessitated that documents be rewritten by attorney.

5/18/07 Put together master package for prospective buyers and for each heir. Heirs expect binder with maps and pertinent documents.

5/20/07 Wilmington, N.C. for Blue Cross meeting. Return 5/23/07.

5/30/07 Pick up LLC papers from attorney and drive them to Mt. Holly for Cathy & Jane signatures and Notary. Verify Tax Codes in documents with York County tax bills.

5/31/07 Drive to Kinston, N.C. to get Bob to sign and notarize everything.

6/01/07 Drive to Raleigh, N.C.. Marjie & Marvin sign for the SMB & MCB A/B Trust and take Tommy to lunch. Back to Lake Wylie, S.C. at 10:30 P.M. .

6/04/07 Drive to Simpsonville, S.C. and meet with Donn at his office. Return home the same day.

6/05/07 Drive back to Mt. Holly, S.C. to see Jane & Cathy. Tommy stupidly didn't point out all the signature lines.

6/06/07 A number of long distance calls to Richmond, Virginia and Memphis, Tennessee to determine whether Tommy needs to fly to there. Not necessary. Clipper will take documents to Helen. Phoned Helen's personal attorney to confirm her status and type of ownership of property. Put Helen's personal attorney in touch with our LLC attorney and they spoke to one another to verify transactions.

6/07/07 Overnite mail envelopes to Memphis with LLC documents for Helen's notarized signatures.

6/11/07 Go to Rock Hill attorney with documents to correct signature line. No Trust in Memphis. Helen retains her S.C. property in her own name. Re-mail

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everything Overnite Express Mail as before.

6/15/07 Receive phone calls from three developers asking if LLC completed yet. Explain delays. Several phone calls to and from "et al"s and others in The Family with interest in what's going on.

6/18/07 Tommy goes to Mt. Holly again because Tommy made another ommission with the Cathy & Jane signature spots. Cathy & Jane accuse Tommy of making excuses to come and see them. Take finalized LLC documents to Rock Hill attorney. Make copies at Kinkoes.

6/25/07 Deliver maps, plat numbers, tax receipts to Will Jordan at Tuttle Development. Contact surveyor at Williams Engineers to discuss possible survey of remainder of "Area A", redrawn "Area B", and remainder of Lot #42.

6/26/07 Get \$14,000.00 from retirement fund for possible use on Estate expenses. Put in checking/savings.

7/03/07 Deliver maps and parcel numbers to surveyor in Rock Hill. Awaiting cost estimate due about 7/15/07. Walk remains of "Area A" and walk over "Common Lot #98" on Hilldale Road. Accosted by three residents while on site. They had never seen a Cato and were excited to find out that there really was such a thing.

7/09/07 Telephone conferences: Mark Quincey at Kuester Real Estate ^② Development near Tega Cay, S.C., Joan Brauningher about purchase of Lot #98 for her daughter, Chris Thomas of Childress Klein Properties in Charlotte, N.C., ^④ surveyor Ed Woodward to locate stakes on Lot #98, attorney Pitts about reputations of various people and companies, Eric Lockamy about Ebenezer Church interest in acquiring roadway across "Area A", Tony Berry at Berry ^⑥ Development in Rock Hill, Lynn Jenkins at Southern Commercial Real Estate of ^⑦ Charlotte and Rock Hill, Warren Norman of Warren Norman Developers in Rock Hill. ^①

7/10/07 Two hour meeting and review of all options for sale or development with Will Jordan of Tuttle Development in Rock Hill. Visit Warren Norman Developers. Visit Berry Development. One hour meeting and review with Manager and Asst. Manager of Development at Kuester Properties.

7/11/07 Deliver "package" of information material to Chris Thomas, Development manager at Childress Klein Properties, Charlotte, N.C. . Prepare activity report for heirs. Night phone call from Tuttle Co. with offer to mangle entire property for 8% to 10%. Good and helpful advice received on direct and immediate opportunities without their involvement. If we sell the easiest, they'll still take the leftovers. Suggested that prime prospects usually are the best because they have a special interest. Mr. Jordan also suggested asking prices for some

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parcels. Alternatively suggested that engineering studies on all parcels would in making parcels more attractive by spelling out "best use" to prospects during a presentation. Engineering studies would range from \$1,000.00 to \$4,000.00 for each parcel. Tommy seeks to avoid that expense.

A luncheon meeting with cash-offer people is planned for last week in July. Tommy plans to firm up any interest by the other developers by then.

Get a sneak peak of the all-new AOL.com.

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EXPENSES OF GENERAL MANAGER
OFPAGE 1
OF 15

T.E. CATO ESTATE L.L.C.

2/8/07 — 9/14/07

		PHONE	MILES	COPIES	POSTAGE	SERVICES MATERIAL	HOURLY
2/8/07	CONF. w/ATTY. re/LLC. Review property with Will Jordan @ Tuttle Co. York County Tax Appraiser re/ Taxes, ZONING. MAIL INFO to heirs	0/0	56/56	4.42/4.42	5.46/5.46	.79/.79	6/6
2/12/07	Ltrs. to all heirs	0/0	0/56	0/42	.97/2.45	.35/1.05	.2/6.2
2/13/07	Ltr to all heirs	0/0	0/56	.64/1.06	2.34/2.34	.60/1.65	0/6.2
2/17/07	TELEPHONING MARJIE, DAVID, BUD	0/0	0/56	0/1.06	2.34/2.34	1.65/1.65	.5/6.
2/20/07	TELECONS. WITH DEVELOPERS. MAIL, maps, etc.	0/0	0/56	0/1.06	1.01/3.33	.50/2.15	1/2.
2/19/07	TELECON w/DAVID BURTON. Compose objectives	0/0	0/56	0/1.06	3.35/3.35	2.15/2.15	.5/8.
2/24/07	Ltr. + report to all heirs	0/0	0/56	0/1.06	.39/2.74	.10/2.25	2/10.
2/25/07	NEW PLAT Map to MARJIE BURTON. MARK UP 5 maps for other heirs.	0/0	0/56	0/1.06	1.08/4.75	.50/2.75	4/14.
2/26/07	MAPS to PHIL BURTON & BUD BURTON. WALK PROPERTIES to confirm lots. 4 letters to BURTONS	0/0	34/90	0/1.06	4.21/9.02	2.10/4.85	1/15.
3/30/07	MEET in Rock Hill and present to developer. Review Objectives with Rock Hill attorney. DISCUSS CHARACTERISTICS of Corporations, REPUTATIONS of Developers. MEET WITH CHARLOTTE C.O.P.A. to Review implications of LLC	0/0	76/166	0/1.06	0/9.02	0/4.85	5/20.

EXPENSES FEB - SEPT '07

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		PHONE	MILES	COPIES	POSTAGE	SERVICES	MATERIAL	
4/9/07	MAILING TO AGG HEIRS	0	3	3.31	2.79	.70		3
		0	169	4.37	10.86	6.55		12
5/1/07	Rock Hill to PRESENT TO DEVELOPER, SOLICIT HIGHER BIDS.	0	37	4.37	16.86	1.00	2.	
	SEEK APPROVAL, REPORT TO HEIRS, RE PROGRESS AND					6.55		
	CRA OPINIONS AND ATTORNEY OPINIONS, BOX OF ENVELOPES							
5/9/07	YORK COUNTY COURTHOUSE, ZONING, PLANNING DEPT.	0	31	4.37	11.86	6.55	2.	
	ENGINEERING DEPT. RE WETLANDS REGULATIONS, ETC.							
	PHONE MARIE & MARVIN RE 5-1-07 E-MAIL.							
5/10/07	PHONE MARIE & MARVIN TO CONSULT WITH MARVIN LLC	0	12	6.18	9.55	11.86	6.55	2
	PHONE ATTORNEY TO GO AHEAD WITH L.L.C.							
	72 COPIES OF REVIEW REPORT.							
5/13/07	LONG DISTANCE CALLS "MAY 13, 2007 FROM CINCINNATI"	0	53.23	249	9.55	11.86	6.55	31

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EXPENSES

2/07 - 9/07

(2/8/07 - 9/14/07)

		PHONE	MILES	COPIES	POSTAGE	MP/TRAFFIC SERVICES	Hours
5/14/07	CORRECTIONAL INSTITUTIONS - SEARCH SMITHSONIAN + MCQUINN A/TRAFFIC FILED 5/4/07 - RESURRECT 1998 LLC AND BID - APPRAISALS - DEERE DOVE OFFER. REVIEW OWNERS OF RECORD INFO WITH ATTORNEY	0/53.23	28/277	0/9.55	0/11.86	0/6.55	2.3/32.4
5/15/07	2 TELECONS WITH ATTORNEY RE HELEN SOLE OWNERSHIP AND BURTON A/TRAFFIC TELECON WITH DEVELOPER w/ QUESTIONS LONG TELECON WITH MARGIE AND MARVIN	0/53.23	0/277	0/9.55	0/11.86	0/6.55	0.8/33.
5/18/07	ASSEMBLE "BID PACKAGE" FOR HELEN AND PROSPECTIVE BUYERS + DEVELOPERS.	0/53.23	0/277	0/9.55	0/11.86	0/6.55	2/35.

EXPENSES: 2/8/07-9/14/07

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		PHONE	MILES	COPIES	POSTAGE	INTERNET SERVICE	HOV
5/30/07	TO RICHMOND P/LA DOCS. FROM ATTORNEY. TAILE TO MOUNT HOLLY, S.C. + CARRY TO REVIEW, SIGN, NOTARIZE ^{LLC} AT R.I.T. BANK. SCOUR DOCUMENTS TO VERIFY PLAT NUMBERS, TAX CODES, ETC.	0/53.23	50/327	0/9.55	0/11.86	0/6.55	8.2/39
5/31/07	KINSTON NC to get BOB SIGNATURES + NOTARY No meals. ^{LLC}	0/53.23	394/721	0/9.55	0/11.86	0/6.55	6/45
6/1/07	KINSTON to RICHMOND. MEET WITH MARJIE AND MARVIN to REVIEW AND DISCUSS LLC AND PLANS for selling property. 8:30 AM - 10:30 PM No meals. RETURN HOME.	0/53.23	276/997	0/9.55	0/11.86	0/6.55	15/60
6/4/07	TO SIMPSONVILLE, S.C. DANN JOHNSON REVIEW + NOTARIZE LLC. AT HIS OFFICE. BACK TO MOUNT HOLLY, S.C. TO HAVE JANE + CARRY RE-SIGN. ABOUT 10 PHOTOS	0/53.23	241/1238	0/9.55	0/11.86	0/6.55	5/61

EXPENSES 2/8/02-9/14/07

	PHONE	MAILS	CAPITAL	FEES	REVENUE	2-3
6/7/07	53.23	42	9.55	39.02	6.55	2.3
OVERNITE L.C. DOCUMENTS TO HELEN						
U.P.S. RETURN PRE-PAYD.						
PACKAGE + SHIP. PHONE CALLS						
TO HELEN'S ATTORNEYS AND NOTARY.						

PAGE 5 of 15

	PHONE	MAILS	CAPITAL	FEES	REVENUE	2-3
6/11/07	53.23	35	9.55	16.15	6.55	2
VISIT ATTORNEY TO RE-DO						
SIGNATURE PAGE FOR HELEN						
NO TRUST, NO TRUSTEES, MEMPHIS						
NOTARY REJECTED SIGNATURE LINE.						
RE-MAIL ALL DOCS AGAIN - OVERNITE.						

	PHONE	MAILS	CAPITAL	FEES	REVENUE	2-3
6/15/07	53.23	35	9.55	16.15	6.55	1
TUTTLE + Co Developers telephone						
conference. TUTTLE is anxious to do						
ASKING ABOUT L.L.C. COMPLETED YET.						
PHONE CONT. TO MEMPHIS RE/						
HELEN'S QUESTIONS + HER ATTORNEYS'						
QUESTIONS.						

EXPENSES

2/8/07 - 9/14/07

PHONE MILE COPIES POSTAGE MATERIALS & SUPPLIES HO.

6/18/07 Documents to Gary + Jane + Mount Holly. 0/53.23 47/73.62 4.82/14.27 0/67.21 0/6.55 2.3/9.1

Review, discuss, new signatures, make copies.

6/19/07 MAKE UP PLAT MAP, TOPOGRAPHIC MAP, 0/53.23 36/139.8 13.4/27.78 0/67.21 0/6.55 1/14

Tax bills, watering maps, etc for

Heels and B. DREAS/APPROPRIATE/PERSONS

FOR MARKETING AND SOLICITATION.

VISIT AGENCY TO REVIEW MARKETING

PLANS AND APPROPRIATE PLANS.

6/20/07 Cards for Developers' packages 0/53.23 0/139.8 0/27.78 0/67.21 17.29/25.74 0/9.1

and realtors.

EXPENSES 2/8/07 - 9/14/07		Phone	Miles	Copies	Postage	Travel + Seaside	Hour
4/25/07	Develop Forms for Developers' bids. Put Developers' Bld packages together. Deliver complete Bld package to Turner Co. Visit Rem Estate Office w/ 5 common Lots. Telecon with Williams Engineering re/ Survey all properties. (2) withdraw \$14,000.00 to fund expenses.	0/53.23	47/14.45	11.78/39.56	0/67.31	0/25.74	4/78.2
7/3/07	Maps to Surveyor in Rock Hill. WALK LOT #98 AND ALL of "Area A" WITH MAPS AND TOPO. Meet with TWO Residents of Estate AND answer all their questions.	0/53.23	39/14.84	1.20/40.76	0/67.31	0/25.74	4/78.2

EXPENSES 2/8/07-9/14/07

		PHONE	MILES	COPIES	POSTAGE	MATERIAL & SUPPLIES	Hours
7/6/07	Phone call #9548 - Service to 1/6	23.43	1	40.76	67.31	25.77	78
7/9/07	Telecons: Kuesia Development, John Brannin on purchase lot #98, City of - Klein Ranch Ed Woodward at Williams Engineering, Attorney, Eric Lockamy of Ebenezer Church about Fruit Berry Development, Will Jordan re Title, Warren Naimo Development to set appointments Visit all above 8:15 AM. 5:00 P.M.	46.66	45 15.37	28.74 69.62	20.00 67.31	25.74	5.83
7/11/07	York County Court House - confirm "Area C" RE-APPAINT per Maggie's request. Long Discussion with Childers - Klein and Chris Thomas. Activity Report to Heirs TO 7/11/07.	76.16	33 15.65	32.84 73.46	67.31	25.74	88

EXPENSES 2/8/07 - 9/14/07

PHONE MAIL COPIES POSTAGE SERVICE
INTEREST Ho

PAGE 10 OF 15

DATE	DESCRIPTION	PHONE	MAIL	COPIES	POSTAGE	SERVICE INTEREST	Ho
7/18/07	MEET WITH TAX REALTY BROKER-IN-CHARGE AND SELECT REAL ESTATE AGENT - MONTECAL + STRATEGIZE. LIST 3 COMMON LOTS. REVIEW AND EVALUATE PROPOSAL PLAN.	0/180.97	42/16.35	0/72.46	0/67.31	0/25.74	4/100
7/19/07	ROLL HOIRS ON HOT LISTING. SEEK INPUT AND ADVICE.	0/180.97	0/16.35	0/72.46	N/A/67.31	0/25.74	1/101
7/20/07	TAX ID FAXING TO IRS. AT COPY CENTER. COPY WATER-LINE MAPS, TOPO MAPS, SEWER LINE MAPS FOR HOIRS. BACKUP ^{23.00} IRS FAX WITH U.S. MAIL TO IRS.	0/180.97	23/18.61	18-40/121.86	3.00/70.31	0/25.74	2-1/104

Expenses 2/8/07-9/14/07

PAGE 11 of 15

		PHONE	MILES	COPIC	POSTAGE	MATERIAL SERVING	HOURLY
7/23/07	SEARCH YORK COUNTY Courthouse for 6 versions of COVENANTS AND RESTRICTIONS. Copy them and deliver to Realtors SHOWING TO BUYERS.	0/180.97	50/19.11	8.58/190.50	0/70.31	0/25.74	3/107.2
7/24/07	YTD. Bill to ATTORNEY PERSONAL CHECK #239. development	0/180.97	0/19.11	64/191.14	0/70.31	2,169.30/194.04	0/107.2
7/24/07	MEETINGS: WARREN NORMAN Q., THOMAS COMMERCIAL REALTY, C.P.A., SURVEYOR HUCKS LAND DEVELOPMENT, TATE REALTY. CONTACT WITH HUCKS FOR SURVEYS AND TO MARK STAKE LOCATIONS.	0/180.97	0/77/19.88	64/191.14	0/70.31	2,169.30/194.04	0/112.2
7/27/07	PHONE ALL 9 DEVELOPERS TO OFFER OPPORTUNITY TO BUY AT \$1 MIL PLUS. Solicit OPINIONS ONCE AGAIN.	0/180.97	0/19.88	64/191.14	0/70.31	2,169.30/194.04	0.25/114

EXPENSES 2/8/07 - 9/14/07

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		PHONE	MILES	COPIES	POSTAGE	MATERIALS SERVICES	Hour
7/28/07	SOLICIT ALL HEIRS RE/ ADVICE ON ~~SETTING~~ VALUE ON 5 LOTS. ASK EACH SIGNATORY TO SUGGEST A HOURLY RATE FOR TOMMY'S TIME. DISCUSS DEVELOPMENT HISTORY WITH H.O.A. PRESIDENT AND AGREE TO MEET WITH HOA MEMBERS IN SEPT. WITH CATHY AND HOA MEMBERSHIP. TO DISCUSS FARM HISTORY.	180.97	1988	191.14	N/A 70.31	N/A 2,199.04	11
7/30/07	DISCUSS ~~POST~~ BANK APPRAISALS WITH RECOMMENDED MAI APPRAISER - RATES, VALIDITY, ETC. DISCUSS APPRAISALS WITH ATTORNEY AND HEIRS. PHONE C.P.A.	180.97	13 1988	27.02 191.14	70.31	2,199.04	11

Expenses 2/8/07 - 2/14/07

		PHONE	MILES	COPIES	POSTAGE	MATERIALS & SERVICES	Hours
7/3/07	Meet with C.P.A. & Review our LLC Documents, etc. His job is to keep us out of trouble and protect each partner's activity rights. Need to visit Courthouse and Resurrect Historical Value channels from Assessor and Promote. Final conversation with Will Jones at Title: "Take title \$1,000,000.00"	180.97	35 2023	191.14	70.31	2,194.04	3 11.5
8/2/07	Phone all developers and bidders one more time to seek higher bids (No Thanks)	180.97	2023	191.14	70.31	2,194.04	1.5 11.9
8/3/07	Sign Letter-of-Intent at Thomason Development. Take Tax Forms to C.P.A. Visit Listed Lots and Verify signs installed and specification sheets in boxes.	180.97	37 2060	2.89 191.14	70.31	2,194.04	2 123.5
8/6/07	Long distance calls 6/07/07 - 7/06/07						13.53

EXPENSES 2/8/07 - 9/14/07

PHONE MAILS COPIES POSTAGE MATERIALS
SERVICE HOV

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8/13/07	10413 envelopes from Fred's	0/180.97	0/206.0	0/196.14	0/70.31	3.71/2197.75	0/12
8/14/07	Follow-up visit to Surveyor's office to check on progress. Reply to BURTONS e-mail. Letter with questions re/ intent.	0/180.97	0/207.9	0/196.14	N/A/70.31	N/A/2197.75	3/12
8/18/07	MATERIAL for NOTEBOOKS + COLLATE.	0/180.97	13/2092	4.80/196.02	N/A/70.31	N/A/2197.75	1
8/21/07	CORRESPOND TO HEIRS re/ their INQUIRIES.	0/180.97	13/2105	0/196.02	0/70.31	623.06/2197.75	2/12
8/21/07	MARJIE'S OVERNITE DEMAND MAILING	0/180.97	29/2134	0/196.02	24.12/70.31	0/2197.75	1/12
8/21/07	REPRODUCE ARCHIVE COPIES FOR EACH HEIR BOOK	0/180.97	13/2149	48.41/196.02	0/70.31	0/2197.75	0/12
8/23/07	NEW MAP PKG TO ALL HEIRS WITH TOPOS, etc.	0/180.97	5/2152	0/196.02	16.85/70.31	0/2197.75	3/12
8/24/07	DALE DOUG INTERESTED BUYER. WANTS INFO IMMEDIATELY. RUSH TO COPY CENTER AND THEN TO HIS ROCK HILL OFFICE SO HE CAN BID. D.O.T. MAPS, PLAT MAP, etc.	0/180.97	0/2210	20.10/261.59	0/70.31	0/2197.75	0/12
8/24/07	COPY RECORDS & PROPERTIES HISTORY AT COURT HOUSE	0/180.97	0/2210	16.40/277.99	0/70.31	0/2197.75	0/12

PAGE 15 of 15 ^{2/6/07-9/14/07} Expenses

		Phone	Miles	Copies	Postage	Material & Service	Hours
8/28/07	copy activity Report & mail to Jones	180.97	22.12	1.03 279.02	11.35	1.0 2260.89	2.4
8/28/07	Summary of BIDDING ACTIVITY TO et al.	180.97	22.12	N/A 279.02	11.35	N/A 2260.89	2.4
8/30/07	ASSEMBLE AND SHIP NOTEBOOKS to Heires as promised (MONTHS AGO).	180.97	14.36	110.87 279.02	11.35	5.14 2260.89	5.14
9/4/07	Visit Surveyor in Newport AND FIRE Hitting Non-performance (4 weeks without survey) Meet Reardon in Rock Hill about offer on #98.	180.97	31.67	279.02	22.32	2260.89	2.2
9/6/07	Pitome carries for Seav. to 9/6/07	57.39 238.27	22.67	279.02	22.32	2260.89	1.49
9/6/07	STAMPS to replace ~~used~~ + stock	238.27	22.67	279.02	41.00	2260.89	1.49
9/8/07	ck #2258 to Hucks & Assoc. for STAKES FORATE	238.27	22.67	279.02	267.50	2260.89	1.49
9/10/07	Tally Expenses ^{from 2/07} for SUBMISSION to ACCOUNTANT	238.27	22.67	279.02	263.82	2260.89	4.5
9/14/07	Tally expenses from 2/07 for ACCOUNTANT	238.27	22.67	279.02	263.82	2260.89	3.5

CARRY FORWARD

TO 9/14/07 12/24/07

EXPENSES OF GENERAL MANAGER

T. E. CATO ESTATE L.L.C

9-14-07 — 12-24-07

PAGE 1 OF 7

		PHONE	MILES	COPIES	POSTAGE	SERVICE	How
9/14/07	C/FWD. (2-8-07 FROM 9-14-07)	\$238.27	2.61	\$279.00	\$263.32	\$2980.89	\$5.15
9/17/07	TELECON W/BUYER. VISIT C.P.A. REVIEWED EXPENSES & TIME ACCT. REVIEWED TAX FILINGS TO BE DONE BY C.P.A. TURN IN EXPENSE RECORDS	✓	35 2302	✓	✓	✓	2.5 16
9/24/07	4 Hours (NOT LOGGED) & 30 miles (NOT LOGGED) TO MEET W/ CATO ESTATE HOMEOWNERS MEMBERS. TELECON 1/2 HOUR W/ REALTOR RE/ 5 LOTS LISTED & OFFER/COUNTER-OFFER ON LOTS 13+14	✓	✓	✓	✓	✓	.5 160
9/25/07	PAY AT&T PHONE BILL LATW. (9/7-10/6 USEAGE)	\$53.79 \$292.06	✓	✓	✓	✓	✓
9/30/07	" " " " (9/15-9/14 USEAGE)	\$32.30 \$324.38	✓	✓	✓	✓	✓
10/1/07	TELECON W/BUYER #13+14 DON GORDON & NEGOTIATE OFFER. TELECON THOMASSON RE/ CLOSING HIS FARMWID APTS.	✓	✓	✓	✓	✓	.5 11
10/3/07	TELECONS REALTOR + BUYER LOTS #13+14	✓	✓	✓	✓	✓	.5 161
10/4/07	TELECON REALTOR RE/ LOT #30+31. LOOK UP + FWD.	✓	✓	✓	✓	✓	.5 16
10/12/07	COPY + MAIL DOCUMENTS TO CLOSING ATTY.	✓	3 2305	\$2.00 \$281.00	✓	✓	.75 162
10/19/07	OVERNIGHT DEED TO HELEN RE/ ROADBED	✓	13 2318	✓	\$46.18 \$310.00	✓	1 163
10/24/07	TO N.C. DROP BOX W/ DEEDS, MAIL, PHONE AGENS	\$324.26 \$2331	12 2331	\$281.00 \$310.00	\$2980.89 \$310.00	✓	1.5 164

EXPENSES OF GENERAL MANAGER

T.E. CATO ESTATE L.L.C.

9-14-07 — 12-24-07

PAGE 2 OF 7

		Phone	Miles	Books	Postage	Services Materials	Hours
10/25/07	ROBBED QUIT CLAIM TELECONS BOB, MARJIE, CATY, JANE Plans for Action. 12:00 — 1:00	\$324.50	2331	\$281.00	\$310.00	\$2,980.89	166.2
10/28/07	TELECON TO D. BURTON. NO KNOWLEDGE OF TELEPHONE CONF. CALL. DON'T COME TO RALEIGH. DAVID WANTS TO COVER WITH PARENTS. PROMISES TO THINK ABOUT CONFERENCE HOOKUP	✓	✓	✓	✓	✓	166.3
10/30/07	TELECON TO MARJIE & MARVIN TO ASK FOR MTC. TO REVIEW # DISCUSS STRATEGY FOR MOVING FORWARD. REJECTED. THEY WILL HAVE DAVID CALL ME TO SET UP MEETING IN RALEIGH WON'T SIGN QUIT CLAIM. HAVE QUESTIONS & WILL ANSWER	✓	✓	✓	✓	✓	166.5
11/1/07	D. BURTON CALL ME @ 8:30 P.M. DON'T COME TO SEE MARJIE # MARVIN, D. BURTON WILL SET UP MTC. w/ PARENTS. HE WILL VISIT MARJIE & MARVIN 11/1/07 RE/ A MEETING. OVERNIGHT DEED TO MARJIE & MARVIN WITH RETURN PREPARED OVERNIGHT ENVELOPE ENCLOSED. QUESTIONED AITY. QUALIFICATIONS AND FEES. ASK FOR REFUND. THOMSSON HAS NO \$1,000,000.00 B + D = \$900,000.00. NOT IMPRESSED w/ CATY & JANE. SHOULD NOT PAY ATTORNEY FOR L.L.C. PAPERS. NO SURVEY. WE DISCUSSED 6 DEVELOPERS NOT INTERESTED AT ANY PRICE. DEBATED VALUE OF LAND AND LOTS.	✓	2353	✓	\$32.50 \$342.50	✓	167.5
11/6/07	11:15 AM — 11:40 AM. TELECON WITH BURTONS. REQUEST REVIEW MEETING TO REVIEW EVERYTHING. NO. WILL SEND ME WRITTEN QUESTIONS INSTEAD. LONG DISTANCE IS TODAY	\$73.01 \$397.37	✓	✓	✓	✓	168.1

EXPENSES OF GENERAL MANAGER
T.E. GARD ESTATE L.L.C.

PAGE 3 OF 7

9-14-07 — 12-24-07

		PHONE	MILES	COPIES	POSTAGE	SEVERAL MATERIAL	HOURS
11/11/07	FWD. Email Questionnaires To ALL AND TELECONS W/ JOHNSON & JONES	\$397.37	22.53	\$281.82	\$342.50	\$2980.89	.75 168.
11/13/07	TALLY # PRE. 2006 REAL ESTATE TAXES BILLS & MAIL	\$377.37	23.66	\$281.82	\$342.50	\$2980.89	2.5 171.
11/14/07	(5) TELECON CARRY RE/ PHYSICAL HOUSING AND DRUG PHONE COUNCIL W/ OPPOSITION TO L.L.C. (5) CARRY TO ATTY. W/ GAZA STRIP HOLDUP. (.75) TELECON W/ BUYERS RE/ GAZA STRIP AND POSSIBLE LAW SUIT FOR SPECIFIC PERFORMANCE, ETC. (.25) TELECON TO LLC ATTY. ABOUT LAWSUIT & LIABILITY.	✓	✓	✓	✓	✓	2 173.
11/17/07	4:30-5:04 TELECON W/ ALBERT ABOUT EVERYTHING: HIS ATTORNEY, TAX ATTORNEY, SALE OF INDIVIDUAL LOTS, DAVID PHONE COUNCIL, DISCUSSED TYPES OF APPRAISALS AND DEGREE OF REALITY, AND TAX APPRAISALS	✓	✓	✓	✓	✓	.5 173.
11/21/07	CLIPPER REQUEST ADDL. COPIES OF 5 DOCUMENTS. CAPTION & MAILED IMMEDIATELY.	✓	13 2379	(PREPAID) \$281.82	.53 \$343.03	✓	1 174
11/24/07	TELECON CLIPPER RE/ APPRAISALS, deeds, SURVEYS, AND HOW TO ACCEDE TO BURTON'S DEMANDS.	✓	✓	✓	✓	✓	1.1 175
11/25/07	TELECON BOB. HE DEMANDS PROMPT ACTION.	\$377.37	23.79	\$281.82	\$343.03	\$2980.89	.1 17

EXPENSES OF GENERAL MANAGER

T.E. CATO ESTATE L.L.C.

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9-14-07 — 12-24-07

		Phone	Miles	Copies	Postage	Supplies	Hours
11/26/07	TELECONF. w/LLC ATTY. & CORRESPOND ALL HEIRS	\$397.37	237.9	\$281.82	\$343.07	\$2980.89	177
11/27/07	9:30-12:00: To Buyer & RE-NEGOTIATE SALE TERMS	✓	49.5 2428.5	✓	✓	✓	6.25 183.7
	12:00-12:45: REVIEW STRIP DILEMMA w/ L.L.C. ATTY.						
	2:00-4:00: REPORT TO CARMY & JANE & RETURN						
	6:30-8:00: REPORT & ANSWER TO JONES, BOB, DANN						
11/28/07	SEND 2 BEGGING Ltrs. TO MARJIE, MARVIN, DAVID.	✓	48 2476.5	✓	\$922 \$362.25	✓	4.5 187.7
	CONFERENCE w/ BUYER'S ATTORNEYS TO AVOID LAWSUIT						
	AND SALVAGE DEAL: 9:30-11:30. ANSWER HEIRS						
	LETTERS & INQUIRIES RE/ SUIT: 1:30-2:30.						
	ALSO OVERNITE BEGGING LETTER HARD COPY TO						
	MARJIE AT U.P.S. 4:30-5:00						
11/29/07	8:00-9:00: ANSWER PARTNERS' INQUIRIES RE/ STATUS OF	✓	46 2522.5	✓	✓	✓	3 190.75
	SALE, PARTNERS' PERSONAL ATTORNEYS' QUESTIONS.						
	2:30-4:30: PROCESS RE-NEGOTIATED CONTRACT.						
	TELEPHONE PARTNERS TO ANTICIPATE DELIVERY, DRIVE						
	TO MT. HOLLY TO GET 2 SIGNATURES DONE.						
11/30/07	9:30-1:00: OVERNITE U.P.S. TO HELED WITH OVERNITE RETURN.	✓	200 2722.5	✓	\$77.21 \$439.46	✓	5 195.75
	ENCLOSED. DRIVE TO SIMPSONVILLE TO REVIEW SITUATION						
	DELIVER PAPERS TO DANN & GET SIGNATURE.						
12/1/07	PROHIBIT JONES AND EMIL BURTON ACCUSATIONS	\$397.37	2722.5	\$281.82	\$439.46	\$2980.89	196.25
	AND DEMANDS FOR MONEY TO ALL PARTNERS.						

EXPENSES OF GENERAL MANAGER
T.E. CATO ESTATE L.L.C.

9-14-07 — 12-24-07

PAGE 5 OF 7

12/4/07

11:30-12:00: TELECON Buyer re/ Memphis Delay & EFFECT ON CONTRACT. LTNS to Buyer's Attorney & L.L.C. ATTORNEY TO UPDATE BOTH ON POSSIBILITY HELENS SIGNATURE LOST. BOTH DOCS STILL IN MEMPHIS. PHONE MEMPHIS & REQUEST MAILING. ENVI.

PHONE	MILES	COPIES	ASSAULT	SERVICES	RENTALS	HOUS
\$397.37	2722.5	\$281.82	\$439.46	\$2980.89	0.5	196.

12/5/07

TELECONS JONES re/ STATUS OF DOCUMENTS. IN THE MAIL. ENVI 2 LAW FIRMS AND BUYERS. 10:30 — 12:50.

PHONE	MILES	COPIES	ASSAULT	SERVICES	RENTALS	HOUS
\$397.37	2722.5	\$281.82	\$439.46	\$2980.89	2.25	199

12/6/07

TELECON & ENVI to Attorney re/ BURTON THREATS of FELONY prosecution AND ASSET PROTECTION QUESTIONS AND Necessity of DEFENSE ATTORNEY. DISCUSS WITH BUYERS BURTON BLOCK ON CLEARING TITLE WITH QUIET CLAIM AND CONSEQUENCES. REVIEW IMPASSE WITH LLC ATTY AND BUYERS' ATTORNEY (9:30-10:30). DELIVER OLD CONTRACTS TO JUSTIN VANN, BUYERS ATTY. (11:30-12:30). MEETING WITH THOMASON CO. TO TRY AND SAVE DEAL. RENEGOTIATE. WORK TOGETHER FOR SALVAGE REMEDY. WHEN BUYER OF THREATENED INJUNCTION. MAKE COPIES OF QUIET CLAIM TO MAIL + FAX TO JONES family attorney (1:30-3:30).

PHONE	MILES	COPIES	ASSAULT	SERVICES	RENTALS	HOUS
\$159.93	\$557.30	21	\$1026	\$292.80	\$439.46	\$2980.89

EXPENSES OF GENERAL MANAGER

T.E. CATO ESTATE L.L.C.

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9-14-07 ——— 12-24-07

		Phone	Miles	Copies	Postage	Services + Materials	Hours
12/7/07	APPT. AT TATE REALTY: NEGOTIATE ON LOT #98 A AND (1:30-3:00). RESPOND TO BURTON DEMANDS LETTER OF 11/30/07 (4:00-5:00)	\$557.30	31/2789.5	8/292.08	8/449.46	8/2980.89	2.5/205.5
12/10/07	DUN & RECEIPTS TO ETAL OF R.E. TAXES due	✓	2/191.5	8/296.14	✓	✓	1/206.5
12/12/07	CLOSING AT MORTON & GETTYS. TAKE ARCHITECT CERTIFICATION FOR GARAGE IN CATO ESTATE TO CITY FOR SIGNATURE. MEET C.P.A. TO REVIEW ACTIVITIES. RESPOND DOWNE INQUIRY. (2:45-6:00)	✓	49/2880.5	✓	✓	✓	3.25/209
12/13/07	10:30-12:00 P/M CHECK FROM JOSHUA WANN, ATTY., THEN TO BANK AND OPEN ACCOUNT. 1:00-2:00 GO TO 231 PLANTATION ROAD WITH ARCHITECTURAL APPROVAL. COPIES OF ARCHITECTURAL APPROVAL FORM.	✓	39/2879.5	8/296.46	✓	✓	2.5/212
12/15/07	ACCOUNTING AND BOOKKEEPING. PREPARE REAL ESTATE MAILING AND PAYMENT. RETURN VOIDED CHECKS TO PARTNERS.	8/557.30	8/2879.5	8/296.46	8/449.46	8/2980.89	3/215.2
12/16/07	3 CEMETERIES + get d.o.d. ECT, ELC, TEC	✓	17/2926.5	✓	✓	✓	2/217
12/19/07	CONFERENCE WITH C.P.A. w/ DISTRIBUTION AMOUNT	✓	✓	✓	✓	✓	3/217
12/20/07	DISTRIBUTE CHECKS. DELIVER TWO CERTIFIED MAIL: 4.	✓	49/2975.5	✓	12084/460.30	✓	2.5/220

EXPENSES OF GENERAL MANAGER

T.E. CATO ESTATE L.L.C.

9-14-07 — 12-24-07

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12/21/07 ANSWER INQUIRY ON TAXES, EXPENSES, ACCOUNTING
AND PRICING. WORK UP PROPERTY TAXES, PAY THEM,
REPORT TO ALL CONCERNED.

12/22/07 VOIDED PARTNER PROPERTY TAX CHECKS, COPY, RETURN.

12/24/07 BIG PAPER FOR A COPY, COLLATE, PACKAGE & MAIL

SUMMARY

2/8/07 through 12/24/07

PHONE	\$ 557.30
MILES	\$ 1,449.42
COPIES	\$ 296.46
POSTAGE	\$ 439.46
SERVICES & MATERIALS	\$ 2,980.89
HOURS	\$ 11,981.56
TOTAL	\$ 17,705.09

(* 2,988.5
X \$ 485 (IRS)
\$ 1,449.42)

(* 224.5
X \$ 53.37
\$ 11,981.56)

FINI 2007

BURTON
eburton
BURTON
NON-OWNER
Ex. 58

Subj: Cato Estate Area A, Area B, Area C, and Area D available as a package
Date: 8/1/07 10:26:47 A.M. Eastern Daylight Time
From: CharInsOff
To: smburton@intrex.net, dburton4@nc.rr.com, teamjohnson@charterinternet.com, JONESCLIPPER,
treblard@comcast.net, bcato03@earthlink.net

Marjie Donn Helen Bob Cathy
Marvin Clipper Tom Jane
Bud Albert
Phil Sara
DAVID

The LLC is offering to sell you Areas A, B, C, and D for \$1,000,000.00 or more.
Terms are cash at closing to be within 60 days.

You may be able to develop those pieces or list them for sale or just hold them for an investment. I
want to give each in the family a chance to bid on these properties.

Any bids must be in to me before noon on 8/3/07.

J.T.Cato
General Manager
T.E.Cato L.L.C.

Added 3 more hours.
No LAWS RECD.
SIGNED LETTER of INTENT @ 3:00 PM.
JTC
(CLOSING 12/07)

Get a sneak peek of the all-new AOL.com.

Wednesday, August 01, 2007 America Online: CharInsOff

PX018-001
01404

EXHIBIT 59

SATURDAY
Subj: Questions about TE Cato LLC letter?
Date: 8/4/07 1:26:10 P.M. Eastern Daylight Time
From: SloanMBurton@hotmail.com
To: CharInsOff@aol.com

Tommy,

Marvin and I received your email letter dated 8/1/2007 concerning the offer to the heirs of TE Cato as it relates to the property currently owned in joint by the heirs of my father TE Cato (see copy of your email below in blue text).

----- Original Message -----
From: CharInsOff@aol.com
To: smburton@intrex.net; dburton4@nc.rr.com; teamjohnson@charterinternet.com;
JONESCLIPPERS@aol.com; webland@comcast.net; bcato03@earthlink.net
Sent: Wednesday, August 01, 2007 10:26 AM
Subject: Cato Estate Area A, Area B, Area C, and Area D available as a package

Marjo Donn Helen Bob Cathy
Marvin Clipper Tom Jane
Bud Albert
Phil Sara

WEDNESDAY

The LLC is offering to sell you Areas A, B, C, and D for \$1,000,000.00 or more.
Terms are cash at closing to be within 60 days.

You may be able to develop those pieces or list them for sale or just hold them for an investment. I want to give each in the family a chance to bid on these properties.

Any bids must be in to me before noon on 8/3/07.

J.T.Cato
General Manager
T.E.Cato L.L.C.

I have a few questions concerning the intent of the letter if you don't mind clarifying several points?

Would you please address the following questions with a response:

1. The LLC is offering to sell each heir all of the lots addressed as area A,B,C and D in the estate. What is your purpose for offering the heirs, the opportunity to purchase areas A,B,C and D at this point in time?
2. Where, and how did you obtain a price of \$1,000,000 dollars or more, as the purchase price for the land in areas A,B,C and D? Is this dollar amount based on some sort of formula you obtained or created, or is it from an appraised value for that property that you have obtained from an appraiser?
3. Since all of us already own 1/5 of this property, have you taken into account the fact that this \$1,000,000 amount may be requiring an heir to purchase this land as a whole which that heir could already own 1/5 of, which could mean that any specific heir might be paying for some of the land that they already own?
4. I noticed that you make the statement that you "want to give each in the family a chance to bid on these properties". What are your intentions for offering each heir this opportunity; in other words, what is your next step after the heirs offer or don't offer a bid on the land?

Saturday, August 04, 2007 America Online: CharInsOff

5. We also noticed that the email letter states that "Any bids must be in to me before noon on 8/3/2007"? I know for a fact that David didn't even get the letter until Friday 8/3/2007, although he did receive the email two days before. ✓

*DA BURTON
got 2!!*

6. When you came to visit us on Friday June 1st, 2007, you asked me to sign a letter that allowed you to be a spokesperson for TE Cato LLC as the general manager. As I understood from your explanation of the purpose of that letter at that time, the letter allows you to act as a spokesperson for all of the heirs so that we present a unified front with any developers that may be interested in purchasing or developing the specified land. I personally thought this was a good idea, and I just want to clarify that as general manager, all of the heirs have granted you the ability to only negotiate and record any offers for the land on all of the heirs behalf; however, any final decision to sell or not sell the areas A,B,C, and D or any of the property jointly held by the heirs of TE Cato still rests with all of the heirs coming to a unanimous decision as to what should or should not be done with the property, and obviously doesn't rests solely with any one heir or individual. I'm not trying to be pain or ruffle any feathers, I just want to make sure that all of us are on the same page. The email letter seems to leave open an unresolved answer as to what may or may not be done with the land if any of the heirs do not offer any bids. Without specifying the reason for the offer to the heirs, I wanted to make sure that by accident you don't mistakenly proceed to far in the negotiating process without the proper authorization from all of the heirs. I for one have no desire nor do I cherish, any legal problems or lawsuits from any attorneys representing any developers thinking that somehow your speaking as the TE Cato LLC general manager somehow, represents a legitimate offer on all of the heirs behalves as it relates to the property. The last thing we all need, is a lawsuit from a developer's attorney that misunderstands your authority. ?

TO SELL IT!

7. Finally, could you please mail me a copy of the letter that I signed on June 1st, when you came to our house. I have not yet received a copy of that letter.

*ANOTHER
COMPLETE SET
SENT W.P.S. "Next Day"
DELIVERY (NOON MAIL)*

Finally, I would also like to make you aware just for your knowledge, that after talking to our accountant, the fact that any sell of the land would have a significant impact on me in regards to capital gains tax, since the cost basis of the sell of the land would date back to 1957 when I inherited my portion of the land from my dad. Upon my demise, my children would have a stepped-up cost basis and the amount of taxes would be minimized tremendously for our family. Any current sell of the land will have to be significant to offset this huge capital gains tax that I would incur. ? How much longer since 1957

Regards,
Your Aunt,

Marjorie C. Burton

Saturday, August 04, 2007 America Online: CharlinsOff

FINAL cc: clms

Exhibit 65

Subj: Burton questions on "TECato LLC letter of 8/1/07"
Date: 8/20/07 1:28:51 P.M. Eastern Daylight Time
From: CharInsOff
To: sloanmburton@hotmail.com(Marjie&Marvin), DBurton4@nc.rr.com(David),
sara.TheFamilyConnection@coats-homeless.org(Sara), treblard@comcast.net(Albert),
JONESCLIPPER, teamjohnson@charterinternet.com(Donn), bcato03@earthlink.net(Bob)

Dear Marjie and Marvin,

Sorry its taken a couple of weeks to answer your e-mail. Cookie has recovered well from the loss of her Mother. Thanks for your patience.

I'll try and answer your questions and will follow your paragraph numbering:

1. Because some heirs and children of heirs have expressed interest in owning land. In particular, David Burton and I had a long conversation on 3/19/07 to the effect that he never wanted to sell that land. Tom and Bob offered to sell out our interest in Granddaddy's property to David, but he did not take us up on that offer to be a 20% owner. Others on the family also have the money and may like to be developers of the entire site. That opportunity was made available four months later to everybody. I was trying to be fair. Also, in April of 1985, Jane, Cathy, Sarah, Bob, and Tommy made a written offer to Lib, Marjie, and Helen to buy those five out of their combined 40% ownership. The offer letter and two of the three replies are on file. So, everyone in the family has had a shot at buying parts or the whole.

2. That price is the highest offer I've been able to squeeze from the eight developers I've been working with over the last six months. It's the result of appraisals and competitive offers and counter-offers. I played one off against the other as a strategy that you and Marvin discussed with me at your house on 6/1/07. It wouldn't be fair to allow one of our relatives to buy at less than we've been offered. Please refer to the details of those negotiations in the nine letters and reports I've sent you (so far).

3. Your concerns about fifths is valid. The net effect would be as you suggest. That land is owned by the Corporation. Any buying and selling among the partners would be monitored by an attorney to protect everyone else in the Corporation.

4. See your "#1.". My intentions are to follow the consensus instructions that I received from each heir during surveys, correspondence, e-mails, conferences, telephone calls, and including personal visits like the 10-hour meeting (including the lunch you shared with me) that you and Marvin and I had going over all the documents of the L.L.C. while at your dining room table on 6/1/07. Since no one in our extended families showed any interest in owning the property in part or in total, a Letter of Intent to Purchase was accepted by the Corporation on 8/3/07 at 2:00 P.M. - giving an extra two hours past the 12:00 noon deadline. I really thought your family might want to buy the property and develop it; everyone else wants out and wants to sell and quit paying property taxes.

5. David was the only one to receive two letters. Everyone else got only one. I sent him a duplicate copy of the e-mail through the U.S. Mail as an explanation and apology for leaving his name (but of course not his e-mail name and address that was included with all the others) from the 13-name list of relatives. So, everyone was treated the same but David got one more than anyone else.

6. The same presentation of the L.L.C., deed, and S.C. License Application was given the same way to each signatory. The percentages of ownership were included in the L.L.C. document and you and I

Monday, August 20, 2007 America Online: CharInsOff

and Marvin reviewed them. There was no questioning of ownership percentages by any heir I met with - I guess it's pretty straight forward. The implementation of a Corporation is what you and Marvin have been working on for 30 years - I kept all those typewritten copies all this time. Bud Burton was ready to implement a L.L.C. per his letter to "Cato Family Members (and heirs)" dated 4/23/98 and 3/25/99 - I kept those, too. The 3/25/99 letter from Bud promised L.L.C. implementation. Everyone signed off and supported that. Dale Dove was to set up the L.L.C. and also was going to buy the property for a hoped-for \$613,000.00. according to Bud's report (I have that). Everyone agreed to the Dale Dove deal. Now, all the heirs have agreed that Tommy's turn has come to be in charge and that interests in the Corporation are the same as the percentages of ownership. In the Corporation, no one has "veto power" over the majority.

I really appreciate your concern for liability from exposure to developers, but nothing I do is without consultation with the Corporation Attorney and the Corporation C.P.A. . Since I am neither an attorney nor a C.P.A., their oversight and involvement (as I've stated over and over in letters to the heirs to seek their input and to seek their advice) is necessary to protect the partners and to protect the Corporation. Continuing and ongoing consultations take time and money, but those "consults" represent insurance against risk. Anyway, these activities were outlined during all our planning letters, meetings, and phone calls as we all agreed on this present course of action. I'm trying to stay that course. Be assured, no one misunderstands the authority of the Corporation.

7. Yep. I was in the process of getting a copy of everything into a fat 3-ring binder for you (as promised). It will contain a new map, Corps Waterway maps, gulleys, new roadway, etc. . It has so much in it that it weighs about four pounds! It'll be a central place for all the "stuff".

Thanks for writing me,
Tommy

Letter references from:

Bud 11/16/96, 4/23/98, 4/28/98, 8/10/98, 8/17/04, 9/28/98, 3/25/99, 3/31/99, 12/31/04
Marjie & Marvin 6/2/67, 7/31/68, 2/28/69, 5/5/94, 11/26/99, 3/20/07, 3/21/07, 11/19/00
Tommy 2/24/07, 4/9/07, 6/21/07, 7/12/07, 7/18/07, 7/29/07, 7/31/07, 8/1/07, 8/16/07

Get a sneak peek of the all-new AOL.com.

Monday, August 20, 2007 America Online: CharInsOff

Subj: Fw: Letter #2 to Tommy
Date: 8/21/07 8:40:00 A.M. Eastern Daylight Time
From: SloanW.Burton@hotmail.com
To: charlinsOff@aol.com
CC: dburton4@nc.rr.com

Exhibit 66

Burton's
WANT
More
copies

Tommy,

After receiving your email, I still have questions as to the process by which we are moving forward in an attempt to acquire interest in the possible sale of the areas A,B,C, and D of the jointly owned property by all heirs in Cato Estates.

I appreciate you getting me a 3-ring binder together (item #7 of your email) to eventually send to me regarding all of this information. However, two documents that I am particularly interested in immediately receiving from you, are a copy of the LLC agreement that I signed in your presence at my home on June 1st, 2007, and a copy of all independent appraisals of the property that you have gathered. I have already requested once in a phone conversation with you a copy of the LLC agreement I signed. I have also requested for a second time in my last email a copy of that same document. So far I have not received a copy. Therefore, I am again requesting and demanding a copy of two items that I would like to have you OVERNIGHT to me via either UPS or FedEx, so that I may have a better understanding of the process. I will gladly pay for the shipping cost of these items in order to expedite their delivery to me.

I demand that you ship me these two items OVERNIGHT: *Done see list's Receipt!*

- 1) A copy of the LLC agreement that I signed on June 1st, 2007
- 2) A copy of ALL independent appraisals of the property in question (Areas A,B,C, and D of Cato Estates, that you have acquired in order to evaluate the worth of the property.

My address is as follows:

Marjorie Burton
4300 Boxwood Road
Raleigh, NC 27612

I will expect to receive these items at my home no later than Wednesday, August 22, 2007 since they are to arrive overnight. Thank you!

Regards, Your Aunt,
Marjorie Burton

✓
see UPS
Receipt

notes to me:
1. All items are in 3-ring binder
being copied - will mail to Everyone 8/30/07 JTC

2. Also met his "demands" in
above e-mail & shipped Overnite
+ met some demand for
extra copies. JTC

Wednesday, August 29, 2007 America Online: CharInsOff

10-22-07

EXHIBIT 77

Helen, Margie and Marvin, Don, Cathy, Jane, and Bob:

Please sign this Quit Claim Deed in front of a Notary and return to me as soon as you can.

The new road that Bud negotiated in 2000-2001 with the South Carolina Department of Transportation was Quit Claim Deeded to the State and then the State Quit Claim Deeded the old roadbed back to all of us. A copy of that, recorded 11-14-06, is in your "Big White Notebook".

The "old roadbed" was not made part of "Area B" — the homelace property! So, it's a 50' x 200' strip that stands alone in the middle of "Area B".

The enclosed Quit Claim Deed is that strip. The enclosed Quit Claim is the best way to make that strip once again part of "Area B" without us having to pay about \$2,000.00 for a new survey and more legal fees.

Please get it back to me as fast as you can. I have to follow-up with the "it also"! Jemmm

EXHIBIT 88

Subj: Fw: Questions concerning Cato Estates?
Date: 11/7/07 9:39:00 P.M: Eastern Standard Time
From: SloanMBurton@hotmail.com
To: CharInsOff@aol.com
CC: dburton4@nc.rr.com

Tommy,

We have looked over the new quitclaim deed that you sent, and we have likewise looked into several of the emails that you sent over the past year and we have found some disturbing discrepancies. The following is a list of the problems that prevent us from signing this quitclaim deed, and we need for you to resolve these issues and questions. (Our questions are in blue text).

1. In the email dated 04/09/2007 from Tommy Cato, Tommy states that the Thomasson Developers are selling an apartment complex and would like to file a 1031 like kind exchange within 90 days of selling their apartment complex to avoid taxes. It states "They admit to setting aside \$900,000.00 for Area D & Area B." When David Burton asked Tommy the other night on the telephone about the fact that somewhere he had read about \$900,000 being offered for Areas B & D, when asked about this, Tommy replied "that was a mistake that I made". What mistake are you referring to? Are you telling us now that the Thomasson's never made an offer of \$900,000 dollars for areas B & D? If they did not make an offer of \$900,000.00 dollars, then why would you type such a number in an email? Was your intent to mislead everyone into thinking that we had a legitimate offer when apparently there wasn't a legitimate offer for Cato Estates? And if they did make such an offer, then when you told David that that information in your email was your mistake, exactly what mistake are you referring to? How can this offer be a mistake when you clearly have a specific number that you quote? Likewise, the rush to judgment isn't as critical since the like kind exchange time limit is 180 days not 90 days.
2. The same email further states, "If we can quickly do an LLC, then I can take the Thomasson info and shop around for better offers - after getting new surveys and appraisals done. Even though that's going to cost a bundle, it may prevent us from asking too little or from asking too much." David stated that you told him on the phone the other night when he called you that you had obtained neither a survey nor an appraisal on the Cato Estates property. If this statement is true, and you really haven't obtained an appraisal or new surveys, then you really have no earthly idea what the value of the Cato Estates et al property is worth, and you have contradicted your own best advice that you offered in the email? Why would I be interested in selling a property that may be tremendously undervalued, and worth a lot more money than any of us know about?

Thursday, November 08, 2007 America Online: CharInsOff

3. Furthermore, in an email dated 02/24/2007, Tommy writes, "Thomasson is anxious to spend several million dollars soon. He is selling an apartment complex, in the next few months and wants your property so he can do a Tax-Free-Exchange so he can roll his money and pay no taxes. That makes him amenable to paying a premium price! That developer already owns the old Melvin Faile 5 acres bound by Dutchman Creek, Celanese By-pass, and our Area D. That 5 acres is adjacent to the 7 acre Area D at the intersection of Celanese By-pass and Twin Lakes Road." Tommy gives as the reason why Mr. Thomasson's situation is unique is because of the following four reasons:

- a) He is a motivated buyer
- b) He is considering buying everything
- c) We have some power over him because he is "hot-to buy" and his 5 acres will be enhanced
- d) He wants to close within 6 months (Tax-Free-Exchange)

We would like to know what happened to the "several million dollars" that Mr. Thomasson wanted to spend? Also, the negotiations that you have rendered on our behalf, does not in any way sound like he is paying a premium price as your email suggests! In fact, just the opposite is true from the argument we make in Item #4 of this letter. I for one would like to see what power you have exhibited over him, when I feel that you have caved into his offer by essentially taking the first and only offer that you were given? Where has any of this played to our benefit, when in actuality, you are in our best judgment invoking a "fire sale" and not working to obtain a premium legitimate offer of several million dollars which again you have led us to believe in your email.

Thursday, November 08, 2007 America Online: CharInsOff

4. In that same email dated 02/24/2007 Tommy writes, "One developer is a slicker who is pressing me to the point of aggravation and has made an insulting offer of \$10,000.00 per acre." Yet now you want to sell Areas A, B, C & D for \$1,000,000 (one million) dollars. That means that you have included areas A & C for an extra (one hundred thousand) \$100,000.00 dollars above the original \$900,000.00 dollars offered by the Thomasson's for areas B & D as stated in your email. Area C has a total acreage of 10.5 acres and Area A has a total acreage of 4.35 acres according to the South Carolina Maps of Cato Estates. This combination of areas A & C gives a grand total of 14.85 acres. If you then divide the additional \$100,000.00 dollars that Mr. Thomasson would have to pay to acquire areas A & C by the total 14.85 acres for both areas, that will give a price per acre of \$6,734.00 per acre. I for one find this price totally unacceptable as a reasonable price for an acre of land, when I currently have personal lots for sale within Cato Estates that sell for between \$30,000.00 and \$50,000.00 dollars for less than an acre of land in some cases. Why should any of us be satisfied accepting a price of \$6,734.00 per acre and expect to be pleased with that offer when Tommy himself stated in the email dated 02/24/2007 that the price one slicker developer offered was an "insult at \$10,000 per acre"? Again Tommy, you have contradicted your own advice, and I question whether or not you really have everyone's best interest at heart in negotiating a fair and equitable price for the et al property considering the fact that you contradict and violate your own best suggestions repeatedly. Moreover, in an email dated 07/31/07, Tommy writes the following: "7/18/07 Spent 4 hours reviewing comparable properties, discussing our lots, marketing plans of the Realtor, and negotiating a listing price for lots #98, #13, and #14: \$69,000.00, \$55,000.00 and \$55,000.00" respectively. Tommy, how can you justify selling these 3 lots for this price yet selling areas A & C for \$6,734.00 per acre. There is no consistency to your evaluation of the Cato Estates property or lack of evaluation since we have no appraisal or survey.

Thursday, November 08, 2007 America Online: CharInsOff

5. Yet another misleading statement that you sent in that same email dated 02/24/07 you write: "Capital Gains Taxes are the lowest now than within recent times. We should act now." Denoting a sense of urgency in order to take advantage of the low Capital Gains Tax. Tommy goes on to say, "The new liberal congress has promised to increase taxes-especially Capital Gains Taxes-as soon as they can. We should act now." Again, you are suggesting that Capital Gains Taxes will increase soon, and in order to avoid paying higher taxes, then we must act soon to sell this property. In reality, the following excerpt from the website www.bankrate.com, totally contradicts the urgency to avoid higher taxes on Capital Gains. See the following quote I took from that website:

For many years, investors whose overall income put them in the top four income-tax brackets faced a long-term capital gains rate of 20 percent, while lower-income investors paid capital gains taxes of 10 percent.

Tax-law changes in May 2003, however, lowered the rates by 5 percent each. Most investors, which generally means folks in the higher-income ranges, now find their capital gains taxed at 15 percent. Taxpayers in lower-income brackets pay only 5 percent on most investment earnings.

These lower rates were scheduled to end on Dec. 31, 2008.

However, in May 2006, lawmakers agreed to extend this tax break for investors for another two years. Now capital gains and qualified dividends will continue to be taxed at 15 percent (or 5 percent for lower-income taxpayers) through 2010.

You will notice that the lower tax rate is extended to the year 2010 which means that we have no incentive "to act now" because there is NO urgency in avoiding a higher tax on the sale of the land. We have until the end of 2010 before that takes affect.

6. There is yet another problem I see that probably many of the heirs haven't thought of, and that is profit or return on investment. Given the following scenario:

Right now, we have all paid just on the et al property a total of \$44,869.02 in property taxes just from 1990 to 2006 excluding two years 2001 and 2003. If this land were to be sold for \$1,000,000 (one million) dollars, Marjorie's 20% share of that sell would equal \$200,000 dollars. A 15% tax bracket on long term capital gains would equal (\$200,000 times 15%) or \$30,000 owed in taxes. Add to that \$30,000 dollars the 20% of Marjorie's share of the taxes already paid \$44,869.02 and you get \$8,973.00 dollars, or a total of taxes paid by Marjorie at the time of the proposed sell of the land at approximately \$40,000.00. Marjorie's net profit on that would equal \$160,000.00. Sounds great until you figure that is a 16% return on the total \$1,000,000 divided by the time of 50 years that she has been holding the land and paying taxes and the return equals (0.32%) or 1/3 of 1% per year. Not a very good return if I may say so considering the long term investment! This figure does not include any fees to be paid by TE Cato estates for handling all of the past years bookwork etc.

Regards,

Marvin and Marjorie Burton

Thursday, November 08, 2007 America Online: CharInsOff

David Burton Road Runner

From: "Marvin Burton" <SloanMBurton@hotmail.com>
To: "David Burton RR" <dburton4@nc.rr.com>
Sent: Wednesday, December 26, 2007 8:03 PM
Attach: Cato Estates comments.eml
Subject: Fw: Cato Estates comments

*attached email is
the next page
from Carroll Pitts*

----- Original Message -----

From: CharInsOff@aol.com
To: sloanmburton@hotmail.com ; DBurton4@nc.rr.com
Sent: Friday, November 16, 2007 4:42 PM
Subject: Fwd: Cato Estates comments

F.Y.I.: In addition to all the market appraisals (about 10) this York County attorney has been specializing in real estate matters for 42 years. He commutes by our property every day and knows the market and knows, well, all the "players".

See what's new at AOL.com and Make AOL Your Homepage.

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.516 / Virus Database: 269.17.9/1197 - Release Date: 12/25/2007 8:04 PM

12/26/2007

PX024-001
01416

David Burton Road Runner

From: "Pitts, Carroll" <CPitts@rbh.com>
 To: <CharlinsOff@aol.com>
 Cc: "Pitts, Carroll" <CPitts@rbh.com>
 Sent: Thursday, November 08, 2007 2:53 PM
 Subject: Cato Estates comments

*This goes with
 previous page email
 This is the attachment*

Tom, I have a few comment as an outsider.
 Cato Estates is not a "hot" area for development. To my knowledge, there is not a list of potential purchasers just waiting to purchase any piece or all of the property.

1. Individual home site lots. The are probably the easiest to dispose of and should bring decent prices. However, potential purchasers are probably limited to persons who already know someone who live there. Speculative builder are more likely to go into a new subdivision.
2. Celanese/Twin Lakes property is basically a hole in the ground next to a bigger hole in the ground owned by Thomasson. If he bought the Cato lot to go with his own lot, it would improve both, and Broadus is one of the few people who can make bad property work for his development.
3. Ebenezer Road property is probably the most valuable and if one could find the right buyer for the right purpose, it would bring a nice price. The property across Ebenezer Road has developed pretty nicely, but on the Plantation Road side, nothing much has happened.
4. Ten acre tract. If I were offered a Deed for free, I would probably not take it. I don't know how one can developed it. It has to be used for residential only and probably only for free standing houses as opposed to multifamily housing such as townhouses. My guess is that when someone starts to developed this tract, there will be no less that 5 adjoining owners who will come forward and say "Mr. Cato said this would never be developed".

As I said months ago, if I were the owner and some one offered a million dollars for all of it, I wouldn't stop running until it was in my bank.

Feel free to share my opinions.

Carroll

12/26/2007

PX024-002
 01417

EXHIBIT 1071

Subj: Cato Estate sale of A,B,C,&D
Date: 12/12/07 1:31:04 P.M. Eastern Standard Time
From: CharInsOff
To: jonesclipper(pass to Helen,cathye@comporium.net,cathye@comporium.net/pass to
all { Jane),bcato03@embarqmail.com,teamjohnson@charterinternet.com,sloanmburton@hotmail.com. } all

Because of the impasse over clearing the old roadbed through a simple Quit Claim, your L.L.C. was forced to renegotiate terms of the 8/3/07 Intent to Purchase Agreement. We will proceed to closing under the revised Contract for a reduced \$900,000.00 with the remaining \$100,000.00 to pass upon the clearing of title to the old roadbed. The buyer has pledged an additional \$10,000.00 toward the extra expense to the L.L.C. in petitioning the Court of Common Pleas for resolution.

A partial distribution to interests will be made as soon as the C.P.A. audits the to-be-set-up L.L.C. checking account. Normally a L.L.C. would distribute about 80% of funds prior to dissolution of the L.L.C., but because of some recent dissension, the life span of the L.L.C. may be extended.

After 50 years, some progress is being made; I'll keep you posted.

J.T.Cato
General Manager
T.E.Cato Estate L.L.C.

See AOL's top rated recipes and easy ways to stay in shape for winter.