

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2015-CP-07-00913

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SC Court of Appeals

IN THE MATTER OF THE ESTATE OF JOHN JOSEPH MANNING, Jr.

Deanna Bushman, as Holder of Durable Power of Attorney
for Sally Manning and as Trustee of the Trust Agreement for
Sally Manning Dated 6 December 2004,

Respondent,

v.

The Estate of John Joseph Manning, Jr., John J. Manning, III,
Christopher Manning, and Linda Manning,

Appellants.

RECORD ON APPEAL

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-00913

In the Matter of the Estate of John Joseph Manning, Jr.

Deanna Bushman, as holder of Durable Power of Attorney for Sally Manning and as Trustee of the Trust Agreement of Sally Manning dated Dec 6, 2004,
PLAINTIFF(S)

The Estate of John J. Manning, Jr. John J. Manning, III; Christopher Manning, and Linda Manning
DEFENDANT(S)

Submitted by: Crystal H. Swinford	Attorney for : ☐ Plaintiff ☐ Defendant
	or
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Defendant's Motion for Reconsideration of this Court's Order, dated Sep 8, 2017 is denied without rehearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Beaufort Common Pleas

Case Caption: Deanna Bushman , plaintiff, et al VS John J Manning Jr , defendant, et al
Case Number: 2015CP0700913
Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2017-09-19 11:19:24 page 3 of 3

0003

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO: 2015-CP-07-00913

IN THE MATTER OF THE ESTATE OF)
JOHN JOSEPH MANNING, JR.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY FOR)
SALLY MANNING AND AS TRUSTEE)
OF THE TRUST AGREEMENT OF)
SALLY MANNING DATED DECEMBER)
6, 2004,)

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT AS TO THE
ELECTIVE SHARE CAUSE OF
ACTION
(Not Fully Resolving Case)**

Plaintiff,)

vs.)

THE ESTATE OF JOHN J. MANNING, JR;)
JOHN J. MANNING, III; CHRISTOPHER)
MANNING; AND LINDA MANNING,)

Defendants.)

This matter came before the Court on July 11, 2017 for a hearing on Plaintiff's Motion for Partial Summary Judgment as to the Elective Share and Defendants' Motion for Summary Judgment. Present on behalf of Plaintiff Deanna Bushman¹ were J. Ashley Twombly and Jennifer I. Campbell, and present on behalf of Defendants the Estate of John J. Manning, Jr., John J. Manning, III, Christopher Manning, and Linda Manning was Elizabeth B. Mayo.

The issue raised in both motions is whether Sally Manning, Decedent John Manning's surviving spouse, is entitled to take an elective share of one-third of Decedent's estate, or, if the

¹ Sally Manning has been diagnosed with Alzheimer's disease and is *non compos mentis*. Plaintiff Deanna Bushman is the holder of Mrs. Manning's durable Power of Attorney and is the trustee of Mrs. Manning's Trust Agreement.

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contingent and discretionary trust described in Decedent's estate planning documents is sufficient to satisfy Mrs. Manning's elective share. For the reasons contained here, Mrs. Manning is entitled to take an elective share of one-third of Decedent's estate, and that the contingent and discretionary trust described in Decedent's estate planning documents does not satisfy the elective share under South Carolina law.

I. Relevant Factual Background

Based on review of both Plaintiff's motion and supporting memorandum and Defendants' motion and supporting memorandum, the parties agree on the relevant facts. Decedent and Sally Manning were married at the time of Decedent's death on September 4, 2014. In his estate planning documents, Decedent made no provisions for Mrs. Manning. In his First Codicil to his Last Will and Testament signed on September 2, 2009, Decedent stated, "I expressly make *no provision* in this Will for my wife, SALLY A. MANNING as she has been provided for by other means." Likewise, in the Third Amendment and Restatement of his Revocable Trust, Decedent again stated "I hereby expressly make *no provision* in this Trust Agreement for my spouse, SALLY A. MANNING." (emphasis added).

Despite the expressed language stating Mrs. Manning was to receive nothing upon Decedent's death, Decedent's Trust included the following provisions: "Notwithstanding the above, in the event any portion of the Trust Estate *shall be deemed* payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III, and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee of such separate share." (emphasis added).

Paragraph (C) of Article 4 of Decedent's Trust provides as follows:

- (1) The trustee shall pay to, or for the benefit of, my spouse, during her lifetime, so much of the income of the separate share, if any, established in this Paragraph (C) as the trustee shall, from time to time, determine to be necessary for the health and support of my spouse, in accordance with the standard of living to which she has become accustomed, including medical surgical, hospital or other institutional care, due regard being given by the trustee to the amount of income known to the trustee to be available to by spouse from other sources.
- (2) Upon the death of my spouse, the principal and all accrued and undistributed income, if any, of such separate shall be added to and become a part of the Manning Family Share to be held, administered and distributed as provided in ARTICLE 5.

The Decedent died in 2014, and per the terms of his estate planning documents, nothing passed to Mrs. Manning. Moreover, the trust he described in his estate planning documents was never funded and furthermore, nothing has ever been paid to Mrs. Manning from his estate or any related trust thereto.

II. Standard of Review

"Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." Preservation Capital Consultants, LLC v. First American Title Ins. Co., 406 S.C. 309, 315, 751 S.E.2d 256, 259 (2013); Rule 56(c), SCRCP. Since there are no disputed issues of material fact, this case is proper for summary judgment.

III. Analysis

South Carolina Code Ann. § 62-2-201 provides that the surviving spouse of a decedent has "a right of election *to take* an elective share of one-third of the decedent's probate estate." S.C.

Code Ann. § 62-2-201(a).² Because the elective share is designed to provide for the surviving spouse, the subjective intent of the decedent cannot and does not override the elective share. As the South Carolina Supreme Court stated, “[t]he provisions concerning the elective share do not provide for the testator’s intent to the contrary Therefore, we find that the elective share provision may not be ignored by a testator” Matter of Patrick, 303 S.C. 559, 562-63, 402 S.E.2d 664, 666 (1991).

It is undisputed that nothing has passed to Mrs. Manning under Decedent’s Will and Revocable Trust. In fact, Decedent’s estate planning documents both expressly state that no provision is made for Mrs. Manning. Because nothing has passed to Mrs. Manning under Decedent’s estate planning documents, Mrs. Manning is entitled to take an elective share of one-third of Decedent’s probate estate, free of trust, pursuant to S.C. Code Ann. § 62-2-201.

Defendants argue that the contingent and discretionary trust of Paragraph (C) of Article IV of Decedent’s Revocable Trust is sufficient to satisfy Mrs. Manning’s elective share. This Court disagrees, finding the contingent and discretionary trust does not satisfy Mrs. Manning’s elective share. In terms of satisfying the elective share, South Carolina law provides:

...all property, including any beneficial interest, which passes or has passed to the surviving spouse, or would have passed to the surviving spouse, but was renounced or disclaimed must be applied first to satisfy the elective share...

S.C. Code Ann. Section 62-2-207(a). In the case *sub judice*, the Decedent clearly set forth his intent by providing, in no uncertain terms, that he was making “no provision” for Mrs. Manning. As a result, no beneficial interest passed to Mrs. Manning via Decedent’s revocable trust. The trust only purports to provide for Mrs. Manning at some point in the future and based

² In their Motion for summary judgment filed on March 8, 2017, Defendants concede that (1) Mrs. Manning is entitled to an elective share; (2) Mrs. Manning made a timely claim for an elective share; and (3) the assets of Decedent’s Revocable Trust are included as part of Decedent’s probate estate for purposes of calculating the elective share.

upon a determination, through some unspecified process, that a portion of the estate was "deemed" payable to her. Further, by its terms, payments to, or for the benefit of Mrs. Manning, *if any*, are only to be made upon the trustee's determination that such payments are "necessary for the health and support" of Mrs. Manning. Therefore, Mrs. Manning is not actually "entitled" to any portion of the trust. Further, such contingent and discretionary provisions render any purported beneficial interest incapable of calculation for the purpose of applying toward satisfaction of her elective share.³ Accordingly, the language of the revocable trust, does not and cannot satisfy the elective share under South Carolina law.⁴

IV. Conclusion

For the reasons stated herein, the Court finds that Sally Manning, Decedent's surviving spouse, is entitled to take an elective share equal to one-third of Decedent John J. Manning, III's probate estate, which for calculation purposes includes the assets held in trust. Further, Mrs. Manning is entitled to receive her elective share outright and free of trust.⁵ Defendants' Motion for Summary Judgment is DENIED, and Plaintiff's Motion for Partial Summary Judgment is GRANTED. This Order does not resolve the case in its entirety, and the case will continue on the remaining causes of actions.

IT IS SO ORDERED.

CARMEN T. MULLEN
Judge, Fourteenth Judicial Circuit

_____, 2017
Beaufort, South Carolina

³ These provisions also preclude the contingent and discretionary trust from qualifying for "full value" satisfaction because distributions are completely discretionary and trustees are also remainder beneficiaries.

⁴ Plaintiff's expert Harley D. Ruff opined that the contingent and discretionary trust a) is of no legal or practical effect, and b) even if recognized, would not satisfy the elective share.

⁵ Defendants do not dispute that the assets held in trust at the Decedent's death are to be included in the probate estate for purposes of determining the elective share amount.

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Beaufort Common Pleas

Case Caption: Deanna Bushman , plaintiff, et al VS John J Manning Jr , defendant, et al
Case Number: 2015CP0700913
Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

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0009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF THE ESTATE OF
JOHN JOSEPH MANNING, JR.

DEANNA BUSHMAN, as HOLDER OF
DURABLE POWER OF ATTORNEY
FOR SALLY MANNING and as
TRUSTEE OF THE TRUST
AGREEMENT OF SALLY MANNING
DATED DECEMBER 6, 2004,

Plaintiff,

vs.

THE ESTATE OF JOHN J. MANNING,
JR; JOHN J. MANNING, III;
CHRISTOPHER MANNING; AND
LINDA MANNING,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2015-CP-07-913

**AMENDED COMPLAINT AND
PETITION FOR ELECTIVE SHARE
(JURY TRIAL REQUESTED)**

2015 DEC 21 PM 4:39
JEROME ROSEBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: DEFENDANTS ABOVE NAMED:

Deanna Bushman, as the Holder of the Durable Power of Attorney for Sally A. Manning and as Trustee of the Trust Agreement of Sally Manning dated December 6, 2004, hereinafter "Plaintiff," complaining of Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff currently holds the Durable Power of Attorney for Sally Manning, which was recorded on November 30, 2006 and is also the Trustee of the Trust Agreement of Sally Manning dated December 6, 2004.

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2. Sally Manning (Sally) is a citizen and resident of the County of Beaufort, State of South Carolina.

3. The Estate of John (Jack) J. Manning, Jr., was opened with the Beaufort County Probate Court and John J. Manning, III, was appointed as personal representative of the Estate of Jack Manning on April 8, 2015.

4. Defendant John J. Manning, III, (Manning, III) is, upon information and belief, a citizen and resident of the County of Westchester, State of New York.

5. Defendant Christopher Manning is, upon information and belief, a citizen and resident of the County of New Haven, State of Connecticut.

6. Defendant Linda Manning is, upon information and belief, a citizen and resident of the County of New Haven, State of Connecticut.

7. Jurisdiction over all out of state Defendants, including but not limited to John J. Manning, III, Christopher Manning, and Linda Manning, is appropriately based upon SC Code § 36-2-803 known as the South Carolina Long Arm Statute and this court has jurisdiction pursuant to S.C Code Ann. § 15-7-30.

8. The most substantial part of the alleged acts and omissions giving rise to this Complaint occurred in Beaufort County, South Carolina.

FACTUAL ALLEGATIONS

9. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

10. John J. (Jack) Manning, Jr. was married to Sally.

11. During their marriage, Jack and Sally kept their finances separate, and Jack historically did not access Sally's assets.

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12. Sally executed a Durable Power of Attorney that was filed on November 30, 2006. Under the Durable Power of Attorney, Jack was appointed as Agent, and, in the event Jack was unable to serve as Agent, Plaintiff was named as the alternate.

13. On November 29, 2004, Jack established a Revocable Trust (Jack Manning Revocable Trust) that was amended on June 6, 2008, September 2, 2009, and on July 26, 2012.

14. On December 6, 2004, Sally established the Trust Agreement for Sally Manning (Sally Manning Trust). Sally is listed as the Trustee and Jack is named as the alternate Trustee should Sally become incapacitated. Plaintiff is now the Trustee of this Trust.

Sally and Jack's Cognitive Decline

15. Sally has been diagnosed with dementia/Alzheimer's disease and since the latter part of 2008 has been living at The Cypress of Hilton Head in The Preston Health Center and has been receiving specialized care for her cognitive impairments.

16. Jack, upon information and belief, began having cognitive issues causing a cognitive decline by 2011-2012, and required the assistance of in-home caregivers.

Manning, III and Christopher Manning Take Advantage of Cognitive Declines

17. Manning, III, and Christopher Manning are Jack's only two children.

18. In 2012, Manning, III and Christopher Manning began to take advantage of Jack and Sally's cognitive declines. Specifically, they took over the finances of both Jack and Sally and began to divert money to themselves.

Morgan Stanley Accounts

19. Sally had an IRA account and a Reserved Client Financial Management Account with Morgan Stanley.

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20. In or around September 28, 2012, Manning, III improperly retitled Sally's Reserved Financial Management Account from her personal name into the name of the Sally Manning Living Trust. They also purported to name Jack as the Trustee. In the alternative, Manning, III exercised undue influence and control over Jack and forced or otherwise convinced him to retitle Sally's Reserved Financial Management Account into a trust account and forced or otherwise convinced Jack to name himself as the Trustee even though Jack was not capable of serving as trustee at that time due to his cognitive decline.

21. Manning, III improperly withdrew over \$182,700.00 from Sally's Reserved Client Financial Management Account and Trust Account. In the alternative, Manning, III exercised undue influence and control over Jack and forced him to withdraw funds from Sally's Reserved Client Financial Management Account and Trust Account.

22. The funds improperly withdrawn from Sally's Morgan Stanley Accounts were used for the personal benefit of Manning, III and Christopher Manning.

23. In April 2014, the mailing address for Sally's monthly statements was changed to 344 Midland Street, Bridgeport, Connecticut.

24. In May 2014, the mailing address for Sally's monthly statements was changed to 13 Baylis Court, Tarrytown, New York.

Wells Fargo Accounts

25. Prior to Manning, III and Christopher Manning taking advantage of Sally and Jack's cognitive declines, Sally was an owner of two Wells Fargo Checking accounts, a Crown Classic Banking Account that was Sally's primary checking account (Account -4456) and a Crown Classic Banking Account that was Jack's primary checking account (Account -4469).

Sally's Primary Wells Fargo Checking Account

26. In February 2012, Manning, III was added to Sally's primary checking account by Manning, III representing himself as Jack. In the alternative, Manning, III unduly and improperly influenced Manning to make this change, or Manning, III improperly used Jack's Power of Attorney to make this change.

27. Starting with the December 2012 statement, the statements for Sally's primary checking account were mailed to 427 Brewster St., Bridgeport, Connecticut 06605-3409.

28. Starting with the December 2013 statement, the statements for Sally's primary checking account were mailed to 334 Midland Street, Bridgeport, Connecticut 06605-3456.

29. After Manning, III was added to Sally's primary checking account, the account use changed.

30. Upon information and belief, Manning, III and Christopher Manning began improperly using Sally's primary checking account for their own personal benefit.

31. The monthly statements for Sally's primary checking account establish multiple ATM withdrawals and purchases in New York and Connecticut. Purchases made include but are not limited to Cumberland Farms in Fairfield Connecticut, Taylormade-Adidas, Nordstrom in White Plains New York, Fairview Golf Center in Elmsford, New York, and Cirque du Soleil, none of which were to benefit Sally.

32. Funds from Sally's primary checking account were transferred to and from the other Wells Fargo accounts.

33. Manning, III and Christopher Manning withdrew over \$11,880.00 from Sally's Wells Fargo Checking Account for their own personal benefit.

Jack's Wells Fargo Primary Checking Account

34. In February 2012, Manning, III was added to this account by Manning, III representing himself as Jack. In the alternative, Manning, III unduly and improperly influenced Jack to make this change or Manning, III improperly used Jack's Power of Attorney to make this change.

35. Christopher Manning was added to this account on September 4, 2014, after Jack died on September 4, 2014 at 5:20 am.

36. Starting with the December 2012 statement, the statements for Jack's primary checking account were mailed to 427 Brewster St., Bridgeport, Connecticut 06605-3409.

37. Starting with the December 2013 statement, the statements for Jack's primary checking account were mailed to 334 Midland Street, Bridgeport, Connecticut 06605-3456.

38. After Manning, III was added to Jack's primary checking account, the account use changed.

39. Before Manning, III was added to Jack's primary checking account, the financial transactions between Jack and his children and grandchildren were Christmas checks and birthday checks that generally ranged between \$50.00 and \$100.00.

40. After Manning, III was added to Jack's primary checking account, Manning, III and Christopher Manning began using the account for their own personal benefit.

41. The monthly statements for Jack's primary checking account establish multiple ATM withdrawals, transfers to pay credit cards including payments to a Visa card that, upon information and belief did not belong to either Sally or Jack, and payments to a Chase card in the name of Manning, III and purchases, none of which were to benefit Sally or Jack.

42. Funds from Jack's primary checking account were transferred to and from the

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other Wells Fargo accounts.

43. Manning, III and Christopher Manning withdrew over \$123,700.00 from Jack's primary checking account for their own personal benefit.

Wells Fargo Premier Checking Account

44. On or about September 24, 2012, Jack and/or Manning, III opened a Premier Checking Account (-2449) initially in Jack's name.

45. By October 31, 2012, Manning, III, was added to the Premier Checking Account.

46. On or about February 11, 2013, Sally was added to the Premier Checking Account.

47. Upon information and belief, Sally was added to the Premier Checking Account to facilitate transfers and withdrawals from Sally's primary checking account and the Premier Checking Account and to facilitate misappropriation of her monthly Social Security checks.

48. Starting with the December 2012 statement, the statements for the Premier Checking Account were mailed to 427 Brewster St., Bridgeport, Connecticut 06605-3409.

49. Starting with the December 2013 statement, the statements for the Premier Checking Account were mailed to 334 Midland Street, Bridgeport, Connecticut 06605-3456.

50. Funds from Sally's primary checking account and from Jack's primary checking account were deposited into the Premier Checking Account.

51. In addition, Sally's monthly Social Security checks were deposited into the Premier Checking Account starting in February 2013.

52. The monthly statements for the Premier Checking Account establish multiple

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transfers to Sally and Jack's primary checking accounts, transfers to pay credit cards including payments to a Visa card that, upon information and belief did not belong to either Sally or Jack, and purchases, none of which were to benefit Sally.

53. In December 2013, Manning, III wrote check payable to Linda Manning for \$12,000.00 from the Premier Checking Account and wrote "Have fun" in the memo line.

54. Manning, III and Christopher Manning withdrew over \$37,500.00 from the Premier Checking Account for their own personal benefit and benefit of Linda Manning.

55. Jack died on September 4, 2014.

56. Manning, III and/or Christopher Manning have never been the holder of Sally's Durable Power of Attorney and have never been the Trustee of Sally's Trust.

FOR A FIRST CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY BY JOHN J. MANNING, JR., AND BY JOHN J. MANNING, III)

57. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

58. At all relevant times, Jack owed a fiduciary duty to Sally to use the Durable General Power of Attorney and exercise his powers as Trustee in a manner which was in Sally's best interest.

59. To the extent that Manning, III may contend that he believed he was a General Power of Attorney holder for Sally or was acting in the place of Jack, either as a Trustee or Power of Attorney holder, then Manning, III owed a fiduciary duty to Sally.

60. Jack and/or Manning, III breached the fiduciary duties owed by engaging in acts involving self-dealing, subterfuge, unfair interested-party transactions, siphoning of funds and fraudulent schemes for their own personal gain and for the personal gain of Christopher

Manning and other family members as described more fully above.

61. Plaintiff, on behalf of Sally, has been damaged, and will continue to be damaged, including but not limited to actual financial losses, as a proximate cause and result of the breaches and misconduct of Jack and/or Manning, III.

62. In addition to actual damages due Plaintiff on behalf of Sally, due to the reckless, willful, wanton, and intentional conduct of Jack and Manning, III in conscious disregard of Sally's rights, Plaintiff is entitled to an amount of punitive damages.

FOR A SECOND CAUSE OF ACTION
(CONVERSION AS TO ALL DEFENDANTS EXCEPT LINDA MANNING)

63. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

64. Defendants converted the assets of Sally's Reserved Financial Management Account, an account solely in Sally's name, by placing the assets into a trust account and naming Jack as the Trustee.

65. Defendants also converted assets of Sally by withdrawing and transferring and accepting funds belonging to Sally for their own personal use.

66. The money and assets Defendants misappropriated from Sally belong to Sally.

67. At all relevant times, Defendants knew that they did not have a right to take the Sally's money and assets for their own personal benefit.

68. Defendants wrongfully converted and appropriated money and assets owned by Sally without any legal right to do so.

69. In total, Defendants have converted at least \$585,000.00.

70. The misappropriation and conversion of said funds was willful, wanton, heedless, gross and reckless.

71. Plaintiff, as Durable Power of Attorney holder for Sally, has suffered and is continuing to suffer actual damages proximately caused by Defendants' breaches and misconduct and is entitled to damages in an amount which will adequately compensate for the injuries sustained by Sally.

72. In addition to actual damages owed Plaintiff, due to the reckless, willful, wanton, and intentional conduct of Defendants, all of which was done in conscious disregard of Plaintiff's rights and the rights of Sally, Plaintiff is entitled to an amount of punitive damages which will adequately punish and impress upon Defendants the seriousness of their conduct.

FOR A THIRD CAUSE OF ACTION
(CONSTRUCTIVE TRUST AS TO ALL DEFENDANTS)

73. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

74. Through a breach of fiduciary duty, bad faith, abuse of confidence, and/or mistake of fact, Defendants converted and received funds that belonged to Sally.

75. Under these circumstances, Defendants have wrongly obtained property which they ought not retain in good conscience.

76. Plaintiff is entitled to the intervention of equity and to the imposition of a constructive trust on all of the assets and funds that Defendants misappropriated from Sally.

77. Any assets inappropriately converted should be returned to Plaintiff, as Durable Power of Attorney holder for Sally.

FOR A FOURTH CAUSE OF ACTION
(UNDUE INFLUENCE AND DURESS AS TO JOHN J. MANNING, III, AND CHRISTOPHER MANNING)

78. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates

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them by reference as if repeated verbatim.

79. Plaintiff is informed and believes that by at least early 2012, Jack was declining in health, including a cognitive decline.

80. Manning, III, and Christopher Manning maintained a confidential relationship and/or fiduciary relationship with Jack.

81. During a time in which Jack was in a frail physical and mental state and was susceptible to overreaching influences, Manning, III and Christopher Manning seized upon the opportunity to exercise undue influence and substantial control over Jack.

82. Manning, III and Christopher Manning used undue influence, duress, and mental coercion to destroy Jack's free will and to cause Jack to, among other things,

- a. completely revoke his Second Amendment and Restatement of John J. Manning, Jr. Living Trust on July 26, 2012, and establish a new trust entitled Third Amendment and Restatement of John J. Manning, Jr. Living Trust;
- b. convert Sally's Morgan Stanley Reserved Client Financial Management Account into a Trust Account with Jack as a Trustee;
- c. make large withdrawals from Sally's Morgan Stanley accounts, including but not limited to a \$25,000.00 withdrawal in September 2012, a \$40,185.82 withdrawal in April 2013; and a \$40,000 withdrawal in April 2014
- d. allow Manning, III, and Christopher Manning to withdraw money from the Wells Fargo accounts owned by Jack and Sally;
- e. give large sums of money to family members of Manning, III, and Christopher Manning, including but not limited to a \$12,000 check to Linda Manning, the wife of Christopher Manning.

83. As a result, Defendants caused losses to Plaintiff, on behalf of Sally, and Plaintiff seeks a return.

84. The actions that were caused by the undue influence of Manning, III, and Christopher Manning should all be deemed invalid and unenforceable.

85. The Third Amended and Restatement of John J. Manning, Jr. Living Trust should be held invalid and unenforceable and the assets in the Trust should be distributed pursuant to the terms of the Second Amended and Restatement of John J. Manning, Jr. Living Trust.

86. The assets transferred to the Morgan Stanley Trust Account should be restored in the Morgan Stanley Reserved Client Financial Management Account.

FOR A FIFTH CAUSE OF ACTION

(REMOVAL OF JOHN J. MANNING, III AND CHRISTOPHER MANNING AS TRUSTEES)

87. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

88. In the event that the Third Amendment and Restatement of the John J. Manning, Jr. Living Trust is determined to be valid, Plaintiff seeks the removal of Manning, III and Christopher Manning as Trustees of any Subtrust created by the Third Amendment and Restatement of the John J. Manning, Jr. Living Trust for the benefit of Sally Manning (Subtrust).

89. Manning, III and Christopher Manning are not fit and appropriate Trustees of the Subtrust, as explained in detail herein, they have already breached fiduciary duties and converted and misappropriated hundreds of thousands of dollars of Sally's assets.

90. In addition, Manning, III and Christopher Manning have a conflict of interest that prevents them from being appropriate Trustees of the Subtrust.

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91. Under the terms of the Third Amendment and Restatement of the John J. Manning, Jr. Living Trust, the principal and all accrued and undistributed income of the Subtrust is to be distributed to Jack's living children, namely Manning, III and Christopher Manning.

92. Accordingly, Manning, III and Christopher Manning have a direct financial interest in the principal and income of the Subtrust that conflicts with the fiduciary duties owed to Sally as beneficiary of the Subtrust, and Manning, III and Christopher Manning should be removed as Trustees of any Subtrust that may be created by the Third Amendment and Restatement of the John J. Manning, Jr. Living Trust.

FOR A SIXTH CAUSE OF ACTION
(INJUNCTION AS TO ALL DEFENDANTS)

93. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

94. Defendants refuse to acknowledge that they are in possession of stolen money and/or assets that were purchased with stolen money.

95. Defendants are all actively spending the money that was stolen from Sally, irreparably harming Plaintiff by making the money more difficult to track, account for or recover.

96. Plaintiff does not have an adequate remedy at law because the Estate of Jack Manning does not have sufficient assets to transfer back to Plaintiff the money that was stolen from her. Further, Defendants have no known insurance coverage to recover against, and Plaintiff has no other legal remedy that would provide the same relief as is sought herein.

97. Plaintiff will likely succeed on the merits based on the fact that Plaintiff possess clear documentary evidence that shows Defendants misappropriated funds belonging

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to Sally for their own personal use.

98. Therefore, Plaintiffs respectfully request that the Court enter an order enjoining the Estate of Jack Manning, Jr., Manning, III, Christopher Manning, and Linda Manning from spending or otherwise disposing of any and all money or assets that originated from money stolen from Sally until the Court can further inquire into these matters.

FOR A SEVENTH CAUSE OF ACTION
(REQUEST FOR AN ACCOUNTING)

99. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

100. Plaintiff requests an accounting of Sally and Jack's property, both real and personal, assets and liabilities, from January 1, 2011, through the present.

FOR AN EIGHTH CAUSE OF ACTION
(PETITION AND REQUEST FOR ELECTIVE SHARE)

101. Plaintiff re-alleges all of the proceeding paragraphs above and incorporates them by reference as if repeated verbatim.

102. Sally Manning and Jack Manning were married on October 13, 1997, in Beaufort County.

103. Sally Manning and Jack Manning were still married when Jack Manning died on September 4, 2014.

104. Sally Manning is informed and believes that documents purporting to be the Last Will and Testament of John J. Manning, Jr., dated November 29, 2004, and the First Codicil to the Will of John J. Manning, Jr. dated September 2, 2009, were filed with the Beaufort County Probate Court on October 2, 2014.

105. The Estate of John (Jack) J. Manning, Jr., was opened with the Beaufort County Probate Court and John J. Manning, III, was appointed as personal representative of the Estate of Jack Manning on April 8, 2015.

106. Plaintiff, as Durable Power of Attorney holder for Sally Manning, elects to take her elective share of the Estate of John J. Manning, Jr.

107. This election is made within the later of (a) eight months after the date of Decedent's death, (b) six months after the Informal or Formal Probate of Decedent's will, or (c) thirty days after Plaintiff was served with a Summons and Petition to set aside an Informal Probate or to modify or vacate an Order for Formal Probate of the Decedent's will.

108. Attached hereto as Exhibit A is the Summons and Petition for Elective Share

PRAYER FOR RELIEF

Now, therefore, Plaintiff prays for the following:

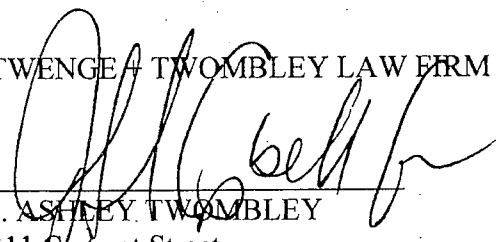
- a) That actual, consequential, direct, special and punitive, double and treble damages be awarded against Defendants in amounts to be determined by the trier of fact;
- b) That the Court enter an Order finding that a constructive trust arose over any and all money and assets stolen from Sally Manning the moment that Defendants stole said funds;
- c) That the Court enter an order finding any and all money stolen by Defendants and transferred to Defendants does not equitably belong to them and under the circumstances, Defendants hold such money in a constructive trust for Plaintiff;
- d) That the Court enter an order finding that Defendants John J. Manning, III, and Christopher Manning exerted undue influence over Jack Manning and that all action that occurred as a result of the undue influence are invalid and unenforceable;

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- e) That the Court issue an Order removing John J. Manning, III, and Christopher Manning as Trustees of any Subtrust that may be created for the benefit of Sally Manning;
- f) That the Court issue an Order awarding Sally Manning an elective share;
- g) That the Court issue an Order enjoining Defendants;
- h) That the Court order Defendants to provide an accounting;
- i) That the Court join any other parties as may be necessary;
- j) That the Court award attorney's fees in this matter; and
- k) That the Court provides such other and further relief as it deems just and proper.

TWENGE + TWOMBLEY LAW FIRM

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Attorney for Plaintiff

Beaufort, South Carolina

December 17, 2015

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE MATTER OF THE ESTATE)
JOHN JOSEPH MANNING, Jr.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING and as)
TRUSTEE of the TRUST AGREEMENT)
OF SALLY MANNING DATED)
December 6, 2004)

Plaintiff,)

vs.)

THE ESTATE Of JOHN JOSEPH)
MANNING, Jr., JOHN J. MANNING,)
III, CHRISTOPHER MANNING, and)
LINDA MANNING,)

Defendants.)

COURT OF COMMON PLEAS
14TH JUDICIAL DISTRICT
CASE # 2015-CP-07-00913

(Previously Probate Court
Case # 2014ES0700930

ANSWER OF DEFENDANTS JOHN J.
MANNING, III, CHRISTOPHER
MANNING and LINDA MANNING
TO PLAINTIFF's AMENDED
COMPLAINT AND PETITION

TO: PLAINTIFF NAMED ABOVE AND HER ATTORNEY OF
RECORD, J. ASHLEY TWOMBLEY

Defendants, John J. Manning, III, Christopher Manning and Linda Manning, by and through their undersigned counsel, do respectfully answer the Plaintiff's Complaint and Petition and make their Answer (specifically reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure) and would respectfully allege and show this Honorable Court that:

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PARTIES AND JURISDICTION

1. These Defendants deny each and every allegation of the Plaintiff's Amended Complaint and Petition not hereinafter specifically admitted, qualified, or denied herein.
2. Answering Paragraph 1, these Defendants admit that the Plaintiff is the successor attorney-in-fact for Sally Manning ("Sally") under Power of Attorney recorded November 30, 2006 and that the Plaintiff is the successor trustee of the Trust agreement executed by Sally on December 6, 2004.
3. Answering Paragraph 2, these Defendants admit that Sally is a citizen and resident of Beaufort County, South Carolina.
4. Answering Paragraph 3, these Defendants admit that the Estate of John J. Manning, Jr. ("Jack") was opened in the Beaufort County Probate Court and that John J. Manning III ("Manning III") was appointed as Personal Representative of the Estate on April 8, 2015.
5. Answering Paragraph 4, these Defendants admit that Manning III is a citizen and resident of Westchester County, New York.
6. Answering Paragraphs 5 and 6, these defendants admit that Christopher Manning ("Chris") and Linda Manning ("Linda") are citizens and residents of New Haven County, Connecticut.
7. The allegation in Paragraph 7 states a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied.
8. These Defendants deny the allegation in Paragraph 8 and demand strict proof thereof.

FACTUAL ALLEGATIONS

9. Each and every allegation of the foregoing Paragraphs 1 through 8 are herein restated and realleged verbatim.
10. These Defendants believe that no response is required as to the allegations contained in Paragraph 9.
11. Answering Paragraph 10, these Defendants admit that Jack was married to Sally.

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12. These Defendants deny the allegation in Paragraph 11 and demand strict proof thereof.
13. These Defendants admit the allegation in Paragraph 12, crave reference to such instrument and deny any allegations inconsistent therewith.
14. These Defendants admit the allegation in Paragraph 13, crave reference to such instrument and deny any allegations inconsistent therewith.
15. These Defendants admit the allegation in Paragraph 14, crave reference to such instrument and deny any allegations inconsistent therewith.
16. In answering Paragraph 15, these Defendants admit that Sally has been living at The Cypress of Hilton Head in the Preston Health Center since late 2008 and lack knowledge or information satisfactory to form a belief as to the truth of the balance of the allegation in Paragraph 15.
17. In answering Paragraph 16, these Defendants admit that Jack hired in-home assistance in 2012, deny the balance of the allegations in Paragraph 16 and demand strict proof thereof.
18. In answering Paragraph 17, these Defendants admit that Manning III and Chris are Jack's only two children.
19. In answering Paragraph 18, these Defendants admit that Manning, III began handling Jack and Sally's financial matters in 2012, deny the balance of the allegations in Paragraph 18 and demand strict and demand strict proof thereof.
20. In answering Paragraph 19, upon information and belief, these Defendants admit that Sally had an IRA account and another account at Morgan Stanley, crave reference to such instruments and deny any allegations inconsistent therewith.
21. In answering Paragraph 20, these Defendants admit that Manning, III retitled Sally's Reserved Financial Management Account to the trustee of her Trust and admit that Jack was the named trustee of such Trust. These Defendants deny that such retitling was improper and deny the balance of the allegations in Paragraph 20 and demand strict proof thereof.
22. In answering Paragraph 21, these Defendants deny that Manning, III improperly withdrew over \$182,700.00 from Sally's Reserved Financial Management Account

- and the Trust, deny any allegations in Paragraph 21 inconsistent therewith and require strict proof thereof.
23. In answering Paragraph 22, These Defendants deny the allegations in Paragraph 22 and demand strict proof thereof.
24. In answering Paragraphs 23 and 24, these Defendants admit that Manning III's address was added to the accounts for the purpose of receipt of duplicate copies of monthly statements at the addresses listed and deny all allegations in paragraph 23 and 24 inconsistent therewith.
25. In answering Paragraph 25, these Defendants admit that Sally was listed as, an owner of certain Wells Fargo accounts, crave reference to such accounts and deny any allegations inconsistent therewith. To the best of these Defendants knowledge and belief, they admit that Wells Fargo Accounts ending 4456 and 4469 were checking accounts in the joint names of Sally and Jack and deny any allegations inconsistent therewith.
26. In answering Paragraph 26, these Defendants admit that Manning, III was added to Account ending 4456 in February 2012 and deny any allegations inconsistent therewith.
27. In answering Paragraphs 27 and 28, these Defendants admit that Manning III's address was added to the accounts for the purpose of receipt of duplicate copies of monthly statements at the addresses listed and deny all allegations in paragraph 27 and 28 inconsistent therewith.
28. These Defendants admit the allegation in Paragraph 29.
29. These Defendants deny the allegation in Paragraph 30 and demand strict proof thereof.
30. In answering Paragraph 31 these Defendants admit that ATM withdrawals and purchases were made using Account ending 4456 and deny any allegations inconsistent therewith.
31. These Defendants admit the allegation in Paragraph 32.
32. Defendant Chris denies the allegation in Paragraph 33 and demands strict proof thereof. Defendant Manning III admits that he deposited \$6,325.00 of his own funds into Account ending 4456 in the period beginning June 13, 2012 and ending

September 19, 2012 and withdrew approximately \$3,577.65 from Account ending 4456 for his personal use and denies any allegations inconsistent therewith.

33. In answering Paragraph 34, these Defendants admit that Manning, III was added to Wells Fargo Account ending 4469 and deny that the addition of Manning III to the Account was improper, deny the balance of the allegations in Paragraph 34 and demand strict proof thereof.

34. These Defendants admit the allegation in Paragraph 35.

35. In answering Paragraphs 36 and 37, these Defendants admit that Manning III's address was added to the accounts for the purpose of receipt of duplicate copies of monthly statements at the addresses listed and deny all allegations in paragraph 36 and 37 inconsistent therewith.

36. These Defendants admit the allegation in Paragraph 38.

37. These Defendants admit the allegation in Paragraph 39.

38. These Defendants admit the allegations in Paragraph 40.

39. These Defendants admit that withdrawals were made from the account and deny the balance of the allegations in Paragraph 41. .

40. These Defendants admit the allegation in Paragraph 42.

41. These Defendants deny the allegation in Paragraph 43 and demand strict proof thereof.

42. In answering Paragraph 44, upon information and belief, these defendants admit that Jack opened the account ending 2449 in his sole name.

43. These Defendants admit the allegations in Paragraphs 45 and 46.

44. These Defendants deny the allegation in Paragraph 47 and demand strict proof thereof.

45. In answering Paragraphs 48 and 49, these Defendants admit that Manning III's address was added to the accounts for the purpose of receipt of duplicate copies of monthly statements at the addresses listed and deny all allegations in paragraphs 48 and 49 inconsistent therewith.

46. These Defendants admit the allegations in Paragraph 50.

47. These Defendants admit the allegations in Paragraph 51.

48. These Defendants admit that withdrawals were made from the account and deny the balance of the allegations in Paragraph 52.
49. These Defendants admit the allegation in Paragraph 53.
50. These Defendants deny the allegations in Paragraph 54 and demand strict proof thereof.
51. In answering Paragraph 55, these Defendants admit that Jack died on September 4, 2014.
52. In answering Paragraph 56, these Defendants admit that neither Manning III nor Chris were ever the holder of Sally's Durable Power of Attorney or the Trustee of her Trust, crave reference to such instruments and deny any allegations inconsistent therewith.

FOR A FIRST DEFENSE and ANSWER TO FIRST CAUSE OF ACTION

53. Each and every allegation of the foregoing Paragraphs 1 through 52 are herein restated and realleged verbatim.
54. These Defendants believe that no response is required as to the allegations contained in Paragraph 57.
55. These Defendants lack sufficient information to either admit or deny the allegations contained in Paragraph 58 and therefore the same is denied. Further, such allegation states a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
56. These Defendants deny the allegation in Paragraph 59 that Manning, III acted as a General Power of Attorney holder for Sally and admits that he acted in place of Jack and at his direction. These Defendants lack sufficient information to either admit or deny the balance of the allegations in Paragraph 59 and therefore the same is denied. Further, the balance of such allegation in Paragraph 59 states a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

57. The allegations in Paragraph 60 state a conclusion of law and as such do not require a response but to the extent a response is deemed to be required, the same is denied. These Defendants demand strict proof thereof and deny any allegations inconsistent therewith..
58. These Defendants deny the allegations in Paragraph 61 and demand strict proof thereof.
59. The allegations in Paragraph 62 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

**FOR A SECOND DEFENSE and ANSWER TO SECOND CAUSE OF
ACTION**

60. Each and every allegation of the foregoing Paragraphs 1 through 59 are herein restated and realleged verbatim.
61. These Defendants believe that no response is required as to the allegations contained in Paragraph 63.
62. These Defendants deny the allegation in Paragraph 64 regarding the conversion of assets in Sally's Reserved Financial Management Account. These Defendants admit that the assets were transferred to Sally's trust under which Jack was the named trustee of the Trust.
63. These Defendants deny the allegations in Paragraph 65 and demand strict proof thereof.
64. In answering Paragraph 66, these Defendants deny the misappropriation of any money and assets and demand strict proof thereof.
65. The allegations in Paragraph 67 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
66. These Defendants deny the allegations in Paragraph 68 and 69 and demand strict proof thereof. Upon information and belief, Defendants deny that Sally was ever the owner of funds in the amount of \$585,000.00.

67. The allegations in Paragraphs 70, 71 and 72 state a conclusion of law and as such do not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

FOR A THIRD DEFENSE and ANSWER TO THIRD CAUSE OF ACTION

68. Each and every allegation of the foregoing Paragraphs 1 through 67 are herein restated and realleged verbatim.

69. These Defendants believe that no response is required as to the allegations contained in Paragraph 73.

70. These Defendants deny the allegations in Paragraphs 74, 75, 76, and 77 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same are denied and these Defendants demand strict proof thereof.

FOR A FOURTH DEFENSE and ANSWER TO FOURTH CAUSE OF ACTION

71. Each and every allegation of the foregoing Paragraphs 1 through 70 are herein restated and realleged verbatim.

72. These Defendants believe that no response is required as to the allegations contained in Paragraph 78.

73. These Defendants admit that Jack was in declining physical health and deny the balance of the allegations in Paragraph 79 and demand strict proof thereof.

74. The allegation in Paragraph 80 states a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, these Defendants admit that they had a confidential relationship with Jack.

75. These Defendants deny the allegation in Paragraph 81 and demand strict proof thereof.

76. These Defendants deny the allegations in Paragraph 82 and demand strict proof thereof.

77. These Defendants deny the allegations in Paragraph 83.

78. The allegation in Paragraphs 84 and 85 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
79. The allegation in Paragraph 86 states a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

FOR A FIFTH DEFENSE and ANSWER to FIFTH CAUSE OF ACTION

80. Each and every allegation of the foregoing Paragraphs 1 through 79 are herein restated and realleged verbatim.
81. These Defendants believe that no response is required as to the allegations contained in Paragraph 87.
82. The allegation in Paragraph 88 does not require a response but to the extent a response is deemed to be required, the same is denied. Further, Paragraph 88 fails to state a claim upon which relief may be granted.
83. The allegations in Paragraph 89 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
84. These Defendants deny the allegation in Paragraph 90 and demand strict proof thereof.
85. Answering Paragraph 91, these Defendants crave reference to the instrument.
86. In answering Paragraph 92, these Defendants deny the allegation that any interest they have in the Subtrust creates a conflict of interest. Further, the allegations in Paragraph 92 state a conclusion of law and as such does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

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FOR A SIXTH DEFENSE and ANSWER to SIXTH CAUSE OF ACTION

87. Each and every allegation of the foregoing Paragraphs 1 through 86 are herein restated and realleged verbatim.
88. These Defendants believe that no response is required as to the allegations contained in Paragraph 93.
89. These Defendants deny the allegation in Paragraphs 94 and 95 and demand strict proof thereof.
90. The allegation in Paragraph 96 does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
91. The allegations in Paragraph 97 state a conclusion of law and as such do not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.
92. The allegation in Paragraph 98 does not require a response but to the extent a response is deemed to be required, the same is denied and these Defendants demand strict proof thereof.

**FOR AN SENENTH DEFENSE and ANSWER TO SEVENTH CAUSE OF
ACTION**

93. Each and every allegation of the foregoing Paragraphs 1 through 92 are herein restated and realleged verbatim.
94. These Defendants believe that no response is required as to the allegations contained in Paragraph 99.
95. The allegation in Paragraph 100 does not require a response but to the extent a response is deemed to be required, the same is denied. Further, Paragraph 100 fails to state a claim upon which relief may be granted.

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FOR AN EIGHTH DEFENSE and ANSWER TO EIGHTH CAUSE OF ACTION

96. Each and every allegation of the foregoing Paragraphs 1 through 95 are herein restated and realleged verbatim.

97. These Defendants believe that no response is required as to the allegations contained in Paragraph 101.

98. These Defendants admit the allegations in paragraphs 102, 103, 104, 105, 106 and 107 and crave reference to such instruments and deny any allegations inconsistent therewith.

100. These Defendants believe that no response is required as to the allegations contained in Paragraph 108.

FOR A FIRST AFFIRMATIVE DEFENSE

101. Each and every allegation of the foregoing Paragraphs 1 through 100 are herein restated and realleged verbatim.

102. At all relevant times, Jack in his capacity as Agent under Sally's Durable Power of Attorney and/or as successor trustee under Sally's Revocable Trust acted in accordance with his fiduciary duties and responsibilities as sets forth in South Carolina Code of Laws Sections 62-5-401, *et seq.* and 62-7-101, *et. seq.* and the terms of such Durable Power of Attorney and of the Trust.

FOR A SECOND AFFIRMATIVE DEFENSE

103. Each and every allegation of the foregoing Paragraphs 1 through 102 are herein restated and realleged verbatim.

104. Upon information and belief, the total assets of Sally at the time of her marriage to Jack was less than the amounts claimed as actual damages by Plaintiff on behalf of Sally.

105. Upon information and belief, Sally's total annual income during the years as of her marriage to Jack was approximately \$20,000.

106. Upon information and belief, Sally did not possess liquid assets in the amount of \$585,000.00 at any time during her marriage to Jack.

FOR A THIRD AFFIRMATIVE DEFENSE

107. Each and every allegation of the foregoing Paragraphs 1 through 106 are herein restated and realleged verbatim.

108. Plaintiff's Complaint and Petition for Elective Share fails to state a claim pursuant to which it can recover attorney's fees and costs.

FOR A FOURTH AFFIRMATIVE DEFENSE

109. Each and every allegation of the foregoing Paragraphs 1 through 108 are herein restated and realleged verbatim.

110. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands due to her own inequitable conduct in such manner as the evidence will show.

FOR A FIFTH AFFIRMATIVE DEFENSE

111. Each and every allegation of the foregoing Paragraphs 1 through 110 are herein restated and realleged verbatim.

112. Plaintiff's Complaint and Petition fail to state a claim upon which relief can be granted.

FOR A SIXTH AFFIRMATIVE DEFENSE

113. Each and every allegation of the foregoing Paragraphs 1 through 112 are herein restated and realleged verbatim.

114. Petitioner's claims are barred, in whole or in part, by the doctrine of laches.

FOR A SEVENTH AFFIRMATIVE DEFENSE

115. Each and every allegation of the foregoing Paragraphs 1 through 114 are herein restated and realleged verbatim.

116. These Defendants hereby gives notice that it intends to rely upon such other and further defenses that may become available or appear during the discovery in this case and reserve their right to amend their answer to asset any such defense(s).

COUNTERCLAIMS

Parties and Jurisdiction

117. Upon information and belief, Plaintiff is a resident and citizen of California.

118. Defendant Manning III is a resident and citizen of New York.

119. Defendants Chris and Linda are residents and citizens of Connecticut.

120. The Court has jurisdiction over this matter and venue is appropriate in this Court.

For a First Counterclaim

(Conversion)

121. On or about September 26, 2014, Plaintiff changed the address for account statements on the Accounts to her residence in La Canada, California.

122. During the period beginning June 13, 2013 and ending September 19, 2012, Manning III deposited a total of \$5,325.00 of his own funds into Account ending 4456 for his convenience.

123. Shortly after Jack's death, Manning III deposited approximately \$12,000.00 from Jack's equity line account into the Account ending 4456 for use in administering Jack's estate, i.e., last illness expenses and funeral bills.

124. Upon information and belief, on or about September 26, 2014, Plaintiff misappropriated and/or converted withdrew \$2,577.65 belonging to Manning III from Account ending 4456 by improperly withdrawing such amount for Sally's use.

125. Upon information and belief, on or about September 26, 2014, Plaintiff misappropriated and/or converted withdrew approximately \$12,000.00 belonging to Jack's estate deposited for convenience in paying estate expenses from Account ending 4456 by improperly withdrawing such amount for Sally's use.

126. The \$2,577.65 improperly withdrawn from the Account ending 4456 by Plaintiff belongs to Manning III.

127. The approximately \$12,000.00 deposited in Account 4456 and improperly withdrawn from the Account ending 4456 by Plaintiff belong to Jack's estate.

128. The improper withdrawal of such funds was willful, wanton, heedless, gross and reckless.

129. Manning III has been damaged and will continue to be damaged due to Plaintiff's improper withdrawal of such funds.

130. The estate of Jack has been damaged and will continue to be damaged due to Plaintiff's improper withdrawal of such funds.

131. In addition to actual damages due to Manning III and by Jack's estate as a result of Plaintiff's improper withdrawal of such funds, due to the reckless, willful, wanton and intentional conduct of the Plaintiff in such withdrawal of funds in disregard of Manning

III's rights, Manning III and Jack' estate are entitled to an amount of punitive damages which will adequately punish and impress upon Plaintiff the seriousness of her conduct.

For a Second Counterclaim

(Constructive Trust)

132. Each and every allegation of the foregoing Paragraphs are herein restated and realleged verbatim.

133. Through her actions, Plaintiff converted funds belonging to Manning III.

134. Through her actions, Plaintiff converted funds belonging to Jack's estate.

135. Plaintiff has wrongly obtained funds which she ought not to retain in good conscience.

136. Manning III is entitled to the intervention of equity and to the imposition of a constructive trust on all of the funds that Plaintiff improperly withdrew from Account ending 4456.

137. \$2,577.65 improperly withdrawn from Accounting ending 4456 shall be returned to Manning III as his own funds.

138. Jack's estate is entitled to the intervention of equity and to the imposition of a constructive trust on all of the funds that Plaintiff improperly withdrew from account ending 4456.

139. Approximately \$12,000.00 improperly withdrawn from Accounting ending 4456 shall be returned to Jack's estate as its own funds.

RESPONSE TO PETITION FOR ELECTIVE SHARE

140. Each and every allegation of the foregoing Paragraphs are herein restated and realleged verbatim.

141. The Estate admits that Sally was married to Jack at his death on September 4, 2014.

142. The Estate denies that Plaintiff is entitled to take an elective share of the Estate of John J. Manning, Jr.

143. Upon information and belief, on or about February 26, 1999, Jack purchased for Sally's benefit an unlimited Genworth Life Insurance Company ("Genworth") long term

care policy. Upon information and belief, the initial monthly premium was \$367.23. The monthly premium increased to \$440.67 monthly effective May 14, 2014.

145. Upon information and belief, Genworth has paid approximately \$8,000.00 each month pursuant to the policy purchased by Jack for Sally's benefit to the care facility in which Sally resides since late 2008.

146. Upon information and belief, Sally is the beneficiary of a portion of Jack's R. J. Reynolds America, Inc. (formerly R. J. Reynolds Company) pension currently administered by AON and has been receiving monthly pension distributions ("Pension") since Jack's death.

147. Upon information and belief, the present value of the Genworth and the Pension payments to or for Sally's benefit exceed the amount of the elective share.

148. If the Court determines that Plaintiff on behalf of Sally is entitled to an elective share, the amount of the elective share must be reduced by any benefits Plaintiff on behalf of Sally received pursuant to SC Code of Laws Sections 62-2-206 and 62-2-207 and any other applicable statutes and/or case law.

149. ARTICLE 4, paragraph (C) of the Trust provides in part as follows:

"I hereby expressly make no provision in this Trust Agreement for my spouse, SALLY A. MANNING. Notwithstanding the above, in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of my spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee of such separate share."

150. If the Court determines that Plaintiff on behalf of Sally is entitled to an elective share, the amount of the elective share not reduced by the Genworth and Pension amounts shall be held for Sally's benefit by Manning III and Chris as Trustees for the benefit of Sally.

151. The Defendants reserves the right to raise other grounds and assert additional defenses and matters as may be disclosed during the course of additional investigation.

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WHEREFORE, having fully answered the Petitioner's Complaint and Petition and asserting its Counterclaim against the Petitioner, Respondents pray that Petitioner's Complaint and Petition be dismissed with prejudice, with attorney's fees and costs and that this Court enter its Order as follows:

1. Declaring that:

a. The elective share claimed by Plaintiff is reduced by the present value of payments by Genworth to or for the benefit of Sally and by pension payments made to or for the benefit of Sally from Jack's R.J. Reynolds Company pension.

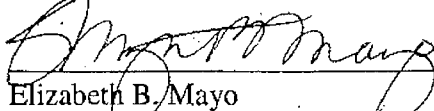
b. Any amount payable to Sally as part of an elective share in excess of the Genworth payments and the R. J. Reynold's Company payments be held in the "subtrust" established in Jack's Trust for the benefit of Sally with Manning III and Chris as co-Trustees of the Trust.

2. Plaintiff refund to Manning III in funds improperly withdrawn by Plaintiff from the Accounts.

3. Plaintiff refund to Jack's estate funds improperly withdrawn by Plaintiff from the Accounts.

4. Such other and further relief as the Court deems just and proper.

NOVIT & SCARMINACH, P.A.



Elizabeth B. Mayo
52 New Orleans Road, Suite 400 (29928)
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
843-785-5850 ext 3012

Attorney for Defendants JOHN J.
MANNING, III, CHRISTOPHER
MANNING, and LINDA MANNING

Hilton Head Island, South Carolina
January 16, 2016

0041

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

14TH JUDICIAL DISTRICT

CASE # 2015-CP-07-00913

COUNTY OF BEAUFORT)

(Previously Probate Court

Case # 2014ES0700930

IN THE MATTER OF THE ESTATE)

JOHN JOSEPH MANNING, Jr.)

DEANNA BUSHMAN, as HOLDER OF)
JOHN J.

ANSWER OF DEFENDANTS

DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING,)

MANNING, III, CHRISTOPHER
MANNING and LINDA MANNING
TO PLAINTIFF'S COMPLAINT
AND PETITION

Plaintiff,)

vs.)

THE ESTATE of JOHN JOSEPH)
MANNING, Jr., JOHN J. MANNING,)
III, CHRISTOPHER MANNING, and)
LINDA MANNING,)

Defendants.)

JOHN J. MANNING, III, CHRISTOPHER MANNING, and LINDA MANNING, being duly sworn, says that they are the Defendants herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as to matters therein stated to be alleged on information and belief, and to those matters they believes them to be true.

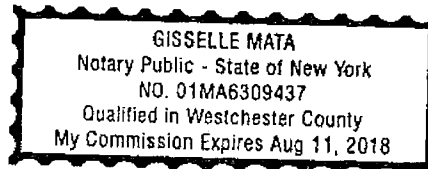
JOHN J. MANNING, III, Defendant

SWORN to and Subscribed before me

Gisselle Mata
this 12th day of February, 2016.

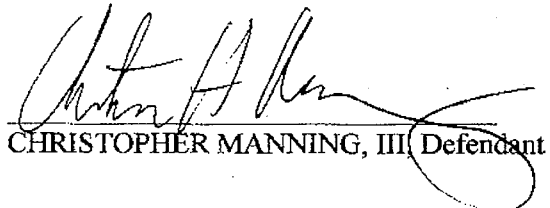
Gisselle Mata
Notary Public for New York

My Commission Expires: Aug 11, 2018
(SEAL)

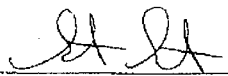


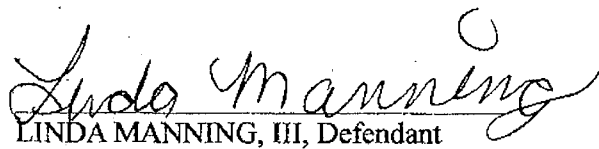
XXXXX
0042

Notary Public for Connecticut
My Commission Expires: _____
(SEAL)

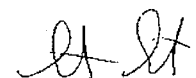

CHRISTOPHER MANNING, III, Defendant

SWORN to and Subscribed before me
this 15th day of February, 2016.


Notary Public for Connecticut
My Commission Expires: 6/30/2020
(SEAL)


LINDA MANNING, III, Defendant

SWORN to and Subscribed before me
this 13th day of February, 2016.


Notary Public for Connecticut
My Commission Expires: 6/30/2020
(SEAL)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF THE ESTATE OF
JOHN JOSEPH MANNING, JR.

DEANNA BUSHMAN, as HOLDER OF
DURABLE POWER OF ATTORNEY
FOR SALLY MANNING AND AS
TRUSTEE OF THE TRUST
AGREEMENT OF SALLY MANNING
DATED DECEMBER 6, 2004,

Plaintiff,

vs.

THE ESTATE OF JOHN J. MANNING,
JR.; JOHN J. MANNING, III;
CHRISTOPHER MANNING; AND
LINDA MANNING,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2015-CP-07-00913

**REPLY TO ANSWER AND
COUNTERCLAIMS OF DEFENDANTS
THE ESTATE OF JOHN J. MANNING,
JR., JOHN J. MANNING, III,
CHRISTOPHER MANNING AND
LINDA MANNING**

2016 MAR 15 PM 3:31
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: ELIZABETH B. MAYO, ESQUIRE, ATTORNEY FOR DEFENDANTS, THE
ESTATE OF JOHN J. MANNING, JR., JOHN J. MANNING, III, CHRISTOPHER
MANNING, AND LINDA MANNING:

Plaintiff, Deanna Bushman, as Holder of Durable Power of Attorney for Sally Manning
and as Trustee of the Trust Agreement of Sally Manning, dated December 6, 2004, hereinafter
"Plaintiff," replying to the Answer of Defendants the Estate of John J. Manning, Jr., John J.
Manning, III, Christopher Manning and Linda Manning to Plaintiff's Amended Complaint and
Petition (hereinafter "Defendants' Answer and Counterclaims") would allege and state as
follows:

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1. Plaintiff hereinafter realleges and incorporates herein each and every allegation contained in her Amended Complaint and Petition for Elective Share as if repeated hereinafter verbatim.

2. Each and every allegation of Defendants' Answer and Counterclaims not hereinafter specifically admitted is denied.

3. Paragraphs 1 through 116 are Defendants' responses to Plaintiff's Amended Complaint and Petition for Elective Share and as such require no response by the Plaintiff; to the extent that an allegation contained therein is construed as being inconsistent with the Plaintiff's position or reply to Defendants' Answer and Counterclaims, the same is expressly denied.

FOR A FIRST DEFENSE

4. Plaintiff admits the allegations contained in Paragraph 117 of Defendants' Answer and Counterclaims.

5. Plaintiff admits the allegations contained in Paragraph 118 of Defendants' Answer and Counterclaims.

6. Plaintiff admits the allegations contained in Paragraph 119 of Defendants' Answer and Counterclaims.

7. Paragraph 120 of Defendants' Answer and Counterclaims is a statement and/or conclusion of law and Plaintiff is not required to admit or deny the same. By way of further response, to the extent that Paragraph 120 of Defendants' Answer and Counterclaims attempts to allege or does allege any cause of action, claim, act, error, or omission as to Plaintiff, those allegations are denied and strict proof thereof is demanded.

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8. Plaintiff denies the allegations contained in Paragraph 121 of Defendants' Answer and Counterclaims.

9. Plaintiff lacks sufficient information as to admit the allegations contained in Paragraph 122 of Defendants' Answer and Counterclaims, and accordingly, denies each and every allegation contained therein, and demands strict proof thereof.

10. Plaintiff lacks sufficient information as to admit the allegations contained in Paragraph 123 of Defendants' Answer and Counterclaims, and accordingly, denies each and every allegation contained therein, and demands strict proof thereof.

11. Plaintiff denies each and every allegation contained in Paragraph 124 of Defendants' Answer and Counterclaims and demands strict proof thereof.

12. Plaintiff denies each and every allegation contained in Paragraph 125 of Defendants' Answer and Counterclaims and demands strict proof thereof.

13. Plaintiff denies each and every allegation contained in Paragraph 126 of Defendants' Answer and Counterclaims and demands strict proof thereof.

14. Plaintiff denies each and every allegation contained in Paragraph 127 of Defendants' Answer and Counterclaims and demands strict proof thereof.

15. Plaintiff denies each and every allegation contained in Paragraph 128 of Defendants' Answer and Counterclaims and demands strict proof thereof.

16. Plaintiff denies each and every allegation contained in Paragraph 129 of Defendants' Answer and Counterclaims and demands strict proof thereof.

17. Plaintiff denies each and every allegation contained in Paragraph 130 of Defendants' Answer and Counterclaims and demands strict proof thereof.

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18. Plaintiff denies each and every allegation contained in Paragraph 131 of Defendants' Answer and Counterclaims and demands strict proof thereof.

19. Paragraph 132 of Defendants' Answer and Counterclaims does not state an allegation of fact against Plaintiff, and therefore no reply is required; to the extent an allegation of fact is made, Plaintiff denies it and demands strict proof thereof.

20. Plaintiff denies each and every allegation contained in Paragraph 133 of Defendants' Answer and Counterclaims and demands strict proof thereof.

21. Plaintiff denies each and every allegation contained in Paragraph 134 of Defendants' Answer and Counterclaims and demands strict proof thereof.

22. Plaintiff denies each and every allegation contained in Paragraph 135 of Defendants' Answer and Counterclaims and demands strict proof thereof.

23. Plaintiff denies each and every allegation contained in Paragraph 136 of Defendants' Answer and Counterclaims and demands strict proof thereof.

24. Plaintiff denies each and every allegation contained in Paragraph 137 of Defendants' Answer and Counterclaims and demands strict proof thereof.

25. Plaintiff denies each and every allegation contained in Paragraph 138 of Defendants' Answer and Counterclaims and demands strict proof thereof.

26. Plaintiff denies each and every allegation contained in Paragraph 139 of Defendants' Answer and Counterclaims and demands strict proof thereof.

27. Paragraph 140 of Defendants' Answer and Counterclaims does not state an allegation of fact against Plaintiff, and therefore no reply is required; to the extent an allegation of fact is made, Plaintiff denies it and demands strict proof thereof.

28. Paragraphs 141 through 151 are Defendants' responses to Plaintiff's Petition for Elective Share and as such require no response by the Plaintiff; to the extent that an allegation contained therein is construed as being inconsistent with the Plaintiff's position or reply to Defendants' Answer and Counterclaims, the same is expressly denied.

FOR A SECOND DEFENSE

(Failure to State a Claim)

29. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

30. Plaintiff is informed and believes that Defendants' Answer and Counterclaims fails to state a claim against Plaintiff, and accordingly, Defendants' Counterclaims should be dismissed.

FOR A THIRD DEFENSE

(Waiver, Estoppel, Laches and Unclean Hands)

31. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

32. Some or all of Defendants' Counterclaims may be barred in whole or part by the doctrine of waiver, estoppel, laches and unclean hands.

FOR A FOURTH DEFENSE

(Statute of Limitations)

33. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

34. Defendants' Counterclaims are barred in whole or in part by the applicable Statutes of Limitations.

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FOR A FIFTH DEFENSE

(No Act or Omission)

35. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

36. No act or omission of Plaintiff either proximately caused or contributed to any injury or damage which Defendants may have sustained and, on account thereof, Defendants are not entitled to recover damages against Plaintiff in any sum whatsoever.

FOR A SIXTH DEFENSE

(Damages Proximately Caused by Defendants' Own Actions or Inactions)

37. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

38. Any damage sustained by Defendants was proximately caused by Defendants' own actions or inactions, and not by any act or omission by Plaintiff.

FOR A SEVENTH DEFENSE

(Failure to Mitigate Damages)

39. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

40. Some or all of Defendants' Counterclaims are or may be barred by Defendants' failure to mitigate their damages.

FOR AN EIGHTH DEFENSE

(Additional Defenses)

41. Plaintiff repeats and realleges all of the above allegations as if repeated herein verbatim.

42. Plaintiff expressly reserves the right, upon completion of discovery and investigation or otherwise, to amend or supplement her Reply to Defendants' Answer and

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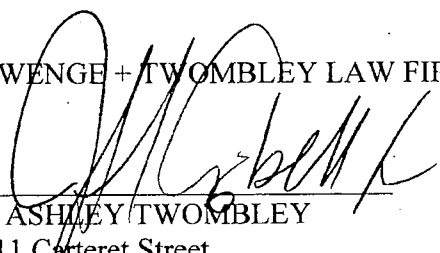
Counterclaims to assert additional defenses as may be appropriate.

WHEREFORE, Plaintiff having fully replied to Defendants' Answer and Counterclaims prays:

- a) for a jury trial and for all damages available under the law;
- b) for an award of actual and punitive damages against Defendants in amounts to be determined at trial;
- c) that Defendants' claim be dismissed with costs to Defendants and for an award of attorney's fees and costs of this action; and
- d) for such other and further relief as may be just and proper under these circumstances.

TWENGE + TWOMBLEY LAW FIRM

BY:


J. ASHLEY TWOMBLEY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorney for Plaintiff

Beaufort, South Carolina

March 11, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE MATTER OF THE ESTATE)
JOHN JOSEPH MANNING, Jr.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING,)

Plaintiff,)

vs.)

THE ESTATE of JOHN JOSEPH)
MANNING, Jr., JOHN J. MANNING,)
III, CHRISTOPHER MANNING, and)
LINDA MANNING,)

Defendants.)

COURT OF COMMON PLEAS
14TH JUDICIAL DISTRICT
CASE # 2015-CP-07-00913

Previously Probate Court
Case # 2014ES0700930

NOTICE OF MOTION and
MOTION for SUMMARY
JUDGMENT

TO: J. Ashley Twombly, Esquire; Attorney for Plaintiff, Deanna Bushman as holder of Durable Power of Attorney for Sally A. Manning.

YOU WILL PLEASE TAKE NOTICE that the Defendants, the Estate of John J. Manning, Jr., John J. Manning, III, Christopher Manning and Linda Manning, by the through their undersigned counsel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before this Honorable court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order for Summary Judgment in favor of the Defendants on the ground that there is no genuine issue of material fact.

This Motion is based on the grounds that the South Carolina Code Ann. § 62-2-201, et seq., does not require outright distribution from an illusory trust of an elective share amount.

This Motion is based on the pleadings and discovery in this case, any affidavits and/or memorandum as may be filed prior to the hearing and such argument of counsel as the Court may deem proper.

Respectively submitted,

Novit & Scarminach, PA

By: s/ Elizabeth B. Mayo
Elizabeth B. Mayo
SC Bar # 7400
52 New Orleans Road, Ste 400
PO Drawer 14
Hilton Head Island, SC 29938
843-785-5850 ext 3012
emayo@ns-lawfirm.com

March 7, 2017
Hilton Head Island, SC 29928

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS)

14TH JUDICIAL DISTRICT)

CASE # 2015-CP-07-00913)

COUNTY OF BEAUFORT)

Previously Probate Court)

Case # 2014ES0700930)

IN THE MATTER OF THE ESTATE)
JOHN JOSEPH MANNING, Jr.)DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING,)DEFENDANTS' MEMORANDUM
in SUPPORT of MOTION for
SUMMARY JUDGMENT)

Plaintiff,)

vs.)

THE ESTATE of JOHN JOSEPH)
MANNING, Jr., JOHN J. MANNING,)
III, CHRISTOPHER MANNING, and)
LINDA MANNING,)

Defendants.)

The Defendants herein respectfully submit this Memorandum in Support of their Motion for Summary Judgment.

STATEMENT OF CASE

This action was commenced by the filing and service of Plaintiff's Summons and Petition for Elective Share filed in the Beaufort County Probate Court on or about April 9, 2015 as Case No. 2014ES0700930 as amended by Plaintiff's Amended Complaint and Petition filed on or about October 7, 2015. The action was subsequently removed to the Court of Common Pleas, 14th Judicial District (Case No. 2015-CP-07-00913) by Order dated April 14, 2017. The Complaint, as amended, seeks the statutory elective share under SC Ann. § 62-2-201, et seq., from the Estate of John J. Manning, Jr. who died testate on September 4, 2014 (the "Decedent"). Mediation was held on February 2, 2017 with Ralph E. "Ned" Tupper at which time it was agreed to submit the issue of whether the elective

share may be held in trust for the surviving spouse or must be distributed outright to the surviving spouse.

STATEMENT of RELEVANT FACTS

The Defendants are John J. Manning, III ("Jay"), Christopher H. Manning ("Chris"), and Linda Manning. Jay and Chris are the only children of the Decedent. Jay is the Personal Representative of the Decedent's estate and Jay and Chris are the Trustees of the Decedent's Revocable Trust. Linda Manning is Chris' spouse.

The Plaintiff is Deanna Bushman, agent for Sally Manning under a Durable Power of Attorney dated November 20, 2006. As a result of her 2006 dementia diagnosis, Ms. Manning has been a resident of The Preston, the memory unit at The Cypress in Hilton Head, a retirement community, since mid-2008. Ms. Bushman is Ms. Manning's niece by marriage; Jay and Chris are not Ms. Manning's children.

The Decedent and Ms. Manning were married in October 1997. In 2004, the Decedent executed a revocable inter vivos trust (the "Trust") which allocated assets between two sub-trusts at his death – a marital trust and a family trust; Ms. Manning was the beneficiary during her lifetime of both.¹ In 2008, the Decedent revised his 2004 estate planning documents in part to update the document to the then-Federal estate tax credit/exclusion amounts; this effectively eliminated any provision for the marital sub-trust. In 2009, the Decedent again amended the Trust to exclude Ms. Manning as a beneficiary of the Trust except as provided in Article VIII, Paragraph (2) as follows:

(2) The Settlor hereby expressly makes no provision in this Trust Agreement for the Settlor's wife, SALLY A. MANNING, as the Settlor has otherwise provided for her. *Provided, however, in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of the Settlor's wife, such amount shall be held, administered and distributed as provided in this*

¹ It is unknown what the Decedent's estate plan was prior to 2004.

Paragraph (2). (Emphasis added.) In such event, the following persons, in the order named, shall serve as Trustee of such amount: JOHN J. MANNING, III and CHRISTOPHER H. MANNING.

In 2012, the Decedent executed an amendment which amended and restated the Trust in its entirety. Ms. Manning was excluded as a beneficiary except as provided in ARTICLE 4, Paragraph (C) as follows:

(C) I hereby expressly make no provision in this Trust Agreement for my spouse, SALLY A. MANNING. Notwithstanding the above, *in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of my spouse as provided in this Paragraph (C) of ARTICLE 4.* (Emphasis added.)

The balance of the Trust passes outright to the Decedent's sons and any assets remaining in any share established for Ms. Manning also pass to the Decedent's sons at Ms. Manning's death.

At the time of the Decedent's death, the Trust was funded with an investment account and real property; the Decedent's estate also held tangible personal property and two small refunds payable as a result of his death. The tangible personal property was distributable to his children outright.

STANDARD

In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Silvester v. Spring Valley Country Club, 344 S.C. 280,543 S. E. 2nd 563 (Ct.App.2001).

ARGUMENT

There is no dispute as to Ms. Manning's entitlement to an elective share of the

Decedent's estate pursuant to SC Code Ann. §62-2-201, et seq. or that Ms. Manning (through her agent, Ms. Bushman) timely filed an election for the elective share. The sole issue for determination is "how" the elective share amount is to be distributed, i.e., in trust as per the terms of the July 26, 2012 Amended and Restated Trust or outright to Ms. Manning. At this time, we are not asking the Court to address the amount of the elective share only the form of its distribution.² We are asking the Court to determinate if a beneficial interest held in trust for Ms. Manning which may comprise a portion of the elective share must be distributed outright in satisfaction of the elective share.

SC Code Ann. §62-2-201, et seq. - the elective share statute - provides that if a surviving spouse is not entitled per the decedent's Will to at least a one-third (1/3rd) interest in the deceased spouse's probate estate, the surviving spouse may elect to receive an amount from the probate estate which when added to other assets received by the surviving spouse as a result of the deceased spouse's death would equal one-third (1/3rd) of the deceased spouse's probate estate.

SC Code Ann. §62-2-202 (a) and (b) define the "probate estate" as the "decedent's property passing under the decedent's will plus the decedent's property passing by intestacy reduced by funeral administrative expenses and enforceable claims." There is no dispute that Ms. Manning did not receive an amount equal to one-third (1/3rd) of the Decedent's probate estate under the terms of the Decedent's Will.

In determining the amount of the elective share, SC Code Ann. §62-2-207(a) "charges" the surviving spouse as having received "all property, including any beneficial interest³ (emphasis added), which passes or has passed to the surviving spouse . . . so long as the property is passed to the surviving spouse including having passed to the surviving spouse "in a revocable inter vivos trust created by

² It is estimated that the elective share amount will be in the \$300,000 to \$400,000 range.

³ "Beneficial interest" is not defined but is generally deemed to mean a right, interest, benefit or advantage that a person enjoys without actual ownership. A "profit, benefit, or advantage resulting from a contract, or the ownership of any estate as distinct from the legal ownership or control." Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

the decedent.” SC Code Ann. §62-2- 207 (b) further provides that a “beneficial interest” passing to the surviving spouse includes “an interest as a beneficiary in property contained at the decedent’s death in a revocable inter vivo trust found to be illusory, as provided in SC Code Ann. §62-7-401(c).”

The Defendants do not dispute that the assets held in the trust at the Decedent’s death are to be included in the probate estate for purposes of determining the elective share amount under Seifert v So. National Bank of SC (305 S. C. 353, 409 S. E. 2d 337).

As stated in the Reporter’s Comments to SC Code Ann. § 62-2-207, the 2013 amendment to Code Section 62-2-207 “clarifies and makes certain that property passing directly to the surviving spouse in a revocable inter vivos trust, *including a beneficial interest*, (emphasis added) will satisfy the elective share.” In other words, in determining the elective share, if all of the assets passing outright to the surviving spouse and all beneficial interests held in trust for the surviving spouse added together equal the elective share to which the surviving spouse is entitled, the elective share is satisfied and there is no requirement for an outright distribution of trust assets to satisfy the elective share.

Notwithstanding that the Trust assets are includible for purposes of determining the amount of the elective share, the balance of the Trust is not deemed invalid. SC Code Ann. §62-7-401(c) provides that a finding that a trust is illusory and thus unenforceable or invalid for purposes of determining the elective share does not “render the revocable inter vivos trust invalid” for other purposes. As a result, Ms. Manning’s “beneficial interests” in the Trust are not required to be distributed outright in satisfaction of the elective share but, rather, retained in the Trust as part of the elective share.

The clear language of the statute establishes that any assets held for the “beneficial interests” of the surviving spouse in a revocable trust are “counted” as passing to the surviving spouse in satisfaction of the elective share but not required to be distributed outright from the trust to satisfy the elective share. SC

Code Ann. §62-7-401(c) specifically provides that only if other assets including the beneficial interests held in the trust are insufficient “are [trust assets] available for satisfaction of the elective share . . .”, i.e., distributable outright.

Such a result is affirmed by SC Code Ann. §62-2-207(c) which provides that assets held in trust for a surviving spouse in a qualified terminal interest marital trust, i.e., a beneficial interest held for the benefit of the spouse during her lifetime but not distributed to her or her estate at death, are to be considered as part of the elective share amount. There is no requirement that the assets comprising a qualified terminal interest, which will never be distributable outright to the surviving spouse under the terms of the trust, be made distributable solely because of the elective share except as provided in SC Code Ann. §62-7-401(c).

CONCLUSION

The Defendants are entitled to summary judgment on their claim that the assets in the Decedent’s Trust which may comprise a portion of the elective share amount to which Ms. Manning is entitled net of other assets satisfying the elective share are subject to the terms of the Decedent’s Trust and are not required to be distributed outright to Ms. Manning in satisfaction of any portion of the elective share amount.

NOVIT & SCARMINACH, P.A.

By: s/ Elizabeth B. Mayo
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emayo@ns-lawfirm.com

March 7, 2017
Hilton Head Island, SC 29928

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO: 2015-CP-07-00913

IN THE MATTER OF THE ESTATE OF)
JOHN JOSEPH MANNING, JR.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING AND AS)
TRUSTEE OF THE TRUST)
AGREEMENT OF SALLY MANNING)
DATED DECEMBER 6, 2004,)

**NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO THE
ELECTIVE SHARE**

Plaintiff,)

vs.)

THE ESTATE OF JOHN J. MANNING,)
JR; JOHN J. MANNING, III;)
CHRISTOPHER MANNING; AND)
LINDA MANNING,)

Defendants.)

TO: ELIZABETH B. MAYO, ESQUIRE, ATTORNEY FOR DEFENDANTS, THE ESTATE
OF JOHN J. MANNING, JR., JOHN J. MANNING, III, CHRISTOPHER MANNING,
AND LINDA MANNING:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through her undersigned
attorney, hereby moves this Court for an order granting partial summary judgment in favor of the
Plaintiff as to the Elective Share claim and entering an Order finding that Sally Manning is
entitled to a full elective share free of trust.

0059

This motion is based upon the South Carolina Rules of Civil Procedure, supporting case law, the pleadings on file, supporting memoranda, the discovery and depositions to date, and upon such further evidence as may be presented and such other law as is applicable.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. ASHLEY TWOMBLEY
S.C. Bar #72916
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
twombley@twlawfirm.com
Attorneys for Plaintiff

Beaufort, South Carolina

April 10, 2017

0060

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO: 2015-CP-07-00913

IN THE MATTER OF THE ESTATE OF)
JOHN JOSEPH MANNING, JR.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
FOR SALLY MANNING AND AS)
TRUSTEE OF THE TRUST)
AGREEMENT OF SALLY MANNING)
DATED DECEMBER 6, 2004,)

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO THE ELECTIVE
SHARE**

Plaintiff,)

vs.)

THE ESTATE OF JOHN J. MANNING,)
JR; JOHN J. MANNING, III;)
CHRISTOPHER MANNING; AND)
LINDA MANNING,)

Defendants.)

TO: ELIZABETH B. MAYO, ESQUIRE, ATTORNEY FOR DEFENDANTS, THE ESTATE
OF JOHN J. MANNING, JR., JOHN J. MANNING, III, CHRISTOPHER MANNING,
AND LINDA MANNING:

Plaintiff, Deanna Bushman, as Holder of Durable Power of Attorney for Sally Manning
and as Trustee of the Trust Agreement of Sally Manning, dated December 6, 2004, hereinafter
"Plaintiff," submits this Memorandum in Support of her Motion for Partial Summary Judgment.

I. Relevant Factual Background

John J. (Jack) Manning, Jr., and Sally Manning married on October 15, 1997. See
Exhibit A - License and Certificate for Marriage. After Jack and Sally married, Sally was
diagnosed with Alzheimer's disease. As her disease progressed, Sally was no longer able to stay

at home, and by December 2010, Sally had moved to Preston Health Center at The Cypress for round the clock Alzheimer's disease/dementia care. See Exhibit B - 12/30/10 Check to the Preston. Sally remains in the Preston today and is *non compos mentis*.

Jack died on September 4, 2014. See Exhibit C - Jack Manning's Death Certificate. At the time of his death, Jack's operative estate planning documents provided as follows:

- "I expressly make *no provision* in this Will for my wife, SALLY A. MANNING as she has been provided for by other means." See Exhibit D - 9/2/09 First Codicil to Last Will and Testament (emphasis added).
- "I hereby expressly make *no provision* in this Trust Agreement for my spouse, SALLY A. MANNING." See Exhibit E - 7/26/12 Third Amendment and Restatement of Jack Manning's Revocable Trust (emphasis added).

Accordingly, when Jack died almost three years ago, nothing passed to Sally per the expressed provisions in Jack's estate planning documents.

Despite the expressed language that provided for Sally to receive nothing upon Jack's death, Jack's Trust included the following provisions: "Notwithstanding the above, in the event any portion of the Trust Estate *shall be deemed* payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III, and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee of such separate share." *Id.* Paragraph (C) of Article 4 provides as follows:

- (1) The trustee shall pay to, or for the benefit of, my spouse, during her lifetime, so much of the income of the separate share, if any, established in this Paragraph (C) as the trustee shall, from time to time, determine to be necessary for the health and support of my spouse, in accordance with the standard of living to which she has become accustomed, including medical surgical, hospital or other institutional care, due regard being

given by the trustee to the amount of income known to the trustee to be available to by spouse from other sources.

- (2) Upon the death of my spouse, the principal and all accrued and undistributed income, if any, of such separate shall be added to and become a part of the Manning Family Share to be held, administered and distributed as provided in ARTICLE 5.

See Exhibit E - 7/26/12 Third Amendment and Restatement of Jack Manning's Revocable Trust (hereinafter referred to as the "Discretionary Limited Use Trust").

To simplify, Jack's estate plan essentially provides as follows:

- 1) There is "no provision" for Sally in Jack's Will or Trust, and she receives nothing from his estate or trust upon Jack's passing.
- 2) In the event any portion of Jack's estate *shall be deemed* payable to or for the benefit of Sally, it was Jack's desire that Sally receive only the Discretionary Limited Use Trust.
- 3) When Sally dies, the proceeds of the Discretionary Limited Use Trust must pass to Jack's children.

Sally, by and through Deanna Bushman, who is Sally's Trustee and Power of Attorney, has made a claim for an elective share pursuant to South Carolina Code Ann. § 62-2-201, which provides that the surviving spouse of a decedent has "a right of election *to take* an elective share of one-third of the decedent's probate estate." S.C. Code Ann. § 62-2-201(a) (emphasis added). Defendants concede that (1) Sally is entitled to an elective share; (2) Sally made a timely claim for an elective share; and (3) the assets of Jack's Revocable Trust are included as part of Jack's probate estate for purposes of calculating the elective share. However, Defendants' take the position that Sally is only entitled to the Discretionary Limited Use Trust, and then upon Sally's death, the Discretionary Limited Use Trust passes to Defendants.

The parties have filed cross motions for summary judgment. Plaintiff is asking the Court to determine the following legal questions:

- A. Did anything pass to Sally upon Jack's death?
- B. If no, should the Court end its analysis and allow Sally "to take" one-third of Jack's Estate as her elective share?
- C. Should the Court decline to recognize the Discretionary Limited Use Trust because it violates S.C. Code Ann. § 62-7-404 and is contrary to public policy?
- D. If the Discretionary Limited Use Trust is found not to violate S.C. Code Ann. § 62-7-404, is at some point in time is "deemed payable to or for the benefit of Sally," and is established, does the Discretionary Limited Use Trust fully and completely satisfy Sally's elective share?

II. Standard of Review

"Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." Preservation Capital Consultants, LLC v. First American Title Ins. Co., 406 S.C. 309, 315, 751 S.E.2d 256, 259 (2013); Rule 56(c), SCRPC. Upon information and belief, the parties agree that the relevant facts are not in dispute, and that the Court should resolve the questions above on summary judgment grounds.

III. Applicable Law

South Carolina Code Ann. § 62-2-201 provides that the surviving spouse of a decedent has "a right of election *to take* an elective share of one-third of the decedent's probate estate." S.C. Code Ann. § 62-2-201(a) (emphasis added). The decedent's probate estate includes the property that passes under the decedent's will or by intestacy (reduced by funeral and

administration expenses and enforceable claims) as well as the property contained in the decedent's revocable inter vivos trust(s). S.C. Code Ann. § 62-2-202; see also 32 S.C. Jur. Wills § 205.

The South Carolina Code also lists what assets may be charged against the elective share. Under S.C. Code Ann. § 62-2-206, any amounts that pass to the surviving spouse under the decedent's will, by intestacy, by any homestead allowance, or by S.C. Code Ann. § 62-2-401¹ are charged against the elective share. South Carolina Code Ann. § 62-2-207 specifies which probate and non-probate transfers are to be charged against the elective share. The elective share has "the legislative purpose of providing for the surviving spouses." Matter of Patrick, 303 S.C. 559, 564, 402 S.E.2d 664, 666 (1991).

Because the elective share is designed to provide for the surviving spouse, the subjective intent of the decedent cannot and does not override the elective share. As the South Carolina Supreme Court stated, "[t]he provisions concerning the elective share do not provide for the testator's intent to the contrary. . . . Therefore, **we find that the elective share provision may not be ignored by a testator** and affirm the trial court's ruling." Id. at 562-63, 402 S.E.2d at 666 (emphasis added). The elective share is mandatory, and a surviving spouse can take an elective share of the decedent's probate estate, even if the decedent intended to provide the surviving spouse with less. 32 S.C. Jur. Wills § 201.

IV. Analysis

A. *Nothing passed to Sally upon Jack's death.*

Sally is entitled to an elective share. Under S.C. Code Ann. §§ 62-2-206 and -207, specified assets or funds that "pass" to Sally upon Jack's death are charged against the elective

¹ S.C. Code Ann. § 62-2-401 provides that "the surviving spouse of a decedent who was domiciled in this State is entitled from the estate to a value not exceeding twenty-five thousand dollars in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects."

share. Therefore, the first question before the Court whether anything passed to Sally upon Jack's death.

It is undisputed that nothing passed to Sally at Jack's death. That is because Jack expressly provided that "no provision" be made for Sally in his will or trust. See Exhibit D - 9/2/09 First Codicil to Last Will and Testament; Exhibit E - 7/26/12 Third Amendment and Restatement of Jack Manning's Revocable Trust. In addition, there have been no transfers pursuant to S.C. Code Ann § 62-2-207.

Moreover, no person or Court has ever "deemed" that Sally is entitled to the Discretionary Limited Use Trust, and Sally has never received any payments from any such Trust. Accordingly, nothing passed to Sally upon Jack's death.

B. Since nothing passed to Sally at Jack's death, the Court should end its analysis here and allow Sally "to take" one-third of Jack's Estate as her elective share.

The Court should end its analysis and enter an Order finding that, because nothing passed to Sally upon Jack's death, Sally has the right *to take* an elective share of one-third of Jack's probate estate as set forth in S.C. Code Ann. § 62-2-201(a). The Court is not required to examine the Discretionary Limited Use Trust because it did not pass to Sally upon Jack's death. Nothing passed to Sally, and therefore, the Discretionary Limited Use Trust is irrelevant. If the Court agrees, it is not necessary for the Court to address any of the additional arguments below.

C. The Court should refuse to recognize the Discretionary Limited Use Trust because it violates S.C. Code Ann. § 62-7-404 and is contrary to public policy.

If the Court decides that something (the Discretionary Limited Use Trust) did pass to Sally upon Jack's death, the Court should then determine if the Discretionary Limited Use Trust is void and should not be established or enforced. Jack's Revocable Trust attempts to require

that, in the event that “any portion” of Jack’s Revocable Trust “shall be deemed payable” to Sally, the Discretionary Limited Use Trust be established for Sally’s benefit. However, the Discretionary Limited Use Trust violates public policy, is an effort to subvert the elective share statutes, and provides no benefits to Sally.

1. The Discretionary Limited Use Trust violates public policy.

Under the law in South Carolina, “[a] trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.” S.C. Code Ann. § 62-7-404. In this case, South Carolina law and public policy recognize a mandatory elective share, and a testator may not ignore the elective share provision and disinherit his spouse. In the Matter of Patrick, 303 S.C. at 562-63, 402 S.E.2d at 666 (“[t]he provisions concerning the elective share do not provide for the testator’s intent to the contrary. . . . Therefore, we find that the elective share provision may not be ignored by a testator and affirm the trial court’s ruling.”); Medlin, The South Carolina Probate Code Patched and Refurbished Version 2013, 65 S.C. L. Rev. 81, 100 (“ability to disinherit a spouse ended with the enactment of the SCPC.”).

Jack’s estate plan attempts to accomplish precisely what the law forbids: he seeks to disinherit his wife, expressly providing that “no provision” be made for her in his will or trust. He simply cannot do that, and the significance of this cannot be overstated. Sally received nothing upon Jack’s death because Jack, in his estate planning documents, made crystal clear what his intentions were.

2. The Discretionary Limited Use Trust is an effort to subvert the elective share statutes.

To make matters worse, after expressly disinheriting Sally, Jack then attempts to subvert the law further by dictating that if Sally is entitled to receive something, then Sally can only receive the Discretionary Limited Use Trust. But this is not the way an elective share

works. If Sally is not provided for in Jack's estate (which she expressly was not), she is legally entitled to take an elective share, plain and simple. Neither Sally nor this Court is required to accept or follow Jack's back up plan, clearly intended to subvert the elective share statutes. Accordingly, the Court should decline to follow Jack's back up plan because it is clearly an effort to subvert elective share law.

3. The Discretionary Limited Use Trust is void because it provides no benefit to Sally.

South Carolina Code Ann. § 62-7-404 provides that "[a] trust and its terms must be for the benefit of its beneficiaries." However, the Discretionary Limited Use Trust does not actually benefit Sally.

The Discretionary Limited Use Trust was written and designed so that no payments will ever be made to Sally. First, under the Discretionary Limited Use Trust, whether or not any payments are ever made to Sally is left completely up to the "discretion" of the trustees. The trustees can only make a payment to Sally if the trustees, in their discretion, deem a payment is "necessary for the health and support" of Sally. Again, Sally is not "entitled" to anything.

To go even further, when exercising discretion about whether to make a payment to Sally, the trustees are to consider other sources of income for Sally. At the time these provisions were drafted, Jack knew that Sally was a was full time resident of the Preston Health Center, that Sally suffered from an irreversible disease, and also knew that all of Sally's expenses were being paid by a long-term care policy of which Sally has been the policy holder since 1999. See Exhibit F – Sample Monthly Banking Statement and Exhibit G - Genworth Policy. In addition, Jack knew that Sally received monthly Social Security benefits. See Exhibit F – Sample Monthly Banking Statement. In other words, Jack knew that based upon the "necessary" standard he created in the Discretionary Limited Use Trust, along with the provision that

required the trustees to consider other sources of income "available" to Sally before giving Sally any money, he had tailor made a trust that would never need to be invaded for Sally's benefit.

If the Court were to allow this procedure to stand, Jack will have totally subverted the elective share statutes and created a situation where Sally never receives a dime from his estate.

Finally, Jack's two children (John J. Manning, III and Christopher Manning) are the named trustees of the Discretionary Limited Use Trust for the benefit of Sally. Jack's two children also receive the entire corpus of the Discretionary Limited Use Trust after Sally dies. See Exhibit E - 7/26/12 Third Amendment and Restatement of Jack Manning's Revocable Trust. Accordingly, Jack's children are not required or otherwise obligated to give Sally any of the money that will ultimately pass to them unless they believe, in their discretion, that giving Sally the money is "necessary." If this stands, the Court will have allowed Jack to totally bypass Sally and transfer his entire estate to his children.

Since South Carolina law and South Carolina public policy support a mandatory elective share, and since Jack's Third Amendment and Restatement of his Revocable Trust was written to avoid making any payments to Sally and to circumvent and frustrate her elective share rights, the Discretionary Limited Use Trust is void.

D. The Discretionary Limited Use Trust, even if funded, does not fully satisfy Sally's elective share.

Assuming that the Discretionary Limited Use Trust is not void, the question then become whether the Discretionary Limited Use Trust, without any other payments to Sally, fully satisfies Sally's elective share.

Under S.C. Code Ann. § 62-7-207(c), the **only time** that the value of the beneficial interest equals the value of the trust dollar for dollar is when the trust qualifies for the federal estate marital tax deduction under Section 2056 of the Internal Revenue Code. S.C. Code Ann. §

62-7-207(c).

In order for a trust to qualify for the marital deduction, the surviving spouse must be entitled to **all** income of the trust **for life**. 26 U.S.C. § 2056(b)(7)(B)(ii) (“The surviving spouse has a qualifying income interest for life if— (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct² interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.”) Under the terms of the Discretionary Limited Use Trust, Sally is not entitled to anything. Therefore, the Discretionary Limited Use Trust fails to qualify for the marital deduction because Sally does not have “the right exercisable annually (or more frequently) to require distribution to herself of the trust income” Treas. Reg. § 20.2056(b)-5(f)(8). (emphasis added).

Importantly, “[a]n interest passing in trust fails to satisfy the condition . . . that the spouse be entitled to all the income, to the extent that the income is required to be accumulated in whole or in part or may be accumulated *in the discretion of any person other than the surviving spouse; to the extent that the consent of any person other than the surviving spouse is required as a condition precedent to distribution of the income*; or to the extent that any person other than the surviving spouse has the power to alter the terms of the trust so as to deprive her of her right to the income.” Treas. Reg. § 20.2056(b)-5(f)(8). (emphasis added).

Clearly, the Discretionary Limited Use Trust does not qualify for the marital deduction. Sally is not entitled to any income ever. In fact, she can only receive a payment from the trust if the Trustees exercise discretion and deem a payment necessary for Sally’s support or health after consideration of Sally’s other assets.

² Usufruct means “the legal right of using and enjoying the fruits or profits of something belonging to another.” See Merriam-Webster Dictionary.

Plaintiff's expert Harley Ruff has reviewed the terms of Jack's Revocable Trust and has opined that, as relates to the Discretionary Limited Use Trust:

- (1) Nothing passed to Sally upon Jack's death;
- (2) Sally has the right *to take* an elective share of one-third of Jack's probate estate as set forth in S.C. Code Ann. § 62-2-201(a)
- (3) The Discretionary Limited Use Trust violates public policy, is an effort to subvert the elective share statutes, and provides no benefits to Sally.
- (4) The contingent trust under Article 4, Section (C) does not qualify for "full value" satisfaction treatment under S.C. Code §62-2-207 (c), because such trust does not qualify for the marital deduction under Internal Revenue Code section 2056.
- (5) Distributions of income and principal from this contingent trust are completely discretionary with the Trustees. Mrs. Manning has no absolute rights to distribution from his contingent trust.
- (6) The Trustees of this contingent trust, John J. Manning, III and Christopher H. Manning, who hold the discretionary powers of distribution, are also the remainder beneficiaries upon Mrs. Manning's death, and thus have personal financial interests in limiting distributions to Mrs. Manning.

See Exhibit H - Ruff Affidavit.

Accordingly, the Discretionary Limited Use Trust does not qualify for the marital deduction, and the beneficial value of the Discretionary Limited Use Trust does not equal the value of the assets held in the Discretionary Limited Use Trust. Further, the value of Sally's beneficial interest in Discretionary Limited Use Trust is non-existent to minimal since payments are not even required and the Discretionary Limited Use Trust was drafted so that no payments would be made.

V. Conclusion

For the reasons contained herein, the Court should grant the motion for summary Judgment, finding that:

- 1) Nothing passed to Sally upon Jack's death;
- 2) The fact that nothing passed to Sally upon Jack's death ends the Court's analysis and Sally is allowed "to take" one-third of Jack's Estate as her elective share;
- 3) Alternatively, the Court should refuse to recognize the Discretionary Limited Use Trust because it violates S.C. Code Ann. § 62-7-404, is contrary to public policy, is an effort to subvert elective share law and provides no benefit to Sally; and
- 4) If the Discretionary Limited Use Trust is found not to violate S.C. Code Ann. § 62-7-404, and at some point in time is "deemed payable to or for the benefit of Sally," Sally's beneficial interest in the Discretionary Limited Use Trust does not fully fund Sally's elective share and Sally is entitled to additional funds to equal her full elective share.

TWENGE + TWOMBLEY LAW FIRM

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Attorney for Plaintiff

Beaufort, South Carolina

April 10, 2017

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

971138

BEAUFORT

LICENSE NUMBER

COUNTY

GROOM—NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(1) JOHN JOSEPH HANNING, JR.			(2a) [REDACTED]		(2b) 64
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)		
(3) PENNSYLVANIA		(4) CAUCASIAN	(5a) [REDACTED]		
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)	
(5b) HILTON HEAD ISLAND		(5c) BEAUFORT	(5d) SOUTH CAROLINA	(6) 2ND	
BRIDE—NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(7) SALLY ANN FREEMAN			(8a) [REDACTED]		(8b) 60
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)		
(9) TEXAS		(10) CAUCASIAN	(11a) [REDACTED]		
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)	
(11b) HILTON HEAD ISLAND		(11c) BEAUFORT	(11d) SOUTH CAROLINA	(12) 3RD	
MAIDEN NAME OF BRIDE (If Different From Above)					
(13) BUSHMAN					

Application for a license was filed with this court at 12:17p on the 10th day of OCTOBER, 1997. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant. Given under my hand and seal at 12:17p this the 11th day of OCTOBER, A.D. 1997.

Francis M. Simon
Signature of Issuing Officer

FRANCIS M. SIMON, PROBATE JUDGE
Title of Issuing Officer

GROOM—Signature			BRIDE—Signature		
(14) <i>John Joseph Manning Jr.</i>			(15) <i>Sally Ann Freeman</i>		
I certify that the above named persons were married on			Place of Marriage		
(16) October 15 1997 (MONTH) (DAY) (YEAR)			(17) Hilton Head Island (Beaufort) SOUTH CAROLINA (CITY) (COUNTY)		
OFFICIANT—Signature			OFFICIANT—Title		
(18a) <i>James F. Berl</i>			(18b) Notary Public for South Carolina Comm. Expires: 4/5/98		
OFFICIANT—Mailing Address					
(18c) [REDACTED] Hilton Head Island, South Carolina 29926					

DHEC 681 (Rev. 1/96)

PROBATE JUDGE COPY

CERTIFICATION OF COPY

This document consisting of 1 page(s) is hereby certified to be a true copy of the original document on file in the Probate Court of Beaufort County, South Carolina. In witness whereof, I have hereto set my official signature and affixed the seal of the Probate Court, at the County and State aforesaid.

Date 2/6/15 Name Francis M. Simon (Seal)

Title Clerk Beaufort County Probate Court
Beaufort, South Carolina

0073

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-14-029682

DECEDENT'S NAME: *JOHN JOSEPH MANNING JR*

AKA's: NA

ARMED FORCES: YES

DATE OF BIRTH: DECEMBER 08, 1932

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: COASTAL CAROLINA MEDICAL CENTER, HARDEEVILLE, SC 29927

PLACE OF DISPOSITION: SAULS FUNERAL HOME

DISPOSITION LOCATION: BLUFFTON, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: [REDACTED]

PLACE OF BIRTH: PENNSYLVANIA

SURVIVING SPOUSE'S NAME: SALLY ANN BUSHMAN

FATHER'S NAME: JOHN JOSEPH MANNING SR

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: CLAIRE MCGOWAN

INFORMANT'S NAME: JOHN JOSEPH MANNING III

MAILING ADDRESS: [REDACTED]

FUNERAL HOME: SAULS FUNERAL HOME OF BLUFFTON, 90 SIMMONSVILLE ROAD, BLUFFTON, SC, 29910

FUNERAL DIRECTOR: LINIOUS MARTIN SAULS III

EMBALMER'S NAME: NOT EMBALMED

ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 04, 2014

ACTUAL OR PRESUMED TIME OF DEATH: 0520

CAUSE OF DEATH - PART I

SEPTICEMIA

URINARY TRACT INFECTION

SENILE DEMENTIA ALZHEIMER'S TYPE

OTHER SIGNIFICANT CONDITIONS - PART II:

POLYCYTHEMIA RUBRA VERA, DEHYDRATION

CORONER CONTACTED? NO

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: DR. WILLIAM GLENN IV

CERTIFIER'S ADDRESS: NA

DATE FILED: SEPTEMBER 12, 2014

DATE OF ISSUANCE: OCTOBER 14, 2014

SPECIAL INSTRUCTIONS:

NA

SEX: MALE

SOCIAL SECURITY NUMBER: [REDACTED]

AGE: 81 YEARS

COUNTY OF DEATH: JASPER

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY MEMBER

LICENSE NUMBER: 1316

LICENSE NUMBER: NA

MANNER OF DEATH: NATURAL

LICENSE NUMBER: 19072

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

SC03980109

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Barbara E. Derrick
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 01/24/2014

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

FIRST CODICIL
TO LAST WILL AND TESTAMENT
OF
JOHN J. MANNING, JR.

I, JOHN J. MANNING, JR., a resident of Beaufort County, South Carolina, being of lawful age and sound and disposing mind and memory, do make, publish and declare this to be the First Codicil to the Last Will and Testament executed by me on November 29, 2004.

(1) ITEM I of my said Last Will and Testament is hereby deleted in its entirety and substituted in lieu and in place thereof is the following new ITEM I:

"ITEM I. I expressly make no provision in this Will for my wife, SALLY A. MANNING as she has been provided for by other means."

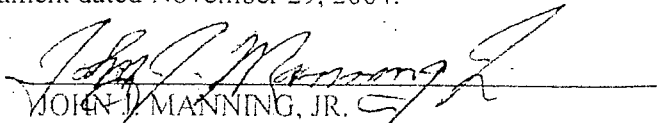
(2) ITEM IV of my said Last Will and Testament is hereby deleted in its entirety and substituted in lieu and in place thereof is the following new ITEM IV:

"ITEM IV.

(1) I nominate and appoint JOHN J. MANNING, III as my Personal Representative under this Will. In the event JOHN J. MANNING, III fails to survive me or otherwise fails or ceases to serve as Personal Representative, I nominate and appoint CHRISTOPHER H. MANNING as successor Personal Representative. I request that no bond be required of any person/entity named herein as Personal Representative or any successor Personal Representative. Any person or entity serving as Personal Representative shall be entitled to receive reasonable compensation for services rendered and reimbursement for reasonable expenses."

(3) In all other respects, I hereby ratify and confirm all the provisions of my Last Will and Testament dated November 29, 2004.

IN WITNESS WHEREOF, I have on this 2nd day of September, 2009, at Hilton Head Island, South Carolina, signed my name at the end of this instrument of two (2) pages, which I declare to be the First Codicil to my Last Will and Testament dated November 29, 2004.


JOHN J. MANNING, JR.

I, Eliz B. Mayo, and I, Melvin F. Land, the witnesses, sign our names to this instrument, and at least one of us, being duly sworn, do hereby to the undersigned authority that I sign and execute this instrument as the First Codicil of the Last Will and Testament of JOHN J. MANNING, JR. (the "Testator") and that each of us sign it willingly. (or each has willingly directed another to sign for him/her). and that each of us, in the presence and hearing of the Testator hereby signs this Will as witness to the Testator's signing, and that to the best of our

0075

knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Shirley B. May
Witness
Melora F. Land
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Subscribed, sworn to and acknowledged before me by the Testator and subscribed and sworn to before me by Melora F. Land, the witness, this 2nd day of September, 2009.

Shirley B. May
Notary Public for South Carolina
My Commission Expires: (NOTARY SEAL)

MY COMMISSION EXPIRES
JUNE 21, 2017

0076

THIRD AMENDMENT AND RESTATEMENT

TO

REVOCABLE

TRUST AGREEMENT

CREATED BY

JOHN J. MANNING, JR.

Prepared by:

**Elizabeth B. Mayo, JD, LLM
Novit & Scarminach, P.A.
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
843-785-5850**

007

**THIRD AMENDMENT and RESTATEMENT
OF
JOHN J. MANNING, JR. LIVING TRUST**

This 3rd Amendment and Restatement of the JOHN J. MANNING, Jr. LIVING TRUST dated November 29, 2004 as amended by 1st amendment dated June 6, 2008 and by 2nd amendment dated September 2, 2009 is made at Hilton Head Island, South Carolina, this 26th day of July, 2012.

WHEREAS, ARTICLE VI of said Trust Agreement reserves to the Grantor the right to amend, alter or revoke said Trust Agreement in part or in its entirety; and

WHEREAS, the Grantor now desire to amend said Trust Agreement in its entirety;

NOW, THEREFORE, the said Trust Agreement is hereby amended in its entirety as follows:

“WITNESSETH:

“I, JOHN J. MANNING, JR., as grantor and as trustee do create this trust (to be known as the JOHN J. MANNING, JR. LIVING TRUST as amended and restated July 26, 2012”) for the purposes and upon the terms and provisions hereafter set forth. Accordingly, I hereby pay and deliver to the trustee the sum of One Dollar which, together with any other property herewith or hereafter assigned, conveyed, devised or bequeathed to the trustee by me or by any other persons (all of which is hereafter collectively termed “the trust funds”), shall be held and disposed of by the trustee upon the following terms:

Definitions

ARTICLE 1. (A) Children. The references in this instrument to my children, grandchildren, descendants, issue or children's issue are intended to include both natural born and legally adopted children, whether born or adopted before or after the execution hereof. For identification purposes, I now have two children whose names are JOHN J. MANNING, III and CHRISTOPHER H. MANNING.

(B) Code. “Code” shall mean the Internal Revenue Code of 1986, as amended.

(C) Education. “Education” shall mean expenses (hereinafter defined) incurred for the following types of education: elementary, high school, college preparatory, college, professional school, post graduate, and technical academic institutions and instruction in the areas of art, dance, music and physical fitness whether or not such instruction leads to a degree. “Expenses” for education shall include tuition, books, student supplies, room, board, travel, special course fees, lab fees, uniforms, and professional or educational societies and all other reasonable costs and reasonable expenses customarily associated with education.

(D) Estate Tax Exemption. The largest amount that can pass to the By-Pass Trust without increasing the Grantor's federal estate tax.

(E) Spouse. My spouse's name is SALLY A. MANNING.

(F) Survivor. Survivorship as between my spouse and me, for all purposes hereunder, shall be determined as a matter of fact without reference to any legal or statutory presumption respecting the order of our deaths; provided that if my spouse and I should die in a common accident and it cannot reasonably be determined which of us died first, then my spouse shall be presumed to have predeceased me. Survivorship as between any other beneficiary and me, for all purposes hereunder, shall be determined as a matter of fact without reference to any legal or statutory presumption respecting the order of our deaths; provided that if such other beneficiary and I should die in a common accident and it cannot reasonably be determined which of us died first, then such beneficiary shall be presumed to have predeceased me.

(G) Trustee. I am serving as the initial trustee of the trust. If I cease to serve as trustee for any reason, including my incapacity, my sons, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as successor co-trustees (hereinafter referred to individually and collectively as "trustee"). In the event of the incapacity or disability of any person serving as successor trustee hereunder, such trustee shall be deemed to have resigned and the successor trustee or trustees as provided in this Agreement shall serve as successor trustee/trustees. I request that no bond be required of any person/entity named herein as trustee.

(H) Incapacity. Any person serving as trustee shall be deemed to be "incapacitated" (and while incapacitated shall not serve as a trustee) if another then-serving trustee or, if there is none, the next successor trustee receives written certification that the examined individual is physically or mentally incapable of managing the affairs of the trust (or, in my case, my personal financial affairs), whether or not there is an adjudication of incapacity. Such certification shall be valid only if it is signed by at least two (2) licensed physicians, each of whom has personally examined me or the trustee, as the case may be; such certification need not indicate any cause for my incapacity or the incapacity of the trustee. A certification of incapacity shall be rescinded when a serving trustee receives a certification that I am capable of managing my personal financial affairs or that the former trustee, as the case may be, is capable of managing the trust's affairs. This certification, too, shall be valid only if it is signed by at least two (2) licensed physicians, each of whom has personally examined me or the trustee, as the case may be, and at least one (1) of whom is board certified in the specialty most closely associated with the former disability. No person is liable to anyone for actions taken in reliance on the certifications under this paragraph or for dealing with a trustee other than the one removed for disability based on these certifications.

(I) The headings used in this Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Agreement.

During My Lifetime

ARTICLE 2. The provisions of this ARTICLE 2 shall be applicable only during my lifetime.

(A) This instrument may be amended or revoked by me at any time in writing; if I am not then serving as trustee, written notice of any such amendment or revocation shall be made to the trustee. No such amendment shall increase the duties and responsibilities of any

trustee other than myself without the trustee's consent. It is understood that I may also at any time and from time to time withdraw funds and properties from the trust. Except during my lifetime while I am serving as trustee, such withdrawals shall be by written notice to the trustee designating the funds or properties so withdrawn. At all times I am serving as trustee, no written notice of amendment or revocation shall be required.

(B) (1) The net income of the trust estate, if any, shall be paid and distributed currently to me in convenient regular installments.

(2) In addition, the trustee shall distribute to me so much of the principal as I request at any time or times in a writing delivered to the trustee.

(3) During any period of my incapacity as a result of illness, accident or any other cause, during any such period of incapacity and notwithstanding anything contained in paragraphs (1) and (2) of this Paragraph (B) to the contrary, the trustee shall pay or distribute so much of the net income and principal of the trust for the support, maintenance, comfort, recreation, and welfare of my spouse and me, and for the payment of any taxes or other obligations for which I may be liable, at such time, in such amounts, and to such extent, as the trustee, in their sole discretion, deems to be in my best interest. Any undistributed income shall be added to the principal of the trust estate at the end of each calendar year.

(C) The trustee shall not be obligated to pay any premium or assessment on any life insurance policy on my life held by the trustee hereunder.

Upon My Death

ARTICLE 3. The terms of the trust shall become fixed and irrevocable at my death. After the satisfaction of all debts, taxes and costs of administration of my estate as provided under my Will and elsewhere under this trust, the funds and properties which remain in the hands of the trustee (including without limitation any life insurance or other benefits paid to the trustee, any property which passed to the trustee under my Will, and any other funds or property received by the trustee by reason of my death) shall be held, administered and distributed as hereinafter provided.

I do not intend to exercise any power of appointment that may have been given to me under the Will or other instrument executed by my spouse or any other person; nothing contained herein shall be deemed an exercise of any such power of appointment in whole or in part.

Allocation of Trust Estate

ARTICLE 4.

(A) Except as provided in written memoranda left by me disposing of certain of such items and found or identified by the trustee within sixty (60) days after my death, the trustee is authorized to distribute all or any of my clothing, jewelry, books, pictures, household furniture and equipment, automobiles, and other similar nonbusiness tangible chattel property, all policies of fire, burglary, property damage, and other insurance on or in connection with the use of such property comprising the trust estate, and airline or other frequent flyer or other member awards or benefits ("Chattel Property"), outright and free of trust, in substantially equal share, to my then-living issue, per stirpes. In the event such then-living issue are unable to agree among themselves within six months of the date of my death on the division of such Chattel Property, such division shall be determined by the trustee whose decision shall be binding and conclusive on all parties

concerned. If I leave such written memoranda, such item(s) of my Chattel Property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within sixty (60) days after his appointment, it shall be conclusively presumed that there are no such memoranda and any subsequent discovered memoranda shall be ineffective. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such Chattel Property, the trustee shall distribute all of such items not disposed of my such memoranda, outright and free of trust, as provided herein.

(B) Except as provided in Paragraph (C) of this ARTICLE 4, the Trustee shall hold, administer and distribute the balance of the trust estate as the Manning Family Share pursuant to the terms of ARTICLE 5 of this Trust Agreement.

(C) I hereby expressly make no provision in this Trust Agreement for my spouse, SALLY A. MANNING. Notwithstanding the above, in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of my spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee of such separate share.

(1) The trustee shall pay to, or for the benefit of, my spouse, during her lifetime, so much of the income of the separate share, if any, established in this Paragraph (C) as the trustee shall, from time to time, determine to be necessary for the health and support of my spouse, in accordance with the standard of living to which she has become accustomed, including medical, surgical, hospital or other institutional care, due regard being given by the trustee to the amount of income known to the trustee to be available to my spouse from other sources.

(2) Upon the death of my spouse, the principal and all accrued and undistributed income, if any, of such separate share shall be added to and become a part of the Manning Family Share to be held, administered and distributed as provided in ARTICLE 5.

(3) My spouse may disclaim her interest in all or any amount or fraction of the trust funds to be allocated to such separate share. Such disclaimer may be made for any reason, including but not limited to, the possible minimization of the total amount of estate taxes payable out of both my estate and my spouse's estate. In such event, the trust funds in which my spouse has disclaimed an interest shall not be allocated to such separate share but instead shall be allocated to and held, administered and distributed as part of the Manning Family Share as provided in ARTICLE 5. Any disclaimer by my spouse shall also serve to terminate the interests of and provisions for all other beneficiaries, if any, under such separate share established in Paragraph (C) of this ARTICLE 4 in the trust funds allocated to the Manning Family Share by reason of such disclaimer.

(D) The distribution or assignment of trust funds under this ARTICLE 4 may be in cash or in kind, in specific properties or undivided interests, as the trustee shall determine, each distribution in kind to be credited at then current values. The trustee is authorized to estimate the allocation to the separate share, if any, established Paragraph (C) of this ARTICLE 4 and to make distribution to such separate share subject to final adjustment, if any, upon the final settlement of the Federal estate proceedings in connection with my estate. In making the allocations required under this ARTICLE 4, the trustee may rely upon any statement or report submitted in writing by my Personal Representative.

Manning Family Share

ARTICLE 5. The trust funds then constituting the Manning Family Share shall be distributed, outright and free of trust, in equal shares, one such share to each of my then-living children and one such share to the then-living issue of each deceased child of mine. Amounts of principal, if any, distributed to any child of mine pursuant to previous ARTICLES hereof shall be taken into account by the trustee in the division of the trust funds into shares. Amounts of principal distributed to each child thereunder shall be considered trust assets (valued at the date of distribution) and the trust share established for each child (or for a deceased child's surviving issue) shall be charged with the amounts so distributed to such child.

(1) Each share established for a then-living child shall be distributed outright, free of trust, to such child.

(2) Each share established for a child who has died leaving issue surviving at the date such share is established shall be paid over and distributed outright, free of trust, to such child's then-living issue, per stirpes. Such portion shall be retained in trust and administered for the benefit of such then-living issue of such deceased child as follows:

(a) Until the youngest then-living child of such deceased child of mine attains the age of twenty-five (25), the trustee shall distribute, apply or expend any part or all of the net income and, if the income is insufficient therefor, the principal of such share to or for the benefit of all or any one of such then-living children of such deceased child, in cash or in kind and in such amounts and proportions as the trustee shall determine necessary in the trustee's discretion for the health, support, maintenance and education of such beneficiary, according to the standard of living which such then-living children are accustomed at my death and after taking into consideration to the extent the trustee deems advisable any other income or resources known to the trustee to be available to such children. Any undistributed income shall be added to the principal of such portion at the end of each calendar year. Further, it is my intention that the support, maintenance, health and education of such children under the age of twenty-five (25) shall be given priority over conservation of the trust estate for the benefit of the remaindermen.

(b) When the youngest then-living child of such deceased child of mine attains the age of twenty-five (25), the trustee shall divide the principal and any undistributed income, in equal share, one such share for each of the then-living children of such deceased child of mine and one such share for the then-living issue, per stirpes of any deceased child of a deceased child of mine.

(3) Notwithstanding anything contained herein to the contrary, CHRISTOPHER H. MANNING shall serve as trustee of any share established herein for the benefit of the then-living issue of JOHN J. MANNING, Jr. and LINDA MANNING shall serve as the trustee of any share established herein for the then-living issue of CHRISTOPHER H. MANNING.

Catastrophe Clause

ARTICLE 6. If none of my children or their issue survive at the death of the survivor of my spouse and me; or if there should be a complete failure of all beneficiaries of the trusts established under ARTICLES 4 and 5 hereof, the trustee shall pay over and distribute the trust funds to such persons in such shares and proportions who would be entitled to my estate under the laws of descent

and distribution then in effect for the state of my domicile at death had I then died intestate and unmarried and predeceased by my parents.

Perpetuities Clause

ARTICLE 7. Notwithstanding the foregoing provisions no trust share hereunder shall continue in effect beyond the expiration of twenty-one years after the death of the last survivor of my spouse, my children and my issue living at my death. Any trust share then in existence shall terminate and the property shall be distributed to the income beneficiaries in the same proportions as they are then entitled to such income. If at termination the rights to the income of such trust share are not fixed by the provisions of such trust share, distribution shall be made, per capita, to the persons who are then entitled or authorized in trustee's discretion to receive income distributions from such trust share.

Spendthrift Clause

ARTICLE 8. To the extent permitted by law, no interest of any beneficiary in the income or principal of any trust established herein shall be subject to pledge, assignment, sale or transfer in any manner, nor shall any beneficiary have power in any manner to anticipate, charge or encumber his or her interest, nor shall the interest of any beneficiary be liable or subject in any manner while in the possession of the trustee, for debts, contracts, liabilities, engagements or torts of such beneficiary.

Trustee Powers

ARTICLE 9. (A) The trustee shall have full and complete power and authority as to such trust to administer the trust property without the necessity of securing the order of any court in connection with any transaction. Without intending to limit the generality of the foregoing, the trustee is authorized to retain, sell, assign, transfer, convey, exchange, lease, mortgage, pledge, contract with respect to, and in any manner dispose of, any or all of the trust property; to execute any instruments or writings incidental to the exercise of such powers; to borrow money; to exercise any voting, subscription and other rights and privileges incidental to securities; and to cause securities to be registered in the name of a nominee. The trustee is given broad discretion in the investment and reinvestment of trust funds, including (without limitation) the authority to invest in common stocks, common trust funds including common trust funds and collective funds of the trustee and/or any of its affiliates or of any other fiduciary and/or any of its affiliates, collective investment funds, real estate or any interest therein, and other classes of property which the trustee may deem to be in the best interest of the beneficiaries and in any security or evidence or indebtedness of any entity of which any bank or financial institute then serving as trustee has an interest including any affiliate or subsidiary of such trustee. The trustee is authorized to make distributions in cash or in kind or both, and to determine the values of any properties so distributed. The trustee is authorized to make allocations and distributions of assets in kind without regard to the adjusted basis of the assets so allocated or distributed and without making any equitable adjustment among the distributees therefor. The trustee is authorized to employ suitable agents and counsel, including but not limited to, any subsidiary or affiliate of the trustee and to pay their reasonable expenses and compensation. At all times there is more than one trustee then serving, a majority decision shall control.

The determination of the trustee in making such allocations and distributions of assets in kind shall be binding on all beneficiaries. The trustee shall be exonerated from any and all liability arising from the exercise of such discretion to make allocations and distributions of assets in kind, and no beneficiary shall have any claim against the trust or the trustee arising therefrom. Except as expressly provided herein, any trust property to be paid or distributed hereunder to or for the benefit of a minor may be paid or distributed to a custodian under the Uniform Gifts to Minors Act of the state of domicile of such minor, in the manner and form provided thereunder. The trustee is authorized to name the custodian of any trust property so paid or distributed. No person dealing with the trustee shall be under a duty to see to the application of the proceeds of any transaction, and the execution of any instrument or paper by the trustee shall be conclusive evidence to those dealing with the trustee of the trustee's power so to act. The trustee is specifically authorized to purchase securities or other properties from my estate, to advance trust funds to my estate, or to loan trust funds to my estate with or without security therefor. Further, the trustee of any trust hereunder is authorized at any time and from time to time in its sole and absolute discretion to merge such trust with or to contribute the trust funds to any other trust created by me or by my spouse which has all of the same individuals as beneficiaries thereof, which has substantially similar provisions with respect to the distribution of income and principal thereunder, and which is irrevocable and unamendable at the time of merger.

(B) If the trust should include any interest in any closely held corporations, general or limited partnerships or joint venture, the trustee is authorized to exercise all powers with respect to any such business interest which I could exercise if present and acting. This shall include, but shall not be limited to, the following powers: (1) To continue, expand, limit, alter, reconstitute, incorporate or terminate any such business interests in any way the trustee may determine to be advisable without liability for loss arising therefrom, unless such loss results directly from the trustee's gross negligence or willful misconduct; (2) To name and to change directors, or to act as a director and receive compensation therefor; (3) To retain or sell any such business interests, and, if a sale or disposition thereof is made, (i) the terms, techniques, or manner thereof shall be wholly within the discretion of the trustee, and (ii) the trustee is specifically authorized and empowered to make such sale to any partner, officer or employee of the business or to any beneficiary hereunder; (4) To take all actions necessary to fully effectuate any agreements requiring the sale of any such business interests at my death; (5) To hire and discharge officers and employees, fix their compensation and define their duties, or to act as an officer or employee and receive compensation therefor; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the trustee may deem appropriate, including the right to employ any beneficiary or affiliate of the trustee in any of the foregoing capacities; (6) To invest other trust funds in such business interests, to pledge other assets of the trust as security for loans made to such business interests, and to loan funds from the trust to such business interests; (7) To take any action required to convert any corporation into a partnership or sole proprietorship; (8) To treat any such business interests as entities separate from the trust, and, in accounting to the beneficiaries, the trustee shall only be required to report the earnings and condition of such business interests in accordance with standard business practices. All liabilities arising from any business interest retained and operated by the trustee pursuant to the authorization obtained herein shall be satisfied first from the business itself and second out of the trust estate. In no event shall any liability be enforced against the trustee personally, unless such liability shall result directly from the trustee's gross negligence or willful misconduct, and if the trustee shall be held personally liable as a direct

result of anything other than the trustee's gross negligence or willful misconduct, the trustee shall be entitled to indemnity first from the business and second from the trust estate.

(C) The trust estate may include real properties and interests in real properties that are subject to mortgage. The trustee may, in its discretion, place title to any such real property in the name of a nominee or nominee, including any individual or individuals, authorized to hold such title in whatever form the trustee deems best without disclosing the capacity in which such property is held. Such properties may be received by the trustee subject to such mortgages and the mortgage indebtedness as to each property or interest may be continued and carried as a charge on such property by the trustee. The preceding sentence is not intended to authorize the allocation to or retention of mortgaged property in the Marital Trust unless the trustee is satisfied that the mortgage can be carried and discharged without depriving my spouse of the full beneficial enjoyment of the property during my spouse's lifetime. The net income of the trust shall be determined without any deduction or charge for principal payments on any such mortgages.

The trustee is authorize to use and expend the trust income and principal to (i) conduct or cause to be conducted environmental investigations of the trust property, including environmental audits, assessments, site monitorings, laboratory analyses, testing, title histories, aerial photographs, public and private records reviews and any related inquiries arising out of or in any way related to liability or claims under state or local environmental statutes, regulations, ordinances, requirements, demands of government authorities or policies or under common law ("environmental laws"); (ii) take appropriate remedial action to contain, clean up or remove any actual or threatened environmental hazard, including a spill, release, discharge or contamination, and conduct site restoration work on the trust property, and notify the appropriate federal, state or local authorities either on the trustee's own accord or in response to an actual or threatened violation of environmental laws; (iii) institute legal proceedings, claims and demands concerning environmental hazards, contamination or condition of a trust property, or contest, pay, compromise, settle or comply with legal proceedings, claims, demands, orders, penalties, fines and damages brought or imposed by federal, state or local government authorities or by a private litigant; and (iv) employ agents, consultants and legal counsel to assist with or perform the above undertakings or actions. Any expenses or costs incurred by the trustee under this paragraph may be charged against income or principal as the trustee shall determine.

The trustee may reject in a writing to the grantor, if living, or to the then-income beneficiaries of the trust and to any co-trustee any trust asset, real or personal, that is deemed by the trustee after appropriate environmental audit not to be in compliance with environmental laws and shall not be deemed to have accepted title to such property and shall not act or be obligated to act in any way as trustee with respect to such property or any interest in such property which is or may become a part of the trust estate until an appropriate environmental audit is performed at the expense of the grantor or the trust to determine that conditions with respect to such property or interest in such property are in compliance with environmental laws and the trustee has accepted such property as an asset of the trust estate in a separate writing delivered to the grantor, if living, or to the then income beneficiaries of the trust and to any co-trustee.

(D) The trustee shall exercise and perform the trust powers and duties in accordance with sound and accepted accounting procedures. In this connection, irrespective of statute or rule of law, the trustee may allocate or apportion receipts and disbursements between income and corpus, and may reserve out of income a reasonable amount to cover the depreciation or depletion of property subject to exhaustion, wear and tear, and obsolescence. The trustee is

specifically authorized in its discretion to determine the net distributive income of the trust before deducting depreciation or depletion, thereby transferring to the distributees a part or all of the depreciation or depletion allowance deductible for federal income tax purposes. Any earned income items or Qualified Plans assigned to the By-Pass Trust shall be treated as principal.

The trustee shall keep true and correct books of account showing all transactions in the trust estate, which books of account shall at all times be open to inspection by me or by any then-income beneficiary. The trustee shall render to me, and after my death to the beneficiaries, periodic statements of receipts and disbursements and submit an annual inventory showing the assets and property in each trust. In no event shall a bond be required of the trustee.

(E) I intend that all estate and inheritance taxes, including taxes on life insurance, shall be paid by my personal representative out of my estate. I further direct that no portion of any distribution from any Qualified Plans.

(F) As to any insurance policy the proceeds of which are payable to the trust, the trustee may institute proceedings to enforce payment, but shall not be required to engage in any litigation unless and until the trustee shall have been indemnified against any expenses and liabilities which might arise in connection therewith. The trustee is authorized to compromise and adjust claims arising out of such insurance policies, upon such terms and conditions as the trustee may deem proper.

(G) Notwithstanding anything contained herein to the contrary, no compensation shall be paid to me, to my spouse, or to any child of mine while serving as trustee. No compensation shall be paid to any other person or entity serving as trustee during my lifetime unless and until funds or property in addition to the original trust corpus are transferred to the trustee. At such time, the trustee shall be entitled to receive reasonable compensation for services rendered; any bank or financial institution serving as trustee shall be entitled to receive compensation according to its regularly adopted schedule of compensation in effect at the time such services are rendered. No special charge shall be made in connection with the distribution of principal or the termination or transfer of the trusteeship, except on the basis of the extra services required in connection with such principal distribution, termination or transfer. Any person or entity serving as trustee shall be entitled to reimbursement for reasonable expenses.

(H) The trustee is authorized to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives, including any beneficiary hereunder or any affiliate of the trustee, as the trustee may deem appropriate and to pay such compensation from the assets of the Fund.

(I) In order to minimize the impact of any generation-skipping tax that may be applied to any of the trusts created by this Agreement or their beneficiaries, the Trustee, in its sole and absolute discretion is authorized to take the following actions:

(i) If any trust created herein would be partially exempt from generation-skipping tax by reason of an allocation of a generation-skipping tax exemption to it, prior to such allocation the trustee shall divide the total trust assets into two separate trust shares of equal or unequal value, to permit allocation of the exemption solely to one trust share (the "exempt share"). The exempt share shall consist of a fractional interest of the total trust assets in an amount necessary to cause the exempt trust to be entirely exempt from generation-skipping tax. The other trust share (the "nonexempt share") shall consist of the remaining fractional interest of the total trust assets. For purposes of this allocation, asset values as finally determined for federal estate tax purposes shall be used.

(ii) If a trust established herein, whether created under this paragraph (I) or not, is entirely exempt or nonexempt from generation-skipping tax and adding property to it would partially subject the trust to such tax, the trustee may hold that property in a separate trust in lieu of making such addition.

(iii) If the trustee divides a trust into two separate shares or creates a separate trust for additions, the trusts or trust shares that result shall have the same terms and conditions as the original trust. The trustee shall not make discretionary distribution from the income or principal of the exempt share to beneficiaries who are nonskip persons as long as any readily marketable assets remain in the nonexempt share.

(iv) Upon division or distribution of an exempt share and a nonexempt share, the trustee may allocate property from the exempt share first to a share from which a generation-skipping transfer is more likely to occur.

(v) If the trustee considers that any distribution from a trust under this Agreement, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping tax payable by the beneficiary, the trustee shall augment the distribution by an amount which our trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relate.

(vi) If the trustee considers that any termination of an interest in trust property is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

(J) Any trustee, including but not limited to, any bank or other financial institution serving as trustee hereunder, and/or any of its affiliates is authorized to have dealings with the trust estate in any capacity notwithstanding the fact that it is designated and may be acting as trustee hereunder.

(K) Any trustee may disclaim, in whole or in part, any right, power, privilege or immunity granted to the trustee under this Agreement. In addition, any trustee shall have the authority to disclaim, in whole or in part, any interest in property for any reason, including but not limited to, a concern that such property could cause potential liability under any federal, state or local environmental law.

(L) Any person serving as trustee ("Relieved Trustee") may, from time to time, with the consent of any other person then also serving as trustee, be relieved of any or all of the authority, duties, and obligations vested or imposed by this Agreement by delivering to such other person an instrument in writing delegating all or any part thereof to other person as trustee. Such Relieved Trustee shall have the full power to revoke such delegation and renew the same at the pleasure of Relieved Trustee by delivering an instrument in writing, to that effect, to such other person then serving as trustee.

(M) Any person serving as trustee ("Unavailable Trustee") is at any time inaccessible, unavailable, temporarily incapacitated, or unable to respond to Trustee's proposal, any other person then also serving as trustee shall proceed as if under the circumstances, Unavailable Trustee had authorized such other person to proceed with the proposal in its absolute discretion, and such action as shall be conclusive and binding as to all persons.

(N) Any person, corporation or government entity dealing with the trustee hereunder may accept the certificate of such trustee as to whether any trustee has delegated

authority as hereinbefore permitted or authorized, or as to any action or non-action of trustee or as to any disagreement between the trustees and the status thereof.

Resignation or Removal of Trustee

ARTICLE 10. (A) At all times during my lifetime, I or any legal representative of mine (including my attorney-in-fact under any power of attorney in effect executed by me in accordance with the laws of South Carolina) shall have the right to demand and receive the resignation of any successor trustee by written notice to said successor trustee; in such event, the next successor trustee designated herein shall serve as trustee.

After my death, the beneficiaries hereunder who are then receiving income or then entitled to be considered for receipt of income from the applicable trust or their legal representatives ("then-income beneficiaries") shall have the right to demand and receive such resignation. In such event, the next successor trustee designated herein shall serve as trustee.

A demand for resignation shall not be valid or effective unless there is a written designation of and acceptance by a successor trustee.

(B) Any person or entity serving as the trustee shall have the right to resign as the trustee or successor trustee by written notice to the then-income beneficiaries hereunder of their legal representatives. In such event, the successor trustee designated herein shall serve as successor trustee. Written notice of resignation shall not be valid or effective unless there is a written designation of and acceptance by a successor trustee

(C) If, at any time, no successor trustee is designated herein or if such designated successor trustee fails or ceases to serve, a majority of the then-income beneficiaries hereunder shall designate a successor trustee. In the event a successor trustee is not designated within thirty (30) days after receipt of notice of resignation, removal, or cessation or refusal to serve, the court having proper jurisdiction over the trust established herein shall immediately make such designation.

(D) Upon receipt of an effective demand in writing for resignation or written of removal and appointment and acceptance of a successor trustee, the incumbent trustee shall deliver the trust assets to such successor trustee. Thereafter, the incumbent trustee shall be discharged of all further responsibility or liability and the next successor trustee, without further act, shall be vested with all the estate, title, powers and duties granted to the predecessor. The incumbent trustee shall, however, execute and deliver to its successor such assignments or other instruments as may be necessary or advisable.

(E) Any person named herein or appointed pursuant to the provisions hereof as Trustee who fails within a reasonable time to undergo a medical examination at the written request of any person having an interest hereunder (including, but not limited to, another Trustee acting hereunder) for the sole purpose of determining if the individual lacks the required capacity to continue to serve hereunder or fails to cause the results of such examination to be made available within a reasonable time to the person making the written request, shall be deemed to have resigned as Trustee; provided that there is reasonable basis to request the medical examination be undertaken and provided further that no such request may be made more than once every twenty-four (24) months. The cost of the medical examination shall be borne by the trust with respect to which such individual is acting as Trustee.

(F) The provisions of this ARTICLE 10 shall be applicable to the removal

of all successor trustees.

Miscellaneous Provisions

ARTICLE 11. (A) Any other provisions of this trust instrument to the contrary notwithstanding.

(1) If at any time during the administration of this trust only one person is serving as trustee, and the trustee is a then current discretionary income beneficiary under any provision of this trust instrument, no portion of the net income of the trust shall be distributed, applied or expended in the discretion of the trustee-beneficiary to or for the benefit of the trustee-beneficiary without the written consent of one other then current discretionary income beneficiary.

(2) If at any time during the administration of this trust any person serving as trustee is also a then current discretionary principal beneficiary under any provision of this trust instrument, the purposes for which principal of the trust may be distributed, applied or expended to or for the benefit of the trustee-beneficiary shall be limited to the medical care, support, maintenance and education of the trustee-beneficiary, and no principal of the trust shall be distributed, applied or expended to or for the benefit of the trustee-beneficiary for any other purpose without the written consent of a person having a substantial interest in the principal of the trust which is adverse to the exercise of such discretion in favor of the trustee-beneficiary within the meaning of Code Section 2041. The provisions of this paragraph shall not be construed to defeat any right of withdrawal created herein.

(3) If at any time during the administration of this trust any person serving as trustee is granted the discretionary authority under any provision of this trust instrument to distribute, apply or expend the principal of the trust to or for the benefit of a beneficiary to whom the person serving as trustee is legally obligated (for support or otherwise), such person shall have no authority as trustee to distribute, apply or expend principal of the trust to or for the benefit of such beneficiary if such distribution, application or expenditure of principal will discharge such legal obligation, either directly or indirectly. Further no distributions shall be made hereunder which would discharge any legal obligation of either of us to any beneficiary unless such distribution could properly be made directly to either of us under the terms of this Agreement.

(B) In any proceeding involving the construction, operation or modification of this Agreement, the then-living beneficiary(s) to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding, not only upon such known persons but also upon all unknown and undetermined beneficiaries.

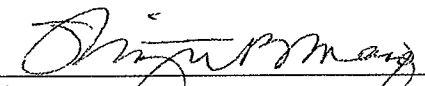
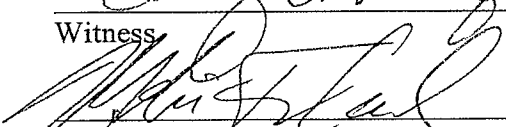
(C) In the event any trust created hereunder has a fair market value as determined by the trustee of Fifty Thousand Dollars or less, and/or if the trustee, in its discretion, determines that it is uneconomical or impractical to continue such trust, the trustee may terminate such trust and distribute the assets then comprising the trust estate to such person or persons then entitled to receive or to have the benefit of the income therefrom. If there is more than one income beneficiary, the trustee is authorized to make such distributions to such income beneficiaries in the proportion in which they are beneficiaries or, if no proportion is designated herein, in equal shares to such beneficiaries.

(D) This Trust has been prepared pursuant to the laws of the State of South Carolina; this Trust shall be administered in accordance with the laws of the State of South Carolina during my lifetime.

IN WITNESS WHEREOF, I, JOHN J. MANNING, Jr., as grantor and as trustee, have on the date first above written, at Hilton Head Island, South Carolina, signed my name at the end of this instrument of thirteen (13) total pages, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Revocable Trust and that I sign it willingly, (or have willingly directed another to sign for me), and that I sign as my free and voluntary act for the purpose therein expressed and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

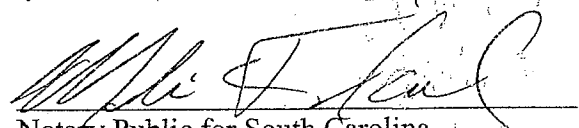

JOHN J. MANNING, JR.

I, Eliz. B. Mayo, and I, Melvin F. Land, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, do hereby declare to the undersigned authority that each of us sign and execute this instrument as the grantor's Revocable Trust and that each of us sign it willingly, (or each has willingly directed another to sign for him/her), and that each of us, in the grantor's presence and hearing, hereby signs this Agreement as witness to the grantor's signing, and that to the best of our knowledge the grantor is eighteen years of age or older, of sound mind, and under no constraint or undue influence.


Witness

Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Subscribed, sworn to and acknowledged before me by JOHN J. MANNING, JR., the grantor, and subscribed and sworn to before me by the other witness, this 26 day of July, 2012.


Notary Public for South Carolina
My Commission Expires: _____
(NOTARY SEAL)

My Commission Expires July 7, 2019

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE PROBATE COURT

IN THE MATTER OF:
THE ESTATE OF
JOHN J. MANNING, JR.
(Decedent)

AFFIDAVIT

CASE NUMBER: 2014ES0700930

PERSONALLY appeared before me the undersigned Harley D. Ruff who being duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of South Carolina. I am a board-Certified Specialist in Estate Planning and Probate law, and have held that designation since 1998. I have represented thousands of clients in estate planning and estate administration matters in my 25 years of practice.
2. This Affidavit concerns the Estate of John J. Manning, Jr. (the "Decedent") and the John J. Manning, Jr. Revocable Trust Agreement dated November 29, 2004, as amended and restated (the "Trust").
3. Under S.C. Code Ann. §62-2-201(a):

if a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of one-third of the decedent's probate estate, as computed under Section 62-2-202, the share to be satisfied as detailed in Sections 62-2-206 and 62-2-207.
4. In terms of satisfying the elective share, S.C. Code Ann. §62-2-207(a) provides:

... all property, including any beneficial interest, which passes or has passed to the surviving spouse, or would have passed to the surviving spouse, but was renounced or disclaimed, must be applied first to satisfy the elective share ...
[emphasis added]
5. Nothing passes to Mrs. Manning from Decedent's estate or from the Trust.
6. Nothing has passed to Mrs. Manning from Decedent's estate or from the Trust.

0091

7. The first paragraph of Article 4, Section (C) of the Trust provides:

I hereby expressly make no provision in this Trust Agreement for my spouse, SALLY A. MANNING. Notwithstanding the above, in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of my spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee to such separate share.

8. Thus, Article 4, Section (C) of the Trust does two things:

- (1) It clarifies that Mrs. Manning's omission from the Trust is intentional; and
- (2) It purports to create a contingent trust for the benefit of Mrs. Manning, if and only if "any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse."

9. Under the Trust, no portion of the trust estate may be "deemed payable to or for the benefit of" Mrs. Manning, under the terms of Article 4, Section (C), because in fact no assets are payable to or for the benefit of Mrs. Manning; she is completely disinherited.

10. Further, the Trust does not give any person the power to "deem" any Trust assets to be payable to or for the benefit of Mrs. Manning, under the terms of Article 4, Section (C).

11. Therefore, the contingency of Article 4, Section (C) of the Trust clearly is not met, and thus the purported contingent trust never comes into existence.

12. The contingency of Article 4, Section (C) of the Trust cannot be triggered by a claim for an elective share, and any argument for such triggering is completely without any merit, for the following reasons:

- (1) The language of Article 4, Section (C) itself does not speak to or include any reference to the elective share.
- (2) In a successful elective share proceeding, the outcome is that a surviving spouse is entitled to a one-third share of a decedent's probate estate. The outcome is not that any

portion of a trust is deemed payable to or for the benefit of a surviving spouse.

- (3) Once a surviving spouse has established the right to an elective share payment, such payment is to be made outright under S.C. Code Ann. §62-2-205 (d) and (e), and a decedent cannot "override" this right to an outright payment after the fact, by trying to impose a trust on that amount.

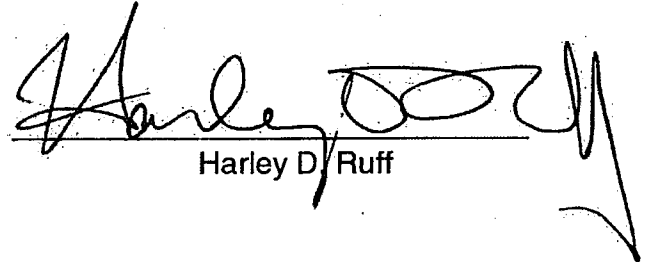
13. Even if the "overriding" referred to in Paragraph 12 (3) above were permitted by the South Carolina Probate Code, the effect of the provision in this case would be to place an amount equal to one-third of the Decedent's probate estate into the contingent trust under Article 4, Section (C) of the Trust. However, this amount would not fully satisfy Mrs. Manning's elective share, since the value of Mrs. Manning's interest in this trust would be significantly less than the full value of the property of such trust. This is the case because:

- (1) The purported contingent trust under Article 4, Section (C) does not qualify for "full value" satisfaction treatment under S.C. Code Ann. §62-2-207(c), because such trust does not qualify for the marital deduction under Internal Revenue Code section 2056.
- (2) Distributions of income and principal from this contingent trust are completely discretionary with the Trustees. Mrs. Manning has no absolute rights to distribution from this contingent trust.
- (3) The Trustees of this contingent trust, John J. Manning, III and Christopher H. Manning, who hold the discretionary powers of distribution, are also the remainder beneficiaries upon Mrs. Manning's death, and thus have personal financial interests in limiting distributions to Mrs. Manning.

14. It is true that the decedent actually could have created a trust for the benefit of Mrs. Manning, and that such actual trust could have been used to satisfy Mrs. Manning's elective share claim, in full (had such actual trust qualified under S.C. Code Ann. §62-2-207(c)) or in part. However, that is not what the decedent did; instead he expressly disinherited Mrs. Manning. The decedent cannot then avoid the resulting mandatory elective share by attempting to impose a contingent trust on such share after the fact.

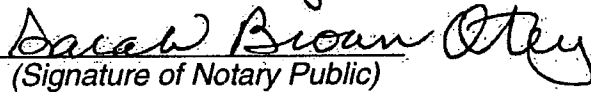
15. Therefore, Mrs. Manning is entitled to an elective share of one-third of the decedent's probate estate (which includes the Trust), payable outright; and

that the contingent trust in Article 4, Section (C) is of no legal or practical effect.


Harley D. Ruff

SWORN TO AND SUBSCRIBED BEFORE ME

this 7th day of April, 2017


(Signature of Notary Public)

Sarah Brown Otey (SEAL)

(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires:
8-9-2021



STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE MATTER OF THE ESTATE)
JOHN JOSEPH MANNING, Jr.)

DEANNA BUSHMAN, as HOLDER OF)
DURABLE POWER OF ATTORNEY)
SALLY MANNING,)

Plaintiff,)

vs.)

THE ESTATE Of JOHN JOSEPH)
MANNING, Jr., JOHN J. MANNING,)
III, CHRISTOPHER MANNNG, and)
LINDA MANNING,)

Defendants.)

COURT OF COMMON PLEAS
14TH JUDICIAL DISTRICT
CASE # 2015-CP-07-913

(Previously Probate Court
Case # 2014ES0700930

DEFENDANTS' NOTICE and MOTION
TO RECONSIDER and BRIEF IN
SUPPORT

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Defendants, **THE ESTATE Of JOHN JOSEPH MANNING, Jr., JOHN J. MANNING, III, CHRISTOPHER MANNNG, and LINDA MANNING**, hereby submit this Motion for Reconsideration of the Court's Final Order dated and entered on September 8, 2017 (the "Order") pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

1. Introduction.

This Court's September 8, 2017 Order improperly granted partial summary judgment because no competent summary judgement established that the Trust established by John J. Manning, Jr. was invalid or that the provisions of such Trust were insufficient as relates to the elective share election made by Plaintiff on behalf of Sally Manning, surviving spouse, of John J. Manning, Jr. Accordingly, Defendants respectfully request reconsideration of the Court's September 8, 2017 Order.

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2. Argument and Authorities

There are two basic circumstances in which a motion for reconsideration is appropriate: (1) when the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and (2) when an issue or argument has been raised, but not ruled on. Elam v. South Carolina Dept. of Transp., 361 S.C. 9,602 S.E.2d 772, 780 (2004).

A. Validity of Trust. Plaintiff filed the instant action on January 26, 2015 seeking among other causes of action an elective share of the estate of John J. Manning, Jr. who died testate on September 4, 2014. After discovery and mediation in October 2016 and, on the advice of the mediator, the parties each filed a Motion for Summary Judgment. The sole issue for determination at the July 11, 2017 hearing was whether the Plaintiff's elective share request on behalf of Sally Manning entitles the Plaintiff to "take" the elective share amount outright or whether the elective share amount is satisfied by a provision in Mr. Manning's trust establishing a separate trust share for Sally Manning in the elective share amount.

To summarize the facts, at his death, essentially all of Mr. Manning's assets were held in a revocable trust dated July 26, 2012 which provided that if "any portion of the Trust Estate shall be deemed payable to or for the benefit of the Settlor's wife, such amount shall be held, administered and distributed as provided in this Paragraph (2)." In other words, if any portion of the Trust Estate is "deemed" to constitute an elective share amount, i.e., an amount payable to or for the benefit of Sally Manning, then such amount is to be set aside as the elective share amount and held in the Trust pursuant to its terms.

The Plaintiff timely made the elective share request, thus, a "portion of the Trust Estate [was] deemed payable to or for the benefit of the Settlor's wife" and triggered the terms of the trust. Such elective "triggered" Sally Manning's "entitlement" to a portion of his Trust as per the terms of the Trust.

Notwithstanding Mr. Manning's preference that - because he had otherwise provided for her - none of his assets would be payable to or held for Sally Manning's benefit, he took into consideration that she may be "entitled" to a portion of his assets, i.e., the elective share amount. As a result, the Trust clearly provides that if she is entitled to some portion of his assets, i.e., the

elective share amount, such portion was to remain in his Trust and used for her benefit as provided therein. As the Plaintiff's attorney maintained, his "intent" is irrelevant, however, the terms of the Trust are not.

The Court erred in determining that the Trust was invalid for purposes of establishing the elective share once Sally Manning made the election, i.e., she became entitled to it. The Trust to be established for Sally Manning was contingent on her election of the elective share; she made the election and the trust came into existence. The trust was contingent but not invalid and, thus, no portion of the elective share amount to be held in the trust is required to be distributed to Sally Manning as a result of the Plaintiff's election.

The Plaintiff's attorney's argument for a literal reading of the statute, i.e., that to "take" an elective share can mean *only* the outright possession of the elective share amount regardless of the manner in which the assets to fund the elective share amount are held in the deceased spouse's estate and therefore the Order, is not supported by the statute.

In addition the Plaintiff's attorney argued that there had been no determination of Sally Manning's entitlement to a portion of the Trust contrary to the Plaintiff's elective share petition. Defendants do not deny that Sally Manning was entitled to an elective share under the law.

Seifert v So. National Bank of SC (305 S. C. 353, 309 S. E. 337), the "watershed" elective share decision in South Carolina clearly upheld the terms of the separate share for Seifert's surviving spouse "carved from the respondents' trust" while including the value of the assets in Seifert's trust only for purposes of calculating the elective share amount. The assets in the surviving spouse's trust were included in the amount of her elective share but were not required to be disgorged in payment of the elective share.

Further, SC Code Ann. §62-2-207(a) provides that that a beneficial interest *held* (emphasis added) for the benefit of the surviving spouse in a revocable trust is included in the elective share amount. SC Code Ann. §62-2- 207 (b) further provides that a "beneficial interest" passing to the surviving spouse includes "an interest *as a beneficiary* in property contained at the decedent's death in a revocable inter vivos trust found to be illusory, as provided in SC Code

Ann. §62-7-401(c).” The statute does not require that the trust interest be disgorged to satisfy the elective share; the statute does not change the terms of the trust.

Further, per the Reporter’s Comments to SC Code Ann. § 62-2-207, the 2013 amendment to Code Section 62-2-207 “clarifies and makes certain that property passing directly to the surviving spouse in a revocable inter vivos trust, *including a beneficial interest*, (emphasis added) will satisfy the elective share.” In other words, in determining the elective share, if all of the assets passing outright to the surviving spouse and all beneficial interests held in trust for the surviving spouse added together equal the elective share amount to which the surviving spouse is entitled, the elective share is satisfied and there is no requirement for an outright distribution of trust assets to satisfy the elective share.

Mr. Manning’s Trust provides that if Sally Manning makes the elective share election, a “beneficial interest” in the amount of the elective share to which she is entitled will be held for her benefit in his Trust. Therefore, the elective share amount to which Sally Manning is entitled should be held in the Trust with no requirement that such amount be distributed outright to Sally Manning. The trust share is contingent on Ms. Manning’s election but the terms of the trust are not invalid.

The Court’s Order held that the terms of the beneficial interest established for Sally Manning upon her election of the elective share are insufficient to satisfy her elective share as “against public policy.” The Defendants’ object to the conclusion that the Trust violates public policy by providing only discretionary income and principal to the surviving spouse.

B. Sufficiency of Trust. The Court’s erred in holding that because Mr. Manning did not “want” to provide for Sally Manning, the Trust established for her upon her election of the elective share did not satisfy the elective share because distributions from the Trust were discretionary.

Defendants object to the conclusion that the discretionary nature of the Trust distributions invalidate the Trust for purposes of the elective share. The elective share statutory scheme does not provide direction or any requirement as to how the surviving spouse is to be provided for by the elective share amount.

Notwithstanding that in his pleadings, the Plaintiff's attorney made no allegation of the insufficiency of the terms of the Trust with respect to the elective share portion to be established for Sally Manning, any argument regarding the public policy surrounding the elective share must be viewed against the "changing economic needs, social customs and moral aspirations of a people. *Weeks v. New York Life Ins. Co.*, (1924) 112 S. E. 587.

The Court in *Weeks* citing *Magee v O'Neill*, 119 S. C. 185, 45 Am. Rep. 765, stated that "[I]t is the duty of the Legislature to make laws and of the court to expound them, ***the subjects in which the court undertakes to make the law by mere declaration [of public policy] (sic) should not be increased in number without the clearest reasons and the most pressing necessity."

Because the statutory scheme does not provide direction or any requirement of how the elective share amount is to be used for the benefit of the surviving spouse, any determination of the sufficiency of the terms of the Trust is not supported by the statute.

C. Conclusions and Request for Relief. For the foregoing reasons, Defendants respectfully request that this Court reconsider and deny the Plaintiff's motion for summary judgment; grant Defendants' motion for summary judgment; and grant Defendants any and all relief to which they may be entitled.

Respectfully submitted,
NOVIT & SCARMINACH, P.A.

By: s/ Elizabeth B. Mayo
 Elizabeth B. Mayo
 Post Office Drawer 14
 Hilton Head Island, SC 29938
 (843) 785-5850, ext. 3012 (phone)
 Attorney for Defendants
 SC Bar # 007400

September 13, 2017
 Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2015-CP-07-00913

IN THE MATTER OF THE ESTATE OF JOHN
JOSEPH MANNING, Jr.

DEANNA BUSHMAN

PLAINTIFF

VERSUS

JULY 11, 2017

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

THE ESTATE OF JOHN J. MANNING,
JR., ET AL

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

0100

APPEARANCES

ON BEHALF OF PLAINTIFF
DEANNA BUSHMAN:

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ON BEHALF OF DEFENDANTS
THE ESTATE OF JOHN J. MANNING,
JR., ET AL:

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EXHIBITS

No exhibits were admitted.

0102

1 BEGINNING 11:27 A.M.

2 BY THE COURT:

3 THE COURT: All right. We have the defendants'
4 motion for summary judgment and the plaintiff's
5 partial summary judgment motion, correct? All right.
6 Whenever you're ready.

7 MR. TWOMBLEY: Your Honor, Ashley Twombley for
8 the plaintiff. We filed a pretty detailed memorandum.
9 I don't know if you have a copy. I brought an extra.

10 THE COURT: I have it, I've read it, and I
11 appreciate it.

12 MR. TWOMBLEY: Okay. Great. Your Honor, this is
13 a, in our opinion, we think a fairly straight-forward
14 issue. Jack and Sally Manning were married. Mr.
15 Manning died. The law in South Carolina provides that
16 when you die, your spouse, if you do not leave
17 anything for them in your will or your trust, your
18 spouse is entitled under the law to take an elective
19 share.

20 THE COURT: Right.

21 MR. TWOMBLEY: To take an elective share. In
22 this case, when Jack Manning died, his will expressly
23 said, *I leave nothing for my wife.* His trust said, *I*
24 *hereby leave nothing to my wife.*

25 So the question is very simple and basic, when

1 Mr. Manning died, did Sally Manning receive anything?
2 Did anything pass to her at the time of Mr. Manning's
3 death. Mr. Manning died --

4 THE COURT: In 2014, I saw.

5 MR. TWOMBLEY: -- in 2014. It's 2017. Ms.
6 Manning has never received one dime from his estate,
7 never received one dime from his trust. Now, what Mr.
8 Manning does say in his will is --

9 THE COURT: He said I've provided for her by
10 other means. I saw that.

11 MR. TWOMBLEY: Well, he says he sets up this
12 trust. What he first said is I want her to receive
13 nothing, but if anybody in the future ever determines
14 that she has to receive something, then, what I want
15 her to receive is this trust. Well, the way this
16 trust is set up, and Mr. Manning knew it, it is a
17 trust that's discretionary. The trustees are not
18 required to ever give Ms. Manning anything.

19 THE COURT: Right.

20 MR. TWOMBLEY: If they ever do have to give her
21 anything, they look at her other assets and resources.
22 Mr. Manning knew that Ms. Manning had a long-term --

23 THE COURT: My understanding is that she --

24 MR. TWOMBLEY: Yes, ma'am, she's currently --

25 THE COURT: Right.

0104

1 MR. TWOMBLEY: -- virtually physically and
2 mentally totally incapacitated. She is in a nursing
3 home. She does have a health insurance policy that
4 provides for her care each month.

5 THE COURT: Okay.

6 MR. TWOMBLEY: So what this means, effectively,
7 is that she's never going to receive anything. And
8 it's very creative, but what the end result is, is
9 that Sally Manning never receives anything. That is
10 just directly contrary to the law in South Carolina.
11 Even in Ms. Mayo's brief, which is very well written,
12 but it acknowledges -- it acknowledges -- on Page 3,
13 Page 4, it says: *when added to other assets received*
14 *by the surviving spouse.* Ms. Mayo cannot point to one
15 single solitary asset that has been received by the
16 surviving spouse, because none have.

17 She quotes 62-2-207, assets, talking about the
18 beneficial interest in the trust, which passes or has
19 passed. Here we are, your Honor, he died in 2014.
20 We're in 2017. Nothing has passed. Nothing passed
21 when he died, or nothing has passed prior to that.

22 Your Honor, to allow this to take place would, in
23 our opinion, be a watershed event in elective share
24 law. Because essentially, what you would be allowing
25 is for someone to get creative and too cute by half,

0105

1 and totally write out their surviving spouse out of
2 their estate plan. That is not what the legislature
3 in South Carolina has provided that the law is. And
4 unfortunately for Mr. Manning, he set forth expressly
5 and directly what his goals were with his estate plan,
6 and that was to pass nothing to his wife. And we
7 think the court -- you just asked two questions: did
8 anything pass when he died? No. And if nothing
9 passed, then the question is: does the law provide
10 that she's entitled to take a third? It does. If you
11 make that ruling, Ms. Mayo and I, I think in short
12 order, will be able to determine what that amount is.

13 I do not think -- of course, I'll let Ms. Mayo
14 argue that she's arguing that there's been other
15 provisions made for the spouse prior to the time he
16 died, but maybe I'm wrong about that.

17 THE COURT: Okay.

18 MR. TWOMBLEY: Thank you, your Honor.

19 THE COURT: Ms. Mayo, whenever you're ready.

20 MS. MAYO: Thank you, your Honor. I appreciate
21 it. And I agree that Mr. Twombley and I agree that
22 Mrs. Manning is entitled to her elective share. She
23 has filed for the elective share. And according to
24 the terms of the trust, it says that if she is deemed
25 to be entitled to anything, which would be the

0106

1 elective share, it will be held in the trust for her
2 benefit. There is nothing in the statute that
3 requires the trust to include specific terms for the
4 surviving spouse. But she will be entitled to the
5 elective share under the statute, but it will be held
6 in the trust. There is nothing in the statute that
7 requires that elective share or beneficial interest
8 held in a revocable inter vivos trust established by
9 Mr. Manning be disgorged to meet the elective share.

10 Therefore, I believe that it's -- it's very clear
11 in the statute, particularly in 62-7-401(c), that the
12 trust assets are used solely for the purposes for
13 calculating the amount of the elective share. They do
14 not have to be disgorged for purpose of meeting the
15 elective share amount.

16 Mrs. Manning and Mr. Manning were joint tenants
17 of several bank accounts at Wells Fargo, and after Mr.
18 Manning's death, the plaintiff, as Mrs. Manning's
19 power of attorney, did re-title those assets in Mrs.
20 Manning's name. So she did receive some assets from
21 the estate.

22 The leading cases, *Seifert* and *Dreher* in South
23 Carolina, which I'm sure you are familiar with,
24 indicates that the trust is illusory, but it is not
25 invalid or void. Therefore, the terms of the trust

0107

1 would be valid, while the assets in the trust would be
2 considered as part of the probate estate for purposes
3 of determining what the amount is.

4 With respect to Mr. Twombly's allegation that it
5 would be a watershed in the elective share, again, I
6 think *Seifert* and *Dreher* both indicate that the trust
7 is valid; it is not going to be void; it's just the
8 assets in the trust are determined to be part of the
9 calculation.

10 There is no public duty for Mr. Manning to have
11 made any specific provision other than the elective
12 share for his spouse. And there's no public interest
13 involved. The statute, 62-7-404, which talks about
14 the purposes of a trust, says it can't be illegal or
15 contrary to public policy. The Reporter's comments
16 define that as it can't be in a criminal activity or a
17 tortuous act by the trustee. The settler's purpose is
18 not to defraud creditors or others, and the
19 consideration for creating the trust is not -- is
20 illegal.

21 None of those definitions of against public
22 policy apply to this trust. Mr. Manning created a
23 trust that requires that the elective share amount
24 that's claimed remain in the trust and it be
25 administered according to the terms of the trust.

008

1 I think that it's very --

2 THE COURT: So how is that sufficient to provide
3 for her one-third elective share? How is that
4 sufficient?

5 MS. MAYO: Because the trust is going to carve
6 out from the whole trust an amount equal to the
7 elective share, and she will receive, then, the income
8 and/or principal, according to her needs. There is no
9 requirement in the statute that she has to get
10 anything. It's just that those assets are available
11 to her. And *Dreher* and *Seifert* both had -- *Dreher*, I
12 do not believe, had even provisions for the surviving
13 spouse. *Seifert* had an income provision, but
14 discretionary principal. So it's just that the amount
15 of the trust is available for the elective share and
16 can be used for that. It's not that it has to be
17 disgorged, and it is not that it has to provide any
18 specific benefit.

19 THE COURT: All right. You want to just respond,
20 Mr. Twombly.

21 MR. TWOMBLEY: Just very briefly, your Honor.
22 Respectfully, I think it totally is against public
23 policy. I mean, to write a will that says in a trust
24 I hereby leave nothing to my spouse, but if she has to
25 get anything, I create this lesser-included trust,

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1 that is against -- a violation of public policy. It
2 does exactly what the law says you can't do. It says
3 you must leave something to your spouse, and if you
4 don't, they are required -- they are entitled to take
5 an elective share.

6 Ms. Mayo said that under the terms of the trust,
7 Ms. Manning would be entitled to the income and
8 principal. There is no provision in that trust that
9 entitles Mrs. Manning to income or principal. And if
10 Ms. Mayo is aware of such provision, I'd like to know
11 about it.

12 The income and principal in the trust are
13 controlled by her client, even under her theory.
14 These are Mr. Manning's children. And guess where all
15 the money goes after my client passes away?

16 THE COURT: Obviously, to the sons.

17 MR. TWOMBLEY: It goes to the two sons. So to
18 assert that this trust allows Mrs. Manning to take a
19 third of Mr. Manning's estate, when here we are, three
20 years after he's died, and she has not received one
21 single solitary penny. Your Honor, if she was
22 entitled to the income and principal, well, she should
23 have been receiving it in 2014. And in 2015, and in
24 2016, and in 2017. And there's never given her a
25 dime.

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1 This does violate public policy. We have an
2 affidavit from Mr. Roof, who is an expert. We offered
3 him as an expert. I don't know that his credentials
4 are challenged by Ms. Mayo. And he says that nothing
5 passes to Sally, and that she is entitled to take one-
6 third of his probate estate. He also says that this
7 discretionary, limited use trust violates public
8 policy. It's an effort to subvert the elective share
9 statute.

10 THE COURT: Okay.

11 MR. TWOMBLEY: That's all we have, your Honor.
12 Thank you.

13 THE COURT: Okay. Do you want to respond at all
14 or? Okay.

15 MS. MAYO: No, your Honor.

16 THE COURT: Okay. All right. Well,
17 respectfully, I'm going to deny your motion for
18 summary judgment. I am granting your motion for
19 partial summary judgment. I need you all to provide
20 me a proposed order quickly, if you can, you all.
21 Something just as soon as possible. I go on vacation
22 next couple weeks and after this week, so I would love
23 -- and I'm not pushing you. If you guys have
24 something else going on, I understand. But if I could
25 have it by Friday or maybe by Sunday night, I will

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1 issue an order and I will sign it. So I just like to
2 get things done sooner rather than later, but if you
3 need more time, Just tell me. Okay?

4 MR. TWOMBLEY: We should be able to get it done,
5 and we'll share it back and forth.

'6 THE COURT: Okay. Okay. Thank you all.

7 MR. TWOMBLEY: Thank you, Judge.

8 MS. MAYO: Thank you, your Honor.

END PROCEEDING 11:41 A.M.

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CERTIFICATE OF REPORTER

JULY 11, 2017 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing July 11, 2017 Transcript of Hearing is a true and accurate record of the proceedings had on said date, in the case of In the Matter of the Estate of John Joseph Manning, Jr.; Deanna Bushman versus the Estate of John J. Manning, Jr., et al, Beaufort County, Court of Common Pleas, Case Number 2015-CP-07-00913; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by Hon. R. Bruce Wallace. Pursuant to SCACR 607, requests for copies of this or any transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature November 11, 2017.

Wanda H. Rowe, CVR-M
Official Court Reporter

LICENSE AND CERTIFICATE FOR MARRIAGE STATE OF SOUTH CAROLINA

971138

BEAUFORT

LICENSE NUMBER

COUNTY

GROOM—NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(1) JOHN JOSEPH HANNING, JR.			(2a) [REDACTED]		(2b) 64
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)		
(3) PENNSYLVANIA		(4) CAUCASIAN	(5a) [REDACTED]		
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)	
(5b) HILTON HEAD ISLAND		(5c) BEAUFORT	(5d) SOUTH CAROLINA	(8) 2ND	
BRIDE—NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(7) SALLY ANN FREEMAN			(8a) [REDACTED]		(8b) 60
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)		
(9) TEXAS		(10) CAUCASIAN	(11a) [REDACTED]		
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)	
(11b) HILTON HEAD ISLAND		(11c) BEAUFORT	(11d) SOUTH CAROLINA	(12) 3RD	
MAIDEN NAME OF BRIDE (If Different From Above)					
(13) BUSHMAN					

Application for a license was filed with this court at 12:17p on the 10th day of OCTOBER, 1997. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant. Given under my hand and seal at 12:17p this the 11th day of OCTOBER, A.D. 1997.

Francis M. Simon
 Signature of Issuing Officer

FRANCIS M. SIMON, PROBATE JUDGE
 Title of Issuing Officer

GROOM—Signature			BRIDE—Signature		
(14) <i>John Joseph Hanning Jr.</i>			(15) <i>Sally Ann Freeman</i>		
I certify that the above named persons were married on			Place of Marriage		
(16) October 15 1997			(17) Hilton Head Island (Beaufort) SOUTH CAROLINA		
(18a) OFFICIANT—Signature			OFFICIANT—Title		
(18a) <i>James F. Berl</i>			Notary Public for South Carolina		
OFFICIANT—Mailing Address			(18b) Comm. Expires: 4/5/98		
(18c) [REDACTED]					
Hilton Head Island, South Carolina 29926					

DHEC 681 (Rev. 1/96)

PROBATE JUDGE COPY

CERTIFICATION OF COPY

This document consisting of 1 page(s) is hereby certified to be a true copy of the original document on file in the Probate Court of Beaufort County, South Carolina. In witness whereof, I have hereto set my official signature and affixed the seal of the Probate Court, at the County and State aforesaid.

Date 2/6/15 Name Cecilia Simon (Seal)

Title Clerk Beaufort County Probate Court
 Beaufort, South Carolina

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GE Capital Assurance

LONG TERM CARE INSURANCE POLICY

POLICYHOLDER:

Sally F Manning

INSURED SPOUSE:

None

POLICY NUMBER:

UCG0888816

This policy is intended to be a
tax-qualified contract under the
Internal Revenue Code.

SEE THE PROVISIONS ON PAGE 2

DECLARATIONS

We at General Electric Capital Assurance Company (GE Capital Assurance) are pleased to issue this insurance policy. It has many important features. Please read it carefully.

RENEWABILITY**THIS POLICY IS GUARANTEED RENEWABLE FOR LIFE:**

You (the Policyholder named above) have the right, subject to the terms of this policy, to continue it as long as you pay the required premiums on time. We cannot change any of the terms of this policy on our own, except that, in the future, we may increase the premiums.

**OUR LIMITED RIGHT
TO CHANGE
PREMIUMS**

Premiums will not increase due to a change in age or health. We can, however, change premiums based on issue age, plan choices, coverage amounts and limits, and premium payment mode; but only if we change the premiums for all similar policies issued in the same state and on the same form as this policy. Premium changes will only be made as of an anniversary of the policy's Effective Date. We must give you at least 31 days written notice before we change premiums.

**30 DAY RIGHT TO
EXAMINE YOUR
POLICY**

You have 30 days from the day you receive this policy to examine and return it to us if you decide not to keep it. You do not have to tell us your reason for returning the policy. Simply return it to us at our Administrative Office or to the agent or office through which it was bought. We will refund the full amount of any premium paid within 30 days of such a policy return; and the policy will be void from the start.

**IMPORTANT CAUTION
ABOUT THE
APPLICATION**

The issuance of this long term care insurance policy is based upon the responses to questions on the application for this policy. A copy of that application is enclosed. If an Insured Person's answers are incorrect or untrue, we have the right to deny benefits or rescind the policy, subject to the Time Limit on Certain Defenses. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of an Insured Person's answers are incorrect, contact our Administrative Office at this address: 1650 Los Gatos Drive, San Rafael, California 94903-1899.

THIS POLICY IS NOT A MEDICARE SUPPLEMENT POLICY: If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from us.

NOTICE TO BUYER: This policy may not cover all of the costs associated with long term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.

FEDERAL TAX QUALIFICATION PROVISIONS

This section describes our intent that this be a qualified contract.

**Our Intent
that this be a
Qualified Contract**

This policy is intended to be a qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 (as amended by the Health Insurance Portability and Accountability Act of 1996 - Public Law 104-191).

**Conformity with Internal
Revenue Code**

If on its effective date, the policy does not comply with the requirements of the above cited section, it will be treated as if it had been changed to comply with those requirements. Because the policy is guaranteed renewable, we will inform you in writing of any required change in the provisions of this policy; and you will be given the choice of accepting the change, or retaining the policy without that change.

TABLE OF CONTENTS

These are the major provisions of the policy in the order in which they appear.

Section Title	Page
DECLARATIONS (This describes some general rights and obligations)	1
FEDERAL TAX QUALIFICATION PROVISIONS	2
TABLE OF CONTENTS	2
SCHEDULE	3
GLOSSARY	4
(Here you can find the definition of terms used throughout the policy. Additional definitions are found in some of the Benefit Provisions.)	
BENEFIT PROVISIONS	6
(Here you can find a description of the specific Benefits provided by the contract and how you qualify for them.)	
EXCLUSIONS AND LIMITATIONS	14
BASIC CONTRACT PROVISIONS (Provisions discussing this contract in general)	15
CLAIMS PROVISIONS	16
(This section describes the claims process. It includes: what must be done initially; how and when to file a claim; how we evaluate a claim and pay benefits; and how to appeal a claim denial.)	
EFFECTIVE DATE AND PREMIUM PROVISIONS	19
(This section describes the actions to be taken to place and keep the policy in force. It includes the Waiver of Premium and Grace Period provisions. It also describes the safeguards provided against loss of coverage if premiums are not paid on time.)	
A copy of the application for this policy	Attached
Any appropriate Riders, Endorsements, Notices and other papers	Attached

Refer to the Schedule to determine the Benefits, Options and applicable coverage details.

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SCHEDULE

GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY

Policy Number: UCG0888816

Policy Effective Date: Apr 14, 1999

Name and Address of Policyholder:

Insured Spouse: None

Sally F Manning
 291 Belfair Oaks Boulevard
 Bluffton, SC 29910

POLICY COVERAGES

Privileged Care Coordination Benefit.....	Included
Home Care Benefit.....	Included
Caregiver Training Benefit.....	Included
Equipment Benefit.....	Included
Supplementary Benefit.....	Included
Long Term Care Facility Benefit.....	Included
Bed Reservation Benefit.....	Included
Waiver of Premium.....	Included

COVERAGE LIMITS

Elimination Period*.....	100 Days
Daily Payment Maximum*.....	\$165.00
Lifetime Payment Maximum.....	Unlimited

*These limits do not always apply - refer to the Benefit Provisions for details.

INFLATION PROTECTION

COMPOUND 5% BENEFIT INCREASES..... See Attached Rider

See the next page for Premium Information.

SCHEDULE (Continued)

GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY

Policy Number: UCG0888816

Name of Policyholder: Sally F Manning

PREMIUM INFORMATION

RATE CLASSIFICATION: Policyholder - Standard with Spousal Discount
Insured Spouse - None

ANNUAL PREMIUMS: Basic Policy Coverage \$2,195.75
Inflation Protection (N/A shown if no increases)..... \$2,700.60
Optional Rider(s) (if any) See Rider(s)
Annual Total \$4,896.35

FIRST PREMIUM
\$440.67

PREMIUM PAYMENT MODE
Monthly

MODAL PREMIUM
\$440.67

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SCHEDULE



GE Capital Assurance

COMPOUND BENEFIT INCREASES INFLATION PROTECTION RIDER

We at General Electric Capital Assurance Company (GE Capital Assurance) are pleased to issue this insurance rider to you. We urge you, the Insured, to read it carefully.

The following provisions are added to the policy as of its Effective Date.

These changes are made in consideration of your application and payment of the additional premium described below.

COMPOUND BENEFIT INCREASES INFLATION PROTECTION PROVISION

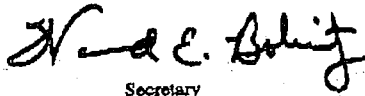
Your Daily Payment Maximum and Lifetime Payment Maximum amounts will each increase on every anniversary of the effective date of this policy. Annual increases will apply to benefits payable for any expenses you incur on or after the date of the increase. The first increase will be equal to 5% of your original amount. Each increase thereafter will be equal to 5% of the increased amount that applied on the date of the prior increase.

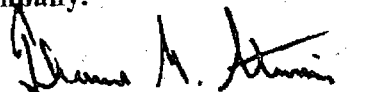
RIDER PREMIUM

The Schedule in the policy shows both: the premium for the policy with the inclusion of this rider; and the amount charged for this rider. The same conditions that apply to changing premiums for the policy apply to our changing premiums for this rider. The premium for this rider will be waived when the policy premium is waived during the continuation of a period of confinement.

In all other respects the conditions and provisions of the policy remain the same.

Signed for General Electric Capital Assurance Company.


Secretary


President and CEO, Long Term Care Division

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GE Capital Assurance

SOUTH CAROLINA POLICY RIDER

This Rider is to be attached to and forms a part of all policies issued in South Carolina under Policy Form 7030J. The policy to which this rider is attached is changed in the following manner:

The Survivorship Benefit is added to the Benefit Provisions in the policy.

SURVIVORSHIP BENEFIT

When an Insured Person's spouse dies after this policy has been in force for at least ten years, no further premium payments will be required for this policy if:

- Both the Insured Person and such spouse continuously had long term care insurance coverage in force with us, other than under a Nonforfeiture Benefit, on the date of death of the spouse and for at least the prior ten year period; and
- Such spouse's coverage included a similar Survivorship Benefit; and
- No long term care benefits were paid or payable by us for the Insured Person or spouse during the first ten years of such concurrent coverage.

In all other respects the conditions and provisions of the policy remain the same.

Signed for General Electric Capital Assurance Company.

W. E. Bolitz
Secretary

Thomas R. Stoff
President, Long Term Care Division

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GLOSSARY

This section defines words and phrases used on a general basis in the policy. Additional terms are defined in the Benefit Provisions.

Activities of Daily Living	Each of the following is considered to be an Activity of Daily Living:
Bathing:	Washing oneself: (a) by sponge bath; or (b) in either a tub or shower, including the task of getting into or out of the tub or shower.
Dressing:	Putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.
Eating:	Feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.
Continence:	The ability to maintain control of bowel and bladder functions; or when unable to maintain control of bowel and bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).
Toileting:	Getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.
Transferring:	Moving in and out of a bed, chair or wheelchair.
Daily Payment Maximum	This is the greatest amount we will pay for all expenses an Insured Person incurs on any one day. Unless specifically stated in a Benefit, this limit applies to the combined total for all benefit payments provided by the policy for that person. The Daily Payment Maximum that applies on the Effective Date of the policy is shown in the Schedule. If the Schedule states that Inflation Protection applies, the Benefit Increases provision in the Inflation Protection Rider states how the Daily Payment Maximum will increase over time.
Elimination Period	The number of days for which an Insured Person must incur expenses that qualify for benefit payments under the policy; but for which we will NOT pay benefits. Days used to satisfy the Elimination Period do not need to be consecutive, but must occur within a 2 year period. Once an Insured Person has satisfied this Elimination Period requirement, he or she will never have to satisfy a new Elimination Period for the policy. The Schedule shows the number of days in each Insured Person's Elimination Period. Note, the Elimination Period does not apply to: the Privileged Care Coordination Benefit; the Caregiver Training Benefit; the Equipment Benefit; or the Home Care Benefit when the Privileged Care Coordinator Option is used.
Family Member	Your spouse and anyone who is related to you or your spouse (including adopted, in-law and step-relatives) as a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, first cousin, nephew or niece.

Insured Person	You, the Policyholder named in the Schedule, and your Insured Spouse, if any, who is also named in the Schedule or in an attached coverage rider.
Licensed Health Care Practitioner	Any of the following who is not a Family Member: a physician (as defined in section 1861(r)(1) of the Social Security Act); a registered professional nurse; a licensed social worker; or any other individual who meets such requirements as may be prescribed by the Secretary of the Treasury.
Lifetime Payment Maximum	The combined total amount we will pay as benefits under this policy. This amount is shown in the Schedule. If the Schedule states that Inflation Protection applies, the Benefit Increases provision in the Inflation Protection Rider states how the Lifetime Payment Maximum will increase over time.
Medicare	The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended.
Nurse	Someone who is licensed as a Registered Graduate Nurse (RN), Licensed Practical Nurse (LPN), or Licensed Vocational Nurse (LVN), and is operating within the scope of that license.
Policy Year	Each twelve month period beginning with the Effective Date of the policy, as shown in the Schedule.
Prevailing Expenses	Expenses, fees or charges actually incurred by an Insured Person which do not exceed the level of charges normally made for similar care, service or other items provided to persons with comparable medical conditions or impairments in the locality where they are received. An expense, fee or charge is considered to be incurred on the day on which the care, service or other item forming the basis for it is received.
You, Your	The Policyholder named in the Schedule.
We, Us, Our	General Electric Capital Assurance Company (GE Capital Assurance). We are a stock life insurance company. Our Administrative Office is at 1650 Los Gatos Drive, San Rafael, California 94903-1899.

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BENEFIT PROVISIONS	
LIMITATIONS OR CONDITIONS ON ELIGIBILITY FOR BENEFITS	
This section describes the Benefits payable under the policy.	

BENEFIT ELIGIBILITY

For an Insured Person to be eligible for Benefits provided by the policy we must receive ongoing proof, including a Current Eligibility Certification, which demonstrates, based on information from care providers, personal physicians and other Licensed Health Care Practitioners, that the covered care is needed due to the Insured Person continually:

- being unable to perform, without Substantial Assistance from another individual, at least two (2) Activities of Daily Living due to a loss of functional capacity. In addition, this loss of functional capacity must be expected to exist for a period of at least 90 days; or
- requiring Substantial Supervision to protect oneself from threats to health and safety due to Severe Cognitive Impairment.

**Current Eligibility
Certification Defined**

A **Current Eligibility Certification** is a Licensed Health Care Practitioner's written certification, made within the preceding 12-month period, that the Insured Person meets the above requirements.

The Claims Provisions section describes the claims evaluation process.

Additional Definitions

An **Activity of Daily Living** is one of the following: Bathing; Dressing; Eating; Continence; Toileting; and Transferring. Definitions of these activities are found in the Glossary (page 4).

Substantial Assistance means:

- "Standby Assistance" which is the presence of another person within arms reach of the Insured Person that is necessary to prevent, by physical intervention, injury to the Insured Person while he or she is performing the Activity of Daily Living; or
- "Hands-on Assistance" which is the physical assistance of another person without which the Insured Person would be unable to perform the Activity of Daily Living.

Severe Cognitive Impairment means a loss or deterioration in intellectual capacity that:

- is comparable to (and includes) Alzheimer's disease and similar forms of irreversible dementia; and
- is measured by clinical evidence and standardized tests that reliably measure impairment in the person's:
 - short-term or long-term memory;
 - orientation as to people, places or time; and
 - deductive or abstract reasoning.

Substantial Supervision means continual supervision (which may include cueing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired person from threats to his or her health or safety (as may result from wandering).

0125

CONDITIONS

Benefits will be paid only for expenses an Insured Person incurs for covered care that is received pursuant to his or her Plan of Care and while his or her insurance is in force.

Benefit payments are subject to: the Elimination Period requirements; the applicable Daily Payment Maximum and Lifetime Payment Maximum; and all other provisions of the policy.

**Plan of Care
Defined**

A Plan of Care is a written, individualized plan for care and support services for an Insured Person that:

- Has been developed as a result of an assessment and incorporates any information provided by his or her personal physician; and
- Has been prescribed by a Licensed Health Care Practitioner; and
- Fairly, accurately and appropriately addresses his or her long term care and support service needs; and
- Specifies: the type, frequency and duration of all services required to meet those needs; the providers appropriate to furnish those services; and an estimate of the cost of such services.

The Plan of Care must be updated as the Insured Person's needs change. We must receive a copy of the Plan of Care upon its completion and each time it is updated. We retain the right to request periodic updates not more frequently than once every 30 days. We will make copies of the current Plan of Care available to the Insured Person's personal physician.

**PRIVILEGED CARE
COORDINATION
BENEFIT**

This is an
Optional Benefit the
Insured Person
may choose to use.

We will pay the expenses an Insured Person incurs for Privileged Care Coordination Services furnished by a Privileged Care Coordinator. Expenses paid under this Benefit will count against the policy's Lifetime Payment Maximum.

No Daily Payment Maximum or Elimination Period: The Daily Payment Maximum does not apply to payments made under this Benefit. This Benefit is not subject to, and may not be used to satisfy, any Elimination Period.

Definitions

A **Privileged Care Coordinator** is a Licensed Health Care Practitioner designated by us to provide Privileged Care Coordination Services.

Privileged Care Coordination Services include, but are not limited to:

- Developing and prescribing a Plan of Care appropriate for the Insured Person's condition.
- Providing the initial and ongoing certifications required to satisfy the Current Eligibility Certification requirements.
- Suggesting a variety of formal and informal care and support service providers and possible financial resources available to meet the needs identified in the Insured Person's Plan of Care.
- Assistance with implementing an Insured Person's Plan of Care by scheduling and coordinating the care and support service providers he or she has chosen from those suggested by the Privileged Care Coordinator.
- Ongoing monitoring of the care and support services an Insured Person is receiving. This will include periodic re-assessments to determine revisions to the Plan of Care that are warranted by changes in the Insured Person's care and support service needs.

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HOME CARE BENEFIT

This is an option
the Insured Person
may choose to use.

Benefits of the Privileged Care Coordinator Option: The following benefits apply when an Insured Person receives care and support services exclusively in accordance with a Plan of Care developed by a Licensed Health Care Practitioner who is a Privileged Care Coordinator:

- We will pay 100% of the expenses he or she incurs for the following care and services that are consistent with that Plan of Care:
 - Health care services provided by a Nurse, or a licensed physical, occupational, respiratory or speech therapist;
 - Home Health Aide and Personal Care Attendant Services;
 - Homemaker Services;
 - Chore Services;
 - Adult Day Care;
 - Hospice Care; and
- The first 21 days of Respite Care he or she receives during a Policy Year. (Respite Care is not subject to, nor will it satisfy any Elimination Period.)
- Payment for the above expenses will not be subject to the Daily Payment Maximum; however, not more than 7 times the Daily Payment Maximum will be paid for all those expenses which an Insured Person incurs during any calendar week (Sunday through Saturday).
- The policy will be eligible for monthly waiver of any premiums becoming due while an Insured Person is receiving the above care and support services.

No Elimination Period: When this option is used, we will waive the Insured Person's Elimination Period for these care and support services. In addition, each day the Insured Person incurs expenses for the above care and support services (except Respite Care) will count toward satisfying his or her Elimination Period for other benefits that are subject to an Elimination Period.

This applies when the
above option is not used.

Benefits When Any Other Plan of Care Is Used: The following benefits apply when an Insured Person receives care and support services in accordance with a Plan of Care developed by a Licensed Health Care Practitioner who is not a Privileged Care Coordinator:

- We will pay 100% of the Prevailing Expenses he or she incurs for:
 - Health care services provided by a Nurse, or a licensed physical, occupational, respiratory or speech therapist;
 - Adult Day Care;
 - Hospice Care;
- The first 21 days of Respite Care he or she receives during a Policy Year (Respite Care is not subject to, nor will it satisfy any Elimination Period.); and
- Home Health Aide and Personal Care Attendant Services;
- Homemaker Services; and
- Chore Services; and
- We will not waive the Elimination Period requirement for care and support services received in accordance with that Plan of Care; and
- Payment for all expenses he or she incurs on any one day will always be subject to the Daily Payment Maximum.

Definitions

Adult Day Care means a program for six or more individuals of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

Chore Services means assistance a person provides with light work or household tasks the Insured Person would normally perform. This is limited to assistance provided when: the Insured Person is no longer capable of performing the work or tasks (because of his or her need for assistance); they are necessary to or consistent with the Insured Person's ability to remain safely at home; and an informal (unpaid) caregiver is not available. This may include such activities as: simple household repairs; taking out the garbage; and related tasks that do not require the services of a trained aide or attendant.

Home Health Aide and Personal Care Attendant Services means assistance a person provides with the following tasks when necessary to, or consistent with, the Insured Person's ability to remain safely at home: simple health care tasks; personal hygiene; performing Activities of Daily Living; managing medications; and other related supportive tasks. Providers of these services may be independent and do not need to be affiliated with a home health care agency.

Homemaker Services means assistance a person provides with activities necessary to or consistent with the Insured Person's needs to manage and maintain a household when he or she is no longer capable of managing those activities and an informal (unpaid) caregiver is not available. This may include such activities as: preparing meals; doing laundry; and doing incidental household tasks.

Hospice Care means services (not prescription drugs) that are designed to provide palliative care to an Insured Person or to alleviate the person's physical, emotional and spiritual discomforts because he or she is experiencing the last phases of life due to a terminal disease (6 months or less to live).

Respite Care is short-term care provided in order to relieve an Insured Person's primary informal (unpaid) caregiver in the Insured Person's home. It can be furnished in an institution, in the Insured Person's home, or at a community-based program.

**CAREGIVER
TRAINING BENEFIT**

We will pay the Prevailing Expenses an Insured Person incurs for training an informal (unpaid) caregiver to care for the Insured Person in his or her home. All of the following conditions apply to the payment of this Benefit.

- We will not pay for training provided to someone who will be paid to care for the Insured Person.
- The training cannot be received while the Insured Person is confined in a hospital or Long Term Care Facility, unless it is reasonably expected that the training will make it possible for the Insured Person to go home where he or she can be cared for by the person receiving the training.

No Elimination Period: This Benefit is not subject to, and may not be used to satisfy, any Elimination Period.

Limitations on Benefit Payments: The lifetime maximum total amount we will pay with respect to an Insured Person under this Caregiver Training Benefit is an amount equal to five (5) times his or her Daily Payment Maximum. Payment under this Benefit will not count against any Daily Payment Maximum.

**EQUIPMENT
BENEFIT**

We will pay the Prevailing Expenses an Insured Person incurs for the purchase or rental of Supportive Equipment when all of the following conditions are satisfied.

- The equipment must be intended to assist the Insured Person in living at home or in other residential housing by relieving his or her need for direct physical assistance.
- It must be reasonably expected that the equipment will enable the Insured Person to remain at home or in other residential housing for at least 90 days after the date of purchase or first rental.
- The equipment must be specified in, and consistent with, the Insured Person's Plan of Care.

Supportive Equipment is equipment, such as the following, which meet the above conditions: pumps and other devices for intravenous injection; ramps to permit movement from one level of the residence to another; grab bars to assist in toileting; and other mechanical aids. It does not include either: equipment that will, other than incidentally, increase the value of the residence in which it is installed; or artificial limbs, teeth, medical supplies, or equipment placed in the Insured Person's body, temporarily or permanently.

No Elimination Period: This Benefit is not subject to, and may not be used to satisfy, any Elimination Period.

Limitations on Benefit Payments: The lifetime maximum total amount we will pay with respect to an Insured Person under this Equipment Benefit is an amount equal to 50 times his or her Daily Payment Maximum. Payment under this Benefit will not count against any Daily Payment Maximum.

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**SUPPLEMENTARY
BENEFIT**

(For expenses not
otherwise covered;
upon approval by us.)

We will pay the Prevailing Expenses an Insured Person incurs for care, treatment, services, supplies or other items received in accordance with a Supplementary Benefit plan.

Any plan may be adopted as a **Supplementary Benefit** as long as:

- it clearly specifies the benefits to be payable;
- it provides coverage only for qualified long term care services as defined in Section 7702B(b) of the Internal Revenue Code (see page 2); and
- it is mutually agreeable to the Insured Person, his or her personal physician and us as a cost-effective alternative to benefits otherwise available under the policy.

Benefits are not payable for any expenses incurred either: prior to the date of mutual agreement; or after the Lifetime Payment Maximum has been reached. Agreement to participate in a Supplementary Benefit plan will not waive any of the rights an Insured Person or we have under the policy.

A Supplementary Benefit plan may be discontinued at any time without affecting the Insured Person's right to the benefits otherwise available under the policy.

Examples: A Supplementary Benefit plan may pay for the use of providers, facilities or supports not otherwise covered by the policy. Examples include, but are not limited to:

- In-home safety devices.
- Home delivered meals.
- Stays in other types of facilities.
- Additional equipment benefits.

**LONG TERM CARE
FACILITY BENEFIT**

**Long Term Care
Facility Defined**

We will pay the expenses an Insured Person incurs for care and support services (including room and board, but not prescription drugs) provided by a Long Term Care Facility. The expenses must be consistent with the level of charges normally made for other inpatients receiving similar care in that facility. He or she must be confined there as a resident inpatient.

An institution* (such as a nursing home, assisted care facility or Alzheimer's facility) which is licensed by the appropriate federal or state agency to engage primarily in providing care and services sufficient to support needs resulting from inability to perform Activities of Daily Living or Severe Cognitive Impairment. It must also:

- Provide such care and services on a twenty-four hour a day basis;
- Have a trained and ready to respond employee on duty at all times to provide such care and services;
- Provide 3 meals a day and accommodate special dietary needs;
- Have arrangements with a duly licensed physician or Nurse to furnish medical care in case of an emergency;
- Have the appropriate methods and procedures to provide necessary assistance to residents in the management of prescribed medications; and
- Have accommodations for at least five resident inpatients in one location, unless it has been determined by us, based on information from our Privileged Care Coordinator, that it has the services and facilities required to appropriately address the Insured Person's needs as described in his or her Plan of Care (even with accommodations for less than five resident inpatients).

A Long Term Care Facility is NOT: a hospital or clinic; a subacute care or rehabilitation hospital or unit; a place which operates primarily for the treatment of alcoholism, drug addiction or mental illness; the Insured Person's primary place of residence in an area used principally for independent residential living (including, but not limited to, boarding homes and adult foster care facilities); or a substantially similar establishment.

- * If an institution has multiple licenses or purposes, a portion, ward, wing or unit thereof will qualify as a Long Term Care Facility only if it: meets all of the above criteria; is authorized by its license, to the extent that licensing is required by law, to provide such care to inpatients; and is engaged principally in providing not only room and board, but also care and services which meet all of those criteria.

**BED RESERVATION
BENEFIT**

We will continue to pay benefits, or give Elimination Period credit, under the Long Term Care Facility Benefit for each day an Insured Person:

- is temporarily absent during a stay in the Long Term Care Facility; and
- is charged to reserve his or her accommodations in that facility.

We will do this for a total of not more than the first 21 days per person (continuous or not) of such absence during a Policy Year.

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EXCLUSIONS AND LIMITATIONS

This section states the conditions under which payment will be limited, or not made at all, even if an Insured Person otherwise qualifies for benefits. These conditions apply to all benefits provided by the policy and to all attached riders.

EXCLUSIONS

No payment will be made for any expenses incurred for any room and board, care, treatment, services, equipment or other items:

- Provided by a Family Member, unless:
 - the Family Member is a regular employee of the organization that is providing the services; and
 - the organization receives payment for the services; and
 - the Family Member receives no compensation other than the normal compensation for employees in her or his job category.
- For which no charge is normally made in the absence of insurance.
- Provided outside of the United States of America or its territories or possessions.
- Resulting, directly or indirectly, from war or act of war, whether declared or not.
- Resulting, directly or indirectly, from attempted suicide or an intentionally self-inflicted injury.
- To the extent they are for your alcoholism or drug addiction.

NON-DUPLICATION

Benefits will be paid only for covered expenses that are in excess of the amount paid or payable under Medicare (including amounts that would be reimbursable but for the application of a deductible or coinsurance amount) and any other federal, state or other governmental health care plan or law (except Medicaid).

We will consider, for the purposes of satisfying an Elimination Period, days on which an Insured Person incurs expenses that would otherwise qualify as satisfying his or her Elimination Period, but are excluded from coverage because benefits are paid or payable under governmental health care plans or laws as stated above.

0123

BASIC CONTRACT PROVISIONS

This section describes: the documents that state all the contractual agreements; the importance of completing the application truthfully and correctly; and other basic rights, obligations and features.

The Contract

Entire Contract; Changes: The entire contract between you (the Policyholder) and us is as stated in this policy, the application for the Insured Persons and any attached papers. No change in this policy will be effective until approved by one of our officers. That approval must be noted on or attached to this policy. No agent may change this policy or waive any of its provisions.

Time Limit on Certain Defenses

Misstatements in the Application: After 2 years from the policy's Effective Date only fraudulent misstatements in your application may be used to:

- void this policy; or
- deny any claim for loss incurred or disability that starts after the 2 year period.

Pre-Existing Conditions: We will not reduce or deny any claim under this policy because of a sickness or physical or medical condition that existed before the policy's Effective Date.

Other Provisions

Misstatement of Age: If an Insured Person's age was misstated in the application for this policy, we will pay the benefits that the premiums paid would have purchased at his or her true age. If, based on that true age, the policy would not have become effective, we will only be liable for the refund of all premiums paid for this policy. This policy will not be issued to persons under age 18 or over age 84.

Governing Jurisdiction: This policy is governed by the laws of the state in which you reside on its Effective Date.

Conformity with State Statutes: If this policy does not comply with the laws of the state in which you reside on its Effective Date, we will treat it as though it had been changed to comply with those laws.

Time Periods: All time periods begin and end at 12:01 a.m. at your residence.

Non-Participating; Dividends Not Payable: This policy does not participate in our profits or surplus earnings; has no cash values; and will not pay dividends at any time.

No Cash Values, Borrowing, or Use as Collateral: The policy does not provide for a cash surrender value, or other money that can be borrowed; or paid, assigned or pledged as collateral for a loan.

013K

CLAIMS PROVISIONS

This section describes: when we must be notified of a claim; what to send us; how we evaluate and pay claims; and other rights and responsibilities under the contract.

Your Role in the Claims Process

Let us know at once, then follow these procedures.

Early awareness by our Claims Department will facilitate a timely claim review. You can help us in this process by letting us know immediately when an Insured Person thinks he or she is eligible for benefits under this policy. Of course, someone else who is authorized to act on your behalf can also contact us for you.

Privileged Care Coordinators

When an Insured Person uses a Privileged Care Coordinator (as provided in the Privileged Care Coordination Benefit), we will work with that coordinator to ensure that we understand the Insured Person's condition, any prescribed Plan of Care, and any care and support services received.

Telling us About a Claim

Notice of Claim: We must be notified when an Insured Person has a claim. The notice can be given to us at our Administrative Office or to our agent. It must be received within 30 days of the date the covered loss starts, or as soon as reasonably possible. Include in the notice at least: the Insured Person's name; the Policy Number; and an address to which the claim forms should be sent.

How to File a Claim

Claim Forms: When we get notice of claim we will send out the necessary forms to be used to file proof of loss.

The forms will tell you how to complete them and where to send them. Read them carefully. Answer all questions and send all required information to the address on the forms. This will assist us in the evaluation of the claim so that we can determine the benefits for which the person is eligible.

If you or your representative do not get the necessary claim forms within 15 days, proof of loss can be filed without them by sending us a letter which describes the occurrence, the character and the extent of the loss for which your claim is made. That letter must be sent to us at our Administrative Office within the time period stated in the next paragraph.

When to File a Claim

Proofs of Loss: When the policy provides for payment for continuing loss, written proof of the loss must be given to us within 90 days after the end of each 30 day period for which benefits may be payable. For any other loss, written proof must be given to us within 90 days after such loss. If it was not reasonably possible to give us written proof in the time required, we shall not reduce or deny a claim for being late if the proof is filed as soon as reasonably possible. Unless the claimant is not legally capable, the required proof must always be given to us no later than 1 year from the time specified.

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**Our Evaluation Criteria;
and the Claims Payment
Process**

How We Evaluate Claims: We will obtain information about a person on whose behalf a claim is made by working with that person, and his or her personal physician and Privileged Care Coordinator (if the Privileged Care Coordinator Benefit is used). We will also consult with any Licensed Health Care Practitioners, agencies and other care providers he or she used. We will then review that information to determine eligibility for benefits. We reserve the right, as part of the evaluation and at our expense, to do an assessment or a physical examination of a person on whose behalf a claim is made. Similar evaluations may be required, at reasonable intervals, to determine eligibility for continued benefits. We may use outside services to assist in evaluating an Insured Person's condition.

On an ongoing basis, we must receive updates to the Insured Person's Plan of Care and a Current Eligibility Certification by a Licensed Health Care Practitioner as required in the Benefit Eligibility provisions. We will also need a copy of his or her Medicare Explanation(s) of Benefits (or similar form for other plans and programs subject to the Non-Duplication provision) to determine which expenses (if any) are excluded from coverage.

Physical Examinations: At our expense, we have the right to require a medical examination when a claim is made and at reasonable intervals while continued benefits are being claimed.

Time of Payment of Claim: After we receive the proper written proof of loss, we will pay any benefits then due immediately; and at the end of each 30 days thereafter, when the loss is expected to result in on-going benefits.

Payment of Claims: All benefits will be payable to the Policyholder. Any benefits unpaid at the Policyholder's death will be payable to his or her estate. If benefits are payable to an estate, we may pay a portion of those benefits, up to \$1,000, directly to someone related to the Insured Person by blood or marriage who is deemed by us to be justly entitled to the benefits. We will be discharged to the extent of any such payment made in good faith.

We may pay all or a portion of any benefits for care or services an Insured Person receives to the provider of the care or services; unless you direct us to do otherwise in writing by the time proofs of loss are filed. We do not require that a particular provider provide the care or services.

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How to Appeal a Claim Decision

We will inform you, the Policyholder, in writing if a claim, or any part of a claim, is denied.

Appeal Process: If you believe that our decision on a claim is in error, we will reconsider the claim. You must send us a brief note (no special form needed) that tells us why you feel we should change our decision. You may authorize someone else to act for you in this appeal process.

The note should include the names, addresses and phone numbers of any providers you think we should contact to learn more about the health and the care received by the person on whose behalf the claim was made. This would include the physicians, health care professionals and other care providers who treated the Insured Person; and the facilities from which he or she received care, treatment, services, equipment or other items.

We will provide you with a written explanation of the reasons for any claim denial and make available all information directly related to that denial within 60 days of the date of any written claims appeal. We will immediately pay any benefits due as a result of our reconsideration.

Legal Actions: You cannot sue on any claim before 60 days after written proof of loss has been given as required by your policy. You cannot sue after 6 years from the time written proof of loss is required to be given.

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Continuation for Lapse due to Alzheimer's Disease and Other Forms of Cognitive or Functional Impairment: We will provide a retroactive continuation of coverage if:

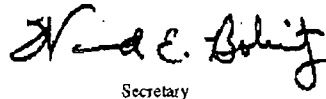
- the policy terminates due to non-payment of premiums (lapse); and
- within 7 months after termination we are given proof that an Insured Person met the Benefit Eligibility requirements of the policy.

We must receive proof of his or her impairment or incapacity and all past-due premiums within that 7 month period. Any benefits for which an Insured Person qualified during the continuation period will be paid to the same extent they would have been paid if the policy and its riders had remained in force from the date of termination.

**Conversion of Spouse
Coverage Upon Death
of the Policyholder**

If you, the Policyholder, die while the policy is in force and your spouse is an Insured Person, he or she can continue to be covered by the policy; provided that premiums continue to be paid when due. All reference to "you" and the "Policyholder" in this policy will then apply to such spouse.

Signed for General Electric Capital Assurance Company.


Secretary


President, Long Term Care Division

Please keep this policy in a safe place with your other important documents.

**GENWORTH LIFE INSURANCE COMPANY
NAME CHANGE ENDORSEMENT**

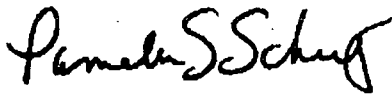
With the necessary regulatory approval, General Electric Capital Assurance Company has changed its name to Genworth Life Insurance Company, effective January 1, 2006.

The Company's administrative address and telephone number are:
3100 Albert Lankford Drive
Lynchburg, VA 24501-4948
1-888-436-9678

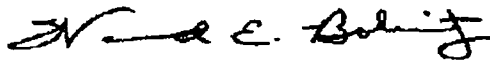
No terms, conditions or benefits of your contract, policy or certificate have changed. All servicing of your contract, policy or certificate will continue to be done by the Company or its affiliated representatives.

Please keep this endorsement with your General Electric Capital Assurance Company contract, policy or certificate.

For Genworth Life Insurance Company,



**Pamela S. Schutz
President**



**Ward E. Bobitz
Secretary**

FIRST CODICIL
TO LAST WILL AND TESTAMENT
OF
JOHN J. MANNING, JR.

I, JOHN J. MANNING, JR., a resident of Beaufort County, South Carolina, being of lawful age and sound and disposing mind and memory, do make, publish and declare this to be the First Codicil to the Last Will and Testament executed by me on November 29, 2004.

(1) ITEM I of my said Last Will and Testament is hereby deleted in its entirety and substituted in lieu and in place thereof is the following new ITEM I:

"ITEM I. I expressly make no provision in this Will for my wife, SALLY A. MANNING as she has been provided for by other means."

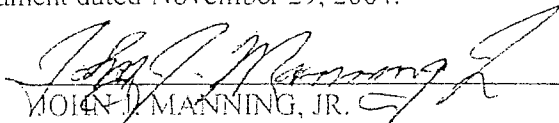
(2) ITEM IV of my said Last Will and Testament is hereby deleted in its entirety and substituted in lieu and in place thereof is the following new ITEM IV:

"ITEM IV.

(1) I nominate and appoint JOHN J. MANNING, III as my Personal Representative under this Will. In the event JOHN J. MANNING, III fails to survive me or otherwise fails or ceases to serve as Personal Representative, I nominate and appoint CHRISTOPHER H. MANNING as successor Personal Representative. I request that no bond be required of any person/entity named herein as Personal Representative or any successor Personal Representative. Any person or entity serving as Personal Representative shall be entitled to receive reasonable compensation for services rendered and reimbursement for reasonable expenses."

(3) In all other respects, I hereby ratify and confirm all the provisions of my Last Will and Testament dated November 29, 2004.

IN WITNESS WHEREOF, I have on this 2nd day of September, 2009, at Hilton Head Island, South Carolina, signed my name at the end of this instrument of two (2) pages, which I declare to be the First Codicil to my Last Will and Testament dated November 29, 2004.


JOHN J. MANNING, JR.

I, Eliz B. Mayo, and I, Melvin F. Land, the witnesses, sign our names to this instrument, and at least one of us, being duly sworn, do hereby to the undersigned authority that I sign and execute this instrument as the First Codicil of the Last Will and Testament of JOHN J. MANNING, JR. (the "Testator") and that each of us sign it willingly, (or each has willingly directed another to sign for him/her), and that each of us, in the presence and hearing of the Testator hereby signs this Will as witness to the Testator's signing, and that to the best of our

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knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Shirley B. May
Witness
Melvin F. Bond
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Subscribed, sworn to and acknowledged before me by the Testator and subscribed and sworn to before me by Melvin F. Bond, the witness, this 2nd day of September, 2009.

Shirley B. May
Notary Public for South Carolina
My Commission Expires:
(NOTARY SEAL)

MY COMMISSION EXPIRES
JUNE 21, 2017

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THIRD AMENDMENT AND RESTATEMENT

TO

REVOCABLE

TRUST AGREEMENT

CREATED BY

JOHN J. MANNING, JR.

Prepared by:

**Elizabeth B. Mayo, JD, LLM
Novit & Scarminach, P.A.
52 New Orleans Road, Suite 400
Post Office Drawer 14
Hilton Head Island, South Carolina 29938
843-785-5850**

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**THIRD AMENDMENT and RESTATEMENT
OF
JOHN J. MANNING, JR. LIVING TRUST**

This 3rd Amendment and Restatement of the JOHN J. MANNING, Jr. LIVING TRUST dated November 29, 2004 as amended by 1st amendment dated June 6, 2008 and by 2nd amendment dated September 2, 2009 is made at Hilton Head Island, South Carolina, this 26th day of July, 2012.

WHEREAS, ARTICLE VI of said Trust Agreement reserves to the Grantor the right to amend, alter or revoke said Trust Agreement in part or in its entirety; and

WHEREAS, the Grantor now desire to amend said Trust Agreement in its entirety;

NOW, THEREFORE, the said Trust Agreement is hereby amended in its entirety as follows:

“WITNESSETH:”

“I, JOHN J. MANNING, JR., as grantor and as trustee do create this trust (to be known as the JOHN J. MANNING, JR. LIVING TRUST as amended and restated July 26, 2012”) for the purposes and upon the terms and provisions hereafter set forth. Accordingly, I hereby pay and deliver to the trustee the sum of One Dollar which, together with any other property herewith or hereafter assigned, conveyed, devised or bequeathed to the trustee by me or by any other persons (all of which is hereafter collectively termed "the trust funds"), shall be held and disposed of by the trustee upon the following terms:

Definitions

ARTICLE 1. (A) Children. The references in this instrument to my children, grandchildren, descendants, issue or children's issue are intended to include both natural born and legally adopted children, whether born or adopted before or after the execution hereof. For identification purposes, I now have two children whose names are JOHN J. MANNING, III and CHRISTOPHER H. MANNING.

(B) Code. “Code” shall mean the Internal Revenue Code of 1986, as amended.

(C) Education. “Education” shall mean expenses (hereinafter defined) incurred for the following types of education: elementary, high school, college preparatory, college, professional school, post graduate, and technical academic institutions and instruction in the areas of art, dance, music and physical fitness whether or not such instruction leads to a degree. “Expenses” for education shall include tuition, books, student supplies, room, board, travel, special course fees, lab fees, uniforms, and professional or educational societies and all other reasonable costs and reasonable expenses customarily associated with education.

(D) Estate Tax Exemption. The largest amount that can pass to the By-Pass Trust without increasing the Grantor’s federal estate tax.

(E) Spouse. My spouse's name is SALLY A. MANNING.

(F) Survivor. Survivorship as between my spouse and me, for all purposes hereunder, shall be determined as a matter of fact without reference to any legal or statutory presumption respecting the order of our deaths; provided that if my spouse and I should die in a common accident and it cannot reasonably be determined which of us died first, then my spouse shall be presumed to have predeceased me. Survivorship as between any other beneficiary and me, for all purposes hereunder, shall be determined as a matter of fact without reference to any legal or statutory presumption respecting the order of our deaths; provided that if such other beneficiary and I should die in a common accident and it cannot reasonably be determined which of us died first, then such beneficiary shall be presumed to have predeceased me.

(G) Trustee. I am serving as the initial trustee of the trust. If I cease to serve as trustee for any reason, including my incapacity, my sons, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as successor co-trustees (hereinafter referred to individually and collectively as "trustee"). In the event of the incapacity or disability of any person serving as successor trustee hereunder, such trustee shall be deemed to have resigned and the successor trustee or trustees as provided in this Agreement shall serve as successor trustee/trustees. I request that no bond be required of any person/entity named herein as trustee.

(H) Incapacity. Any person serving as trustee shall be deemed to be "incapacitated" (and while incapacitated shall not serve as a trustee) if another then-serving trustee or, if there is none, the next successor trustee receives written certification that the examined individual is physically or mentally incapable of managing the affairs of the trust (or, in my case, my personal financial affairs), whether or not there is an adjudication of incapacity. Such certification shall be valid only if it is signed by at least two (2) licensed physicians, each of whom has personally examined me or the trustee, as the case may be; such certification need not indicate any cause for my incapacity or the incapacity of the trustee. A certification of incapacity shall be rescinded when a serving trustee receives a certification that I am capable of managing my personal financial affairs or that the former trustee, as the case may be, is capable of managing the trust's affairs. This certification, too, shall be valid only if it is signed by at least two (2) licensed physicians, each of whom has personally examined me or the trustee, as the case may be, and at least one (1) of whom is board certified in the specialty most closely associated with the former disability. No person is liable to anyone for actions taken in reliance on the certifications under this paragraph or for dealing with a trustee other than the one removed for disability based on these certifications.

(I) The headings used in this Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Agreement.

During My Lifetime

ARTICLE 2. The provisions of this ARTICLE 2 shall be applicable only during my lifetime.

(A) This instrument may be amended or revoked by me at any time in writing; if I am not then serving as trustee, written notice of any such amendment or revocation shall be made to the trustee. No such amendment shall increase the duties and responsibilities of any

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trustee other than myself without the trustee's consent. It is understood that I may also at any time and from time to time withdraw funds and properties from the trust. Except during my lifetime while I am serving as trustee, such withdrawals shall be by written notice to the trustee designating the funds or properties so withdrawn. At all times I am serving as trustee, no written notice of amendment or revocation shall be required.

(B) (1) The net income of the trust estate, if any, shall be paid and distributed currently to me in convenient regular installments.

(2) In addition, the trustee shall distribute to me so much of the principal as I request at any time or times in a writing delivered to the trustee.

(3) During any period of my incapacity as a result of illness, accident or any other cause, during any such period of incapacity and notwithstanding anything contained in paragraphs (1) and (2) of this Paragraph (B) to the contrary, the trustee shall pay or distribute so much of the net income and principal of the trust for the support, maintenance, comfort, recreation, and welfare of my spouse and me, and for the payment of any taxes or other obligations, for which I may be liable, at such time, in such amounts, and to such extent, as the trustee, in their sole discretion, deems to be in my best interest. Any undistributed income shall be added to the principal of the trust estate at the end of each calendar year.

(C) The trustee shall not be obligated to pay any premium or assessment on any life insurance policy on my life held by the trustee hereunder.

Upon My Death

ARTICLE 3. The terms of the trust shall become fixed and irrevocable at my death. After the satisfaction of all debts, taxes and costs of administration of my estate as provided under my Will and elsewhere under this trust, the funds and properties which remain in the hands of the trustee (including without limitation any life insurance or other benefits paid to the trustee, any property which passed to the trustee under my Will, and any other funds or property received by the trustee by reason of my death) shall be held, administered and distributed as hereinafter provided.

I do not intend to exercise any power of appointment that may have been given to me under the Will or other instrument executed by my spouse or any other person; nothing contained herein shall be deemed an exercise of any such power of appointment in whole or in part.

Allocation of Trust Estate

ARTICLE 4.

(A) Except as provided in written memoranda left by me disposing of certain of such items and found or identified by the trustee within sixty (60) days after my death, the trustee is authorized to distribute all or any of my clothing, jewelry, books, pictures, household furniture and equipment, automobiles, and other similar nonbusiness tangible chattel property, all policies of fire, burglary, property damage, and other insurance on or in connection with the use of such property comprising the trust estate, and airline or other frequent flyer or other member awards or benefits ("Chattel Property"), outright and free of trust, in substantially equal share, to my then-living issue, per stirpes. In the event such then-living issue are unable to agree among themselves within six months of the date of my death on the division of such Chattel Property, such division shall be determined by the trustee whose decision shall be binding and conclusive on all parties

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concerned. If I leave such written memoranda, such item(s) of my Chattel Property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within sixty (60) days after his appointment, it shall be conclusively presumed that there are no such memoranda and any subsequent discovered memoranda shall be ineffective. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such Chattel Property, the trustee shall distribute all of such items not disposed of my such memoranda, outright and free of trust, as provided herein.

(B) Except as provided in Paragraph (C) of this ARTICLE 4, the Trustee shall hold, administer and distribute the balance of the trust estate as the Manning Family Share pursuant to the terms of ARTICLE 5 of this Trust Agreement.

(C) I hereby expressly make no provision in this Trust Agreement for my spouse, SALLY A. MANNING. Notwithstanding the above, in the event any portion of the Trust Estate shall be deemed payable to or for the benefit of my spouse, such amount shall be held, administered and distributed as a separate share for the benefit of my spouse as provided in this Paragraph (C) of ARTICLE 4. In such event, JOHN J. MANNING, III and CHRISTOPHER H. MANNING, or the survivor of them, shall serve as trustee of such separate share.

(1) The trustee shall pay to, or for the benefit of, my spouse, during her lifetime, so much of the income of the separate share, if any, established in this Paragraph (C) as the trustee shall, from time to time, determine to be necessary for the health and support of my spouse, in accordance with the standard of living to which she has become accustomed, including medical, surgical, hospital or other institutional care, due regard being given by the trustee to the amount of income known to the trustee to be available to my spouse from other sources.

(2) Upon the death of my spouse, the principal and all accrued and undistributed income, if any, of such separate share shall be added to and become a part of the Manning Family Share to be held, administered and distributed as provided in ARTICLE 5.

(3) My spouse may disclaim her interest in all or any amount or fraction of the trust funds to be allocated to such separate share. Such disclaimer may be made for any reason, including but not limited to, the possible minimization of the total amount of estate taxes payable out of both my estate and my spouse's estate. In such event, the trust funds in which my spouse has disclaimed an interest shall not be allocated to such separate share but instead shall be allocated to and held, administered and distributed as part of the Manning Family Share as provided in ARTICLE 5. Any disclaimer by my spouse shall also serve to terminate the interests of and provisions for all other beneficiaries, if any, under such separate share established in Paragraph (C) of this ARTICLE 4 in the trust funds allocated to the Manning Family Share by reason of such disclaimer.

(D) The distribution or assignment of trust funds under this ARTICLE 4 may be in cash or in kind, in specific properties or undivided interests, as the trustee shall determine, each distribution in kind to be credited at then current values. The trustee is authorized to estimate the allocation to the separate share, is any, established Paragraph (C) of this ARTICLE 4 and to make distribution to such separate share subject to final adjustment, if any, upon the final settlement of the Federal estate proceedings in connection with my estate. In making the allocations required under this ARTICLE 4, the trustee may rely upon any statement or report submitted in writing by my Personal Representative.

Manning Family Share

ARTICLE 5. The trust funds then constituting the Manning Family Share shall be distributed, outright and free of trust, in equal shares, one such share to each of my then-living children and one such share to the then-living issue of each deceased child of mine. Amounts of principal, if any, distributed to any child of mine pursuant to previous ARTICLES hereof shall be taken into account by the trustee in the division of the trust funds into shares. Amounts of principal distributed to each child thereunder shall be considered trust assets (valued at the date of distribution) and the trust share established for each child (or for a deceased child's surviving issue) shall be charged with the amounts so distributed to such child.

(1) Each share established for a then-living child shall be distributed outright, free of trust, to such child.

(2) Each share established for a child who has died leaving issue surviving at the date such share is established shall be paid over and distributed outright, free of trust, to such child's then-living issue, per stirpes. Such portion shall be retained in trust and administered for the benefit of such then-living issue of such deceased child as follows:

(a) Until the youngest then-living child of such deceased child of mine attains the age of twenty-five (25), the trustee shall distribute, apply or expend any part or all of the net income and, if the income is insufficient therefor, the principal of such share to or for the benefit of all or any one of such then-living children of such deceased child, in cash or in kind and in such amounts and proportions as the trustee shall determine necessary in the trustee's discretion for the health, support, maintenance and education of such beneficiary, according to the standard of living which such then-living children are accustomed at my death and after taking into consideration to the extent the trustee deems advisable any other income or resources known to the trustee to be available to such children. Any undistributed income shall be added to the principal of such portion at the end of each calendar year. Further, it is my intention that the support, maintenance, health and education of such children under the age of twenty-five (25) shall be given priority over conservation of the trust estate for the benefit of the remaindermen.

(b) When the youngest then-living child of such deceased child of mine attains the age of twenty-five (25), the trustee shall divide the principal and any undistributed income, in equal share, one such share for each of the then-living children of such deceased child of mine and one such share for the then-living issue, per stirpes of any deceased child of a deceased child of mine.

(3) Notwithstanding anything contained herein to the contrary, CHRISTOPHER H. MANNING shall serve as trustee of any share established herein for the benefit of the then-living issue of JOHN J. MANNING, Jr. and LINDA MANNING shall serve as the trustee of any share established herein for the then-living issue of CHRISTOPHER H. MANNING.

Catastrophe Clause

ARTICLE 6. If none of my children or their issue survive at the death of the survivor of my spouse and me; or if there should be a complete failure of all beneficiaries of the trusts established under ARTICLES 4 and 5 hereof, the trustee shall pay over and distribute the trust funds to such persons in such shares and proportions who would be entitled to my estate under the laws of descent

and distribution then in effect for the state of my domicile at death had I then died intestate and unmarried and predeceased by my parents.

Perpetuities Clause

ARTICLE 7. Notwithstanding the foregoing provisions no trust share hereunder shall continue in effect beyond the expiration of twenty-one years after the death of the last survivor of my spouse, my children and my issue living at my death. Any trust share then in existence shall terminate and the property shall be distributed to the income beneficiaries in the same proportions as they are then entitled to such income. If at termination the rights to the income of such trust share are not fixed by the provisions of such trust share, distribution shall be made, per capita, to the persons who are then entitled or authorized in trustee's discretion to receive income distributions from such trust share.

Spendthrift Clause

ARTICLE 8. To the extent permitted by law, no interest of any beneficiary in the income or principal of any trust established herein shall be subject to pledge, assignment, sale or transfer in any manner, nor shall any beneficiary have power in any manner to anticipate, charge or encumber his or her interest, nor shall the interest of any beneficiary be liable or subject in any manner while in the possession of the trustee, for debts, contracts, liabilities, engagements or torts of such beneficiary.

Trustee Powers

ARTICLE 9. (A) The trustee shall have full and complete power and authority as to such trust to administer the trust property without the necessity of securing the order of any court in connection with any transaction. Without intending to limit the generality of the foregoing, the trustee is authorized to retain, sell; assign, transfer, convey, exchange, lease, mortgage, pledge, contract with respect to, and in any manner dispose of, any or all of the trust property; to execute any instruments or writings incidental to the exercise of such powers; to borrow money; to exercise any voting, subscription and other rights and privileges incidental to securities; and to cause securities to be registered in the name of a nominee. The trustee is given broad discretion in the investment and reinvestment of trust funds, including (without limitation) the authority to invest in common stocks, common trust funds including common trust funds and collective funds of the trustee and/or any of its affiliates or of any other fiduciary and/or any of its affiliates, collective investment funds, real estate or any interest therein, and other classes of property which the trustee may deem to be in the best interest of the beneficiaries and in any security or evidence or indebtedness of any entity of which any bank or financial institute then serving as trustee has an interest including any affiliate or subsidiary of such trustee. The trustee is authorized to make distributions in cash or in kind or both, and to determine the values of any properties so distributed. The trustee is authorized to make allocations and distributions of assets in kind without regard to the adjusted basis of the assets so allocated or distributed and without making any equitable adjustment among the distributees therefor. The trustee is authorized to employ suitable agents and counsel, including but not limited to, any subsidiary or affiliate of the trustee and to pay their reasonable expenses and compensation. At all times there is more than one trustee then serving, a majority decision shall control.

The determination of the trustee in making such allocations and distributions of assets in kind shall be binding on all beneficiaries. The trustee shall be exonerated from any and all liability arising from the exercise of such discretion to make allocations and distributions of assets in kind, and no beneficiary shall have any claim against the trust or the trustee arising therefrom. Except as expressly provided herein, any trust property to be paid or distributed hereunder to or for the benefit of a minor may be paid or distributed to a custodian under the Uniform Gifts to Minors Act of the state of domicile of such minor, in the manner and form provided thereunder. The trustee is authorized to name the custodian of any trust property so paid or distributed. No person dealing with the trustee shall be under a duty to see to the application of the proceeds of any transaction, and the execution of any instrument or paper by the trustee shall be conclusive evidence to those dealing with the trustee of the trustee's power so to act. The trustee is specifically authorized to purchase securities or other properties from my estate, to advance trust funds to my estate, or to loan trust funds to my estate with or without security therefor. Further, the trustee of any trust hereunder is authorized at any time and from time to time in its sole and absolute discretion to merge such trust with or to contribute the trust funds to any other trust created by me or by my spouse which has all of the same individuals as beneficiaries thereof, which has substantially similar provisions with respect to the distribution of income and principal thereunder, and which is irrevocable and unamendable at the time of merger.

(B) If the trust should include any interest in any closely held corporations, general or limited partnerships or joint venture, the trustee is authorized to exercise all powers with respect to any such business interest which I could exercise if present and acting. This shall include, but shall not be limited to, the following powers: (1) To continue, expand, limit, alter, reconstitute, incorporate or terminate any such business interests in any way the trustee may determine to be advisable without liability for loss arising therefrom, unless such loss results directly from the trustee's gross negligence or willful misconduct; (2) To name and to change directors, or to act as a director and receive compensation therefor; (3) To retain or sell any such business interests, and, if a sale or disposition thereof is made, (i) the terms, techniques, or manner thereof shall be wholly within the discretion of the trustee, and (ii) the trustee is specifically authorized and empowered to make such sale to any partner, officer or employee of the business or to any beneficiary hereunder; (4) To take all actions necessary to fully effectuate any agreements requiring the sale of any such business interests at my death; (5) To hire and discharge officers and employees, fix their compensation and define their duties, or to act as an officer or employee and receive compensation therefor; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the trustee may deem appropriate, including the right to employ any beneficiary or affiliate of the trustee in any of the foregoing capacities; (6) To invest other trust funds in such business interests, to pledge other assets of the trust as security for loans made to such business interests, and to loan funds from the trust to such business interests; (7) To take any action required to convert any corporation into a partnership or sole proprietorship; (8) To treat any such business interests as entities separate from the trust, and, in accounting to the beneficiaries, the trustee shall only be required to report the earnings and condition of such business interests in accordance with standard business practices. All liabilities arising from any business interest retained and operated by the trustee pursuant to the authorization obtained herein shall be satisfied first from the business itself and second out of the trust estate. In no event shall any liability be enforced against the trustee personally, unless such liability shall result directly from the trustee's gross negligence or willful misconduct, and if the trustee shall be held personally liable as a direct

result of anything other than the trustee's gross negligence or willful misconduct, the trustee shall be entitled to indemnity first from the business and second from the trust estate.

(C) The trust estate may include real properties and interests in real properties that are subject to mortgage. The trustee may, in its discretion, place title to any such real property in the name of a nominee or nominee, including any individual or individuals, authorized to hold such title in whatever form the trustee deems best without disclosing the capacity in which such property is held. Such properties may be received by the trustee subject to such mortgages and the mortgage indebtedness as to each property or interest may be continued and carried as a charge on such property by the trustee. The preceding sentence is not intended to authorize the allocation to or retention of mortgaged property in the Marital Trust unless the trustee is satisfied that the mortgage can be carried and discharged without depriving my spouse of the full beneficial enjoyment of the property during my spouse's lifetime. The net income of the trust shall be determined without any deduction or charge for principal payments on any such mortgages.

The trustee is authorize to use and expend the trust income and principal to (i) conduct or cause to be conducted environmental investigations of the trust property, including environmental audits, assessments, site monitorings, laboratory analyses, testing, title histories, aerial photographs, public and private records reviews and any related inquiries arising out of or in any way related to liability or claims under state or local environmental statutes, regulations, ordinances, requirements, demands of government authorities or policies or under common law ("environmental laws"); (ii) take appropriate remedial action to contain, clean up or remove any actual or threatened environmental hazard, including a spill, release, discharge or contamination, and conduct site restoration work on the trust property, and notify the appropriate federal, state or local authorities either on the trustee's own accord or in response to an actual or threatened violation of environmental laws; (iii) institute legal proceedings, claims and demands concerning environmental hazards, contamination or condition of a trust property, or contest, pay, compromise, settle or comply with legal proceedings, claims, demands, orders, penalties, fines and damages brought or imposed by federal, state or local government authorities or by a private litigant; and (iv) employ agents, consultants and legal counsel to assist with or perform the above undertakings or actions. Any expenses or costs incurred by the trustee under this paragraph may be charged against income or principal as the trustee shall determine.

The trustee may reject in a writing to the grantor, if living, or to the then-income beneficiaries of the trust and to any co-trustee any trust asset, real or personal, that is deemed by the trustee after appropriate environmental audit not to be in compliance with environmental laws and shall not be deemed to have accepted title to such property and shall not act or be obligated to act in any way as trustee with respect to such property or any interest in such property which is or may become a part of the trust estate until an appropriate environmental audit is performed at the expense of the grantor or the trust to determine that conditions with respect to such property or interest in such property are in compliance with environmental laws and the trustee has accepted such property as an asset of the trust estate in a separate writing delivered to the grantor, if living, or to the then income beneficiaries of the trust and to any co-trustee.

(D) The trustee shall exercise and perform the trust powers and duties in accordance with sound and accepted accounting procedures. In this connection, irrespective of statute or rule of law, the trustee may allocate or apportion receipts and disbursements between income and corpus, and may reserve out of income a reasonable amount to cover the depreciation or depletion of property subject to exhaustion, wear and tear, and obsolescence. The trustee is

specifically authorized in its discretion to determine the net distributive income of the trust before deducting depreciation or depletion, thereby transferring to the distributees a part or all of the depreciation or depletion allowance deductible for federal income tax purposes. Any earned income items or Qualified Plans assigned to the By-Pass Trust shall be treated as principal.

The trustee shall keep true and correct books of account showing all transactions in the trust estate, which books of account shall at all times be open to inspection by me or by any then-income beneficiary. The trustee shall render to me, and after my death to the beneficiaries, periodic statements of receipts and disbursements and submit an annual inventory showing the assets and property in each trust. In no event shall a bond be required of the trustee.

(E) I intend that all estate and inheritance taxes, including taxes on life insurance, shall be paid by my personal representative out of my estate. I further direct that no portion of any distribution from any Qualified Plans.

(F) As to any insurance policy the proceeds of which are payable to the trust, the trustee may institute proceedings to enforce payment, but shall not be required to engage in any litigation unless and until the trustee shall have been indemnified against any expenses and liabilities which might arise in connection therewith. The trustee is authorized to compromise and adjust claims arising out of such insurance policies, upon such terms and conditions as the trustee may deem proper.

(G) Notwithstanding anything contained herein to the contrary, no compensation shall be paid to me, to my spouse, or to any child of mine while serving as trustee. No compensation shall be paid to any other person or entity serving as trustee during my lifetime unless and until funds or property in addition to the original trust corpus are transferred to the trustee. At such time, the trustee shall be entitled to receive reasonable compensation for services rendered; any bank or financial institution serving as trustee shall be entitled to receive compensation according to its regularly adopted schedule of compensation in effect at the time such services are rendered. No special charge shall be made in connection with the distribution of principal or the termination or transfer of the trusteeship, except on the basis of the extra services required in connection with such principal distribution, termination or transfer. Any person or entity serving as trustee shall be entitled to reimbursement for reasonable expenses.

(H) The trustee is authorized to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives, including any beneficiary hereunder or any affiliate of the trustee, as the trustee may deem appropriate and to pay such compensation from the assets of the Fund.

(I) In order to minimize the impact of any generation-skipping tax that may be applied to any of the trusts created by this Agreement or their beneficiaries, the Trustee, in its sole and absolute discretion is authorized to take the following actions:

(i) If any trust created herein would be partially exempt from generation-skipping tax by reason of an allocation of a generation-skipping tax exemption to it, prior to such allocation the trustee shall divide the total trust assets into two separate trust shares of equal or unequal value, to permit allocation of the exemption solely to one trust share (the "exempt share"). The exempt share shall consist of a fractional interest of the total trust assets in an amount necessary to cause the exempt trust to be entirely exempt from generation-skipping tax. The other trust share (the "nonexempt share") shall consist of the remaining fractional interest of the total trust assets. For purposes of this allocation, asset values as finally determined for federal estate tax purposes shall be used.

(ii) If a trust established herein, whether created under this paragraph (I) or not, is entirely exempt or nonexempt from generation-skipping tax and adding property to it would partially subject the trust to such tax, the trustee may hold that property in a separate trust in lieu of making such addition.

(iii) If the trustee divides a trust into two separate shares or creates a separate trust for additions, the trusts or trust shares that result shall have the same terms and conditions as the original trust. The trustee shall not make discretionary distribution from the income or principal of the exempt share to beneficiaries who are nonskip persons as long as any readily marketable assets remain in the nonexempt share.

(iv) Upon division or distribution of an exempt share and a nonexempt share, the trustee may allocate property from the exempt share first to a share from which a generation-skipping transfer is more likely to occur.

(v) If the trustee considers that any distribution from a trust under this Agreement, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping tax payable by the beneficiary, the trustee shall augment the distribution by an amount which our trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relate.

(vi) If the trustee considers that any termination of an interest in trust property is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

(J) Any trustee, including but not limited to, any bank or other financial institution serving as trustee hereunder, and/or any of its affiliates is authorized to have dealings with the trust estate in any capacity notwithstanding the fact that it is designated and may be acting as trustee hereunder.

(K) Any trustee may disclaim, in whole or in part, any right, power, privilege or immunity granted to the trustee under this Agreement. In addition, any trustee shall have the authority to disclaim, in whole or in part, any interest in property for any reason, including but not limited to, a concern that such property could cause potential liability under any federal, state or local environmental law.

(L) Any person serving as trustee ("Relieved Trustee") may, from time to time, with the consent of any other person then also serving as trustee, be relieved of any or all of the authority, duties, and obligations vested or imposed by this Agreement by delivering to such other person an instrument in writing delegating all or any part thereof to other person as trustee. Such Relieved Trustee shall have the full power to revoke such delegation and renew the same at the pleasure of Relieved Trustee by delivering an instrument in writing, to that effect, to such other person then serving as trustee.

(M) Any person serving as trustee ("Unavailable Trustee") is at any time inaccessible, unavailable, temporarily incapacitated, or unable to respond to Trustee's proposal, any other person then also serving as trustee shall proceed as if under the circumstances, Unavailable Trustee had authorized such other person to proceed with the proposal in its absolute discretion, and such action as shall be conclusive and binding as to all persons.

(N) Any person, corporation or government entity dealing with the trustee hereunder may accept the certificate of such trustee as to whether any trustee has delegated

authority as hereinbefore permitted or authorized, or as to any action or non-action of trustee or as to any disagreement between the trustees and the status thereof.

Resignation or Removal of Trustee

ARTICLE 10. (A) At all times during my lifetime, I or any legal representative of mine (including my attorney-in-fact under any power of attorney in effect executed by me in accordance with the laws of South Carolina) shall have the right to demand and receive the resignation of any successor trustee by written notice to said successor trustee; in such event, the next successor trustee designated herein shall serve as trustee.

After my death, the beneficiaries hereunder who are then receiving income or then entitled to be considered for receipt of income from the applicable trust or their legal representatives ("then-income beneficiaries") shall have the right to demand and receive such resignation. In such event, the next successor trustee designated herein shall serve as trustee.

A demand for resignation shall not be valid or effective unless there is a written designation of and acceptance by a successor trustee.

(B) Any person or entity serving as the trustee shall have the right to resign as the trustee or successor trustee by written notice to the then-income beneficiaries hereunder of their legal representatives. In such event, the successor trustee designated herein shall serve as successor trustee. Written notice of resignation shall not be valid or effective unless there is a written designation of and acceptance by a successor trustee.

(C) If, at any time, no successor trustee is designated herein or if such designated successor trustee fails or ceases to serve, a majority of the then-income beneficiaries hereunder shall designate a successor trustee. In the event a successor trustee is not designated within thirty (30) days after receipt of notice of resignation, removal, or cessation or refusal to serve, the court having proper jurisdiction over the trust established herein shall immediately make such designation.

(D) Upon receipt of an effective demand in writing for resignation or written of removal and appointment and acceptance of a successor trustee, the incumbent trustee shall deliver the trust assets to such successor trustee. Thereafter, the incumbent trustee shall be discharged of all further responsibility or liability and the next successor trustee, without further act, shall be vested with all the estate, title, powers and duties granted to the predecessor. The incumbent trustee shall, however, execute and deliver to its successor such assignments or other instruments as may be necessary or advisable.

(E) Any person named herein or appointed pursuant to the provisions hereof as Trustee who fails within a reasonable time to undergo a medical examination at the written request of any person having an interest hereunder (including, but not limited to, another Trustee acting hereunder) for the sole purpose of determining if the individual lacks the required capacity to continue to serve hereunder or fails to cause the results of such examination to be made available within a reasonable time to the person making the written request, shall be deemed to have resigned as Trustee, provided that there is reasonable basis to request the medical examination be undertaken and provided further that no such request may be made more than once every twenty-four (24) months. The cost of the medical examination shall be borne by the trust with respect to which such individual is acting as Trustee.

(F) The provisions of this ARTICLE 10 shall be applicable to the removal

of all successor trustees.

Miscellaneous Provisions

ARTICLE 11. (A) Any other provisions of this trust instrument to the contrary notwithstanding.

(1) If at any time during the administration of this trust only one person is serving as trustee, and the trustee is a then current discretionary income beneficiary under any provision of this trust instrument, no portion of the net income of the trust shall be distributed, applied or expended in the discretion of the trustee-beneficiary to or for the benefit of the trustee-beneficiary without the written consent of one other then current discretionary income beneficiary.

(2) If at any time during the administration of this trust any person serving as trustee is also a then current discretionary principal beneficiary under any provision of this trust instrument, the purposes for which principal of the trust may be distributed, applied or expended to or for the benefit of the trustee-beneficiary shall be limited to the medical care, support, maintenance and education of the trustee-beneficiary, and no principal of the trust shall be distributed, applied or expended to or for the benefit of the trustee-beneficiary for any other purpose without the written consent of a person having a substantial interest in the principal of the trust which is adverse to the exercise of such discretion in favor of the trustee-beneficiary within the meaning of Code Section 2041. The provisions of this paragraph shall not be construed to defeat any right of withdrawal created herein.

(3) If at any time during the administration of this trust any person serving as trustee is granted the discretionary authority under any provision of this trust instrument to distribute, apply or expend the principal of the trust to or for the benefit of a beneficiary to whom the person serving as trustee is legally obligated (for support or otherwise), such person shall have no authority as trustee to distribute, apply or expend principal of the trust to or for the benefit of such beneficiary if such distribution, application or expenditure of principal will discharge such legal obligation, either directly or indirectly. Further no distributions shall be made hereunder which would discharge any legal obligation of either of us to any beneficiary unless such distribution could properly be made directly to either of us under the terms of this Agreement.

(B) In any proceeding involving the construction, operation or modification of this Agreement, the then-living beneficiary(s) to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding, not only upon such known persons but also upon all unknown and undetermined beneficiaries.

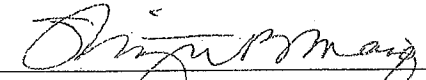
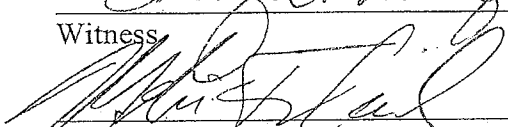
(C) In the event any trust created hereunder has a fair market value as determined by the trustee of Fifty Thousand Dollars or less, and/or if the trustee, in its discretion, determines that it is uneconomical or impractical to continue such trust, the trustee may terminate such trust and distribute the assets then comprising the trust estate to such person or persons then entitled to receive or to have the benefit of the income therefrom. If there is more than one income beneficiary, the trustee is authorized to make such distributions to such income beneficiaries in the proportion in which they are beneficiaries or, if no proportion is designated herein, in equal shares to such beneficiaries.

(D) This Trust has been prepared pursuant to the laws of the State of South Carolina; this Trust shall be administered in accordance with the laws of the State of South Carolina during my lifetime.

IN WITNESS WHEREOF, I, JOHN J. MANNING, Jr., as grantor and as trustee, have on the date first above written, at Hilton Head Island, South Carolina, signed my name at the end of this instrument of thirteen (13) total pages, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Revocable Trust and that I sign it willingly, (or have willingly directed another to sign for me), and that I sign as my free and voluntary act for the purpose therein expressed and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

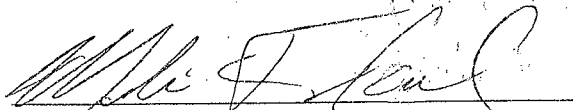

JOHN J. MANNING, JR.

I, Eliz. B. Mayo, and I, Melvin F. Land, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, do hereby declare to the undersigned authority that each of us sign and execute this instrument as the grantor's Revocable Trust and that each of us sign it willingly, (or each has willingly directed another to sign for him/her), and that each of us, in the grantor's presence and hearing, hereby signs this Agreement as witness to the grantor's signing, and that to the best of our knowledge the grantor is eighteen years of age or older, of sound mind, and under no constraint or undue influence.


Witness

Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Subscribed, sworn to and acknowledged before me by JOHN J. MANNING, JR., the grantor, and subscribed and sworn to before me by the other witness, this 26 day of July, 2012.


Notary Public for South Carolina
My Commission Expires: _____
(NOTARY SEAL)

My Commission Expires July 7, 2019

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-14-029682

DECEDENT'S NAME: *JOHN JOSEPH MANNING JR*

AKA's: NA

ARMED FORCES: YES

DATE OF BIRTH: DECEMBER 08, 1932

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: COASTAL CAROLINA MEDICAL CENTER, HARDEEVILLE, SC 29927

PLACE OF DISPOSITION: SAULS FUNERAL HOME

DISPOSITION LOCATION: BLUFFTON, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE:

PLACE OF BIRTH: PENNSYLVANIA

SURVIVING SPOUSE'S NAME: SALLY ANN BUSHMAN

FATHER'S NAME: JOHN JOSEPH MANNING SR

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: CLAIRE MCGOWAN

INFORMANT'S NAME: JOHN JOSEPH MANNING III

MAILING ADDRESS:

FUNERAL HOME: SAULS FUNERAL HOME OF BLUFFTON, 90 SIMMONSVILLE ROAD, BLUFFTON, SC, 29910

FUNERAL DIRECTOR: LINIOUS MARTIN SAULS III

EMBALMER'S NAME: NOT EMBALMED

ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 04, 2014

ACTUAL OR PRESUMED TIME OF DEATH: 0520

CAUSE OF DEATH - PART I

SEPTICEMIA

URINARY TRACT INFECTION

SENILE DEMENTIA ALZHEIMER'S TYPE

OTHER SIGNIFICANT CONDITIONS - PART II:

POLYCYTHEMIA RUBRA VERA, DEHYDRATION

CORONER CONTACTED? NO

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: DR. WILLIAM GLENN IV

CERTIFIER'S ADDRESS: NA

DATE FILED: SEPTEMBER 12, 2014

DATE OF ISSUANCE: OCTOBER 14, 2014

SPECIAL INSTRUCTIONS:

NA

SEX: MALE

SOCIAL SECURITY NUMBER:

AGE: 81 YEARS

COUNTY OF DEATH: JASPER

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY MEMBER

LICENSE NUMBER: 1316

LICENSE NUMBER: NA

MANNER OF DEATH: NATURAL

LICENSE NUMBER: 19072

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

SC03980109

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton

Catherine Templeton
Director and State Registrar

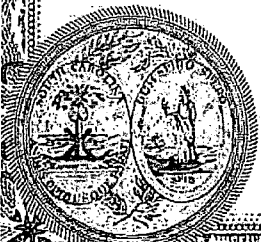
Barbara E. Derrick

Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 01/24/2014

0157



FILED - 2017 Apr 10 12:41 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0700913

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2015-CP-07-00913

IN THE MATTER OF THE ESTATE OF JOHN JOSEPH MANNING, Jr.

Deanna Bushman, as Holder of Durable Power of Attorney
for Sally Manning and as Trustee of the Trust Agreement for
Sally Manning Dated 6 December 2004,

Respondent,

v.

The Estate of John Joseph Manning, Jr., John J. Manning, III,
Christopher Manning, and Linda Manning,

Appellants.

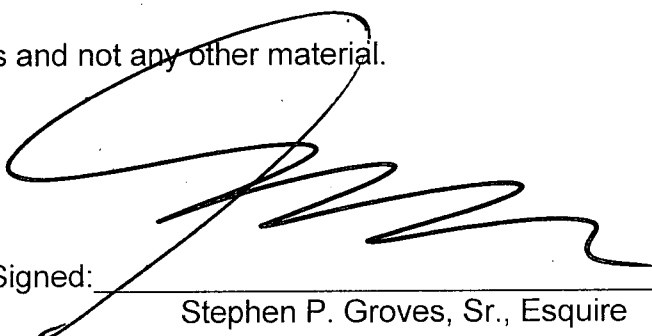
**Rule 210(g), SCACR, Certificate of Counsel
(Volume III)**

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I, Stephen P. Groves, Sr., Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal** contains all of the material and documentation proposed to be included by any of the parties and not any other material.

Signed: 

Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

30 April 2018

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