

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE BROOKS P. GOLDSMITH, CIRCUIT JUDGE

Case No. 2017-001775

Mikell M. Henderson, ...Appellant,

vs.

Mikell R. Scarborough, individually and as Personal Representative of the Estate of Mary Ross Hanahan and Joseph Ross Henderson, ... Defendants,

Of whom Mikell R. Scarborough, individually and as Personal Representative of the Estate of Mary Ross Hanahan, is the Respondent.

**RECORD ON APPEAL
VOLUME II**

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1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
2 COUNTY OF CHARLESTON) Case No. 2015-CP-10-6502
3)
3 MIKELL M. HENDERSON,)
4)
4 Plaintiff,)
5)
5 vs.) Transcript of Record
6)
6 MIKELL R. SCARBOROUGH,)
7 individually and as)
7 personal representative)
8 of the Estate of Mary)
8 Ross Hanahan and Joseph)
9 Ross Henderson,)
9)
10 Defendants.) DATE: May 18, 2017
11)

12
13 B E F O R E:

14 THE HONORABLE BROOKS GOLDSMITH

15
16 A P P E A R A N C E:

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17 Attorney for the Plaintiff

18 SHIRRESE BROWN BROCKINGTON
19 Attorney for the Defendant, Mikell R. Scarborough

20
21
22 Karen V. Andersen, RMR, CRR
23 Circuit Court Reporter
24
25

Exhibit

Description

Identification

Evidence

D-1

PowerPoint presentation

9

1 THE COURT: First matter of the morning is
2 Henderson vs. Scarborough, 2015-CP-10-6502. The matter
3 comes before the Court on two motions for summary judgment,
4 I believe; is that correct?

5 MS. BROCKINGTON: Yes, Your Honor.

6 THE COURT: And petitioner or plaintiff ready to
7 proceed?

8 MS. BROCKINGTON: Yes, we are.

9 THE COURT: Defense ready to proceed? I got it
10 backwards.

11 Before we proceed, let me make a statement. I
12 noticed in one of the e-mails I received, somebody wanted to
13 bring to my attention that Mr. Scarborough is a
14 Master-in-Equity in Charleston County. What I would like to
15 say on the record is that I do know who he is. I may have
16 spoken to him in the past, but it would be in passing. I
17 don't think that we've ever had a conversation about any
18 subject.

19 I assume his office is in the courthouse here, but
20 I don't know that. I've never seen him on this premises. I
21 believe the only place I've ever seen him is at the annual
22 judicial conference. And if we did speak, it must have been
23 just saying, hey, or something like that.

24 Do we need any further inquiry on this matter? I
25 will be glad to step out of the room.

1 MR. SILVERNAIL: No, Your Honor. I was the one who
2 brought that to the Court's attention, simply for
3 convenience. Based on what Your Honor said, I don't see any
4 reason why we couldn't proceed.

5 THE COURT: All right. I have perused the motion
6 and the memoranda and affidavits. Glad to hear from
7 counsel.

8 MS. BROCKINGTON: Your Honor, may it please the
9 Court. I'm Attorney Shirrese Brockington. I represent
10 Mikell Scarborough, as you know. My co-counsel, Attorney
11 Joseph Mendelsohn, is also representing Mr. Scarborough as
12 the personal representative of the estate of his aunt, Mary
13 Ross Hanahan. He could not be with us today. So I will be
14 flying solo with regard to these motions.

15 There is a housekeeping motion I would like to
16 bring to the Court's attention. And it's with the consent
17 of Mr. Silvernail. Prior to these motions being sent,
18 Mr. Silvernail -- we had filed an affidavit of Christopher
19 Moss. He is a fact witness to this case, Your Honor.
20 Mr. Silvernail filed an objection, a motion basically to
21 object and to strike the affidavit. I understand this
22 morning, now that he's had the opportunity to depose Mr.
23 Moss, he will be withdrawing that motion to strike

24 MR. SILVERNAIL: That is correct, Your Honor.

25 THE COURT: All right.

1 MS. BROCKINGTON: I just wanted to clarify that for
2 the record.

3 THE COURT: You may proceed.

4 MS. BROCKINGTON: Thank you, Judge. As Your Honor
5 knows, my client is the Master-in-Equity for Charleston
6 County. We've already clarified that that will certainly
7 not impact any ruling that Your Honor may render, but I
8 would like to point out that in addition to being the Master
9 for many years, before that, he was in private practice
10 dealing with real estate.

11 Your Honor, our first motion for summary judgment
12 is in regard to the formation and the funding of an entity
13 called the MRH Family LLC. This is an LLC that was formed
14 in December of 2012 by Ms. Mary Ross Hanahan. Ms. Hanahan
15 is known professionally as Dede. So I may refer to her as
16 Dede. She is my client's aunt and she is the mother of
17 Mr. Mikell Henderson.

18 Your Honor, there are certain numbers I would like
19 to put in your head, if I may.

20 This case involves one estate, that of Ms. Mary
21 Ross Hanahan.

22 It involves two cousins, my client and his cousin,
23 Mikell Henderson, the petitioner.

24 It involves three important dates and time frames.
25 And I will go over those momentarily.

1 It involves six documents.

2 But the most important number, Your Honor, that I
3 would like for you to know about is the number zero. The
4 number zero represents the number of adverse medical reports
5 with regard to the mental capacity of Ms. Mary Ross Hanahan.

6 Your Honor, there are many facts in this case that
7 are not in dispute. The very first date that I would like
8 this Court to be aware of is in June of 2012. At that point
9 in time, Aunt DeDe was diagnosed with lung cancer. Prior to
10 that diagnosis, she had a medical history of being bipolar.
11 That's an illness that can result and cause unusual shifts
12 in mood, energy, activity levels, and the ability to carry
13 out day-to-day tasks.

14 In 2005, she was diagnosed with dementia.

15 In 2012, DeDe was divorced. She lived alone in
16 Mount Pleasant with one or two dogs who she treated as her
17 children.

18 Several years earlier, her son, the petitioner,
19 Mr. Henderson, and his wife and children, had moved from
20 South Carolina to Georgia where he had obtained a job. Ms.
21 Hanahan has an older son named Ross Henderson. He's named
22 as a party in this action, but has not taken any part. Yet,
23 he plays an important role. Ross and his mom had a rocky
24 relationship. He was not involved at all in her finances or
25 her estate planning.

1 During the course of their lifetime, her lifetime
2 and my client, Mikell Scarborough's lifetime, he and DeDe
3 had a strong, close and loving relationship. There's no
4 question that she treated him like a son. And there's
5 testimony from Christopher Moss, the CPA, that she said to
6 him, Mikell Scarborough is my son. Mikell would spend time
7 with his Aunt DeDe on a regular basis, at lunch, spend time
8 with her. And she loved him. There's no question about
9 that. That fact is not in dispute.

10 In June of 2012, after the lung cancer diagnosis
11 and with some other health issues, there were some sitters
12 that were engaged to assist Ms. Hanahan with regard to
13 day-to-day tasks. They would be involved in taking her to
14 doctor appointments, grocery store, the bank, and often out
15 to lunch.

16 Over the years, Dede had inherited substantial real
17 estate from her parents. And like a lot of southerners, she
18 had a lot of dirt, but she had poor cash flow in order to
19 sustain herself and her lifestyle. It was with the
20 agreement of her son and her nephew, Mikell Scarborough,
21 that Mikell Scarborough would manage his aunt's investments,
22 which on occasions, would require the sale of real estate.
23 And with those proceeds, he would ensure that they were
24 invested properly and that she had enough income and
25 liquidity to meet her financial needs.

1 The regular monthly bill payments -- again, this is
2 all by agreement and consent, it is not in dispute -- was
3 managed by her son Mikell Henderson. For many years, this
4 arrangement worked exceedingly well. And DeDe was taken
5 care of.

6 In 2012, in the course of handling the financial
7 matters for his aunt, Mikell Scarborough -- and I will use
8 the full name, Your Honor, to distinguish between the two
9 Mikells -- became aware that some estate tax laws were
10 changing, to the detriment of the U.S. population. The tax
11 exemption amount of around \$3.5 million or \$4 million was
12 dropping to \$1 million as of January 1st of 2013. If this
13 took effect through Congress, then the result was going to
14 have a devastating impact on DeDe Hanahan's estate. Her
15 real estate holdings totaled about \$8 million at that time.
16 So had the exemption dropped to \$1 million, \$7 million would
17 be exposed to this estate tax, which would also cost
18 millions of dollars to her estate.

19 Knowing this, Mikell Scarborough undertook some
20 proactive measures to help his aunt to reduce that estate
21 tax -- potential tax exposure. He knew Christopher Moss.
22 Mr. Moss is locally a CPA, but he's also an attorney
23 registered in Washington, D.C. and other states. Although
24 he is not licensed as an attorney in South Carolina, he's
25 licensed as a CPA in South Carolina. Mikell knew him

1 professionally and socially through church.

2 In talking to Mr. Moss, Mr. Moss recommended a
3 certain course of action. And there's no dispute with
4 regard to these facts, Your Honor. Mr. Moss recommended
5 that DeDe Hanahan could form an entity, an IRS-approved
6 entity known as the family LLC. It would hold selective
7 real estate. The real estate would be appraised. It would
8 be given a discounted value for lack of marketability and
9 minority interest. Family members would hold various
10 percentages of ownership interest in this LLC.

11 The trick was, the formation and the funding of the
12 LLC. So the placement of real estate in the name of the LLC
13 had to occur before December 31st of 2012 or it would be all
14 for naught. So Mikell Scarborough, with the knowledge and
15 the consent and the agreement of his cousin, Mikell
16 Henderson, arranged for Aunt Dede to go see Chris Moss.
17 This was on December 6 of 2012. Mikell Scarborough was
18 present. DeDe was present. A list of real estate was
19 provided.

20 At this discussion, at this meeting with Mr. Moss,
21 Mr. Moss, knowing that this meeting was occurring, had taken
22 the proactive steps of preparing a PowerPoint presentation
23 to provide to Aunt Dede. If I can hand this up, and a copy
24 has been provided to Mr. Silverman.

25 (Dft. Exh. 1, PowerPoint presentation, was marked

1 for identification.)

2 BY MS. BROCKINGTON:

3 Q. I hand you what's been marked as Defendant's
4 Exhibit 1. Now, this was an exhibit to Mr. Moss's
5 deposition, the five action steps that needed to be taken
6 prior to December 21st of 2012.

7 Step one, the MRH Family LLC needed to be formed to
8 be owned 100 percent by you, meaning Dede Hanahan, and
9 assets transferred to the LLC.

10 Step two, to give 68 percent of the LLC to your
11 son, Mikell Henderson, and 30 percent to Mikell Scarborough,
12 who, in return, will manage and protect the family LLC.
13 You, DeDe Hanahan, own the remaining two percent.

14 Step three, one-time payment of \$5,000 to
15 Christopher Moss, CPA, to set up the structure and \$500 a
16 month for annual tax LLC preparation and IRS protection from
17 audit.

18 Step four, gift tax returns are filed to reflect
19 transfer of assets, all tax-free.

20 Step five, partnership return for the LLC as filed
21 annually, and K-1s issued to the family, which are the
22 scheduled K-1s that reflect what family members receive over
23 the course of the year from the LLC.

24 When DeDe Hanahan heard this presentation and the
25 estimation from Mr. Moss, she said yes. Mikell Henderson

1 said yes. Mikell Scarborough said yes. It was with full
2 knowledge, participation and consent between the three
3 family members that were going to be involved.

4 But there's one important clarification, Judge.
5 And this is in Mr. Moss's testimony. He originally said to
6 DeDe Hanahan, you should give 75 to 80 percent to your son
7 and less to Mikell Scarborough. And she said no. She said,
8 I want my nephew to have the 30 percent because he is a son
9 to me. That is how she described him. And that's how close
10 she was to Mikell Scarborough.

11 After December -- excuse me. Also on December 6th,
12 2012, Your Honor, the same day, a durable power of attorney
13 was created by Mr. Moss and appointed Mikell Scarborough as
14 her primary agent. It was firmly witnessed, notarized, and
15 it was signed by Ms. Hanahan. That document is part of the
16 depositions. It is not contested. They have raised no
17 issue about the capacity of DeDe Hanahan to sign that
18 document on December 6th. That's one of the documents I
19 referred to you out of the six, Your Honor.

20 The LLC had to be funded. But before we even get
21 there, Mikell Henderson -- and this is in his deposition
22 testimony, Judge -- he communicated directly by telephone
23 with his mom. And she said to him, I want to create this
24 LLC and I want Mikell Scarborough to handled the deeds. So
25 he knew. He agreed. He never once, in December of 2012 or

1 before or after, until this lawsuit was brought, did he ever
2 raise the mental capacity of his mother to execute this
3 beneficial aspect of her estate plan that would save her
4 family millions of dollars.

5 As part of the creation of the LLC, Your Honor,
6 deeds had to be prepared. The list of real estate that had
7 been put together by Mikell Scarborough and presented to
8 Mr. Moss on December 6th, there were certain properties
9 chosen out of that list, including about \$6 million worth of
10 property. There's no dispute about that.

11 There was a second attorney engaged to handle the
12 actual drafting of the deeds. And that gentleman is Howard
13 Yates. He's a local dirt lawyer, as he would tell you.
14 Mr. Yates has been a practitioner for probably over 30 years
15 in Charleston. He handles nothing but real estate. He was
16 engaged by Mikell Scarborough to prepare the deeds for DeDe
17 Hanahan to sign over property to the LLC.

18 Now, here's where Ross Henderson comes in, the
19 second son. Ms. Hanahan and he had a very rocky
20 relationship. She initially didn't want to give him
21 anything. Out of this formation of the LLC, Mikell
22 Henderson thought his mom was going to do that. He talked
23 to his mom. It's in his deposition. She says no. He says,
24 why? Why don't you want to include Ross in this? She
25 wouldn't respond, but she wasn't going to do it. So Ross

1 Henderson, who is not in the LLC, but on the same day that
2 the deed for the LLC was signed, December 30th of 2012, DeDe
3 Hanahan conveyed two pieces of property to Ross Henderson.
4 So we have deed number one to the LLC. We have deed number
5 two to Ross Henderson.

6 Those deeds, Your Honor, as I say, they were
7 prepared by Attorney Howard Yates. The day they were to be
8 signed, Mikell Scarborough and Howard Yates went to DeDe's
9 house. Mr. Yates took extreme care at that meeting at
10 DeDe's house to secret Mikell Scarborough away from his
11 aunt. And Howard Yates reviewed those documents.

12 He also reviewed another document. Mr. Yates was a
13 very smart gentleman. He is a smart fellow. He prepared a
14 statement concerning land transfers signed by DeDe Hanahan
15 that acknowledges she's conveying significant property into
16 the LLC, that Mikell Henderson would be a beneficiary of
17 that, and that she was also benefiting her son, Ross
18 Henderson, with a separate conveyance of those other two
19 tracts. It was signed by her before Mr. Yates. That fact
20 is not in dispute.

21 The two deeds, there was not a second witness at
22 her home. They traveled to the office of Christopher Moss,
23 the CPA who had set out the five summary steps that need to
24 be taken. And there, the operating agreement for the LLC,
25 which he had prepared -- and, remember, Mr. Yates did the

1 two deeds and land transfer statements, but Mr. Moss
2 prepared the operating agreement. This operating agreement
3 set out the same percentages that are in Defendant's 1, Your
4 Honor: 68 percent to Mikell Henderson; two percent retained
5 by DeDe Hanahan, and 30 percent into a separate LLC, MRSMIE,
6 LLC, which was owned solely by Mikell Scarborough, 30
7 percent. The operating agreement was signed at Mr. Moss's
8 office by Ms. Hanahan, by Mikell Scarborough. It was sent
9 over to Mikell Henderson. He signed it. Returned it with
10 no questions asked.

11 The only discrepancy is that there were two page
12 5s. One page 5 indicated an initial management term by
13 Mr. Scarborough, Mikell Scarborough, of two years. And
14 another one said five. Mikell Henderson initialed those,
15 initials both pages.

16 Two years roll by after the formation of the LLC.
17 He would have been eligible to take over as the manager, but
18 he didn't. The five-year window ends this December where
19 Mikell Henderson could take over as the manager of the LLC.

20 Your Honor, it is undisputed that the deed in the
21 LLC and deed into Ross Henderson were signed at the office
22 of Christopher Moss before Mr. Moss and before Mr. Yates.
23 And Mr. Yates served as the notary. Mikell Scarborough was
24 in the hallway. He was away from his aunt. He exercised no
25 undue influence on his aunt.

1 And, Your Honor, here's some words that these two
2 professionals used to describe the demeanor that DeDe
3 Hanahan as of December 2012. Howard Yates says: She was
4 adamant. This is what she wanted. I detected no evidence
5 of incapacity or forgetfulness at all. This is what she
6 wanted to do. She was under no disability or constraint or
7 any undue influence. I made doggone certain that Mikell is
8 not here. This is between us. You don't have to do this if
9 you don't want to.

10 That's how Howard Yates described the interaction
11 that he had with DeDe Hanahan with regard to this deed. And
12 Mikell Scarborough was not in the room. She chose to do
13 this of her own free will.

14 Mr. Christopher Moss, he also confirmed DeDe was
15 sharp. She was very sharp that day. How do these men know
16 that? Because they were present. Mikell Scarborough wasn't
17 present. He wasn't in the room. Mikell Henderson wasn't
18 present. He was not in the room. The two professionals
19 engaged to implement an estate plan that would save this
20 family millions did their job. She was questioned. She
21 answered appropriately. What period of time did they spend?
22 Two to three hours to accomplish all of this. She did not
23 waiver. She did not falter. She did not change her mind or
24 appear to be under any duress, stress, mental incapacity,
25 nothing of that nature, Your Honor.

1 I want to point out something else, Judge. The
2 operating agreement that Mikell Henderson signed that same
3 day on the 30th got back to Christopher Moss between
4 December 6th and December 30th, he himself was a lawyer.
5 He's an educated man. He consulted no CPAs of his own. He
6 consulted no legal counsel of his own. He had every
7 opportunity; yet, he did not. And he was thrilled to be the
8 beneficiary of his mom's generosity, thrilled, cooperative,
9 helpful, could not wait for it to happen.

10 Your Honor, the deed to Ross Henderson, one of the
11 four things that was signed on the 30th, the operating
12 agreement, deed one to the LLC, deed two to Ross Henderson,
13 and the estate and land transfer, is not being challenged by
14 Mikell Henderson. We have one document out of four, all
15 signed on the same day. The two deeds were recorded within
16 one minute of each other. The next day, on the 31st, by
17 Howard Yates. There's no dispute about that fact. He has
18 not challenged the deed to his mother.

19 How can Mikell Henderson on one hand say, oh, mom
20 didn't have mental capacity to fund the LLC, but at the same
21 time, she had the mental capacity to gift over to brother
22 Ross.

23 It does not -- it's not logical. It is not
24 reasonable. It's not credible. I submit to you, Judge,
25 Mikell Henderson's position is not credible.

1 To further underscore that, he never raised issue
2 of capacity to his cousin or to Mr. Moss or to anybody.

3 Your Honor, in preparation for this motion and
4 throughout this case, we've had significant discovery.
5 There are hundreds of pages of medical records regarding
6 DeDe Hanahan. There's some I've submitted on the motion
7 with regard to the costs, but I want to focus on a couple
8 that Mr. Henderson has presented in their opposition. Give
9 me just a second.

10 DeDe Hanahan, one of her primary doctors is Kay
11 Durst. Dr. Durst, they have presented a statement -- excuse
12 me, medical report from Dr. Durst, December 6th, 2012. In
13 it, it does relate about bipolar, past medical history,
14 dementia, right broken hip, left upper lobe cancer lesion,
15 and that Ms. Hanahan was seeing an oncologist at the
16 M.U.S.C.

17 With regard to Dede Hananhan's psychiatric
18 assessment, September of 2012, Dr. Durst says: Negative for
19 anxiety, depression and sleep disturbances. That's on page
20 one.

21 On page 2, Dr. Durst reports: An appropriate
22 affect and demeanor, normal speech pattern, grossly normal
23 memory.

24 Your Honor, I don't know what could be clearer
25 about Ms. DeDe Hanahan's mental capacity in September.

1 There's no accompanying report for December of 2012. And
2 there are some related to the codicil, Your Honor, which I
3 will direct on summary judgment for the codicil.

4 There's a lack of any medical testimony, by
5 affidavit, by deposition, by anything. That's the zero
6 number, Judge, the zero number. They have not produced a
7 single report from a single physician, caregiver, assistant,
8 anyone, who supports Mikell Henderson's contention that his
9 mom lacked mental capacity December 2012, zero.

10 Your Honor, I submit to you that under the case of
11 *Finley vs. Gravely*, which sets out the requisite mental
12 capacity somebody has to have with regard to executing a
13 will, with regard to deeds for an LLC, DeDe Hanahan knew
14 what she owned. She knew about the real estate. She knew
15 its value, how taxes were a concern to her. She did not
16 want that burden on her family. And she took steps to
17 implement an asset protection plan that would relieve that
18 burden.

19 She knew the objects of her affection. Certainly,
20 she knew her son Mikell Henderson. He was getting 68
21 percent of the interest in the LLC, 30 percent to a nephew
22 that she loved, nothing in the LLC to Ross. She didn't
23 forget about Ross. She gave him two pieces of real estate.
24 She made this very clear that that's what she wanted.

25 Your Honor, I submit to you that under *Finley v.*

1 Gravelly, the facts that she had dementia, she was bipolar,
2 so what? She had the ability to understand the value of her
3 estate, what she was doing, what she wanted to accomplish,
4 who she wanted to benefit with her generosity.

5 And we submit to you, Your Honor, on that reason
6 alone, the LLC documents, the formation and the funding,
7 should be upheld.

8 Your Honor, we also note after this LLC was formed,
9 it didn't stop there. There's real estate. It was
10 timbered. There's hunting rights. There's hunting leases.
11 It's producing income. One of the primary beneficiaries of
12 that income was DeDe. No question.

13 But in 2013, Mikell Henderson received \$10,000 as a
14 distribution. In 2014, Mikell Henderson received \$8,000 as
15 a distribution. He, along with other members of the LLC,
16 DeDe Hanahan, Mikell Henderson, and MRSMIE, LLC, all got
17 scheduled K-1s that show what distributions were provided to
18 the various members. He used the K-1s in preparation of his
19 own personal tax returns. He didn't say to anybody in 2012
20 and 2013 and 2014, and it wasn't until 2015 when he filed
21 this lawsuit he said, whoa, wait a minute, mom didn't know
22 what she was doing, didn't have the mental capacity.

23 Your Honor, again, I submit to you, that is not
24 credible.

25 If Mikell Henderson were successful, and we don't

1 believe that he should be, Your Honor, but if he were
2 successful in undoing this LLC, and the relief he's asked
3 for is it be voided ab initio, all of this \$6,000,000 worth
4 of real estate which received the discounted value that the
5 IRS believes is worth about 3 million, which is verified
6 through appraisals and discounts, and filed again with the
7 tax return, would come back into our state. When she died,
8 exemption amount was about 5.1 million. If her estate is at
9 the 8 million and exemption amount is 5.1, it's easy to do
10 the math. You've got a \$2.9 million exposure to estate
11 taxes. And the estate tax rate is extremely high, between
12 45 and 55 percent. Millions of dollars will be owed
13 needlessly to the IRS.

14 And why Mikell Henderson believes that is okay to
15 now attack the very plan that his mother took such great
16 pains to implement, and which he participated, is a mystery.
17 We don't -- we can't understand the motivation. But we do
18 know that it makes no sense. And, again, is not credible.

19 Your Honor, with regard to the motion for summary
20 judgment, I know you've heard this matter many, many times,
21 and it is our burden to show there's no genuine issue of
22 material fact, we should be granted judgment as a matter of
23 law.

24 I've already related to you the case of *Finley v.*
25 *Gravely* that we believe supports the fact that Ms. Hanahan,

1 DeDe Hanahan, had the requisite mental capacity to
2 understand exactly what she was doing. It is corroborated
3 by independent witnesses. And the issue is not raised by
4 her son until 2015.

5 Your Honor, we have a couple of cases I would like
6 to cite to you. We understand too that since there was a
7 confidential relationship between Mikell Scarborough, who
8 loved his aunt and she loved him, we have -- the burden of
9 proof shifts to us to show there's no undue influence. Your
10 Honor, however, Mr. Henderson has to show clear and
11 convincing evidence that Mikell Scarborough unduly
12 influenced his mom to do what she did.

13 Mikell Henderson doesn't have that, Judge. He was
14 not present when the deeds were signed. Mikell Scarborough
15 was not present when those deeds were signed. He was not
16 present when the land -- land transfers, when she said she
17 was doing this freely, voluntarily. She acknowledges Mikell
18 Scarborough is getting interest. Her son Ross was getting
19 property. That was prepared by Howard Yates. She signed
20 it. No question.

21 Your Honor, if you look at the excerpts of the
22 deposition testimony of Mikell Henderson that I submitted in
23 support of our motion, there is no medical evidence of her
24 incapacity. He has no one to conflict or to contradict the
25 testimony of Christopher Moss or Howard Yates that Mikell

1 Scarborough was out of the room. So what is he hanging his
2 hat on? I don't know what he's hanging his hat on, Judge.
3 But I submit to you, there is no evidence, clear and
4 convincing or otherwise, that there was ever any undue
5 influence exerted by Mikell Scarborough on his aunt to
6 include him in her estate plan.

7 Your Honor, if Mr. Henderson doesn't dispute that
8 that's what happened, he doesn't dispute them, I submit to
9 you that that is not a fact that's in dispute. In order for
10 there to be undue influence, Mr. Henderson has to show what
11 actions of Mikell Scarborough, what actions did he bear upon
12 his aunt to make that estate plan and to include him.

13 Mikell Henderson participated fully with the
14 knowledge and consent and after consulting his mom to
15 acknowledge she wanted to do that. That was a separate
16 telephone call. Mikell Scarborough wasn't present when that
17 phone call occurred. There was e-mail between Mikell
18 Henderson and Christopher Moss. Mikell Scarborough was not
19 involved in that.

20 So, Your Honor, the mere existence of influence is
21 not enough. To initiate a will, we submit to you, is not
22 enough to initiate an LLC document signed, because it didn't
23 happen.

24 The influence that Mikell Scarborough would have
25 had to have exerted is to have destroyed the free agency of

1 his mom. She was with other people, professionals, two to
2 three hours within the signing of these documents. What
3 role did he play? He was in the waiting room or, excuse me,
4 out in the hallway. He was out in the hallway and not
5 present.

6 So there is no one, Mikell Henderson, Christopher
7 Moss or Howard Yates, or even the deposition testimony of
8 Mikell Scarborough, that says Mikell Scarborough brought
9 some force or act or stress upon DeDe Hanahan.

10 Your Honor, the second case that I would just point
11 out to the Court real briefly is the case of *Smith v. Jones*.
12 This was one that was recently filed in December of 2016
13 where there was an objection by counsel that she hadn't had
14 the opportunity to depose certain caregivers and medical
15 providers in regard to -- before the argument of the summary
16 judgment motion.

17 The court found that there was no medical testimony
18 to support the allegations of lack of capacity. That's what
19 we have here. In his deposition testimony, Mikell Henderson
20 does not dispute any of the doctors. The one that he's
21 presenting, about to use, 2005, the diagnosis of dementia,
22 there's no question she had dementia. But there's nothing
23 past 2005 that they presented that says DeDe Hanahan did not
24 have the mental capacity necessary to do what she did.

25 Your Honor, just in summary, and I know I've been

1 lengthy, but I do want you to have some of the historical
2 background in this case, we submit to you, there is no
3 genuine issue of fact, of material fact, in regard to the
4 formation of the LLC or the funding of it. And we ask that
5 this Court dismiss the action to drop title that's been
6 brought by Mikell Henderson.

7 THE COURT: All right. Thank you. Glad to hear
8 from you.

9 MR. SILVERNAIL: Thank you, Your Honor. Ms.
10 Brockington's number theme, one is the number of people who
11 knew what DeDe Hanahan's estate plan was on the day she
12 died. And I think there's a forthcoming argument on the
13 motion regarding the codicil. These things bleed together
14 somewhat. I may plow some ground in advance. I will try
15 not to replot it in response to the next one.

16 On the day DeDe Hanahan signed the LLC operating
17 agreement and the deed transferring property to the LLC, she
18 was being advised by three people. One was Howard Yates,
19 the attorney who prepared the deed transferring the bulk of
20 the real property Ms. Hanahan owned into this LLC.
21 Mr. Yates had no involvement in creating the LLC. He
22 testified to having limited knowledge about what it was,
23 what the dispositive provisions were.

24 Importantly, Mr. Yates, who was brought to Ms.
25 Hanahan's house on that day by Judge Scarborough, had never

1 spoken to Ms. Hanahan before that day regarding these deeds
2 or any other issue related to the transfer of property. And
3 on that day, he testified that he believed Mikell
4 Scarborough was his client. And so he had prepared a deed
5 transferring what opposing counsel has described as about \$6
6 million worth of real estate, being about 80 percent of this
7 woman's net worth, into an LLC, presented it to her.

8 Although he did testify he rigorously satisfied
9 himself that signing this deed was what she wanted to do,
10 his limited knowledge of the circumstances surrounding the
11 signing of that deed, I believe, would limit his ability to
12 know, beyond signing the deed, what would happen. He was
13 not there to advise her on creating the LLC. He did not
14 know what her estate plan was beyond the LLC.

15 And he testified, I believe, that he spent about
16 two hours there in the house. He came with Mr. Scarborough.
17 He left with Mr. Scarborough. They went directly to
18 Christopher Moss's office to look at the remaining LLC
19 documents.

20 Mr. Moss testifies that his meeting with Ms.
21 Hanahan was three hours or thereabouts. Mr. Yates says he
22 spent two hours at the home with her and about 45 minutes at
23 Mr. Moss's office, at the end of which he, Mr. Scarborough,
24 and DeDe left together. Mr. Yates prepared this deed in a
25 vacuum.

1 Even Mr. Moss, who prepared the more sprawling
2 document, the operating agreement setting out how the LLC
3 would be owned and managed, testified that he had no
4 knowledge at any point, before, during or after this LLC was
5 created, of what the dispositive provisions of any other
6 estate plan documents Ms. Hanahan had were.

7 And there was one very important one, that nobody
8 living today has testified they knew about before the day of
9 DeDe Hanahan's death, a codicil that gave Mr. Scarborough
10 her house and an adjacent lot in the Old Village in Mount
11 Pleasant. The properties together, based on the appraisals
12 he's obtained, are worth about \$1.1 million.

13 On the date that my client did sign the LLC
14 operating agreement, he had no idea that codicil existed.
15 It had never been mentioned to him, even though it had been
16 signed just eight to ten weeks before. Judge Scarborough is
17 the only witness who has testified that Ms. Hanahan ever
18 mentioned any attempt to make the gift carried out in that
19 codicil to him.

20 The witnesses who signed the codicil when it was
21 signed were brought in from outside. And we will deal with
22 that in a little more detail when we are responding to the
23 motion regarding the codicil. But on the date that this LLC
24 agreement was done, no attorney advising her other than
25 Mr. Scarborough.

1 Mr. Moss, who somewhat surprisingly is not a
2 licensed attorney in South Carolina, but undertook a
3 substantial measure of estate planning for Ms. Hanahan, did
4 not know about the codicil and did not know that her
5 previous will had left all of her property, except two
6 tracts of real estate, to Mr. Mikell. Mr. Yates didn't know
7 anything about her existing estate plan and recent alleged
8 change to it, or, really, the effect that this deed could
9 have on her. Because without knowing that, nobody could
10 advise her on what exactly she was changing about the
11 disposition of her estate by creating this LLC or funding
12 it.

13 And there's a lot of focus by the defendant in this
14 case on taxes. And it's puzzling. I think everybody in the
15 room, if polled, would agree that we would like to minimize
16 taxes where appropriate. And, certainly, my client, when
17 presented with the suggestion by his cousin that there was
18 an opportunity to minimize taxes and, in fact, that there
19 was a brewing deadline Ms. Brockington described a little
20 while ago that would have heavily skewed the taxes due, my
21 client agreed wholeheartedly that tax planning, where
22 possible, is a good idea for Ms. Hanahan.

23 So on December 6th, 2012, Mr. Moss met with Ms.
24 Hanahan. Mr. Scarborough was there. Mr. Moss presented a
25 PowerPoint presentation, including the slide Ms. Brockington

1 handed up earlier, which he testified was prepared without
2 having met Ms. Hanahan previously or having done any
3 business with her, and which he testified even in that first
4 meeting with her, anticipated a substantial gift to
5 Mr. Scarborough. Where exactly he came to anticipate that
6 that would be the case, we still don't know.

7 We do know that Mr. Yates was engaged by
8 Mr. Scarborough, who never met or spoken to Ms. Hanahan
9 about this matter before. We know that Mr. Moss was engaged
10 by Mr. Scarborough, who, in fact, had brought other family
11 members to Mr. Moss to create similar entities, at least one
12 of which he ended up effectively being the manager of as
13 well, as he did with Ms. Hanahan's LLC.

14 And the management, there is another important
15 aspect of this matter. Both the ownership and the
16 management, which often get attributed by both sides in this
17 case to Mr. Scarborough, are actually given to an entity
18 called MRSMIE, LLC, which stands for Mikell R. Scarborough,
19 Master-in-Equity, LLC. An entity that, it seems at one
20 point, was wholly owned and solely managed by
21 Mr. Scarborough. But in between when these transactions
22 occurred and the present, that's been shifted. There's some
23 ownership in that company now belonging to his wife and
24 children. And his wife is now a co-manager.

25 And when I tried to examine Mr. Moss, who created

1 the entity that was funded with DeDe Hanahan's property,
2 about where along the way he made it from his initial
3 presentation about giving her nephew property to the final
4 document which actually gives that property to an entity
5 over which she had no control, and the management alienation
6 of which was completely beyond her knowledge and reach, and
7 as it turned out, both were changed, as far as we know,
8 without her knowledge, when asked about how MRSMIE, LLC came
9 to be in the final document, despite there being no mention
10 of it prior to December 2012 operating agreement, Mr. Moss
11 claimed privilege. He couldn't tell me about another
12 client, ostensibly, that being MRSMIE. Despite the fact
13 that for his client, DeDe Hanahan, he had placed MRSMIE, LLC
14 in a position of managing most of her property and in a
15 position of receiving a substantial portion of her property.

16 When asked whether he ever discussed MRSMIE with
17 Ms. Hanahan, he couldn't remember. And when asked whether
18 she had ever asked any questions about what on earth that
19 was when it turned up in this document on December 30th,
20 2012, he said she never asked anything about that entity.

21 So today, as we stand here, nobody can really
22 testify about whether Ms. Hanahan knew what she did with her
23 property that day. And the only evidence that the
24 respondents are basing their arguments on is that Mikell
25 Scarborough was going to receive a portion of that property

1 and manage it. And that's not what the final document had
2 in it. That's not what occurred.

3 And so that brings us back around to what's the
4 reason why this LLC might exist? They allege it was for tax
5 purposes. Mr. Scarborough and Mr. Moss both advised my
6 client that this was an opportunity to avoid an estate tax
7 problem or minimize one. So it's very puzzling when I
8 inquired to both Mr. Scarborough and Mr. Moss about what
9 exactly the tax savings would have been on December 6th,
10 2012, when they met and made this presentation to DeDe
11 Hanahan. The information we got was Mr. Moss was never
12 really told what Ms. Hanahan's net worth was. And he didn't
13 believe he knew what exactly the tax, or even generally, the
14 tax consequences would have been.

15 And so on this date where maybe there could have
16 been an extreme tax consequence, nobody actually knew what
17 it was. Nobody explained to Ms. Hanahan, what are you
18 saving for the people you are leaving this property to, if
19 anything?

20 And very oddly, even though the anticipation
21 testified to by, I believe, both Mr. Scarborough and
22 certainly Mr. Ross, was the estate tax law would change,
23 have an exemption of only \$1 million on January 1, 2013,
24 that change did not occur. But it was a concern at the end
25 of 2012, based on slow-moving legislature.

1 Even though their concern was that anything over a
2 \$1 million would become taxable, all the evidence shows that
3 when they funded the LLC, they left more like \$2 million in
4 property in her name. They did not avoid as much tax as
5 they allegedly could have. And I don't know that anybody
6 could have known that, since all the evidence is nobody
7 involved in that transaction actually knew exactly what the
8 nature and extent of her property was.

9 Mr. Moss didn't know what it was worth. He didn't
10 discuss that with Ms. Hanahan. Mr. Scarborough prepared a
11 list of the properties that would go into the LLC. We have
12 no idea how that was arrived at. Mr. Moss says he came to
13 the meeting when he first met them on 2012. Mr. Yates said
14 all his contacts regarding preparation of that deed, which
15 he had in his hand when he met Ms. Hanahan and spoke to her
16 for the first time on December 30th, 2012, all of that
17 information came from Mr. Scarborough, who Mr. Yates
18 believed was his client.

19 And so on December 30th, 2012, there isn't any
20 evidence that Ms. Hanahan knew what she was doing here. And
21 when asked whether he was aware of the year's old dementia
22 diagnosis on December 30th, 2012, Mr. Moss said he was not.
23 When asked whether he would have done anything different if
24 he was aware of the dementia diagnosis, he said he wouldn't
25 have done any of this at all.

1 And so Mr. Moss went on what he had, made a major
2 shift in Ms. Hanahan's property. Did not know exactly what
3 that shift was, what impact it would have on her, her
4 estate, or the objects of her affection, because he didn't
5 know what the rest of her property was and he didn't know
6 what she intended to do with it.

7 Although we will focus a little more on the codicil
8 in a little bit, nobody on that day knew that the codicil
9 existed, at least nobody who was signing the LLC operating
10 agreement, except for Mr. Scarborough. We don't know
11 whether Ms. Hanahan still knew about it at that point,
12 because Mr. Scarborough had taken it with him after it was
13 executed and it never made it back into her possession.

14 So on this date, December 30th, 2012, my client was
15 presented with this situation. We need to do tax planning
16 for your mother. Mr. Moss, a tax expert, had advised that
17 this is a good way to minimize taxes. Mr. Scarborough, who
18 had for years managed Ms. Hanahan's property and business
19 affairs, and who my client has been very clear he
20 appreciated doing so, but Mr. Scarborough was the only
21 person who really knew that much about Ms. Hanahan's
22 business and Mr. Scarborough was managing other interests in
23 these same tracts of land through other family members
24 through which he was attorney in fact or manager in an LLC
25 or some other fiduciary capacity. So my client was faced

1 with Mr. Moss, the CPA, and his trusted cousin, who was an
2 experienced lawyer and judge and knew a lot about real
3 estate, saying this is a good idea, we need to do this to
4 minimize taxes.

5 Between December 6th, when Mr. Moss first met Ms.
6 Hanahan, and December 30th, when the final LLC document and
7 the deeds were signed, all my client knew was Ms. Hanahan
8 would be creating an LLC as a tax avoidance or minimization
9 measure. My client learned, and this is undisputed, only on
10 December 30th, when he received the drafted operating
11 agreement from Mr. Moss, which I believe came to him after
12 four o'clock in the afternoon on the 30th, with a request
13 that it be signed and returned. And if it was not signed
14 and returned by the end of December 31st, these tax
15 opportunities could be lost irrevocably.

16 What my client received and reviewed for the first
17 time was a document that had two inconsistent page fives,
18 one setting out a two-year management term for MRSMIE, LLC,
19 and one setting out a five-year management term for that
20 same entity. There was no explanation given for that.

21 My client has testified indisputably that when he
22 received that document via e-mail from Mr. Moss on December
23 30th, 2012, it was his first knowledge that 30 percent of
24 his mother's property being put into that LLC would be given
25 to his cousin Mikell. His testimony is that at that point,

1 he did not like that, but he was presented with something of
2 an emergency. This had to be done or all opportunities may
3 be lost.

4 And on the date that he signed that, he did not
5 know that in addition to the 30 percent that organization
6 would give Mr. Scarborough or his LLC, or whoever's LLC that
7 was at the point it distributed it, he would receive another
8 12 to 14 percent of DeDe Hanahan's net worth in the form of
9 her home and adjacent lot. My client was unaware of that on
10 that date. And although he signed the document and
11 proceeded based on the advice he was given, based on what he
12 knew at that time, he was unaware of how massive the shift
13 in DeDe Hanahan's estate plan was during the year 2012.

14 And so at this point, we are faced with records
15 that show DeDe Hanahan was diagnosed with dementia seven
16 years before this document was signed, before these
17 documents were signed; that the people preparing these
18 documents did not know about that diagnosis; that Mr. Moss,
19 had he known about it, says he wouldn't have done this. And
20 I think he came back around and clarified that he would have
21 done it differently at least, after initially saying he
22 wouldn't have done it at all. But without knowing that, he
23 wasn't able to take that into account and make a
24 professional judgment about what was appropriate.

25 And on that day, Mr. Scarborough knew what was

1 going into the LLC because he commissioned the deed. He
2 knew what was coming to him because he was involved in the
3 creation of the LLC itself. He knew what he would inherit
4 under the codicil because he was present on the day it was
5 signed and had been given the only copy that seems to exist
6 of that codicil. He was the only person on that day who
7 knew that.

8 There was medical evidence that she was on a
9 general -- let me quote rather than paraphrase. One of the
10 medical records Ms. Brockington referred to was done very
11 close in time to the date on which the LLC documents were
12 signed. That's the report of Dr. Durst. On September 6th,
13 2012, this is 90 days before Mr. Moss first meets Ms.
14 Hanahan, before the process of putting together this LLC is
15 put in motion by Mr. Scarborough, and about 120 days or 110
16 days before Ms. Hanahan signs these deeds transferring the
17 bulk of her property into an LLC. In the document giving 30
18 percent of that LLC to her nephew, Dr. Durst's notes say,
19 with regard to the dementia, the history is obtained from
20 the patient, from her son and from a relative. The dementia
21 is reported to have been present for several months. Her
22 mental status appears to be gradually deteriorating.

23 This was the doctor's general note in September of
24 2012 about the dementia, which had been initially diagnosed
25 back in 2005. We have in the records -- in the record,

1 affidavits from or affidavit from Katherine Henderson, my
2 client's wife, who testified in her affidavit that she was
3 very involved with Ms. Hanahan's care. She took her to
4 medical appointments. She managed organizing her
5 medications. Because by 2010, Ms. Hanahan couldn't keep
6 track of that herself. Ms. Hanahan had been hospitalized
7 years ago for lithium toxicity after her medications got out
8 of balance.

9 And so from at least 2010 until Ms. Hanahan's
10 death, somebody had to be responsible for organizing Ms.
11 Hanahan's medications. Mrs. Henderson says Ms. Hanahan
12 didn't know what some of those medications were for. If
13 they weren't organized correctly, her health was in danger.

14 Ms. Hanahan had, on more than one day a week,
15 caretakers coming in to ensure that she was fed and that her
16 house was kept and that her everyday needs, including
17 dressing, included available assistance from these folks.

18 And on a medical record presented by the respondent
19 during my client's deposition, very close in time to the
20 execution of these documents, on October 16th, 2012, a
21 caretaker notes that Ms. Hanahan had to have some assistance
22 with getting dressed. She had to have stand-by assistance
23 with many things. She required some assistance with
24 ambulation and mobility.

25 In addition to her mental status, Ms. Hanahan was

1 in failing physical health at that point. And I think
2 everybody agrees to that. She had been diagnosed with
3 cancer, as respondent's counsel has told the Court. She was
4 dealing with treatments. She was dealing with her ongoing
5 mental illness issues, which her ex-husband testified had
6 been present throughout her life.

7 And the person who had managed her affairs for over
8 20 years at this point was Mikell Scarborough. We agree
9 that Ms. Hanahan trusted Mikell Scarborough. My client
10 trusted Mikell Scarborough. That is the reason given for my
11 client's not questioning what went on with the LLC when he
12 saw it for the first time, given about 24 hours to sign it
13 or risk causing a tax problem he advised would be
14 substantial, despite having been so advised by people who
15 didn't know exactly what the tax problem could be.

16 And so we believe that there are facts in
17 controversy here. Those include whether Ms. Hanahan could
18 understand these documents on the day they were done.
19 Because there was no unified work on this. Mr. Moss did an
20 isolated piece of work. Mr. Yates did an isolated piece of
21 work. My client signed the document based on the
22 information he was given, which was not full information at
23 the time. My client didn't understand exactly what was
24 going into the LLC either.

25 And so on the day that this LLC document was

1 signed, Mr. Scarborough was the only person who knew what
2 Ms. Hanahan's estate plan was, what her property was, what
3 effect these transactions would have on the existing
4 disposition of her estate.

5 And that's something I do want to note briefly.
6 She had a will from November of 1998. Mr. Scarborough has
7 offered for probate and it's been admitted to probate. And
8 my client doesn't dispute the validity of that will. That
9 left two tracts of land to her other son, Ross Henderson.
10 It left everything else to my client, named my client as her
11 personal representative. She had given my client that will,
12 not when it was done, but my client believes somewhere
13 around 2001, wanting to make sure he was aware of her plans.
14 My client had that will. Did not know that in 2012, in
15 October, a codicil had been done which made a substantial
16 shift in her estate plan. Not knowing that, and not knowing
17 exactly what was going into the LLC, could not know on
18 December 30th, 2012, how much her estate plan had shifted.

19 But that will gives an explanation for something
20 that Ms. Brockington focused on a great deal. My client
21 hasn't objected to the deed done the same day, December
22 30th, 2012, giving two tracts of land to his brother. He
23 testified in his deposition he didn't believe his mother had
24 capacity on that day. However, the two tracts of land given
25 to his brother on that deed were the same two tracts of land

1 that, since 1998, his mother had expressed that her estate
2 plan should go to his brother. He always expected those to
3 go to his brother. His mother had told him, at least in the
4 form of the will and I believe otherwise, that that was her
5 intent and her desire.

6 And so, of course, my client didn't contest that
7 for two reasons. One, it didn't appear to be out of line
8 with Ms. Hanahan's intent as my client knew it and had known
9 it for years. And the second is, had my client contested
10 those deeds successfully on the basis of influence -- undue
11 influence or capacity, those properties would come back into
12 the estate and be distributed right back out to Ross
13 Henderson, his brother, under her will. Her codicil didn't
14 change the disposition of those two tracts of land.

15 So throughout 1998 through her death in October of
16 2014, even though this was done during a time when my client
17 didn't believe she had capacity, it was right in line with
18 what he knew to be her intent. And there was never any
19 statement made to him that she had changed her mind about
20 that.

21 And so we believe that there are issues in
22 controversy both about Ms. Hanahan's capacity, there is a
23 medical record noting very close in time that she had
24 declining mental health and that she had dementia that had
25 been showing symptoms for a while. There's a diagnosis in

1 2005.

2 There's an affidavit in the record from Katherine
3 Henderson pointing out that Ms. Hanahan could no longer get
4 voicemails from her home phone, even though she had been
5 previously able to do it. She could no longer manage her
6 own medication and had not been able to do that for years,
7 that she was forgetful.

8 And all of these things are agreed to by Ms.
9 Hanahan's ex-husband, my client's father, Joseph Henderson,
10 who was deposed in this case and who also testified, as
11 Mrs. Henderson did, that Ms. Hanahan had been quite the
12 reader during most of her lifetime. But by the last several
13 years of her life, they both noticed that she was no longer
14 reading. Mr. Henderson said the same book would be around.
15 I wouldn't see new ones. Mrs. Henderson, my client's wife
16 says, I noticed in conversations when you got to the place
17 where you recommend to each other what you were reading, Ms.
18 Hanahan was recommending the same book time and time again.
19 And Mrs. Henderson believed that she was trying to cover for
20 the fact that she wasn't able to read books for pleasure
21 anymore.

22 All of these things are indicia that Ms. Hanahan
23 was, at the very least, susceptible to undue influence or
24 that she was incapacitated by late 2012.

25 And Ms. Brockington pointed out, I have to say

1 incorrectly, that my client had never raised the issue of
2 Mr. Hanahan's capacity when these transactions were done.
3 He did not come in and try to stop the transactions he knew
4 about. However, he did raise capacity a number of times
5 with his cousin, Mikell Scarborough. There are e-mails in
6 the record, including one or two that are attached to our
7 return to the summary judgment motions, which relate to Ms.
8 Hanahan's driving.

9 By June of 2012, which is the date Ms. Brockington
10 focused on, Mr. Scarborough was saying to my client, if
11 she's still driving, we need to take her keys. They were
12 unified in their concern over Mr. Hanahan being able to
13 drive, for being a danger to herself or others. The whole
14 family had that concern. It had existed for a while.

15 Mrs. Henderson, in her affidavit, notes that
16 Mr. Scarborough had something of a motto, as long as she's
17 mad at somebody else, she's not mad at me. And
18 Mrs. Henderson felt that that came through when it came time
19 to unify and ensure that Ms. Hanahan didn't hurt herself or
20 somebody else on the road. They felt that Mr. Scarborough
21 agreed wholeheartedly with them that she shouldn't be
22 driving, but then wouldn't actually disappoint her or anger
23 her by taking an active role in that conversation.

24 So at that point in time, Ms. Hanahan was no longer
25 driving, or at least everybody agreed that she shouldn't be

1 driving. She was dependent on others for her care. She had
2 caretakers coming into her house. She was dependent on
3 Mr. Scarborough to handle her business as he had done for
4 years and as my client and, likely, Ms. Hanahan believed he
5 had done faithfully and appropriately.

6 But at this point in time, Mr. Scarborough knew
7 more about Ms. Hanahan's business than anybody else did.
8 She didn't keep up with it. Her ex-husband and my client
9 and my client's wife have all testified that Ms. Hanahan
10 wouldn't read a document if you put it down in front of her,
11 that Ms. Hanahan really didn't have a strong interest, even
12 when she was well, in her own affairs, that her father had
13 managed the family property for much of his lifetime, that a
14 brother may have managed it after her father's death or
15 after her father ceased to manage it.

16 And after her brother's death, Mr. Scarborough came
17 in and began managing it. And we all agreed that during
18 that time, Mr. Scarborough did help promote her liquidity.
19 And he was a benefit to her. There is no dispute about
20 that. But for that reason, my client trusted him. For that
21 reason, he enjoyed a confidential relationship with Ms.
22 Hanahan. And for that reason, today, he is the only person
23 who at the time these transactions were done, could have
24 known what effect they had on her estate plan on disposition
25 of her property.

1 So we submit this is a question for the jury both.
2 on the undue influence and the incapacity causes of action,
3 that the jury should decide. Because under the applicable
4 case law, including *Havird v. Schissell*, circumstantial
5 evidence is adequate to prove undue influence. In most
6 cases, that's all we've gone. If you are in a room full of
7 disinterested folks, it's likely somebody is going to
8 influence you to do anything. That goes on in the dark.

9 So here we have evidence similar to what we have in
10 many undue influence cases. We have evidence that turns up
11 in the form of voids in the evidence, what people don't
12 know, what's not in the record, what nobody other than
13 Mr. Scarborough knows. And Mr. Scarborough has testified
14 about what he knows. But he's got a real substantial dog in
15 this fight.

16 And so we would submit to Your Honor that summary
17 judgment is inappropriate on either of those issues with
18 regard to the LLC

19 THE COURT: Thank you, sir. Let me ask a question.
20 Before you complete -- your client -- I'm sorry, your
21 client -- let me back up and rephrase the question, because
22 I'm not sure I fully understand. He knew beginning December
23 the 6th or shortly thereafter, I guess, that she was
24 planning on doing something, Ms. Hanahan?

25 MR. SILVERNAIL: They were going to do tax

1 planning.

2 THE COURT: Right. With her estate?

3 MR. SILVERNAIL: Yes, sir.

4 THE COURT: And did he know who all were involved
5 in it? Mr. Moss may not have known about Mr. Yates. I
6 don't know.

7 MR. SILVERNAIL: He knew that Mr. Moss was
8 involved. Mr. Moss made contact with my client. He knew
9 generally that there was going to be an entity created and
10 that property would be transferred to it. He did not know
11 what the ownership portions would be. He knew that his
12 cousin Mikell, who was here and helpful with most aspects of
13 her business, was involved in helping her do this.

14 THE COURT: The other thing I wasn't sure about is,
15 I couldn't tell from the memorandum, that when the estate
16 planning documents were prepared and I guess sent by e-mail
17 on the 30th -- is that right?

18 MR. SILVERNAIL: Yes, Your Honor.

19 THE COURT: Did that disclose what was going to be
20 included?

21 MR. SILVERNAIL: No, Your Honor. What my client
22 received on that day was the operating agreement, which
23 described how the company would be managed and who would own
24 the company.

25 THE COURT: So he did not know about what property

1 was going to be included in that?

2 MR. SILVERNAIL: No, sir, he did not. And, Your
3 Honor, I apologize. I have a package of the excerpts of the
4 depositions that are cited in our memorandum and some of the
5 exhibits that were not attached to the memorandum, to keep
6 the Court from having to print off such a huge chunk of
7 stuff. If I may approach. I've given a copy of this to
8 opposing counsel.

9 THE COURT: Certainly.

10 MR. SILVERNAIL: And I also have the original
11 depositions of all of the witnesses who we deposed.

12 THE COURT: Okay. Thank you, sir. Ten minutes.

13 MS. BROCKINGTON: To finish those or both
14 arguments?

15 THE COURT: For what? I'm sorry.

16 MS. BROCKINGTON: There's a second summary judgment
17 motion.

18 THE COURT: No, just in response.

19 MS. BROCKINGTON: First of all, I think there needs
20 to be clarification. And Mr. Silvernail, I don't know if he
21 realized this, but this case is not on the jury docket.
22 It's on the nonjury docket. And we are on the 24th on the
23 nonjury docket. So we are coming up fast for a trial.

24 Your Honor, the explanation with regard to the deed
25 to Ross Henderson still makes no sense. What I heard

1 Mr. Silvernail say is because this property is already going
2 to Ross Henderson under Ms. Hanahan's will, there is no need
3 to contest that document. Well, you can't cherry pick, Your
4 Honor, in my opinion, with regard to documents. You are
5 either saying all that she had executed that day are
6 invalid, or are you saying none of them are invalid? I
7 don't see how you can cherry pick and say, just because
8 there's property going to my brother or if it came back to
9 the estate, it would then go to my brother, that the
10 document that gave him that very property on December 30th
11 is not, in fact, valid.

12 And I think too, Your Honor, that that particular
13 gift to son Ross supports the mental capacity of DeDe
14 Hanahan. It shows her consistency from 1998 to whenever she
15 first was giving that property to her son Ross, to 2012 when
16 she actually did end up gifting it.

17 Your Honor, I would like to point out, with regard
18 to the residence -- and we haven't touched too much on the
19 codicil which did give her house and lot in Mount Pleasant
20 to Mikell Scarborough. Your Honor, in the deposition
21 testimony of Mr. Moss, the question was asked, this was
22 asked by Mr. Silvernail: Was her home one of the properties
23 that was discussed of that possibility, meaning to be
24 included in the LLC?

25 His answer: No, but it would not have been because

1 the general best practice is not to include your home in the
2 family LLC, because then it sounds like you are trying to
3 just do your will a little early before you die. And so
4 nobody in my business would put your home in a family LLC.

5 So, in Chris Moss's view, as a CPA who was
6 preparing the document, it would not have been prudent to
7 put the home and the adjacent vacant lot into the LLC. And
8 the fact that there was a codicil that was done before that
9 that gave it to my client -- and we will touch on the
10 validity of that in the second argument, Your Honor -- Ms.
11 Hanahan had no duty to tell her son that's what she had
12 done. Mikell Scarborough had no duty to tell his cousin
13 that's what his mom had done. And as I say, we will touch
14 more on that with regard to the second argument.

15 Your Honor, the most puzzling part of that to us is
16 that at no time did Mikell Henderson, between December 6th
17 and December 30th, raise an issue of capacity to his cousin
18 or his mom with regard to this estate planning.

19 Were there concerns about her condition? Sure.
20 She had medical conditions that merited necessary attention.
21 Was she able to drive herself at that point? No. Family
22 thought it was wise not to let her have her car or not let
23 her drive herself. She still had her vehicle, but not drive
24 herself.

25 But, yet, despite the now assertion that she did

1 not have the requisite mental capacity, there were no steps
2 taken. To my knowledge, there's nothing in the record that
3 shows they took any action for a guardianship for her, a
4 conservatorship for her.

5 With regard to medical records, and this is part of
6 what's in the memorandum with regard to the codicil, after
7 September 12 -- excuse me, after September 6th of 2012,
8 there are three very relevant medical records, Your Honor.
9 October 16, 2012, DeDe is seen by Dr. Durst, her primary
10 doctor. Psychiatric report says: Negative for anxiety,
11 depression and sleep disturbances.

12 Psychiatric report: Appropriate affect, demeanor,
13 normal speech pattern, grossly normal memory.

14 That was three days before the codicil was signed,
15 Your Honor, on October 19th.

16 There's a second doctor. Dr. Durst was the primary
17 care physician. There's a second doctor. And her name is
18 Piabe Lake; last name is Dr. Lake. She's a psychiatrist.
19 This is part of the record, Your Honor. Here's what she
20 says about DeDe Hanahan on October 18th, 2012, one day
21 before the codicil: Appearance, neat; thought process,
22 normal; perceptual disturbance, none; alertness, within
23 normal limits, WNL; orientation, full as to place, time,
24 person; speech, normal; affect, congruent; thought content,
25 normal; memory, WNL, meaning within normal limits; insight,

1 no gross deficit. And it ranges from poor to no gross
2 deficit. Judgment, no gross deficit.

3 So, Your Honor, we have two physicians that confirm
4 that, despite the diagnosis that DeDe suffered from, there's
5 nothing that points to the lack of mental capacity necessary
6 to support the signing of those documents for the LLC. And
7 in his deposition testimony, Mr. Henderson does not refute
8 those reports.

9 There's also reports that we attached, Your Honor,
10 with regard to the caregivers. October 16th, October 20th,
11 October 18th, all of them support that DeDe Hanahan was
12 alert, oriented. She got dressed. Did they help her?
13 Sure. Did they do house work? Sure. Did they drive her
14 around? Sure. But there's nothing that says she didn't
15 understand what was going on with regard to her estate.

16 Your Honor, we submit to you that for undue
17 influence to be something that this Court finds exists in
18 regard to the actions of Mikell Scarborough in regard to
19 Aunt Dede, the nonmoving party for the summary judgment must
20 present more evidence than is ordinarily required. It has
21 to be clear and convincing.

22 There's nothing convincing about the fact that
23 Mikell Scarborough helped his aunt, helped make this plan
24 happen. He did it in conjunction with his cousin's full
25 knowledge, consent and participation.

1 Mikell Henderson kept himself in the dark. He
2 didn't contact -- to my knowledge, he didn't contact Chris
3 Moss from December 6th to December 30th about what was going
4 on. If he was so concerned about who's getting what, why
5 didn't he make a call, send an e-mail, say, tell me,
6 fellows, what's happening with mom's estate? He didn't do
7 that.

8 So, Your Honor, we submit to you that there is no
9 genuine issue of material fact in regard to the entity
10 formation or its funding. And DeDe Hanahan knew what was
11 going on.

12 We renew our request to the summary judgment to be
13 granted.

14 THE COURT: All right. Thank you. Do you need to
15 respond at all? I am not inviting you to do it, just asking
16 you.

17 MR. SILVERNAIL: No, Your Honor.

18 THE COURT: The Court agrees with the argument made
19 by the respondent and grants the motion for summary
20 judgment, asking Ms. Brockington if you will please prepare
21 an order consistent with this ruling.

22 The Court is going to be in recess for five
23 minutes. I will talk to the solicitor's office to find out
24 where they are and we will come back in a few minutes. We
25 have to do something about the amount of time we are

1 spending argument over. 15 minutes each, total. We will be
2 in recess for five minutes.

3 (Whereupon, recess transpired.)

4 THE COURT: This is the motion for summary judgment
5 as to the codicil?

6 MS. BROCKINGTON: Yes, sir, it is.

7 THE COURT: Glad to hear from you.

8 MS. BROCKINGTON: Your Honor, we do appreciate the
9 opportunity to address you once more. You heard the
10 history. And I would like to just focus on the relevant
11 time period here, October of 2012.

12 On October 19th, 2012, Mikell Scarborough, as was
13 his custom, picked up his Aunt DeDe from his home in Mount
14 Pleasant and they went to lunch at a restaurant called Sette
15 in Mount Pleasant, one of her favorite spots. During that
16 luncheon, she produced a document, which is the codicil to
17 her last will and testament. The will, as you know from the
18 earlier argument, was signed by her in November of 1998.
19 That will was not challenged at all. It is not an issue.

20 Your Honor, with regard to that codicil, it does
21 certain things. It gives a house, her house, her residence
22 and the adjacent vacant lot, to her nephew, Mikell
23 Scarborough. If Mikell Scarborough was not living, it would
24 go to his son. And he's also Mikell R. Scarborough Jr., but
25 I believe he goes by Ross, not to confuse it with Ross

1 Henderson, who is the son of DeDe.

2 The document does one other thing, Judge. It
3 appoints Mikell Scarborough as the primary personal
4 representative, but it makes Mikell Henderson, her son, as
5 the alternate personal representative in the event that
6 Mikell Scarborough cannot serve.

7 The testimony of Mikell Scarborough would show that
8 she produced this document. She had it in a manilla folder,
9 brought it with her in the car, brought it to the
10 restaurant, pulled it out of the folder and showed it to
11 him. Mikell Scarborough had absolutely no idea, no
12 knowledge who prepared the document, no knowledge of how she
13 obtained it, no knowledge of if she consulted with an
14 attorney or not.

15 Although by the looks of it, it appears to be
16 something that an attorney would prepare, just based on the
17 verbiage. I myself have an estate planning practice and can
18 kind of tell when things are homemade, as I call them,
19 versus things that are documents prepared by a lawyer.

20 But the bottom line is, Mikell Scarborough did not
21 prepare it. There is no testimony in any of the record
22 before Your Honor or from Mikell Henderson that disputes
23 this fact. So it is not in dispute that he did not prepare
24 it, nor did he have it prepared.

25 When she pulled that out and he looked it over and

1 saw what his aunt wanted to do, he immediately said, bad
2 idea, because he knew that it would bring controversy with
3 his cousin, who otherwise was entitled to receive 100
4 percent of her estate, with the exception of two tracts that
5 were going to the son, Ross Henderson.

6 She insisted. And Mikell Scarborough calls a lady
7 named January O'Neil. Jan had worked for my client for many
8 years in his law practice. When he ascended to the bench as
9 the Master-in-Equity, she went to work for him. She was
10 downtown. He was in Mount Pleasant. It took her 30 minutes
11 to get from downtown to the restaurant.

12 Ms. O'Neil's testimony is uncontroverted that
13 whenever she arrived, she conversed with DeDe. They talked
14 at length about dogs. That was a common element that they
15 had. As I said earlier, DeDe Hanahan had one or two dogs
16 near the end of her life. And she loved them and treated
17 them like her children. So it was a common discussion. The
18 atmosphere was congenial. Jan O'Neil saw DeDe Hanahan
19 review the codicil. She looked at it. She read it. She
20 scanned over it.

21 There was no doubt in Jan O'Neil's mind that DeDe
22 Hanahan had reviewed it and understood the contents of that
23 document. And Jan herself, and she says, I didn't know what
24 a codicil was. That's in her testimony. She said, I always
25 thought it meant amendment to a will. But when I looked at

1 it, I knew that DeDe was giving something to her nephew,
2 Mikell Mikell Scarborough. That's what Jan O'Neil got out
3 of it.

4 And it's not a document that Jan O'Neil prepared.
5 It's not a document that Mikell Scarborough asked Jan O'Neil
6 to prepare. So the origin of it is a mystery. But I don't
7 think it's incumbent upon us to show who drafted it. It
8 doesn't matter. The document was there.

9 What matters is, how was it executed? How was it
10 signed? Was it done properly? Because Mikell Scarborough,
11 even at the table when it was signed, the answer to that was
12 no. He walked away from the table. DeDe Hanahan told Jan
13 she wanted to sign it.

14 A second witness, manager of the restaurant, name
15 is Chris Martin, had been alerted that this might be needed.
16 Chris Martin walks over to the table. Mary Ross Hanahan
17 signs it. She signs it twice, Judge. She doesn't just sign
18 it once. She signs it twice. She signs in the part
19 regarding the temporary disposition. And then the part that
20 says: I hereby freely and voluntarily execute this document
21 and I'm of sound mind. All of that verbiage, which is in
22 the will, which should be in the codicil, it was there.

23 Mikell Scarborough does not dispute his mom's
24 signatures. Says it's hers. He doesn't dispute that. He
25 doesn't dispute the way Jan O'Neil had testified. He

1 himself, before he brought this lawsuit, spoke to Ms. O'Neil
2 about the execution of the codicil. He spoke to Chris
3 Martin about the execution of the codicil. There's no doubt
4 the signing took place before Jan O'Neil and Christopher
5 Martin. Jan served as the notary. It got signed.

6 Mikell Scarborough was away from the table. There
7 was no influence he could have asserted over his aunt in
8 regard to that document.

9 She was consistent. And that's the way Howard
10 Yates found her to be. She was adamant. She was insistent.
11 And she was sharp. That is the language in the testimony of
12 January O'Neil. DeDe Hanahan was sharp that day. That
13 matches with Christopher Moss's description of her later in
14 December.

15 After the codicil was signed, it was given to
16 Mikell Scarborough. He took it for safekeeping. Your
17 Honor, I pointed out earlier, there's some medical
18 testimony -- excuse me, not testimony, there's medical
19 records that support that DeDe Hanahan had the mental
20 capacity to sign that codicil and would understand the
21 nature of what she was doing. The record is void of any
22 medical records to the contrary. There's no evidence.
23 There's no deposition testimony.

24 In his deposition testimony, Mikell Henderson, I
25 asked him these questions, I said: Did you contact

1 Dr. Lake, Dr. Hughs, Dr. Schirmer, Dr. Durst?

2 There was at least five or six physicians that his
3 mother had been under their care at one time or another.
4 And Dr. Durst and Dr. Lake were the two closest in time.
5 His answer every time was "no".

6 Your Honor, with regard to the medical reports that
7 we do have, as I said earlier, the thought content was
8 normal, thought process was normal, within normal limits.
9 Mikell Henderson does not dispute those reports.

10 So what else are we to assume from that? There's a
11 confidential relationship, sure, between Mikell and his
12 aunt. We already established that. So the burden shifts to
13 us with regard to undue influence. But with regard to
14 capacity, she obviously knew she had a house and a lot. And
15 she went somewhere and had somebody draft a document that
16 was going to provide a gift to her nephew. This was well
17 before the LLC was formed.

18 Could she have changed her mind at any time? Of
19 course she could have. She was not limited or physically
20 confined to her house, Judge. She had a driver. She had
21 ladies who took her around to the Boulevard Diner, to Sette
22 Restaurant, to the grocery store, to the bank on a regular
23 basis. She had the means and the ability to figure out she
24 needed somebody other than her nephew or somebody at his
25 request to prepare that codicil. She was resourceful and

1 she was determined. And what she has ended up doing is she
2 gifted him something because she loved him.

3 Your Honor, I don't want to belabor too much on
4 this argument, because you've heard a lot of history with
5 regard to these parties. But we do not believe that Mikell
6 Henderson has provided any clear and convincing evidence of
7 undue influence by Mikell Scarborough.

8 Was he knowledgeable about her estate? Sure.
9 Mikell Henderson knew about her estate. Was she
10 knowledgeable about her estate? Yes. She knew she owned
11 the house and lot. She knew she had other real estate. She
12 went to the bank on a regular basis. Did she have trouble
13 signing a check from time to time? She did. Did she need
14 help, some assistance managing her monthly bills? She did.
15 But it didn't stop her from gifting something she wanted her
16 nephew to have.

17 And we don't believe that Mr. Henderson has
18 provided any evidence of any sort with regard to the fact
19 that her free agency was destroyed by the actions and
20 behaviors of her nephew. There's no evidence that supports
21 that whatsoever.

22 And so, Your Honor, just as we have with regard to
23 the LLC, I will point to the deposition testimony of Ms.
24 January O'Neil. The codicil itself, it was properly signed,
25 witnessed, executed, notarized, and not challenged with

1 regard to the actual execution. We submit it's a valid
2 document.

3 We believe, Your Honor, that there are two causes
4 of action relative to that codicil that we should be awarded
5 a summary judgment. And that Mr. Henderson's attempt to
6 undermine this additional estate planning of his mother be
7 supported by this Court. Thank you.

8 THE COURT: Thank you, ma'am. Glad to hear from
9 you.

10 MR. SILVERNAIL: Your Honor, fortunately, you've
11 already heard a good bit of the background about the family,
12 who they are and how they came to be here.

13 And just a little about this codicil.
14 Mr. Scarborough is the only person who testified that DeDe
15 Hanahan showed up with this codicil. His testimony was they
16 went to lunch, as they did often. When he arrived at her
17 house to get her, because she didn't drive any more in
18 October of 2012, she had this document, he believed in a
19 manilla folder. They went to lunch. She announces that she
20 wanted to execute this thing at the lunch table.

21 Mr. Scarborough called his secretary to come over
22 from the courthouse to Mount Pleasant. He asked the manager
23 of the restaurant whether he would help.

24 Ms. O'Neil was an important witness in this
25 situation. And what she says is, there was no discussion

1 about the codicil at the time it was signed. She said, I
2 chatted with Ms. Hanahan. She does say she was comfortable,
3 that Ms. Hanahan knew what she was doing. But other than
4 reading the codicil for herself, Ms. O'Neil had no -- was
5 not present for any discussion about what Ms. Hanahan was
6 doing. She said she sees Ms. Hanahan scan the document.
7 She didn't say see her read it; she said scanned.

8 Now, I want to remind the Court all of the other
9 witnesses, other than Mr. Scarborough, all the family
10 witnesses say that by this time, Ms. Hanahan was no longer
11 pleasure reading. And they all agreed that Ms. Hanahan
12 would not read forms at doctor's office, would not read
13 legal forms. She wanted somebody else to handle that.
14 That's all evidence in the record. And Mr. Scarborough
15 doesn't dispute either of those things.

16 So here we are at the lunch table. This document
17 has appeared, according to Mr. Scarborough, from parts
18 unknown. Apparently, he didn't make any inquiry into where
19 it came from. He is the only person who says that Ms.
20 Hanahan had, prior to this day, expressed an intention to
21 have this codicil carried out. No other witness was ever
22 made aware by DeDe Hanahan that she intended to leave her
23 house and her lot to Mr. Scarborough, or to make him her
24 personal representative.

25 Importantly, just before this codicil was done, and

1 this affidavit is attached to our return, John Johnson, who
2 is Ms. Hanahan's son-in-law, says, I went -- and he knows
3 exactly when it was, December 2012, because he was going to
4 lunch with DeDe for his 55th birthday. And he knows when
5 his birthday is. He shows up to take her to lunch. Her
6 driveway was unpaved. It was, I suppose, gravel or rocks.
7 And she was using a cane or a walker at the time. He
8 expressed to her that she ought to get it paved. He
9 explained it was dangerous for her to get in and out without
10 level ground.

11 And her response was, well, call somebody and see
12 about getting that done; and is there anything else you
13 would want done around here? And he said, it's your house,
14 your property, whatever you would like. And she said, well,
15 it's going to be your house one day; what would you like
16 done?

17 That is a month before this codicil gets signed
18 giving the house and lot to Mikell Scarborough. John
19 Johnson, who has no interest in the outcome of this case, by
20 the way, who did not get the house, who does not get the
21 house if we are successful, John Johnson says that between
22 September of 2012 and when DeDe died in October of 2014, she
23 would say to him all along, when he needed to replace a
24 light fixture, what kind do you want, she would say, get
25 whatever you would like, it's going to be your house.

1 He said she expressed that to him on multiple
2 occasions between when she allegedly executed this codicil
3 knowing and intending to give her house to Mikell
4 Scarborough and when she eventually passed away.

5 And so it's important on this issue. Nobody knows
6 who drafted that codicil. In a relatively short career,
7 composed mostly of probate litigation, I have never had a
8 case that, after 18 months of litigation, nobody in the case
9 still had any idea where the thing came from.

10 And, you know, Ms. Brockington is correct that I
11 don't know that they are compelled to find who drafted this
12 codicil. However, there is a major void in the evidence in
13 this case. Mikell Scarborough is the only person who says
14 DeDe had that herself. Don't know where it came from.

15 January O'Neil sees it already sitting on the table
16 when she arrives for the execution. She has no idea where
17 it came from. She says when the other witness came up to
18 the table, the will was already on the table -- or the
19 codicil, excuse me. Other than Ms. Hanahan, January O'Neil,
20 Ms. Martin and Mr. Scarborough, as far as we know, nobody
21 ever laid eyes on that codicil after the date it was
22 executed.

23 So the fact that we don't know who drafted it --
24 and I agree with Ms. Brockington, it certainly appears to be
25 an attorney-drafted document -- the fact that we don't know

1 who drafted it, means that we don't know what instructions
2 Ms. Hanahan gave. We do not know whether Ms. Hanahan gave
3 the instructions. We don't know when or how the
4 instructions were conveyed. And we've gone back through the
5 bank records from the time. This is a codicil for which it
6 appears nobody ever billed her, or at least she never paid
7 him for it. And there was no -- her previous lawyer who did
8 her will has been contacted. He didn't do this.

9 Mr. Scarborough says he may have given Ms. Hanahan
10 some names back in 2012, but he doesn't remember who they
11 are and doesn't know who she contacted.

12 So by not having the drafter, we are left unusually
13 in this case with witnesses only to the execution. And so
14 it's very important that those witnesses knew.

15 And according to January O'Neil, there was no
16 advice given to Ms. Hanahan at the execution. There was no
17 description given to Ms. Hanahan at the execution. January
18 O'Neil testifies that Ms. Hanahan scanned the document, but
19 that she asked no questions about it, made no announcements
20 about what she was doing or what she intended to do.

21 So aside from the assumption of January O'Neil that
22 Ms. Hanahan physically looked at the document, she was
23 reading and comprehending it, there's no evidence in the
24 record that Ms. Hanahan knew what she wanted to do, except
25 Mr. Scarborough's testimony that she told him she intended

1 to do this. She never said that to anybody else. She
2 continued to say to her son-in-law that he would be one of
3 the owners of her house.

4 And so after October 2014, when Ms. Hanahan passed
5 away, my client learned for the first time of this codicil.
6 Did they have a duty to tell him? No. But the evidence
7 shows it had been Ms. Hanahan's custom to keep my client
8 involved. She had given him her original will. She had
9 given him her power of attorney that she did in 1998. She
10 had been with him when she did a healthcare power of
11 attorney in 2009. She had involved him in the discussion of
12 the LLC creation. He was involved in that.

13 This codicil is the only substantial transaction
14 Ms. Hanahan engaged in in the last 20 years that my client
15 wasn't aware of. And, frankly, it's best spoken in
16 Mr. Scarborough's own words. One of the primary problems
17 with this codicil and one of the reasons why summary
18 judgment, we would submit, is not appropriate in this case,
19 on February 26th, 2015, and this is attached to our return,
20 Mr. Scarborough e-mails my client. This is after my client
21 has raised concerns about this codicil that he never heard
22 of until after his mother died, that John Johnson says
23 Mr. Scarborough was at the house on the day she died and was
24 happy to announce that he had found her will.

25 Mr. Scarborough says in his February 26th, 2015,

1 e-mail: I still haven't had any confirmation on who drafted
2 the codicil. I recall giving DeDe some names of lawyers,
3 but I don't recall who she saw or who she said drafted it.
4 She handed it to me and asked me to keep -- ask that I keep
5 it. Frankly, I assumed she was going to change her mind,
6 what she would want to do.

7 Well, he assumes she was going to change her mind,
8 but he testifies he never spoke to her again about this
9 codicil, Mr. Scarborough. She never brought it up to him.
10 He never brought it up to her. He took the only copy he was
11 aware of being in existence, being the original codicil
12 signed that day during the lunch he had taken her to. He
13 took that with him. They never discussed it again.

14 She could not have destroyed this document if she
15 changed her mind. She could not have looked at this
16 document or refreshed herself on what it said or consider
17 making any change to it. And, nonetheless, he also assumed
18 she would change her mind. That was his belief. That's
19 what he represents to my client when a controversy arises
20 about this codicil.

21 And my client is sort of shocked to find out that
22 it's out there, because my client had always heard from his
23 mother that one of her children would enjoy her house. And
24 he was aware that that had been her only stated intent to
25 anybody other than Mr. Scarborough, who has been deposed or

1 given testimony in this case.

2 And so in looking at undue influence, the Court
3 considers, number one, circumstantial evidence, because
4 that's usually all we have. And in this case, there is
5 circumstantial evidence. We've cited case law showing that
6 among the things the Court considers, among the things that
7 contribute to a finding of undue influence are: Did they
8 have any opportunity to change it? Well, no. They never
9 discussed it again. She never has it again. She doesn't
10 talk about it with the people who later do estate planning
11 work for her in December of 2012. Nobody else knows about
12 this thing. She doesn't have it. Mr. Scarborough has
13 possession of it.

14 We have no idea how involved she was in
15 commissioning the drafting of this document, because we
16 don't know who did it. We don't know who gave the
17 direction. We don't know how it was given. And we don't
18 know what it was. So we have no person who can measure
19 whether this document says what DeDe Hanahan intended to do.

20 We have January O'Neil who says she scanned it at
21 the table at the time when everybody says she wasn't reading
22 generally anymore. She wasn't reading generally anymore.

23 And so, additionally, there's the existence of a
24 confidential relationship. Mr. Scarborough acknowledges
25 that. Mr. Scarborough was handling her business. Despite

1 the fact that Mr. Scarborough thought this was a bad idea
2 and was going to cause a problem with her son who otherwise
3 would have been the beneficiary of this piece of property,
4 he never takes it upon himself to mention it or to suggest
5 that maybe we all ought to talk about this, as they did
6 about most of her other business.

7 During this time, my client was paying her
8 day-to-day bills. He saw that her utilities got paid, her
9 alarm bill got paid. Mr. Scarborough managed her real
10 estate and managed her investments. And as money was needed
11 for the day-to-day bills, my client, they would correspond
12 with one another about what needs to be in the checking
13 account. They had a close working relationship through this
14 time. And it was a collaborative one on helping DeDe.

15 Nonetheless, when Mr. Scarborough is presented with
16 the situation, when she's doing something that he thinks is
17 a bad idea, that he didn't want her to do and thought she
18 would change her mind about it, he never brings it up again
19 with her. Never mentions it to my client. He never urged
20 her to bring out into the open what she allegedly wanted to
21 do and allow the discussion -- allow my client the
22 opportunity to hear from his mother, even in her reduced
23 state, what she said she wanted and why, so that he could
24 understand if that was, in fact, what she wanted and why.

25 So, you know, we have a lot of the indicia of undue

1 influence, and I think plenty to get through summary
2 judgment. He hangs on to the document. We can't show -- we
3 can't and they can't, nobody can show that she was primarily
4 involved in commissioning the document being drafted.

5 She was, I think everybody agrees, if not
6 incompetent, then suffering physical health effects. She
7 had been diagnosed with cancer a few months ago. Her
8 mobility was limited. We all agree to these things. Her
9 mental health had always been a struggle. And we all agree
10 she's been diagnosed with dementia in 2005.

11 Even short of incapacity, the Court should consider
12 the fact that this lady was susceptible. She was not at her
13 best. She was no longer driving in October of 2012. And
14 she depended on the caretakers. She depended on
15 Mr. Scarborough. She depended on my client and his wife.
16 And from time to time, she depended on her ex-husband. But
17 Mr. Scarborough is the only one of those folks that knew
18 about this transaction, knew about this major change to her
19 estate plan.

20 And so at the end of the day, summary judgment is
21 not where we decide who wins the case. Summary judgment is
22 where we decide if we get a trial on the merits. And at
23 this point, given the circumstances surrounding this
24 codicil, even in light of Your Honor's previous resulting on
25 the LLC issue, this is a really different situation. There

1 is no professional involved who can testify about what she
2 wanted. There are no discussions with my client, although
3 we dispute that my client understood the LLC transaction
4 very well. He didn't know anything about this, and nobody
5 says otherwise.

6 And so, you know, as to the codicil, we believe
7 there are absolutely material facts in dispute. And we
8 believe that there is substantial, at least circumstantial
9 indicia of undue influence. We believe there remains a
10 question of fact about her capacity to understand this,
11 because there was no professional advising her or talking to
12 her on the day she signed this codicil, except for one
13 lawyer who inherits over a million dollars in property.

14 So we would submit summary judgment is
15 inappropriate on causes of action relating to the codicil.

16 THE COURT: All right. Thank you, sir.

17 MS. BROCKINGTON: May I respond very briefly? Two
18 quick things. I point out, Mikell Henderson, his mom
19 considered in the codicil. This is a discussion of a chain
20 of e-mails beginning June the 6th of 2012, between himself
21 and Mikell Scarborough. And in it, in that chain of
22 e-mails, she's been diagnosed with a cancer. Mikell
23 Henderson says: This may give mom the incentive to do some
24 estate planning. I would prefer that she include Ross in
25 her will, but right now, she's not happy with him. At the

1 very least, could you look at planning for her medical and
2 healthcare cost in the future and to arrange her estate to
3 minimize inheritance taxes?

4 Mikell Scarborough writes back to his cousin and
5 says: As to estate planning, we should give some this year
6 and implement for the future. She's now upset with Ross.
7 As usual, his timing is bad. She's spoken of a codicil to
8 her will, but some overarching plan is best here.

9 That was in June, four months before the codicil
10 was executed.

11 Your Honor, the origin is a mystery, but there's no
12 requirement that a professional prepare a will or a codicil.
13 All you have to do is look at Legalzoom.com and you've got
14 plenty of samples out there. People flock to Office Depot
15 and Staples. They get these kits that they can prepare
16 their own documents. We don't think that's what happened
17 here. Ms. Hanahan, DeDe, she didn't have a computer at
18 home.

19 But we do believe she did go to some attorney. We
20 don't know who. But she told someone what she wanted to do
21 with her house and with her life. And she wanted to change
22 who was in charge of her estate. She switched from her son
23 to her nephew, but she didn't forget about her son. So that
24 tells us she has the mental capacity to understand what she
25 directed this individual to prepare for her.

1 With regard to undue influence, Your Honor, after
2 the codicil was signed and Mr. Scarborough takes it with
3 him, two years elapse from the time the codicil was signed
4 to the death of DeDe. In those two years, she could have
5 gone back to whoever the attorney was that had prepared that
6 document. The fact that the codicil wasn't in the house,
7 that doesn't matter. People come all the time to
8 attorneys -- and estate planning is a big part of my
9 practice -- and they have documents they've had for years.
10 They might not even have the originals. They might have
11 copies. But they sit down and say what they want with
12 regard to their estate planning.

13 She recognized the objects of her affection. She
14 didn't make a material change. I know it sounds like a lot
15 of money with the house and the lot. But the bulk still
16 went over to son Mikell. He went from about 100 percent
17 owner to maybe a 70 percent owner. That's what she wanted.
18 She wanted it. And, Your Honor, they don't have any
19 evidence to the contrary that that is not what she wanted.

20 As far as an explanation of the codicil, somebody
21 had to advise her what the effect was, but it wasn't my
22 client who advised her about that. But we do believe a
23 professional attorney did, in fact, prepare it and, thus,
24 had to counsel her with regard to its effect.

25 And it's important to note, Your Honor, it's a

1 codicil. It's an amendment. It ties back into that '98
2 will. So her capacity did not change.

3 THE COURT: All right. Thank you. Folks, I'm
4 going to take this matter under advisement. Hope to be in
5 touch with you shortly with my decision. I understand you
6 have a trial date.

7 MS. BROCKINGTON: I am not certain of the trial
8 date. We are on the nonjury docket. I believe we have a
9 term coming up in June. That would be the earliest, but
10 that's not that far away.

11 THE COURT: I will be in touch. We will be in
12 recess for five minutes.

13 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

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


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE CIRCUIT COURT
) C/A #: 2015-CP-10-6502

Mikell M. Henderson,

Petitioner,

vs.

Mikell R. Scarborough, individually
and as Personal Representative of
the Estate of Mary Ross Hanahan,
and Joseph Ross Henderson,

Respondents.

IN RE: Estate of Mary Ross Hanahan

DEPOSITION OF

MIKELL M. HENDERSON

Tuesday, April 18, 2017

11:03 a.m. - 3:43 p.m.

The deposition of Mikell M. Henderson, taken on behalf of the Respondents at the law offices of Shirrese B. Brockington, Esquire, 4 Carriage Lane, Suite 304, Charleston, South Carolina, on the 18th day of April, 2017 before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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Representative of the Estate of Mary Ross Hanahan

Also Present:
Mikell R. Scarborough

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



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1 MIKELL M. HENDERSON, having been duly sworn, deposes
2 and testifies as follows:

3 MR. HENDERSON - EXAMINATION BY MS. BROCKINGTON:

4 Q: Mr. Henderson?

5 A: Yes, ma'am.

6 Q: I'm attorney Shirrese Brockington, as you know.
7 I represent your cousin, Mikell Scarborough,
8 individually in this lawsuit that you've
9 brought against him.

10 A: Uh-huh.

11 Q: I have as co-counsel here today, Mr. Joe
12 Mendelsohn. And, of course, you have your
13 attorney, Mr. Silvernail.

14 A: Uh-huh.

15 Q: You sat through several depositions.

16 A: Yes, ma'am.

17 Q: There's certain questions I need to ask you
18 before we start, please. Have you ever had
19 your deposition taken before?

20 A: No.

21 Q: All right. I will be asking you a series of
22 questions and showing you a series of
23 documents. If there is something that you
24 don't understand, I'm happy to rephrase it,
25 okay. You cannot consult with your attorney as



1 to your answers, but if there's a time when you
2 need a break, then you just let me know and
3 we'll take a break, okay?

4 A: Yes, ma'am. I understand.

5 Q: Yes, sir. Is there anything medic- -- are you
6 on any medications today that could affect your
7 testimony?

8 A: No, I don't believe any of the medications I
9 take affect it.

10 Q: Okay. All right, let's begin. Would you state
11 your full name and address for the record,
12 please?

13 A: Mikell, M-I-K-E-L-L, Milton, M-I-L-T-O-N,
14 Henderson. My address is 102 River Walk Drive,
15 Brunswick, Georgia. The zip code is 31523.

16 Q: And how long have you lived at that address,
17 Mr. Henderson?

18 A: I believe we purchased that house in late 2010,
19 Probably November of 2010.

20 Q: And when you say we, who are you referring as
21 the we?

22 A: My wife and I.

23 Q: And what is your wife's name?

24 A: Katherine O'Connor Henderson.

25 Q: Would you spell Katherine for the court



1 reporter?

2 A: Yes. It's K-A-T-H-E-R-I-N-E, and O'Connor is
3 O, apostrophe, C-O-N-N-O-R.

4 Q: And how long have y'all been married?

5 A: Since November 13th of 2004.

6 Q: All right. And does she go by Kat?

7 A: Yes.

8 Q: All right. Is she employed?

9 A: Yes, she is.

10 Q: What does she do?

11 A: She is a high school English teacher at a
12 private school on Saint Simons Island.

13 Q: Y'all have children?

14 A: Yes, ma'am.

15 Q: How many children do you have, Mr. Henderson?

16 A: Two boys.

17 Q: Would you give me their names and ages please?

18 A: Yes, ma'am. My first son, William Mikell
19 Henderson, is ten years old. And my son,
20 Joseph Connor Henderson, is five years old.

21 Q: And were these the two grandsons that your dad
22 just testified to that he helps with the
23 caregiving for your children?

24 A: Yes, ma'am.

25 Q: Okay. Tell me, what is your education starting



1 with college?

2 A: I attended the Citadel from 1986 to 1990, and
3 graduated with a bachelor of science in
4 business administration. I then worked for
5 several years. You know, I worked in the
6 private sector in Indiana for a year. Came
7 back to South Carolina and worked on the
8 waterfront for about a year as a boarding agent
9 for a shipping company. And then around 1990-
10 -- I'd say '93, '94, I was hired by Sunoco
11 Products Company out of Hartsville, South
12 Carolina.

13 Q: To do what?

14 A: I was going to be a production supervisor. So
15 I was a production management trainee. They
16 sent me to Santa Maria, California for one
17 year. And that might've been '93, '94. And
18 then after a year there, they wanted to move me
19 into a production supervisor position in
20 Milesburg, Pennsylvania, which is roughly
21 twenty something miles from Penn State
22 University.

23 Q: Did you except that position?

24 A: Yes, ma'am. I did.

25 Q: How long were you in Pennsylvania?



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1 A: Approximately a year.

2 Q: And then what did you do subsequent to that
3 job?

4 A: I left that job to attend law school.

5 Q: Where'd you go to law school?

6 A: Initially, my first year of law school I went
7 to the University of North Dakota, in Grand
8 Forks, North Dakota.

9 Q: And where did you transfer after that?

10 A: After my first year, the summer I attended a
11 summer program in Ausland, Norway and I -- my
12 father and my mother had encouraged me to try
13 to graduate from University of South Carolina
14 School of Law. So I had applied for a
15 transfer, I was accepted, and so the beginning
16 of my second year I transferred to the
17 University of South Carolina in Columbia.

18 Q: In what year did you graduate from USC School
19 of Law?

20 A: 1998, May of 1998.

21 Q: And were you subsequently employed as an
22 attorney after your graduation in 1998?

23 A: Yes, ma'am. I clerked for a Circuit Court
24 Judge, Rodney A. Peeples, out of the Second
25 Judicial Circuit for a year.



1 Q: How as that experience?

2 A: Interesting to say the least, but beneficial.

3 Q: Sorry. The judge that I was with, we were down
4 in Aiken one term and it was with Judge
5 Peeples.

6 A: I know Judge Peeples' reputation and he earned
7 it well.

8 MR. MENDELSON: I graduated law school with him.

9 (Off the record discussion.)

10 Q: All right. Upon finishing -- was it a one year
11 clerkship or a two year clerkship?

12 A: One year, one year.

13 Q: And then what was your employment after that?

14 A: I was offered a position as an assistant
15 solicitor in the Seventh Judicial Circuit in
16 Spartanburg, South Carolina, which I accepted.

17 Q: How long were you in that position?

18 A: I was there for -- from -- for maybe a year, a
19 little over a year and the opportunity became
20 available, because of the elections, the
21 solicitor in the Ninth Circuit had been -- had
22 changed and I accepted a transfer to the Ninth
23 Judicial Circuit in Charleston, Berkeley
24 Counties. And they stationed me in Berkeley
25 County.



1 Q: And how long were you at the Berkeley County
2 Solicitor's Office?

3 A: I was there probably from around 2000 to 2008,
4 I would say. And I transferred to the
5 Charleston office for approximately a year.

6 Q: What types of cases would you prosecute?

7 A: I handled -- starting out, anything from the
8 driving case load, DUIs, driving under
9 suspension, failure to stop, habitual offender.
10 By the time I got to Berkeley County it was
11 drug offences, major felonies, murder, rape,
12 child molestation, or just the full range of
13 cases, but because of the length of experience
14 or time I had, you know, typically they hand
15 you the more significant cases I think if
16 you've been there longer. They don't typically
17 handle a -- give a new attorney a giant complex
18 case.

19 Q: Did you ever practice in the civil arena?

20 A: No, ma'am. Never practiced civil law.

21 Q: Did you ever clerk at a law firm?

22 A: I clerked in law school for the Department of
23 Natural Resources and for at least a year, year
24 and a half for Beaufort, Mabry, and Jim Quinn
25 when they were the chief and deputy for DNR.



1 I had very briefly clerked for a lawyer in
2 Columbia named Barron Stanton, I believe was
3 his name. But it was only for a couple of
4 weeks because Natural Resources offered me the
5 position that was too good to turn down.

6 Q: Did you ever clerk or work in the office of
7 Michael Brackett?

8 A: No, ma'am.

9 Q: All right. And then what did you do after --
10 with your employment after 2008?

11 A: Well 2008 to 2009 I was in the Charleston
12 Office in the Ninth Circuit handling cases. In
13 2009, I was offered a position with the
14 Department of Homeland Security's Federal Law
15 Enforcement Training Center in Glynco, Georgia.

16 Q: And you accepted that position?

17 A: Yes, ma'am.

18 Q: Okay. And how are you employed presently?

19 A: Presently, I'm still at the Federal Law
20 Enforcement Training Center in Glynco, Georgia,
21 but I'm now employed by the U.S. Customs and
22 Border Protections, Office of Chief Counsel.

23 Q: You supervise attorneys?

24 A: No, ma'am.

25 Q: All right. As chief counsel, what is your



1 primary role?

2 A: Well, I'm not chief counsel, I work for the
3 Office of Chief ---

4 Q: Or you work for the office?

5 A: --- yes, ma'am.

6 Q: Oh, I'm sorry.

7 A: I'm sorry. No. I'm definitely not the chief
8 counsel.

9 Q: All right. What is your present role at that
10 office.

11 A: I'm an attorney advisor and an instructor.

12 Q: That's a full-time position?

13 A: Yes, ma'am.

14 Q: What classes are you teaching?

15 A: I teach -- now I teach naturalization law, an
16 introduction to just U.S. Government Law,
17 Naturalization Law. Of course on that, non-
18 immigrant classifications for custom and border
19 protection officers. Understanding the none-
20 immigrant classification process. Immigrant
21 classifications. How aliens obtain immigrant
22 visas for non-immigrant purposes, immigrant
23 purposes. I teach how to apply the grounds of
24 inadmissability to aliens who are attempting to
25 enter the United States and have violation



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1 under the INA, and that's the Immigration
2 Nationality Act Section 212(A), which contains
3 the grounds for aliens seeking admissibility
4 into the United states.

5 Q: And who is your primary students, you know, who
6 are you teaching to?

7 A: I teach the basic custom and border protection
8 students that are hired to work at US ports of
9 entry throughout the United States and at
10 preclearance stations overseas.

11 Q: Okay. Do you have any side jobs?

12 A: No, ma'am. Just raising kids.

13 Q: Okay. How old were you when your parents
14 divorced?

15 A: I was six, I believe, when they separated. I
16 would say I was seven or eight when they
17 divorced.

18 Q: And how old was your brother, Ross?

19 A: My brother Ross is a year and a half older than
20 me maybe, so he was probably nine, eight or
21 nine when they separated. Maybe nine or ten
22 when the divorced.

23 Q: Okay. How would you describe your relationship
24 with your mom during your childhood?

25 A: Well I, you know, I don't recall a lot of -- I



1 think, you know, your memory kicks in around,
2 you know, four or five. I remember living in
3 York, Maine. I was very close to my mother
4 because my father was a naval officer and was
5 at sea for long periods of time, and so she
6 took, you know, care of us. Up until their
7 separation in Cherry Hill, New Jersey, I mean,
8 she was my mother so I loved her. I don't
9 think I recognized some of the issues that I
10 later realized that were occurring with her.
11 You know, children don't necessarily see some
12 of the problems when they're young, but when
13 they're older and look back and they realize
14 that there are some issues.

15 Q: How would you describe your mom's relationship
16 with Ross as y'all were growing up?

17 A: Difficult, I think. She was, I think, much
18 harder on my brother for a number of reasons.

19 Q: What would be those reasons?

20 A: I mean, the gathering I get is his educational
21 disabilities and behavioral problems that he
22 had associated with that, she was not capable
23 of handling.

24 Q: Did any of that change as y'all matured to
25 adulthood?



1 A: No.

2 Q: How would you describe your relationship with
3 your cousin, Mikell Scarborough, as y'all were
4 growing up?

5 A: I did not see much of my cousin, until I was
6 probably at the Citadel, I think, in 1986. I
7 would see him occasionally, but it was a good
8 relationship. After that, I think it was a
9 good relationship. I conferred with him about
10 going to law school. I conferred with two
11 other cousins who are attorneys, and several
12 other friends about, you know, the practice of
13 law, of becoming a lawyer.

14 Q: And did anything he say influence you to become
15 an attorney, or is something ---

16 A: It dissuade me from becoming a lawyer, that's
17 for sure.

18 Q: Okay.

19 A: I don't think it was the determining factor,
20 no, but I -- he didn't have anything negative
21 to say about being a lawyer.

22 Q: How would you describe Mikell Scarborough's
23 relationship with your mom as he was a child,
24 during his childhood?

25 A: I recall -- I think good. I think -- I know



1 that my mother talked of babysitting for Mikell.
2 and his older brother, and I think his younger
3 brother as well at times, and enjoyed that. I
4 remember him coming to visit one time in York,
5 Maine at our house. I remember visiting them
6 in Camden at their home, I think, on one or two
7 occasions. I think my father or my mother had
8 sold them a VW vehicle that they had that they
9 were going get to rid of.

10 Q: Is that Camden, South Carolina?

11 A: Yes, ma'am, that was. And I don't think that
12 we saw him often growing, you know, up through
13 college. We would -- if we were here for the
14 holidays, we might see him. You know, I might
15 see him. Now, what contact he had with my
16 mother when I was not here, I have no idea.

17 Q: And how would you describe y'all's
18 relationship, you know, as an adult before her
19 death? Your and Mikell's relationship?

20 A: Fairly good. Very, very good.

21 Q: Were you close to any of your mom's siblings
22 while you were growing up? Like Mikell
23 Scarborough's mother, for example?

24 A: No. Not Mikell's mother as much. When my
25 father was at sea, after my parents divorced,



1 several family members came to take care of my
2 brother and I while my father wasn't there.
3 There was a school teacher that taught my
4 father in Indiana who came down. And she would
5 take of us through the summer. A great aunt,
6 one of my father's aunts from Indiana would
7 come down. Or from Ohio, I'm sorry. She was
8 from Dayton, Ohio. She lived there. And then
9 my Aunt Frances actually came once or twice to
10 take care of us for several weeks.

11 Q: And you were how old whenever Frances came?

12 A: I would say I was probably seven to ten,
13 somewhere in that range.

14 Q: Are you close to Frances now, your Aunt
15 Frances?

16 A: Not particularly. I mean, I have contact with
17 her. I correspond with her on occasion. I try
18 not to avoid her, but I don't go out of my way
19 necessarily.

20 Q: Do you have any contact with your Uncle Buist
21 Hanahan, known as Uncle Pete?

22 A: I have not seen him since my son was two years
23 old. Well no, I take that back. I saw him at
24 my mother's funeral. No, I do not have a close
25 relationship with him.



1 Q: All right. How about with Betty, Mikell
2 Scarborough's mother? How would you describe
3 your relationship with her at presently?

4 A: Cordial. I mean, I have not seen her since my
5 mother's funeral. And before that, it was
6 quite some time before that the last time I saw
7 her. I just don't typically run into her when
8 I'm down there.

9 Q: Are there other aunts and uncles I've missed?
10 There was quite a list yesterday.

11 A: Well, Billy. When he was alive, I saw him
12 frequently. Other than ---

13 Q: That's your Uncle Billy?

14 A: Yes, ma'am. My mother's oldest brother. I saw
15 him right up until his death. His son, Bill
16 Hanahan, I maintain somewhat contact with him.
17 His exwife, or I'm sorry, his widow, who --
18 Jane, I sometimes converse with her. His
19 daughter, Ann. Occasionally I will converse
20 with her, very occasionally. And since Maria,
21 I -- his daughter Maria Metaxas, I believe I saw
22 her when she was living, I want to say -- she
23 was living somewhere in the mid-west for awhile
24 after she was diagnosed with cancer and I saw
25 her because business with the government took me



1 up there, and I saw her.

2 Q: All right. Mr. Henderson, I'm going to direct
3 your attention to the time period around 2008,
4 2009. You were here in Charleston. Is that
5 right?

6 A: Yes, ma'am. Yes, until probably October of
7 2009.

8 Q: All right. Would you see your mom? Would you
9 be in touch with your mom during that time
10 period?

11 A: Yes, ma'am. Typically when I lived here about
12 every week. I'd usually try and go by on the
13 weekends and see her.

14 Q: And would it just be for a visit or would you be
15 assisting her with payment of bills? How would
16 you describe y'all's ---

17 A: At that time, I was ---

18 Q: --- relationship?

19 A: --- if she asked for assistance with bills I
20 would be trying to assist her with that. Mostly
21 it was making sure that, you know, her lawn was
22 done. I was trying to make sure that there was
23 somebody taking care of the yard, because she
24 wasn't capable of doing that. Just making sure
25 she was all right. Making sure that she was



1 getting around okay.

2 Q: At what point did you become involved with her
3 healthcare? And we're looking again at that
4 time frame you were here, around ---

5 A: Prior to ---

6 Q: --- 2008, 2009.

7 A: Prior to your time frame, I starting becoming
8 involved in with healthcare, I think.

9 Q: To what extent?

10 A: She had falls that resulted in hospitalizations.
11 One I know with the lithium toxicity issue with
12 her, her blood. And I know it's in the medical
13 records where she had a very high lithium level,
14 and she was extremely out of sorts in the
15 hospital. I mean, I was concerned that she had
16 had a stroke. There was a concern that she had
17 a stroke, I think, prior to that, or subsequent
18 to that where I believe they determined it was
19 TIA, trans ischemic anomaly. And the lithium
20 toxicity with that, I was afraid that she was
21 not going to be able to care for herself.
22 Luckily the toxicity was the issue and she
23 rebounded from that, but it had physical side
24 effects for her.

25 Q: And she was on lithium for what reason?



1 A: I believe her depression. I believe her
2 psychiatrist, Dr. Christine Lloyd at the time,
3 had her on lithium and some other medications
4 and really wasn't -- either she wasn't
5 monitoring my mother, or my mother wasn't going
6 to the appointments with her.

7 Q: All right. Do you know what other physicians
8 who's care your mom was under at the time she
9 was under Dr. Lloyd's care?

10 A: Dr. Scott Thompson was her internist and I don't
11 know that there were really any other doctors
12 around that time, unless it was, you know, a
13 result of her going to the ER and being admitted
14 and then she might've had whatever on calls.

15 Q: Did her medical providers change over a period
16 time, say between 2009 and 2012?

17 A: At -- I believe in 2012, yes. Dr. -- well Dr.
18 Lloyd, I don't know if she quit seeing Dr. Lloyd
19 all together, but she began seeing a Dr. Lake.
20 Piave, P-I-A-V-E, was her first name, Lake, in
21 Mount Pleasant. And I believe that Mikell
22 Scarborough may have made the introduction for
23 my mother for that. And she was a psychiatrist,
24 or psycholo- -- I think psychiatrist, because
25 she was prescribing medication.



1 Q: Do you know what type of medication she was
2 prescribing for your mom?

3 A: I know my mother took Depakote. I'd have to
4 look at the list of medications she took. I
5 mean, she was on anti-anxiety medication, Lor --
6 maybe Lortab. Lorazepam. I'm sorry.

7 Q: Any other physicians that you were familiar with
8 around 2012?

9 A: She began seeing -- she changed from Dr. Scott
10 Thompson in late 2012 to Dr. Christine -- or I'm
11 -- Dr. Kay Durst, on the Isle of Palms.

12 Q: And why was the change made to Dr. Durst?

13 A: Her cancer diagnosis, and a result of her
14 hospitalization and finding the tumor in her
15 chest.

16 Q: All right. And so, this was lung cancer?

17 A: Yes, ma'am.

18 Q: Do you know what action your -- excuse me. Do
19 you know what action your mom's doctors
20 recommended that your mom take relative to the
21 lung cancer?

22 A: That she seek treatment. I don't recall if they
23 did not believe chemo therapy would be good, or
24 if my mother did not want to undergo chemo
25 therapy, but she did a radiation, or a



1 radiography treatment initially for the tumor
2 in, I want to say, late 2012 at MUSC downtown.

3 Q: And what was the result of that radiation on the
4 tumor?

5 A: I think in one of the documents you had, that it
6 was a reduction of the tumor. It reduced the
7 tumor, but she was supposed to have regular
8 follow ups, which she wasn't keeping up with and
9 it was difficult for -- depending on the timing,
10 it was difficult for me or my wife to get up
11 here. Summertime, my wife probably came up
12 twenty times to take my mother to different
13 appointments.

14 Q: And was the lung cancer diagnosis around June of
15 2012?

16 A: Yes, ma'am. Yeah, June.

17 Q: Okay. And so, prior to that diagnosis of
18 cancer, were you managing any of your mom's
19 assets?

20 A: Yes. Well I was paying her bills, and as of
21 late 2011, beginning of 2012, I was paying her
22 monthly bills.

23 Q: Why was that?

24 A: Because she couldn't pay them.

25 Q: She couldn't pay them because she couldn't



1 afford them, or she couldn't keep up with them?

2 A: She couldn't keep up with them.

3 Q: What were the bills that you were helping to see
4 that they got paid?

5 A: Lawn care, gas bill, her power I think was on an
6 automatic -- or her energy bill was on an
7 automatic draft. American Express, I think I
8 had been paying for awhile. And I'd have to
9 look at the records, but veterinary bills for
10 her dog typically. My mother would -- if I or
11 my wife went to my mother's house, she wouldn't
12 open her mail. And so we would find past due
13 notices that needed to be addressed and I would
14 typically take those with me and I had primarily
15 the only account that I accessed was a checking
16 account of hers.

17 Q: Where was that checking account?

18 A: Wells Fargo.

19 Q: Whose name was on that account?

20 A: I believe my mother's, Mikell Scarborough's, and
21 mine.

22 Q: And was by that by agreement?

23 A: Yes.

24 Q: When did that get established?

25 A: Prior to 2009.



1 Q: How did it get funded, if you were using that to
2 pay her bills?

3 A: I would let Mikell Scarborough know if I -- if
4 I knew how much a batch or a month of bills
5 would be, I would check the balance online. I
6 set up online banking for a lot of these for
7 her, and if I had to write a check, I also had
8 the checkbook, and I would make sure there was
9 a sufficient funds. If there wasn't, I would
10 email my cousin, Mikell Scarborough. And I
11 believe what he would do is transfer funds from
12 some other account. There was another account
13 I was listed on, but I don't recall which one it
14 was.

15 Q: Was it a brokerage account?

16 A: It may have been the brokerage account. I don't
17 -- I couldn't say without seeing the actual
18 statements.

19 Q: And why was your cousin Mikell managing any of
20 your mom's assets?

21 A: He had began assisting her back in, I think
22 1991, with her assets. With her property and
23 other assets, stocks.

24 Q: And that was by request of your mom?

25 A: Yeah. By -- I think by request of my mother.



1 I think my Aunt Frances also may have been
2 involved in, you know, trying to make sure that
3 my mother was not going to lose her house at the
4 time. She didn't have a regular source of
5 income.

6 Q: What was her source of income, sources of
7 income?

8 A: Either stocks that were sold, or property that
9 she sold. Later, I think her income would've
10 included the social security, which my wife
11 actually went through the process of signing her
12 up for social security and was surprised to find
13 my father had provided enough for her to get
14 social security on a monthly basis.

15 Q: Did she receive alimony from your dad?

16 A: She did initially. But I'm sure that ended
17 sometime in the like -- might've been that late
18 1970s, early 1980s. And my mother did remarry,
19 so I'm sure that probably would've affected it
20 as well.

21 Q: When did she remarry?

22 A: I don't recall the exact time she got remarried.
23 I was probably 11, 12, 13?

24 Q: And who did she remarry -- who did she get
25 married to at that point?



1 A: His name is Bacot B-A-C-O-T, Alston, A-L-S-T-O-
2 N, Wayne.

3 Q: Do the name again, Bacot?

4 A: Bacot Alston Wayne. Goes by ---

5 Q: W-A-Y-N-E?

6 A: Yes, ma'am.

7 Q: How long did they stay married?

8 A: They were married, I believe, through Hurricane
9 Hugo, which would've been 1990, 19- -- or 1989,
10 1990. They separated once, well twice actually.
11 They separated and then finally, I think she
12 filled for divorce.

13 Q: And do you know when they were divorced?

14 A: I would -- I know it was after 1990 and before
15 1995.

16 Q: Between 1991, when Mikell Scarborough started
17 assisting your mom, up until around 2009, did
18 you have any concerns over his management of her
19 assets?

20 A: No.

21 Q: When did your concerns first arise?

22 A: Well, I think probably the first concern I had
23 was the day my mother died.

24 Q: And that was what date?

25 A: October 23rd of 2014.



1 Q: And what caused the concern to arise at the day
2 of death?

3 A: Mikell informed me that my mother had done a
4 codicil to her last will and testament several
5 years before and that she had left the house and
6 her adjacent lot to him and had changed her
7 personal representative from me to him.

8 Q: And that's what you brought the lawsuit over?

9 A: No. Not necessarily, I think there's more in
10 the complaint than just that.

11 Q: All right. Let's take a look.

12 A: All right.

13 Q: At this point, Mr. Henderson, I'm going to have
14 a number of documents.

15 A: Sure.

16 Q: I'm going to show them to you ---

17 A: Yeah.

18 A: --- and then we'll be getting them marked.

19 A: Okay. Yeah.

20 Q: So this will be a of couple minutes. Let me
21 just move your water, just over a little bit.

22 Do you recognize this last will and testament?

23 A: Yes, ma'am. I do.

24 Q: And who's will is that?

25 A: This is mother's last will and testament that



1 she executed in November of 1998.

2 MS. BROCKINGTON: All right. Let me get that marked
3 as Respondent's 1, please.

4 (Respondent's Exhibit Number 1 was marked for
5 identification purposes.)

6 Q: All right. Mr. Henderson, I'm going to ask you
7 some questions about what we now have marked as
8 Respondent's Exhibit 1. All right. Is this the
9 will that's been submitted for probate to the
10 Charleston County Probate Court?

11 A: Yes, ma'am. I believe it is.

12 Q: Okay. Do you know who prepared that document
13 for your mom?

14 A: Yes, ma'am. An attorney Demal Mattson in Mount
15 Pleasant.

16 Q: Did you know Mr. Mattson at the time this was
17 done?

18 A: No, ma'am, I did not.

19 Q: Did your mom discuss with you the fact she was
20 going to have a will made?

21 A: No.

22 Q: Do you know where she kept the original after it
23 was executed?

24 A: No.

25 Q: All right. Let's take a look at the terms of



- 1 the will. Well first of all, do you have any
2 issues with this will at all?
- 3 A: No, ma'am.
- 4 Q: You're not challenging this will are you?
- 5 A: No, ma'am.
- 6 Q: Okay. Let's look at item number three.
- 7 A: Okay.
- 8 Q: All right. Now you have an older brother, Ross,
9 we've established?
- 10 A: Yes, ma'am..
- 11 Q: What is your mom leaving to your brother Ross
12 under this will?
- 13 A: She's leaving her half interest in two tracts of
14 land that she owned in combination with her, I
15 believe her sister Frances Hanahan, Frances G.
16 Hanahan.
- 17 Q: All right. Let's look at item number four. And
18 that's the bequest to the SPCA of \$5,000?
- 19 A: Yes, ma'am.
- 20 Q: Do you have any concerns about that bequest to
21 the SPCA?
- 22 A: No, ma'am. My mother loved dogs.
- 23 Q: And she had at least one or two in her home
24 prior to her death?
- 25 A: She had one at the time of her death, but at



1 times she had two, two dogs.

2 Q: And she treated them like children. Is that a
3 fair statement?

4 A: Yes. She was very close to her dogs. She loved
5 her dogs.

6 Q: Okay. Looking at item number five, Mr.
7 Henderson.

8 A: Uh-huh (affirmative response).

9 Q: Who gets the residue of your mom's estate?

10 A: According to this, I do.

11 Q: And in 1998 what did that consist of?

12 A: I would assume it would've consisted of her
13 house, the lot, her personal possessions, any
14 bank accounts, assets, or real property that she
15 owned in whole or in common.

16 Q: What did she own as far as real estate, other
17 than the house and lot in 1998?

18 A: And I'm not entirely sure. I know she owned
19 9.75 acres along the Ashley River. I know that
20 she owned portions of property on what we
21 describe as Big Mill Brook Plantation. Now how
22 much acreage at the time, or division of
23 ownership, I'm not sure of. I know that she had
24 owned property in -- at Dungannon Plantation
25 down in Ravenel, South Carolina, and several



1 other tracts of land.

2 Q: All right. And she appointed you as the
3 personal representative, correct?

4 A: Yes, ma'am.

5 Q: Did she appoint an alternate?

6 A: I don't believe this document has an alternate
7 in it.

8 Q: Okay. Why would -- what would you guess, would
9 be the value of the residue of her estate at
10 that time, in 1998?

11 A: I couldn't even give an educated guess.

12 Q: Do you know the value of the two lots that were
13 to go to your brother Ross?

14 A: No.

15 Q: Well ---

16 A: Not at that time, I certainly don't.

17 Q: --- would it appear that this will was
18 disproportionate between you and your brother?

19 A: Oh, absolutely. Yes.

20 Q: Why do you think she made you the primary
21 beneficiary of her estate?

22 A: Because my mother would periodically become
23 upset with my brother and she did not think that
24 he was responsible with his money.

25 Q: What does she base that on?



- 1 A: What did she base that on?
- 2 Q: Yes, sir.
- 3 A: I have no idea, I couldn't speak for her.
- 4 Q: Okay. All right. In item five, does she name
- 5 an alternate to you in case you predeceased her
- 6 with regard to her estate?
- 7 A: Which number was that, ma'am, I'm sorry?
- 8 Q: Number five.
- 9 A: Okay. No, she does not.
- 10 Q: Okay. In number three, item three, with regard
- 11 to the two lots. If Ross were not living, who
- 12 gets those properties?
- 13 A: According to this they would go to me.
- 14 Q: All right. And turning to the signature page.
- 15 A: Uh-huh.
- 16 Q: Will you tell me how many witnesses there are on
- 17 that page?
- 18 A: Two witnesses.
- 19 Q: Can you read the names?
- 20 A: Marsha, I don't know if it's Gunn, or Ginn.
- 21 Q: Ginn.
- 22 A: Ginn from Summerville South Carolina and Yvonne
- 23 C. Mattson of Mount Pleasant, South Carolina,
- 24 which I assume may have been Mr. Mattson's wife
- 25 or relative.



1 Q: And can you tell who's the notary on the last
2 page?

3 A: Yes, ma'am. Demal Mattson is.

4 Q: Okay. Flipping back to the signature line ---

5 A: Uh-huh.

6 Q: --- right below that.

7 A: Yes.

8 Q: Do you see the doc -- the paragraph that starts
9 out, we the below described -- excuse me. Below
10 subscribed witnesses sign our names to this
11 instrument. Can you read that entire phrase
12 into the record for me?

13 A: "We, the below subscribed witnesses, sign our
14 names to this instrument, being first duly
15 sworn, and do hereby declare to the undersigned
16 authority that the Testatrix signs, and executes
17 this instrument as her Last Will and Testament,
18 and that she signs it willingly, and that each
19 of us, in the presence and hearing of the
20 Testatrix, hereby signs this Will as witnesses
21 to the Testatrix signing, and that to the best
22 of our knowledge, the Testatrix is eighteen
23 years of age or older, of sound mind and under
24 no constraint or undue influence."

25 Q: Do you believe that to be an accurate statement



1 of your mom's state of mind at the time she
2 signed this will?

3 A: In 1998, yes.

4 Q: Okay. Mr. Henderson, after your mom got
5 diagnosed with the cancer in June of 2012, were
6 there any discussions between you and your mom
7 with regard to her estate planning?

8 A: I told her that if she wanted to make any
9 changes to her estate, that we would need to
10 discuss that between she, and Mikell
11 Scarborough, and myself.

12 Q: Why was Mikell Scarborough to be included on
13 those discussions?

14 A: Because she trusted in his advice ---

15 Q: Did you ---

16 A: --- on those matters.

17 Q: Did you and Mikell Scarborough communicate via
18 email in regard to those situations?

19 A: Yes, ma'am. I believe there's an email in late
20 June or July, regarding my mother's cancer
21 diagnosis and that now may be a good time to
22 broach the issue of estate planning.

23 Q: Okay. I'm going to ask if you'd identify this
24 document for me, Mr. Henderson?

25 A: This is an email from me to Mikell Scarborough



1 dated June 6, 2012 at 2 -- I'm sorry 1:59 p.m.,
2 and a subsequent one dated -- from Mikell
3 Scarborough to me at 2:13 p.m.

4 Q: All right. And I'm going to ask you before we
5 get these marked, if you recognize a second
6 email of June 8.

7 A: This appears to be a series of emails between
8 Mikell Scarborough and I.

9 Q: Okay.

10 **MS. BROCKINGTON:** Let me get those marked, please,
11 before we go through them. Two and Three for
12 me, please, ma'am.

13 **(Respondent's Exhibit Numbers 2 and 3 were marked for**
14 **identification purposes.)**

15 Q: All right. Mr. Henderson, I'm going to direct
16 your attention to what's been marked as
17 Respondent's 2.

18 A: Uh-huh.

19 Q: What's the date of that email?

20 A: June 6th of 2012.

21 Q: And what does the re line read?

22 A: Of the top one or the bottom one?

23 Q: Of the tope one.

24 A: "DeDe's biopsy."

25 Q: Okay. And who is that email directed to, or who



1 is it from starting at the top?

2 A: It's from Mikell Scarborough, it is to me, and
3 it is regarding that Mikell Scarborough's on the
4 phone with my wife Kat getting the scoop, which
5 would indicate from the lower email the
6 diagnosis of the tumor being malignant.

7 Q: All right. And then further in that email, is
8 that from you to Mikell Scarborough?

9 A: And it also says I'm on board with all of this
10 from Mikell. I'm sorry, what ---

11 Q: Okay.

12 A: --- what was the question again? I'm sorry.

13 Q: I'm sorry. Right below that, does the email
14 chain really start with you sending an email to
15 ---

16 A: Yes, ma'am, it does.

17 Q: --- your cousin ---

18 A: It does. It was ---

19 Q: --- Mikell Scarborough?

20 A: --- that one's -- the second one, or the one
21 below it is dated June 6th of 2012 at 1:59 p.m.
22 It is an email from me to Mikell Scarborough,
23 copied my father, and my wife, and my home email
24 address.

25 Q: All right. Are you confirming that your mom's



1 tumor was malignant?

2 A: I am confirming that my wife had spoken to
3 radiologist who confirmed to her that the tumor
4 was malignant and that the report was going to
5 be sent to the new internist, Dr. Durst.

6 Q: All right. And then skipping down to paragraph
7 number three. What's the discussion about
8 treatment of the cancer?

9 A: That I hope that it had been detected early.
10 That we needed to make sure that mom's -- that
11 she did not want life saving treatment, a do not
12 resuscitate, a DNR. To see if she has a living
13 will in the event she'd suffer some incident in
14 her home. Bright Star had expressed some
15 concern about that to us. And I said I would
16 have to check the living will, or it was
17 actually a -- with Demal Mattson. At the same
18 time she did 1998 last will and testament, she
19 did a desire of a declaration for a natural
20 death. Along with a general power of attorney.

21 Q: All right. And did you in fact check with
22 Attorney Mattson?

23 A: I did.

24 Q: What was the result of that conversation?

25 A: That he had no other documents.



1 Q: Okay. All right. Did you subsequently -- does
2 your mom execute a new healthcare power of
3 attorney to replace the living will?

4 A: She did in 2000- and -- I believe it was 2009.

5 Q: And who does she name as agents on that
6 document? Do you recall?

7 A: I believe me and Mikell Scarborough, I believe.

8 Q: All right.

9 A: I'd have to see it.

10 Q: And looking at the --- I'm sorry?

11 A: I would have to see it, but I believe both of
12 us.

13 Q: All right. And looking at paragraph number
14 four, the one below, would you read that into
15 the record?

16 A: "Also, this may give mom the incentive to do
17 some estate planning. I would prefer that she
18 include Ross in her Will but right now she is
19 not happy with him. However, this could provide
20 the opportunity for her to create a support
21 trust for Ross for his future and possibly
22 educational trust for Will and Connor. At least
23 with a Support Trust for Ross we can tell her
24 she can control Ross from the grave. She might
25 like that idea. Mom told Kat she wanted to sell



1 her acreage at Big Millbrook and that Mom
2 thought she needed the money? Depending on the
3 treatment and health care costs, she may very
4 well need the money in the future. However, I
5 don't want to her to just sell property if she
6 does not have to yet. At the very least, we
7 could look planning for her medical and health
8 care costs in future and to arrange her estate
9 to minimize inheritance taxes."

10 Q: Okay. So at the end of that, your comment to
11 her -- or to your cousin Mikell, is for your mom
12 to minimize her inheritance taxes. What was her
13 tax exposure in June of 2012?

14 A: I have no idea.

15 Q: All right. Where did that verbiage come from?

16 A: The inheritance taxes?

17 Q: Yes, sir.

18 A: Well if she owned considerable amounts of real
19 property, I was assuming that they would have
20 values that would be quite large.

21 Q: Any idea of that value?

22 A: I would imagine that the property, the ten acres
23 at -- next to my great grand -- or my
24 grandfather's house would be worth at least a
25 half a million, maybe to a million. I know my



1 mother thought it was worth a million dollars.
2 She thought that her house and lot was worth,
3 you know, \$750,000. The acreage at Dungannon
4 that she had a community interest in was worth
5 probably well over a million dollars.

6 Q: Where do these values come from?

7 A: From my mother. From my mother and Mikell
8 Scarborough.

9 Q: All right. At what point in time did you learn
10 about the value of these particular properties?
11 These are high numbers.

12 A: Yes. Well, what time did I learn the values
13 then or subsequent?

14 Q: Well, let me rephrase the question. Were you
15 aware of the value of these pieces of real
16 estate at the time you wrote this email?

17 A: I knew that they were worth what I just
18 described.

19 Q: And that was based upon discussions with your
20 mother?

21 A: And looking at the general values of property in
22 the Charleston area.

23 Q: All right. What research did you conduct with
24 regard to her real estate?

25 A: Well, I bought a house in Mount Pleasant, so I



1 know what roughly a house would cost and houses
2 in the old village area would cost.

3 Q: When did you buy that house?

4 A: I bought that house in 2003, I think, probably.
5 Because I'd lived on Daniel Island previously.

6 Q: Did you own it in 2012?

7 A: I owned it in 2010 and sold it.

8 Q: All right. Well, let me ask it a different way.

9 A: Okay.

10 Q: Did you conduct any online research relative to
11 the pieces of real estate your mom owned in June
12 2012 or subsequent thereto?

13 A: No, ma'am. No.

14 Q: All right. And you had no idea what her estate
15 tax exposure might be. Is that your testimony?

16 A: Mikell Scarborough had indicated to me she would
17 have a high tax exposure.

18 Q: Did you doubt that?

19 A: No. I had no reason to.

20 Q: Did he give you a number?

21 A: No.

22 Q: Did y'all discuss strategies in June 2012 as to
23 how her estate tax exposure could be minimized?

24 A: Other than creating trusts or other gifts, no.

25 Q: What other gifts?



1 A: If she wanted to gift any property.

2 Q: All right. What property was under
3 consideration to be gifted?

4 A: Any property she owned as far I knew.

5 Q: Did you discuss with your mother what properties
6 to gift?

7 A: Not at that time, no.

8 Q: Did you ever have a discussion with your mom
9 with regard to what properties to gift prior to
10 her lifetime to help save on taxes?

11 A: Well, my mother had a number of conversations
12 with me about gifting property, if that's what
13 you're asking.

14 Q: Yes, sir.

15 A: Okay.

16 Q: Over what period of time?

17 A: From 2000 to 2014, to the day of her death, she
18 talked about gifting either her house to me and
19 the lot. She talked repeatedly about the 9.75
20 acres at Millbrook, next to my grandfather's
21 house. She talked about her share of Dungannon
22 with me. And I think that was it.

23 Q: And did you consult with anyone in regard to
24 these gifts ---

25 A: No, ma'am.



1 Q: --- other than Mikell Scarborough?

2 A: I -- no. I talked -- when she would mention
3 gifting, say this acreage at Big -- at
4 Millbrook, next to my grandfather's house, I
5 would typically let my cousin Mikell know by
6 telephone. And let him know that she had
7 offered me the acreage again, but I didn't want
8 it right now. I don't think that it would be
9 within her financial interest to make a gift of
10 a piece of property that is marketable,
11 considering she may need the money.

12 Q: All right. Well let's look at this email again.
13 What support trust did you envision for your
14 brother Ross?

15 A: A support -- something that would provide a
16 maintenance for him on a monthly basis.

17 Q: And what property would that be?

18 A: I was leaving that up to the -- to the later
19 discussion of what property -- you mean what
20 property would be sold?

21 Q: Well, what I'm trying to figure out, when you're
22 talking about a support trust, are you generally
23 -- I think you're describing like an income
24 producing trust?

25 A: Yes.



1 Q: Are any of these properties income producing?

2 A: Other than timber, no. Oh, and hunting leases,
3 no.

4 Q: Any idea what the timber would've been worth in
5 June of 2012 on any of these properties?

6 A: Based on what was said yesterday, several
7 hundred thousand dollars.

8 Q: Did you investigate that?

9 A: No, ma'am, huh-uh. No.

10 Q: Okay. Did you suggest to your mom she
11 investigate that?

12 A: No.

13 Q: Did you discuss it with your cousin?

14 A: No.

15 Q: All right. Do you know the value of the hunting
16 leases?

17 A: No. I've inquired and never been given
18 responses.

19 Q: Did you envision that Ross would be supported
20 through sale of certain properties?

21 A: That my brother would be?

22 Q: Yes.

23 A: Yes. I think he would.

24 Q: All right. Through what properties? What would
25 envision would've been sold to support Ross?



1 A: Whatever my -- whatever we determined would be
2 best to generate a support trust for him.

3 Q: And who would you imagine would be trustee for
4 your brother?

5 A: I don't know.

6 Q: You never discussed that with your mom?

7 A: No.

8 Q: Did you discuss it with Mikell Scarborough, him
9 serving as trustee for your brother?

10 A: It -- I may have. I don't recall ever having
11 that conversation with him. It probably
12 would've been I don't care whether it would be
13 you, or me, or someone else.

14 Q: All right. The educational trust for Will and
15 Connor. Those are your two boys. Right?

16 A: Yes, ma'am.

17 Q: All right. What did you envision should be set
18 up for them?

19 A: Something that would provide for if they wanted
20 to attend college, that there would be some
21 funds available for them to pay for tuition.

22 MS. BROCKINGTON: Are you having to leave us?

23 MR. MENDELSON: See y'all.

24 MS. BROCKINGTON: All right. Thank you.

25 MR. MENDELSON: Take care.



1 MS. BROCKINGTON: Does anyone need a break right this
2 minute, or are we good to continue?

3 A: No, I'm good.

4 MR. BROCKINGTON: Okay. All right. We'll see you,
5 Joe.

6 MR. MENDELSON: Bye-bye.

7 (Mr. Mendelsohn left the room at this time.)

8 Q: All right. So educational trust for Will and
9 Connor. Your children would've been how old in
10 2012?

11 A: My son Will, would've been five to six. And my
12 son Connor would've been -- he was born in June
13 2011, so he would've been one.

14 Q: Did you talk to your mom about setting up these
15 trusts for you children?

16 A: I think at some point I mentioned that if she
17 ever wanted to do something like that, then that
18 would be -- I would be fine with that.

19 Q: And what was her response?

20 A: She didn't give a response.

21 Q: Why didn't you want some property sold? You
22 said you -- I don't want her to just sell
23 property if she does not have to yet.

24 A: Well, my understanding is that the value of
25 property typically increases over time.



1 Q: Uh-huh.

2 A: Is that a fair -- I think that's a fair
3 statement. And that if she just sold something
4 now and did not need the money, she would be
5 selling it prematurely when she could sell it a
6 year, two years, three years from now when she
7 actually needed money.

8 Q: Well, how were her finances looking in June
9 2012?

10 A: Well, she would periodically mention that she
11 thought she didn't have any money?

12 Q: Was that the truth?

13 A: I don't believe so, no. And I think I contacted
14 Mikell Scarborough and he would indicate to me
15 that she was financially solid right now as long
16 as she didn't go on some, you know, spend --
17 make some wild expenditure.

18 Q: Did you agree with the budget that Mikell had
19 set for your mom ---

20 A: Absolutely.

21 Q: --- that he described?

22 A: Yes.

23 Q: All right. Let's take a look at Exhibit 3.
24 This is the next email. All right. If you look
25 kind of toward the middle of the page, who is



- 1 the email from?
- 2 A: This is from me to Mikell Scarborough on June
- 3 8th at 9:53 a.m.
- 4 Q: All right. Well, look down below. Is there an
- 5 earlier email ---
- 6 A: Oh, yeah. I'm sorry.
- 7 Q: --- of 8:31 a.m.?
- 8 A: Yeah. There is an earlier email from Mikell
- 9 Scarborough to me on June 8th at 8:31 a.m.
- 10 Q: All right.
- 11 A: I'm sorry. Yeah, and it's regarding the prior
- 12 day's email, 6/7/2012.
- 13 Q: All right. So June the 8th of 2012, let's look
- 14 at that paragraph. Would you read into the
- 15 record, it's starts with as to estate planning?
- 16 A: Okay. "As to estate planning, I agree a lot of
- 17 that can wait a little while but I think the
- 18 idea of gifting some this year would be wise."
- 19 Q: Excuse me, let me back you up just to the lower
- 20 portion of the 8:31 ---
- 21 A: Oh, I'm sorry.
- 22 Q: At 8:31. I'm sorry.
- 23 A: I'm sorry. So ---
- 24 Q: It's from Mikell Scarborough to you.
- 25 A: Yes.



- 1 Q: Okay. And this is the first in the chain.
- 2 A: Okay.
- 3 Q: So as to estate planning.
- 4 A: Okay. I'm sorry. I'm sorry. Okay.
- 5 Q: That's okay.
- 6 A: "As to estate planning, we should gift some this
- 7 year and the."
- 8 Q: Maybe then?
- 9 A: Yeah. And then, "Implement for the future. She
- 10 is now upset with Ross as usual his timing is
- 11 bad. She has spoken of a codicil to her will,
- 12 but some overarching plan is best here. I doubt
- 13 she will change much and who will buy behind
- 14 Frances & put up with that?" Or w that.
- 15 Q: All right. And then that's relative to your mom
- 16 being upset with your brother?
- 17 A: Yes, ma'am.
- 18 Q: Do you know why she was upset with Ross in June
- 19 of 2012?
- 20 A: No. I couldn't say particularly.
- 21 Q: Okay. And then your response up above it at
- 22 9:53.
- 23 A: Yes.
- 24 Q: As to estate planning.
- 25 A: Oh. "As to estate planning, I agree a lot of



1 that can wait a little while but I think the
2 idea of gifting some this year would be wise.
3 Kat and I are glad to tear up the check Mom gave
4 the boys if she needs the money. We would
5 prefer she keep the property as long as
6 practical and possible rather than start selling
7 everything now. My suggestion is that we try to
8 at least get Mom to do a support trust for Ross.
9 That way he will have some of the basic
10 necessities provided for and he would not have
11 control of the money if that is her concern. My
12 fear is any property Ross inherits he will have
13 to sell because he probably will not be able to
14 afford the taxes. But that is up to Mom and
15 Ross. Maybe we need to go ahead and start
16 litigation with Frances over the jointly owned
17 property? Although any litigation fees are not
18 an attractive thought with the current prospect
19 of home health care costs."

20 Q: All right. What check did your mom give you for
21 your children?

22 A: I think she had written gift checks for
23 birthdays or something that we ended up, I
24 think, we never cashed.

25 Q: How much were they for?



1 A: I believe like \$25 each, maybe \$50.

2 Q: You were concerned about cashing a \$25 check ---

3 A: Yeah.

4 Q: --- of your mother's?

5 A: Yes, ma'am. Those may have been more, but I
6 know I have seen -- at one time I saw checks
7 from her and it may have been around this time
8 and they were for -- not for large amounts of
9 money.

10 Q: All right. After this point in time, and we're
11 in June of 2012, she's been diagnosed with the
12 cancer, and were there any other discussions
13 between you and your mom relative to her estate
14 planning?

15 A: I don't recall at the moment, no.

16 Q: Do you recall any discussions or email chains
17 between yourself and your cousin Mikell
18 regarding her vehicle and her driving?

19 A: A number of them.

20 Q: Okay. Do you recognize this email from June the
21 7th, 6th and 7th?

22 A: Yes, ma'am.

23 Q: All right. Let me get that marked.

24 (Respondent's Exhibit Number 4 was marked for
25 identification purposes.)



1 Q: And that's Number 4, I believe?

2 A: Yes, ma'am.

3 Q: Okay. On Exhibit 4, Mr. Henderson, this is an
4 email chain between yourself and your cousin, is
5 that right?

6 A: Yes, ma'am.

7 Q: All right. And again, we're starting kind of at
8 the lower end, so it's kind of in the middle ---

9 A: Yes, ma'am.

10 Q: --- June 6.

11 A: Yeah.

12 Q: And it says, Mikell, talking about a homeowner's
13 policy. And then the next paragraph says, "Also
14 what do we want to do with Mom's car?" And
15 what's your -- what's your reply?

16 A: I said, "I have no problem with you taking her
17 car and her signing it over to you. However, we
18 need to find out whether we might need a car at
19 her house for the sitters to use to take Mom to
20 the doctor, grocery store, etcetera."

21 Q: Okay. And then up above did Mikell Scarborough
22 respond to you?

23 A: Yes. He mentioned the homeowner's policy issue.
24 "I am fine with car whichever works best for
25 Dede."



1 Q: All right. Was that the same vehicle she owned
2 whenever she died two years later?

3 A: Yes, ma'am.

4 Q: Do you have any issue with Mikell having
5 possession of that car now?

6 A: No, ma'am. He said in the email, I think DD
7 would be more comfortable in her car, which I
8 agreed with.

9 Q: Well, you heard his testimony yesterday that his
10 wife is driving the car. Do you have any issue
11 with that?

12 A: I think there's a liability issue if his wife's
13 driving the car to the estate.

14 Q: Do you have an issue with Mikell Scarborough
15 having possession of the car?

16 A: No. You asked me that. No.

17 Q: Okay. All right. Do you recognize this
18 document, Mr. Henderson?

19 A: Yes, ma'am.

20 Q: All right. What is that?

21 A: It is the codicil, First Codicil to the Last
22 Will and Testament of Mary Ross Hanahan.

23 Q: And let's get that marked as Exhibit 5.

24 (Respondent's Exhibit Number 5 was marked for
25 identification purposes.)



1 Q: All right. What does item two provide in the
2 will, Mr. Henderson?

3 A: It provides that disposition of her house and
4 adjoining lot.

5 Q: Does it make any other specific bequest under
6 the codicil?

7 A: Well, it -- in item two, it bequest's it to her
8 nephew Mikell Scarborough. In the event that he
9 predeceases her, to his -- her great nephew,
10 Mikell Scarborough's son, Mikell Scarborough,
11 Jr.

12 Q: And now what does item three do?

13 A: It nominates Mikell Scarborough to be the
14 personal representative of her last will and
15 testament. And in the even that he is unable or
16 unwilling to serve, then I would be appointed
17 the personal representative.

18 Q: All right. What's the date of that document on
19 page two?

20 A: October 19th of 2012.

21 Q: Is that your mom's signature?

22 A: Yes, ma'am.

23 Q: Do you have any concerns that that is not your
24 mother's signature?

25 A: No, ma'am.



- 1 Q: And right below the first signature, what is the
2 language there? Can you read that into the
3 record?
- 4 A: Yes, ma'am. "I, Mary Ross Hanahan, the
5 TESTATOR, sign my name to this instrument this"
6 19th day -- "19 day of of October 2012 and,
7 being first duly sworn, do hereby declare to the
8 undersigned authority that I sign and execute
9 this instrument as FIRST CODICIL to my Last Will
10 and Testament and that I sign it willingly, that
11 I execute it as my free and voluntary act for
12 the purposes therein expressed, and that I am
13 eighteen years of age or older, of sound mind,
14 and under no constraint of undue influence."
- 15 Q: Is that her signature down below that statement?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And then looking at page three. Who are
18 the witnesses?
- 19 A: Christopher W. Martin and January E. O'Neale.
- 20 Q: All right. And their names are printed at the
21 top of the page, is that right?
- 22 A: Yes, ma'am.
- 23 Q: And then their signatures are below?
- 24 A: Yes, ma'am.
- 25 Q: And then who's in the notary? Who signed as



1 notary, excuse me?

2 A: January O'Neale.

3 Q: And is dated the same day?

4 A: Yes, ma'am.

5 Q: October 19th, 2012?

6 A: Yes.

7 Q: Mr. Henderson, you have brought a lawsuit
8 regarding this document and you filed an action
9 against your cousin September 2nd of 2015 in the
10 Charleston County Probate Court challenging this
11 codicil. Is that right?

12 A: Yes, ma'am.

13 Q: All right. Let's take a look at what you allege
14 in your petition. Well, do you know where the
15 codicil was signed?

16 A: I later discovered where the codicil was signed.

17 Q: Where was it signed?

18 A: It was signed at Sette Seven Restaurant in Mount
19 Pleasant, South Carolina.

20 Q: And who was present when it was signed?

21 A: To my knowledge only Mikell Scarborough and the
22 two witnesses.

23 Q: Who prepared the codicil?

24 A: I have no idea.

25 Q: Is there any information in your possession that



1 Mikell Scarborough prepared this document?

2 A: No.

3 Q: Is there any information in your possession that
4 January O'Neale prepared this document?

5 A: No, ma'am.

6 Q: Is there any information in your possession that
7 Christopher Martin prepared this document?

8 A: No, ma'am.

9 Q: Okay. So who did it?

10 A: That's what I'd like to know.

11 Q: Who did your mom use as an attorney?

12 A: Demal Mattson.

13 Q: Anybody else?

14 A: Not that I'm aware of. Other than the Ross
15 Development attorneys that -- in that
16 litigation. But I don't believe she had any
17 contact with them.

18 Q: Who are those lawyers?

19 A: I believe is name is Trenholm Walker with -- I
20 can't recall the name of the firm downtown.

21 Q: Why do you believe that your mom did not contact
22 Mr. Walker?

23 A: I don't -- I would bet that my mother has never
24 spoken to him.

25 Q: Any other attorneys that she might've consulted



1 about this matter?

2 A: None that I can think of. I think I saw
3 something regarding, at one time, a -- I don't
4 know if it was a Sinkler and Warren with regards
5 to a -- might've been a condemnation action for
6 some property at some time, but I -- no, not
7 around this time frame, no.

8 Q: Did your mom have a computer?

9 A: No.

10 Q: So she could not have prepared this herself,
11 right?

12 A: No, ma'am.

13 Q: Could she have instructed someone to prepare it?

14 A: I don't know.

15 Q: Well, how do you think it came into existence?

16 A: How do I think it came into existence?

17 Q: Yes, sir.

18 A: I think Mikell Scarborough brought it to her.

19 Q: Well, you heard his testimony yesterday that he
20 did not provide that document to your mom.

21 A: Uh-huh.

22 Q: That she had the document in a manilla folder
23 and brought it to the luncheon. Did you hear
24 that testimony?

25 A: Yes, ma'am.



1 Q: Okay. Why are you saying now that you think
2 Mikell Scarborough brought it to her?

3 A: The inconsistencies from the time this document
4 was executed through April, I would say, late
5 April of 2015.

6 Q: I'm sorry, back me up a second. Okay. The
7 inconsistencies from what date?

8 A: From the day that this was signed, from October
9 19th of 2012 up until probably the late April of
10 2015.

11 Q: What happened in April 2015?

12 A: That is when I informed Mikell Scarborough that
13 I was going to challenge this.

14 Q: Okay. All right. We have a document here, the
15 first codicil to your mom's will.

16 A: Uh-huh.

17 Q: Was this admitted to probate in Charleston
18 County?

19 A: It was.

20 Q: And did you instruct Mikell Scarborough not to
21 present it to the court?

22 A: I asked him to find out the origin of the
23 codicil on at least a half a dozen, if not more
24 -- half a dozen emails, and probably phone
25 calls, and meetings as well, to find out the



1 origin of it.

2 Q: What would he say to you when you were asking
3 for that?

4 A: Well, let me back up. Between October 19th of
5 2012, on the day my mother died, I didn't know
6 about the codicil.

7 Q: Did she have a duty to tell you?

8 A: I don't believe she did, no.

9 Q: Did Mikell Scarborough have a duty to tell you
10 about it?

11 A: No.

12 Q: Did anybody have duty to tell you about her
13 estate planning?

14 A: Well, I would think that Mikell Scarborough had
15 a duty to tell me since we were both trying
16 provide for her care together.

17 Q: What do you base that on, Mr. Henderson?

18 A: Well, my mother had offered me the property on
19 a number of occasions and I would've never taken
20 her to an attorney and had her prepare a
21 document giving me her real property or any
22 other property without consulting with my
23 cousin.

24 Q: Do you think your cousin took her to a lawyer to
25 have this prepared?



1 A: I -- he may have.

2 Q: What proof do you have?

3 A: I don't have any, ma'am.

4 Q: What proof do you have that he prepared it
5 himself?

6 A: I don't -- I -- other than the inconsistencies
7 from October 2000 -- or October of 2012 through
8 the date of her death. The way that the origin
9 of this changed, his unwillingness to tell me
10 about where it was executed, how it was
11 executed, who -- what attorneys he referred her
12 to in Mount Pleasant.

13 Q: Are there witnesses to this, Mr. Henderson?

14 A: Yes.

15 Q: Who are the witnesses?

16 A: Chris Moss, I believe is a witness to one of
17 them.

18 Q: You think Chris Moss is a witness to this
19 codicil?

20 A: No, ma'am. To that conversation.

21 Q: To the conversation?

22 A: Yeah, about the inconsistencies, yes.

23 Q: Do you think Chris Moss has any information
24 about this document?

25 A: No, ma'am.



1 Q: She didn't even meet him until December of 2012,
2 is that right?

3 A: Yes, ma'am, to my knowledge. I don't think she
4 met him prior to that.

5 Q: You make the statement that Mikell arranged for
6 a secretary and a manager of the restaurant to
7 witness the codicil?

8 A: Yes, ma'am.

9 Q: You also make a statement that Mikell
10 Scarborough supervised the execution.

11 A: Yes, ma'am.

12 Q: What leads you to believe he supervised the
13 execution of the codicil?

14 A: I believed, based on the information I had, he
15 was present when it was executed.

16 Q: Well, did you hear his testimony yesterday that
17 he stepped away?

18 A: Yes, ma'am. I heard his testimony.

19 Q: Okay. What information do you have that's
20 different?

21 A: I don't have any other information that would be
22 different.

23 Q: Have you talked to Chris Martin?

24 A: I did at one time.

25 Q: When did you talk to Chris Martin?



1 A: I talked to him, I want to say, probably March
2 of 2015.

3 Q: And what was the conversation about?

4 A: If he recalled witnessing a codicil for my
5 mother. If he recalled my mother, first.

6 Q: And did he?

7 A: He did.

8 Q: What did Mr. Martin tell you?

9 A: He said he recalled witnessing it, but he could
10 not recall any great details about the actual
11 execution, the sequence of events.

12 Q: Did he indicate if your mom hesitated signing
13 it?

14 A: He didn't. Again, he said he could not recall
15 the sequence of events. He just remembered that
16 he witnessed it. So I can't answer that
17 question.

18 Q: Okay. But he acknowledged that he witnessed
19 your mom's signature?

20 A: Yes, ma'am.

21 Q: Did he acknowledge that Ms. January O'Neale was
22 present when the codicil was executed?

23 A: He recalled that there was another person
24 present. I don't believe he knew Ms. O'Neale.

25 Q: Do you doubt the matter in which this got



1 signed?

2 A: Doubt that -- I'm sorry?

3 Q: Do you have any information it was executed
4 differently than what was testified to
5 yesterday?

6 A: No, ma'am.

7 Q: Okay. Did you talk to Ms. January O'Neale prior
8 to starting litigation?

9 A: Yes, I did.

10 Q: When did you talk to her?

11 A: Same day I talked to Chris Martin.

12 Q: And what did she tell you?

13 A: She told me that she was called from the
14 courthouse by Mikell Scarborough to come and
15 witness and notarize a document for my mother.

16 Q: Did that surprise you?

17 A: Yes.

18 Q: Why did that surprise you?

19 A: Because in a meeting in November, or Feb- --
20 November of 2014 or February of 2015, I had to
21 -- had a -- finally had a copy of the codicil
22 and I indicated that I did not know either one
23 of these witnesses and verbalized both of them.
24 And Mikell Scarborough did not acknowledge that
25 January O'Neale worked for him.



- 1 Q: Well, should he?
- 2 A: I would think he would since I was asking about
3 the witnesses and who are they, and I don't know
4 who these people are, and I was asking about how
5 this codicil came about.
- 6 Q: How did you locate Ms. O'Neale?
- 7 A: I looked her up.
- 8 Q: And you saw she worked at the courthouse?
- 9 A: Yes, ma'am.
- 10 Q: And in the Master In Equity's office?
- 11 A: Yes, ma'am. I mean I -- once I realized who she
12 was, I know that I had met her previously.
- 13 Q: Do you have any reason to doubt her testimony
14 from yesterday?
- 15 A: No, ma'am.
- 16 Q: All right. We're still on the codicil, Mr.
17 Henderson.
- 18 A: Okay, that's fine.
- 19 Q: All right. In your first cause of action on the
20 petition ---
- 21 A: Uh-huh.
- 22 Q: --- you state that your mother lacked
23 testamentary capacity. What do you base that
24 on?
- 25 A: Her declining physical and mental health.



1 Q: Now, you went in and checked with her doctors in
2 October of 2012. Is that correct?

3 A: Yes, ma'am.

4 Q: Who were her doctors?

5 A: In October of 2012, I believe it would've been
6 -- well, Dr. Durst would've been her internist.
7 She was under the care of Dr. Sharma and I want
8 to say it was another doctor at MUSC later in
9 2013. I believe my wife had taken her to a
10 neurologist for several appointments and a OBGYN
11 appointment, either my wife or my father.

12 Q: Was she under the care of Dr. Lake?

13 A: Yes, she was also under the care of Dr. Lake.

14 Q: And Dr. Sharma was for the oncology?

15 A: Yes, ma'am.

16 Q: How do you spell Sharma?

17 A: S-H-A-R-M-A.

18 Q: All right. Have you talked to Dr. Lake about
19 your mom's mental condition ---

20 A: Yes.

21 Q: --- in October of 2012?

22 A: I couldn't say whether I did in October of 2012.
23 I periodically talked to her, yes.

24 Q: Have you talked in regard to this litigation?

25 A: I think right after my mother died I informed



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1 her my mother was dead, and a few months later
2 I informed her that there were issues with her
3 estate that I may want to speak to her or I may
4 have to have counsel approach her about.

5 Q: Did you follow-up with her about that?

6 A: Did I follow-up with Ms. Lake, no. Dr. Lake,
7 no.

8 Q: Okay. Do you have any written statements from
9 Dr. Lake ---

10 A: No.

11 Q: --- regarding this ---

12 A: No, ma'am.

13 Q: --- this litigation?

14 A: Not at this time, no.

15 Q: How about Dr. Durst?

16 A: No.

17 Q: You've not talked to her or you have no
18 statements?

19 A: I have no statements.

20 Q: Have you talked to her?

21 A: I believe I did after my mother's death. I --
22 same thing as Dr. Lake.

23 Q: How about Dr. Sharma?

24 A: No.

25 Q: No, as to statements or speaking with him?



- 1 A: No, as to statements or speaking to him.
- 2 Q: How about Dr. Scott Thompson?
- 3 A: No, I have not contacted him.
- 4 Q: At all?
- 5 A: Or had a statement from him, no.
- 6 Q: How about Dr. Thomas Hughes?
- 7 A: I believe we contacted his office, I did. I do
- 8 not have any statements from him.
- 9 Q: When did he treat your mom?
- 10 A: He treated my mom going back to, I want to say
- 11 December, or prior to December 2006. I know
- 12 that -- I believe there was diagnosis of
- 13 dementia at the end of December of 2006. He saw
- 14 her in 2012, I want to say March or April, when
- 15 she was hospitalized at East Cooper Hospital.
- 16 And he had ordered some tests for her, MRI, PET
- 17 scans. I think one of them was the one that
- 18 ultimately revealed the lung tumor. And he
- 19 treated her in 2012 for hydrocephalus.
- 20 Q: How about Dr. Lloyd, Christine Lloyd?
- 21 A: Not at that time, my mother was not seeing her.
- 22 Q: Have you spoken to her in regard to this
- 23 litigation?
- 24 A: No, ma'am.
- 25 Q: Any written statements ---



1 A: No, ma'am.

2 Q: --- from Dr. Lloyd? Any other physicians that
3 I have not identified that your ---

4 A: No, ma'am.

5 Q: --- that you have spoken to about your mom's
6 mental ---

7 A: Not that I recall, no.

8 Q: --- condition? All right. I'm going to have
9 this document marked as our next exhibit.

10 COURT REPORTER: Six.

11 MS. BROCKINGTON: Exhibit 6, all right. Are we good
12 for maybe another 15 minutes and then ---
13 (No audible response is heard.)

14 MS. BROCKINGTON: Okay. And then we'll see where we
15 are.

16 (Respondent's Exhibit Number 6 was marked for
17 identification purposes.)

18 Q: All right. Mr. Henderson, what I've handed you
19 has now been marked at Respondent's Exhibit
20 Number 6. I submit to you that this a summary
21 of a statement of a visit by your mom to Dr.
22 Kay Durst.

23 A: Uh-huh.

24 Q: And you've testified just now that you're
25 familiar with Dr. Durst. Is that right?



1 A: Yes.

2 Q: What type of doctor is Dr. Durst?

3 A: I believe she's a general practitioner.

4 Q: And what services did she provide to your mom?

5 A: I -- she's either a general practitioner or an
6 internist. I'm not sure which.

7 Q: All right. And ---

8 A: She was her primary physician.

9 Q: --- and looking at the top of the document, what
10 was the date of the visit?

11 A: It says Tuesday, October 16th, 2012.

12 Q: And that was three days before the codicil was
13 signed, right?

14 A: Yes, ma'am.

15 Q: Who took her to that appointment?

16 A: I do not recall.

17 Q: Okay. All right. Let's take a look at kind of
18 the middle of the page, ROS is -- it's ROS colon
19 and then at the bottom of that list it says
20 psychiatric.

21 A: Yes, ma'am.

22 Q: Can you read into the record what was Dr.
23 Durst's findings regarding your mom that day?

24 A: It says negative for anxiety, depression, and
25 sleep disturbances.



1 Q: All right. What was her past medical history?

2 A: Bi-polar, dementia, right hip broken four and a
3 half years ago, left upper lobe lung cancer
4 lesion, seeing oncology at MUSC.

5 Q: What's her social history, a little further down
6 that page?

7 A: Lives alone and son and daughter-in-law in low -
8 lives in Run- -- and daughter-in-law, I assume
9 that means, lives in Brunswick. She has two
10 children. She has caregiver with her.

11 Q: Do you know who that caregiver would've been on
12 that day?

13 A: No, ma'am. I have no idea.

14 Q: Okay. And what are her current problems listed
15 as?

16 A: Abdominal pain, acquired hypothyroidism,
17 constipation, COPPED, dementia, hyperkalemia,
18 hyperlipidia (ph), lung cancer, numbness,
19 uterine prolapse.

20 Q: All right. Let's go to page two. And you see
21 there with regard to the exams, what were her
22 physical exam in a general basis?

23 A: Well developed and nourished; appropriately
24 groomed; in no apparent distress.

25 Q: And what did Dr. Durst report as your mom's



1 psychiatric affect at that time?

2 A: Appropriate affect in demeanor; normal speech
3 pattern; grossly normal memory.

4 Q: Do you have any reason to dispute the findings
5 of Dr. Durst on October 16th of 2012?

6 A: No, ma'am, I couldn't, I'm not a doctor.

7 Q: All right. Let me get these next two marked
8 consecutively.

9 (Defendant's Exhibit Numbers 7 and 8 were marked for
10 identification purposes.)

11 Q: Okay. Mr. Henderson, we have before you two
12 additional medical reports concerning your mom.
13 These are from Dr. Lake. The first one would be
14 Respondent's 7 and that one would be dated at
15 the bottom. Do you see the bottom date on that
16 one?

17 A: Yes, ma'am. It says ---

18 Q: What is the date?

19 A: --- September 13th of 2012.

20 Q: And what services did Dr. Lake provide to your
21 mom?

22 A: Psychiatric services.

23 Q: Okay. Let's look at the top. I know the font
24 is very small, but let's take a look and see.
25 How did your mom present in her appearance that



- 1 day?
- 2 A: It's circled neat.
- 3 Q: How about her speech?
- 4 A: Normal.
- 5 Q: How about her affect?
- 6 A: Congruent. I'm not sure, estable or state?
- 7 Q: Stable.
- 8 A: Stable. Restricted.
- 9 Q: What's her thought process?
- 10 A: Normal.
- 11 Q: Thought content?
- 12 A: Mild paranoia.
- 13 Q: Above the -- right across some thought content.
- 14 A: I'm sorry.
- 15 Q: The one that's circled.
- 16 A: Oh. Thought content, normal.
- 17 Q: And then below that, it's hand written.
- 18 A: Mild paranoia.
- 19 Q: How about memory?
- 20 A: W-N-L.
- 21 Q: Do you know what that stands for?
- 22 A: No, ma'am.
- 23 Q: Within normal limits, I submit to you.
- 24 A: If you say so. Yes, ma'am.
- 25 Q: How about across on the left side, perceptual



- 1 disturbance?
- 2 A: None is circled.
- 3 Q: And -- okay. And her alertness, how is that
- 4 indicated?
- 5 A: It looks like P1.
- 6 Q: It's between diminished and enhanced. Right?
- 7 A: Yes, ma'am.
- 8 Q: Okay. And orientation?
- 9 A: Full is circled.
- 10 Q: Okay. Her insight, is it listed as poor or no
- 11 gross deficit?
- 12 A: No gross deficit.
- 13 Q: And her judgement, poor or no gross deficit?
- 14 A: No gross deficit.
- 15 Q: And at the bottom, what is her diagnosis?
- 16 A: Is that the A-P?
- 17 Q: It's A/P. Yes, sir.
- 18 A: Okay, I'm sorry. Bipolar I DO, cognitive
- 19 impairment, patient irked, is something allowed
- 20 to drive. Is not allowed to drive. Spends a
- 21 lot of time in bed because has nothing to do.
- 22 Feels depressed. At court -- I don't --
- 23 something current meds.
- 24 Q: That one's a little hard.
- 25 A: Yeah. So, I'm not sure what that word is.



1 Q: Okay.

2 A: Feels depressed is ---

3 Q: Feels ---

4 A: --- the last.

5 Q: --- all right. Yes, sir. That's sufficient on
6 this one.

7 A: Yes, ma'am.

8 Q: Do you have any reason to doubt this report of
9 Dr. Lake?

10 A: No, ma'am.

11 Q: All right. Let's get the next one, which would
12 be Respondent's 8, also a report of Dr. Lake.
13 And what's it dated at the bottom?

14 A: This is October 18th of 2012.

15 Q: Okay. And we're going to go through the same
16 scenario.

17 A: Okay.

18 Q: So this is one day before the codicil is singed.
19 Is that right?

20 A: Yes, ma'am.

21 Q: What's your mom's appearance before Dr. Lake?
22 We're at the top left.

23 A: Yes, ma'am. I'm sorry, I'm just reading the ---

24 Q: Okay.

25 A: I'm trying to see the other information that's



- 1 on it that I couldn't read.
- 2 Q: Oh, okay.
- 3 A: Okay. Appearance, neat is circled.
- 4 Q: Okay. How about her mood?
- 5 A: Her mood, there is a line next to euthymic.
- 6 Q: All right. Thought process below that?
- 7 A: She circled normal.
- 8 Q: Perceptual disturbance?
- 9 A: None is circled.
- 10 Q: Alertness?
- 11 A: NL.
- 12 Q: Do you think that would be within normal limits?
- 13 A: Okay.
- 14 Q: Orientation?
- 15 A: Full is circled.
- 16 Q: As to place, time, and person. Is that right?
- 17 A: Yes, ma'am.
- 18 Q: How about her speech?
- 19 A: It's circled normal.
- 20 Q: Her affect?
- 21 A: Congruent.
- 22 Q: And what falls below congruent? What's the next
- 23 line?
- 24 A: Stable.
- 25 Q: Okay. What's her thought content?



1 A: Normal it shows.

2 Q: How about her memory?

3 A: WNL is circled. Within normal limits according
4 to you.

5 Q: And what is her insight? Poor or no gross
6 deficit?

7 A: No gross deficit for insight and judgement.

8 Q: Do you have any reason to doubt this report of
9 Dr. Lake?

10 A: No, ma'am.

11 Q: All right. Let me get two more documents marked
12 and we'll go through those, then we might take
13 a break at that point. Bear with me one second.
14 Let me get this marked as number 9.

15 (Respondent's Exhibit Number 9 was marked for
16 identification purposes.)

17 Q: And 10.

18 (Respondent's Exhibit Number 10 was marked for
19 identification purposes.)

20 Q: Okay. Mr. Henderson, starting with the
21 Respondent's Exhibit Number 10, I submit to you
22 that that is a report from Care for Life. Was
23 that a sitting service taking care of your mom?

24 A: Yes, ma'am.

25 Q: Who was responsible for securing their services?



- 1 A: Who was responsible?
- 2 Q: Yes, sir.
- 3 A: Both Mikell Scarborough and I.
- 4 Q: Okay. And did you sign a contract for Care for
- 5 Life to care for your mom?
- 6 A: I'm not sure if there was a contract.
- 7 Q: But you and Mikell Scarborough consulted and
- 8 decided that your mom was at the point she
- 9 needed some at home health care. Is that right?
- 10 A: Yes, ma'am.
- 11 Q: Okay.
- 12 A: Certainly prior to this date.
- 13 Q: Did you ever meet the employee Laura McGuire?
- 14 A: I'm sorry. You said Exhibit 10 previously. You
- 15 mean Exhibit 9?
- 16 Q: Number 9.
- 17 A: Okay. I'm sorry.
- 18 Q: I'm sorry.
- 19 A: That's just ---
- 20 Q: That's all right.
- 21 A: --- thought I misheard you earlier. I'm sure I
- 22 did meet Laura McGuire at some point -- Laura
- 23 McGuire.
- 24 Q: Okay. And you see kind of in the middle of the
- 25 page at the top there are two dates. What are



1 those two dates relative to Care for Life?

2 A: It says 10/16/2012 and 10/20/2012.

3 Q: All right. So 10/16 would've been three days
4 before the codicil was signed. Is that right?

5 A: Yes, ma'am.

6 Q: And of course, 10/20 would be the next day?

7 A: Yes, ma'am.

8 Q: Okay. And look at the bottom, toward the
9 bottom.

10 A: Yes.

11 Q: It says, the section that says, alert would be
12 an A. O is an orient -- O is oriented, C is
13 confused. What does Ms. McGuire indicate was
14 your mom's mental status as of that day?

15 A: Alert -- AO, alert oriented.

16 Q: All right. And is the -- underneath there,
17 there's three choices; F for forgetful, AG for
18 agitated, CB for combative. Is anything marked?

19 A: No, ma'am.

20 Q: All right. How about for October 20, the next
21 day. Those same questions. What is your mom's
22 mental status as reported by Ms. McGuire?

23 A: For the first, it was AO, alerted oriented, and
24 there was nothing listed in the bottom.

25 Q: Do you have any reason to doubt the caregiver's



1 report?

2 A: I -- no, ma'am, I couldn't. No.

3 Q: Okay. And look on page two for me ---

4 A: Yes, ma'am.

5 Q: --- of that document. And then toward the end,
6 right before she signs and puts in the date. It
7 says, CLT has appointment October 30th at 11:00
8 a.m. with Dr. Durst. Would you agree with me
9 that's what it says?

10 A: I'm sorry, I have it on the wrong one.

11 Q: October ---

12 A: Is that the 20 -- 15th or 20th date? I'm sorry.
13 Okay. Yes, I'm sorry.

14 Q: It's the October 16th date.

15 A: I'm sorry. I was looking at the one before it.

16 Q: Okay.

17 A: To appointment with Dr. Durst. We something to
18 be at boulevard diner.

19 Q: And then at the end of that phrase, what -- or
20 end of that writing by Ms. McGuire. Does it say
21 all went well?

22 A: Yes. Dr. Durst, all went well.

23 Q: Okay. No reason to question that. Right?

24 A: No, ma'am. I don't know what she meant, but.

25 Q: All right. And looking at Exhibit 10n, the next



- 1 document. It's a Care for Life Daily Charting.
2 Do you recognize the name Henrietta Wise?
3 A: Yes, ma'am.
4 Q: And who is Ms. Wise?
5 A: She was one of the caregivers for my mother.
6 Q: Had you ever met her?
7 A: Yes. A number of times.
8 Q: Okay. What was your impression of Ms. Wise?
9 A: I liked Ms. Wise. I thought she was very nice.
10 Q: Okay. And her entry is dated October 18th,
11 2012. Is it not?
12 A: Yes, ma'am.
13 Q: All right. That's the day before the codicil
14 was signed?
15 A: Yes, ma'am.
16 Q: And at the bottom, what is indicated for your
17 mom's mental status?
18 A: A, is alert.
19 Q: And is anything written below that?
20 A: I can't tell if that's an A or and F.
21 Q: Might be a F.
22 A: Forgetful.
23 Q: For forgetful?
24 A: That's right.
25 Q: Okay. Any reason to doubt this report of Ms.



1 Wise?

2 A: No, ma'am.

3 Q: Have you spoken to Ms. Wise in regard to this
4 litigation?

5 A: No, ma'am.

6 Q: Well, you listed her as a witness.

7 A: Yes, ma'am.

8 Q: You haven't talked to her though?

9 A: No, ma'am. I didn't think it was appropriate
10 for me to contact her.

11 Q: Why not?

12 A: Because I thought that was something that my
13 counsel should do.

14 Q: Okay. Have you talked to Ms. Laura McGuire?

15 A: No, ma'am.

16 Q: Have you talked to any of the caregivers for
17 Care for Life?

18 A: No. One, Rose Harrison, had contacted my
19 brother-in-law, and actually saw him at his
20 place of work downtown. And based on that
21 conversation she had given him her phone number.
22 And I tried to call her but I could not reach
23 her. So I've never spoken to her.

24 Q: Okay. Do you have any written statements from
25 any of the caregivers for Care for Life?



1 A: No, ma'am.

2 Q: Okay. Do you have any written statements at all
3 regarding your mom's mental status in October of
4 2012?

5 A: No, ma'am.

6 Q: How about with regard to December of 2012?

7 A: No, ma'am.

8 Q: Okay.

9 MS. BROCKINGTON: We're at 12:30, so shall we take a
10 one hour lunch break? I've got a good ways to
11 go.

12 MR. SILVERNAIL: That's fine.

13 MS. BROCKINGTON: Okay.

14 (A lunch break was taken from 12:29 p.m. until 1:28
15 p.m.)

16 Q: All right. Mr. Henderson, you ready to go back
17 on the record?

18 A: Yes, ma'am.

19 Q: Okay. All right. We're going to pick up, Mr.
20 Henderson. We were discussing a codicil that
21 your mom executed in October of 2012.

22 A: Yes, ma'am.

23 Q: When did your mom tell you that you would be the
24 one to inherit the house and the lot?

25 A: I would say -- well, beginning in and around



1 2001, when she had given me her -- the copy of
2 her will, the 1998 will, the healthcare -- or
3 the declaration of a desire for a natural. And
4 that, I think I have the original copy of and
5 the original copy of the general power of
6 attorney that she wanted to make sure I had
7 those documents and knew, you know, knew the
8 contents of them. And then, after that mom
9 mentioned giving me the house -- I, you know, in
10 a time frame between 2006 and her death, at
11 least a dozen times, if not upwards of twenty.

12 Q: Does she believe that you, and your wife and
13 family, were going to be moving back to the
14 Mount Pleasant area ---

15 A: Yes.

16 Q: --- and need the house?

17 A: Because I told her that at some point my family
18 -- we wanted to move back to the Charleston
19 area.

20 Q: Did she ever discuss with you giving the house
21 to Ross and John?

22 A: I think she mentioned it at one time, yes.

23 Q: At what ---

24 A: Yes, at least once.

25 Q: --- at what point in time did she mention that?



1 A: 2010 to 2011, I would say. That's around the
2 time where she mentioned that.

3 Q: Why do you think she was changing her mind in
4 that time frame about who she wanted to leave
5 the house to?

6 A: When she would ask me if I wanted the house, I
7 would not jump at the opportunity.

8 Q: She expected you to be, what, more excited,
9 pleased?

10 A: I think she wanted me to, to -- yes, please give
11 me the house. I want it, I want it now, and I
12 -- it -- I didn't want her to -- I wasn't going
13 to treat her any differently because she left me
14 her house. So I didn't tell her what she wanted
15 to hear, I think. And so, she wanted her house
16 to go to, I think me first. And because I
17 wasn't apparently over enthusiastic about it.
18 I would typically tell her that the house was
19 small, I'd have to renovate it, you know, but
20 you know, if that, you know, that's not
21 something that we needed to worry about now.
22 It's her residence. I fully intended her to
23 live there until she died.

24 Q: How large is the house?

25 A: That house is maybe only 1300 square feet.



1 Something that's fairly small.

2 Q: Was it a property that she received through the
3 divorce of your father?

4 A: That ---

5 Q: Yes.

6 A: --- house? No, ma'am. No she purchased that in
7 the -- I want to say 1985, I believe.

8 Q: And that was before her second marriage?

9 A: I -- it might've been during her second
10 marriage.

11 Q: Okay.

12 A: I know that they lived there, both of them lived
13 there.

14 Q: During the time you were managing her bill
15 paying, was there a mortgage on the property?

16 A: Not in the later stages, no, no. Not in the --
17 not 2000 -- not after, certainly not after 2009
18 when I really started doing more for her.

19 Q: And who was responsible for securing, you know,
20 like insurance for the property? Did that fall
21 to you or Mikell Scarborough?

22 A: I think previous to me, it was either my mother
23 or Mikell Scarborough. What I did, was I would
24 get the insurance bills and pay those and make
25 sure that she had the homeowners insurance and



1 that she had liability insurance for her
2 automobile.

3 Q: Okay. And who took care of paying the taxes on
4 those properties?

5 A: Mikell Scarborough did.

6 Q: How about taxes on the other real estate in
7 which she held in interest?

8 A: Mikell Scarborough did as far I know.

9 Q: Okay. To your knowledge did anything become
10 delinquent under his management?

11 A: No, not that I know of. I think there was some
12 issues with either my mother's name not being
13 listed on some properties, and -- but the taxes
14 were paid by the other owners, I think. And I
15 don't know if that was either the Hutchinson
16 Island property, or it may have been Dungannon
17 as well.

18 Q: Okay. Why do you think your cousin drafted this
19 codicil?

20 A: I have no idea.

21 Q: Well, you say in ---

22 A: Right.

23 Q: --- your pleadings that you're informed and
24 believe he drafted it which named him as
25 fiduciary and devised ---



1 A: I assume it's because he wanted to have the
2 house, and he wanted to have the adjacent lot,
3 and he wanted to be in charge of her estate.

4 Q: But what evidence do you have that he drafted
5 it?

6 A: I don't have any.

7 Q: Okay. Mr. Henderson, in your second cause of
8 action, you're seeking to overturn this codicil
9 on the claim that your mom was susceptible to
10 undue influence exercised upon her by Mr.
11 Scarborough.

12 A: Yes, ma'am.

13 Q: What is the basis of that allegation?

14 A: The basis of that? Well, she and Mikell had a
15 very close confidential relationship. She -- he
16 was her trusted financial advisor to her and
17 family member. He had assisted with her
18 finances and managing her assets since 1991.

19 Q: But what specific acts of influence did he
20 exercise that overcame her free will?

21 A: When -- whenever my mother wanted to do
22 something that Mikell did not want her to, he
23 would -- and he told me, he would usually direct
24 her away from it and get her to see his point of
25 view and he would direct her around it so that



1 she would do what he felt was the best thing to
2 do.

3 Q: Well you heard his testimony yesterday that he
4 tried to convince your mom not to have this
5 codicil exercised?

6 A: Yes, ma'am.

7 Q: Do you believe -- do you believe that that's
8 true?

9 A: I have no idea.

10 Q: Your mom never had any conversations with you
11 about the procurement of the document?

12 A: No, and neither did Mikell Scarborough.

13 Q: You allege in your petition that he coerced her
14 to sign it, the codicil. What evidence do you
15 have that supports that allegation?

16 A: The statements my mother had made to me about
17 the house prior to October of 2012 about leaving
18 the house to me and certainly afterwards.

19 Q: What about the statements of leaving the house
20 to Ross and to John?

21 A: She may have made those statements to -- about
22 Ross and John too.

23 Q: So wouldn't that indicate that she wanted to
24 favor Ross and John over you and your wife?

25 A: I think my mother had a favorite -- had a favor



1 for her children as opposed to her nieces and
2 nephews. I think the priority for her was
3 providing for her descend- -- her direct
4 descendants as opposed to her nieces and
5 nephews.

6 Q: Well, let's look at that cod- ---

7 A: And that matches the discussions I had with her
8 over the years.

9 Q: Okay. Let's look at the codicil ---

10 A: Okay.

11 Q: --- which is -- may I look at the exhibit
12 number. Excuse me just ---

13 A: Yeah. It's Exhibit 5.

14 Q: Thank you. Exhibit 5. Give me a second and let
15 me find my copy. All right. Looking at page
16 one. Would you read that part that starts, I
17 Mary Ross Hanahan, all the way through to the
18 word me?

19 A: "A resident and domiciled in the County of
20 Charleston, State of South Carolina, knowing the
21 uncertainties of life and the certainties of
22 death, and being of sound and disposing mind and
23 memory, due hereby make, publish, and declare
24 this to be a first codicil to my Last Will and
25 Testament, heretofore made by me."



1 Q: Okay. Does that language sound familiar to you
2 at all, Mr. Henderson?

3 A: I've seen it in similar wills that I've
4 observed.

5 Q: Well if you look at Respondent's Exhibit 1, your
6 mom's will. What does that first paragraph say?

7 A: It appears to be virtually the sa- -- it's very
8 similar language.

9 Q: Okay.

10 A: Knowing that uncertainties of life and being --
11 certainties of death, and being of sound of
12 mind. Those phrases are transposed in this, but
13 other than that, it's very similar. So it
14 appears to be boiler plate language.

15 Q: You heard Ms. O'Neale's testimony yesterday that
16 in her presence your mom had reviewed the will?

17 A: Yes, ma'am

18 Q: Do you have any reason to doubt Ms. O'Neale's
19 veracity?

20 A: Yes.

21 Q: Why do you have reason to doubt her veracity?

22 A: My mother would not read a docu- -- a legal
23 document you put in front of her for a number of
24 years.

25 Q: Well, we don't know who prepared this document.



- 1 Correct?
- 2 A: No. No.
- 3 Q: Okay. We don't know who she would've consulted.
- 4 Correct?
- 5 A: No.
- 6 Q: You don't know of an attorney she would've gone
- 7 to other than people you've already expressed in
- 8 your testimony?
- 9 A: Or the ones Mikell Scarborough says he referred
- 10 her to, yes.
- 11 Q: Did Mikell Scarborough relate to you the names
- 12 of any attorneys he provided to your mom?
- 13 A: No. After repeated requests, he never provided
- 14 those.
- 15 Q: And then looking at the second page of the
- 16 codicil, at the bottom. And it starts out: "I,
- 17 MARY ROSS HANAHAN, the TESTATOR, sign my name,"
- 18 will you read ---
- 19 A: Yes, ma'am.
- 20 Q: --- that again into the record please?
- 21 A: "I, MARY ROSS HANAHAN, the TESTATOR, sign my
- 22 name to this instrument this 19th day of October
- 23 2012 and, being first duly sworn, do hereby
- 24 declare to the undersigned authority that I sign
- 25 and execute this instrument as FIRST CODICIL to



1 my Last Will and Testament and that I sign it
2 willingly, that I execute it as my free and
3 voluntary act for the purposes therein
4 expressed, and that I am eighteen years of age
5 or older, of sound mind, and under no constraint
6 or undue influence."

7 Q: Your mom -- excuse me. Your mom signed
8 underneath that ---

9 A: Yes, ma'am.

10 Q: --- paragraph. Did she not?

11 A: Yes, ma'am.

12 Q: Do you have any reason to doubt that she
13 reviewed that part of the codicil?

14 A: Yes.

15 Q: Why do you doubt that?

16 A: Because she wouldn't read a legal document that
17 you presented to her. She would ask you what it
18 contained.

19 Q: All right.

20 A: She would've asked me if I was there. She
21 would've asked Mikell Scarborough if he was
22 there. He would've -- she would've asked my
23 wife if she was there. She would ask my father
24 if he was there. What is -- what am I signing.

25 Q: Okay. Looking at item three ---



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1 A: Yes, ma'am.

2 Q: --- where she names your cousin as the primary
3 personal representative.

4 A: Yes, ma'am.

5 Q: And this was a role that you were nominated in
6 under the original will?

7 A: Yes, ma'am.

8 Q: You're not forgotten in this provision, are you,
9 Mr. Henderson?

10 A: No, ma'am. Not according to this.

11 Q: Okay. Where's your name appear?

12 A: My name appears in the second part of that
13 paragraph.

14 Q: If this codicil simply changed the personal
15 representatives of your mom's estate, would you
16 be challenging this codicil?

17 A: I would if it hadn't been brought to my
18 attention by Mikell Scarborough and he had for
19 two -- for that period of time.

20 Q: So your testimony is, if all this codicil did
21 was name Mikell first as personal representative

22 ---

23 A: I ---

24 Q: --- may I finish my question?

25 A: --- okay. Yeah, yeah. Absolutely.



1 Q: And you second, would you be challenging this
2 document?

3 A: I can't answer your question.

4 Q: I need an answer from you, Mr. Henderson.

5 A: I cannot answer that question. I can't answer
6 the question because I don't know that if this
7 just changed her personal representative, had I
8 asked Mikell Scarborough about the facts and
9 circumstances of it, would he have -- if he had
10 done the same thing that he did afterwards, if
11 he had one, not told me for two years, and two,
12 given inconsistence response for four months
13 after, six months after her death, yes. If he
14 had said something immediately, probably not.
15 If he had said, your mother wanted to change the
16 personal representative from me to you, we've
17 done that, probably wouldn't have.

18 Q: If this codicil would've left him the car and
19 changed nothing else, would you be challenging
20 this document?

21 A: No, ma'am. She always said that that's the one
22 thing that she wanted him to have.

23 Q: If this document left the house and lot to Ross
24 and John and made no other changes, would you be
25 challenging the document?



1 A: I would be happy that brother and my brother-in-
2 law got that house.

3 Q: You wouldn't doubt her capacity if that was the
4 situation. Is that right, Mr. Henderson? Is
5 that your testimony?

6 A: No. It's not my testimony.

7 Q: All right. Your third cause of action is to try
8 title to real estate relative to the MRH Family
9 LLC?

10 A: Yes, ma'am.

11 Q: And you're alleging your mom lacked capacity to
12 understand it?

13 A: Yes, ma'am.

14 Q: Okay. You're aware there's a deed in which she
15 signed to transfer property to this LLC?

16 A: Yes, ma'am.

17 Q: At the same time that she was signing a deed
18 relative to properties for the LLC, did she also
19 sign another deed?

20 A: I believe the one providing the lots to my
21 brother that were a part of that 1998 last will
22 and testimony.

23 Q: Okay. Let's get this marked. This will be
24 Number 11, I believe?

25 (Respondent's Exhibit Number 11 was marked for



1 identification purposes.)

2 Q: All right. Mr. Henderson, for the record would
3 you read the -- actually, what is the title of
4 this particular document.

5 A: The document has a label, Title to Real Estate.

6 Q: Okay. And we'll -- I'll refer to it as a deed
7 for purposes of the deposition. Who is the
8 grantor, the maker of this document?

9 A: Mary Ross Hanahan.

10 Q: And she's formally known as what?

11 A: Mary Ross Hanahan Henderson.

12 Q: And that's your mom. Right?

13 A: Yes, ma'am.

14 Q: Who's the grantee, the recipient of this
15 property?

16 A: Jay Ross Henderson.

17 Q: And that's your brother. Right?

18 A: Yes, ma'am.

19 Q: And in looking at, kind of in the middle of that
20 page, where it says for the legal description.

21 A: Yes.

22 Q: See attached Exhibit A. Can you flip through a
23 couple pages, go page three? And you see tract
24 one?

25 A: Yes, ma'am.



1 Q: And it says -- what does it say? Just -- you
2 can summarize.

3 A: Oh, it's her half interest in a tract of land
4 that she owns at Moffet Hill Plantation. And I
5 believe she owned that in -- her half interest
6 along with her sister, Frances Henderson --
7 Frances Hanahan. I'm sorry.

8 Q: All right. And what's tract number two?

9 A: It is a half interest in another tract of land
10 at Moffet Hill Plantation that she owned with
11 her sister, Frances Hanahan.

12 Q: All right. And go back to page one. What's the
13 date of the deed?

14 A: December 30th of 2012.

15 Q: And on the second page, is that your mom's
16 signature?

17 A: Yes. It appears to be, yes.

18 Q: Okay. And who are the witnesses to the deed?

19 A: Joseph Howard Yates, Jr, and H. Christopher
20 Moss.

21 Q: Who is Mr. Yates?

22 A: I believe Mr. Yates is an attorney in the
23 Charleston area that Mikell Scarborough has used
24 on a number of family matters with regard to
25 deeds or titles of this type.



- 1 Q: Okay. And who's Mr. Moss?
- 2 A: He is a certified public accountant.
- 3 Q: Is he also an attorney?
- 4 A: Not in the state of South Carolina.
- 5 Q: Is he an attorney elsewhere?
- 6 A: He is in, I think, District of Columbia or
- 7 Virginia, he has a license to practice there.
- 8 Q: Okay. Would you go back to the document,
- 9 please, sir?
- 10 A: Yeah. Uh-huh.
- 11 Q: All right. In the probate section, who's the
- 12 notary?
- 13 A: The notary is Joseph H. Yates, Jr.
- 14 Q: And who's signature is he notarizing?
- 15 A: He is -- my mother's signature, Mary Ross
- 16 Hanahan.
- 17 Q: Well, who's on the line across from Mr. ---
- 18 A: Christopher Moss. I'm sorry.
- 19 Q: Okay. So he's notarizing the second witness to
- 20 the doc -- to the deed. Is that correct?
- 21 A: Yes, ma'am.
- 22 Q: Okay. Do you have any reason to doubt that your
- 23 mom signed before these gentlemen?
- 24 A: No, ma'am.
- 25 Q: Do you have any reason to doubt that it was



- 1 signed on December 30th, 2012?
- 2 A: No, ma'am.
- 3 Q: Do you know who prepared this?
- 4 A: No, ma'am. Never saw the document until this
- 5 litigation.
- 6 Q: Okay. And with regard to what would be page
- 7 five of the document. Paragraph number three.
- 8 A: It says the Affidavit for Taxable or Exempt
- 9 Transfers?
- 10 Q: Yes. I'm sorry, that would be it.
- 11 A: I'm sorry, I just -- it wasn't numbered.
- 12 Q: That's okay.
- 13 A: Okay.
- 14 Q: It is page five ---
- 15 A: Yeah.
- 16 Q: --- but it starts out affidavit. Under 3C, what
- 17 is marked?
- 18 A: Exempt from the deed recording fee because gift
- 19 number one.
- 20 Q: Okay. What was the value of these two pieces of
- 21 property when your mom gifted them to your
- 22 brother in December of 2012?
- 23 A: I do not know. I have no idea what the value of
- 24 those properties was.
- 25 Q: And you see on the very last page, the recording



1 page?

2 A: Yes, ma'am.

3 Q: Recorder's page. What was the date of the
4 recording?

5 A: December 31st, 2012 at 2:44 p.m.

6 Q: Okay. And what's the book and page number?

7 A: Book 0300 page 993.

8 Q: Did these two properties correlate to the two
9 properties in the 1998 last will and testament?

10 A: I believe they did.

11 Q: Are you challenging these deeds in any manner
12 Mr. Henderson? That this deed -- excuse me.
13 This deed in any manner?

14 A: No, ma'am.

15 Q: Why not?

16 A: Because in 1998, my mother at least wanted to
17 give those to him, to my brother.

18 Q: But do ---

19 A: I don't know why I would challenger her wanting
20 to give it to him in 2012.

21 Q: Does your brother still own these two parcels to
22 your knowledge?

23 A: To my knowledge, yes.

24 Q: Okay. Did you ever talk to him about this gift
25 from your mom of these properties?



1 A: I have, yes.

2 Q: All right. What's been your conversation with
3 your brother?

4 A: His dealings with Fran as the other owner, his
5 desire to sell the property at times, and -- or
6 hold onto it and pay the taxes.

7 Q: Is anybody living there? Is it occupied?

8 A: No, no, no. There's -- I don't believe there's
9 any residence, or buildings, or pertinences on
10 the -- on the properties. He's been there, I
11 have not.

12 Q: Is he trying to sell it and Frances Hanahan's
13 objecting, or do you know?

14 A: I don't know. He's just expressed interest
15 about trying to sell ---

16 Q: Okay.

17 A: --- and I think some of it had to do with the
18 environmental litigation with PCS Nitrogen and
19 Ross Development, that my brother wanted to try
20 and sell it for that purpose.

21 Q: Did he have to sell his interest in order to
22 raise money to pay off that judgement?

23 A: I -- I -- it certainly would've helped him, I
24 think. But I don't know what my brother's full
25 financial. I don't ask him what his monthly



1 financial situation is.

2 Q: How much did you have to pay toward the PCS
3 litigation?

4 A: I think it was \$21,500, and I believe my brother
5 had about the same.

6 Q: How did you raise the money?

7 A: I took a loan from my father.

8 Q: Is there any interest being charged on that?

9 A: No.

10 Q: When is it due back -- to be paid back, excuse
11 me.

12 A: When my father tells he wants it back.

13 Q: It's an open ended note?

14 A: Yes, ma'am. It's not a note, it's -- I'm going
15 to provide you the money and if I need it back,
16 you pay it back.

17 Q: So there's not written note to document the
18 loan?

19 A: No, ma'am. No.

20 Q: Do you owe any other monies toward the PCS
21 litigation in regard to attorney's fees or
22 anything of that ---

23 A: Yes, ma'am. I do.

24 Q: --- nature?

25 A: I do.



1 Q: What do you owe on the attorney's fees?

2 A: That I'm not sure. I know recently I paid some
3 money towards that, but it's probably several
4 thousand dollars. I mean, it's certainly less
5 -- I believe it's less than five thousand, it's
6 more than one thousand.

7 Q: Do you know, did your mom have a liability
8 related to the PCS litigation?

9 A: Yes.

10 Q: How much was her liability?

11 A: I want to say her full liability was \$368,000,
12 and the only reason why I know that is the
13 attorneys had sent a sheet listing the
14 shareholder liability for each family member.
15 And then when they were discussing the potential
16 settlement, it was based on those percentages.
17 So that's the only reason why I knew how much
18 mine was, I think, and -- or what my full
19 liability was and what my mother's was, and my
20 brother's as well.

21 Q: Right. Now remind me, I'm sorry, was the
22 litigation ongoing before your mom died ---

23 A: Oh, yes.

24 Q: --- in October ---

25 A: Absolutely. Yes.



1 Q: --- of 2014? And then, so her estate has had to
2 pick up any expense. Is that right?

3 A: Yes, I believe.

4 Q: Okay. Do you know how much the estate has paid
5 on her behalf?

6 A: No.

7 Q: Have you asked your cousin?

8 A: No.

9 Q: With regard to the deed into your brother, do
10 you know if Mikell Scarborough was present when
11 this was executed?

12 A: No, ma'am. I have no idea if he was present.

13 Q: Well did you hear his testimony yesterday that
14 he was not present?

15 A: Yes, I did. I heard him say that.

16 Q: Do you have ---

17 A: But prior to that I have no ---

18 Q: --- any reason to doubt ---

19 A: No. I have no reason to doubt that he claims
20 that he wasn't there.

21 Q: Okay. Mr. Henderson, you mentioned you had a
22 power of attorney given to you by your mom. Is
23 that correct?

24 A: Yes, ma'am.

25 Q: Okay. Let me get this marked as Number 12.



1 (Respondent's Exhibit Number 12 was marked for
2 identification purposes.)

3 Q: All right. When was that General Power of
4 Attorney, which has now been marked as Exhibit
5 12, signed by your mother?

6 A: November 2nd of 1998.

7 Q: So the same date as the will. Is that right?

8 A: Yes, ma'am.

9 Q: And who does she appoint as her agent?

10 A: She appoints me.

11 Q: Anybody else?

12 A: I do not see anyone listed.

13 Q: Okay. Looking at the signature page, can you
14 tell me who are the witnesses to this document?

15 A: Yvonne Mattson and Marsha Gunn, or Ginn.

16 Q: Ginn. And is there a third witness?

17 A: There is, Demal Mattson is the notary on it.
18 There's a last one and it's Demal Mattson, I
19 believe that's his signature as well, yes.

20 Q: Okay. Did you -- did your mom provide you this
21 document at some point? I believe you testified
22 she did, but I wasn't clear on the date.

23 A: I believe it was around 2001. She wanted to
24 make sure that I had her documents.

25 Q: Was it ever recorded?



1 A: No, ma'am. I wasn't aware it needed to be
2 recorded.

3 Q: Who had the original?

4 A: I had the original.

5 Q: So were you acting under this general power of
6 attorney whenever you took over her bill paying?

7 A: Yes, ma'am. I would -- if there was a need for
8 -- if I had to inquire, let's say, with AT&T
9 about her phone service, there being a problem,
10 they would frequently ask, you know, we need to
11 speak to her. Well, my mom wouldn't speak to
12 them. So if I needed to get the problems -- you
13 know, I said I have her general power attorney.
14 They would ask for a copy of it. So I would
15 either scan it or fax it and send it to them.

16 Q: Okay.

17 A: Same thing with the hospitals and the rehab hos-
18 -- centers, things like that.

19 Q: Did you ever have any problems in utilizing this
20 power of attorney at any point from when you
21 received it to 2012?

22 A: I don't believe so, no.

23 Q: When was your first conversation with Chris
24 Moss?

25 A: I think it was in November of 2012.



1 Q: Can you be a little more specific as to the
2 date?

3 A: No, ma'am. I don't recall the exact date.

4 Q: Okay. And who initiated that call?

5 A: I don't recall who initiated the call. I -- if
6 I had contact with him, it probably would've
7 been arranged with Mikell Scarborough.

8 Q: And what would've been the purpose of talking to
9 Mr. Christopher Moss?

10 A: To do the estate planning for the creating this
11 LLC.

12 Q: Okay. What was the need for the LLC?

13 A: I -- the explanation I got was to take
14 advantages of the Bush era tax -- inheritance
15 tax limit, moving from five million dollars down
16 to one million dollars. And that expiring on
17 the 31st of 2012, December 2012.

18 Q: And who related that information to you? Was it
19 Mr. Moss or was it your cousin?

20 A: Both of them.

21 Q: Did you check that out independently?

22 A: No, ma'am.

23 Q: Did you find that to be correct? That the tax
24 exemption amount was actually going to decline

25 ---



- 1 A: Yes, ma'am.
- 2 Q: --- after January 1 ---
- 3 A: Yes, ma'am.
- 4 Q: --- of 2013?
- 5 A: Yes.
- 6 Q: What did you think needed to be done to protect
7 and safeguard your mom's estate?
- 8 A: I was -- to safeguard and protect it. You know,
9 it could've been either anything from leaving it
10 the way it was or trying to do things to
11 mitigate the potential taxes that the estate
12 might have, depending on how long she lived.
- 13 Q: How could the taxes be mitigated?
- 14 A: That I wasn't sure. That's why I consulted with
15 Mr. Moss when he offered to provide some
16 explanation. I'm not a tax attorney and I'm not
17 an accountant.
- 18 Q: What did Mr. Moss relate to you?
- 19 A: That the LLC would -- the ownership interest in
20 it would provide a vehicle for protection of the
21 assets in it from the -- from inheritance tax.
- 22 Q: And tell me about who was engaged in the initial
23 conversation with you and Mr. Moss. Was it just
24 the two of y'all on the phone or did you
25 conference in Mikell Scarborough?



1 A: I don't recall if Mikell Scarborough was
2 conferenced in or not.

3 Q: Okay.

4 A: He may have been, but I don't recall that.

5 Q: Between the November date, which we're not sure
6 of the exact date.

7 A: Yes.

8 Q: Trough December 31st of 2012, how many times did
9 you communicate on the phone with Chris Moss?

10 A: I don't know if it was two, three times maybe.

11 Q: Okay. How about via email? Did you have
12 communications with him via email?

13 A: Yes. I think he called me on December 5th,
14 either he or Mikell Scarborough, and it was
15 regarding the general power of attorney. And
16 there was discussions about that. And then, I
17 think, one of the emails that was provided
18 yesterday, had some information about the --
19 confirming that I had talked to my mother about
20 this LLC and that based on what she had been
21 told, she wanted to go forward with it.

22 MS. BROCKINGTON: All right. Let me have this
23 marked. This will be Number?

24 COURT REPORTER: 13.

25 MS. BROCKINGTON: Okay.



1 (Respondent's Exhibit Number 13 was marked for
2 identification purposes.)

3 Q: All right. Mr. Henderson, you have in your hand
4 what we have marked as Respondent's Exhibit
5 Number 13, an email dated December 5th, 2012.
6 And it is from you to
7 cmos@infinitepartnerships.com and Mikell
8 Scarborough. Is that right?

9 A: Yes, ma'am. It's copied to Mikell Scarborough,
10 yes.

11 Q: And it's talking about the general power of
12 attorney for your mom. Right?

13 A: Yes, ma'am.

14 Q: Okay. All right. In this email, you're
15 thanking Chris for talking to you that
16 afternoon. So that would've been Wednesday,
17 December 5th.

18 A: Yes, ma'am.

19 Q: And you had sent to him a copy of the general
20 POA. Is that right?

21 A: Yes, ma'am. The Exhibit 12, or what's marked
22 Respondent's 12.

23 Q: Yes, thank you. And what communication did you
24 get back from Mr. Moss relative to that power of
25 attorney?



1 A: I don't believe he responded back to me at all.

2 Q: All right. Well what about the next statement?
3 You say, I left a message for Mikell Scarborough
4 to contact me back regarding a durable or
5 limited POA for me to sign allowing him to
6 handle the deeds and matters associated with the
7 LLC.

8 A: Yes. Mikell Scarborough had talked to me and
9 indicated he was not sure whether the general
10 power of attorney was sufficient. And then,
11 that there may be a need for a power of attorney
12 for the purpose of handling the deeds.

13 Q: Okay. And would you read into the record that
14 next short paragraph please?

15 A: "I just spoke to my mother on the phone as well.
16 I went over the details of what you and I
17 discussed. She stated she wanted to go ahead
18 with creating the LLC and that she would agree
19 to me or her signing a limited or durable power
20 of attorney for Mikell Scarborough to take care
21 of the deeds to her properties."

22 Q: All right. Tell me about that conversation with
23 your mom.

24 A: I asked her if she had met with Chris Moss, and
25 she indicated that she had, and Mikell



1 Scarborough. I indicated if she -- I asked her
2 if she understood based on what Chris Moss had
3 told me, that creating the LLC would limit the
4 potential inheritance tax, and limit the
5 inheritance tax certainly for her estate
6 depending on what properties were put in it.

7 Q: And did your mom confirm that that was her
8 understanding as well?

9 A: Yes, she did. We didn't discuss the -- she
10 didn't mention, and I certainly wasn't going to
11 mention ownership interest or anything like that
12 with her because she was contributing all of the
13 property to create an LLC. So, no, nothing
14 else.

15 Q: All right. How was the ownership interest
16 determined in the LLC?

17 A: Well, according to what Mikell Scarborough said
18 yesterday, Chris Moss or my mother came up with
19 it.

20 Q: Do you have reason to doubt that?

21 A: I -- no, if that's what he says.

22 Q: All right. What input did you have, Mr.
23 Henderson?

24 A: I don't believe I had any other than approving
25 what was sent.



1 Q: Well, what is the percentage of ownership you
2 have?

3 A: I have 68 percent ownership, my mother had 2
4 percent, and Mikell Scarborough had 30 percent.

5 Q: And it's your testimony that you had no input
6 whatsoever into that 68 percent ---

7 A: I didn't come up ---

8 Q: --- determination?

9 A: I didn't come up with that calculation, no.

10 Q: When did you first hear of that calculation?

11 A: December 30th of 2012, when he emailed it with
12 operating agreement that Chris Moss sent.

13 Q: Did you question it?

14 A: I did.

15 Q: Who did you talk to about it?

16 A: I talked to Mikell Scarborough about my mother
17 having a two percent interest in a LLC that she
18 was contributing 100 percent of assets to, and
19 questioning how she was going to live off of 2
20 percent.

21 Q: What was his response?

22 A: All the proceeds, and profits, and revenues from
23 the LLC would go toward her care and
24 maintenance.

25 Q: Was that agreeable to you?



- 1 A: I -- as long as my mother was provided for, I
2 was -- that was my primary concern.
- 3 Q: Okay. And who received the other thirty
4 percent?
- 5 A: Mikell Scarborough did.
- 6 Q: Individually or through some other means?
- 7 A: Through the MRSMIE LLC, of which he was the sole
8 owner at the time.
- 9 Q: Did that surprise you?
- 10 A: That he was the sole owner?
- 11 Q: No, sir. That he was receiving 30 percent?
- 12 A: Yes.
- 13 Q: Did you make any comments to him about it or
14 express any concerns?
- 15 A: No, ma'am.
- 16 Q: Why not?
- 17 A: At the time I was not sure what my mother's
18 intentions were with regards to his 30 percent.
19 You know, based on assumptions, if she wanted to
20 provide something for him besides the car, I
21 didn't know. And it was -- what time was this,
22 3:30 on December 5th -- or no, I'm sorry. When
23 the operating agreement came, it was on December
24 30th, and I think the conditions for the --
25 creating the LLC expired the next night at



1 midnight.

2 Q: All right. So let me make sure I understand
3 your testimony. On December 5th, you talked to
4 your mom about the creation of the LLC.

5 A: Yes, ma'am.

6 Q: Is that right?

7 A: Yes, ma'am.

8 Q: And she confirms that's what she wants to do.
9 Correct?

10 A: Yes, ma'am. She said based on her conversations
11 with Mikell Scarborough, that's what she wanted
12 to do.

13 Q: And that was because of the tax exemption
14 changing and dropping. Is that right?

15 A: Yes, ma'am.

16 Q: You did not discuss with her what properties
17 were going into the LLC?

18 A: No, ma'am.

19 Q: Okay. Did you discuss who would be drafting the
20 documents with her?

21 A: No, ma'am.

22 Q: What did you see your role as at this point, on
23 December 5th?

24 A: My role was almost the same as her last will and
25 testament. I was a beneficiary of whatever she



1 was going to be doing potentially. If --
2 depending on what ownership interest I had.

3 Q: And you were going to inherit the two percent
4 that she retained. Is that right?

5 A: Found out, yes. Yeah, at the time, but that
6 didn't occur to me.

7 Q: I'm sorry. What did not occur to you?

8 A: It didn't occur to me at the time it was created
9 that I would end up inheriting her two percent.

10 Q: Where did you think it would ---

11 A: I just never thought about that.

12 Q: --- go?

13 A: I didn't think about where it would go.

14 Q: Okay.

15 A: I didn't.

16 Q: But you were clearly the sole beneficiary of the
17 68 percent. Right?

18 A: Yes, in creating the LLC.

19 Q: Okay. Your wife is not involved?

20 A: No, ma'am.

21 Q: Your children are not involved, they're minors
22 of course, but they're not involved.

23 A: Yes. No, no.

24 Q: Okay. All right. Let's look at -- back to
25 number thirteen. The next paragraph, you're



1 talking about if you and Mikell Scarborough
2 speak, you'll try to cover additional details of
3 a name for the LLC.

4 A: Yes, ma'am.

5 Q: Why were you tasked with coming up with a name?

6 A: He had asked me what kind of a name we wanted to
7 have for it, because he had several other LLCs
8 or been involved with several other family LLCs.

9 Q: And that was Mikell Scarborough who was saying
10 to you, Mike, we need to come up with a name?

11 A: Yes.

12 Q: Okay. Who did come up with that name?

13 A: I believe he did.

14 Q: All right. And making sure he can get the
15 durable or limited POA as soon as possible. So
16 you were aware that there was a need for a
17 second power of attorney. Is that right, Mr.
18 Henderson?

19 A: No, that was the same one that's referred to in
20 the first paragraph.

21 Q: Okay.

22 A: And then it goes on to talk about the course of
23 action would help save both myself, and
24 potentially my brother an amount well in excess
25 of Mr. Moss's fee.



1 Q: What was the fee Mr. Moss was going to charge?

2 A: I don't recall what the fee was. At the time,
3 I believe if the LLC was going to be created my
4 brother would've had a ownership interest.

5 Q: What led you to think that?

6 A: My discussions with Mikell Scarborough.

7 Q: How about discussions with your mom?

8 A: I had not discussed it with my mom yet. I
9 didn't discuss it with her.

10 Q: Did it surprise you when the operating agreement
11 was provided to you that Ross was not included?

12 A: I believe between December 5th and whenever I
13 received the operating agreement on the 30th,
14 Mikell Scarborough made clear to me my mother
15 did not want to give my brother any interest, is
16 what he told me.

17 Q: Did you understand her reluctance to do that?

18 A: Yes. I didn't respect it, but I understood it.

19 Q: Why did she not include Ross, to your knowledge?

20 A: You'd have to ask her. I don't ---

21 Q: I can't ask her.

22 A: --- I -- well I can't ---

23 Q: Mr. Henderson, I'm asking you.

24 A: --- neither can I. There's a lot of things I'd
25 liked to ask her now.



1 Q: You didn't talk to her about including Ross or
2 not including Ross?

3 A: I, at some point, yes. I told her before this
4 that if we were going to make an estate change,
5 that she should include my brother.

6 Q: And what was her response to that?

7 A: No response. She didn't talk to me about that.
8 She wouldn't respond to it.

9 Q: Well, when you saw the operating agreement on
10 Oc- -- excuse me, on December 30th of 2012, did
11 you call your mom?

12 A: I don't believe I did, no.

13 Q: So you didn't talk to her about your 68 percent
14 interest and the fact Ross was not included?

15 A: No, because Mikell Scarborough had already told
16 me that my mother did not want my brother to
17 have any interest whatsoever and that all she
18 wanted to do was give him those two pieces of
19 property.

20 Q: Did you feel that there was a need to verify
21 this separately and independently from talking
22 to Mikell Scarborough?

23 A: No.

24 Q: Okay. Excuse me a second.

25 A: That's okay.



1 Q: Who selected the real estate to go in the LLC?

2 A: I don't know.

3 Q: Did you make any suggestions regarding it?

4 A: I don't believe I did, no.

5 Q: So your testimony is you didn't suggest to your
6 cousin or Chris Moss, hey, certain properties
7 need to go into the LLC or not go in the LLC?

8 A: I -- no, I don't believe I made any. I don't
9 recall ever making a suggestion about which
10 properties should or shouldn't go in there.

11 Q: Okay. All right, Mr. Henderson, I'll have this
12 marked as Exhibit 14.

13 (Respondent's Exhibit Number 14 was marked for
14 identification purposes.)

15 Q: Do you recognize this Durable Power of Attorney?

16 A: Yes, ma'am. I do.

17 Q: All right. Who is the grantor -- or excuse me,
18 the principal in this power of attorney?

19 A: Mary Ross Hanahan, my mother.

20 Q: Okay. And who is the agent that's named?

21 A: Mikell R. Scarborough.

22 Q: Anybody else?

23 A: No, ma'am.

24 Q: And what was the purpose of this power of
25 attorney?



1 A: I couldn't tell you what the purpose of it was.
2 I didn't have anything to do with drafting it --
3 -
4 Q: Okay.
5 A: --- or executing it.
6 Q: Let's look at page two. What day was it signed?
7 A: December 6th of 2012.
8 Q: Is that your mom's signature?
9 A: Yes, ma'am.
10 Q: No doubt about it?
11 A: I don't have any reason to doubt that one.
12 Q: Okay. And look at page three.
13 A: Yes.
14 Q: Who are the witnesses?
15 A: Christopher Moss and I cannot make out the name,
16 Preeanne or Brianne.
17 Q: Okay. Have you talked with Christopher Moss
18 about this power of attorney?
19 A: No. Christopher Moss has not returned any calls
20 I've made to him.
21 Q: Okay. How about the second witness, did you try
22 to get hold of the witness/notary on this
23 document?
24 A: She's not the notary, Chris Moss is the notary,
25 but I -- the second witness I did not try to get



1 in touch with. Oh, I'm sorry.

2 Q: I'm sorry I have to clarify for you.

3 A: No, she's -- no, you're correct. She is the
4 notary. Miss -- is it Brianne or Preeanne? No.
5 I did not try to get in touch with her.

6 Q: Do you know how she pronounces --- go off the
7 record a second.

8 (Off the record discussion.)

9 A: No, I did not try and contact Ms Perranoe.

10 Q: Okay. And what was -- looking at the last page,
11 the recorders page.

12 A: Uh-huh.

13 Q: Does it state it was recorded December 6th of
14 2012?

15 A: Yes, ma'am.

16 Q: Okay. And what was the time?

17 A: 12:28 p.m.

18 Q: And it was returned back to your cousin, right?

19 A: It was filed by my cousin and received by him.
20 By Mikell Scarborough.

21 Q: Yes, sir. Did your mom end up -- well, hang on
22 a second, let me get this one marked. This will
23 be Exhibit 15.

24 (Respondent's Exhibit Number 15 was marked for
25 identification purposes.)



1 Q: All right, Mr. Henderson, looking at the MRH
2 Family LLC Operating Agreement.

3 A: Yes, ma'am.

4 Q: Okay. Is this in fact the operating agreement
5 that you received December 30th of 2012?

6 A: No, ma'am. It is not.

7 Q: It is not?

8 A: It is not.

9 Q: What is different about it?

10 A: There's a page five missing. There were two
11 page number fives to the document that I had.
12 Duplicates, almost identical except for the
13 tenure and qualifications under 5.1(a) were
14 different.

15 Q: And what was -- what are the differences?

16 A: I believe it says that, the partnership elects
17 manager, MRSMIE LLC to help and assist the
18 management of the partner for a term of two or
19 three years. It may have been -- it was two or
20 three. And the copy I sent back to Chris Moss
21 had -- I had initialed every page above the page
22 numbers.

23 Q: Okay.

24 A: So this is not the one I sent in, no. It's a
25 copy of the last page.



1 Q: It's -- is the last page correct?

2 A: Yes, ma'am. I did sign it.

3 Q: Okay.

4 A: Yes.

5 Q: All right. Can we go off the record please.

6 (Off the Record)

7 (Respondent's Exhibit Number 16 was marked for
8 identification purposes.)

9 Q: Mr. Henderson, we're back on the record.

10 A: Yes, ma'am.

11 Q: All right. What I'm handing you, or what you're
12 looking at is Respondent's Exhibit Number 16 and
13 it is the MRH Family LLC Operating Agreement.
14 At the top is a handwritten notation, December
15 the 30th of 2012. Is that your writing, sir?

16 A: Yes, ma'am, that is.

17 Q: Okay. And looking through each of the pages,
18 are those your initials on each and every page?

19 A: Yes, ma'am.

20 Q: Okay. Is this the same document that was sent
21 to you by Chris Moss?

22 A: Yes, ma'am.

23 Q: And it was sent to you December 30th, is that
24 Right?

25 A: Yes, ma'am.



1 Q: Okay.

2 A: And Mr. Moss asked me to sign the last page and
3 return it to him, but I signed every page and
4 returned the entire document to him.

5 Q: And when did you return it to him? Do you
6 recall what time?

7 A: It would've been -- it was either on the 30th or
8 the 31st. I forget.

9 Q: Did you read over the document, Mr. Henderson?

10 A: I looked at it, yes, I did.

11 Q: Did you have any questions about the document?

12 A: I noted that there were duplicate page fives at
13 the time, but other than that, no, I didn't have
14 any questions.

15 Q: Okay. And you were testifying just a moment ago
16 with regard to the two page fives. Looking at
17 the first page five, under the management
18 section.

19 A: Yes, ma'am.

20 Q: What is the tenure -- or excuse me, 5.1(a) term
21 -- tenure and qualifications, what is the
22 management period initially?

23 A: Five years and it says that removal -- under
24 (b), it says removal can be removed any time
25 after the expiration of five years by a majority



1 vote.

2 Q: And who was the manager at that point?

3 A: MRSMIE LLC.

4 Q: And that was run by your cousin Mikell, is that
5 right?

6 A: At the time he was sole owner of the MRSMIE LLC.

7 Q: All right. And with regard to the second page
8 five. What does the 5.1(a) section ---

9 A: It has a ---

10 Q: --- support?

11 A: --- two year management period for MRSMIE LLC
12 and that they can be removed any time after the
13 expiration of two years by a majority vote of
14 members.

15 Q: All right. Did you consult with Mikell
16 Scarborough about this discrepancy in the
17 document?

18 A: No, ma'am.

19 Q: Why not?

20 A: Just didn't. There wasn't a particular reason.

21 Q: Well did it concern you if there was a two year
22 window of management verses a five year window
23 of management?

24 A: I figured that at some point if that became an
25 issue that would be resolved.



- 1 Q: Resolved in what fashion?
- 2 A: Discussion of why there's a different between
3 two and five years.
- 4 Q: Well, did you take any action in December of
5 2014 to remove your cousin as the manager?
- 6 A: In December of 2014?
- 7 Q: Yes, sir.
- 8 A: No. I think I questioned it in November of 2014
9 at a meeting regarding the LLC with Chris Moss.
- 10 Q: What was that meeting about?
- 11 A: It was a meeting about the LLC's -- the MRH
12 Family LLC's assets, the current revenues
13 generated by it. Also about my mother's estate,
14 the properties that were in her estate, and
15 beginning the process of looking at probating
16 her estate.
- 17 Q: All right. Where did that meeting take place?
- 18 A: Chris Moss's office in Mount Pleasant.
- 19 Q: Who was present?
- 20 A: Mikell Scarborough, and my self, and Chris Moss.
- 21 Q: And what did you learn at that meeting?
- 22 A: Well, I believe I've learned that -- and I
23 forget if it was prior to that or after, I know
24 there was an email that I sent Chris Moss about
25 finding -- a question as to whether or not --



- 1 who had drafted the operating agreement.
2 Because Chris Moss had led me to believe Howard
3 Yates had drafted the operating agreement.
- 4 Q: What did Chris Moss say that led you to believe
5 Mr. Yates had prepared it?
- 6 A: That Mr. Yates prepare -- that he didn't prepare
7 it, and Mikell didn't prepare it, Howard Yates
8 prepared it.
- 9 Q: Is that what he specifically said?
- 10 A: Yes, ma'am.
- 11 Q: All right. When does the five year term expire?
- 12 A: It would be five years from the signing of it.
13 So it would be December of -- 30th, I assume,
14 December 30th of 2017.
- 15 Q: So on December 30th of this year, what are your
16 intentions with regard to the management?
- 17 A: I don't know what the intentions are at this
18 time. I'll seek ---
- 19 Q: Would you plan to exercise your ---
- 20 A: --- I'll seek ---
- 21 Q: --- rights of manage -- or removing ---
- 22 A: I'll seek the advice of an attorney and a CPA as
23 to what I should be doing.
- 24 Q: Okay. Have you ever visited the properties that
25 are part of the LLC?



1 A: Some of them, yes. Absolutely.

2 Q: Which ones have you visited?

3 A: The house, the lot, the 9.75 acres. I've
4 visited the 420 acre tract that Big Millbrook,
5 Dungannon. I have not been -- I've been by the
6 Bacon's Bridge or Cooks Crossing property.

7 Q: Uh-huh.

8 A: I've not been to Hutchinson Island, the eight
9 acre tract at, I think, Fairview Plantation, and
10 I've been by the property that we sometimes
11 refer to as the Edisto Property.

12 Q: You're aware that timbering has occurred on some
13 of these tracts, Mr. Henderson?

14 A: Yes, ma'am.

15 Q: Do you have any objection to the timbering
16 occurring?

17 A: Other than, there's been no notification made to
18 me on what's been timbered, what the values are,
19 and accounting of the LLC.

20 Q: But the fact that it's been timbered, you're in
21 agreement with? Is that a fair statement?

22 A: Timbering to a certain degree. I'd like to know
23 a lot more about -- as far as it being clear
24 cut, is it being harvested, or for, you know, I
25 don't know if it's pine trees that they're



1 cutting and thinning, no details have been
2 provided to me.

3 Q: Well between the time this was created in
4 December of 2012 and October of 2014, when your
5 mom died ---

6 A: Uh-huh.

7 Q: --- did you engage in any discussion with your
8 cousin about the tracts and what was going on
9 with them?

10 A: Yes. He informed me that, I think, the 420 acre
11 tract at my moms was being timbered -- certainly
12 prior to her death, and that he was awaiting to
13 have some timbering done on the 920 acre tract
14 that I think now is in the Duck Pond Hill LLC.

15 Q: All right. Looking at page ten ---

16 A: Yes, ma'am.

17 Q: --- of this document with the signatures.

18 A: Yes.

19 Q: Is that your mom's signature?

20 A: Yes, ma'am.

21 Q: Any doubt of your -- in your mind about that?

22 A: No, ma'am.

23 Q: And it reflects the two percent interest. Is
24 that right?

25 A: It does.



- 1 Q: Is your signature next?
- 2 A: Yes, ma'am. It is.
- 3 Q: And you have the 68 percent interest. Right?
- 4 A: Yes, ma'am.
- 5 Q: And then the MRSMIE LLC is next. Is that right?
- 6 A: Yes, ma'am.
- 7 Q: 30 percent?
- 8 A: Yes, ma'am.
- 9 Q: For a total of 100 percent?
- 10 A: Yes, ma'am.
- 11 Q: Ross's name is not on there, right, Mr.
- 12 Henderson?
- 13 A: No, ma'am. No, he's not.
- 14 Q: Did that cause you any concern when you signed
- 15 this?
- 16 A: Yes.
- 17 Q: To whom did you raise that concern?
- 18 A: I later raised it to my mother.
- 19 Q: And what did she say about it?
- 20 A: She didn't respond.
- 21 Q: How late -- how much later did you raise it to
- 22 her?
- 23 A: Certainly within the next month.
- 24 Q: Did you inform your brother that he was not
- 25 included?



1 A: I believe I did.

2 Q: What was his response?

3 A: He, at the time, did not -- he said it didn't
4 matter to him. He didn't want anything from my
5 mother.

6 Q: Were you -- did you have any doubt of your mom's
7 capacity in December 30th of 2012 when she
8 signed this?

9 A: Yes.

10 Q: What were your doubts?

11 A: I -- my mother couldn't write checks, other than
12 for cash, she couldn't balance her checkbook,
13 she couldn't -- she wouldn't -- she couldn't
14 operate her phone to her -- she didn't have a
15 cell phone, she had a -- at one time she had a
16 cordless phone, she didn't -- couldn't operate
17 that because she would leave it off the hook and
18 it -- the battery would die. She had no ability
19 to understand that it has be charged on the
20 handset. So we had to go back to having a
21 stationary phone that had a cord to it. Then
22 she could not retrieve her voice messages from
23 the machine. And that became clear, because
24 after messages and messages, that she would say
25 she didn't get my message, it was clear she



1 wasn't retrieving her messages. And I asked her
2 if she was able to retrieve them and she said
3 no.

4 Q: Well, Mr. Henderson ---

5 A: Huh?

6 Q: --- you talked to your mom December 5th?

7 A: Yes, ma'am.

8 Q: According to the email, Respondent's Exhibit 13.
9 Do you recall that?

10 A: Yes, ma'am.

11 Q: And in it you say, I spoke to her on the phone,
12 went over the details, she stated she wanted to
13 go ahead with creating the LLC.

14 A: Uh-huh.

15 Q: Did you doubt her capacity then?

16 A: I did not doubt her capacity that she wanted to
17 follow what Mikell Scarborough had suggested was
18 the best course of action.

19 Q: What changed in three weeks time?

20 A: What changed in three weeks time?

21 Q: Yes, sir. Between December 5th of 2012 and
22 December 30th of 2012?

23 A: I can't point to anything that changed during
24 that three week period of time.

25 Q: Did you tell Chris Moss, hey, I don't think mom



1 understands what's going on?

2 A: No, I didn't talk to him about that, no.

3 Q: Did you say to my cousin -- your cousin, Mikell
4 Scarborough, hey, cuz, I don't think mom
5 understands?

6 A: I'd had conversations about my concerns with my
7 mom's confidence -- competence on several
8 occasions with him probably prior to that and
9 certainly after that.

10 Q: How about on December 30th of 2012?

11 A: No, not on December 30th of 2012. No.

12 Q: Was this document ever amended, Mr. Henderson,
13 before she died?

14 A: Not to my knowledge, no.

15 Q: Has it been amended since?

16 A: I -- not to my knowledge.

17 **MS. BROCKINGTON:** All right. Would you mark this as
18 Number Seventeen.

19 **(Respondent's Exhibit Number 17 was marked for**
20 **identification purposes.)**

21 Q: Mr. Henderson, I have prepared a chart. You may
22 have seen this before. And in it, I have listed
23 out values of the real estate in the LLC.
24 Valuations of 2012 and 2014.

25 A: Uh-huh.



- 1 Q: Can you look over that document?
- 2 A: Yes, ma'am.
- 3 Q: All right. Can you confirm for me the Fairview
4 Plantation property is in the LLC?
- 5 A: Yes, it is, I believe. I have a different
6 breakdown of the properties, but yes.
- 7 Q: Okay. How about the Millbrook Plantation, Block
8 D? The second entry.
- 9 A: Yes, the 455 acres is in the LLC.
- 10 Q: All right. The third entry, Millbrook
11 Plantation, Tract D, River Lot, 9.75 acres?
- 12 A: Yes, that is in the LLC.
- 13 Q: How about the next entry, Millbrook Plantation,
14 Block E and E1, 890 acres and almost a 30 acre
15 tract?
- 16 A: Yes, ma'am. That is in the LLC.
- 17 Q: Now, the first three your mom holds 100 percent
18 -- held 100 percent interest, is that correct?
- 19 A: That's correct.
- 20 Q: But in the fourth entry she only had a one-fifth
21 interest, is that right?
- 22 A: I'm sorry. In the fourth entry?
- 23 Q: Yes, sir. The ---
- 24 A: Oh, yes, yes, yes.
- 25 Q: --- Millbrook Plantation, Block ---



1 A: Yes, she only had a one -- well one-fifth
2 interest, I believe in the Millbrook Plantation
3 block E and E1.

4 Q: Okay. How about Dungannon, a quarter interest
5 in that parcel?

6 A: Yes, ma'am.

7 Q: And the 18 Mile Site, Charleston County, a one-
8 sixth interest in an eight acre tract?

9 A: Yes.

10 Q: Okay.

11 A: I'm not sure whether that, the eight acre tract,
12 is in the LLC or in her estate to be honest. I
13 don't know.

14 Q: Okay. Well if you don't know, we'll -- that's
15 fine. I'll accept your testimony on that. But
16 collectively, what are we showing at the 2012
17 values of those properties?

18 A: It says 6.9 -- roughly 6.9 million dollars.

19 Q: And for 2014, what's the valuation?

20 A: 6.2.

21 Q: Which -- million?

22 A: Yes, million. I'm sorry.

23 Q: Would you agree that those are approximately
24 correct values for those years?

25 A: I couldn't tell you that those are correct or



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1 incorrect.

2 Q: Have you looked at appraisals for these
3 properties?

4 A: I have seen the appraisals that were provided to
5 my mother's estate.

6 Q: Did you ask that any subsequent appraisals be
7 performed?

8 A: I have not.

9 MS. BROCKINGTON: Okay. Would you mark this as 18
10 please.

11 (Respondent's Exhibit Number 18 was marked for
12 identification purposes.)

13 Q: Are you ready, Mr. Henderson?

14 A: Yes, ma'am. I'm sorry.

15 Q: Okay. That's all right. All right. In looking
16 at Respondent's Exhibit 18, Mr. Henderson ---

17 A: Uh-huh.

18 Q: --- what is the name of this document?

19 A: This is entitled a Title to Real Estate.

20 Q: And is that your mom as the grantor?

21 A: Yes, ma'am.

22 Q: And who is the grantee?

23 A: The MRH Family LLC, in which she will hold a
24 membership interest.

25 Q: Right. And what day is this on?



- 1 A: This is signed December 30th of 2012.
- 2 Q: Okay. Looking at page two. Is that her
3 signature?
- 4 A: Yes. Yes, I believe it is.
- 5 Q: Who are the witnesses?
- 6 A: Joseph Howard Yates, Jr. and Christopher Moss.
- 7 Q: Who's the subscribing witness?
- 8 A: Well, it's -- subscribing witness is H.
9 Christopher Moss.
- 10 Q: And who's the notary?
- 11 A: Joseph H. Yates, Jr.
- 12 Q: Do you have any reason to the doubt the manner
13 in which this deed was executed?
- 14 A: The manner in which it was executed?
- 15 Q: Yes, sir.
- 16 A: I have no knowledge whether my mother reviewed
17 the document before she signed it, so.
- 18 Q: Well, do you have any knowledge about the
19 circumstances under which this got signed?
- 20 A: No, ma'am. No.
- 21 Q: Do you know if Mikell Scarborough was present?
- 22 A: I -- no.
- 23 Q: Okay.
- 24 A: I have no idea.
- 25 Q: Do you know where the signing took place?



- 1 A: No.
- 2 Q: And looking at the legal descriptions.
- 3 A: Yes, ma'am.
- 4 Q: Can you take a moment and verify if the tracts
- 5 listed on this deed match with the previous
- 6 exhibit?
- 7 A: I'm having trouble finding the 18 Mile site.
- 8 Q: I agree.
- 9 A: The last item.
- 10 Q: I think it's not on this deed and I might have
- 11 picked that up in error, but.
- 12 A: Yeah, I don't -- I just don't see that one and
- 13 the numbers on some of the -- for the acreage,
- 14 is a little off and maybe it's just the way I'm
- 15 looking at it. But the Fairview Plantation
- 16 tract one -- that's Millbrook Plantation.
- 17 Q: I'll submit to you some of the legals might not
- 18 match what's on the tax records now because of
- 19 earlier conveyances.
- 20 A: The tract two, it says 99.81 acres and this a
- 21 portion of Fairview. So it shows it as 131.35
- 22 and then in another place later on, it -- this
- 23 property was originally found to contain 120
- 24 acres, but upon a plat re-surveyed 131.35, so
- 25 that is correct. That one I just didn't -- it



- 1 wasn't adding -- the math was not adding up, so.
- 2 Q: But some of those are not ---
- 3 A: Yeah. Other than the 18 Mile site, which I
- 4 believe is in the estate, I believe those are
- 5 the properties within the LLC.
- 6 Q: Okay. And looking at the last page, the
- 7 recording page, recorder's page.
- 8 A: Well there is -- it does show six tracts. I'm
- 9 sorry. It shows six tracts, and your sheet only
- 10 has five. So I'm not sure if -- okay ---
- 11 Q: There's two tax map numbers combined ---
- 12 A: Okay. Okay.
- 13 Q: --- on the fourth one.
- 14 A: That may be -- this is Saint -- okay. If that
- 15 may be the discrepancy, but I -- there's just --
- 16 just because this says six -- this has six
- 17 separate tracts and this only has five if we
- 18 take out the 18 Mile site, the last time.
- 19 Q: Yes, sir. Looking at the recorder's page ---
- 20 A: Yes, ma'am.
- 21 Q: --- on the -- for the last page of Number 18.
- 22 A: Uh-huh.
- 23 Q: What's the date it got recorded?
- 24 A: Recorded December 31st, 2012 at 2:45 p.m.
- 25 Q: All right. Was that before or after the deed



- 1 was -- into your brother was recorded?
- 2 A: I would have to look at his exhibit, I'm sorry.
- 3 I believe it's Number 11, your Exhibit Number
- 4 11.
- 5 Q: Yes, sir.
- 6 A: It is immediately after. So it would've been
- 7 within a minute of it being -- of my brother's
- 8 Number 11 being recorded.
- 9 Q: But they're dated the same date, aren't they,
- 10 Mr. Henderson?
- 11 A: Yes, ma'am.
- 12 Q: Same witnesses?
- 13 A: Yes, ma'am.
- 14 Q: And yet you are not challenging the deed to your
- 15 brother?
- 16 A: No, ma'am.
- 17 Q: And in your petition, the action to try title,
- 18 you said that your mom didn't have capacity to
- 19 understand the transactions involving the LLC.
- 20 Would that include the deeds?
- 21 A: It would.
- 22 Q: The deed, excuse me, not deeds but the deed.
- 23 A: It would.
- 24 Q: Well, how can you say that she didn't understand
- 25 the conveyance into the LLC and you're raising



1 a challenge, but there's a gift to your brother
2 by separate deed and you're not raising a
3 challenge?

4 A: Because if, without this, my brother would've
5 inherited the same pieces of property. Without
6 this conveyance, this gift earlier, under her
7 1998 will, he would've inherited, according to
8 the will, the same pieces of property. So I
9 didn't believe there was any reason to challenge
10 that. I discussed that with my brother.

11 Q: Did she have capacity to sign his deed?

12 A: No.

13 Q: Did she have capacity to sign the LLC deed?

14 A: No.

15 Q: What are you basing that on?

16 A: Her dementia, her cognitive decline for the last
17 -- beginning in late 2011, certainly up until
18 her death. Her -- a number of things. Her
19 hydrocephalus. She couldn't recall my wife
20 giving her the Heimlich maneuver because she was
21 choking at a restaurant. She couldn't recall
22 who had called her that day. She couldn't
23 recall who had been there the previous day. If
24 I knew that Mikell Scarborough had been there
25 the day before, I would ask her if she knew



1 Mikell -- had she him, and she would say no.

2 Q: All right. So you've brought this lawsuit
3 saying she lacked capacity, yet you didn't raise
4 a challenge on her signing the operating
5 agreement of December 30th ---

6 A: I believe ---

7 Q: ---- the same day as the deeds?

8 A: I believe the lawsuit challenges that as well.

9 Q: Well, I'm trying to understand the basis of your
10 lawsuit, Mr. Henderson. We have ---

11 A: I think you -- I think when you ask me the
12 question, you explained it.

13 Q: Well, what you've done -- you've challenged the
14 codicil.

15 A: Uh-huh.

16 Q: You've challenged the creation of this LLC?

17 A: Yes.

18 Q: Your trying to -- in your pleading, you're
19 saying you want the LLC to be declared void ab
20 initio, from the beginning.

21 A: Yes.

22 Q: You site lack of capacity on your mom's part.
23 You site undue influence.

24 A: Yes, ma'am.

25 Q: What was her lack of capacity when she signed



- 1 the operating agreement the same day she signed
2 the deeds?
- 3 A: The same, that she had -- the same that she had
4 all along. The same incapacity.
- 5 Q: Well, if you were concerned about her lack of
6 capacity, why did you go forward?
- 7 A: Why did I go forward, because Mikell Scarborough
8 who we trusted as an advisor, encouraged us to
9 do so.
- 10 Q: But you knew when you signed the operating
11 agreement, there was a 30 percent interest going
12 to the MRSMIE LLC. Right?
- 13 A: Yes, ma'am. I was not happy about that, but I
14 was -- if that's what would help with the estate
15 planning, then I was fine with that.
- 16 Q: But now you're trying to undo all that.
- 17 A: Without the LLC, I could've just let it expire,
18 I guess, and let the date expire and not formed
19 the LLC or signed agreement. But I think the
20 paperwork had already been submitting creating
21 it.
- 22 Q: I don't -- may be obtuse here, Mr. Henderson.
- 23 A: That's okay.
- 24 Q: I still don't understand if you were so
25 concerned about your mom's not understanding



1 this procedure, this process, why did you let
2 her go forward?

3 A: Because Mikell Scarborough recommended it was in
4 everyone's best interest.

5 Q: Did you seek independent advice?

6 A: Did I? No.

7 Q: Yes, sir.

8 A: No. I trusted my cousin.

9 Q: You're a lawyer?

10 A: Yes, ma'am.

11 Q: You're an educated man?

12 A: Yes, ma'am.

13 Q: You have your own CPA?

14 A: Not at that time.

15 Q: You didn't discuss it with any CPA?

16 A: No, ma'am.

17 Q: You didn't discuss ---

18 A: Chris Moss, the one that Mikell Scarborough
19 brought to us, who's not available.

20 Q: Have you spoken to any attorney. I'm not asking
21 about Mr. Silvernail or Mr. Bracket, but did you
22 speak to any attorney at the time, in December
23 of 2012?

24 A: No, ma'am.

25 Q: Why not?



1 A: Part of it was, it was December 30th of -- late
2 in the day on December 30th of 2012, and Mikell
3 Scarborough had already said this was just a
4 formality, to go ahead and sign these documents
5 to create it.

6 Q: Mr. Henderson, you testified you talked to Chris
7 Moss November of 2012, we don't know the exact
8 date.

9 A: Yes, ma'am.

10 Q: Here we are, approximately five or six weeks
11 later, and documents are being circulated, what
12 action did you take?

13 A: What action did I take?

14 Q: Yes, sir. To investigate and make sure that
15 this was the right thing?

16 A: I relied on Mikell Scarborough.

17 Q: How are you injured by this?

18 A: How am I injured by that?

19 Q: Yes, sir.

20 A: Well, let me see ---

21 Q: What are your damages?

22 A: What are my damages?

23 Q: Yes, sir.

24 A: Well, I think in an email I sent Mikell
25 Scarborough in March or April of 2015, I think



1 I described that there were a number of
2 problems. They fact that he had the codicil
3 from 2012 until my mother's death without even
4 advising me about that. I wouldn't have had my
5 mother sign a document that conveyed property to
6 me or any other person without running it by
7 Mikell Scarborough. So that combined with the
8 fact that that -- I didn't know what the
9 property was in the LLC up until November of
10 2014, after she died. Finding out the day she
11 died that he codicil. I didn't know whether the
12 codicil was in the LLC -- or the house and the
13 lot were in the LLC until either that day that
14 she died when Mikell told me about it. And then
15 ---

16 Q: Wait, wait, just a moment.

17 A: Yes.

18 Q: The house and lot?

19 A: Yes, ma'am.

20 Q: How are those in the LLC?

21 A: I said, I didn't know if they were in the LLC or
22 not, because I've never ---

23 Q: Oh, I'm sorry. You didn't know if they were ---

24 A: --- been provided with a list of anything from
25 the management of the MRH Family LLC.



1 Q: Well, haven't you received distributions from
2 the LLC?

3 A: Mikell Scarborough would periodically ask me if
4 I needed a check.

5 Q: Have you received distributions, Mr. Henderson?

6 A: Mikell Scarborough, I believe has written
7 checks, yes.

8 Q: How much have you received in 2013?

9 A: I do not recall.

10 Q: Is \$10,000 an accurate number?

11 A: It very well could be, yes.

12 Q: All right. How about in 2014?

13 A: I do not recall what distributions I received.

14 Q: Would \$8,000 be an accurate number?

15 A: That probably would be accurate, yes.

16 Q: Okay. Did you receive K-1s relative to this LLC
17 in 2013 and 2014?

18 A: 20- -- yes, 2013 and 2014 from -- directly from
19 Chris Moss.

20 Q: Okay. And you filed your own personal returns
21 in those two years, Mr. Henderson?

22 A: No. I have an accountant that prepared my
23 taxes.

24 Q: Did you provide those K-1s to your accountant?

25 A: Absolutely.



1 Q: Did you rely on those K-1s in preparation of
2 your own returns?

3 A: Yes.

4 Q: Did you tell that -- your CPA that, hey, I'm
5 worried that my mom didn't have capacity, didn't
6 understand what was going on with this LLC?

7 A: No.

8 Q: Why not?

9 A: Because I didn't think it was the accountant's
10 responsibility at the time.

11 Q: How are you damaged by the LLC being in
12 existence?

13 A: My mother's estate value went down from the
14 codicil and the LLC, I think there's a
15 calculation somewhere of what her value -- the
16 value of it decreased to the advantage of both
17 my -- well primarily, Mikell Scarborough,
18 because the codicil goes -- the house and the
19 lot go directly to him and the MRSMIE LLC was
20 solely owned by him, and then since then that
21 has been divulged or evolved into a family held
22 LLC. My mother didn't like owning property with
23 her siblings. I think that certainly if his LLC
24 had been owned by other people, his family, she
25 wouldn't've wanted it. She wouldn't have even



- 1 engaged in a conversation about creating an LLC.
- 2 Q: Wouldn't you have the same opportunity to create
- 3 a family LLC of your own?
- 4 A: Could I?
- 5 Q: Yes, sir.
- 6 A: I don't know whether -- if you're telling me
- 7 that this operating agreement allows me to do
- 8 that?
- 9 Q: I'm not ---
- 10 A: Because I think the LLC doesn't allow me to do
- 11 that. So I don't know that I can. I would have
- 12 to go to an attorney that handles that and ask
- 13 them.
- 14 Q: If you died, who would inherit your interest in
- 15 this LLC?
- 16 A: My wife and my children probably would under my
- 17 will.
- 18 Q: So that'd be someone outside of your mom's
- 19 immediate family. Right?
- 20 A: Well, my wife would have it in care for my
- 21 children is the way my will is structured. If
- 22 that's what you're asking.
- 23 Q: If the codicil weren't in existence, would you
- 24 be challenging the LLC?
- 25 A: I can't say that I wouldn't, no.



- 1 MS. BROCKINGTON: All right. Let's get this marked.
2 This will be Exhibit 19.
3 (Respondent's Exhibit Number 19 was marked for
4 identification purposes.)
5 Q: Mr. Henderson, I'm showing you Exhibit 19. It's
6 a form 709. Do you know what that is?
7 A: No, ma'am. I'm not familiar with the tax code
8 forms.
9 Q: Okay. Well, I submit to you this is called a
10 gift tax return.
11 A: Uh-huh.
12 Q: It was prepared by Mr. Christopher Moss on your
13 mom's behalf relative to the gifting of the real
14 estate to the LLC. Do you see those numbers on
15 there?
16 A: Yes, ma'am. I do.
17 Q: Okay. What number do we have on the top line,
18 it's kind of the middle of the page, but what's
19 the top number?
20 A: On -- in -- enter the amount from Schedule A,
21 number 1 ---
22 Q: Yes, sir.
23 A: \$2,914,000.
24 Q: Okay. Would you look at the second page for me?
25 A: Yes, ma'am.



1 Q: All right. Who is reflected as having ownership
2 interest in the LLC?

3 A: Mikell Scarborough, nephew. Membership interest
4 MRH LLC. And two, Mikell Henderson, son.

5 Q: All right. And you say that the property was --
6 there's a valuation discount due to lack of
7 marketability?

8 A: Yes, ma'am.

9 Q: Okay. Are you aware that by gifting into the
10 LLC your mom took over six million dollars in
11 assets, from the document I showed you earlier,
12 and it was reduced to about a three million
13 dollar gift?

14 A: According to this, yes.

15 Q: If the LLC were declared void from the
16 beginning, do you know what would happen to
17 those pieces of real estate?

18 A: Those pieces of real estate?

19 Q: That are in the LLC presently.

20 A: They would go into her estate.

21 Q: And what would cause her estate to be valued at?

22 A: I do not know.

23 Q: Are you ---

24 A: It would be greater than this -- the value we're
25 talking about, yes.



1 Q: Are you aware that your mom's estate could be
2 valued at more than eight million dollars?

3 A: That sounds correct, yes.

4 Q: Okay. And so, if her estate became valued at
5 eight million dollars ---

6 A: Uh-huh.

7 Q: --- and the exemption amount when she died was
8 about five million four hundred thousand ---

9 A: Yes, ma'am.

10 Q: --- you realize there would be a taxable
11 component to her estate?

12 A: Yes.

13 Q: How would the estate taxes get payed?

14 A: I can't answer that.

15 Q: Well, you would be inheriting all of these
16 properties, Mr. Henderson.

17 A: Yes, ma'am.

18 Q: So if you do the math ---

19 A: Uh-huh.

20 Q: --- and we've got almost a three million dollar
21 difference ---

22 A: Uh-huh.

23 Q: --- between ---

24 A: I would be taxed on the three million dollars in
25 excess.



1 Q: Yes, sir.

2 A: Yes. Okay.

3 Q: And there would be estate taxes on that three
4 million.

5 A: Yes, ma'am.

6 Q: Do you know the amount of estate taxes?

7 A: I believe an accountant had tried to run that
8 for me, but I cannot remember what it is. I
9 think it was about -- it was 2.3 million
10 perhaps. I'm not -- I couldn't swear to it.
11 Sorry.

12 Q: How would you pay that?

13 A: Don't know.

14 Q: Wouldn't you have to sell something?

15 A: More than likely. I mean that's possible.

16 Q: What would you pick to sell.

17 A: I couldn't tell you. I mean, you want me to
18 pick something? I couldn't tell you.

19 Q: I'm trying to understand, Mr. Henderson, that
20 creation of the LLC saved estate taxes, but if
21 you unwind the LLC, that brings it all back and
22 inflates the value of her estate.

23 A: Uh-huh.

24 Q: And if you're the sole beneficiary, okay, of
25 that process, it's going to cost her estate,



1 thus it will cost you.

2 A: Uh-huh.

3 Q: And I'm trying to figure out why you would be
4 amenable to that.

5 A: If that's what I would owe, that's what I would
6 owe. There's nothing I can do about that.

7 Q: You're willing to risk having to pay millions of
8 dollars in estate taxes when it's not necessary?

9 A: I don't understand your question. When it's not
10 necessary. To challenge the estate, or the LLC,
11 or both?

12 Q: What I'm saying is, if your mom's estate -- if
13 all the real estate is pulled back into her
14 estate ---

15 A: Uh-huh.

16 Q: --- at the time of death, October 23rd of 2014,
17 and the number is eight million and we have a
18 5.4 million dollar exemption, so there's an
19 amount over which estate taxes are owed, you as
20 the beneficiary of her estate would owe millions
21 of dollars.

22 A: Uh-huh.

23 Q: Is that what you want?

24 A: I don't think my mother had the capacity to
25 create the LLC or sign the codicil, and if



1 that's the end result of it, then you know,
2 sorry. That -- I'm going to pay the government
3 a lot of taxes.

4 Q: Okay. One more document ---

5 A: Yes, ma'am.

6 Q: And then I think we'll be very close to
7 finishing. This will be number 20.

8 (Respondent's Exhibit Number 20 was marked for
9 identification purposes.)

10 Q: Mr. Henderson, you see Exhibit Number 20?

11 A: Yes, ma'am.

12 Q: Can you read into the record what that is?

13 A: It is entitled Statement of Mary Ross Hanahan
14 Concerning 2012 Land Transfers.

15 Q: Is that your mom's signature?

16 A: Yes, ma'am. It appears to be.

17 Q: What's the date of that?

18 A: It is dated December 30th of 2012.

19 Q: Who are the witnesses?

20 A: Joseph Howard Yates, Jr. and Christopher Moss.

21 Q: Did you tell me you had spoken to Mr. Yates, or
22 not? I'm sorry.

23 A: I don't believe I've ever spoken to Mr. Yates.

24 Q: Okay. All right. I know it's not that long,
25 but just for purposes of the record, would you



1 read the entirety of this document into the
2 record please?

3 A: "I, Mary Ross Hanahan, formally known as Mary
4 Ross Hanahan Henderson, acknowledge and state as
5 follows: I have had the opportunity to consult
6 with Chris Moss, CPA, and my nephew, Mikell
7 Scarborough, concerning my assets and the 2013
8 estate tax changes. I'm aware that without
9 planning my estate, taxes could be very high.
10 To avoid substantial estate taxes, it is my
11 desire to convey the properties described in the
12 deed from me to MRH Family, LLC. I am aware
13 that Mikell Scarborough will have an interest in
14 a limited liability company that is a member of
15 the MRH Family, LLC. I am aware that this
16 conveyance will be for nominal consideration,
17 that being my membership in MRH Family, LLC. I
18 am aware that I will hold two percent interest
19 in it. It is my desire to convey to my son, J.
20 Ross Henderson, my one-half interest in the
21 property described in the ... deed to him. This
22 property is identified as Tax Map Numbers 061-
23 00-00-023 and 038-00-00-012, being a the 30 and
24 80 acre parcels in the Moffet Hill Plantation
25 Tract. In signing this deed, I have not been



- 1 placed under any duress or influence by any one.
2 Howard Yates has been asked to prepare the deed
3 for me and has not rendered tax advice. He has
4 advised me that the I am fee to sign or not to
5 sign this document. With this my Hand and Seal,
6 this 30th day of December, 2012." Signed by
7 Mary Ross Hanahan.
- 8 Q: Would you agree with me, this says your mom was
9 not under any duress?
- 10 A: I believe that's what the document says, yes.
- 11 Q: And she was not under any influence by anyone to
12 sign?
- 13 A: That's what the document says.
- 14 Q: All right. Are you still seeking to have a
15 special administrator appointed?
- 16 A: Yes, ma'am.
- 17 Q: For what purpose?
- 18 A: To administer the estate.
- 19 Q: And what is this special administrator supposed
20 to do about the tax liability?
- 21 A: The tax liability for the estate?
- 22 Q: Yes, sir.
- 23 A: As far as the current tax liability?
- 24 Q: No. If the LLC is overturned and this real
25 estate that's in it comes back to the estate,



1 how is the special administer supposed to pay
2 the bill?

3 A: Probably going to have to sell property.

4 Q: Which properties?

5 A: I don't know. I can't speak for the special
6 administer. I don't know if they would consult
7 with me, or anyone else.

8 Q: Do you have anything they don't want to -- that
9 you don't want to see sold?

10 A: I would wait until I had the opportunity to
11 speak to them to make judgements on that.

12 Q: Do you know what the interest would be on this?

13 A: No, ma'am.

14 Q: Any penalties?

15 A: No, ma'am.

16 Q: What are the attorney's fees that you've paid
17 thus far in this action?

18 A: I could not tell you. \$30,000 in deposit, I
19 believe. Was it twenty or thirty, and several
20 -- probably another additional -- probably
21 20,000 initially on deposit and another 15,000.

22 Q: 20,000 to whom?

23 A: To Moses and Brackett.

24 Q: All right. And I believe Michael Brackett is
25 still representing you, is that correct?



- 1 A: Yes, ma'am. He's still.
- 2 Q: And then another 15,000?
- 3 A: Yes, ma'am.
- 4 Q: Who have you paid that to?
- 5 A: I've consulted with a law firm in Savannah,
- 6 Hunter Maclean.
- 7 Q: And I'm sorry, they're -- are they representing
- 8 you or you simply consulted with them?
- 9 A: I have consulted with them, yes.
- 10 Q: Okay. Are they going to be taking over any of
- 11 the litigation?
- 12 A: Not that I'm aware of, no.
- 13 Q: Okay. All right. I just want to make sure of
- 14 that.
- 15 A: No.
- 16 Q: All right. What's your fee agreement with Mr.
- 17 Silvernail?
- 18 A: Fee agreement? I would have to see a copy of
- 19 it.
- 20 Q: Yes, sir. Is it hourly?
- 21 A: I don't believe it is. Oh, no. I believe it
- 22 is, yes.
- 23 Q: Hourly verses contingent?
- 24 A: Yes.
- 25 Q: What's the hourly rate Mr. Silvernail's charging



1 you?

2 A: I want to say it's \$250.00 an hour, but I could
3 not swear to that.

4 Q: Have you paid him anything?

5 A: That deposit that I gave to the law firm.

6 Q: Well, you paid Moses and Brackett.

7 A: Yes.

8 Q: Okay.

9 A: And he still is -- I believe he still draws from
10 that amount from Moses and Brackett as he -- my
11 understanding is, when he left the firm they
12 were jointly keeping that case. \

13 Q: Mr. Henderson, do you realize that in bringing
14 this action that we filed a counterclaim for
15 attorney's fees for your cousin?

16 A: Yes, ma'am.

17 Q: Okay. Are you aware that if we're successful on
18 this action, and you are not, that can I seek
19 payment of my attorney's fee -- or he can seek
20 payment of what he's paid me from you?

21 A: Yes, ma'am.

22 Q: Okay. All right. Let me step out with my
23 client and then we'll be ready to wrap up with
24 a couple of follow-up questions.

25 (A short break was taken from 3:03 p.m. until 3:10



1 p.m.)

2 Q: All right, Mr. Henderson, I've got a few follow-
3 up questions ---

4 A: Yes, ma'am.

5 Q: --- for you. You have listed on your witness
6 list, your wife, Katherine Henderson.

7 A: Yes, ma'am.

8 Q: What will she testify to?

9 A: Her contacts with my mother over the years.

10 Q: In particular with regard to the house, did your
11 mom say anything to your wife about you and your
12 wife -- you and Kat getting the house?

13 A: Yes.

14 Q: When was that?

15 A: Probably 2010, 2011, 2012, and 2000 -- maybe '14
16 as well.

17 Q: Do you know of any occasion when your mom said
18 that she would like Mikell Scarborough to move
19 into the house with her?

20 A: No. Oh, move into the house with her? Yes, at
21 one -- one time she said that she thought he was
22 going to be divorcing his wife and she wanted
23 him to move in to her house.

24 MS. BROCKINGTON: Okay. Let me have this marked as
25 Exhibit 21.



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1 (Respondent's Exhibit Number 21 was marked for
2 identification purposes.)

3 Q: All right. Mr. Henderson, I'm showing you an
4 email from July 23rd of 2013. Is that an email
5 from you to your cousin Mikell?

6 A: Yes.

7 Q: And your wife's copied on that, is that right?

8 A: Yes, ma'am.

9 Q: And your mom's copied on that?

10 A: Yes, ma'am. That was an email address that I
11 had created for her. She never knew how to use
12 email.

13 Q: Is that unusual for someone of her age?

14 A: To not know how to use email?

15 Q: Yes, sir.

16 A: I wouldn't say it's unusual, no.

17 Q: Okay. What was this message about primarily?

18 A: It's regarding a Care For Life -- that I'd
19 talked to them about my mother -- that a
20 urologist appointment for my mother and some
21 samples that she was supposed to take, and we
22 had put them in her pill boxes, and where the
23 rest of the samples were, and hoping that my
24 mother would take them.

25 Q: All right. And what does the last sentence say



1 on that? Do you know?

2 A: "Kat got a kick out of mom asking you (and only
3 you) to move in to her house.

4 Q: And that's referencing your cousin Mikell. Is
5 that right?

6 A: Yes.

7 Q: All right. On your witness list you have John
8 Johnson. I believe he's the husband of your
9 brother Ross. Is that right?

10 A: Yes, ma'am. He is.

11 Q: Okay. What would be his testimony in this
12 matter?

13 A: His interactions with my mother, and when he
14 started going over there, caring for her lawn,
15 taking her to lunch, assisting her around the
16 house, his discussions with my mom where --
17 about her house in general. And I think, also
18 the day she died.

19 Q: Okay. And you have your brother Ross listed as
20 a witness. What would he testify to?

21 A: He probably testify about his relationship with
22 my mother, the interaction he had with her, the
23 impressions he had of taking her periodically to
24 the hospitals during this period of time -- or
25 prior to 2012, I think.



1 Q: Yes, sir. I know that you've named your brother
2 as a respondent in this matter. Did he ever
3 actually get served any pleadings?

4 A: I don't know that I named him as a respondent in
5 this, did I? I'm sorry.

6 Q: Yes, sir. I'll show you the caption.

7 A: Yeah. No, I don't believe he's been served, but
8 I couldn't state that.

9 Q: So he's not participating in this litigation at
10 all, Mr. Henderson?

11 A: Not that I'm aware of, no.

12 Q: Why was he listed in it?

13 A: I couldn't answer that question. I think the
14 attorneys filed the pleadings.

15 Q: Well, didn't you look over the pleadings?

16 A: Yes, ma'am.

17 Q: Did you see his name there?

18 A: Yes, ma'am.

19 Q: Did you ask about it?

20 A: Oversight, that's -- no, no.

21 Q: Okay. Ms. Rose Harrison, you spoke to her I
22 believe. Is that right? Or attempted to
23 contact Ms. Rose?

24 A: Attempted to contact her.

25 Q: You were not successful?



1 A: No, ma'am.

2 Q: Okay. And we have Mikell R. Scarborough, Jr.
3 listed as a witness from you. Why have you
4 listed Ross Scarborough?

5 A: To see what interactions he had with my mother
6 in the last few years of her life and why she
7 would put him in the codicil?

8 Q: Have you talked to him about this litigation?

9 A: No, ma'am. I haven't -- I haven't tried to talk
10 to him.

11 Q: Do you intend to try to reach out to him?

12 A: If counsel determines that that's necessary.

13 Q: He was listed as an alternate beneficiary for
14 the house and lot. Correct?

15 A: In the codicil. Yes, ma'am.

16 Q: Do you object to that?

17 A: To the codicil, yes.

18 Q: No. Do you object to him being listed?

19 A: Yes.

20 Q: Are there any other witnesses that are not on
21 this list that you've spoken to, Mr. Henderson?

22 A: I think -- I don't know if Chris Martin is on
23 that list. Is he?

24 Q: Yes, he is on the list.

25 A: Okay. Then he's the only other person I think



1 that I have spoken with.

2 Q: Okay. When Mikell Scarborough was getting ready
3 to probate your mom's estate, did you offer to
4 serve as personal representative?

5 A: My recollection was the day my mother died,
6 Mikell Scarborough indicated he did not want to
7 take the house into his name because of the
8 pending PCS litigation. And subsequent to that,
9 he indicated, I want to say in February of 2015
10 at a meeting with Chris Moss at Chris Moss's
11 office, that he did not want to be the PCR.
12 That he was going to give that responsibility to
13 me.

14 Q: And why did that not ---

15 A: And it didn't happen.

16 Q: --- go through?

17 A: Because he didn't do it.

18 Q: Well ---

19 A: He didn't file whatever is necessary, I assume,
20 for him to relinquish his responsibility as
21 personal representative.

22 Q: Did you ask him about that?

23 A: I did that day, yeah.

24 Q: Did you ask about it any time later?

25 A: No, because I couldn't get answers about the



1 codicil and it seemed apparent that he wasn't
2 going to, so.

3 Q: Did you ever seek to have a guardian or
4 conservator appointed for your mother through
5 any judicial proceeding here in Charleston
6 County?

7 A: No, I did not take action to that. I considered
8 that, yes.

9 Q: Did you consult with any attorney about that?

10 A: I -- the only person I consulted with was Mikell
11 Scarborough, and probably my wife.

12 Q: But you chose not to do that?

13 A: No, I didn't -- yes, I did -- I chose not to do
14 that. I'm sorry.

15 Q: How big is the lot that's adjacent to the house?

16 A: I couldn't say. I mean, it's roughly the same
17 size as the -- it's probably a little deeper
18 than the house lot.

19 Q: Could another structure be built on that one?

20 A: Yes. That's, I think, why it was originally a
21 -- I think the original intent was to do
22 something similar to that.

23 Q: And who is the attorney you spoke with at the
24 Hunter Maclean Law Office, Mr. Henderson?

25 A: I spoke with a Joey Strength, S-T-R-E-N-G-T-H,



1 and David Burkoff, B-U-R-K-O-F-F, I believe is
2 how his last name is spelled. I met -- and
3 there was another, I cannot recall. There was
4 third attorney that had -- I have not met him.
5 He had participated in a conference call.

6 Q: And that was after the litigation was filed?

7 A: Yes, ma'am.

8 Q: Okay. Do you know what a special administrator
9 would charge for services if one were to be
10 appointed?

11 A: No, ma'am.

12 Q: Okay. Give me just one minute. All right. I
13 don't believe I have any further questions.
14 Your attorney may have a few for you.

15 MR. SILVERNAIL: Just a few.

16 MR. HENDERSON - EXAMINATION BY MR. SILVERNAIL:

17 Q: Now earlier in the deposition, Ms. Brockington
18 spent some time running you through some
19 hypotheticals about whether you would have
20 contested certain documents if certain realities
21 were different. Do you recall that?

22 A: Yes, sir.

23 Q: Specifically, I believe she had asked you if you
24 would have contested -- actually, I think she
25 had asked you whether -- why you did not contest



1 the deed giving property to your brother on
2 December 30th of 2012. Do you recall that?

3 A: Yes.

4 Q: Did your mother ever tell you that she wished
5 for your brother to have those pieces of
6 property?

7 A: No.

8 Q: Did your mother's will indicate that she did?

9 A: Yes.

10 Q: Did you know about her will?

11 A: Yes.

12 Q: Did ---

13 A: Since 2001, approximately.

14 Q: All right. Now the codicil giving property to
15 Mikell Scarborough, had your mother ever voiced
16 that intent to you about her house?

17 A: No.

18 Q: Specifically that it would go to him?

19 A: No.

20 Q: I think Ms. Brockington asked you if you
21 would've contested the codicil if all it did was
22 gave your mother's car to Mikell Scarborough.
23 Do you recall that?

24 A: Yes.

25 Q: Do you recall your mother ever telling you that



1 she wished for Mikell Scarborough to have her
2 car?

3 A: Numerous times.

4 Q: I believe that Ms. Brockington inquired about
5 whether you would've contested the codicil if
6 all it did was name your cousin as personal
7 representative. Do you recall that?

8 A: Yes.

9 Q: Did your mother ever voice any intent to you
10 that be personal representative of her estate?

11 A: No.

12 Q: Now, moving -- this is going to be a little
13 hectic to skip around and get what we need.
14 Let's go back to Respondent's 13.

15 A: Okay. That's an email dated December 5th, 2012?
16 Is that correct?

17 Q: Yes.

18 A: Okay.

19 Q: And you all went through it -- this at some
20 length a few minutes ago. You indicate in this
21 that you had spoken to your mother about the LLC
22 and that she was okay with going forward.
23 Correct?

24 A: Yes, sir.

25 Q: On December 5th of 2012, did you have any idea



1 what the ownership proportions of the LLC were
2 going to be?

3 A: No.

4 Q: Had you been given any indication that Mikell
5 Scarborough would own any portion of the LLC?

6 A: No.

7 Q: When did you first learn that?

8 A: I believe on the 30th of December, when I
9 received the operating agreement from Chris
10 Moss.

11 Q: And so, I think this self answering, but in the
12 conversation you reference here with your
13 mother, did you discuss anything about who would
14 own the LLC?

15 A: Certainly my mother would own it, and I assumed
16 that my -- that I would be a member and my
17 intent was my brother would also be a member.

18 Q: And so, during this conversation, you didn't
19 have any discussion with your mother about
20 Mikell Scarborough receiving a portion of the
21 LLC?

22 A: No.

23 Q: And did she voice any wish to you that anyone
24 else be made an owner of the LLC in that
25 discussion?



1 A: No.

2 Q: And at the time you were -- on December 5th of
3 2012, you were aware of the provisions of your
4 mother's will?

5 A: Yes.

6 Q: And those were that two pieces of real estate
7 went to your brother and all of her other
8 property would come to you. Correct?

9 A: Yes.

10 Q: Did you have any reason to expect on December
11 5th of 2012 that the LLC would substantially
12 shift her existing estate plan?

13 A: I didn't know how it would shift her estate
14 plan. I didn't know -- even know whether those
15 two pieces of property, for sure, whether they
16 would still go to my brother until, really
17 later. I believe -- let me correct. I believe
18 there was a discussion between Mikell
19 Scarborough and I in December that my mother
20 only wanted to give -- according to him, the two
21 pieces of property in the '98 will to my
22 brother. That was all she wanted to give him.

23 Q: And had you -- between 1998 and your mother's
24 death, did you discuss those two pieces of real
25 estate with your mother?



1 A: Just a few times in general, that she owned them
2 with her sister Frances and she found that to be
3 frustrating to have co-ownership, because she
4 couldn't get her sister to agree to do anything
5 with the property, either sell it to generate
6 income or it -- really anything else.

7 Q: Okay. And did she ever make reference to any
8 intent about who would receive those two pieces
9 of property at her death other than what was
10 written in her will?

11 A: No.

12 Q: Okay. Now, let's take a look at Respondent's
13 16, which is the operating agreement.

14 A: Yes, sir.

15 Q: Let's go to the back page here. This page bears
16 your signature, your mother's signature, and
17 Mikell Scarborough's signature on behalf of
18 MRSMIE LLC, correct?

19 A: Yes, sir.

20 Q: Were -- do you recall what signatures were on
21 this page when you signed it?

22 A: I would have to look back at the email that
23 Chris Moss sent me and the attachment. I do not
24 recall whether my mother's signature was already
25 on it or not, but -- to be honest.

