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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas

The Hon. Jennifer B. McCoy, Circuit Court Judge
The Hon. Tamara C. Curry, Probate Court Judge

Case No. 2017-CP-10-5198
Appellate Case No.: 2018-01680

Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters,..... Appellants,

v.

The Estate of William H. Murray,..... Respondent.

RECORD ON APPEAL – VOLUMN I

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INDEX

1. Order on Probate Appeal (*Affirmed*) dated August 14, 2018, and filed August 15, 2018 000003

2. Order to Amend Order Granting Motion for Summary Judgment signed November 13, 2017 000016

3. Order Granting Motion for Summary Judgment signed September 28, 2017 000034

4. Order Recognizing Authority of a Foreign Personal Representative signed by Judge Condon on August 15, 2014, and filed in West Chester County, New York on December 31, 2014 000050

5. Notice of Appeal to the SC Court of Appeals dated September 6, 2018 000057

6. Respondent's Motion to Dismiss Appeal filed in the Circuit Court on June 8, 2018 000063

7. Appendix filed with Appellants' Response in Opposition to Respondent's Motion to Dismiss Appeal dated June 11, 2018 000070

8. Supplemental Record on Appeal filed with the Circuit Court on June 19, 2018 .. 000641

9. Designation of Matter to be Included in the Record on Appeal in the Circuit Court on behalf of Respondent filed with the Circuit Court on January 19, 2018 001186

10. Initial Brief of Respondent The Estate of William E. Murray filed with the Circuit Court on March 20, 2018 001190

11. Appellant's Initial Brief filed with Circuit Court on January 19, 2018 001216

12. Notice of Appeal filed in the Probate Court on November 27, 2017 001241

13. Estate's Reply Memorandum in Support of Motion for Summary Judgment with all supporting exhibits filed with the Probate Court on July 24, 2017 001246

14. Claimant's Memorandum in Opposition to Motion for Summary Judgment with all Exhibits filed in the Probate Court on July 18, 2017 001391

15. Estate's Motion for Summary Judgment with Memorandum in Support and all supporting exhibits filed in the Probate Court on October 31, 2016 001552

16. Affidavit of Pamela Murray with Exhibits 001946

17. Affidavit of Elizabeth Murray with Exhibits 001972

18. Certificate Reopening Minnie Murray's Estate 001980

19. Guardianship Petition dated April 30, 2007 001981

20. Claimants' Petition for Allowance dated September 22, 2008 001986

21. PR Notices of Disallowance dated August 21, 2008 001988

22. Claim(s) filed on behalf of Estate of Minnie H. Murray and Stylesetters dated June 3, 2008 001993

23. Transcript of Appeal Hearing dated June 19, 2018 002007

24. Transcript of Probate Court Hearing on Motion for Summary Judgment dated July 25, 2017 002046

25. Deposition Transcript of Hilton Smith 002123

26. Deposition Transcript of Larry Bump 002160

27. Deposition Transcript of Gil Mestler 002188

28. Deposition Transcript of Dana Flavin 002212

29. Deposition Transcript of Jeff Young 002310

30. Deposition Transcript of Elizabeth Murray 002331

31. June 27, 2018 – Letter from Appellants' Counsel to Judge McCoy 002475

32. July 16, 2018 – Letter from Respondent's Counsel to Judge McCoy 002488

33. Certification of Counsel 002490

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas
For the Ninth Judicial Circuit

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Appeal from Charleston County Probate Court
The Hon. Tamara C. Curry, Probate Judge
Case No. 2017-CP-10-05198

Elizabeth Murray as Personal Representative
of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellants,

v.

The Estate of William E. Murray,

Respondent.

ORDER ON PROBATE APPEAL
(Affirmed)

This matter comes before the Court pursuant to S.C. Code Ann. §62-1-308 on appeal from the order of the Charleston County Probate Court, dated September by 28, 2017, disallowing two claims asserted against The Estate of William E. Murray which include one claim by Elizabeth Murray as Executrix of the Estate of her mother, Minnie H. Murray, and a separate claim on behalf of her own business, Elizabeth's Stylesetters. The parties submitted briefs as provided by Section 62-1-308, and the matter came before the Court for oral arguments on June 19, 2018. Having carefully reviewed the briefs and the record, and having considered the arguments on each and all the issues raised, the order of the Probate Court is AFFIRMED.

Procedural and Factual Background

The Appellant, Elizabeth Murray, is one of three daughters of Minnie H. Murray and William H. Murray. The other two daughters of that marriage are Pamela Holmes Murray, and Catherine Murray-Smith. Their Mother/Mrs. Murray, a resident of New York, died on June 18,

JBH/1

1967; Elizabeth Murray was appointed as a successor Executrix of her Mother's Estate in 1975. Mr. Murray died more than 40 years later on August 7, 2007, as a resident of this State; Hilton C. Smith, Jr., was appointed as Personal Representative of Mr. Murray's estate along with James Ma.

During the decade preceding his death in August 2007, Mr. Murray was diagnosed with Parkinson's disease and suffered a gradual decline in physical and mental abilities. During the two-three years preceding Mr. Murray's death, there was substantial family discord. One of the points of contention involved Mr. Murray's actions, as chairman on a trust, in removing his daughters Pamela and Elizabeth Murray as trustees which led to highly contentious litigation. While the details of that litigation are not directly relevant to the issue before the Court, in the course of that litigation, Elizabeth Murray asserted claims that her Father was mentally incompetent and incapable of executing the removal documents. Those assertions, which are discussed in more detail below, form part of the foundation for the Probate Court's judicial estoppel ruling on the Stylesetters Claim.

In addition, the Appellant Elizabeth Murray began posturing to challenge Mr. Murray's estate planning, and she even went so far as to consult with lawyers about how to "remove" people who were close to her Father and ways to change her Father's estate plan. Mr. Murray was concerned that his daughter would make a grab for an inheritance, but he had engaged the services of estate planning attorney, Edward G.R. Bennett, through whom he executed a Durable Healthcare Power of Attorney and a Last Will and Testament. Despite Mr. Murray's planning, during the last months of his life, Appellant's machinations escalated and she made allegations that the agents he had appointed under this Health Care Power of Attorney were giving Mr. Murray morphine with the intent of causing an overdose; however, healthcare professionals found Mr. Murray's condition to be consistent with advanced Parkinson's disease and found Mr. Murray well

JBM/2

cared for with no signs of abuse. In addition, a guardianship petition was filed in the Probate Court in July 2007 (just a month before his death) alleging that Mr. Murray was incompetent and seeking appointment of a guardian at which time a temporary guardian was appointed by the Probate Court.

This appeal directly relates to two creditor's claims filed on June 3, 2008, by Elizabeth Murray against her Father's estate. The claim made by Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray for $6,260,845.70 arises from a 1980 Settlement Agreement regarding a debt owed by Mr. Murray to Mrs. Minnie Holmes Murray at the time of her death in 1967. The following facts as to that claim are incontrovertible under the evidence of record. Mr. Murray had borrowed $142,685 from his wife, Minnie Holmes Murray, and upon her death, the note became the property of her Estate. During the course of the probate of her Estate, Mr. Murray reached an agreement with the beneficiaries (his three daughters) – "the 1980 Settlement Agreement." Mr. Murray made six yearly payments pursuant to the 1980 Settlement Agreement – the last being on February 24, 1986; Elizabeth Murray took no legal actions to collect the sums still remaining due on under the 1980 Settlement Agreement during Mr. Murray's lifetime. In 1992, the three Daughters reached an agreement for accounting and liquidation of the Mother's Estate, and the three Daughters executed an agreement on December 12, 1992, to transfer the debt owed by Mr. Murray to the three beneficiaries, jointly.

The claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for $538,034, is allegedly for interior design services she performed for an Inn formerly owned by her Father.

Notices of Disallowance were filed on August 21, 2008, and Elizabeth Murray filed Petition(s) for Allowance of the claims on September 22, 2008. After years of extensive litigation and discovery on a number of issues, the Estate filed a Motion for Summary Judgment, which motion was granted by the Probate Court in an Order, dated September by 28, 2017. As to the

JBM/3

claim of Elizabeth Murray as Executrix of her Mother's Estate, the Probate Court found that she lacks standing to pursue the asserted debt because any obligation would be due to the three Daughters, personally, not the Mother's Estate.. In addition, the Probate Court found that any claim by the Mother's Estate was barred as a matter of law by the statute of limitations and by the equitable doctrine of laches based on a delay of 22 years in pursuing a default of the debt which occurred in 1986. As to the claim of Elizabeth's Stylesetters, the Probate Court found that the Elizabeth Murray is judicially estopped from asserting her claim, which is based on a document supposedly executed by Father/Mr. Murray 14 days before his death, in view of the fact that she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life.

Standard of Review: On appeal from the final order of the probate court, the circuit court applies the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Matter of Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "An appellate court reviews the grant of summary judgment using the same standard employed by the circuit court." Columbia/CSA–HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 411 S.C. 557, 560, 769 S.E.2d 847, 848 (2015). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that ... no genuine issue [exists] as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the

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nonmoving party." Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361–62, 563 S.E.2d 331, 333 (2002).

The Probate Court properly applied the summary judgment standard to the facts which are undisputed and by considering any disputed facts in the light most favorable to Elizabeth Murray. The claim of Elizabeth Murray as Executrix of her Mother's Estate was properly disallowed for lack of standing because the alleged debt had been transferred out of Mrs. Murray's estate to the three Daughters personally; and for the additional and independent ground that any claim on the debt was barred as a matter of law by the statute of limitations. As to the claim of Elizabeth's Stylesetters, the Probate Court also properly found that the Elizabeth Murray is judicially estopped from asserting her claim on behalf of Elizabeth's Stylesetters based on her repeated assertions in legal proceedings that her Father lacked mental capacity in the last years of his life.

DISCUSSION

I. Claim by the Estate of Minnie Holmes Murray

A. Lack of Standing: The Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of the Estate of Minnie Murray reached an agreement in 1992 that transferred the debt to themselves as joint community property. The general law on standing as correctly identified by the Probate Court provides:

> Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1413 (7th ed.1999). "Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." 1A C.J.S. Actions § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*

Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 665 S.E.2d 237, 241 (Ct. App. 2008). "'Generally, a party must be a real party in interest to the litigation to have standing.' Sloan v.

JBM/5

Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). 'A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.' *Id.*" Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010).

The Probate Court correctly concluded that the Estate of Minnie Holmes Murray is not the real party in interest and has no standing to pursue this claim because any debt owed under the 1980 Settlement Agreement is the community property of the three Daughters. That conclusion is supported by the clear and express language of the 1992 Agreement that the debt "shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis." The conclusion is further supported by the sworn testimony of Appellant Elizabeth Murray and her sister Pamela in their April 3, 2013 affidavits that they had "entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis."

Other supportive evidence is the fact that during the same time frame that they executed the 1992 transfer agreement, the Daughters also executed a Release in connection with a "Final Account," liquidating assets and discharging Appellant as the PR. And, not to be overlooked, is the fact that the 1980 Settlement Agreement itself involved the Daughters in their individual capacities and expressly contemplated concluding the administration of the Estate of the late Minnie Holmes Murray. Appellant also acknowledged in the "Dear Daddy" letter discussed below that the three Daughters had agreed to share equally in all monies on this debt, and that the debt was owed to his "original daughters" as his "first three children." Accordingly, the Probate Court correctly disallowed the claim as presented because the debt no longer belonged to the Estate of Minnie Murray after 1992, and the ruling is AFFIRMED. Moreover, regardless of who had standing, the claim was properly disallowed because it was barred by the statute of limitations.

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B. Statute of Limitations:

Pursuant to the Probate Code, in the absence of a waiver, "no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid." S.C. Code Ann. § 62-3-802(a). Mr. Murray defaulted on the note in 1986, and thus, the statute of limitations had long expired by the time the claim was presented after Mr. Murray's death in 2007. To avoid the bar from her delay, the Appellant claims that the debt was revived when Mr. Murray allegedly acknowledged and reaffirmed the debt by signing a letter written and presented to him by Elizabeth Murray in February 2006.

The letter (generally referred to as the "Dear Daddy" letter), dated February 9, 2006, is a rambling seven-page document in which Elizabeth Murray generally complains about her Father's estate planning decisions and jealous anger over his intentions to make bequests to his long-time companion/life partner (Helen Flynn), his son-in-law (Hilton Smith), and his fourth daughter (Brianna); and she also expresses concern about her liability to her Mother's Estate as the executrix. She implored her Father to "formally certify below that you are in agreement with your original stated obligation to Mommy's Estate:"

> I must have you, as soon as possible, *memorialize this agreement that those monies are due, as outlined in the 1980 agreement (see attached), by you to* ***her Estate***, whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us. (Emphasis in original).
>
> ****
>
> I must ask you affirm this decades old debt owed to your first three children, which you have always stated is your intention, both legally and as our father.

This letter was not presented with the claim or the Petition for Allowance; rather, it was not until several months after the PRs denied her claim (February 2009), that Appellant produced the letter that Mr. Murray's former paramour (Dana Flavin) had supposedly "uncovered" while cleaning out her office.

JBM 7

As stated by the Probate Court, when the statute of limitations expires, it bars a legal action to collect the debt, but it does not erase the debt. In re Vaughn, 536 B.R. 670, 677 (Bankr. D.S.C. 2015). Stale debts may be revived by either partial payment of the debt or a signed writing. Id. (quoting S.C. Code Ann. § 15–3–120 (2015)):

> No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or interest is equivalent to a promise in writing.

However, any such new promise to pay "'must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full.'" Id. (quoting Black v. White, 13 S.C. 37, 40 (S.C.1880)). "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a clear and explicit promise to pay the debt sued on, or such an unqualified and unequivocal admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." Suber v. Richards, 61 S.C. 393, 402, 39 S.E. 540, 542 (1901). "'It seems to be the general doctrine that the writing, in order to constitute an acknowledgment must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it.'" Id. at 543 (quoting Manchester v. Braedner, 107 N. Y. 346, 14 N. E. 405, 1 Am. St. Rep. 831 (1887)). *See also* 4 *Williston on Contracts* §8:20 (4th ed.); 51 Am. Jur. 2d *Limitation of Actions* §§ 301, 314.

After oral argument was held on June 19, 2018, the Appellant Estate of Minnie Murray submitted a letter to this Court attempting to raise a new issue on appeal challenging the Probate Court's application of South Carolina law on this acknowledgement issue by asserting that the choice of law provision in the 1980 agreement requires application of Georgia law. However, the Appellant has not preserved this choice of law issue for appellate review because she did not raise

JBM/8

it in the Probate Court and she did not set forth any point on the choice of law in her Statement of Issues on Appeal or in her appellate brief; in fact, the Appellant affirmatively cited and argued South Carolina law. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal."); State v. Berry, 418 S.C. 500, 504, 795 S.E.2d 26, 28 (2016) (A party cannot make one argument at trial and another ground on appeal.). Furthermore, Georgia law does not apply to the issue of whether the Dear Daddy letter is a sufficient acknowledgement to avoid the statute of limitations bar because it is a matter integral to the remedy/procedure and thus the law of the forum applies. Paul Pegram & Co. v. Williams, 38 S.C.L. 219, 224, 227 (S.C. App. L. 1851) ("the remedies by which contracts are enforced, are to be according to the *lex fori*"); Levy v. Boas, 18 S.C.L. 217, 219 (S.C. App. L. & Eq. 1831) ("the form of the action, the course of judicial proceedings, and the time when the action must be commenced, must be directed exclusively by the laws of the State, in which the action is brought"); Gattis v. Chavez, 413 F. Supp. 33, 35 (D.S.C. 1976) ("the question of whether the statute of limitations bars a remedy in a given case is ordinarily a matter determined solely by the law of the forum", citing Levy v. Boas, supra.); *see also* Restatement (Second) of Conflict of Laws § 142 (1971)(as to general rule that law of forum state applies to statute of limitations tolling provisions); Lewis v. Gupta, 54 F. Supp. 2d 611, 616 (E.D. Va. 1999)("the applicable statute of limitations and its associated tolling provisions are procedural matters governed by the law of the forum state").

While the Estate presented evidence from several sources to prove that the signature on the Dear Daddy letter is not Mr. Murray's, for the purposes of the summary judgment motion, the signature was properly accepted as genuine. However, even considering the Dear Daddy letter in

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the light most favorable to the Appellant/Claimant, it does not constitute a clear and explicit promise to pay the debt or an unqualified and unequivocal admission that the debt was still due to imply a new promise to pay the debt under the legal standard as set forth in Suber v. Richard, supra. As the Probate Court correctly held: "Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt." The Probate Court's conclusion is supported by the analysis in In re Vaughn, 536 B.R. at, 677, regarding a promise that "the debt will 'come in to be paid with my other debts,' then the debt is not revived.'" (Citing Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C.Ct.App.1841)). The Dear Daddy letter contains similar equivocal language anticipating that the debt may not be due until Father's death as evidenced in the language that the debt was due "whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us." In addition, the letter contains an equivocation that the debt was due "both legally and as our father." Accordingly, in the absence of a sufficient acknowledgement, the Probate Court correctly disallowed the claim as barred by the statute of limitations.

C. Laches:

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (citing Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961)). "Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 599 (Ct. App. 1999). This is certainly a case of unreasonable delay. Appellant sat on her rights and "laid in

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wait" for 22 years until Mr. Murray passed away to pursue a claim for Mr. Murray's alleged default and as a result, the Estate has been prejudiced by the fact that the clock has been running on interest calculations (at a rate of 12%) for over twenty years, such that Appellant now claims she and her two sisters are entitled to over $6 million for an original debt of a little over $200,000. In view of the 22-year delay and the serious prejudice, the Probate Court ruled that she is now barred from asserting her claim by the equitable doctrine of laches as well as the statute of limitations.

The Appellant argues that laches is an equitable defense and does not apply to the legal claim to collect on the debt. Whether the particular ground be statute of limitations or laches, in either, the ultimate conclusion is that the claim was presented far too late. Accordingly, the claim was properly disallowed and the Probate Court's ruling is AFFIRMED.

II. Claim by Elizabeth Murray as Elizabeth's Stylesetters

Elizabeth Murray attended the New York School of Interior Design and established her own interior design company, Elizabeth's Stylesetters. At various times, Mr. Murray hired his Daughter for design projects, including the Inn at Quogue, a New York property owned by Mr. Murray and Hilton Smith. Appellant ceased working at the Inn in 2002. After her Father died, she asserted this claim against his Estate for reimbursement for certain expenses supposedly incurred with her work at the Inn. However, her claim is not supported by any specific invoice(s)[1]; rather, she relies upon a letter she drafted, dated July 21, 2007—just two weeks before her Father

[1] During the probate litigation, Appellant produced a jumble of hundreds of pages of unorganized receipts, invoices, credit card statements and spreadsheets attempting to establish a foundation for her claim. The Estate's co-PR, James Ma, who was Mr. Murray's bookkeeper of all records and payments and worked with Mr. Murray during Elizabeth Murray's employment at the Inn, reviewed the records and confirmed that Ms. Murray is not owed any money related to her employment at the Inn.

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died, purporting to be an agreement by Mr. Murray to pay Appellant for work at the Inn (as well as other monies supposedly owed in conjunction with her divorce).

The Estate moved for summary judgment on grounds that the letter is not a valid contractual basis for the claim because Mr. Murray did not possess the requisite mental capacity to enter into a legally binding contract during those last days of his life.[2] The Probate Court properly declined to grant summary judgment on the factual dispute as to whether Mr. Murray had the mental capacity when he signed the letter; however, the Probate Court did correctly grant summary judgment on the alternative ground that the Appellant is judicially estopped to claim that her Father had the legal mental capacity to execute the July 21, 2007 letter based on statements she made in prior legal proceedings declaring that her Father already was mentally incompetent and incapable of handling his own affairs before July 2007.

The South Carolina Supreme Court adopted the doctrine of judicial estoppel in Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 25-52, 489 S.E.2d 472 (1997), based on a policy concern that "for the judicial process to function properly, litigants must approach it in a truthful manner." "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Id. In Cothran v. Brown, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004), the Court later adopted/articulated the elements necessary for the doctrine to apply:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to

[2] The Estate presented evidence from Mr. Murray's personal physician that recounted his dire medical condition and cognitive impairment during those last weeks of his life, and the MUSC physician testified to a reasonable degree of medical certainty, that as of May 2007, Mr. Murray did not have the mental capacity to enter into a contract.

JBM 12

mislead the court; and (5) the two positions must be totally inconsistent. *See* Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct.App.2001).

The Probate Court properly considered each of these elements. As referenced above, the Murrays were embroiled in litigation in 2006 involving a trust, and during that litigation, Appellant made numerous representations that her father was mentally incompetent for a period of time that included his last weeks.[3] Apart from the trust litigation, the Appellant alleged that Mr. Murray lacked mental capacity in the guardianship proceeding in the Probate Court during July 2007. Based on these filings and proceedings each element has been met to apply judicial estoppel to disallow this claim. Accordingly, the Probate Court's ruling is AFFIRMED on this ground.

CONCLUSION

WHEREFORE, based on the foregoing, the Probate Court properly granted summary judgment to the Estate, disallowing the claim made by Elizabeth Murray on behalf of the Estate of Minnie Holmes Murray for the alleged debt arising from a 1980 Settlement Agreement, and that ruling is AFFIRMED. The Probate Court also properly granted summary judgment to the Estate disallowing the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, and that ruling is AFFIRMED.

AND IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Circuit Court Judge, Ninth Judicial Circuit

Charleston, South Carolina
August 14, 2018

[3] While the Estate of William Murray in no way concedes that William Murray was, in fact, mentally incapacitated at all times alleged by Ms. Murray, the Estate maintains that he clearly did not have the requisite capacity to enter into the subject contractual documents only two weeks prior to his death.

JBM|13

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	
COUNTY OF CHARLESTON)	**CASE No. 2007-ES-10-1116**
)	**ORDER TO AMEND**
IN RE:)	**ORDER GRANTING MOTION**
THE ESTATE OF WILLIAM E.)	**FOR SUMMARY JUDGMENT**
MURRAY)	
)	
)	

Hearing Date:	July 25, 2017
Presiding Judge:	Tamara C. Curry
Plaintiff's Attorneys:	Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.
Respondent's Attorneys:	George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.
Court Reporter:	Janice N. Shepherd, CSR, RPR

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This Court has received and verified information that has been determined to be a clerical error in the recorded Order dated September 28, 2017. Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Court may correct clerical mistakes in judgments or orders. The Petitioner sough a Motion for Summary Judgement and the motion was granted. The Ordered erroneously stated "For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED**". This is a clerical error and the correct language should read "For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby **GRANTED**."

THIS MATTER came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate

of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCP. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

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I. The Standard for Summary Judgment.

Summary Judgment is a drastic remedy and should be cautiously granted only when it is shown that there exists "No genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also *McNair vs. Rainsford, 33 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998).* "The Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving parties; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia vs. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994).* Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a "mere scintilla" of evidence to withstand summary judgment. *Turner vs. Millimon, 392 S.C. 116,122, 708 S.E.2d 766,769 (2011); Hancock vs. Mid South Management Co., Inc.,381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).*

ICC 3/9/18 11/13/17

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1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.
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Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

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5/9/18
11/13/17

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JCC 09/18 11/13/17

IV. Conclusions of Law

The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for $6,260,845.70.

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

Lack of Standing

1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell v. Bank of America, 379 S.C. 437, 444 (Ct. App. 2008)* (citing Black's Law Dictionary 1423 7th ed. 1999). "[S]tanding is ... [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." Id. (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612 (2010)* (citations omitted).
2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed

to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 600 (2001)* (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.

4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are

community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).

5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.
6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.
7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

1 CC
7 of 18
11/13/17

Statute of Limitations

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied...".
10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).*

11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn, 536 B.R. 670, 677 (2015)*; see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'. *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).*

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10/9/18
11/13/17

12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards, 61 S.C. 393, 401 (S.C. 1901)* (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id. at 402.*

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray $240,000. The last payment made by the Decedent pursuant to that

agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over $5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

2 CC
11/8/18
11/13/17

16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

Doctrine of Laches

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198 (1988) (citing Byars v. Cherokee County, 237 S.C. 548 (1961))*

18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199.* Applying the doctrine of laches is "highly fact specific and each case must be judged by its own merits." *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004).* The doctrine of laches may be applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).*

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over $6 million dollars on an original debt of $240,000.

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2/8/18
11/13/17

20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for $538,034.00

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters $538,034.00. The second argument is an argument of fact not law (see SCRCP Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

4CC
13 of 18
11/13/17

Judicial Estoppel

1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251 (1997).* The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.*

The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*

2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown, 357 S.C. 210, 215 (2004).* The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey, 327 S.C.242, 489 S.E.2d 472 (1997).*

3. In order for the doctrine to apply, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that "Elizabeth's Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death." (Pet'r. Mem. Opp'n Summ. J. 14).

5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust ("Samuel Freeman Trust Litigation"). Ms. Murray

commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.

8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.

9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that

the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into an agreement to pay Elizabeth Murray $538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel

Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her $538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

V. Conclusion

For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby **GRANTED.**

Tamara C. Curry
Associate Judge of Probate
Charleston County

November 13, 2017
Charleston, South Carolina

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

JCC
18 of 18
11/13/17

IN THE STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	Case No: 2007-ES-10-1116
	)	
IN THE MATTER OF:	)	
	)	
THE ESTATE OF WILLIAM E. MURRAY	)	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
	)	
	)	

Hearing Date:	July 25, 2017
Presiding Judge:	Tamara C. Curry
Plaintiff's Attorneys:	Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.
Respondent's Attorneys:	George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.
Court Reporter:	Janice N. Shepherd, CSR, RPR

1cc
of 16
1/28/17

THIS MATTER came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce

proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCP. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED.**

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I. The Standard for Summary Judgment.

Summary Judgment is a drastic remedy and should be cautiously granted only when it is shown that there exists "No genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also *McNair vs. Rainsford, 33 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998).* "The Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving parties; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia vs. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994).* Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a "mere scintilla" of evidence to withstand summary judgment. *Turner vs. Millimon, 392 S.C. 116,122, 708 S.E.2d*

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III. Findings of Fact in the Light Most Favorable to Elizabeth Murray

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JCC
5 of 16
9/28/16

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2/9/16
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Lack of Standing

1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell v. Bank of America, 379 S.C. 437, 444 (Ct. App. 2008)* (citing Black's Law Dictionary 1423 7th ed. 1999). "[S]tanding is ... [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." Id. (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612 (2010)* (citations omitted).

2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 600 (2001)* (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.

4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).

5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.

6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.

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7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

Statute of Limitations

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied…".

10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).*

11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn, 536 B.R. 670, 677 (2015)*; see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'. *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).*

12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards, 61 S.C. 393, 401 (S.C. 1901)* (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id. at 402.*

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray $240,000. The last payment made by the Decedent pursuant to that agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over $5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

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16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

Doctrine of Laches

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198 (1988) (citing Byars v. Cherokee County, 237 S.C. 548 (1961))*

18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199.* Applying the doctrine of laches is "highly fact specific and each case must be judged by its own merits." *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004).* The doctrine of laches may be

applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).*

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over $6 million dollars on an original debt of $240,000.

20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for $538,034.00

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to

his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters $538,034.00. The second argument is an argument of fact not law (see SCRCP Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

Judicial Estoppel

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1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251 (1997).* The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.* The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*
2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown, 357 S.C. 210, 215 (2004).* The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey, 327 S.C.242, 489 S.E.2d 472 (1997).*
3. In order for the doctrine to apply, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related

proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that "Elizabeth's Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death." (Pet'r. Mem. Opp'n Summ. J. 14).

5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust ("Samuel Freeman Trust Litigation"). Ms. Murray commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.

8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.

9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into

an agreement to pay Elizabeth Murray $538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her $538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to

execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

V. Conclusion

For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED**.

ICC
16 Oct 16
9/28/17

Tamara C. Curry
Associate Judge of Probate
Charleston County

September 28, 2017
Charleston, South Carolina

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE PROBATE COURT CASE NO: 2014-ES-10-1327
IN RE: ESTATE OF MINNIE HOLMES MURRAY, DECEASED PETITIONER: ELIZABETH E. MURRAY, PERSONAL REPRESENTATIVE QUALIFIED UNDER THE LAWS OF THE STATE OF NEW YORK	)	ORDER RECOGNIZING AUTHORITY OF A FOREIGN PERSONAL REPRESENTATIVE

This matter is based upon the ancillary probate documents of ELIZABETH E. MURRAY, as Administrator qualified under the laws of the State of New York praying that the Estate documents of MINNIE HOLMES MURRAY bearing File Number 1967-2344, be admitted to probate in this Court.

It is made apparent to this Court that MINNIE HOLMES MURRAY departed this life on June 17, 1967, a resident of Westchester County, New York.

Pursuant to Sections 62-4-204 and 62-4-205 of the Probate Code for South Carolina, where there have been filed true and authenticated copies of the Estate proceedings by the domiciliary foreign personal representative, said appointed foreign Personal Representative has the power of a local Personal Representative.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the foreign Personal Representative may exercise in this State all the powers of a local Personal Representative and may maintain actions and proceedings in this State.

AND IT IS SO ORDERED!

Probate Court Judge for Charleston County

Charleston, SC
8/15, 2014

FILED
SURROGATE'S COURT
DEC 31 2014
WESTCHESTER COUNTY
DEPUTY CHIEF CLERK

Control# 11278
EXEMPLIFICATION
FILE#: 1967-2344
FILE NAME: Minnie Holmes Murray

STATE OF NEW YORK)
SURROGATE'S COURT)
COUNTY OF WESTCHESTER)

FILE

2013 NOV 15 PM 3:47

I, Joseph M Accetta, Chief Clerk of the Westchester County Surrogate's Court, being a Court of Record, do hereby certify that the copies of the documents listed below, were compared to the original records of the Court filed in the Surrogate's Office of the County of Westchester, and in my care and custody as the Chief Clerk of the Surrogate's Court, and that the same are full, exact and correct transcripts therefrom, and of the whole of each original record.

LAST WILL AND TESTAMENT OF MINNIE HOLMES MURRAY;PROBATE PETITION;DECREE GRANTING PROBATE; LETTERS OF ADMINISTRATRATION CTA

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affix the seal of the Westchester Surrogate's Court on November 15, 2013.

Joseph M. Accetta

Joseph M Accetta, Chief Clerk

STATE OF NEW YORK)
SURROGATE'S COURT)
COUNTY OF WESTCHESTER)

I, Anthony A. Scarpino Jr., Presiding Judge of the Surrogate's Court, do hereby certify that Joseph M Accetta, the person attesting the above certificate, is Chief Clerk of the Surrogate's Court, that his/her signature to the attestation is genuine, that he/she is the legal custodian of the records and files of the Court, and that the certificate and attestation are in due form.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester Surrogate's Court on November 15, 2013.

Anthony A. Scarpino Jr., Surrogate

STATE OF NEW YORK)
SURROGATE'S COURT)
COUNTY OF WESTCHESTER)

I, Joseph M Accetta, Chief Clerk, of the Westchester County Surrogate's Court, do hereby certify that the Honorable Anthony A. Scarpino Jr., is the Surrogate of Westchester County, duly commissioned and qualified, and the Presiding Judge of the Surrogate's Court, and that his/her signature to the foregoing certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester Surrogate's Court on November 15, 2013.

Joseph M. Accetta

Joseph M Accetta, Chief Clerk

(Facsimile signature executed pursuant to Section 2609 of the Surrogate's Court Procedure Act)

[illegible] attesting the age of

REPORT OF ESTATE NOT FULLY DISTRIBUTED (22 NYCRR 207.42)

SURROGATE'S COURT
WESTCHESTER COUNTY

Estate of MINNIE HOLMES MURRAY, Deceased

File No. 2344/1967

Date of issuance of first permanent letters: October 30, 1967

Approximate amount of gross estate $360,542.10 (as of date of death) *** See supplement attached

Approximate amount that has been distributed to beneficiaries
$ 517,000.00

Approximate amount remaining in fiduciary's hands at present
$ -- The only asset remaining in the Estate is a note receivable as set forth on the supplement

This estate has not yet been fully distributed for the following reason: [state briefly and state date by which distribution may be expected]

Litigation is pending in the CHarleston County Probate Court in CHarleston, SC as to whether or not the Note is a valid debt.
Mediation is scheduled for August 2013 in Charleston, SC.

Date of this report June 7, 2013

Elizabeth Edwards Murray, Fiduciary

Address: 737 Park Ave #33
NYC, NY 10021

Phone: 917-971-1245 (cell)

Donald L. Sharpe
Donald L. Sharpe
Attorney for above Fiduciary

Address: c/o Fordham Law School
140 W. 62nd Street, New York, NY
10023

Phone: 212-636-6828

ESTATE OF MINNIE HOLMES MURRAY
FILE NO. 2344/1967
SUPPLEMENT TO REPORT OF ESTATE NOT FULLY DISTRIBUTED

*** At the time of the decedent's death, her former husband, namely William E. Murray, owed the Decedent the sum of $142,685.10. This receivable was not listed as an asset of the Estate by the original Executor Leon Murray, who was later removed for malfeasance.

Thereafter, on April 22, 1980, the late William E. Murray executed an Agreement with the Decedent's three daughters acknowledging the debt as valid. The Agreement provided that the principal balance of the loan was now $240,000.00 together with interest thereon.

William E. Murray made a few payments on the loan, however, interest has continued to accrue since 1980 at the rate of 12 percent per annum. At the time of the death of William E. Murray in 2007, Elizabeth E. Murray, acting as the successor Executrix of the Estate of Minnie Holmes Murray filed a creditor's claim in the Probate Court in Charleston County, South Carolina against the Estate of William Murray to enforce the Agreement/Note entered into in 1980 by Mr. Murray.

Certificate# 120893

Surrogate's Court of the State of New York
Westchester County
Certificate of Appointment of Administrator

File #: 1967-2344

IT IS HEREBY CERTIFIED that Letters in the estate of the Decedent named below have been granted by this court, as follows:

Name of Decedent: **Minnie Holmes Murray** Date of Death: **June 17, 1967**

Domicile: **Bronxville, New York**

Fiduciary Appointed: **Elizabeth E Murray**
Mailing Address: 113 Upper Lakeshore Drive
Katonah NY 10536

Type of Letters Issued: **LETTERS OF ADMINISTRATION CTA**

Letters Issued On: **August 22, 1975**

Limitations: NONE

and such Letters are unrevoked and in full force as of this date.

Dated: July 22, 2014

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester County Surrogate's Court at White Plains, New York.

WITNESS, Hon. Anthony A. Scarpino Jr., Judge of the Westchester County Surrogate's Court.

Joseph M. Accetta

Joseph M Accetta, Chief Clerk
Westchester County Surrogate's Court

This Certificate is Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

Certificate# 108456

Surrogate's Court of the State of New York
Westchester County
Certificate of Appointment of Administrator

File #: 1967-2344

IT IS HEREBY CERTIFIED that Letters in the estate of the Decedent named below have been granted by this court, as follows:

Name of Decedent:	**Minnie Holmes Murray**	Date of Death: **June 17, 1967**
Domicile:	**Bronxville, New York**	
Fiduciary Appointed:	**Elizabeth E Murray**	
Mailing Address:	737 Park Avenue #3B New York NY 10021	

Type of Letters Issued: **LETTERS OF ADMINISTRATION CTA**

Letters Issued On: **August 22, 1975**

Limitations: NONE

and such Letters are unrevoked and in full force as of this date.

Dated: November 15, 2013

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester County Surrogate's Court at White Plains, New York.

WITNESS, Hon. Anthony A. Scarpino Jr., Judge of the Westchester County Surrogate's Court.

Joseph M. Accetta

Joseph M Accetta, Chief Clerk
Westchester County Surrogate's Court

This Certificate is Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

Certificate# 101153

Surrogate's Court of the State of New York
Westchester County
Certificate of Appointment of Administrator

File #: 1967-2344

IT IS HEREBY CERTIFIED that Letters in the estate of the Decedent named below have been granted by this court, as follows:

Name of Decedent:	**Minnie Holmes Murray**	Date of Death: **June 17, 1967**
Domicile:	**Bronxville, New York**	
Fiduciary Appointed:	**Elizabeth E Murray**	
Mailing Address:	737 Park Avenue #3B New York NY 10021	

Type of Letters Issued: **LETTERS OF ADMINISTRATION CTA**

Letters Issued On: **August 22, 1975**

Limitations: NONE

and such Letters are unrevoked and in full force as of this date.

Dated: June 17, 2013

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester County Surrogate's Court at White Plains, New York.

WITNESS, Hon. Anthony A. Scarpino Jr., Judge of the Westchester County Surrogate's Court.

Joseph M. Accetta

Joseph M Accetta, Chief Clerk
Westchester County Surrogate's Court

This Certificate is Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

87831

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
SEP 17 2018
SC Court of Appeals

The Hon. Jennifer B. McCoy, Circuit Court Judge
The Hon. Tamara C. Curry, Probate Court Judge

Case No. 2017-CP-10-05198

Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters, *Appellants,*

v.

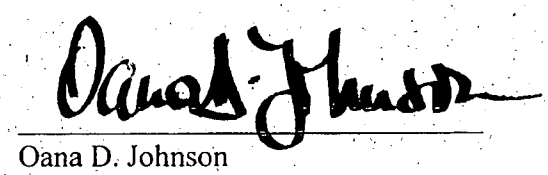
The Estate of William E. Murray, *Respondents,*

NOTICE OF APPEAL

Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters hereby notice their intent to appeal the Form 4 Order of the Hon. Jennifer B. McCoy filed August 7, 2018 and Order of the Hon. Jennifer B. McCoy, dated August 15, 2018.

These Orders on appeal affirmed the Orders of the Probate Court, the Hon. Tamara C. Curry presiding, dated September 28, 2017 and November 13, 2017.

Appellants received notice of the August 7, Form 4 Order on August 13 via mail. Appellants received notice of the August 15 Order on August 22, 2018 via mail.



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ATTORNEYS FOR APPELLANTS

This 6th day of September 2018

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 17 2018
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. Jennifer B. McCoy, Circuit Court Judge
The Hon. Tamara C. Curry, Probate Court Judge

Case No. 2017-CP-10-05198

Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters, *Appellants,*

v.

The Estate of William E. Murray, *Respondents,*

PROOF OF SERVICE

I certify that I have served copies of the forgoing Notice of Appeal on Respondent's counsel of record by depositing true and correct copies with the US Postal Service, postage prepaid, on September 6, 2018 addressed to the following:

Molly H. Craig, Esquire
Jean Marie Jennings, Esquire
HOOD LAW FIRM, LLC
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Post Office Box 1508
Charleston, SC 29402
ATTORNEYS FOR RESPONDENT

John B. Hagerty, Esquire

J. James Duggan, Esquire
DUGGAN LAW FIRM, LLC
44 Markfield Drive, Suite E
Charleston, SC 29407

ATTORNEY FOR CATHERINE SMITH AND BRIANNA MURRAY RODRIQUEZ

Richard S. Rosen, Esquire

Liberty Center
151 Meeting Street
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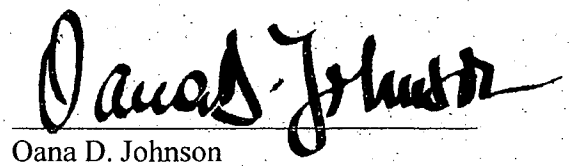
Charleston, SC 29401

ATTORNEY FOR HILTON C. SMITH

PO Box 893
Charleston, SC 29402

SPECIAL FIDUCIARY FOR THE ESTATE OF WILLIAM E. MURRAY



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ATTORNEYS FOR APPELLANTS

This 6th day of September 2018
Charleston, South Carolina

OANA D. JOHNSON
ATTORNEY AT LAW

September 6, 2018

RECEIVED
SEP 17 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters v. The Estate of William E. Murray

Dear madame or sir,

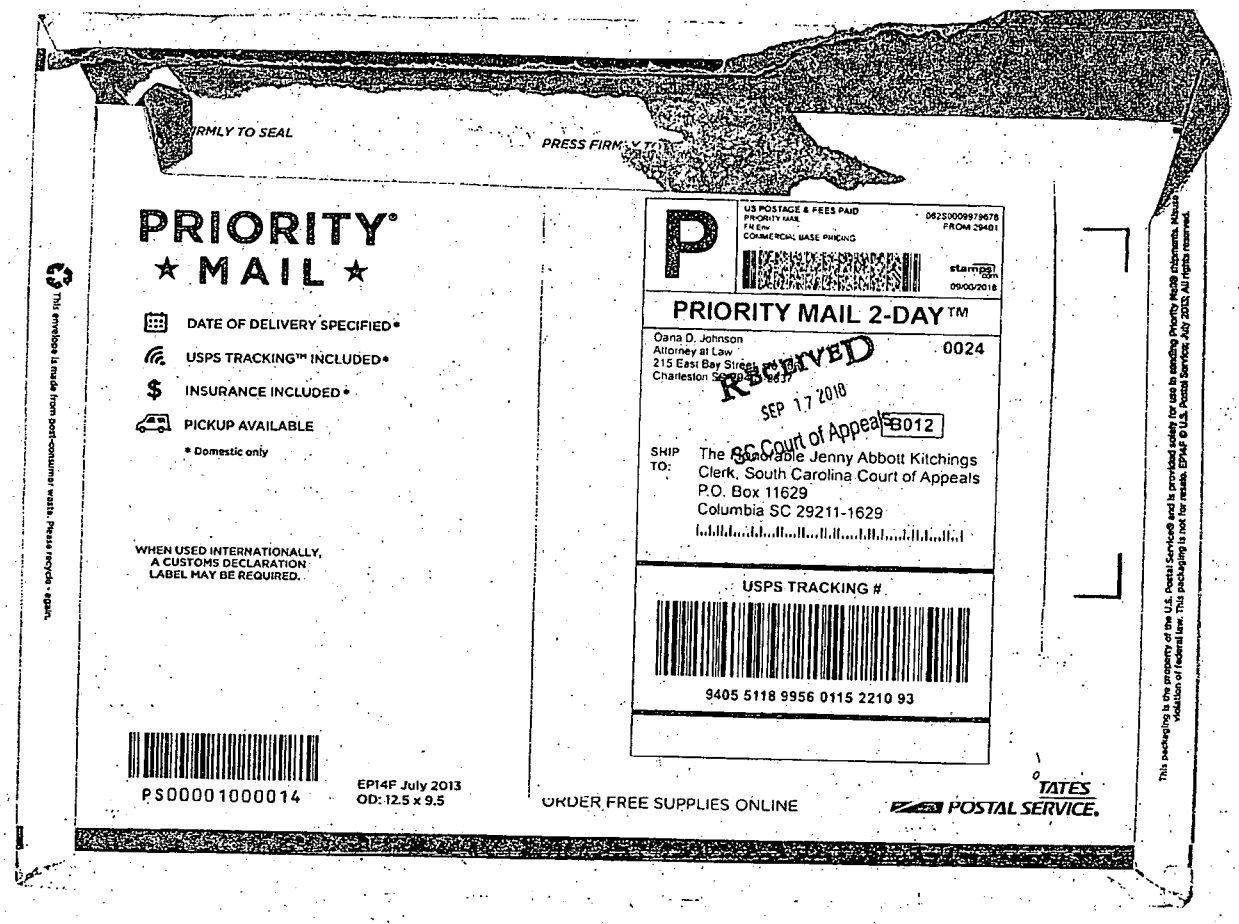
Enclosed, please find the original and one copy of the Notice of Appeal, Proof of Service and our check in the amount of $100 representing filing fee for the appeal. Please file the original return a filed copy of the Petition and Proof of Service in the self adressed envelope provided.

Very truly yours,

Allison Millar

Allison Millar
Assistant to Oana D. Johnson

CC: Molly Hood, Esquire
James Duggan, Esquire
John Hagerty, Esquire
Richard Rosen, Esquire



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Oana D. Johnson
Attorney at Law
215 East Bay Street
Charleston SC 29401-2837

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MOLLY H. CRAIG
Partner
DIRECT DIAL: (843) 577-1215
E-MAIL: molly.craig@hoodlaw.com

June 8, 2018

VIA U.S. MAIL & E-MAIL

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George J. Kefalos P.A.
46A State Street
Charleston SC 29401

Oana D. Johnson, Esquire
Attorney at Law
215 East Bay Street, Suite 406
Charleston, SC 29401

Re: Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters v. The Estate of William E. Murray
C/A No. 2017-CP-10-5198, Charleston CP
HLF File No. 156.000

Dear Counselors:

Enclosed please find Respondent's Motion to Dismiss Probate Appeal in regards to the above-referenced matter which is being filed with the court. If you should have any questions, please feel free to contact me.

Kind regards,

Yours truly,

Molly H. Craig

MHC/jku
Enclosure(s)
cc: ***Via E-Mail***
Barry I. Baker, Esquire
Edward G.R. Bennett, Esquire
John Hagerty, Esquire
J. James Duggan, Esquire
Richard Rosen, Esquire
Frank Blanchard, Esquire

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)
Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters, ☐ Petitioner(s),	) CASE NO. 2017-CP-10-5198
Versus	) **MOTION TO DISMISS PROBATE APPEAL**
The Estate of William E. Murray, ☒ Respondent(s). check box above indicating submitting party	)

Plaintiffs' attorney:	Defendant's attorney:
Oana D. Johnson, Esquire Attorney at Law 215 East Bay Street, Suite 406 Charleston, SC 29401	Molly H. Craig (SC #6960) HOOD LAW FIRM, LLC 172 Meeting Street; Post Office Box 1508 Charleston, SC 29402 Phone: (843) 577-4435; Fax: (843) 722-1630

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss Probate Appeal
Estimated Time Needed: 20 minutes Court Reporter Needed: YES ☒/ NO ☐

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly H. Craig 6/8/17
Signature of Attorney for ☐ Petitioner/ ☒ Respondent Date submitted

SECTION III: ~~Motion~~ Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: (check reason)
☐ Rule to Show ~~Cause~~ in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE
CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

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(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED–AMOUNT DUE:

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas
For the Ninth Judicial Circuit

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Appeal from Charleston County Probate Court

The Hon. Tamara C. Curry, Probate Judge

Case No. 2017-CP-10-05198

Elizabeth Murray as Personal Representative
of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellants,

v.

The Estate of William E. Murray,

Respondent.

Motion to Dismiss Probate Appeal

TO: Oana D. Johnson, and George J. Kefalos, Attorneys for Appellants Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Sylesetters

YOU WILL PLEASE TAKE NOTICE THAT Respondent The Estate of William E. Murray, will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court dismissing the probate appeal on the ground that the Appellants have failed to perfect the appeal in compliance with the Probate Code, S.C. Code § 62-1-308. This motion shall be based upon the statutory and common laws of the State of South Carolina, and the appellate filings in the Court's file, which will show that the Appellants have not filed a Record on Appeal as required by §62-1-308(f).

The court record will show the following facts:

1. On October 11, 2017, the Appellants served and filed a Notice of Appeal from the Order of the Probate Court of September 18, 2017.
2. The Respondent filed and served its brief on March 20, 2017.
3. As of the date of this filing, the Appellants have not filed or served a Record on Appeal as required by § 62-1-380(f).

[See attached Docket Sheet.]

Pursuant to §62-1-380 (f), the Appellants were required to file and serve the Record on Appeal on April 19, 2018 [30 days after service of the Respondent's Brief]:

> Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and file with the clerk of the circuit court one copy of the Record on Appeal with proof of service.

The statute uses mandatory language of "shall." Montgomery v. Keziah, 277 S.C. 84, 282 S.E.2d 853, 854 (1981) ("Ordinarily, the use of the word "shall" in a statute means that the action referred to is mandatory.") In Montgomery, the appellant in a probate appeal did not file or serve any grounds of appeal as required by the statute in place at that time, S.C. Code §18-5-20. In dismissing that appeal, the Court noted that the statute set a mandatory requirement and that "compliance with the provision is necessary for the orderly function of the appellate process." Id. The current statute, §62-1-308 also sets a mandatory requirement and compliance is necessary for the orderly function of the appellate process. Accordingly, this appeal should be dismissed for failure to file a Record on Appeal as mandated by § 62-1-308(f).

Respectfully submitted,

HOOD LAW FIRM, LLC

Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
Jean Marie Jennings (SC #100651)
Christina M. Dickinson, Of Counsel (SC #75423)
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Email: Info@hoodlaw.com

COUNSEL FOR RESPONDENT

Oct. 18, 2018
Charleston, South Carolina

Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

Switch View

Elizabeth Murray , plaintiff, et al VS William E Murray

Case Number:	2017CP1005198	**Court Agency:**	Common Pleas	**Filed Date:**	10/11/2017
Case Type:	Appeal	**Case Sub Type:**	Probate Court 940	**File Type:**	Non-Jury
Status:	Appeal	**Assigned Judge:**	Clerk Of Court C P, G S, And Family Court		
Disposition:		**Disposition Date:**		**Disposition Judge:**	
Original Source Doc:		**Original Case #:**			
Judgment Number:		**Court Roster:**			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Johnson, Oana Dobrescu	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Johnson, Oana Dobrescu	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Johnson, Oana Dobrescu	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Johnson, Oana Dobrescu	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Kefalos, George J.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Kefalos, George J.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Kefalos, George J.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Kefalos, George J.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Baker, Barry I.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Baker, Barry I.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Baker, Barry I.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Baker, Barry I.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Slotchiver, Stephen Michael	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Slotchiver, Stephen Michael	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Slotchiver, Stephen Michael	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Slotchiver, Stephen Michael	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Craig, Mary Agnes Hood	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Craig, Mary Agnes Hood	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Craig, Mary Agnes Hood	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Craig, Mary Agnes Hood	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Hood, Robert H.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
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Hood, Robert H.	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Jennings, Jean Marie	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Jennings, Jean Marie	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Jennings, Jean Marie	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Jennings, Jean Marie	6/18/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/09/2018-14:23		
Murray, William E Estate of	Respondents Initial Brief & cert/srv	Filing		03/20/2018-09:13		

Murray, William E Estate of	Motion/Motion Filing Fee	Filing		02/13/2018-16:23		
Jennings, Jean Marie	Respondents Motion for Extension of Time	Motion	MOTIONS ROSTER - JUDGE McCOY	02/13/2018-16:18		
	Return from Charleston County Probate Court	Filing		02/09/2018-11:11		
	Respondents Designation/Matter to be included in Appeal, srv	Filing		01/19/2018-14:28		
	Appellants Brief & cert/srv	Filing		01/19/2018-14:25		
	Appellants Designations of Matters to be included in Appeal	Filing		01/19/2018-14:20		
Murray, Elizabeth	Motion/Motion Filing Fee	Filing		01/08/2018-12:26		
Johnson, Oana Dobrescu	Appellants Motion for Extension of Time	Motion	MOTIONS ROSTER - JUDGE McCOY	01/08/2018-09:17		
Craig, Mary Agnes Hood	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Craig, Mary Agnes Hood	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Slotchiver, Stephen Michael	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Slotchiver, Stephen Michael	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Baker, Barry I.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Baker, Barry I.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Johnson, Oana Dobrescu	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Johnson, Oana Dobrescu	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Kefalos, George J.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Kefalos, George J.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Jennings, Jean Marie	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Jennings, Jean Marie	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Hood, Robert H.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Hood, Robert H.	2/5/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		01/02/2018-10:12		
Murray, William E	Motion/Motion Filing Fee	Filing		12/12/2017-16:16		
Johnson, Oana Dobrescu	Consent Motion for Extension of Time	Motion	MOTIONS ROSTER - JUDGE McCOY	12/12/2017-14:58		
	Appellants Notice of Appeal & cert/srv	Filing		11/27/2017-11:50		
Murray, Elizabeth	Appeal/Notice of Appeal (Workflow)	Action		10/21/2017-09:18		
Johnson, Oana Dobrescu	Notice of Intent to Appeal From Probate Court, crt/srv	Motion	MOTIONS ROSTER - JUDGE McCOY	10/11/2017-16:07		
Murray, Elizabeth	Motion/Appeal	Motion		10/11/2017-09:18		
Murray, Elizabeth	Appeal/Notice of Appeal	Filing		10/11/2017-09:18		

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THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas
for the Ninth Judicial Circuit

2018 JUN 11 PM 3:26
JULIE J. ARMSTRONG
CLERK OF COURT

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

The Hon. Tamara C. Curry, Probate Court

Case No. 2017-CP-10-5198

Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellants,

vs.

The Estate of William H. Murray

Respondents.

APPENDIX

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ATTORNEYS FOR APPELLANTS

INDEX

Order Granting Motion for Summary Judgement.....000001

Notice of Appeal.....000019

Revised Order Granting Motion for Summary Judgement.....000038

Transcript of Hearing on Motion for Summary Judgement.....000056

Memorandum in Opposition to Motion for Summary Judgement.....000133

Deposition of Hilton Smith.....000294

Deposition of Larry Bump.....000331

Deposition of Gil Mestler.....000359

Deposition of Dana Flavin.....000383

Deposition of Jeff Young.....000481

Deposition of Elizabeth Murray.....000502

Certificate Reopening Minnie Murray's Estate.....000561

Order Signed by Judge Condon on August 15, 2015, and filed in West Chester County, New York on December 31, 2014.....000562

IN THE STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	Case No: 2007-ES-10-1116
	)	
IN THE MATTER OF:	)	
	)	
THE ESTATE OF WILLIAM E. MURRAY	)	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
	)	
	)	

Hearing Date:	July 25, 2017
Presiding Judge:	Tamara C. Curry
Plaintiff's Attorneys:	Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.
Respondent's Attorneys:	George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.
Court Reporter:	Janice N. Shepherd, CSR, RPR

1CC
8/16
1/28/17

THIS MATTER came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce

proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCP. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

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1/28/17

I. The Standard for Summary Judgment.

Summary Judgment is a drastic remedy and should be cautiously granted only when it is shown that there exists "No genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also *McNair vs. Rainsford, 33 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998).* "The Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving parties; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia vs. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994).* Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a "mere scintilla" of evidence to withstand summary judgment. *Turner vs. Millimon, 392 S.C. 116,122, 708 S.E.2d*

766,769 (2011); Hancock vs. Mid South Management Co., Inc.,381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).

II. Background and Procedural History

1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.

2. On June 3, 2008, Elizabeth Murray filed two creditor's claims against the Estate of William E. Murray. Ms. Murray's first claim was filed on behalf of the Estate of Minnie Holmes Murray in the amount of $6,260,845.70. The second claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of $538,034.00.

2 CC
3/8/16
1/28/17

3. The claim on behalf of the Estate of Minnie Holmes Murray is predicated on a Settlement Agreement, dated April 22, 1980, between the Decedent and his three (3) daughters who are the beneficiaries of the Estate of Minnie Holmes Murray, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith.

4. The claim on behalf of Elizabeth's Stylesetters was made by Elizabeth Murray as president of the interior design company. The claim is based on reimbursement of various expenditures of her business for work done at the Inn of Quogue ("the Inn"), a hotel and restaurant formerly owned by the Decedent and Hilton C. Smith Jr.

5. On August 21, 2008, Hilton C. Smith, Jr., as Co-Personal Representative of the Estate of William E. Murray, filed a Notice of Disallowance of Claim as to the claims made

by the Estate of Minnie Holes Murray and Elizabeth's Stylesetters, stating that the claims were not properly made and barred by the statute of limitations.

6. On September 22, 2008, Elizabeth Murray filed a Petition for Allowance of Claim for both the claim of the Estate of Minnie H. Murray and for the claim of Elizabeth Stylesetters.

7. On October 31, 2016, the Estate of William E. Murray filed its Motion for Summary Judgment.

III. Findings of Fact in the Light Most Favorable to Elizabeth Murray

Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

As to the first creditor's claim made on behalf of the Estate of Minnie Holmes Murray:

1. In 1967, the Decedent borrowed $142,685 from his wife, Minnie Holmes Murray. Following the death of Minnie Holmes Murray, on June 18, 1967, the note became the property of her Estate.

2. On April 22, 1980, the Decedent entered into a Settlement Agreement ("1980 Agreement") with his three (3) daughters, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith, as the beneficiaries of the Minnie Holmes Murray Estate. In the 1980 Agreement, the Decedent agreed to pay $240,000 plus 8% interest rate and a default interest rate of 12%. The Decedent also transferred a life insurance policy to the Estate of Minnie H. Murray in the amount of $385,000, to compensate for losses related to the unpaid debt.

3. The Decedent made 6 yearly payments pursuant to the 1980 Settlement Agreement, however, February 24, 1986 was the last time the Decedent made a payment pursuant

to the 1980 Agreement. The Decedent also stopped paying the premiums on the life insurance policy.

4. Between 1998 and 2006, Elizabeth Murray wrote the Decedent several letters inquiring into the 1980 Agreement and asking the Decedent to make payment on the debt or to reestablish the debt owed.

5. On February 9, 2006, a letter was written from Elizabeth Murray to the Decedent asking the Decedent to make payments pursuant to the 1980 Agreement. According to Elizabeth Murray, the Decedent signed the letter in which he recognized the debt.

As to the second creditor's claim made on behalf of Elizabeth's Stylesetters:

6. Elizabeth's Stylesetters had an interior decorating company owned and operated by Elizabeth Murray.

7. Elizabeth Murray filed a claim on behalf of her company, Elizabeth's Stylesetters, in the amount of $538,034.00.

8. The claim stems from work done by Elizabeth's Stylesetters at the Inn, which includes interior decorating work done by Elizabeth Murray and items that were left at the Inn.

9. According to Elizabeth Murray, the Decedent signed an agreement on July 21, 2007, two weeks prior to the Decedent's death, to pay back Elizabeth's Stylesetters for the work done at the Inn.

IV. Conclusions of Law

The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for $6,260,845.70.

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

Lack of Standing

1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell v. Bank of America, 379 S.C. 437, 444 (Ct. App. 2008)* (citing Black's Law Dictionary 1423 7th ed. 1999). "[S]tanding is … [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." Id. (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612 (2010)* (citations omitted).

2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 600 (2001)* (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.

4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).

5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.

6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.

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7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

Statute of Limitations

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied…".

10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).*

11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn, 536 B.R. 670, 677 (2015)*; see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'." *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).*

12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards, 61 S.C. 393, 401 (S.C. 1901)* (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id. at 402.*

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray $240,000. The last payment made by the Decedent pursuant to that agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over $5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

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16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

Doctrine of Laches

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198 (1988) (citing Byars v. Cherokee County, 237 S.C. 548 (1961))*

18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199.* Applying the doctrine of laches is "highly fact specific and each case must be judged by its own merits." *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004).* The doctrine of laches may be

applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).*

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over $6 million dollars on an original debt of $240,000.

20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for $538,034.00

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to

his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters $538,034.00. The second argument is an argument of fact not law (see SCRCP Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

Judicial Estoppel

1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251 (1997).* The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.* The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*

2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown, 357 S.C. 210, 215 (2004).* The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey, 327 S.C.242, 489 S.E.2d 472 (1997).*

3. In order for the doctrine to apply, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related

proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that "Elizabeth's Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death." (Pet'r. Mem. Opp'n Summ. J. 14).

5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust ("Samuel Freeman Trust Litigation"). Ms. Murray commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.

8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.

9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into

an agreement to pay Elizabeth Murray $538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

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13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her $538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to

execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

V. Conclusion

For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED.**

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Tamara C. Curry
Associate Judge of Probate
Charleston County

September 28, 2017
Charleston, South Carolina

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY CHARLESTON)

CIVIL ACTION COVERSHEET

2007-ES -10- 1116

2017-CP-10-5198

IN THE MATTER OF WILLIAM E. MURRAY)

Submitted By: Oana D. Johnson
Address: 215 East Bay St. Suite 406,
Charleston, SC 29401

SC Bar #: 100373
Telephone #: 843-203-4195
Fax #:
Other:
E-mail: oana@odjlaw.com

FILED
2017 OCT 11 P 4:20
CHARLESTON COUNTY
CLERK OF COURT

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☒ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

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2017 OCT 11 P 4:20
CHARLESTON COUNTY
CLERK OF COURT

Submitting Party Signature: Oana D. Johnson **Date:** October 9, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No: 2017-CP-10-

IN THE MATTER OF WILLIAM E. MURRAY

NOTICE OF INTENT TO APPEAL TO THE CIRCUIT COURT

FILED
2017 OCT 11 P 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Petitioners, Elizabeth Murray as Personal Representative for the Estate of Minnie H. Murray and Elizabeth Stylesetters, by and through their undersigned counsel pursuant to S.C. Code Ann. § 62-1-308, intend to appeal to the Charleston County Court of Common Pleas of the Orders of the Honorable Judge of Probate, Tamara C. Curry, dated September 28, 2017 and received by Petitioner on October 4, 2017. Copies of the Order are attached hereto, and incorporated by reference, as if fully restated herein.

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2017 OCT 11 AM 9:23
CHARLESTON COUNTY
PROBATE COURT

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ATTORNEYS FOR PLAINTIFF

This ___ day of September, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2017 I served a copy of **Notice of Intent to Appeal to the Circuit Court** upon the counsel of record in this matter by first class mail, proper postage affixed, by US mail:

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Phone: (843) 577-4435
Facsimile: (843) 722-1630

Robert H. Hood (SC#2599)
Molly H. Craig (SC# 6960)
Christina M. Dickinson (SC #75423)
Jean Marie Jennings (SC #100651)

FILED
2017 OCT 11 AM 9:20
JULIE J. ARMSTRONG
CLERK OF COURT

Will Turner

FILED
2017 OCT 11 AM 9:23
CHARLESTON COUNTY
CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	Case No: 2007-ES-10-1116
	)	
IN THE MATTER OF:	)	
	)	
THE ESTATE OF WILLIAM E. MURRAY	)	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
	)	
	)	

Hearing Date:	July 25, 2017
Presiding Judge:	Tamara C. Curry
Plaintiff's Attorneys:	Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.
Respondent's Attorneys:	George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.
Court Reporter:	Janice N. Shepherd, CSR, RPR

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THIS MATTER came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce

proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCP. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

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I. The Standard for Summary Judgment.

Summary Judgment is a drastic remedy and should be cautiously granted only when it is shown that there exists "No genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also *McNair vs. Rainsford, 33 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998).* "The Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving parties; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia vs. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994).* Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a "mere scintilla" of evidence to withstand summary judgment. *Turner vs. Millimon, 392 S.C. 116,122, 708 S.E.2d*

766,769 (2011); Hancock vs. Mid South Management Co., Inc.,381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).

II. Background and Procedural History

1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.

2. On June 3, 2008, Elizabeth Murray filed two creditor's claims against the Estate of William E. Murray. Ms. Murray's first claim was filed on behalf of the Estate of Minnie Holmes Murray in the amount of $6,260,845.70. The second claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of $538,034.00.

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3. The claim on behalf of the Estate of Minnie Holmes Murray is predicated on a Settlement Agreement, dated April 22, 1980, between the Decedent and his three (3) daughters who are the beneficiaries of the Estate of Minnie Holmes Murray, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith.

4. The claim on behalf of Elizabeth's Stylesetters was made by Elizabeth Murray as president of the interior design company. The claim is based on reimbursement of various expenditures of her business for work done at the Inn of Quogue ("the Inn"), a hotel and restaurant formerly owned by the Decedent and Hilton C. Smith Jr.

5. On August 21, 2008, Hilton C. Smith, Jr., as Co-Personal Representative of the Estate of William E. Murray, filed a Notice of Disallowance of Claim as to the claims made

by the Estate of Minnie Holes Murray and Elizabeth's Stylesetters, stating that the claims were not properly made and barred by the statute of limitations.

6. On September 22, 2008, Elizabeth Murray filed a Petition for Allowance of Claim for both the claim of the Estate of Minnie H. Murray and for the claim of Elizabeth Stylesetters.

7. On October 31, 2016, the Estate of William E. Murray filed its Motion for Summary Judgment.

III. Findings of Fact in the Light Most Favorable to Elizabeth Murray

Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

As to the first creditor's claim made on behalf of the Estate of Minnie Holmes Murray:

1. In 1967, the Decedent borrowed $142,685 from his wife, Minnie Holmes Murray. Following the death of Minnie Holmes Murray, on June 18, 1967, the note became the property of her Estate.

2. On April 22, 1980, the Decedent entered into a Settlement Agreement ("1980 Agreement") with his three (3) daughters, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith, as the beneficiaries of the Minnie Holmes Murray Estate. In the 1980 Agreement, the Decedent agreed to pay $240,000 plus 8% interest rate and a default interest rate of 12%. The Decedent also transferred a life insurance policy to the Estate of Minnie H. Murray in the amount of $385,000, to compensate for losses related to the unpaid debt.

3. The Decedent made 6 yearly payments pursuant to the 1980 Settlement Agreement, however, February 24, 1986 was the last time the Decedent made a payment pursuant

to the 1980 Agreement. The Decedent also stopped paying the premiums on the life insurance policy.

4. Between 1998 and 2006, Elizabeth Murray wrote the Decedent several letters inquiring into the 1980 Agreement and asking the Decedent to make payment on the debt or to reestablish the debt owed.

5. On February 9, 2006, a letter was written from Elizabeth Murray to the Decedent asking the Decedent to make payments pursuant to the 1980 Agreement. According to Elizabeth Murray, the Decedent signed the letter in which he recognized the debt.

As to the second creditor's claim made on behalf of Elizabeth's Stylesetters:

6. Elizabeth's Stylesetters had an interior decorating company owned and operated by Elizabeth Murray.

7. Elizabeth Murray filed a claim on behalf of her company, Elizabeth's Stylesetters, in the amount of $538,034.00.

8. The claim stems from work done by Elizabeth's Stylesetters at the Inn, which includes interior decorating work done by Elizabeth Murray and items that were left at the Inn.

9. According to Elizabeth Murray, the Decedent signed an agreement on July 21, 2007, two weeks prior to the Decedent's death, to pay back Elizabeth's Stylesetters for the work done at the Inn.

IV. Conclusions of Law

The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for $6,260,845.70.

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

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Lack of Standing

1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell v. Bank of America, 379 S.C. 437, 444 (Ct. App. 2008)* (citing Black's Law Dictionary 1423 7th ed. 1999). "[S]tanding is ... [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." Id. (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612 (2010)* (citations omitted).

2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 600 (2001)* (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.

4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).
5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.
6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.
7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

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Statute of Limitations

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied…".
10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).*

11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn, 536 B.R. 670, 677 (2015)*; see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'. *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).*

12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards, 61 S.C. 393, 401 (S.C. 1901)* (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id. at 402.*

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray $240,000. The last payment made by the Decedent pursuant to that agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over $5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

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16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

Doctrine of Laches

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198 (1988) (citing Byars v. Cherokee County, 237 S.C. 548 (1961))*

18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199.* Applying the doctrine of laches is "highly fact specific and each case must be judged by its own merits." *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004).* The doctrine of laches may be

applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).*

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over $6 million dollars on an original debt of $240,000.

20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for $538,034.00

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to

his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters $538,034.00. The second argument is an argument of fact not law (see SCRCP Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

Judicial Estoppel

1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251 (1997).* The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.* The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*

2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown, 357 S.C. 210, 215 (2004).* The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey, 327 S.C.242, 489 S.E.2d 472 (1997).*

3. In order for the doctrine to apply, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related

proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that "Elizabeth's Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death." (Pet'r. Mem. Opp'n Summ. J. 14).

5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust ("Samuel Freeman Trust Litigation"). Ms. Murray commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

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6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.

8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.

9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into

an agreement to pay Elizabeth Murray $538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

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13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her $538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to

execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

V. Conclusion

For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED**.

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Tamara C. Curry
Associate Judge of Probate
Charleston County

September 28, 2017
Charleston, South Carolina

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	
COUNTY OF CHARLESTON)	**CASE No. 2007-ES-10-1116**
)	**ORDER TO AMEND**
IN RE:)	**ORDER GRANTING MOTION**
THE ESTATE OF WILLIAM E.)	**FOR SUMMARY JUDGMENT**
MURRAY)	
)	
)	

Hearing Date:	July 25, 2017
Presiding Judge:	Tamara C. Curry
Plaintiff's Attorneys:	Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.
Respondent's Attorneys:	George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.
Court Reporter:	Janice N. Shepherd, CSR, RPR

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This Court has received and verified information that has been determined to be a clerical error in the recorded Order dated September 28, 2017. Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Court may correct clerical mistakes in judgments or orders. The Petitioner sough a Motion for Summary Judgement and the motion was granted. The Ordered erroneously stated "For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED**". This is a clerical error and the correct language should read "For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby **GRANTED**."

THIS MATTER came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate

of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCP. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

I. The Standard for Summary Judgment.

Summary Judgment is a drastic remedy and should be cautiously granted only when it is shown that there exists "No genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also *McNair vs. Rainsford, 33 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998).* "The Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving parties; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia vs. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994).* Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a "mere scintilla" of evidence to withstand summary judgment. *Turner vs. Millimon, 392 S.C. 116,122, 708 S.E.2d 766,769 (2011); Hancock vs. Mid South Management Co., Inc.,381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).*

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II. Background and Procedural History

1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.
2. On June 3, 2008, Elizabeth Murray filed two creditor's claims against the Estate of William E. Murray. Ms. Murray's first claim was filed on behalf of the Estate of Minnie Holmes Murray in the amount of $6,260,845.70. The second claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of $538,034.00.

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3. The claim on behalf of the Estate of Minnie Holmes Murray is predicated on a Settlement Agreement, dated April 22, 1980, between the Decedent and his three (3) daughters who are the beneficiaries of the Estate of Minnie Holmes Murray, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith.

4. The claim on behalf of Elizabeth's Stylesetters was made by Elizabeth Murray as president of the interior design company. The claim is based on reimbursement of various expenditures of her business for work done at the Inn of Quogue ("the Inn"), a hotel and restaurant formerly owned by the Decedent and Hilton C. Smith Jr.

5. On August 21, 2008, Hilton C. Smith, Jr., as Co-Personal Representative of the Estate of William E. Murray, filed a Notice of Disallowance of Claim as to the claims made by the Estate of Minnie Holes Murray and Elizabeth's Stylesetters, stating that the claims were not properly made and barred by the statute of limitations.

6. On September 22, 2008, Elizabeth Murray filed a Petition for Allowance of Claim for both the claim of the Estate of Minnie H. Murray and for the claim of Elizabeth Stylesetters.

7. On October 31, 2016, the Estate of William E. Murray filed its Motion for Summary Judgment.

III. Findings of Fact in the Light Most Favorable to Elizabeth Murray

Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

As to the first creditor's claim made on behalf of the Estate of Minnie Holmes Murray:

1. In 1967, the Decedent borrowed $142,685 from his wife, Minnie Holmes Murray. Following the death of Minnie Holmes Murray, on June 18, 1967, the note became the property of her Estate.
2. On April 22, 1980, the Decedent entered into a Settlement Agreement ("1980 Agreement") with his three (3) daughters, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith, as the beneficiaries of the Minnie Holmes Murray Estate. In the 1980 Agreement, the Decedent agreed to pay $240,000 plus 8% interest rate and a default interest rate of 12%. The Decedent also transferred a life insurance policy to the Estate of Minnie H. Murray in the amount of $385,000, to compensate for losses related to the unpaid debt.
3. The Decedent made 6 yearly payments pursuant to the 1980 Settlement Agreement, however, February 24, 1986 was the last time the Decedent made a payment pursuant to the 1980 Agreement. The Decedent also stopped paying the premiums on the life insurance policy.
4. Between 1998 and 2006, Elizabeth Murray wrote the Decedent several letters inquiring into the 1980 Agreement and asking the Decedent to make payment on the debt or to reestablish the debt owed.

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5. On February 9, 2006, a letter was written from Elizabeth Murray to the Decedent asking the Decedent to make payments pursuant to the 1980 Agreement. According to Elizabeth Murray, the Decedent signed the letter in which he recognized the debt.

As to the second creditor's claim made on behalf of Elizabeth's Stylesetters:

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IV. Conclusions of Law

The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for $6,260,845.70.

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

Lack of Standing

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1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell v. Bank of America, 379 S.C. 437, 444 (Ct. App. 2008)* (citing Black's Law Dictionary 1423 7th ed. 1999). "[S]tanding is … [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." Id. (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612 (2010)* (citations omitted).
2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed

to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources, 345 S.C. 594, 600 (2001)* (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.

4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are

community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).

5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.
6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.
7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

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Statute of Limitations

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied...".
10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).*

11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn, 536 B.R. 670, 677 (2015)*; see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'. *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).*

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12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards, 61 S.C. 393, 401 (S.C. 1901)* (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id. at 402.*

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray $240,000. The last payment made by the Decedent pursuant to that

agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over $5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

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16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

Doctrine of Laches

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums, 296 S.C. 195, 198 (1988) (citing Byars v. Cherokee County, 237 S.C. 548 (1961))*

18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199.* Applying the doctrine of laches is "highly fact specific and each case must be judged by its own merits." *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004).* The doctrine of laches may be applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).*

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over $6 million dollars on an original debt of $240,000.

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20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for $538,034.00

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters $538,034.00. The second argument is an argument of fact not law (see SCRCP Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

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Judicial Estoppel

1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251 (1997).* The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.*

The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*

2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown, 357 S.C. 210, 215 (2004).* The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey, 327 S.C.242, 489 S.E.2d 472 (1997).*

3. In order for the doctrine to apply, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that "Elizabeth's Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death." (Pet'r. Mem. Opp'n Summ. J. 14).

5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust ("Samuel Freeman Trust Litigation"). Ms. Murray

commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

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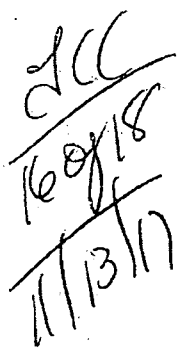
7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.
8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.
9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that

the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into an agreement to pay Elizabeth Murray $538,043.00, in which Elizabeth Murray claims he did.



11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel

Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her $538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

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15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

V. Conclusion

For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby **GRANTED.**

Tamara C. Curry
Associate Judge of Probate
Charleston County

November 20, 2017
Charleston, South Carolina

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

IN RE: THE ESTATE OF
WILLIAM E. MURRAY

THE ESTATE OF WILLIAM E. MURRAY,

Petitioner,

vs. CASE NO. 2007-ES10-1116

ELIZABETH MURRAY,

Respondent.

HEARING BEFORE THE HONORABLE TAMARA C. CURRY

DATE:	July 25, 2017
TIME:	10:12 a.m.
LOCATION:	Charleston County Probate Court 84 Broad Street Charleston, SC
REPORTED BY:	Janice N. Shepherd, Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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THE COURT: Good morning, Ladies and Gentlemen. This is Case Number 2017-ES10-1116 in reference to the Estate of William E. Murray. We have a Motion For Summary Judgment as to claims for the Estate of Minnie H. Murray and Elizabeth Stylesetters.

We have listed for the Estate of William Murray, Hilton C. Smith, Jr., co-personal representative; Molly Craig; John Hagerty; and Edward Bennett. Is that correct?

MS. CRAIG: Yes, sir, Your Honor. Is Edward here? Edward is not here. Also on behalf of the estate is Jean Marie Jennings, and we have a law clerk with us this summer, Greg Rouse, is here as well.

James Ma is the other personal representative of the estate. He sat in the airport at Newark all day yesterday, and they canceled flight after flight after flight. So unfortunately Mr. Ma is not able to join us today.

THE COURT: Thank you. And then we have listed for the Respondent Elizabeth Murray, Attorney Johnson is present?

MS. JOHNSON: That would be me.

THE COURT: She's present. Attorney

Kefalos?

MR. KEFALOS: Yes, ma'am.

THE COURT: Attorney Baker?

MR. BAKER: Yes, ma'am.

THE COURT: And Attorney Slotchiver?

MR. SLOTCHIVER: Yes, Your Honor.

THE COURT: And then I have the other personal representative listed as another party. Catherine Murray-Smith, Brianna Rodriguez being represented by Attorney Duggan?

MR. DUGGAN: Yes, Your Honor.

THE COURT: And then I have the special administrator, Attorney Rosen?

MR. ROSEN: Yes, Your Honor. And your counsel is present with you?

MR. HAGOOD: Mr. Brew Hagood.

THE COURT: Okay, thank you. Anyone else present?

MS. CRAIG: Your Honor, I'm not sure how I overlooked this, but my father, Robert Hood, is also here on behalf of the estate.

MR. HOOD: Good morning, Your Honor.

THE COURT: Good morning. How are you?

MR. HOOD: I'm grateful if you are.

THE COURT: Thank you. Did I leave

anyone else out? I thought I saw counsel in the center. Who did I leave out? No? Parties? Okay. Just wanted to make sure.

Are there any preliminary matters that we need to address before we begin?

MS. CRAIG: No, ma'am, Your Honor.

THE COURT: We can proceed.

MS. CRAIG: May it please the Court.

THE COURT: Yes, ma'am.

MS. CRAIG: Your Honor, as you just indicated, I'm Molly Craig on behalf of the Estate of William Murray. This is a Motion For Summary Judgment with regard to the two claims that were filed by Elizabeth Murray, one of Mr. Murray's daughters, back in 2008. And before I go through and just frame this a little bit, just to take you back, because this has been a while, and I've got a timeline that hopefully will assist us in following all of this.

Just to tell you a little bit about the family dynamics, so to speak, Elizabeth Murray and her sister, Pam Murray -- Pam Murray, unfortunately, has passed away -- Elizabeth Murray and Pam Murray for a number of years had worked together to -- what we contend, to make changes to

Mr. Murray's testamentary intentions. His other two daughters, who are present in the courtroom, Catherine Smith and Brianna, Catherine and Elizabeth Murray and Pam Murray are all sisters. Brianna Murray is a half sister.

So, effectively, if this claim which I have on the screen as being over $6 million -- that's back in 2008 -- it's over double that now because Ms. Murray is claiming that she is entitled to 12 percent interest on an annual basis. So if this claim is granted, Brianna Murray will effectively be left out of her father's will when the Last Will and Testament that Edward drafted for Mr. Murray in 2005 was very clear that he wanted all four of his daughters to take equally under his will. That's a very important point I just want to say at the outset with regard to these claims.

So let's just walk through. Like I said, we've got a timeline, and I hope this will assist us in going through. The first claim -- and it's easy, if you can remember, the first claim goes back to the Estate of Minnie Holmes Murray. She died in 1967. The second claim, that operative date, for Your Honor's benefit, is July 21, 2007, just two days -- I mean, just two weeks or so

before Mr. Murray's death. We'll get to Claim 2 to in a second. But Claim 1 -- and, Your Honor, as I go through these legal documents that we contend prove that a Motion For Summary Judgment should be granted, we have copies of all of these documents. So if Your Honor at any point would like a copy, and of course I'd be happy to e-mail this Power Point to Your Honor if that would assist you as well.

So we get to this first claim. So Mr. Murray, at one point, he borrowed money from his late wife. And we do not contend that this debt was never owed. It was owed. In fact, it was owed, and there was a settlement agreement to memorialize this actual debt. And for some reason -- and we don't know the reason -- Mr. Murray stopped paying on this debt. And that was -- his last payment was in 1986. That's the last time he paid on that Claim 1.

But just to frame the issue so that you can understand a little bit of the family dynamics, because I think that plays in significantly to this, Mr. Murray was unfortunately diagnosed with Parkinson's in 2001.

Then in July 2004 -- this is the

unrefuted evidence that we have from Mr. Murray's medical records. His treating neurologist was Dr. Bergmann, Dr. Bergmann here at the Medical University of South Carolina. And Dr. Bergmann, who was taking care of Mr. Murray for his Parkinson's, he documented in the medical records that "The patient" -- Mr. Murray -- "reports there is some discord with his daughters, two of whom may be seeking to make a 'grab for inheritance' concerning his competency." This is as far back as 2004. And of course the two daughters that we're talking about are Elizabeth and Pam Murray. "To his knowledge, there is no legal process ensuing. Once again, Helen" -- who is his longtime companion -- "confirms information there is nothing to suggest Mr. Murray is impaired at home."

So back in 2004, we see that there is, unfortunately, a fair amount of family discord.

Moving forward in time to a year later, 2005, I think that this date is very important, because Mr. Murray, who is a very sophisticated lawyer, he was an entrepreneur, a philanthropist. He went to Harvard Law School. He was a very smart man, and he went to the best tax lawyer that we have in the Southeast, who is Edward Bennett, and

asked him to prepare his Last Will and Testament to make sure that his testamentary wishes were followed.

That date is important, because just a year later, in 2006, Ms. Murray claims that Mr. Murray renewed that $6 million debt, although he never mentioned it to Mr. Bennett or any of his colleagues or anyone he works with or any of his family members. The only person that contends that is Elizabeth Murray.

So moving forward in time, again, the family discord is getting worse. There was a Samuel Freeman Charitable Trust which basically gave money to a lot of great causes. Mr. Murray was the chairman of that trust. And at one point, he made his daughters, Elizabeth and Pam Murray, trustees. The reason why he removed them as trustees is because he found out that they, as whistleblowers, allegedly, had gone to U.S. Trust and claimed that their own father was self-dealing.

Note that this is in 2006, a year before his death. He has advanced Parkinson's. And Ms. Murray, both Elizabeth Murray and Pam Murray, are working with authorities and prosecutors in New York against their father. So,

quite understandably, he exercised his rights under -- as the chair of the trust, and he removed them as trustees.

This sparked a significant legal dispute between these two daughters and Mr. Murray. And in November 2006, Elizabeth Murray and Pam Murray, they filed an answer and cross-petition in that litigation in New York. And, importantly, in 2006, they filed in the courts of New York that Mr. Murray's "physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters. Accordingly, he is regrettably no longer able to fulfill the duties of Chairman of the Trust." This is in 2006.

Remember that date, July 21, 2007, Ms. Murray says he's competent.

Moving forward, the next significant date on this timeline is March 26th, 2007. Again, Mr. Murray is being treated by his neurologist, Dr. Bergmann, who states that he -- in his medical record that "the patient has become quite depressed. He acknowledges this and endorses considerable anxiety and depression because of the

current legal situations within his family."

The only legal situation with his family in 2007 was Pam and Elizabeth Murray, who were actively working with prosecutors who were trying to remove Mr. Murray as chair of that trust because of self-dealing. This, Your Honor, is just months before Mr. Murray died.

This takes us to May 23, 2007, another very significant date. His treating doctor, Dr. Bergmann, testified that Mr. Murray did not have requisite capacity as of May 23, 2007. Why is it specific to May 23? Because that was when his office visit with Mr. Murray -- I mean, with Dr. Bergmann to follow up on his treatment for Parkinson's.

We took Dr. Bergmann's deposition, and I asked him, "Do you have an opinion whether Mr. Murray was competent and had the requisite mental capacity to understand this document and to acknowledge such a debt on July 21, 2007?" That's the Claim 2.

And this is his response. "I think the best way I can answer this is to look at the last office visit notes that we have here. That is May 23rd, 2007. And at that time he had reached a

level of mental incapacity that he simply would not have been able to take in, I think, the details of a document even much less than this.

"That raises the question of could he have had a period of lucidity, of clarity that would have, you know, magically enabled him to suddenly comprehend this. And I think that, given that he had structural brain disease at that point and, you know, was on this downhill spiral to the end of his life, that he could not have comprehended this."

And then of course that answer needs to be to a reasonable degree of medical certainty, which Dr. Bergmann said yes.

And this is his actual medical record on May the 23rd, 2007, neurology consult, where it is documented by Dr. Bergmann on a neurological exam that Mr. Murray's "mental state reveals that he incorrectly gets the month and he is unable to guess the year. At first he says it's July, and then he thinks it's February. He does not know the day of the week. He is unable to reverse spell. Nevertheless he is able to interact appropriately. He converses socially, but his content is clearly diminishing. Judgment could not be fully assessed

at that current visit."

Now, moving to the next month, June 26, 2006, this is when Mr. Murray's doctor referred Mr. Murray to Hospice care.

THE COURT: You said 2006, but that's 2007.

MS. CRAIG: You are correct. I apologize. Thank you, Your Honor. You're right. It's June 26, 2007.

THE COURT: Thank you.

MS. CRAIG: And, again, it's a neurology consult. And then you'll see where -- the findings on physical examination about Mr. Murray not comprehending much. And then ultimately you'll see, "because of the poor oral motor control, I think that it is unlikely he will survive six months, and for this reason, it is appropriate to call in Hospice." So he made that referral, and he went home for more therapy at home.

Not only did Dr. Bergmann state that it was his opinion that Mr. Murray is not physically capable of managing his affairs, and that date was June 29, 2007, on top of his medical record, but we have another doctor. His name is Dr. Bachman. And

on July the 2nd, again, another doctor who was taking care of Mr. Murray at MUSC, on July 2nd, 2007, Dr. Bachman stated "that Mr. Murray's neurological condition renders him incapable of managing his affairs." That's the second paragraph of that letter.

So in light of all of this, Elizabeth Murray and Pam Murray come to Charleston. And when Elizabeth Murray and Pam arrive in Charleston on July the 26th, Elizabeth Murray called the police to Mr. Murray's apartment. Your Honor, this was days before he died. And he had to be taken to the emergency room for alleged abuse. It was alleged by Elizabeth and Pam Murray. And Mr. Murray was found by the physician at the Roper ER to be well cared for with no signs of abuse and he had to be taken back home. And he had a decubitus ulcer that actually opened up as a result of having to be transported to Roper Hospital because of that allegation.

The next day, Your Honor -- you might remember this -- Elizabeth Murray then asked for a temporary restraining order. And Your Honor appointed Walter Kaufmann as a guardian on this date, which is July 27, 2007. Again, this was at

the request of Elizabeth Murray. And then a few days later, Mr. Murray died, on August the 4th.

That day, his daughter, Pam Murray, called the police saying that she was concerned that the Hospice workers that were working in Mr. Murray's home were directed to give Mr. Murray too much medication. And you might remember this also started additional legal proceedings with Your Honor.

First, Pam Murray filed petition for a formal appointment. And that was on August the 6th, 2007. And both Pam and Elizabeth Murray also filed a petition for an emergency hearing for an order directing an autopsy be performed on Mr. Murray's remains because they contended that he was poisoned to death.

On August 7th, Mr. Smith and Mr. Ma filed a petition for formal appointment of personal representatives and formal probate of the will. And then Pam Murray and Elizabeth Murray realized there was an in terrorem clause, a no contest clause, in Mr. Murray's estate. And clearly they had challenged the estate with their prior filing. In an effort to try to fix that challenge, Pam Murray on August the 14th withdrew her petition for

appointment as personal representative.

So then the autopsy. Pam and Elizabeth Murray would not agree for the autopsy to be done at the Medical University of South Carolina, and so they sent Mr. Murray out of state. And the autopsy report in August of 2007 was very clear that "The autopsy revealed no evidence of injury or neglect, and toxicologic studies were not contributory. The manner of death is natural."

And with that backdrop, Your Honor, just understanding a little bit of the dynamics that we're dealing with, I'd like to address specifically the two creditors claims. And just to run through the procedural history, as we stated, Mr. Murray's death was August the 4th. We had the petition for formal appointment, August the 7th. Then on September the 21st, that's when Mr. Smith and Mr. Ma were appointed as co-personal representatives of the estate. Then it was in June 2008 that Elizabeth Murray sent the two creditors claims to the co-personal representatives. In August, on the advice of counsel, both personal representatives denied the claims, and then the notice of disallowance was served on August 22nd, 2008.

So that brings us, Your Honor, to the first claim. And I'm going to walk through, Your Honor, the legal basis, and I'm going to rely on legal documents to show that there is no genuine issue of material fact, based on the legal documents, the clear correspondence. And this evidence, Your Honor, is unrefuted. It's not in dispute in this case.

So let's just walk through it. Again, this claim, the first one, is based on an April 22, 1980, settlement agreement between Mr. Murray and his three daughters, not Brianna, because Brianna's mother is not Minnie Holmes Murray. Our first legal argument is that Ms. Murray does not have standing or clean hands to pursue this claim. And this, Your Honor, is crystal clear.

When you walk through -- this is the actual 1980 settlement agreement. And, again, I've got copies, to the extent -- I guess they're also exhibits to our brief. But this is the agreement. Again, Your Honor, we've never said or contended that Mr. Murray did not owe this debt. He did, and he paid on the debt for some time. But in 1980, he reached an agreement with the three daughters, and it was signed by all of them, agreeing to a payment

schedule.

And, Your Honor, this is not the entire agreement, just for purposes of argument. I don't want you to think it is. This is the first page and then the last page of the agreement.

But he reached a payment schedule, and the specifics with regard to repaying that debt was all outlined in this 1980 settlement agreement. And you have the signatures of all three daughters, and they're witnessed, and also the signature of Mr. Murray.

So as I said, Your Honor, Mr. Murray paid on this debt. The last -- and it's undisputed that the last payment he made was in 1986. I'll show you a copy of that check in a minute. But sometime between -- and 1986, when he stopped paying, the collective -- the girls decided in 1990 that they wanted to liquidate and dissolve the estate of Minnie Murray. And it is absolutely clear that that was their intent.

Now, this letter I'm showing you is a letter from the CPA that Elizabeth Murray hired to obtain all of the financial information and to go through the financial information of the estate of Minnie Murray. And it's a letter from that CPA to

the lawyer in New York that Ms. Murray hired to draft the documents, to do a full release of her, and to dissolve this estate. And in the letter from the CPA to the lawyer that Ms. Murray hired, the CPA says, "As you know, it is the beneficiaries'" -- that's the three daughters -- "it is the beneficiaries' desire to liquidate the estate into three separate and distinct trusts. It is my understanding that you will also assist the beneficiaries with preparing any trust documents which may be appropriate, as well as designating a trustee or trustees." That was from the CPA to the lawyer.

Then we have the release and discharge of the administrators. That is the release and discharge of Elizabeth Murray, and it is signed by all three daughters. She is not going to be released as the administratrix of the estate if there was any intention that the estate remain open.

The next document we have -- and Ms. Murray has raised this as an issue, but it really isn't. The girls, the three sisters, came to Mr. Smith and also to Elizabeth Murray's former husband. His name is Dan Kelly. And they said,

can you help us with regard to, as you will see, dissolving this estate and dealing with this debt. And Mr. Smith, who was a business partner of Mr. Murray's, had a very good relationship, is married to Catherine Murray, said yes. And so with Mr. Smith's help and Dan Kelly, Elizabeth Murray's husband, they assisted in this process of working with the CPA and a lawyer to get the legal documents drafted and signed, because it was the beneficiaries' intent to meet in December of 1992, sign these documents, and dissolve the estate of Minnie Holmes Murray.

So what I'm showing you now, Your Honor, is a letter from Hilton Smith to the CPA, and it's dated November 13, 1992. And it says, "Upon the completion of this review, it is the intention of the beneficiaries to liquidate the estate. Should there be any other information which you believe is important to review, please advise."

Next in chronological order, Mr. Smith sends a letter to the lawyer that Elizabeth Murray hired. His name is Thomas Berner of Berner and Berner, November 16, 1992. And Mr. Smith states, "Elizabeth Murray has informed me that you and she

spoke on November 9, 1992, and that you have agreed to assist Elizabeth to liquidate the estate. The beneficiaries have elected to liquidate the estate without going through probate. I believe the main issue for you to assist with is the creation of a hold harmless agreement that protects Elizabeth, Pam, and Catherine. I would appreciate seeing a draft of this agreement as soon as possible, and please advise if there is anything else that the estate or beneficiaries need for you to proceed with this liquidation."

This is a letter, as I said, Dan Kelly, Elizabeth Murray's former husband, he also wrote a letter on November 20th, 1992, to Hilton. The purpose of that letter says, "As we discussed, here are the issues which each of the three sisters should be prepared to resolve at the meeting of December 12, 1992, regarding the dissolution of the estate."

Again, Your Honor, it was the intention, and it actually did occur, that the three beneficiary sisters had this meeting in December for the purpose of dissolving the estate. And Elizabeth Murray's husband then documents on the second page of this letter, he is talking about

the debt owed from the Minnie Holmes Murray estate. And this is under the accounting section. And he says under subsection (c), "how will the accounting of jointly held assets be paid for. This will include accounting for the principal and interest due from W.E. Murray, the making of claims to W.E. Murray to repay his debt, etc."

Jointly held assets. It is very clear that this note, this asset, was being transferred out of the estate, that was the will of the three sisters, and being held by each of them individually. And this is documented by Elizabeth Murray's husband.

This is another key document. This is the actual Release, Refunding, Receipt, and Indemnity Agreement. This is the legal document that Mr. Berner, counsel in New York hired by Elizabeth Murray, this is the document that he drafted. And first of all, in this document, there is a full release of Elizabeth Murray, again, as the administratrix. Those beneficiaries are not going to agree to release Ms. Murray, Elizabeth Murray, as the administratrix unless they have received everything they were entitled to under the Minnie Holmes Murray estate. It makes no sense

otherwise.

And in this release, the three girls signed it. And this, Your Honor, is the key. December 12, 1992, this is the same day that they're all meeting, the same day as the release signed as prepared by Mr. Berner, and this document states exactly what the three girls intended to do with regard to the debt that was being transferred out of the estate and to them individually. That debt was the debt that Mr. Murray owed to the Minnie Holmes Murray estate.

And if you read this in its entirety, it says, "This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray, and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980, between William E. Murray and the above-mentioned three beneficiaries, as well as an accrued interest, penalty interest, interest owed on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and any other monies which may become due, shall become community

property between Pamela, Elizabeth, and Catherine on a joint, not several basis. Any monies remitted thereon to any one or more beneficiary shall impose and constitute liability and obligation on that beneficiary to remit a pro-rata share to the other parties to this agreement."

This asset was clearly transferred out of the estate when they did the dissolution and liquidation, and Ms. Murray does not have standing to then come to this court in South Carolina and claim that this estate is open and that it is owed a debt when that debt was clearly transferred out to the three sisters by their agreement.

And I would, Your Honor, for the sake of completeness, when this came to light -- so just to put this in perspective, this is in 1992. Absolutely nothing happens with regard to the Estate of Minnie Holmes Murray until Ms. Elizabeth Murray files a creditors claim in South Carolina court in 2008. There are no income tax returns filed, nothing, because it was the intent that that estate be liquidated and that asset, the debt owed by Mr. Murray, goes to the girls individually. And those are the proper parties that have standing.

So when this came to light, I want to

point this out so that Your Honor has the complete picture about the standing, Ms. Murray filed in New York a letter that she contends evidences that the estate is still viable and still open. And that report was on June the 7th, 2003 -- excuse me, 2013. And the copy I have is not one that is stamped. But, Your Honor, you can't go tell the New York courts that we're going to dissolve and liquidate an estate and then change your mind because it suits you from a financial perspective to come to South Carolina in 2008 and claim that that estate is viable and this debt is still owed when that asset was clearly transferred out of the estate.

There is no genuine issue of material fact. If you just walk through the actual legal documents and the letters from their -- from the representatives that were hired by the beneficiaries, it is very clear that that estate ceased to exist in 1992, and that was their intent, and that debt was transferred out.

So, Your Honor, that is the first legal basis with regard to the Motion For Summary Judgment on Claim 1. And I'd just like to cite to the Court that the key case on standing is the

Powell v. Bank of America case. That cite is 379 S.C. 437. It's a Court of Appeals case from 2008 which says that the concept of justice that is concerned with whether a particular person may raise legal arguments or claims.

Now we go to judicial estoppel. And again, I'm going to walk through -- I'm not talking about facts. I'm talking here, Your Honor, about documents that are not in dispute in this case.

First of all, with regard to judicial estoppel, the first and most obvious basis for judicial estoppel is the fact, as I said, that in 1992, you file all of the legal documents that are necessary to liquidate an estate, the debt is transferred out of the estate into and jointly held by the sisters in their individual capacities, and then come to South Carolina, take a completely different position, inconsistent position, and say that now that debt is owed by the estate and due. Putting aside the statute of limitations and other arguments, that is the first basis for judicial estoppel as a basis for our Motion For Summary Judgment.

Second, Your Honor, is this. Elizabeth Murray had a habit of telling the New York courts

one thing and the South Carolina courts another. I told you that Dan Kelly was her former husband. Mr. Kelly, Dan Kelly, and Elizabeth Murray were divorced. And as part of her divorce, in the Supreme Court of the State of New York, Ms. Murray submitted a statement of net worth -- this is with regard to the divorce proceedings. This is one is dated September the 1st, 2006. And in her sworn statement, which is also notarized, she is specifically asked about contingent interests and if there are prospective inheritances. And she says zero. This is in 2006. 2008, she comes to South Carolina and says she's due this inheritance from the Minnie Holmes Murray estate. And just point out here that that is Elizabeth Murray's signature. None of this is in dispute. We've taken her deposition, and she's acknowledged this, and then of course it was notarized.

But, Your Honor, that's not the only one. Elizabeth Murray did it again. The next year we have another statement of net worth. This is again regarding her divorce proceedings. This one is dated May the 21st, 2007. Again, Ms. Murray signed under oath in New York that she had zero dollars for prospective inheritances.

And this, Your Honor, in 2007, and the one in 2006, both of these statements were after Elizabeth Murray claims that Mr. Murray renewed the debt with a Dear Daddy letter in February of 2006. So after Ms. Murray says in February 2006, her father miraculously has renewed the debt, she files two statements of net worth in New York saying that she has no prospective inheritances. And, again, that is notarized and signed by Elizabeth Murray. None of that is in dispute.

We cite the Hayne Federal Credit Union case on this slide which says, when a party has formerly asserted a certain version of facts in litigation, he cannot later change those facts when the initial version no longer suits him. That case applies perfectly to this situation.

Another legal basis for granting the Motion For Summary Judgment with regard to the first claim is our argument on the statute of limitations. And the applicable Code Section 62-3-802, which, as Your Honor knows, says, "No claim which was named by any statute of limitations at the time of the decedent's death shall be allowed or paid."

This is the operative settlement

agreement, Your Honor. This is a copy of the last page of the 1980 settlement agreement. Mr. Murray paid pursuant to the terms of that agreement up until 1986. And that's a copy of the last check, and that's February 24, 1986, and that is the date when the statute began to run. 1986. And Ms. Murray chose not to file a claim, not to file a lawsuit, not to do anything until her father's death. And it's important, because this claim started out, I believe, about $160,000 debt. And at 12 percent interest clicking away, Ms. Murray is just sitting on this and sitting on this and sitting on this, letting interest accrue to her financial benefit, if it was paid.

So I would be remiss if I didn't talk about the Dear Daddy letter. This is the document, Your Honor. As you know, this claim was -- notice was in 2008. And then months later, after we raised the statute of limitations, clearly, as barring this debt, this letter, which is a February 10, 2006, letter, we call it the Dear Daddy letter -- and it's important, Your Honor, to also understand this. Elizabeth Murray had a habit for years and years, Elizabeth and Pam Murray, of drafting documents, detailed documents, and trying

to get their father or others to sign. This is not in dispute. There are several versions of this Dear Daddy letter and other Dear Daddy letters. Elizabeth would write lots and lots of documents and try to get her father to sign those documents.

One of their arguments is that Ms. Murray would try to -- would renew the debt to Mr. Murray because, from time to time, she wrote a Dear Daddy letter and, remarkably, claims that she would deliver it to her father on Christmas luncheon. And none of these letters are signed by Mr. Murray. None of them are -- some of them aren't even dated. There is no evidence whatsoever that Mr. Murray received them. There is no return receipt. There is no evidence whatsoever.

The only one that is in dispute is the February 10, 2006, Dear Daddy letter. And the circumstances surrounding this letter would come out of a John Grisham book. And I'm not going to get into the specifics of it, because then we are getting into questions of fact, and that is not my intention today. Our Motion For Summary Judgment is so strong on the law that I don't want to get muddy into the issues of fact. But just so that Your Honor -- I bring all of this full circle for

Your Honor, this alleged Dear Daddy letter that was drafted by Elizabeth was in the possession of a paramour of Mr. Murray. And she claims that when she was cleaning out her office, Elizabeth Murray had asked her to look for this letter, months after we had denied the claim based on the statute of limitations, and she found this letter where Mr. Murray allegedly signed renewing the debt.

The circumstances surrounding that signature involve, first, a luncheon that earlier that particular day where Elizabeth Murray took her father to lunch, had an individual named Gil Mestler stand in the back of the restaurant, asked him to come over at a particular time to allegedly see her father sign a document. According to Ms. Murray, he signed "agreed," but couldn't sign his whole name.

Later that day, Elizabeth Murray takes Mr. Murray to the paramour's house. That would be Dana Flavin in Greenwich, Connecticut, and allegedly he signed this Dear Daddy letter in the presence of Dana Flavin and Elizabeth Murray. And then Ms. Flavin kept these documents to herself and miraculously found them in 2009 and sent them to counsel for Elizabeth Murray.

All of that, I agree, would be questions of fact. We've got plenty of answers to all of that. But I'd like to stay to legal issues. I only give that to Your Honor as a point of reference.

But this is the document that Elizabeth Murray contends renews the debt. I just show you what it looks like. This is the signature of Mr. Murray. You'll see the date on February 10th, and that's what I was talking about. He signed allegedly "agreed" at one sitting at lunch and then signed his name when he was with his paramour where Elizabeth Murray had arranged for a meeting with her later that evening.

Now, with regard to -- there were two documents on this day. There was this healthcare proxy, which I'm showing you now, and this Dear Daddy letter. Allegedly Mr. Murray signed both of them at the same time. The reason why the healthcare proxy is particularly of interest is because Mr. Murray had a healthcare power of attorney that Edward Bennett drafted for him. Why would he be signing this document at a paramour's house in Greenwich, Connecticut, after that? It makes no sense. And this is where they contend

that Mr. Murray signed the document.

These are the two signatures, Your Honor. Same day, two signatures. The one on the left is the Dear Daddy letter. The one on the right is the healthcare proxy that they contend Mr. Murray signed.

So what did we do? We looked at lots of signatures of Mr. Murray. We gave all those to an expert, who analyzed the signatures of Mr. Murray when there was no question regarding to his competence, and he -- you might know Mickey Dawson, who is a forensic examiner. He is an expert in handwriting, used to work for SLED, and he analyzed the documents. He did the testing that was necessary. And it is his opinion that, to a reasonable degree of certainty, that those signatures on Exhibit A and Exhibit B -- Your Honor, that's the two signatures I just showed to you -- he said when you compared those signatures to the ones of Mr. Murray that he knows are genuine, that those are not genuine signatures.

Now, the affidavit of Mickey Dawson is unrefuted. There is no handwriting expert who has testified in this case by way of deposition or by affidavit that has given the opinion that those

signatures are in fact genuine. This is the only -- this is unrefuted evidence.

So that is the basis now on behalf of the first claim, the lack of standing, judicial estoppel, statute of limitations, and that that debt was never renewed.

So that takes me now to the second creditors claims. Your Honor, this claim, Elizabeth Stylesetters was an interior design. Elizabeth Murray for a short period of time had this business. It wasn't a very big business, but what she did is she assisted with the interior design of a place owned by Mr. Murray called the Inn at Quogue. And Ms. Murray is claiming that Mr. Murray, her dad, owes her over $500,000 in various expenses. To support this claim, we were basically given a box of just random receipts, and it was impossible to make -- figure out anything with regard to these receipts.

So here we are with a creditors claim. Again, that would be a question of fact. I'm focusing solely on the legal issues. And we've got three.

First one is capacity. This letter that Ms. Murray, Elizabeth Murray, says that

Mr. Murray agreed to pay that debt is dated June the 21st, 2007. And this is another one of those long letters that Elizabeth drafts, which she sets forth all of the things that she believes that her father owes her. And it is signed on July 21, 2007. I point that out because, although the letter says June 21, 2007, that was a prior version. Elizabeth would do lots of different versions of the same document, make changes. But the signature on this was just two weeks before Mr. Murray's death in July 21, 2007. And this is the contention of Elizabeth Murray that her father had capacity to sign this document on this date.

And I would remind Your Honor of the testimony of Mr. Murray's treating neurologist, Dr. Bergmann, who stated -- I've already gone through this -- but as of May 23rd, on that office visit, that Mr. Murray clearly did not have capacity. Again, unrefuted.

Now, judicial estoppel is important for this one as well. First of all, this is an answer and cross-petition that Elizabeth Murray and Pamela Murray filed against their father. And in this court document -- this is in November of 2006. In November of 2006, they filed a legal document in

New York that says -- paragraph 96 -- that says, "WEM" -- William E. Murray -- "lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee." Not once, twice. Second paragraph, Ms. Elizabeth Murray then claims again that Mr. Murray lacked mental capacity in the New York courts. And a third time, she stated that. And that again is signed by Elizabeth Murray. Your Honor, you see this is actually verification signed by Elizabeth Murray, State of New York, and it is notarized, and the date is November 17, 2006.

This is important because November 17, 2006, Elizabeth Murray claims that her father lacks mental capacity. Then with regard to the Stylesetters claim for these random receipts that she claims that she's owed, on July 21, she says he has requisite mental capacity. And then, shortly thereafter, she signed an affidavit for this court stating that a doctor had determined Mr. Murray was incompetent on July 26, 2007.

This is the affidavit Elizabeth Murray filed in this court. And in paragraph 7, she said the doctors also determined that he was incompetent

at the time. So he's incompetent, he's competent, he's incompetent. That's what Elizabeth Murray signed in this case.

Pam Murray, same thing. She filed the same affidavit indicating that her father was incapacitated, and that was on paragraph 7 with regard to Mr. Murray. And the date is July 27.

Also, a basis for the judicial estoppel with regard to the second claim, this is the statement of net worth, again, that we referred to earlier. There are two of them, a 2006 and a 2007 statement that were from the divorce proceedings of Elizabeth Murray in New York. And she was asked about jewelry, antiques, and all of these other -- any other assets. The part of what Elizabeth Murray is claiming in that 500 and something thousand dollar claim is that she is entitled to art work that was left at the Inn at Quogue. She doesn't identify any of this on her statement of net worth. Again, her signature, you've seen this, this is the second time. Again, zero. And all of this is just about a year or less than when she says she is owed this debt. So that's the judicial estoppel.

With regard to the statute of

limitations defense, it's a little different for Claim 2 as in Claim 1. Again, the applicable Code Section is 62-3-802. And it is undisputed in this case that Elizabeth Murray stopped doing any work whatsoever at the Inn at Quogue in 2002.

I provided her deposition testimony on the screen where she was asked, "And you stopped working at the Inn at Quogue 2002; correct?"

"That is correct."

So she stopped working at the Inn at Quogue in 2002. That's when the statute started to run with regard to any debts that were owed to her from the Inn at Quogue. And clearly she waited until 2008 to file her second claim, which is well outside of the statute of limitations.

So just to -- I know we've been going for a while, Your Honor, so I'm going to wrap it up. Just to summarize the Claim 1, the legal reasons for granting our Motion For Summary Judgment would be standing/unclean hands, that's one and the same argument; judicial estoppel; statute of limitations and laches; and of course that debt was never renewed by Mr. Murray.

And the reasons to deny Claim 2 is Mr. Murray lacked mental capacity on July 21, 2007,

two weeks before his death; judicial estoppel; and the statute of limitations.

So, Your Honor, this matter has been going on for ten years, and it's our job to do everything that we can to make sure that Mr. Murray's testamentary wishes are followed in this case. And as I said earlier, based on the will that he signed in 2005, it was Mr. Murray's intention for his four daughters to all take equally under the will, and granting these claims would alter that significantly.

There is no genuine issue of material fact with regard to these legal arguments. I have tried very hard to stay away from the questions of fact. And clearly we've been in litigation for a long time. There are questions of fact. But putting those aside and just looking at the legal arguments, I mean, no standing, judicial estoppel, statute of limitations, each and every one of those, each on its own merits deserves a Motion For Summary Judgment being granted. But when you look at it in the totality, it's like a motion for summary judgment tsunami.

So, Your Honor, we're asking that you end this litigation so that we can follow

Mr. Murray's testamentary wishes, have this estate probated, and bring it to conclusion for all involved. Thank you, Your Honor.

THE COURT: Thank you. Who is going to argue?

MR. KEFALOS: I'll handle part of it, and Ms. Johnson will handle another part of it. May it please the Court.

THE COURT: Yes, sir.

MR. KEFALOS: I'm George Kefalos, and I represent the Estate of Minnie Murray in this claim against the Estate of William Murray, and I represent Elizabeth Stylesetters in the claim against the Estate of William Murray.

Let me begin by addressing the claim that it is clear that the estate ceased to exist in 1992. Let me address the claim that it is clear the estate, that is, the Estate of Minnie Murray, underwent dissolution and liquidation and it's clear that nothing happened in the Estate of Minnie Murray after 1992.

In that regard, Ms. Hood handed up -- Ms. Craig handed up Exhibit Number 8, which is this release and discharge which was signed by the beneficiaries of the Estate of Minnie Murray. And

in handing it up or in commenting, she observed that she didn't have a filed copy. Well, there is a good reason she didn't have a filed copy, is because that release and discharge was never filed. This estate was never closed.

In fact, we addressed this issue two years ago when the Estate of Minnie Murray asked for the appointment of a special administrator. And at that time the Estate of William Murray claimed that the Estate of Minnie Murray was closed, it had been closed for over 20 years, and that Ms. Elizabeth Murray did not prove that she had a standing to proceed as administrator of the Estate of William Murray. They raised that in 2015.

In response, this court issued -- and I'll hand up a copy of the order, but it's on file. This court issued its order based on the certified orders from the New York circuit court saying that the estate was in fact and is indeed still open and Elizabeth Murray is the duly appointed personal representative empowered to pursue this claim.

There was a time when the girls talked about closing the estate back in 1990 and '92. It was never done. I'll explain in a minute.

Instead, the estate was kept open, and the claim was pursued.

The last point I'll make about this is you would think that if the estate had been closed, that is, the Estate of Minnie Murray had been closed, that the Estate of Edward William Murray would be able to produce an order, certified order, saying the estate is closed and had been resolved. They have not been able to do that. And the reason they haven't been able to do that is because the estate is open, remains open, as you can see from the orders of the New York court.

Now, putting aside all of the family drama in the case, this claim is a pretty simple case about two debts, neither of which the estate disputes. The estate, that is the Estate of William Murray, does not challenge the fact that these debts were originally incurred. Instead, they claim, the Estate of William Murray claims, that the Elizabeth Stylesetters debt has been paid and that the Minnie Murray claim should be barred by the statute of limitations.

Let me talk about the Estate of Minnie Murray. Mr. Murray signed the original note to the Estate of Minnie Murray in 1980. At that time it

was for $240,000. Mr. Murray made six payments through 1986, interest on that note, and stopped paying. The Estate of William Murray would have you think or believe that the Estate of Minnie Murray did nothing for 22 years and waited until Mr. Murray died to assert this claim. Well, that's not true. That's not the case.

When Mr. Murray stopped paying back in 1986, the three sisters, Pam Murray, Liz Murray, and Catherine Murray, got together with their accountants and Catherine Murray's husband, Hilton Smith, who at that time worked for Mr. Murray, to try to figure out how to collect the debt. And this happened in the years '90 and '92, the period of time when these different documents were drafted. Some were signed.

Hilton Smith and the accountants advised the ladies that the best way to keep the debt alive was to send a demand letter every two years to Mr. Murray, and that would renew the debt. Now, we know that's not the law, but this is what they understood that they could do, that they could renew the debt simply by sending a demand letter.

The first demand letter was drafted by Mr. Hilton Smith, and it was sent in 1992. It

said, Dear Daddy, remember you owe us this money. The next one was sent in 1994. The next one was sent in 1996. The next one was sent in 1998. The next one was sent in 2000, then 2002, 2004, and 2006. So every two years, the Estate of Minnie Murray has reasserted the claim against Mr. Murray.

Now, Mr. Murray didn't pay anything more on the claim. But that doesn't mean he didn't acknowledge the debt, because on at least two occasions that we know of, Mr. Murray listed the debt on his financial declarations to banks.

In 1993 Mr. Murray acknowledged the debt to the Estate -- this is after the statute of limitations expired. Mr. Murray acknowledged the debt to Minnie Murray, the debt which began at $240,000 he now showed to be $720,000 on his financial declaration.

In 1995 Mr. Murray again listed the debt, after the statute of limitations had expired. He again listed the debt to the Estate of Minnie Murray. This time it had grown to over $1.4 million by his calculations and his acknowledgment. Now, the irony is that -- the financial statements that I'm referencing are either a part of the record, or we'll be handing

them up as a supplement to the record today.

The irony is that Hilton Smith, one of the men who orchestrated the method to keep the debt alive who drafted the first letter, is today the personal representative. And his interests, his side has changed. So the man who orchestrated the method of keeping the debt alive by sending a demand letter every two years is now denying the claim because they didn't properly keep the debt alive. They should have done something besides follow his advice.

Now, in addition to sending the demand letters every two years, in 2005, Pam and Liz -- by this time the lines have been redrawn. Catherine was no longer allied with them. She was allied with her husband, Hilton Smith. But Pam and Liz calculated how much was due on the debt to the Minnie Murray estate from their father. By this time, it had grown to over $6 million, and they asked their father to sign an acknowledgment of the debt. Mr. Murray signed the acknowledgment of the debt with the breakdown of the calculations in February of 2006.

That acknowledgment, which is in evidence, renewed the statute of limitations. It

renewed the debt. It's as if he signed a whole new obligation, this time for $6.2 million.

In response to that acknowledgment, the estate claims it's a forgery, that the signatures are a forgery. Now, the estate has come up with some witnesses, some expert and lay witnesses who say the signature does not look like Mr. Murray's. There are two problems with this argument.

The first is that Mr. Murray suffered from advanced Parkinson's disease, and it's recognized that Parkinson's disease affects the fine motor skills and will result in a person's handwriting being different from the way it used to be.

The other problem with this argument, if on one hand they say that we've got witnesses that say it doesn't look like his handwriting, the other problem with the argument, there are two independent eye witnesses who witnessed Mr. Murray signing the renewal of the note. Two. It's not necessary for the Estate of Minnie Murray to get a handwriting expert to say it's authentic when they have two independent eye witnesses at different times saw him sign.

And here is what happened. In February

of 2006, Liz took the agreement and met with her father in New York. They went to lunch. And at the lunch, they discussed the obligation to the Estate of Minnie Murray, and Liz said, I'll make a memorial of how much is due and what you owe. Are you willing to acknowledge it? He said he was.

Now, at that time he was -- the Parkinson's disease was pretty bad. At that time he was unable to write his full signature. So what he did is he wrote his initials, and he scribbled what looks like "agreed" on the note. That -- those initials and that "agreed" constitute a legally binding signature, and that was witnessed by a fellow named Gil Mestler who was a colonel in the Army and was a former employee of Mr. Murray. He was familiar with Mr. Murray. He spoke with Mr. Murray. He would talk to Mr. Murray, and he knew that Mr. Murray understood what it was he was doing in February of 2006.

That afternoon, Mr. Murray asked Pam and his driver to take him to visit a woman named Dana Flavin. Dana Flavin lived outside the city, was a former lover of his with whom they had had a baby. They had a child. They remained on very good terms over the years and corresponded. So

they went and had dinner with Dana Flavin.

Now, Dana is a medical doctor, having graduated medical school, but never obtained her license, or at that time never obtained her license. She worked and practiced in Europe or Germany primarily where she did research. But she was in New York at the time. And after dinner, Mr. Murray asked them -- talked with Dana privately. So Dana took Mr. Murray back into another room, and Mr. Murray at this time re-signed the note using -- he was able now to write a better signature of -- not completely legible, but more than just his initials. And Dana Flavin has testified that she saw him, he was competent, he knew what he was doing, he readily understood it, they discussed it, and he signed it.

Now, Mr. Murray asked Ms. Flavin to keep the document for safekeeping. So when they came out of the back room and Liz wanted to know what happened, he said, I've taken care of things, don't worry about it.

So at that time, in February of '06 when he signed the agreement, Dana Flavin put it into her safe where it stayed until this action began and we discovered that she still had a

copy -- she still had the original. In fact, we have the original now in our safe.

Now, Liz didn't get a copy of the thing, and of course Mr. Murray said nothing to her about it. Dana Flavin kept it in safekeeping, and I think you'll see one of the exhibits to the defendant's motion is the letter from Dr. Flavin to me disclosing that, hey, I have this. I talked to Liz a copy couple of weeks ago. She says they're looking for proof of the note. I've got it. I've got the original. Do you want me to send it to you. So she sent it to me in 2009, and we of course produced it and made it available for handwriting analysis.

So as far as the note goes, what we have is two eye witnesses, independent, neither of whom have an interest in this case, who witnessed Mr. Murray sign the note at a time when nobody is challenging his competency, because in February of 2006, Mr. Murray was signing documents for the business and for Hilton Smith. So we have two eye witnesses who saw him sign the note in February of 2006. And against that, the estate has a couple of people that say it doesn't look leak his signature. Well, the question of the signature is a question

of fact with two eye witnesses versus the people that say it doesn't look like his signature.

Now, the fact of the matter is, on the question of the existence of the estate, the estate was never closed and never liquidated. The document which is marked Exhibit 8 Ms. Craig made such a deal about which she said she didn't have a filed copy was in fact never filed and is not on record with the New York courts.

There was a time when these girls, back in '90 and '92, were talking about how to collect this note, that they discussed that and in fact had planned at one time to close the estate but determined that that wasn't the way to go, they should not close the estate. In fact, with regard to Ms. Craig's claim that the estate has been dormant since 1992, Ms. Murray has been making distributions on that estate, from the estate to her sister Pam and her sister Catherine as late as 2006.

The Estate of Minnie Murray owned real estate, and it owned debts to it, and it collected interest and stock. And Ms. Murray would continue and has continued throughout those years to make distributions of those sums to the beneficiaries of

the estate.

Now, let's talk for a minute about that. There is a note, there is a document the ladies signed in 1992 that talks about they agreed to share equally any monies which may become due to the Estate of William -- of Minnie Murray from William Murray. So what they've done is they've agreed to share proceeds, which takes us back to the release and discharge.

The Minnie Murray estate had been originally administered by Leon Murray. Well, Mr. Leon Murray did not handle the estate properly and was making uneven distributions. Some girls got some money. Some girls didn't get some money. Some girls got things in kind. Some didn't get gifts in kind. And Mr. Leon Murray was self-dealing.

Liz and Catherine and Pam petitioned the court to have Mr. Leon Murray removed as administrator and had Liz appointed. And if you'll read that, one of those documents in the record, there is an accounting that they signed. So what happened is, at that time, Liz said, let me go through and I'll figure out what it takes to true us up, who got what so far, and then we'll settle

it, and we'll move forward. And so at that time she prepared the accounting, which is not attached to the exhibit to the Estate of William Murray. She prepared an accounting. The ladies looked at it and said, all right, that's right. And they all signed off on it, and they released Liz for any liability for any of those past due claims. And they said, all right, we'll start from ground zero, and from here on, you'll make the distributions the way they're supposed to be made.

The fact that they agreed to divide the proceeds that came into the estate equally does not change the fact that the estate still had the claim against William Murray. There is -- there is no assignment of the note. The note has never been forgiven or assigned. What we have are women who have an expectancy in the Estate of Minnie Murray who agree among themselves that they'll divide equally how much comes in to the estate from the debt of William Murray.

Moreover, they also agree in that same document, they say, and if anybody gets any special treatment -- see, what the girls were concerned is that dad might try to curry favor by paying some money to one of the daughters and not to the

others, and they agree in that same agreement that if anybody gets anything more than an equal share, then you will account to us and divide your share equally among us.

So that agreement is not an assignment of the note. It is simply an agreement that these ladies will share equally in the proceeds. And what they say is any monies which may become due. So they're talking about money in the future. They've not taken control of the note. They've not taken assignment of the note. There is no assignment. What they agreed to say is any money that may become due from William Murray to the estate we'll divide equally. That agreement in no way affects the Estate of Minnie Murray's right to enforce the debt against William Murray. The note can't be transferred out of the estate without an assignment, and there simply is no assignment.

Let me talk for a minute about judicial estoppel. Ms. Craig brought up the issue of judicial estoppel in two contexts, first, taking the position -- Ms. Craig said that Liz Murray took the position in New York courts that the estate was closed and the estate was liquidated, and now she's taking the position in South Carolina courts that

the estate is open and the debt has not been liquidated.

Well, I started off by pointing up the court order that shows it's not inconsistent with the petition because the New York state never closed the estate, and the claim was never liquidated. They had talked about it at one time, but none of those documents were ever filed with the court. The court did not issue an order dissolving the estate, and she's not taking an inconsistent position today. In fact, it is perfectly consistent with all of the documents and all of the distributions that she's made to the sisters over the years.

The other issue of judicial estoppel comes about because of the financial declaration claim put in the divorce.

Now, judicial estoppel has a number of elements. One is that there has to be a totally inconsistent position taken by the same party in the same or related proceedings with the intent to mislead the court. Judicial estoppel is not applicable here because, first, the legal proceedings aren't the same or even similar or related. Liz Murray's divorce is not related to

Minnie Murray's claim against the Estate of William Murray. The parties aren't even the same. Liz Murray is not a holder of the note. The Estate of Minnie Murray is the holder of the note.

The positions are not necessarily inconsistent, let alone totally inconsistent as required by the rule. The fact that Liz might have failed to disclose this potential inheritance on her financial disclosure in divorce proceedings is not -- does not mean that her mother had no claim or the mother's estate had no claim against William Murray.

Let me put it another way. The fact that she may have omitted that from the divorce proceedings does not mean that the claim didn't exist. You can argue, you can accuse her of perhaps an inconsistency or impeaching the witness, but even with that, you'd have a difficult time, because, in that same proceeding, the form which asks for the potential inheritances is about a 12-page form, check, check, check, check, check, check, and she didn't check the potential inheritance. But in the same proceeding, she filed an affidavit where she explained that she was receiving money from the Estate of Minnie Murray.

So it's hard to accuse a person of trying to conceal the fact that she has a potential inheritance when she files an affidavit saying I've got money coming in from the estate of my mother.

The last point is that there is no evidence that Liz knew that her father had signed the note renewal when she filed the financial declaration in the Family Court. Keep in mind that that was filed in '07, and we didn't discover that Mr. Murray had signed the renewal of the note until 2009.

Anyway, it is a clever argument, but it is a red herring, because judicial estoppel has nothing do with that case, the divorce proceedings and the renewal of the claim.

Now, I think I've addressed everything that Ms. Craig brought up. There was one thing that she didn't talk about but was important in the brief, and that was the timeliness of the claim. In the brief, the Estate of William Murray claimed that the petition for the allowance of the claim was filed late.

The estate in its brief argues that the petition to allow the claim should have been made on September 21st, but wasn't made until September

22nd, because 30 days from the disallowance of the claim, from the time they mailed the disallowance of the claim, would have been September 21st. The problem with that argument is that September 21st is a Sunday. And under the rules, when the deadline falls on a Sunday, it's automatically extended to the following day, which was September 22nd, which was the day the petition for the allowance of the claim was filed. It was timely.

Ms. Johnson will talk about the claim of the estate of Elizabeth Stylesetters -- I'm sorry, the claim of Elizabeth Stylesetters.

MS. JOHNSON: May it please the Court.

THE COURT: Yes.

MS. JOHNSON: I'm going to talk to you a little bit about the claim of Elizabeth Stylesetters, which was a company owned by Elizabeth Murray. Elizabeth Murray did a lot of work for her father's properties, not just his commercial properties, but his residences. She did this throughout the years. And in Mr. James Ma's affidavit, which was submitted by the Estate as Exhibit 41 to their brief, Mr. Ma admits that Ms. Murray, through Elizabeth Stylesetters, provided a lot of services to Mr. Murray, and they

had an understanding where Ms. Murray would submit receipts and invoices for her work and for reimbursement of her expenses. Mr. Ma's job as Mr. Murray's accountant was to run the expenses and invoices by Mr. Murray, and that Mr. Murray always instructed him to pay those invoices and reimbursements.

Now, that makes Elizabeth Stylesetters' claim a very simple claim. None of the defenses that the estate raised to that claim are applicable because in fact the estate admits that the services were provided, that the claim exists, but disputes the amount of the claim.

Mr. Ma in his affidavit testified that he believes or is convinced that Ms. Murray was completely reimbursed for her expenses and paid for her work. Well, in fact, Ms. Murray, Elizabeth Stylesetters, submitted vast evidence, ample receipts of the work she had performed and the expenses that she incurred. So it becomes a question of fact. And while the estate is trying to shy away from the facts of this case, you cannot, because this is a factual dispute.

I'm going to address a few of the arguments Ms. Craig made. The estate claims that

also that Elizabeth Stylesetters' claim is barred by judicial estoppel, one because she did not disclose that debt in her divorce filings. Well, she may not have disclosed that in her financial declarations, but in Ms. Murray's affidavit to the court in her divorce proceedings, she disclosed that she had received $3000 a month from her father monthly and that 2000 of those funds were to go towards Elizabeth Stylesetters' debt. That affidavit was filed following the financial declaration.

Let me explain, it is true that Elizabeth Stylesetters claims for some of the work she had performed stem from work performed in 2001, 2002. Nevertheless, the estate, Mr. Murray, had paid Elizabeth Murray $2000 a month towards those claims.

Now, a claim for a debt -- the statute of limitations for a claim for a debt starts to run from the time the last payment was made. The estate admits that the last payment made to Ms. Murray in the amount of $3000, of which $2000 was to be allocated to Elizabeth Stylesetters, was in May 2006. The statute of limitation cannot possibly apply to a claim for the collection of a

debt where the last payment was made in May of 2006 and Ms. Murray's claim was submitted in 2008.

That being said, I'm going to address the Freeman litigation also, which the estate claims would judicially estop Ms. Murray from submitting this claim. George talked to you a little bit about the elements of judicial estoppel. There is no way that the estate can show that the -- that Elizabeth Stylesetters, first of all, made any representations to the court. The debt is owed to Elizabeth Stylesetters.

THE COURT: Please say that again. You confused me just now.

MS. JOHNSON: Okay. I'm sorry. So judicial estoppel applies when we have the same parties. The party claiming the debt due from Mr. Murray's estate is Elizabeth Stylesetters, which is a corporation started by Elizabeth Murray doing design work. Elizabeth Stylesetters made no representations to any court in New York or anywhere else as to Mr. Murray's capacity. Elizabeth Murray made representations.

But to give you the background of the Freeman litigation, the Attorney General in New York has accused Mr. Murray of fraudulently

conducting transactions. Ms. Murray admittedly believed that, at times, Mr. Murray was subject to undue influence. And in her petitions to the court, verified petitions to the court, she did allege that Mr. Murray was partially incompetent. That was not what was shown to you. But her allegations, he was partially incompetent, because, at times, he was subject to undue influence and was unable to concentrate. With that in mind, that is not an inconsistent position. That is not a totally inconsistent position as required to establish judicial estoppel.

The Freeman litigation and the estate litigation are in no way related. This is the second element of judicial estoppel. The position must be taken in the same or related proceedings involving the same party or parties in privity with each other. The estate cannot possibly meet this element because there is no -- the parties are not the same.

The inconsistency must be part of an intentional effort to mislead the court. This is another element of judicial estoppel. There is no allegation even that any representations made in the Freeman litigation are an intentional effort to

mislead the court. And even if there were, the estate cannot show this without creating a question of fact. It is a question of intent as to any representations made by Elizabeth Murray.

And, again, the last element of judicial estoppel is the positions have to be totally inconsistent. They're not. The estate -- Ms. Murray alleged and sustained opinion and believed that Mr. Murray at times was not capable of handling his affairs. In fact, his doctors didn't believe that he was incompetent until May of 2007. In April of 2007, Mr. Murray signed a letter acknowledging his debt, part of his debt, to Elizabeth Stylesetters. That letter is attached to our response to the Motion For Summary Judgment.

And, again, even if the Court were to conclude that Ms. Murray cannot -- took inconsistent positions, there is no need for the acknowledgment of the debt to Stylesetters. The course of business established throughout Mr. Murray's life was that Ms. Murray was providing -- Elizabeth Stylesetters was providing several services to him for his commercial and personal properties in that she were to submit invoices and receipts for reimbursement to Mr. Ma

who would pay them.

Well, that is what happened here. Part of the debt was an old debt that he had continued to pay, $2000 a month. The other part were services that she had provided to Mr. Murray for some of his apartments here, for some of his apartments in New York, for 1565 Brianna Lane. Elizabeth Stylesetters takes the position that not all of these services and not all of her expenses have been reimbursed. The estate in turn submits the affidavit of James Ma who says he thinks that the expenses have been paid. This simply is not a question that can be resolved by summary judgment. It's a question of fact.

And that's all I have.

THE COURT: Thank you. Respond?

MS. CRAIG: Thank you, Your Honor. I'll try to be brief. Taking Claim 1, first, Your Honor, with regard to the standing argument and counsel's references to the estate remaining open after the 1992 agreement was signed, with regard to the document not being filed, you will recall I showed you the document that said that it was the intent of the beneficiaries to liquidate the estate without going through probate.

We contend that the release and the refunding receipt agreement, every single page of that document is initialed. The key page, which is the memorandum where they transfer the asset out of the estate is signed by all three sisters, and then you've got the notary public for three of those documents that are filed. It is clear that it was the intent to close the estate in 1992.

But let's just put that aside for a minute. What's even more clear is that the asset, being the debt owed by Mr. Murray to the Minnie Holmes estate was transferred out. That document is unrefuted. And it's the memorandum, December 12th, 1992, that is signed by all of the sisters. And it's our Bates Stamp Number EEM 0984 where it says that that debt would become community property between Pam, Elizabeth, and Catherine Murray on a joint not several basis.

So we believe it's clear that the estate was intended to be closed. But even if it wasn't, this asset was no longer owed by the estate. That's why there is no standing, because this is not an asset that belonged to the estate as of 1992, and there is no genuine issue of material fact with regard to these legal documents.

With regard to the 1993 and the 1995 schedules that Mr. Kefalos referenced where Mr. Murray listed the debt on a schedule, I refer Your Honor to the case of In re Vaughn. This is a bankruptcy case, but it discusses in -- it's pretty recent, 2015 case, where it discusses renewing a debt, and it outlines law in South Carolina very well. And that says cases says that although modern case law in South Carolina on debt revival is sparse, older cases provide enough guidance for this court to conclude that the debtor's inclusion of the debt in her schedules did not reset the statute of limitations.

So regardless of what was listed in 1993 and 1995, that is not sufficient to reset the statute of limitations. But the statute of limitations would have run anyway, six years, by taking their latest date of 1995. But this is a very good case where it sets out the law and says that a new promise to pay may be implied as well as expressed, but it must amount to an unqualified admission of an subsisting legal liability. It must be established by evidence unambiguous and full.

The law is very clear about if a debtor

wants to renew a debt, how clear it has to be. And that is not what we have in this case.

I'd also like to refer Your Honor to the Suber v. Richards case in addition to In re Vaughn.

Then with regard to the discussion about the 2006 Dear Daddy letter that Mr. Kefalos claims renews the debt, he spent quite some time discussing those facts, and those are facts. And the reason why I told you at the beginning I was going to focus on the legal issues and not factual issues, because there are facts that are in dispute with regard to that 2000 Dear Daddy letter. But at the end of the day, there is only one expert, handwriting expert, who has testified with regard to the genuineness of those signatures.

And then with regard to judicial estoppel with the first claim, the operative case, of course, is the Hayne Federal Credit Union v. Bailey case which sets out five factors that have to -- excuse me, five elements that must be proved. And I'm just going to walk through those.

First is the two inconsistent positions taken by the same party. That's the first one. In this case, Elizabeth Murray claims she has an

interest -- $6 million owed to the estate of her mother. But in the contested divorce in 2006 and 2007, Ms. Murray provided the two sworn statements of her net worth to the Supreme Court of New York where she did not disclose the outstanding payments due from her father. She testified there was no place for it. That is the first element that's met with regard to judicial estoppel.

The second one is the positions must be taken in the same or related proceedings involving the same parties with privity with one another. We do have the same party. We have Elizabeth Murray, and the related action is we're talking about the same thing. We're talking about whether or not this debt existed in the estate or not.

The third element, the party taking the position must have been successful in maintaining that position and have some benefit. Clearly Ms. Murray received a benefit from not disclosing the alleged payment of the prospective interest from her father in her net worth because her husband, his alimony was based on her not having that marital asset.

The fourth element is the inconsistency must be part of an intentional effort to mislead

the court. Ms. Murray testified that her father told her the debt was coming to her at the time of his death. We do not agree that. But per her own testimony, if she thought it was coming to her at Mr. Murray's death, she should have disclosed it on that statement of net worth and failed to do so, and thus intentionally misled the court.

And then the fifth element is also met because these are two totally inconsistent positions in New York saying she's owed nothing and here in South Carolina saying that she is owed over $6 million as of 2008. As I indicated, it's about twice that now based on the 12 percent interest. That's Claim 1.

Now I'll respond, Your Honor, to Claim 2. The statute of limitations, it is not in dispute that Ms. Murray stopped working in 2002. And when she was asked in her deposition, "So if you thought that these debts were due to you from the Inn at Quogue when you stopped working there in 2002, why didn't you sue your father?"

Her response is that it would have evoked a draconian response from her father if she sued him during her lifetime, which is totally inconsistent with the fact that she did sue her

father within a year of his death in the Samuel Freeman Trust litigation.

With regard to the judicial estoppel argument with the second claim, I again refer to the Hayne case, which is instructive and on point with regard to the judicial estoppel argument as well.

Based on all of these arguments, Your Honor, we again ask that you grant the estate's Motion For Summary Judgment. Thank you.

THE COURT: Anything further?

MR. KEFALOS: Just a brief reply.

THE COURT: Okay.

MR. KEFALOS: That would be the -- pardon me. Your Honor, on the issue of who owns the debt, Ms. Craig made it clear it is a question of fact because she said that it is -- that we contend that it was clear that the intent was to close the estate in 1992. Well, there is some evidence that they considered closing the estate in 1992. But there is no evidence that they ever did close the estate in 1992.

And then with regard to her claim that the note was transferred out is not refuted, well, that's not so, because that agreement, which is I

think Exhibit 6 in their exhibits, transfers only the income which may become due from the debt. It does not transfer the debt itself. There is no assignment of the debt. All these girls agreed to do was divide any income which in the future may become due to them.

That's all I have. Thank you, Your Honor.

THE COURT: Thank you. Nothing further?

MS. CRAIG: No, Your Honor, not from the estate.

THE COURT: Thank you.

MS. JOHNSON: No, Your Honor.

THE COURT: Attorney Duggan?

MR. DUGGAN: Your Honor, I was wondering if I could have one moment to talk about my clients' position in this matter?

THE COURT: Yes, sir. Come forward.

MR. DUGGAN: Thank you, Your Honor. As you said earlier, I represent Catherine Murray Smith and Brianna Murray Rodriguez. I'll be super brief. Your Honor, they support everything Molly Craig has said this morning. And I just wanted to bring to the Court's attention that we believe that

the promissory note was fully assigned to the three children. The December 12, 1992, memo says that the total obligation owing from the William E. Murray estate was transferred to the three children. It says that right in the memo.

And, Your Honor, I would just add that sometimes the question of why is really important. Why was this claim brought in the name of the estate instead of brought in Elizabeth's name? And I would represent to the Court, I believe that she was very concerned about the in terrorem clause, so she wouldn't bring it in her personal name. And she also didn't want to again contradict the New York filings that she was making.

That's all I have, Your Honor.

THE COURT: Okay. Thank you very much. Yes, sir.

MR. HAGERTY: Your Honor, John Hagerty. If I could say a few words on behalf of Mr. Murray and his estate.

THE COURT: Yes, sir.

MR. HAGERTY: Good morning. Your Honor, I'm John Hagerty with Nelson, Mullins, Riley & Scarborough, and I've known Bill Murray for over 30 years, and I have represented Mr. Murray and his

entities in business transactions for more than 16 years. So that was many, many years before he died. And I got to know him well, and he was, as you probably ascertained, a very colorful person. So you've heard a lot today about very interesting characters, former lovers, drunkards, friends, associates, all kinds of characters involved here. And you've also heard about competency, when he was competent, when he was not, but also undue influence, what influences there may have been before he was either competent or rendered incompetent.

A lot of these details would have amused Bill Murray. What would not have amused Bill Murray, however, is this extraordinary circumstance where what was originally a $240,000 debt, because it is associated with a 12 percent interest rate, now becomes $12 million. And I might add, the longer this whole process takes, the longer there is a 12 percent interest rate on this $240,000. Very cleverly done, where the longer you drag this event out, the more money you make because, I don't know about you, but none of the rest of us can make 12 percent on our money in the interim. So it gets from this $240,000 to

$12 million.

Why is that of interest to me and what I want to say to you is this. That effectively, because of its size, will cut out Brianna, one of his daughters. And in my long association with Bill Murray, it was always clear to me, as he stated in his will that -- it was one of his last events he did with Edward Bennett, is that he wanted all four of his daughter treated equally. And the effect of all of this interesting testimony about who said what, who did what, I would say to you that one thing you could think about, one thing that's very clear, is his intent. His intent was to take care of his four daughters through his will and give them equal shares and not be paying $12 million at this date. Thank you, Your Honor.

THE COURT: Thank you. Anything from any of the other attorneys?

MR. KEFALOS: The only comment I'll make is Mr. Hagerty's observations are in the nature of testimony, evidence outside the record. We don't know, for example, what would happen if the estate paid a $12 million claim because the estate has never disclosed to us what the status is, what are the assets, what are the tax

liabilities, and how much money is left to distribute to the heirs. We don't have any idea. Mr. Hagerty is saying it will cut out Brianna. We don't know that. They refuse to tell us that. They refuse to give us that information. It's self-serving.

THE COURT: Thank you.

MR. HAGERTY: I could point out, Your Honor, that Bill Murray directed under the terms of his will that we not provide that information.

THE COURT: I understand. The Court has been with this case for a number of years. Believe me, I do know that. Thank you.

What the Court is going to do is to take this under advisement. But what I'd like to have are proposed orders. I'd like to give you a shorter window. And so I know that's usually difficult during the summer months. So how short of a window can I have in terms of getting proposed orders?

MS. CRAIG: Your Honor, just let us know when you'd like it. We'll have it available.

MS. JOHNSON: Same here, Your Honor.

THE COURT: Is two weeks too short?

MS. CRAIG: That's perfectly fine, Your

Honor.

MS. JOHNSON: That will be fine, Your Honor.

THE COURT: Two weeks from today, when would that be? The 8th. So if we could have proposed orders by the 8th, and if you all could send them to the law clerk, he'll give you his e-mail address. Thank you very much.

(The proceedings recessed at 12:00 noon.)

CERTIFICATE OF REPORTER

I, Janice N. Shepherd, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 27th day of July, 2017, at Charleston, Charleston County, South Carolina.

Janice N. Shepherd, RPR, CSR
My Commission expires
October 10, 2024

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **IN RE: ESTATE OF WILLIAM A. MURRAY**	)	**IN THE PROBATE COURT** **CASE NO.: 2007-ES-10-1116** **MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

CHARLESTON COUNTY
17 JUN 8 AM 11:15

Factual Background

The parties are presently before the Court on the Personal Representatives' ("PRs") Motion for Summary Judgment dated October 31, 2016. William E. Murray died testate on August 7, 2007. Mr. Hilton C. Smith and Mr. James Ma were appointed Co-Personal Representatives for the Estate of William E. Murray. The Estate of Minnie H. Murray and Elizabeth Stylesetters submitted timely claims against the Estate of William E. Murrays for $6.2 million dollars and $538,034.00, respectively. The Estate disallowed the claims and Petitioners filed Petitions for Allowance of Claims. The beneficiaries of the Estate of Mr. Murray are Elizabeth Murray, Catherine Murray, Pamela Murray, Brianna Murray and Hilton C. Smith. Of those beneficiaries, Briana Murray and Hilton C. Smith are not beneficiaries of the Estate of Minnie H. Murray.

The Claim of the Estate of Minnie H. Murray consists of a debt originally signed by William E. Murray on April 22, 1980 acknowledged the debt in writing in his financial statements and renewed in writing on February 10, 2006. Mr. Murray made payment under the original Note until 1986. (Exhibit A Note).

When Mr. Murray stopped making payments as required by the Note, the beneficiaries of the Estate of Minnie H. Murray, Elizabeth Murray, Pamela Murray and Catherine Murray retained the services of Hilton C. Smith (the current Co-Personal Representative of the Estate of

William E. Murray) to advise them as to how to proceed further in assuring that the Note ("the ongoing asset of the Estate" (Exhibit 8 to Elizabeth and Pamela Murray Affidavits) as Mr. Smith called it in his letter to the beneficiaries dated December 2, 1992) would be paid. (Exhibit 6 to Elizabeth Murray and Pamela Murray's affidavits and deposition of Hilton Smith (Page 97:9 to 97:14). Mr. Smith undertook to represent the Estate of Minnie Murray and was compensated for his services (Exhibit 5 to Elizabeth Murray and Pamela Murray's affidavits).

As a result of the negotiations, led by Mr. Smith, the beneficiaries of the Estate of Minnie H. Murray were advised to present notices of default to Mr. Murray on a bi-annual basis, including details of the debt owed with interest. Elizabeth Murray as the Executrix of the Minnie H. Murray Estate delivered such notices every other year at their Christmas luncheon, See affidavit of Elizabeth E. Murray. In fact, Mr. Smith drafted the first demand letter to be sent on behalf of Minnie Murray's Estate. (Exhibit 7 to Elizabeth Murray and Pamela Murray Affidavits). Furthermore, as a result of Hilton Smith's negotiations, the beneficiaries of Minnie Murray's Estate reached an agreement that

> "the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest ... which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not several basis...",

thus eliminating the need to create a trust as required by Minnie Murray's last will and testament and as to avoid the necessity of incurring the expense of maintaining a trust that was unfunded. (Exhibit 10 to Elizabeth Murray and Pamela Murray Affidavits). In fact, as late as August 2001, Mr. Smith assured Elizabeth Murray that the debt was protected because Mr. Murray acknowledged it in his financial declaration to Signet Bank, Deposition of Elizabeth

Murray (Page 175:6 to 175:23). Deposition of Hilton Smith (Page 115:14 to 115:18).The Note was renewed in February of 2006. By that time, Elizabeth Murray had become concerned that the debt would not be paid by her father's estate, despite repeated assurances from Mr. Smith. Consequently, Elizabeth Murray met with her father William E. Murray and requested that he review the Note and the accounting of the amount owed under the note, and acknowledge the debt. On February 10, 2006. Mr. Murray met Elizabeth Murray and Gil Mestler at a restaurant in New York to renew the Note; however, Mr. Murray had difficulties writing his name in full, so he renewed it by signing his initials and writing the word "agreed" on the note. (Mestler Depo. pgs. 4:13 to 5:19; 13:2 to 20:2; 20:11 to 21:22). Later that afternoon, when he was feeling better, Mr. Murray signed the acknowledgment with his full signature in the presence of Dana Flavin, an old friend of Mr. Murray. (Flavin Depo. Pages 36:23 to 39:10; Pages 45:25 to 46:4; 69:13 to 70:6; 147:17 to 151:10; 186:8 to 186:22; 204:10 to 204:16; Pages 367:5 to 368:12; Pages 382:17 to 386:20).

Elizabeth's Stylesetters, is an interior design company owned by Elizabeth Murray. It provided various interior design services for multiple properties owned by Mr. Murray and other properties used by him as residences. Elizabeth's Stylesetters had to expend large sums of money in order to remodel and redecorate Mr. Murray's residences, his office and other properties owned by Mr. Murray in addition to having to expend large sums of money at various times to help with the expenses at certain commercial properties. All these expenses were documented and Mr. Murray agreed to repay Elizabeth Stylesetters for the expenses it incurred (See Affidavit of Elizabeth Murray). Furthermore, Mr. Murray made monthly payments towards the debt owed for the Inn at Quogue property until May 2007 when Mr. Murray was admitted to Hospice Care and Mr. Smith took over the handling of Mr. Murray's finances and stopped making the

payments. The Estate acknowledged these payments in its memorandum on page 4, but mischaracterized them as gifts. The Estate's claim that Mr. Murray did not acknowledge this debt is disingenuous as on April 13, 2007, Mr. Murray signed a letter explaining how the funds should be allocated and specifically explained that

> "Payments to you since your completion of the NCIDQ exam and those made prior to your attendance at NYSID were and are to be credited towards various monies owed to you regarding the Inn at Quoque and the Restaurant at an amount of $2,000 per month as we had discussed to cover advances of funds and purchases with respect to the Inn and Restaurant. The balance of $1,000 is a non-taxable gift to you which may or may not continue as my personal finances dictate. I also loaned you money for payment of your attorney fees which is to be repaid to me out of marital funds at the time of your divorce settlement, as NY law generally dictates."

This letter was to be used by Ms. Murray in her divorce proceedings and was signed in front of a notary and Brian Canaday (Exhibit B). Mr. Murray customarily reimbursed Elizabeth Stylesetters for expenses incurred in renovating and furnishing various properties. In November 2006, Hilton Smith denied Ms. Murray access to her documents containing receipts and invoices for the work performed and she was unable to timely submit these invoices to Mr. Murray. From May 2007 until July, 2007, Mr. Murray discussed his obligation with Elizabeth Murray and in July 2007 acknowledged the debt in front of Pamela Murray, Larry Bump and Jeffrey Young on July 21, 2007 at Pamela Murray's home after Pamela read the letter to Mr. Murray and made sure he understood the content and implications of the letter. (Deposition of Jeffrey Young pages 39-42, deposition of Larry Bump (Pages 69:19 to 71:1).

Standard for Decision

Summary judgment is appropriate *only* where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. S.C.R.C.P. 56(c); *Platt v. CSX Transportation Inc.*, 665 S.E.2d 631 (Ct. App. 2008). In evaluating whether a

genuine dispute as to a material factual issue exists, the court must view all evidence, including all reasonable inferences flowing from that evidence, in the light most favorable to the non-moving party. *Platt*, 665 S.E.2d at 634. *See also Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Medical Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App.2006); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App.2005).

In *Higgins v. Medical Univ. of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct.App.1997), the Court of Appeals held that a trial judge deciding a summary judgment motion must take into consideration all documents and evidence contained within the case's record, including pleadings and discovery documents, such as depositions, answers to interrogatories, admissions on file, as well as any affidavits submitted by the parties in conjunction with the motion. Summary judgment is not appropriate where the parties disagree as to the conclusion to be drawn from facts pertinent to the case. *See, e.g., Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (S.C. 2005). Summary judgment should *not* be granted, if there is disagreement concerning the conclusion to be drawn from those facts. *Id.*

Argument

I. The Estate of Minnie H. Murray and Elizabeth Stylesetters timely filed their Petitions for the Allowance of Claims

William E. Murray died on August 4, 2007. Elizabeth Murray submitted two claims on June 3, 2008, one on behalf of the Estate of Minnie H. Murray as Executrix and one on behalf of

Elizabeth Stylesetters, her interior design business. Both claims were disallowed by the Personal Representative, Mr. Hilton Smith, on August 21, 2008. Ms. Murray timely filed her Petition for allowance of the claims on September 22, 2008.

The PRs' factual allegations appear to urge dismissal of the Claims as untimely. The PRs claim the latest the Petitions (after Disallowance) could have been due filed would have been Sunday, September 21, 2008. (PRs' Memorandum at pg. 3 referencing PRs' Exhibit 2).

The PRs filed their Notices of Disallowance of Claims on August 21, 2008 and served them the following day, August 22, 2018 via US Mail. In accordance with S.C. Code Ann. §§ 62-3-804 and 806, Claimants' Petitions for Allowance of claims were due no "later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the personal representative." Thirty days after mailing would have been Sunday, September 21, 2008. Under Rule 6, SCRCP, "In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday." Therefore, the deadline to file the Petitions was Monday, September 22, 2008, the date the Petitions were actually filed. (PRs' Exhibit 3). Therefore, this Court should find the Claims timely and deny the PRs' motion for summary judgment.

II. The PRs are not entitled to summary judgment as to the debt owing to the Estate of Minnie H. Murray because there are material questions of fact as to whether Mr. Murray renewed the debt by acknowledging it during his lifetime.

The PR's assert they are entitled to judgment as a matter of law on the debt evidenced by the 1980 Settlement Agreement because they claim Mr. Murray never made any acknowledgment of

the alleged debt during his lifetime that would "renew" the debt beyond the original statute of limitations or because the claim should be barred for equitable reasons. In so arguing, the PRs ignore the substantial and material questions of fact and assert their position as if their factual allegations have already been established.

A. Whether Mr. Murray acknowledged and reaffirmed the debt flowing from the 1980 Settlement Agreement is a question of fact.

The PRs' primary argument on summary judgment is their belief Mr. Murray did not reaffirm his debt to his wife's estate in 2006. They argue that the statute of limitations for claims arising from the 1980 Settlement Agreement would have expired in 1991, six years after Mr. Murray's last payment per the terms of that Agreement. However, the PRs do acknowledge that debt could have been revived and still be valid as of Mr. Murray's death if he acknowledged the debt in a manner as would imply a new promise to pay the debt. 4 Williston on Contracts §8:20 (4th ed.); 51 Am. Jur. 2d Limitation of Actions §301 ("a new promise to pay a debt, or an unqualified acknowledgement of a debt, from which a promise to pay may be implied, tolls or removes the bar of the statute of limitations"); 51 Am. Jur. 2d Limitation of Actions §314 ("Any language of the debtor that clearly admits the debt and shows an intention to pay it will be considered an implied promise to pay and will take the case out of the statute of limitations"); *Suber v. Richards*, 61 S.C. 393, 401, 404 (S.C. 1901) ("Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a clear and explicit promise to pay the debt sued on, or such an unqualified and unequivocal admission that this particular debt is still due as will imply a promise to pay such debt," and "it should contain nothing inconsistent with an intention on the part of the debtor to pay it." *C.f., Middlebrooks v. Cabaniss*, 193 Ga. 764, 767, 20 S.E.2d 10, 12, *aff'd*, 194 Ga. 26, 20 S.E.2d 574 (1942) (A new

promise, in order to renew a right of action already barred, or to constitute a point from which the limitation shall commence running on a right of action not yet barred, shall be in writing, either in the party's own handwriting, or subscribed by him or someone authorized by him, and, an acknowledgment in writing of the existing liability is equivalent to a new promise to pay.).

In the February 9, 2006 Letter signed by Mr. Murray on February 10, 2006, Mr. Murray acknowledged his debt to his wife's estate was still owing and that it would be due upon his death as a valid claim against his estate. The PRs do not dispute the legal effect of this letter; instead, they make a factual assertion that the signature on the Letter is not that of Mr. Murray. Clearly, the factual assertion cannot be used to prevail on summary judgment as it creates a genuine issue of material fact.

Petitioners have offered significant evidence that Mr. Murray did sign the acknowledgment. First, on February 10, 2006, Mr. Murray signed the note twice. The first signing was with his initials in the presence of Gilbert Mestler, an United States Army Lieutenant Colonel and an attorney known to WEM, and Elizabeth Murray. At that time he was unable (due to his physical condition) to write his full signature, so he wrote the word "agreed" and his initials. (Mestler Depo. Pages 4:13 to 5:19, Pages 15:1 to 24:2; Elizabeth Murray Depo. (Pages 153:3 to 154:4). Later that same day, in the late afternoon, Mr. Murray signed again. This time he was able to sign his full signature in the presence of his friend, Dana Flavin, a physician, who testified Mr. Murray was perfectly competent when he signed. (Flavin Depo. Pages 36:23 to 39:10; Pages 45:25 to 46:4; 69:13 to 70:6; 147:17 to 151:10; 186:8 to 186:22; 204:10 to 204:16; Pages 367:5 to 368:12; Pages 382:17 to 386:20).

The PRs attempt to counter this testimony by alleging the signature on the reaffirmation letter is not that of Mr. Murray's, despite the sworn testimony of two independent witnesses, both with

medical training, who say they saw him sign the document. Obviously, whether the signature is that of Mr. Murray is a quintessential question of fact that cannot be resolved as a matter of law. *Pee Dee Prod. Credit Ass'n v. Joye*, 284 S.C. 371, 375, 326 S.E.2d 650, 653 (1984) (factual dispute regarding whether someone signed a document is properly submitted to the trier of fact for resolution).

The PRs further argue that Mr. Murray told his caretaker, Mr. Sujak, that he never intended to pay the debt, and that he told Mr. Smith, one of the PRs, that he never intended to pay the debt. First, such testimony by Mr. Smith is barred by the Dead Man's Statute because he stands to gain substantially from the disallowance of the claim because he inherits under the will and, if the debt is paid, he inherits less. The South Carolina Dead Man's Statute, S.C. Code Ann. § 19-11-20 (1985) provides, in pertinent part:

> [N]o party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding ... shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic as a witness against a party then prosecuting or defending the action ... when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him....

The rule prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest. *Brooks v. Kay*, 339 S.C. 479, 486, 530 S.E.2d 120, 123–24 (2000) (*citing Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997). The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted. *Id.* at 151, 485 S.E.2d at 909.

As to Mr. Sujak's testimony, he is heavily aligned with Mr. Hilton and his testimony should be viewed as a suspect. Certainly, the questions of credibility for each witness are matters for

trial and cannot be resolved against the non-moving party on summary judgment. Furthermore, there is evidence that Mr. Sujak was heavily inebriated during the visit to Dana Flavin's house. Deposition of Elizabeth Murray, (Page 93:4 to 93:18), Deposition of Sony Sujak (Pages 36:25 to 37:6)

At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Anders v. South Carolina Farm Bureau Mutual Insurance Co.*, 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992). Here, despite the PRs attempts to challenge the validity of Mr. Murray's signature, Petitioner has more than met its burden of production as to Mr. Murray's reaffirmation of the debt by producing the signed letter and the sworn testimony of Gil Mestler and Dana Flavin. This contradictory evidence creates exactly the sort of factual dispute that cannot be resolved on summary judgment and must be decided only after a full trial on the merits. The PRs' summary judgment must be denied.

B. The Claim is not barred by the doctrine of laches or any other equitable defense.

As to the PR's equitable defenses, they do not apply to this Claim because it is a legal claim against the Estate. *Edens v. Edens*, 312 S.C. 488, 491, 435 S.E.2d 851, 852 (1993). "The statute of limitations rather than laches applies to all legal claims against an estate." *Id. citing Kirksey v. Keith*, 32 S.C.Eq. (11 Rich.Eq.) 33 (1859). "A claim based upon breach of contract is a legal as opposed to equitable claim. Therefore, laches does not apply." *Id.*

Even if the Claim sounded in equity rather than law, the PRs are still not entitled to judgment as a matter of law. Any delay in asserting the Claim was entirely understandable given the familial relationship between the heirs of Minnie Murray and their father. The Personal Representative of the Estate clearly recognized that the debt to Minnie Murray's Estate,

especially in light of his correspondence to Elizabeth, Pam and Catherine, where Mr. Smith advises that there should be an agreement determining how to deal with the continuous asset (the note) to Minnie Murray's estate. Mr. Smith understood that given the relationship between the parties, a suit needed to be avoided and ever since 1992 periodically undertook to advise the beneficiaries of Minnie Murray's estate on how to preserve the validity of the debt. (Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10 to Elizabeth Murray and Pamela Murray Affidavits).

Elizabeth Murray is also not "judicially estopped" from claiming her father owed the debt to the Estate of her mother, Minnie Holmes Murray. For the doctrine of judicial estoppel to apply, the PRs must prove: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Cothran v. Brown*, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004); *Carrigg v. Cannon*, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

First, while Elizabeth Murray is one of three beneficiaries of her Mother's estate who stand to gain from the successful prosecution of the Estate's claim, she is not the current holder of Note, the Estate is. Elizabeth Murray and her mother's estate are not the same jural person and are not the same "party" as is required for judicial estoppel to apply.

Second, Ms. Murray's divorce proceedings did not involve litigation of the debt evidenced by the Note nor were those proceedings remotely related to this action. There was no reason for her to have disclosed the claim against her Father at the time of her divorce because it was not a personal asset of hers. She took no position regarding the debt owed by her father to her mother's

Estate in that action and so could not have received any benefit from not disclosing an asset of her mother's estate and there could not be "inconsistent" positions.

Lastly, there is zero evidence that Ms. Murray intentionally misled the court in her divorce proceedings as it was perfectly reasonable for her not to list an asset of her mother's Estate as an asset belonging to her personally. Judicial estoppel is an equitable concept that must be applied with caution and only in the narrowest of circumstances, *Carrigg v. Cannon*, 347 S.C. 75, 84, 552 S.E.2d 767, 772 (Ct. App. 2001) (*citing Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1167 (4th Cir.1982) and 28 Am.Jur.2d Estoppel & Waiver § 75 (2000)). Inasmuch as the PRs have shown none of the elements of judicial estoppel, their motion for summary judgment on that ground should be denied.

Petitioner's Claim is also not barred by the doctrine of "unclean hands" and the PRs' arguments regarding the standing of Elizabeth Murray are disingenuous and nonsensical. Again, Ms. Murray, individually, is not the Petitioner. She is the duly appointed PR of her mother's estate and is prosecuting the claim in her representative capacity. See Exhibit C Certificate of Appointment of Administrator). The claim against Mr. Murray's estate is for a debt he owed the estate of his late wife. There is no other party to prosecute the Claim other than the duly appointed personal representative of her estate. "Under the modern Probate Code, the personal representative is the central figure responsible for the orderly management of a decedent's estate. *Fisher ex rel. Shaw-Baker v. Huckabee*, 415 S.C. 171, 179, 781 S.E.2d 156, 160 (Ct. App. 2015), *reh'g denied* (Jan. 21, 2016), *cert. granted* (Jan. 13, 2017) (citing S.C. Code Ann. §§ 62–3–701 through –721 (Supp. 2014)). The personal representative is afforded the same standing to sue that the decedent had immediately prior to death. *Id. citing* S.C. Code Ann. § 62–3–703(c)

(Supp. 2014), and, the personal representative also may prosecute and defend against claims for the protection of the estate. *Id. citing* S.C. Code Ann. § 62–3–715(20) (Supp. 2014).

As to the collateral and spurious assertion that Elizabeth Murray, as PR of her mother's estate, has "unclean hands" because she failed to create a trust to hold the not as yet liquidated remaining assets of her mother's estate, that too is absurd. Again, equitable defenses are not applicable to breach of contract claims. *Edens v. Edens*, 312 S.C. 488, 491, 435 S.E.2d 851, 852 (1993); *Anderson v. Buonforte*, 365 S.C. 482, 493, 617 S.E.2d 750, 756 (Ct. App. 2005) (If a party has unclean hands, the party is precluded from recovering in equity.) It makes no logical sense for any PR to go to the expense and trouble to create a trust where no liquid assets are presently available to fund the trust.

Furthermore, if anyone comes to court with unclean hands, it is Mr. Smith who advised the beneficiaries on how to handle this debt and induced them to believe that by entering into the agreement in December of 1992, there was no need to create a trust. (See Exhibit 10 to Elizabeth Murray and Pamela Murray Affidavits). Moreover, any alleged complaints about the administration of Minnie Holmes Murray's estate are not properly raised by the PRs of Mr. Murray's estate and have nothing to with the subject matter of this litigation and cannot possibly have prejudiced them because they are no interest whatsoever in Mrs. Murray's estate. "A party will have unclean hands where the party behaves 'unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.'" *Id. quoting Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000).

Equitable defenses cannot not defeat Petitioner's legal claims and summary judgment should be denied.

II. Whether Mr. Murray had the requisite capacity to enter into the contract for the repayment of funds to Elizabeth's Stylesetters is also a question of fact not properly resolved on summary judgment.

As to the claim brought on behalf of Elizabeth's Stylesetters, the PRs allege Mr. Murray did not have the requisite mental capacity to enter into a contract or agreement fourteen days prior to his death, that too is a question of fact that cannot be resolved on summary judgment. The PRs base their argument on the testimony of Dr. Bergmann. However, Dr. Bergmann testified that he had no notes of the last visit from June of 2007 (Deposition of Dr. Bergmann, (Pages 44:9 to 45:4)), and remembers only that Mr. Murray knew he was approaching the end. Moreover, it appears that Dr. Bergmann based his conclusion mostly on the fact that Mr. Murray's capacity to speak was impaired due to Parkinsons and he mumbled. Other calls

There is no indication in Dr. Bergmann's records that he discussed Mr. Murray's progression with his healthcare aids, who assisted Mr. Murray on a daily basis. In fact, Nyesha Cherry, one Mr. Murray's healthcare aids will testify that Mr. Murray was competent until the end (Affidavit of Nyesha Cherry). Finally, Dr. Bergmann might have a motive to support the PRs claim of incompetence as he admitted the Parkinson foundation he started received significant donations from the Freeman and Donaldson Trusts which Hilton controlled (Deposition of Dr. Bergmann, (Page 56:9 to 56:13)).

Elizabeth's Stylesetters, as represented by Elizabeth Murray maintains that Mr. Murray remained lucid and competent and exercised free will until just a few days before his death. The testimony will show that Mr. Murray was estranged from the Hilton Smith and Hellen Flynn in the last year of his life. He resented their control over him and withdrew from communication with them. Any description of Mr. Murray's mumbling or lack of communication can be attributed to his "playing possum".

Yet, during that same period, the weeks and months leading up to Mr. Murray's death, even the PRs admit he was in and out of awareness, and was sometimes competent enough to sign legally significant documents when it suited their purposes. There is no dispute that Mr. Murray continued to sign documents in February 2006, with Hilton Smith's knowledge and consent. (See documents produced by Mr. Murray's Estate including signatures on a 0045-63 – Exhibit D note and mortgage signed February 6, 2006. See also Estate's Responses to RFP where the Estate admits that Mr. Murray had the competency necessary to sign documents, but at times had difficulty and needed assistance as in the above referenced documents where James Ma had to assist Mr. Murray in executing and initialing the documents. – Exhibit E) In fact, the Estate produced documents signed by Mr. Murray as late as August 2006. The PRs cannot seriously contend that Mr. Murray had the requisite capacity to sign documents only on the occasions it suited their purposes.

As to the issue of the Freeman Trust litigation, there was never any judicial determination that Mr. Murray was incompetent to act as trustee there. (Mr. Murray's daughters only claimed that at times Mr. Murray's mental capacity was impaired periodically and he was subject to undue influence by Hilton Smith). In fact, even his physician testified that at that time, he was concerned that Mr. Murray could be subject to undue influence at times and suggested cognitive testing. Deposition of Dr. Bergmann, (Pages 71:13 to 72:3). However, since Mr. Smith controlled Mr. Murray's care and it was not in Mr. Smith's interest to have such testing, there is no record of such cognitive testing being performed. Furthermore, even if Mr. Murray did not have the requisite capacity to sign the acknowledgment of the claims in July 2017, he certainly had the capacity to acknowledge the debt in April of 2006 and did so in front of a notary and Brian Canaday. (See Exhibit B - Canaday letter accompanying Mr. Murray's letter).

Additionally, Elizabeth Murray is not barred from arguing her father's competence to sign on the date and time in question (July 21, 2007) on the grounds of judicial estoppel. Again, for the doctrine of judicial estoppel to apply, the PRs must prove: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *See Cothran, supra.* The issue of Mr. Murray's competence to sign the document giving rise to the Elizabeth's Stylesetter's claim was never litigated in the Freeman Trust litigation. Ms. Murray never took a position on that question during that litigation and, therefore, could not be said to have taken a "totally inconsistent" position. The Freeman Trust litigation was not the same or a related proceeding to this one. And, finally, Mr. Murray was not found incompetent in the Freeman litigation and Ms. Murray received no benefit from raising what were, at the time, quite legitimate concerns about her father's condition and susceptibility to undue influence. In short, the PRs have proven none of the elements of judicial estoppel and their motion for summary judgment should be denied.

What actually transpired with regard to the sums at issue in this Claim, was that there was no issue of payment to Elizabeth's Stylesetters until May of 2007 when Hilton Smith took over paying Mr. Murray's debts. Up until that point, Mr. Murray was paying the debt as previously agreed. See Letter to Elizabeth in her divorce (Exhibit B). Only when Mr. Smith took over paying on Mr. Murray's behalf did he stop the payments to Elizabeth's Stylesetters. (PRs' Memorandum at pgs. 4 -5). As a result, Ms. Murray along with one of her sister Pamela (the one not married to Mr. Smith), discussed the situation with Mr. Murray and asked to affirm the debt

and his intention that she be paid, which he did on July 21, 2007. (Exhibit 1 to Estate's Motion for Summary Judgment, Deposition of Jeffrey Young pages 39-42, deposition of Larry Bump (Pages 69:19 to 71:1). Mr. Young and Mr. Bump both testified that Mr. Murray was coherent, recognized them, was able to hold a conversation and understood what Pam read to him prior to signing. (Deposition of Jeff Young Pages 28:10 to 29:3; Deposition of Larry Bump Pages (Page 60:19 to 60:25). Elizabeth Murray was not present at that time.

As with the claim of the Minnie Murray Estate, the signature of Mr. Murray on the April 2007 letter and July 2007 letter affirms his acknowledgment of and promise to pay and removes any claim by the PR that the Statute of Limitations for the claim has expired.

Conclusion

Given all of the above, Petitioners have more than met their burden of production at the summary judgment stage and have demonstrated material questions of fact that cannot be resolved as a matter of law. Therefore, Petitioner's respectfully request this Court DENY the PRs' motion for summary judgment.

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ATTORNEYS FOR PETITIONERS
ELIZABETH MURRAY AS PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF MINNIE H. MURRAY AND
ELIZABETH STYLESETTERS

This 18th day of July, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Lisa Solomon

Signed this 18 day of July, 2017 at Charleston, South Carolina

By Registered Mail

George J. Kefalos, Esquire
3 State Street
Charleston, SC 29401

February 23, 2009

Dear Mr. Kefalos:

I am an old friend of Mr. Murray's, reaching back over 20 years. In February of 2006, after we had visited a doctor, Dr. Stanley Fahn, at Columbia Presbyterian, Bill decided to pursue a more sophisticated Parkinson's disease treatment and health care regimen than the course of therapy that he was following in South Carolina.

We first consulted with Dr. Stanley Fahn in late 2005 and then went again, this time with Helen Flynn, Elizabeth Murray, and Mr. Murray's two health care attendants, on Feb. 8th. At that time, he told me that he intended to follow the program which was suggested by Dr. Fahn. It is my understanding that Helen, who I had met before, was opposed to this course of treatment and that Bill wanted the freedom to exercise his own judgment on his health care options. I had never met his daughter before but she seemed enthusiastic and helpful in assisting him in supporting his health care decisions.

Mr. Murray had Elizabeth document what he wanted and he asked me to witness it as a health care professional. At the time he came, he asked me to also witness something having to do with his first wife's estate. I read both documents to him and he signed them both in my living room. He asked me to put them into "a safe place" so I put them into my neurology file with other papers pertaining to his treatment. Although Mr. Murray was taking his usual medications, I believe that he was entirely clear so far as his intentions and will to sign both documents. Although Mr. Murray's writing was a bit shaky, his mind was clear and he understood what he was signing and was under no influence to do so.

I recently uncovered this file while cleaning out my office to move to another office. Because I was more focused on the health care aspect, I did not consider the file relevant after his death until Elizabeth called me to ask if I still had the documents. I am happy to give this over to you after having received Elizabeth's approval, as he instructed me to give it only to her.

Please do not hesitate to contact me if I may be of further assistance. Bill was a dear friend of mine and I am happy to be of help in this matter.

Very truly yours,

Dr. Dana Flavin
1-203-964-7011

EXHIBIT
A

17 JUL 18 AM 11:44

William E. Murray

This document is meant to serve as a declaration of what my living circumstances and health care preferences are at this time. These decisions have been reached after much thought, a review with physicians and friends, and with no pressure from any of those individuals. I would like this document to serve both as a health care proxy, attached, and as a statement of how I wish to live the rest of my life, circumstances permitting. However, this document may be revoked at any time depending on those circumstances if I am of sound mind and relatively sound body.

1.)I wish to spend half of my time in NYC at my residence at the Carlyle House with the balance spent in Charleston or other locations of my choice.

2.)As I have become older and infirm, I am increasingly subject to stress and upset. For that reason, I would like to spend at least half of my time alone, with my health care attendants. I do not wish to have any woman in my life other than Helen Flynn, merely time to be alone and reflect and see other friends, on a one to one basis, with whom she may not be comfortable or they with her.

3.)Helen does cause me a great amount of anxiety and a constant presence leads to greater stress and subsequent ill effects upon my health. I have decided to focus a great amount of time on physical therapy, dexterity therapy, speech therapy, and a possible new course of medication that will require spending approximately 10 consecutive weeks in NYC for blood tests and monitoring. I wish to make an extreme effort to regain some strength and mental focus. It is my belief that I should do this alone without the distraction of emotional entanglements.

4.)I have seen a great change in Helen's health and enjoyment of life. I would be much more comfortable with her if she would take medication that has been prescribed and hope that she would see a therapist to explore her depression and the general distress that she has expressed. I strongly believe that we both would be happier if we separately had time to rehabilitate ourselves physically and mentally and at the time that we had achieved our goals we would reevaluate our living together.

5.)To that effect, I would like to direct that my health care attendants report only to me or to those whom I designate. They are not house attendants and are there to serve my needs alone. I think that, given Helen's general health, she should consider having her own part time attendant to assist her both in her chores,shopping, appointments, as well as assist her in keeping the house to her satisfaction. The situation as it stands is clearly not working and I am not willing to risk the comfort of my current arrangements, particularly in light of the stress of this focus on health improvement. I will also require that these attendants sign an agreement to adhere to a certain decorum of behavior, soberness, attendance, dress, and professionalism. They are, however, to report to me alone or my designee and are not to be distracted with household chores and other assistance.

6.)In light of my greater presence in NYC, I will designate certain people, as available and willing, to serve as my voice should I become disabled or infirm or hospitalized while in NYC. This will be a mix of medical and family members and is in no way meant as disrespect to Helen or other members of my family. I have considered these individuals at great length and trust that my bests interests are their priority as well and that they fully understand my intentions. This will be covered in a formal health care proxy under separate documentation. All of these individuals are aware of my deep

feelings for Helen and my concern that she be consulted in major decisions.

Ergo, my priorities are:

A.) A health care proxy with responsibility for medical decisions if I am unable to make them. I will be seeing some new doctors for their counsel and will embark on a regiment of intense physical therapy.

B.) I wish to make the Carlyle apartment comfortable and safe for my limited physical strength and agility. I have directed my daughter Elizabeth to make these changes with respect paid to the architectural specifications outlined by the firm of Scott Ageloff and Associates, AIA. I endorse their recommendations and wish for Elizabeth to carry out these specifications as I have asked her to do.

C.) I wish to have my medications monitored as well as changes in blood pressure, a record of food intake, and other physical symptoms that my attendants notice as well as sleep patterns, unsteadiness, etc. This will also be in accord with my physical therapy regimen apart from medication.

D.) I would like Helen Flynn to acknowledge the above and assure her of my love and respect. I must do all that is in my power to increase my physical and mental agility and I am hoping that she will make a similar effort so that we may be comfortable spending more time together than I am able to spend at this time due to the attendant stress and anxiety which it causes me.

William E. Murray

William E. Murray, Date Signed

Witnessed: _____

Witnessed: _____ 2/10/06

Feb 9th, 2006

Dear Daddy,

Although we have spoken regularly regarding your debt to Mommy's Estate, I have been concerned since you told me that you signed a new Will last Spring. You have not yet confirmed to me that you re-documented your liability to her Estate. When I spoke to Hilton in August of 2002, he confirmed his intent as Executor of your Estate to include it as a "creditor's claim" and mentioned your acknowledgment of it to Signet Bank in Maryland. However, my recent lack of communication with both him and Catherine, as well as her stated assertion that "she and Hilton should inherit everything because he was the one who earned it" both distresses and alarms me. Additionally, you have told me that you "do not wish Helen to know about this debt for personal reasons". There is also the issue of Brianna, over and above Helen, who would obviously not inherit from our Mother's Estate and who could attempt to contest this debt, as it would reduce "her share" of the inheritance from your Estate (I am quoting her words, not mine). While you have a right to do with your own money what you will, your acknowledged debt to Mommy's Estate precedes the existence of both Helen and Brianna in your life and even Hilton, so far as his financial connection to your businesses.

Although you have continued to advise me that, per your language in the 1980 note, "that this Agreement inures to my Estate and its representatives", as well as your assurance that we will get it on a "tax free basis" from your estate if we wait (and that it will reduce your Estate taxes), I am truly fearful of the potential outcome given the additional players added to the mix since the 1980 Agreement and Hilton's 10% share of your businesses. While I am sympathetic to your desire to avoid unnecessary taxes, , I am afraid that others who might not share in the "results" of this liability will attempt to thwart your desires, despite your best intentions. Additionally, I am liable as the Executrix of Mommy's Estate to my sisters and we have all agreed in a document to share equally in all monies received from you. You told me that you have "given" Hilton and Catherine a great deal of money towards their residence and that you made sure that the house was in Catherine's name. You have also given Pam a house, although of lesser value. That would open a contest against Catherine if Pamela and I failed to receive these monies due from your Estate, which I know is not your intention or desire. I know you would abhor the discord that would result from a situation such as this.

To summarize:

-I have notified you of your continuing obligation on a bi-annual basis, without notice of contest by you, as you have advised me to do to continue an "open and notorious declaration of claim of default", and

-you have *not* notified me by certified mail of any contest to the ongoing debt and continuing notice of default and obligation, as you outlined and required in the 1980 Agreement to refute the debt.

However, it has been many years since your last payment and many of your funds have been increasingly co-mingled with Hilton's and even with me regarding Quogue and the money owed to me on that account. I have my original bi-annual letters to you but the acknowledgments from you seem to have disappeared along with many other papers during my divorce proceedings. I would not trust that Dan would not try to benefit from the distribution of those monies or use that eventual inheritance or payment in the divorce action to avoid any liability to me of maintenance after divorce. His attorney seems to dwell (endlessly) on this issue, even so far as his expectation that you will pay Elspeth's college tuition, which he claims you promised to do. I simply don't believe that you said this to him. Therefore, I

need you to formally certify below that you are in agreement with your original stated obligation to Mommy's Estate, which would be legally exempt from his calculations, which is now over $5 million per the computations attached for your examination.

I must have you, as soon as possible, *memorialize this agreement that those monies are due, as outlined in the 1980 agreement (see attached), by you to* ***her Estate,*** whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us. We all hope that you have a long life, and that it is healthier by virtue of the health program on which you wish to embark. However, I have no desire to be sued after your death by my sisters or be aggressed upon by Helen or Brianna or Hilton, who collectively are not recipients of my mother's Estate. While we three, or at least Pam and I, could certainly use the money now, I would rather that you once again formalize your obligation so that I do not have to deal with this issue going forward in a hostile capacity or arena. I don't want to have to sue you to protect myself or to be sued by my sisters!

The situation of the three of us being your sole heirs has changed drastically since 1980, as well as your stated intention at that time to leave "everything to us anyway", as you said at that time.

Accordingly, you must protect me in my legal position as Executrix, CTA, and any resultant liability to my two sisters, for the proceeds and payment of this validated and recognized debt on your part. I will include this note along with your health care declaration, which I understand you want Dana to witness as a health professional. I hope that you will sign this along with that *into her safekeeping* so that I am protected along with your other two original daughters, to whom the money is owed.

I am also very worried about Helen trying to claim it all, *as she has stated she believes should be so* as your "life partner", even though you have never married. Please advise me if, instead, you would like to designate a piece of property, such as the Carlyle apartment, as an asset to be put *in trust* to be received in lieu of this obligation to the three of us. This is allowed for in the original Agreement. Nobody would have to know about your designation of this assignment of proceeds because you own that property in it's entirety. Whichever way you decide to honor the debt is your decision. However, I must ask you affirm this decades old debt owed to your first three children, which you have always stated is your intention, both legally and as our father. I know that you will do what is honorable and that you will make this acknowledgment known to the appropriate parties so that

I am not involved in inappropriate litigation after your death. Please give the signed copy of this to James or Dana or whomever you trust, even Alta, but please not to Hilton or Helen, as I do not feel that they have our best financial interests in their hearts and minds. Regardless of your trust in Hilton, I do not trust him with respect to my future or even my past inheritance from Mommy. He is uncommonly close to Dan these days, working in support of him in my divorce and using his access to you to promote Dan's financial success in negotiations, to my detriment.

Thank you for making this issue one of the past and not one of the future. I love you and want the best for you for many years to come but this is both an legal Agreement as well as an "honor debt". I have delayed enforcing its collection in trust of your advise and counsel, and as your daughter. But this is a legal responsibility for me and I need you to respect my position as someone trusting in you to do the right thing, especially since I have followed your legal counsel with respect to my position as Executrix. I neither wish to nor have funds to hire an attorney for other advise and I must depend on you to do right by me.

Now we will start working on the Carlyle to make it safe for you to be there during the long physical therapy ahead. I know that

you will be a champ and that you will win a few arm wrestling contests in years ahead, even if not with Jimmy Reese! You need to get stronger and try the New York doctors. They will certainly trump the MUSC protocol, as I do not see you getting better despite their best efforts. I promise to be there for you daily and to help you in any way possible in your recovery and improvement. You will be surrounded by friends who love you in NYC. And, I am sure, a few women who will still be fighting over you. Remember that I love you and want the best for you,

Elizabeth William E. Murray, Date Witnessed

2/10/06

Attached Documents:

1)Original 1980 note prepared by Bill McDaniel, Esq., signed by you, copy attached.

2)Excel Schedule of Debt, prepared by Pam, is also attached for your review. (these tables represent the primary components of the debt, the original note to MHM as well as the loans you took out on the insurance policy cash value, which we owned per the 1980 Agreement)

WEM Debt Computation to Estate of Minnie Holmes Murray
Principal and Default Interest
Schedule A

Date	Interest Due	Principal Due	Pymt Due	Amt Due	Period	Int rate	Interest	Total Due
10/13/80	19,200.00	0.00	19,200.00					
10/13/81	19,200.00	0.00	19,200.00					
10/13/82	19,200.00	0.00	19,200.00	19,200.00	365	12%	2,304.00	21,504.00
10/13/83	19,200.00	24,000.00	43,200.00	64,704.00	365	12%	7,764.48	72,468.48
10/13/84	17,280.00	24,000.00	41,280.00	113,748.48	365	12%	13,649.82	127,398.30
				127,398.30	229	12%	9,591.52	136,989.82
05/30/85				126,489.82	136	12%	5,655.65	132,145.47
10/13/85	15,360.00	24,000.00	39,360.00	171,505.47	365	12%	20,580.66	192,086.13
				192,086.13	126	12%	7,957.10	200,043.23
02/16/86				180,843.23	239	12%	14,209.82	195,053.05
10/13/86	13,440.00	24,000.00	37,440.00	232,493.05	365	12%	27,899.17	260,392.22
10/13/87	11,520.00	24,000.00	35,520.00	295,912.22	365	12%	35,509.47	331,421.68
10/13/88	9,600.00	24,000.00	33,600.00	365,021.68	365	12%	43,802.60	408,824.29
10/13/89	7,680.00	24,000.00	31,680.00	440,504.29	365	12%	52,860.51	493,364.80
10/13/90	5,760.00	24,000.00	29,760.00	523,124.80	365	12%	62,774.98	585,899.78
10/13/91	3,840.00	24,000.00	27,840.00	613,739.78	365	12%	73,648.77	687,388.55
10/13/92	1,920.00	24,000.00	25,920.00	713,308.55	365	12%	85,597.03	798,905.57
10/13/93	0.00	0.00	0.00	798,905.57	365	12%	95,868.67	894,774.24
10/13/94	0.00	0.00	0.00	894,774.24	365	12%	107,372.91	1,002,147.15
10/13/95	0.00	0.00	0.00	1,002,147.15	365	12%	120,257.66	1,122,404.81
10/13/96	0.00	0.00	0.00	1,122,404.81	365	12%	134,688.58	1,257,093.39
10/13/97	0.00	0.00	0.00	1,257,093.39	365	12%	150,851.21	1,407,944.59
10/13/98	0.00	0.00	0.00	1,407,944.59	365	12%	168,953.35	1,576,897.95
10/13/99	0.00	0.00	0.00	1,576,897.95	365	12%	189,227.75	1,766,125.70
10/13/00	0.00	0.00	0.00	1,766,125.70	365	12%	211,935.08	1,978,060.78
10/13/01	0.00	0.00	0.00	1,978,060.78	365	12%	237,367.29	2,215,428.08
10/13/02	0.00	0.00	0.00	2,215,428.08	365	12%	265,851.37	2,481,279.45
10/13/03	0.00	0.00	0.00	2,481,279.45	365	12%	297,753.53	2,779,032.98
10/13/04	0.00	0.00	0.00	2,779,032.98	365	12%	333,483.96	3,112,516.94
10/13/05	0.00	0.00	0.00	3,112,516.94	365	12%	373,502.03	3,486,018.97
12/31/05	0.00	0.00	0.00	3,486,018.97	79	12%	90,540.99	3,576,559.95

Total Due Princial & Default Interest on Note Due-Settlement Agreement dated 4/22/80 **$3,576,559.95**

Notes: Payments 10/13/80 and 10/13/81 were scheduled payments per Settlement Agreement
Payment 5/30/85 on US Trust against earliest due interest
Payment 2/16/86 of $19,200.00 for 1984 interest

Computation of Interest from Date of Liquidation
New England Mutual Life Insurance
William E. Murray
Schedule B

Date	Loan Value	Int Rate	Period	Interest Accrued	Balance Owed
12/08/92	$209,867.02	12%	23	$1,586.94	$211,453.96
12/31/92	$211,453.96	12%	365	$25,374.48	$236,828.43
12/31/93	$236,828.43	12%	365	$28,419.41	$265,247.85
12/31/94	$265,247.85	12%	365	$31,829.74	$297,077.59
12/31/95	$297,077.59	12%	365	$35,649.31	$332,726.90
12/31/96	$332,726.90	12%	365	$39,927.23	$372,654.13
12/31/97	$372,654.13	12%	365	$44,718.50	$417,372.62
12/31/98	$417,372.62	12%	365	$50,084.71	$467,457.34
12/31/99	$467,457.34	12%	365	$56,094.88	$523,552.22
12/31/00	$523,552.22	12%	365	$62,826.27	$586,378.48
12/31/01	$586,378.48	12%	365	$70,365.42	$656,743.90
12/31/02	$656,743.90	12%	365	$78,809.27	$735,553.17
12/31/03	$735,553.17	12%	365	$88,266.38	$823,819.55
12/31/04	$823,819.55	12%	365	$98,858.35	$922,677.90
12/31/05	$922,677.90	12%	365	$110,721.35	$1,033,399.24

Total Interest Due on Insurance Policy Loan **$1,033,399.24**
Face $240,000 less surrender value $20,013.04

AGREEMENT

COME NOW Pamela Holmes Murray Smith, Elizabeth Edwards Murray and Catherine Peronneau Murray-Smith, each both individually and as the heir of her mother, Minnie Holmes Murray, (all hereinafter collectively referred to as "Daughters") and Elizabeth Edwards Murray as Administratix DBN of the Estate of Minnie Holmes Murray (referred to hereafter as "The Estate"), and William Edwards Murray (hereinafter referred to as "Father"), and enter into this Agreement this 22 day of April, 1980.

WITNESSETH:

WHEREAS, Daughters, The Estate, and Father wish to reduce to writing their various understandings and agreements concerning certain financial matters; and

WHEREAS, Daughters, The Estate, and Father wish to conclude the administration of the Estate of the late Minnie Holmes Murray, mother of Daughters and former wife of Father; and thereby to establish the trust under the Will of Mother;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Daughters and Father agree as follows:

1.

Father hereby acknowledges that he is indebted to the Estate of Minnie Holmes Murray. The parties hereby agree that the principal amount of the indebtedness was One Hundred Forty-Two Thousand Six Hundred Eighty-Five Dollars ($142,685.00) as of March 9, 1967. The parties further agree that interest has accrued and is due on said indebtedness from March 9, 1967, through October 11, 1976, in the amount of Ninety-Seven Thousand Three Hundred Fifteen Dollars ($97,315.00). Thus, Daughters and Father agree that the total amount of his indebtedness to the Estate as of October 12, 1976, was Two Hundred Forty Thousand Dollars ($240,000.00), and

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CHARLESTON COUNTY

Father agrees to pay that amount plus interest to the Estate in the manner provided below.

The parties agree that no interest on the indebtedness is due or payable for the period from October 12, 1976, through October 12, 1979. The parties further agree, however, that commencing on October 13, 1979, the indebtedness of Two Hundred Forty Thousand Dollars ($240,000.00) shall bear interest at the rate of eight percent (8%) per annum, payable annually. Father shall pay interest only for a period of three (3) years (that is, payments of interest only shall be due on October 13, 1980, 1981, and 1982), after which time Father shall pay principal and accrued interest, amortized over a period of ten (10) years. Thus, the Father's payments shall be as follows:

Payment Schedule

	Principal	Interest	Total
October 13, 1977	-0-	-0-	-0-
October 13, 1978	-0-	-0-	-0-
October 13, 1979	-0-	-0-	-0-
October 13, 1980	-0-	$19,200.00	$19,200.00
October 13, 1981	-0-	$19,200.00	$19,200.00
October 13, 1982	-0-	$19,200.00	$19,200.00
October 13, 1983	$24,000.00	$19,200.00	$43,200.00
October 13, 1984	$24,000.00	$17,280.00	$41,280.00
October 13, 1985	$24,000.00	$15,360.00	$39,360.00
October 13, 1986	$24,000.00	$13,440.00	$37,440.00
October 13, 1987	$24,000.00	$11,520.00	$35,520.00
October 13, 1988	$24,000.00	$ 9,600.00	$33,600.00
October 13, 1989	$24,000.00	$ 7,680.00	$31,680.00
October 13, 1990	$24,000.00	$ 5,760.00	$29,760.00
October 13, 1991	$24,000.00	$ 3,840.00	$27,840.00
October 13, 1992	$24,000.00	$ 1,920.00	$25,920.00

Failure to make any payment when due shall automatically, without notice, result in an increase in the interest rate on the unpaid installment from eight percent (8%) to twelve percent (12%) for the period in which it is unpaid. If Father fails to make any payment of principal or interest when due (hereinafter referred to as a "default") and if Father fails to cure such a default by making said payment within (12) months after the date written notice of said default is given to Father by Daughters, all remaining payments shall, at the option of Daughters, immediately mature and become due and payable in full. There shall be no prepayment penalty. All payments to Daughters under this Agreement shall be sent in care of William G. McDaniel, Suite 200, Candler Building, Atlanta, Georgia 30303.

2.

Father has previously transferred to the Estate of Minnie Holmes Murray, as owner, Policy No. 2,643,459 of the New England Mutual Life Insurance Company, in the stated amount of Three Hundred Eighty-Five Thousand Dollars ($385,000.00), which insurance policy is reassignable to him. Such obligation to reassign said policy is hereby terminated and The Estate's ownership therein is reaffirmed. Simultaneously with the execution of this Agreement, Elizabeth Edwards Murray, as Administratrix shall deliver said policy of insurance to William G. McDaniel, attorney for The Estate, for safekeeping.

Father represents and warrants that the aforesaid policy of insurance is in full force and effect; that there are no loans or liens outstanding and unpaid against the said policy except for premiums thereon; that all premiums due and payable on said policy have been paid; that Father shall have no right to borrow against the said policy except on behalf of and with the express written consent of Daughters which consent is hereby granted for the payment of premiums. Father agrees to maintain additional term insurance to cover premium payment loans. Father shall have no further right

to pledge or encumber said policy. Father agrees to maintain said policy and make all required premium payments exclusive of premium payment loans through October 13, 1980. Father covenants and agrees to make all necessary arrangements with said insurance company to provide Daughters with all notices of premium or interest payments and other information relative to the insurance so that at all times hereafter Daughters shall have complete information concerning the said policy.

3.

Father shall cooperate in any reasonable way with Daughters to collect any monies due them or the Estate of Minnie Holmes Murray as a result of Leon D. Murray, Jr.'s administration of the Estate of Minnie Holmes Murray.

4.

Any notices to be given under the Agreement by any party to any other shall be in writing and must be effected by certified mail, return receipt requested, or by delivery by hand. Except as otherwise specifically provided, notice sent by mail shall be deemed given and received when deposited in the United States mails with adequate postage thereon. Notice to Daughters shall be sufficient if made on or addressed to William G. McDaniel, Attorney-at-Law, Suite 200, Candler Building, Atlanta, Georgia 30303. Notice to William E. Murray shall be sufficient if made on or addressed to William E. Murray, President, East Bay Company, Post Office Box 1298, Charleston, South Carolina 29402. Any party may designate a new address for purposes of notice by giving notice to the other parties pursuant to this provision.

5.

As provided in this Paragraph 5, Father shall have the right to transfer property (exclusive of the Marion Building, Augusta, Georgia) to Daughters in order to extinguish or reduce his principal indebtedness referred to in Paragraph 1 above. Should Father so elect, he shall give written notice to Daughters. The notice must

specifically describe the property, the amount of debt to be extinguished by the transfer, and the proposed method of transfer. Daughters shall be deemed to accept Father's proposal unless they object, in writing, within sixty (60) days after their actual receipt of the notice of proposed transfer. If Father's proposal is accepted or deemed accepted, Father's indebtedness shall be reduced by the amount stated in Father's proposal, as of the date of transfer of the property.

If Daughters object to the proposal, they shall so notify the Father, and the matter may be referred to arbitration by Father or by Daughters. If the matter is referred to arbitration and there is a dispute as to the amount of debt to be extinguished by the transfer, in order for Father to prevail on that issue, he must establish that the property to be transferred has a fair market value of one hundred fifty percent (150%) of the proposed amount of debt to be extinguished by the transfer. Further, the arbitration must establish that the property transferred may not have indebtedness against it in excess of seventy percent (70%) of its total value.

6.

It is agreed that all questions as to rights and obligations arising under the terms of this contract which may properly be submitted to arbitration are subject to arbitration, and such arbitration shall be governed by the commercial arbitration rules of the American Arbitration Association.

If a dispute that is properly submissible to arbitration should arise under this contract, any party may make demand for arbitration by sending written notice to the others within sixty (60) days.

The parties hereto may agree on one arbitrator, but in the event that they cannot so agree, there shall be three arbitrators, one named in writing by Father and Daughters within thirty (30) days after demand for arbitration is made, and a third

to be chosen by the two so named. Should Father or Daughters refuse or neglect to join in the appointment of the arbitrators, they shall be appointed in accordance with the provisions of the commercial arbitration rules of the American Arbitration Association.

All arbitration hearings conducted hereunder, and all judicial proceedings to enforce any of the provisions hereof, shall take place in New York, New York or in such other jurisdiction as shall be mutually agreeable to the parties. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place within said county as is selected by the arbitrators. Notice shall be given and the hearing conducted in accordance with the provisions of the commercial arbitration rules. The arbitrator(s) shall hear and determine the matter. If there is only one arbitrator, his decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive. Upon determining the matter, the arbitrator(s) shall execute and acknowledge the award in writing and deliver a copy thereof to each of the parties by registered or certified mail. Any such award shall be final and binding without right of appeal. A judgment confirming the award of the arbitrator(s) may be rendered by any court having jurisdiction.

If the arbitrators selected hereunder shall fail to reach an agreement within three months, they shall be discharged, and three new arbitrators shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

The costs and expenses of arbitration, including the fees of the arbitrators, shall be borne by the losing party or parties or in such proportions as the arbitrators shall determine. The successful party or parties shall recover as expenses all reasonable attorney's fees incurred by him or them in connection with the arbitration proceeding or any appeals therefrom.

7.

This Agreement constitutes the full and final reconciliation of any and all financial claims of Daughters and the Estate of Minnie Holmes Murray against Father based on rights currently existing, whether known or unknown. This instrument and the documents contemplated hereunder constitute the sole and only agreement of the parties hereto and correctly set forth the rights, duties, and obligations of each to the other as of their date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Any modification of this Agreement must be in writing and signed by each party hereto.

8.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9.

This Agreement shall inure to the benefit of and bind the parties, their estates, heirs, successor, assigns, and representatives.

10.

No failure on the part of any party to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver, and no single or partial exercise of any right, remedy, or power by any party precludes any other or further exercise thereof or the exercise of any other right, remedy, or power. No express waiver or assent by any party to any breach of or default under this Agreement shall constitute a waiver of or an assent to any subsequent breach of or default under this Agreement.

11.

The validity of this Agreement, and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to, and in accordance with, the laws of Georgia.

So agreed, this 22 day of April, 1980

FATHER:

_____ (SEAL)
Witness

William Edwards Murray (SEAL)
William Edwards Murray

DAUGHTERS, both individually and as heirs of their mother Minnie Holmes Murray:

Joseph S. Ott (SEAL)
Witness

Pamela Holmes Murray Smith (SEAL)
Pamela Holmes Murray Smith

Joseph S. Ott (SEAL)
Witness

Elizabeth Edwards Murray (SEAL)
Elizabeth Edwards Murray
(and as Administratrix DBN of the Estate of Minnie Holmes Murray)

Joseph S. Ott (SEAL)
Witness

Catherine Peronneau Murray-Smith (SEAL)
Catherine Peronneau Murray-Smith

MURRAY000171

Legal Document from WE M 2/6/04
to be given to Elizabeth Murray
upon request.

April 16, 2007

Valerie Wolfmen, Esquire
880 Third Ave. 13th Floor
New York, NY 10022

Dear Ms. Wolfmen,

The enclosed is a letter from Mr. William E. Murray to his daughter, Elizabeth. I witnessed the reading of this letter and ensured myself that Mr. Murray was clear as to its content and meaning. He signed the letter in my presence, and it was requested that I forward an original for Ms. Murray's attorney with carbon copies to be forwarded as needed to other judicial council.

Thank you for your endeavors in this matter.

Sincerely,

Brian Lee Canady, D.Arts, M.Div.
873 Friendly Circle
Charleston, SC 29414

17 JUL 18 AM 11:46
PROBATE COURT
CHARLESTON COUNTY

EXHIBIT
B

William E. Murray
One Vendue Range, Charleston, SC 29401

April 10, 2007

Dear Elizabeth,

This letter is meant to clarify my position on various financial issues which are relevant to your divorce proceedings and its closure.

- All gifts that I have made to you both prior to and after your marriage were clearly intended to benefit you alone. This includes the gifts I made to enable you to close the gap between the mortgage on the Katonah property, your substantial down payment, and other ongoing monies borrowed from your mother's estate, all of which were necessary to make this purchase possible and the house habitable.

- The monies that I advanced to you to purchase the tax shelter partnerships were a vehicle meant to create a tax deduction from your substantial earnings at that time. Dan at no time invested or used his own money in these, but there was a $10,000 limit on what I could give you tax free at that time per IRS regulations. Dan was clear on this point as we discussed it at the time of the alleged "gift" to him when it was necessary for me to advance the money to him for the purchase of "his" partnership interest for use in your joint tax return. He has in no way contributed his own money to own a percentage of the real estate partnerships; this was meant to be a gift to your account alone. I have had my attorney request that these partnership interests be returned to me immediately by Dan. There was correspondence to Dan on this issue at the time of the gift which clearly showed that the origination of the purchase funds were a loan from me for the house.

- The $25,000 I contributed at the closing was also a gift to you so that you would have sufficient funds to both close on the purchase of the house, re-roof the house, and remove a 100 foot rotten tree next to the house. I also represented you at the closing to reduce your cost.

- Payments to you since your completion of the NCIDQ exam and those made prior to your attendance at NYSID were and are to be credited towards various monies owed to you regarding the Inn at Quoque and the Restaurant at an amount of $2,000 per month as we had discussed to cover advances of funds and purchases with respect to the Inn and Restaurant. The balance of $1,000 is a non-taxable gift to you which may or may not continue as my personal finances dictate. I also loaned you money for payment of your attorney fees which is to be repaid to me out of marital funds at the time of your divorce settlement, as NY law generally dictates.

- My gift to you of a 1/3 partnership in the Restaurant Inn Quogue Corporation, now defunct, was meant to make available tax losses and resultant refunds to both to (a) preserve your rent-control status governed by an earnings test and (b) provide you with to provide you with income. I did this because of your husband's failure to support you in any meaningful way while you were in school and starting a business thereafter. It was never intended as a windfall to Dan for his personal use beyond my support of you and Elspeth's Chapin tuition payments. I also understood from you that the tax refunds would be used to repay my advances on your attorney fees.

I hope this clears up any questions regarding these matters of contention and misunderstandings on Dan's part.

Love,

William E. Murray

Dad

04/13/07 Margaret E Lyman Notary Charleston, SC

My commission expires July 28, 2015

CC: Daniel P. Kelly
The Honorable Judge Harold Beeler
Valerie Wolfman, Esq.

DIV5779

Certificate# 47996

SURROGATE'S COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

File #: 1967-2344

CERTIFICATE OF APPOINTMENT OF ADMINISTRATOR(S)

IT IS HEREBY CERTIFIED that Letters in the estate of the Decedent named below have been granted by this court, as follows:

Name of Decedent: **Minnie Holmes Murray** Date of Death: **June 17, 1967**

Domicile of Decedent: **Bronxville, New York**

Fiduciary Appointed: **Elizabeth E Murray**
Mailing Address: 737 Park Avenue #3B
New York NY 10021

Type of Letters Issued: **LETTERS OF ADMINISTRATION**

Letters Issued On: **August 22, 1975**

Limitations: **NONE**

and such Letters are unrevoked and in full force as of this date:

Dated: July 22, 2010

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester County Surrogate's Court at White Plains, New York.

WITNESS, Hon. Anthony A. Scarpino Jr., Judge of the Westchester County Surrogate's Court.

Charles T Scott, Esq., Chief Clerk
Westchester County Surrogate's Court

This Certificate is Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

EXHIBIT
C

State of New York
Westchester County Surrogate's Court
111 Dr Martin Luther King Jr Blvd
19th Floor
White Plains, NY 10601
(914)824-5656

Receipt# 107188
Date July 22, 2010 1:06 pm

RE: FileName - Minnie Holmes Murray
File # 1967-2344

*** FEES OWED ***	
3 Certificates	$18.00
*** PAYMENTS ***	
Cash Payment	$18.00
*** TOTALS ***	
Total Due	$18.00
Total Tendered	$18.00

Received of: Donald L Sharpe

Comment:

Operator lcastill

NOTE

February 03, 2006 [Date] | Charleston [City] | SOUTH CAROLINA [State]

1565 Brianna Lane, Charleston, SC 29412

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 86,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Wachovia Mortgage Corporation.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on April 01, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on March 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO Box 96001, Charlotte, NC 28296 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 553.87

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

EXHIBIT D

WEM Signatures 0045

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

ADDENDUM TO NOTE

(Inter Vivos Revocable Trust)

DEFINITIONS USED IN THIS ADDENDUM.

(A) "Revocable Trust." The William E. Murray Revocable Trust created under trust instrument dated February 14, 2005, for the benefit of William E Murray

(B) "Revocable Trust Trustee(s)."
William E Murray
trustee(s) of the Revocable Trust.

(C) "Revocable Trust Settlor(s)."
William E Murray
settlor(s) of the Revocable Trust.

(D) "Borrower." The Revocable Trust, the Revocable Trust Trustee(s) and the Revocable Trust Settlor(s) and any other natural persons signing the Note made by Borrower to Lender and dated the same date as this Addendum as Borrower.

(E) "Lender."
Wachovia Mortgage Corporation

(F) "Security Instrument." The Deed of Trust, Mortgage or Security Deed and any riders thereto of the same date given to secure Borrower's Note to Lender of the same date and covering the Property (as defined below).

(G) "Property." The property described in the Security Instrument and located at:
1565 Brianna Lane, Charleston, SC 29412

[Property Address]

THIS ADDENDUM TO NOTE is made this 3rd day of February, 2006, and is incorporated into and shall be deemed to amend and supplement the Note made by Borrower to Lender and dated the same date as this Addendum (the "Note").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows:

A. INTER VIVOS REVOCABLE TRUST

1. BORROWER CERTIFICATION AND BORROWER WARRANTIES

The Borrower certifies to Lender that the Revocable Trust is an inter vivos revocable trust for which the Revocable Trust Trustee(s) are holding full title to the Property as trustee(s).

WEM Signatures 0047

The Borrower warrants to Lender that (i) the Revocable Trust is validly created under the laws of the State of SOUTH CAROLINA ; (ii) the trust instrument creating the Revocable Trust is in full force and effect and there are no amendments or other modifications to the trust instrument affecting the revocability of the Revocable Trust; (iii) the Property is located in the State of SOUTH CAROLINA ; (iv) the Revocable Trust Trustee(s) have full power and authority as trustee(s) under the trust instrument creating the Revocable Trust and under applicable law to execute the Note, including this Addendum; (v) the Revocable Trust Trustee(s) have executed the Note, including this Addendum, on behalf of the Revocable Trust; (vi) the Revocable Trust Settlor(s) and any other natural persons signing the Note as Borrower have executed the Note, including this Addendum, as Borrower; (vii) only the Revocable Trust Settlor(s) and the Revocable Trust Trustee(s) may hold any power of direction over the Revocable Trust; (viii) only the Revocable Trust Settlor(s) hold the power to direct the Trustee(s) in the management of the Property; (ix) only the Revocable Trust Settlor(s) hold the power of revocation over the Revocable Trust; and (x) the Revocable Trust Trustee(s) have not been notified of the existence or assertion of any lien, encumbrance or claim against any beneficial interest in, or transfer of all or any portion of any beneficial interest in or powers of direction over the Revocable Trust Trustee(s) or the Revocable Trust, as the case may be, or power of revocation over the Revocable Trust.

2. NOTICE OF CHANGES TO REVOCABLE TRUST AND TRANSFER OF POWERS OVER REVOCABLE TRUST TRUSTEE(S) OR REVOCABLE TRUST OR BOTH; NOTICE OF CHANGE OF REVOCABLE TRUST TRUSTEE(S); NOTICE OF CHANGE OF OCCUPANCY OF THE PROPERTY; NOTICE OF TRANSFER OF BENEFICIAL INTEREST IN REVOCABLE TRUST.

The Borrower shall provide timely notice to Lender promptly upon notice or knowledge of any revocation or termination of the Revocable Trust, or of any change in the holders of the powers of direction over the Revocable Trust Trustee(s) or the Revocable Trust, as the case may be, or of any change in the holders of the power of revocation over the Revocable Trust, or both, or of any change in the trustee(s) of the Revocable Trust (whether such change is temporary or permanent), or of any change in the occupancy of the Property, or of any sale, transfer, assignment or other disposition (whether by operation of law or otherwise) of any beneficial interest in the Revocable Trust.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN THE REVOCABLE TRUST

The Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under the Note and this Addendum, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as the Note protects the Note Holder from possible losses which might result if Borrower does not keep the promises made in the Note. That Security Instrument describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes under the Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in the Revocable Trust.

If, without Lender's prior written consent, (i) all or any part of the Property or an interest in the Property is sold or transferred or (ii) there is a sale, transfer, assignment or other disposition of any beneficial interest in the Revocable Trust, Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Addendum to Note.

William E Murray
Trustee of the William E. Murray Revocable Trust

under trust instrument dated February 14, 2005,
for the benefit of William E Murray

-Borrower

Trustee of the _____

under trust instrument dated _____,
for the benefit of _____

-Borrower

William E Murray
Revocable Trust Settlor
-Borrower

Revocable Trust Settlor
-Borrower

[Sign Original Only]

Return To:
Wachovia Mortgage
Corporation
1100 Corporate Center Drive

Raleigh, NC 27607

Prepared By:
Suzanne Rogers
1560 Holcomb Bridge Road
Roswell, GA 30076

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100013700039432404

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 03, 2006 together with all Riders to this document.
(B) "Borrower" is William E Murray, as Trustee of The William E. Murray Revocable Trust dated February 14, 2005, as amended and restated

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is Wachovia Mortgage Corporation

Lender is a Corporation
organized and existing under the laws of The State of North Carolina
Lender's address is 1100 Corporate Center Drive, Raleigh, NC 27607

(E) "Note" means the promissory note signed by Borrower and dated February 03, 2006
The Note states that Borrower owes Lender Eighty Six Thousand Five Hundred And Zero/100 Dollars
(U.S. $ 86,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 01, 2036
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☒ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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In this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Charleston :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Exhibit A attached hereto and incorporated herein by reference thereto

Parcel ID Number: 337-06-00-379 which currently has the address of

[Street]

1565 Brianna Lane

Charleston [City] , South Carolina 29412 [Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

3943240 Initials: WEM 3943240

WEM Signatures 0052

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

WEM Signatures 0053

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

WEM Signatures 0054

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

WEM Signatures 0055

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

WEM Signatures 0056

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

WEM Signatures 0057

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

WEM Signatures 0058

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

WEM Signatures 0059

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

WEM Signatures 0060

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

WEM Signatures 0061

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

WEM Signatures 0062

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

_____

_____ (Seal)
William E Murray AS TRUSTEE -Borrower
FOR THE WILLIAM E. MURRAY REVOCABLE TRUST DATED FEBRUARY 14, 2005, AS AMENDED AND RESTATED.

_____

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

WEM Signatures 0063

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2007-ES-10-1116
	)	
	)	
	)	
IN RE: ESTATE OF WILLIAM E. MURRAY	)	**AFFIDAVIT OF ELIZABETH EDWARDS MURRAY**
	)	
	)	
	)	
	)	

Personal background:

1. I am Elizabeth Edwards Murray, the daughter of William Edwards Murray and Minnie Holmes Murray, born October 11, 1953.

2. I have a BS in Finance from University of Pennsylvania, Wharton School of Finance.

3. I have an Associates Degree in interior design from the NY School of Interior Design.

4. I have two sisters born of these parents: Pamela Holmes Murray, born October 21, 1951 and Catherine Perroneau Murray Smith born December 28, 1954.

5. My mother Minnie H. Murray died on June 18, 1967.

6. My father owed my mother certain monies at the time of her death and the claim for this debt passed to my mother's Estate at the time of her death.

7. My father died testate on August 4, 2007. His will is presently in Probate before this court.

8. Hilton C. Smith, husband to my sister Catherine, is a Co-Representatives of the Estate of William E. Murray along with James Ma.

9. My mother's Estate, the Estate of Minnie H. Murray is a creditor of my father's Estate, the Estate of William E. Murray. My sisters Catherine and Pam and I are beneficiaries of the Estate of Minnie H. Murray and in that capacity, we are creditors of my father's Estate.

10. I am the owner of Elizabeth Stylesetters.

11. Elizabeth Stylesetters provided design services to William E. Murray personally and his business.

12. William E. Murray agreed to reimburse Elizabeth Stylesetters for the services provided and did so in part.

13. At the time of his death, William E. Murray owed Elizabeth Stylesetters certain sums of money.

14. Elizabeth Stylesetters is a creditor of William E. Murray's Estate.

15. As I set forth below, I believe Hilton C. Smith has a conflict of interest that disqualifies him from serving as the Co-personal representative of the Estate of William E. Murray for the purposes of adjudicating the claims of Minnie H. Murray's Estate and the claims of Elizabeth Stylesetters. I believe James Ma should also be disqualified because Mr. Ma works for Mr. Smith and exercises no independent judgment.

16. In summary, I believe that Hilton C. Smith cannot fairly evaluate the claims of the Estate of Minnie H. Murray and Elizabeth Stylesetters for the following reasons:

(a) Mr. Smith was employed by The Estate of Minnie H. Murray to negotiate the original obligation that gives rise to the claim and he should not be put in the position of making a decision on the payment of the debt that he negotiated;

(b) Mr. Smith is a beneficiary of the Estate of William E. Murray and his share in the Estate may be diminished if the claim of the Estate of Minnie H. Murray is paid;

(c) Mr. Smith's wife is a beneficiary of the claim of the Estate of Minnie H. Murray such that if he approves the claim, he would be subject to charges of conflict of interest by other beneficiaries of the Estate of William E. Murray;

(d) Mr. Smith and I have a continuing and irreconcilable personal conflict such that we do not speak to each other.

Background for note:

17. My parents (listed above) were divorced in March 9, 1967.

18. At the time of their divorce, my father owed a debt to my mother in the amount of $142,685. This debt arose because my mother had pledged personal securities as collateral for a loan to my father previous to their divorce. The divorce agreement acknowledged this debt as valid and owing.

19. My mother died on June 18, 1967 whereupon the indebtedness transferred to her estate, the appointed Executor being Leon Dallas Murray, our father's brother.

The new note:

20. I was named successor Executrix for the Estate of Minnie Holmes Murray on August 22, 1975, replacing our uncle. My sister Pam performed an accounting in order to determine the amount due the Estate.

21. Subsequently, I met with my father, I believe, in March of 1976 at his home in NYC, NY to discuss the debt he owed the Estate and to agree on a new amount with accrued interest for which a new note would be written.

22. I contacted attorney Bill McDaniel in Atlanta, GA to prepare a new note and agreement. There were many drafts and after many changes it was agreed upon and signed on April 22, 1980. The new amount of his indebtedness with accrued interest came to $240,000. The new $240K note called for a three year delay until the first payment with no accrued interest during that period, then interest payments only for a period of three years, after which payments would include both principal and interest for a period years.

23. Our father made some payments on the note before we learned that he was not living up to all the terms of the settlement agreement.

Hiring Hilton Smith to negotiate the debt:

24. Our sister Catherine suggested we enlist her husband, Hilton Smith to help us secure payment on the debt. Hilton was married to my sister Catherine and worked for my father. All sisters agreed and we authorized Hilton to act on our behalf by letter dated April 06, 1984, marked as an Exhibit 1 hereto. Our father made a few payments and then stopped payment.

25. Once again Catherine suggested we enlist her husband, Hilton Smith to help us secure payment on the debt. Catherine's letter to us dated October 2, 1991 is marked an Exhibit 2- hereto.

26. On October 9, 1992, we authorized Hilton Smith and Daniel Kelly to act on behalf of the Estate of Minnie Holmes Murray with regard to obtaining or giving information and authorizing actions pertinent to any process, legal services or Probate Court actions. (Exhibit 8)

27. Hilton gathered information from the accountants as can be seen from the correspondence dated October 19, 1992 and November 13, 1992 November 20, 1992 marked as an Exhibits 3 & 4.

28. On December 02, 1992 Hilton outlined his proposal for proceeding to resolve the debt issue, attached hereto as an Exhibit 6.

29. On December 11, 1992 Hilton prepared and faxed to my sister, a letter he drafted for our signature, to be sent to our father. This letter is attached and as Exhibit 7. We signed and mailed the demand.

30. On December 12, 1992, at the advice of Hilton C. Smith, Catherine, Pam, and I entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis. (Exhibit 10)

31. Hilton charged us a fee for his services Exhibit 5, which included meeting with my father and drafting a letter for my father's signature, whereby my father confirmed his debt in the amount shown in the closing papers and whereby we made a formal "demand" for the monies due so as to keep the loan from becoming "stale". I believe that he faxed that letter to my father from his own office in Hagerstown.

32. In August 2001 I spoke with Hilton about the state of the debt. Hilton explained that he had procured a statement from my father, written to Signet Bank in Maryland, acknowledging and reaffirming the debt.

Background for annual renewal letters:

33. Hilton attended our "closing" of the Estate in Atlanta in 1992 after conferring with us and counseling us as to how to work with my father on his debt. In addition, he charged $50/ hr for his work on this during the year plus the settlement period, and

charged for his trip to Atlanta as well. My husband at the time, Dan Kelly, also did summary accounting work and charged for his time as well.

34. Thereafter, our attorney and accountant advised me to periodically "demand" the monies due in writing to my father and to serve such notice to him personally so that there could be no pretense of not being aware of the notice of default and demand.

35. Every other year at our Christmas luncheon, I delivered a notice of default and demand to my father.

36. Over the years, on so many occasions that I could not possibly count them, my father would tell us that "all of that money" he owed to the Estate of Minnie Murray would pass to us tax free from his estate with the accrued interest at 12% per annum and that his estate would also avoid taxation on that part of his estate as it would be considered a creditor claim. He was always very clear that his intention was for this amount to be repaid, either before or after his death. Basically, anytime there was any issue re: money or need on our part, where we could have used access to that inheritance, he mentioned this.

Background of debt owed to Elizabeth Stylesetters:

37. Elizabeth Stylesetters agreed to provide management services for The Inn at ~~and~~ Quogue, one of the properties owned by William E. Murray in New York, and remodeling and interior design services for various other properties owned by William E. Murray, in July of 1999 as evidence by William E. Murray's letter dated April 7, 2000. (Exhibit 9).

38. That my father, William E. Murray agreed to pay me as the owner of Elizabeth Stylesetters, an amount of $2,000 per month towards the services provided.

39. That my father made monthly payments towards this debt until July, 2007.

40. That after that time Mr. Smith undertook the handling of the payments due to Elizabeth Stylesetter and failed to make the payments due.

Other beneficiaries:

41. Brianna Murray is a daughter of William E. Murray and a beneficiary of the Estate of William E. Murray.

42. Brianna Murray is not a beneficiary of the Estate of Minnie Murray.

43. Payment of the claim of the Estate of Minnie Murray might affect the amount to which Brianna Murray might otherwise be due.

The conflict:

44. Mr. Smith is now the personal representative of the Estate of William E. Murray and is now in the position to decide whether the claim of the Estate of Minnie H. Murray should be paid. Despite the fact that Mr. Smith negotiated the original note, he has denied the debt.

45. Mr. Smith is not a beneficiary of the Estate of Minnie H. Murray.

46. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because he represented us in negotiating the original debt.

47. In addition to the above, under the terms of William E. Murray's Will and Trust, Hilton C. Smith stands to receive 8% of Mr. Murray's estate, after debts have been paid.

48. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect his distributive share under the Estate of William E. Murray.

49. In addition to the above, under the terms of William E. Murray's Will and Trust, Catherine Smith (Mr. Smith's wife) stands to receive 8% of Mr. Murray's estate, after debts have been paid.

50. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect his wife's distributive share under the Estate of William E. Murray.

51. In addition to the above, under the terms of William E. Murray's Will and Trust, Brianna Murray stands to receive 8% of the Murray Estate after debts have been paid.

52. Payment of the debt owed to Minnie H. Murray Estate and Elizabeth Stylesetters will substantially diminish the value of the Estate of William E. Murray and could reduce the distributive share due Brianna Murray.

53. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect Brianna Murray's distributive share under the Estate of William E. Murray and subject Mr. Smith to a claim of conflict of interest by Brianna Murray.

54. I am informed and believe that because of his personal enmity toward me, Mr. Smith is not capable of making a fair and impartial decision regarding a claim from which I would benefit.

Elizabeth Edwards Murray

This 3 day of April, 2013
~~Charleston, SC~~ New York, New York

Sworn before me this 3 day of April, 2013

ROBIN LOGUIDICE
Notary Public, State of New York
No. 02LO4980725
Qualified in New York County
Commission Expires April 29, 2015

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2007-ES-10-1116
	)	
	)	
	)	
IN RE: ESTATE OF WILLIAM E. MURRAY	)	**AFFIDAVIT OF PAMELA HOLMES MURRAY**
	)	
	)	
	)	

PERSONALLY appeared before me, Pamela Holmes Murray who, being duly sworn, deposes and says as follows:

Personal background:

1. I am Pamela Holmes Murray, the daughter of William Edwards Murray and Minnie Holmes Murray, born October 21, 1951.

2. I have a Bachelors degree in Business Administration from Emory University with dual major in Accounting and Finance.

3. I have worked in the accounting field for over 40 years.

4. I have two sisters born of these parents: Elizabeth Edwards Murray born October 11, 1953 and Catherine Perroneau Murray Smith born December 28, 1954.

5. I am currently 61 years old and am disabled due to Stage IV metastatic cancer to my bone. I am competent to give this affidavit.

6. My mother Minnie H. Murray died June 18, 1967.

7. My father owed my mother certain monies at the time of her death and the claim for this debt passed to my mother's Estate.

8. My father died testate on August 4, 2007. His will is presently in Probate in front of this Court.

9. Hilton C. Smith, husband to my sister Catherine, is a Co-Personal Representative of the Estate of William E. Murray along with James Ma.

10. My mother's Estate, the Estate of Minnie Murray is a creditor of my father's Estate, the Estate of William E. Murray.

11. I give this affidavit in support of the Motion together with the Petition made by the Estate Of Minnie Murray to disqualify Hilton C. Smith as Co-personal representative of the Estate of William E. Murray.

12. As I set forth more fully below, I believe Hilton C. Smith has a conflict of interest that disqualifies him from serving as the Co-personal representative of the Estate of William E. Murray for the purpose of determining the claim filed by the Estate of Minnie Murray. I believe James Ma should also be disqualified because Mr. Ma works for Mr. Smith and exercises no independent judgment.

13. I believe that Hilton C. Smith cannot fairly evaluate the claim of the Estate of Minnie Murray because (a) Mr. Smith was employed by The Estate of Minnie Murray to negotiate the original obligation that gives rise to the claim and he should not be put in the position of making a decision on the payment of a debt that he negotiated; (b) Mr. Smith is a beneficiary of the Estate of William E. Murray and his share of the Estate might be diminished if the claim on behalf of the Estate of Minnie Murray is paid; (c) Mr. Smith's wife is a beneficiary of the claim of the Estate of Minnie Murray such that if he approves the claim, he would be subject to charges of conflict of interest by other beneficiaries of the Estate of William E. Murray.

Hilton C. Smith:

14. Hilton C. Smith is the Co-personal representative of the Estate of William E. Murray.

15. Hilton C. Smith is married to my sister Catherine Smith, one of William E. Murray's daughters.

Background for note:

16. My parents (listed above) were divorced in March 9, 1967.

17. At the time of their divorce, my father owed a debt to my mother in the amount of $142,685. This debt arose because my mother had pledged personal securities as collateral for a loan to my father previous to their divorce. The divorce agreement acknowledged this debt as valid and owing.

18. My mother died on June 18, 1967 whereupon the indebtedness transferred to her estate, the appointed Executor being Leon Dallas Murray, our father's brother.

The new note:

19. Elizabeth was named successor Executrix for the Estate of Minnie Holmes Murray in August 22, 1975, replacing our uncle. Elizabeth requested that I perform an accounting in order to determine the amount due the Estate.

20. I met with my father, I believe, in March of 1976 at his home in NYC, NY to discuss the debt he owed the Estate and to agree on a new amount with accrued interest for which a new note would be written.

21. I contacted attorney Bill McDaniel in Atlanta, GA to prepare a new note and agreement. There were many drafts and after many changes it was agreed upon and signed on April 22, 1980. The new amount of his indebtedness with accrued interest came to $240,000. The new $240K note called for a three year delay until the first

payment with no accrued interest during that period, then interest payments only for a period of three years, after which payments would include both principal and interest for a period of 10 years.

22. Our father made some payments on the note before we learned that he was not living up to all the terms of the settlement agreement.

Hiring Hilton Smith to negotiate the debt:

23. Upon learning that payments were not made by our father as required by the note, our sister Catherine suggested we enlist her husband, Hilton Smith to help us secure payment on the debt. Hilton was married to my sister Catherine and worked for my father. All sisters agreed and we authorized Hilton to act on our behalf by letter dated April 06, 1984, marked as an Exhibit 1 hereto. Our father made a few payments and then stopped payment.

24. Once again Catherine suggested we enlist her husband, Hilton Smith to help us secure payment on the debt. Catherine's letter to us dated October 2, 1991 is marked an Exhibit 2- hereto.

25. On October 9, 1992, we authorized Hilton Smith and Daniel Kelly to act on behalf of the Estate of Minnie Holmes Murray with regard to obtaining or giving information and authorizing actions pertinent to any process, legal services or Probate Court actions. (Exhibit 8)

26. Hilton gathered information from the accountants as can be seen from the correspondence dated October 19, 1992 and November 13, 1992 November 20, 1992 marked as an Exhibits 3 & 4.

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28. On December 11, 1992 Hilton prepared and faxed to my sister, a letter he drafted for our signature, to be sent to our father. This letter is attached and as Exhibit 7. We signed and mailed the demand.

29. On December 12, 1992, at the advice of Hilton C. Smith, Catherine, Elizabeth and I entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis.

30. Hilton charged us a fee for his services Exhibit 5, which included meeting with my father and drafting a letter for my father's signature, whereby my father confirmed his debt in the amount shown in the closing papers and whereby we made a formal "demand" for the monies due so as to keep the loan from becoming "stale". I believe that he faxed that letter to my father from his own office in Hagerstown.

31. In August 2001, Elizabeth spoke with Hilton about the state of the debt. Hilton explained that he procured a statement from her father, written to Signent Bank in Maryland, acknowledging and reaffirming the debt.

Background for annual renewal letters:

32. Hilton attended our "closing" of the Estate in Atlanta in 1992 after conferring with us and counseling us as to how to work with my father on his debt. In addition, he charged $50/ hr for his work on this during the year plus the settlement period, and charged for his trip to Atlanta as well. My other brother-in-law, Dan Kelly, also did summary accounting work and charged for his time as well.

33. Thereafter, our attorney and accountant advised Elizabeth to periodically "demand" the monies due in writing to my father and to serve such notice to him personally so that there could be no pretense of not being aware of the notice of default and demand.

34. Over the years, on so many occasions that I could not possibly count them, my father would tell us that "all of that money" he owed to the Estate of Minnie Murray would pass to us tax free from his estate with the accrued interest at 12% per annum and that his estate would also avoid taxation on that part of his estate as it would be considered a creditor claim. He was always very clear that his intention was for this amount to be repaid, either before or after his death. Basically, anytime there was any issue re: money or need on our part, where we could have used access to that inheritance, he mentioned this. He mentioned this issue in one form or another well over two dozen times to me alone, and Elizabeth told me that he mentioned it to her frequently as well.

Other beneficiaries:

35. Brianna Murray is a daughter of William E. Murray and a beneficiary of the Estate of William E. Murray.

36. Brianna Murray is not a beneficiary of the Estate of Minnie Murray.

37. Payment of the claim of the Estate of Minnie Murray might affect the amount to which Brianna Murray might otherwise be due.

The conflict:

38. Mr. Smith is now the Co-personal representative of the Estate of William E. Murray and is now in the position to decide whether the claim of the Estate of Minnie H.

Murray should be paid. Despite the fact that Mr. Smith negotiated the original note, he has denied the debt.

39. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because he represented us in negotiating the original debt.

40. Under the terms of William E. Murray's Will and Trust, Hilton C. Smith stands to receive 8% of Mr. Murray's estate, after debts have been paid.

41. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect his distributive share under the Estate of William E. Murray.

42. Under the terms of William E. Murray's Will and Trust, Catherine Smith (Mr. Smith's wife) stands to receive 8% of Mr. Murray's estate, after debts have been paid.

43. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect his wife's distributive share under the Estate of William E. Murray.

44. Under the terms of William E. Murray's Will and Trust, Brianna Murray stands to receive 8% of the Murray Estate after debts have been paid.

45. Payment of the debt owed to Minnie H. Murray Estate will substantially diminish the value of the Estate of William E. Murray and could reduce the distributive share due Brianna Murray.

46. I am informed and believe that Mr. Smith should not be in the position to either approve or deny the claim because his decision might affect Brianna Murray's

distributive share under the Estate of William E. Murray and subject Mr. Smith to a claim of conflict of interest by Brianna Murray.

Pamela Holmes Murray

Pamela Holmes Murray

This 3rd day of April, 2013
Charleston, SC

Sworn before me this 3rd day of April, 2013

(SEAL)
Notary Public for the State of Maryland
My Commission Expires: January 13, 2016

NICHOLAS V. CHI
NOTARY PUBLIC
COMM EXP JANUARY 13, 2016
MONTGOMERY COUNTY, MD

April 6, 1984

Mr. Hilton Smith
233 South Prospect Street
Hagerstown, Maryland 21740

Dear Hilton:

This letter is to request and authorize your representation of the three beneficiaries of the Estate of Minnie Holmes Murray, deceased, with specific regard to the following items:

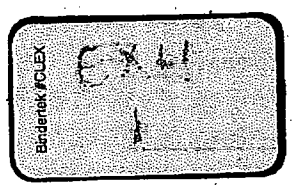
1. The exchange of the note from William E. Murray to the estate in the amount of $240,000 for William E. Murray's Sea Island property, subject to the following:

   a. Interest due and accrued on this note through the closing date of the exchange will accrue interest thereafter of 12% until October 31, 1984, when interest will be paid in full by William E. Murray, payment being of utmost urgency and timeliness being of utmost essence.

   b. The estate will assume the first mortgage from Glenn Federal Savings (understood to have a current balance of approximately $100,000) as of the closing date. All prior payments are to be made by William E. Murray.

   c. The estate will assume the note to Mary D. Harrington (understood to be approximately $30,000) and she will release the property of any and all life interest that she may have in the Sea Island property as of the closing date (all prior payments are to be made by William E. Murray).

   d. William E. Murray will forgive, pay, or assume all other liens, notes, mortgages, or other obligations attached to the Sea Island property.



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e. The fair market value appraisal of the Sea Island property must be at least $400,000, including furnishings, and net fair market value (fair market value less all liens or other evidences of indebtedness) must total at least $250,000.

f. Clear title to both house and furnishings must be conveyed.

g. William E. Murray will assume any fees and costs incurred as a result of this transaction.

2. William E. Murray will continue to be obligated to repay $385,000 to the estate, as acknowledged by the note in the estate dated October __, 1978, and previously exchanged for New England Life Insurance Company Policy Number #2643459, to be exchanged for the total of $385,000 face plus the estate's investment in said policy since October __,1978, (premiums less cash value), bearing interest since that date of 15% per annum, payable upon death of William E. Murray, and secured by his interest in _____.

Please feel free to consult with us on these matters and do not commit to anything other than the above without verbal approval from all three beneficiaries. The purpose of this transaction is to be made whole and secure according to the original spirit and intent of the note of October __, 1978.

Very truly yours,

Pamela H. Murray Smith

Elizabeth E. Murray, Administratrix

Catherine P. Murray Smith

October 2, 1991

Good letter

Mrs. Pamela Murray Stack
395 Oak Glen Drive
Marietta, Georgia 30068

Mrs. Elizabeth Murray Kelly
737 Park Avenue, Apt 3B
New York City, New York 10021

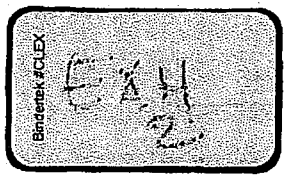
Dear Liz and Pam:

Over the past several years I have from time-to-time questioned where the funds have been appropriated from the Estate of Minnie Holmes Murray. Occasionally, I have received a partial answer, never have I received any kind of statement, even on an annual basis, and quite frequently, I have after-the-fact or never at all been consulted as to loans which you seem to agree upon between yourselves.

I also am very concerned about the dissolution of the estate through probate into a trust, and then into three trusts. Two years ago everything was "we're almost there; Tom Berner has presented the application and we're waiting for the court to appoint a date." Now Gail still has two years of accounting yet to do on files which she only now realizes she needs or is requesting from Arthur Anderson.

I realize that between the accounting process which has been handled in Atlanta because of Pam's initial work with the Estate and the obvious need to have the legalities of probate, etc. handled in New York, that I, in Maryland, am out of the knowledge stream of many small but necessary facts relating to day-to-day activities. There is however, the very unpleasant but realistic fact that the Estate has diminished from over one million dollars in assets to what appears to be approximately two hundred thousand dollars in assets and approximately two hundred thousand dollars in accounts receivable in the form of loans to the three of us. These figures are exclusive of Columbia Office Supply Company on the unsecured note due us from William E. Murray. Therefore, between Estate taxes (@ $100,000?), market losses (@ $300,000?) and other diminishing activities ($200,000 - $300,000?), we now have assets of less than 40% of what we had ten years ago. This makes me extremely uncomfortable and more than a little unhappy. No doubt you are both equally displeased with our "growth" rate.

I would love to have more specific knowledge, but in that I do not know what the deposits or disbursements to/from our brokerage account are from/for, nor what



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disbursements have been made from the checking account, nor what legal retainers have been paid to cover whatever, nor where we stand regarding whatever accounting has or has yet to be done, I am at a loss.

I consider it a necessity to receive an activity report on a monthly or quarterly basis as to disbursements/income and an annual disclosure of year-to-date compilations. With the limited amount of activity, I don't think this would be much more involved than the monthly report we all receive from Uncle Jimmy.

All of us lead very busy lives. At this point it is extremely necessary that these accounting and legal matters be finalized, efficiently and expeditiously. I would like to request that we have a "third party" handle the finalization of these matters. Hilton has offered to do so previously, and again now, especially in that we have the available services of an in-house accountant who he is willing to bill out at $10.00/hour. He would handle any legal or non-accounting related items. If you would rather, Dan has also offered, and is obviously qualified to "get the job done." Either way, I feel very strongly that if we do not put the finalization of these matters into the hands of a third party, that two years further down the road we will be at the same point of "we're almost there" with a probable further decline of assets.

There is also the matter of the note from our father which all of us are hesitant to discuss with him. He is in a better-than-usual cash position currently and I suggest that we have Bill McDaniel send him a letter reminding him of his obligation, summing up the accrued principal and interest payments due, and requesting payment. Whether or not he honors his debt at this time, we need to remind him of it, especially prior to the dissolution of the Estate. It will be much harder for us to handle this once we have individual trusts. Bill McDaniel is familiar with this in that he wrote the agreement. No doubt he will have to refamiliarize himself with it, but he would be far less expensive than engaging someone else on this matter, and he also interacted fairly well with our father. Hilton or Dan would also be able to act as our representative without the emotional trauma we incurred several years ago.

I would appreciate any response or information as to what has happened or what is happening.

Love,

Catherine

Catherine

P.S. I am enclosing a copy of a letter I have sent to Uncle Jimmy, re: HSLP

EEM001002

HILTON + DPK

GAIL MARGOLIES REID CPA PC

October 19, 1992

VIA FEDERAL EXPRESS

717 Cherokee Avenue
Atlanta, Georgia 30315
404 624-9732
404 622-2514 FAX

Mr. Hilton Smith
50 Summit Avenue
Hagerstown, Maryland 21740

Dear Hilton:

As you have requested, and with authorization from Elizabeth Murray, Administratrix for the Estate, I am enclosing copies of the 1989, 1990 and 1991 income tax returns for the Estate of Minnie Holmes Murray. Also enclosed are the schedules of loans from the Estate to each of the three beneficiaries, and the computation of accrued interest on the loan receivable from William E. Murray.

I have included herein copies of the letters I have written today to Pamela and Catherine, so you will know what has been sent to the beneficiaries directly.

If you have any questions regarding the enclosed, please do not hesitate to contact me.

Very truly yours,

GAIL MARGOLIES REID, C.P.A., P.C.

By Gail Margolies Reid
Gail Margolies Reid

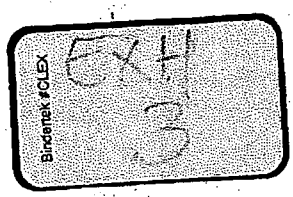
Enclosures

cc: Ms. Elizabeth E. Murray

American Institute of Certified Public Accountants

Georgia Society of Certified Public Accountants

AICPA Division of CPA Firms Private Companies Practice Section



Hilton C. Smith, Jr.
50 Summit Avenue
Hagerstown, Maryland 21740
301 733-4366

November 13, 1992

Ms. Gail Margolies Reid
717 Cherokee Avenue
Atlanta, Georgia 30315

RE: ESTATE OF MINNIE HOLMES MURRAY

Dear Ms. Reid:

Elizabeth, Pam and Catherine have agreed to meet in Atlanta on the 12th of December to complete a full review of the estate's books and records. They request that the following information be available at your office for their review from 1981 forward:

1) Statements and canceled checks for all checking accounts of the estate;

2) All statements from Drexel Burnham and Janney Montgomery Scott;

3) Copies of tax returns and back-up schedules;

4) A schedule of all loans and interest history to the estate for Pam, Elizabeth, or Catherine;

5) A listing of all assets and liabilities;

6) All information available that would be necessary to determine the value of the insurance policy the estate has on William E. Murray's life, and to determine the economic value of continuing the policy in effect.

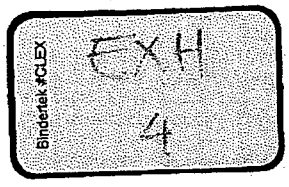
Upon the completion of this review, it is the intention of the beneficiaries to liquidate the estate. Should there be any other information which you believe is important to review, please advise.

Very truly yours,

Hilton C. Smith, Jr.

Holmes-M\Reid

c: Pamela M. Stack
Elizabeth E. Murray
Catherine M. Smith
Daniel P. Kelly



EEM002153

HCS Management, Inc.
50 Summit Avenue, 7th Floor
Hagerstown, Maryland 21740
(301) 733-4365

FAX (301) 733-5675

November 4, 1992

Mrs. Pam Stack
395 Oak Glen
Marietta, Georgia 30067

RE: THE ESTATE OF MINNIE HOLMES MURRAY

S T A T E M E N T

Week Ending 10/17/92	3.5 hours
Week Ending 10/24/92	5.0 hours
Week Ending 10/31/92	5.0 hours
TOTAL	13.0 HOURS

Bill Rate $50.00 per hour

TOTAL DUE..... $675.00

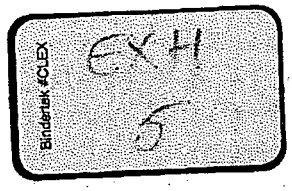
Please apply this to the $12,500 note due from me to the estate.

Very truly yours,

HCS MANAGEMENT, INC.

Hilton C. Smith, Jr.

c: Katie



Holmes-M\HCS-Inv

Hilton C. Smith, Jr.
50 Summit Avenue
Hagerstown, Maryland 21740
301 733-4366

January 12, 1992

Mrs. Pam Stack
395 Oak Glen
Marietta, Georgia 30067

RE: THE ESTATE OF MINNIE HOLMES MURRAY

S T A T E M E N T

12/13/92	4 Hour	Meeting Pam, Liz, Catherine, Gail Reid
12/21/92	1 Hour	Gail Reid/Insurance
01/11/93	1 Hour	Gail Reid, Liz Insurance - Close of JMS
TOTAL	6 HOURS	

Bill Rate $50.00 per hour

TOTAL DUE..... $300.00

DATE OF LIQUIDATION OF ESTATES ASSETS

Very truly yours,

HCS MANAGEMENT, INC.

Hilton C. Smith, Jr.

c: Katie

PLUS EXPENSES RENDERED FOR HIS TRIP. I BELIEVE I GAVE YOU A COPY OF THIS... DOG SITTER ALLEGANCE, BAGGAGE TIPS, MEALS, ETC.

Catherine/Hillari's travel to Atlanta

180 mile @ 28¢/mi	50.40
~~tax~~ childcare, etc	100.00
parking, BWI	25.00
luggage handling - 2 ways	26.00
dinner 12/11/92	90.75
tickets CPMS + HCS	646.00
car rental	72.00
gas	15.00
#	1025.15

EEM003899

Hilton C. Smith, Jr.
50 Summit Avenue
Hagerstown, Maryland 21740
301 733-4366

TO: Elizabeth Murray
Pamela Stack
Catherine Smith

FROM: Hilton C. Smith, Jr.

RE" Estate of Minnie H. Holmes

DATE: December 2, 1992

As you all know, we are meeting on the 12th of December with Gail to wind up the affairs of the estate. In addition to review of the records we have asked Gail to assemble, and the final determination of what amount of distribution is due each of you, we need to address the following issues:

1) How we are going to handle the life insurance policy on William E. Murray. At this time the cash value is approximately $30,000. The three of you need to decide whether to continue or cash in the policy. Gail has promised to be in a position to discuss this matter with us.

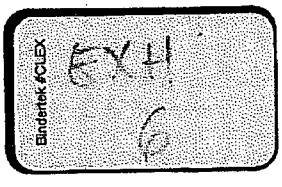
2) A letter needs to be prepared to Uncle Jimmy advising him that each of you at this point will continue to receive 1/3 of the estate's interest and the Huger Street Limited Partnership assets.

3) We have been promised from Tom Berner a hold harmless agreement will be provided to us that provides for each of you releasing the other from any and all claims and a further release to Elizabeth as executrix.

4) The balance of monies due from William E. Murray. We will have to decide how to handle this ongoing asset of the estate, i.e. divisible by three or a community interest in which the three of you continue to be involved.

I look forward to seeing all three of you on the 12th. I will do everything possible to assist you in meeting your goal in winding down the estate completely by the conclusion of that meeting.

c: Dan Kelly



Holmes-H\estate.lt

EEM001312

DEVELOPMENT OFFICES
50 SUMMIT AVENUE, 7TH FLOOR
HAGERSTOWN, MARYLAND 21740
(301) 733-4065

FAX COVER SHEET

DATE: 12-11-97

TO: Ellen Hanna

FAX: [illegible] PHONE:

FROM: Ken Murray

FAX: (301) 733-3078

PROJECT:

MESSAGE:

NUMBER OF PAGES INCLUDING THIS ONE: 2

IF YOU HAVE ANY PROBLEMS RECEIVING THIS FAX, PLEASE CALL (301) 733-4065

CONFIDENTIALITY NOTICE

This facsimile contains confidential information that may also be legally privileged and that is intended only for the use of the addressee(s) named above. If you are not the intended recipient, or the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, copying of this facsimile, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the entire facsimile to us via the mail.

Thank you!

Binder# #CLEx EXH 1

CERTIFIED MAIL

December 12, 1992

William E. Murray, President
East Bay Company
Post Office Box 1298
Charleston, South Carolina 29402

Default Notice Under Agreement
Among Pamela Holmes Murray Smith,
Elizabeth Edwards Murray, Catherine Peronneau
Murray-Smith and William Edwards Murray
Dated April 22, 1980

Dear Mr. Murray:

This letter is to provide you with written notice of default because you have defaulted in your obligation under the above Agreement to make the payments required to be made pursuant to Paragraph 1 of the above Agreement. If you are aware, the consequences of your default pursuant to the above Agreement is that the interest rate on your unpaid installment has been automatically increased to 7% for the period in which it is not paid, and if you fail to cure your default by making the required payments within 12 months after the date of this notice is mailed to you:

"All remaining payments shall, at the option of Daughters, immediately mature and become due and payable in full."

Very truly yours,

Daughters, both individually and as heirs of their mother, Minnie Holmes Murray

Pamela Holmes Murray Smith

Elizabeth Edwards Murray

Catherine Peronneau Murray-Smith

Holmes\WA-Default

MURRAY000223

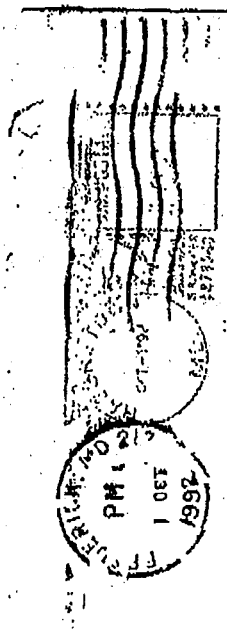
Please allow this to authorize Hilton Smith and Daniel Kelly to act on behalf of the Estate of Minnie Holmes Murray and myself, (Pamela Murray Stack)/(Elizabeth Murray Kelly)/Catherine Murray Smith) with regard to obtaining or giving information, and authorizing actions pertinent to any accounting process, legal services or Probate Court actions. It is the wish of myself and the co-beneficiaries of the Estate that all matters be handled as expeditiously as possible while maintaining prudence as to the cost thereof.

Pamela Murray Stack — Date

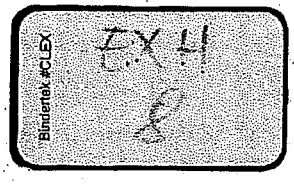
Elizabeth Murray Kelly — Date: Oct 9 1992

Catherine Murray Smith — Date: October 1, 1992

Catherine\Estate



cc, Apt. 33
N.Y. 10021



JUN FILES

Inn at Quogue
52 Quogue Street
Quogue, NY 11959
(212) 653-6560/8026 (FAX)

This document serves to confirm that WEMurray acknowledges that Elizabeth E. Murray has lent The Inn at Quogue and its restaurant various monies and covered various expenses on its behalf and forgone salaries due to her at various times totalling on or about $50M since last July1,1999. WEMurray agrees to pay her back these monies and accrued interest thereon at the rate of $2M per month beginning on May 1, 2000 towards this principle and interest.

Elizabeth E. Murray agrees to supply to WEMurray an accurate accounting of these debts with invoices attached by the end of April, 2000 so that all parties are in agreement as to the total monies owed. All Parties agree that payment against this debt will be paid by WEMurray and will not be sourced through Inn at Quogue cash flow or its restaurant's cash flow unless later agreed otherwise.

4/7/00

Binder# CLBX EX 11

EEM005448

MURRAY000225

DECEMBER 12, 1992

MEMORANDUM

TO: William E. Murray

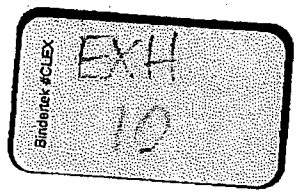
FROM: Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith

This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owed on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

Pamela Murray Stack

Elizabeth E. Murray

Catherine Peronneau Murray Smith



EEM006955

MURRAY000226

STATE OF Georgia ss.: 065-40-8312

COUNTY OF Fulton

On this 12th day of December, 1992, before me personally came Pamela Murray Stack, to me known, and known to me to be the individual described in, and who executed the foregoing instrument; and duly acknowledged to me that she executed the same.

Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 18, 1994

EEM006956

MURRAY000227

STATE OF Georgia ss.: 065-40-8313

COUNTY OF Fulton

On this 12th day of December, 1992, before me personally came Catherine Murray Smith, to me known, and known to me to be the individual described in, and who executed the foregoing instrument; and duly acknowledged to me that she executed the same.

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 31, 1994

Notary Public

EEM006957

MURRAY000228

STATE OF Georgia ss.: 065-40-8314

COUNTY OF Fulton

On this 12th day of December, 1992, before me personally came Elizabeth Edwards Murray to me known, and known to me to be the individual described in, and who executed the foregoing instrument; and duly acknowledged to me that she executed the same.

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 6, 1994

Notary Public

EEM006958

MURRAY000229

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHARLESTON

IN RE: THE ESTATE OF WILLIAM EDWARDS MURRAY,

Deceased,

CASE NO. 2007-ES-10-0116

DEPOSITION OF: ELIZABETH E. MURRAY

DATE: December 9, 2014

TIME: 9:03 AM

LOCATION: Law Offices of
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel For the Estate of
William E. Murray

REPORTED BY: Roxanne M. Easterwood;
Registered Professional Reporter

VIDEOGRAPHER: Nick Stello

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376
Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-39194

said, well, Gill is at the bar, maybe he can do it.

My father knew Gill. And he came over. And my father, first thing he said is, can I get you a cup of coffee. And Gill said no, thanks, I've had some coffee, but thank you very much, I'll take a glass of water. And he says, I'm signing this thing and -- or something like that. And Gill said fine, if you want me to, you know, notarize it or witness it I'll do it.

And he started to sign, and then he started doing this, and it was really -- and it wasn't on the line.

Q. Indicating shaking his hand or tremoring?

A. Termor, tremoring.

Q. Okay.

A. You know, he -- he -- I think he wrote agreed, and then he couldn't sign his name and he did like his initials. But Gill wanted him to sign on the line in his full name and he couldn't and he got very huffy.

My father was a proud man. He didn't like to see -- another man see him lose control of his dexterity. And he got very kind of like

that's all I need, and he stuffed it in his briefcase. And I said, well, that's fine. You know, thank you, daddy. And you know, I mean, Gill was dismissed.

My father was -- I think he was embarrassed. You know, he -- my father was a man who had pride, and I don't think he liked somebody seeing him lose control of his grip. I -- I -- I think he was embarrassed, and so we just changed the subject. And then along came Alta maybe five minutes later. I don't know.

She was -- she came in and she talked and we were going on and on and she was more trying to make sure he was going to get to see some of the doctors that they visited.

He went and saw doctors with Dana Flavin, who I had not met with at that point at that lunch. We met with Alta. He went with Pam to a doctor. I mean, his whole life he had a -- he wanted his full medical treatment in South Carolina. He was seeing a hell of a lot of doctors in New York if that was his intention.

Q. Okay. Who is Alta Brockington? What is her role in all of this?

A. Alta was a close friend of my father's

A. Not to my knowledge. But then I didn't regularly see a copy of my father's will.

Q. Either you have knowledge or you don't.

A. No.

Q. You -- okay. What role does the Signet Bank in Maryland play?

A. In 2001 in August I was doing a catering event and Hilton was up in Quogue and we were looking to sell the hotel and the restaurant and I told him I was concerned about, once again, that he was affiliated with my father so closely. And we were sitting on the back stairs of the restaurant in what was called the Garden Room and he said regardless, I've got it covered, your father wrote a letter to Signet Bank that acknowledged the debt and I have a copy of that, so it's covered.

I remember that very acutely because I wanted to make sure that he was going to acknowledge the debt, or that if he didn't, that there were sufficient records that would protect us.

Q. And did your father have an account with that bank?

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

IN RE: IN THE ESTATE OF

WILLIAM EDWARDS MURRAY,

Deceased.

CASE NO.

2007-ES-10-1116

VIDEOTAPED DEPOSITION OF: ELIZABETH E. MURRAY

DATE: March 25, 2015

TIME: 10:13 AM

LOCATION: Hood Law Firm
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for the Estate

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
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Columbia, SC	Greenville, SC	Charlotte, NC
(803)731-5224	(864)234-7030	(704)573-3919

to go out and face the day, and then she always generally looked picture perfect, but she was very old-fashioned about that.

Q. All right. I think we left off at Ms. Flavin's house, where Mr. Murray and Ms. Flavin stayed in the living room, and you went to another room to use the computer, and Sonny was in the kitchen. Is that right?

A. I saw him go into the kitchen. By the amount he appeared to have drunk by the time he came to the dining room table, I imagine he was full stop in the kitchen, because I believe Dana said to me a bottle and a half of wine was gone, so I would imagine it took him a little time to get that down his gullet.

Q. Did you see Sonny drink alcohol while you were at Dana Flavin's house?

A. No. I saw the empty bottle.

Q. But you didn't see him actually drink it?

A. No, I didn't see him drinking, but I did see his appearance after an hour-and-a-half or two hours, and it was notably different from his appearance, which was already inebriated.

Q. How long was Mr. Murray and Ms. Flavin

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN THE MATTER OF: WILLIAM E. MURRAY

VIDEOTAPE DEPOSITION OF: KENNETH BERGMANN, M.D.

DATE: May 1, 2015

TIME: 9:20 a.m.

LOCATION: Hood Law Firm
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for the Estate of William E. Murray

REPORTED BY: Janice N. Shepherd, Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3236
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

material. And it's long enough ago that I wouldn't know where I got that. So I just want that comment in there. You know, I can't just say, absolutely, yes, of course, that's here, I know that to be true. I just don't remember. But it came from somewhere.

Q. And we will try to get those phone logs from MUSC and produce those to you.

That got us through March 2007. And then paragraph 12, it says that you examined Mr. Murray on June 26th, 2007. We don't have an office note from that visit, do we?

A. Right, no. The last office note in these records here is May 23rd, which we discussed. And obviously I seem to have seen him, and that record is not here.

I do remember seeing him after he was hospitalized, towards the end of his life. And I do remember that the issue of care, of the quality of his care came up. But -- and I remember a visit where he had a skilled -- a home health aide with him, and he looked -- I mean, this is just something you check with patients -- he looked to be in very good care. I mean, you know, he was always clean, well groomed. And I remember that

visit, because it was striking, because I knew that the end was getting close at that point. But, you know, again, that's all I recollect, and we don't have the record here.

MS. CRAIG: Okay. Let's go off the record for a second.

VIDEOGRAPHER: We will now go off the record. The time is approximately 10:15 a.m.

(A recess transpired.)

VIDEOGRAPHER: We are now back on the record. The time is approximately 10:29 a.m.

BY MS. CRAIG:

Q. All right. Dr. Bergmann, before the break, we were on page 2 of your affidavit, which was dated August the 3rd, 2007, and I was asking you questions about your examination of Mr. Murray on June the 26th, 2007. Is that correct?

A. Correct.

Q. Okay. And what do you document in the paragraph 12 about that?

A. What I say is that he had recently been hospitalized. He was getting weaker. He had a diminished ability to communicate. He was holding food in his mouth instead of swallowing, which is a very poor prognostic sign in people with neurologic

A. Correct.

Q. And is that your opinion to a reasonable degree of medical certainty?

A. Yes.

Q. Dr. Bergmann, were you aware that Mr. Murray was -- was a contributor to the Medical University of South Carolina?

A. Oh, yes.

Q. And were you aware that Mr. Murray was quite a philanthropist; he gave charitable donations to multiple charitable organizations and healthcare institutions?

A. Yes.

Q. And the fact that Mr. Murray had made donations to the Medical University of South Carolina, does that have any bearing at all regarding your opinions today?

A. No. I mean, I think medicine is medicine, and the signs and symptoms of a patient and my interpretation of them really is unrelated to any support that he may have lent to the Parkinson's Disease Research Center. It was not dependent upon him. We had, you know, research contracts. We did clinical trial studies. It was obviously a wonderful thing. But as a physician,

KENNETH BERGMANN, M.D. - EX. BY MR. KEFALOS

didn't have hands-on ability; in other words, you know, would not necessarily have written a document, for example. But he would have been able -- when I say able to direct his affairs, he would have been able to discriminate between what he did and did not want to do.

Q. Okay. And that would have been before -- up until, say, June of 2006?

A. I think I referred to that in the June 2006 visit, which I can look at if you like.

Q. No, that's -- well, if you want to, you can.

A. I'm just kind of curious for my own -- if you don't mind. I like to make sure of what I'm signing. It's interesting. This isn't numbered in here. Oh, wait. Yeah, it is. It's 296. At that visit, noted under the discussion at the visit, we had a long -- and I'll quote this: We talked at length about his condition. We had a frank discussion about his needs. I have suggested because of his increase in cognitive dysfunction, that he could be vulnerable to being taken advantage of and I worry that has already happened. He agrees to this, and I have suggested a second opinion with regard to looking at his mental

KENNETH BERGMANN, M.D. - EX. BY MR. KEFALOS

functioning and to consider whether he should have cognitive testing -- testing specifically about his thinking.

Q. Sure. And my question was that up until June of 2006, you felt that he was competent?

A. I think so. And I think he remained competent to some degree after that. Okay? So at what point did he magically cross the line, that's really difficult to say. But clearly at that time, in June of 2006, he was still able to discern his wishes.

Q. You were talking about his capacity in June and July of 2007, and you said that you felt he did not have the capacity, the mental capacity to make decisions involving large sums of money. Would he have had the mental capacity at that time, in June and July of 2007, to carry on intelligent conversations?

A. I -- well, again, it depends what you define as an intelligent conversation. But I think that he really at that time was not able to take in the meaning of what exactly was being said to him and to be able to make a decision of, yes, I want to do something; no, I don't want to do something. He wasn't communicating. As I recall, his voice

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

IN THE MATTER OF: WILLIAM E. MURRAY

C/A NO. 2007-ES-10-1116

DEPOSITION OF: LARRY C. BUMP

DATE: June 22, 2015

TIME: 9:04 AM

LOCATION: Law Offices of
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for The Estate of
William E. Murray

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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everything, you know, I'm assuming.

Q. Were you with him at that time?

A. Yes.

Q. Did he say anything?

A. No.

Q. So how long was Mr. Murray outside?

A. Maybe 20 minutes.

Q. What happened after the 20-minute walk at the -- on Brianna Lane in July of 2007?

A. We went back into the house.

Q. Into Pam's house?

A. Yes.

Q. Who was in Pam's house at that time?

A. At that moment it was Pam, me, her father and his nurse.

Q. And just -- if you'd just walk us through just what happened at that point, everything you remember.

A. Well, I know he came in and I think he had a glass of water. We talked. He seemed very talkative then.

Q. What did Mr. Murray say to you?

A. The backyard looks great, the weather. Not a lot of conversation. Pam and him had the conversation more than I did.

Q. But you and Pam were living together, correct?

A. Yes.

Q. But you didn't see Pam keep it somewhere?

A. She may have filed -- have put it in a file, she may have given it back to Liz. I have no idea. I mean, some -- some things I'm -- I'm privileged to know and some things I was never told so, you know, if she filed it away, she filed it away. I have no idea.

Q. But you do recall that Elizabeth -- excuse me, that -- you do recall that Pam read a portion of this letter to her father but not the entire document?

A. Right.

Q. Correct?

A. Correct.

Q. And that was on July 21, 2007?

A. Correct.

Q. All right. So who asked Mr. Murray to sign the document?

A. Pam.

Q. What did she say?

A. I can't even tell you verbatim. I

can't even tell you how that came about. I mean, you know, if you saw me maybe five years ago, maybe I could, but now I can't honestly tell you exactly what she said or the context or the text of it.

Q. All right. Did you actually see Mr. Murray pick up a pen and sign this document?

A. Yeah, he picked up a pen and couldn't hold a thin pen like you've got so Jeff got him what appeared to be a magic marker and he signed it with that but he could not hold a thin Bic pen or anything.

Q. Do you recall who -- did Mr. Murray sign this document first or did somebody else sign it?

A. I think he signed it first and then I signed it second. I mean, I -- I'm assuming I signed it second.

Q. You're just assuming, you can't remember specifically, correct?

A. No, but he signed it and then I signed it.

Q. Okay.

A. But I don't know if Jeff signed it first or I signed it.

Q. Okay.

A. Do you follow me?
Q. Yes, sir. Yes, thank you.
A. I mean, I can't honestly say who did what when.
Q. It purports to have two signatures of Mr. Murray on Page 3 of Defendant's 1. Do you see that?
A. Well, yeah, after love, I guess. I am assuming that that's an initial or something.
Q. Right. So there's a squiggly line after love and then there's a squiggly line or a signature after William Edwards Murray, so there are two places where that same pen was used to sign the document?
A. Yes.
Q. Did you see Mr. Murray sign the one that says love, dad or signed William Edwards Murray?
A. I can't -- I can't tell you. All I know is he signed it here and then I had to sign it on the second line and fit it in there. That's all I can tell you.
Q. And when you say he signed it here, do you think he signed William Edwards Murray or the love, dad?

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHARLESTON

IN RE: THE ESTATE OF WILLIAM EDWARDS MURRAY,

Deceased,

CASE NO. 2007-ES-10-0116

VIDEO

DEPOSITION OF: HILTON SMITH

DATE: December 16, 2014

TIME: 9:06 AM

LOCATION: Law Offices of
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel For the Elizabeth Murray and Pamela Murray

REPORTED BY: Roxanne M. Easterwood, Registered Professional Reporter

VIDEOGRAPHER: Nick Stello

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reviewing all of the estate's records in my possession to determine the availability of the documents requested in Hilton's letter dated to me November 13, 1992.

So it looks to me like Gail is working to be in a position to assist in the summation of the cash assets of the will of Minnie Farmer Holmes.

Q. This was a time when you and Catherine and Pam and Elizabeth were all on the same side trying to collect this debt?

A. I was working for them, yeah.

Q. Let's look at what we'll mark Exhibit 14.

(Smith EXH. 14, 12/2/92 Memo, marked for identification.)

BY MR. KEFALOS:

Q. This is a memo dated December 2, 1992 from you to the girls. Why did you write this memo?

A. As you know, we are meeting on December 12th. So this was a letter being written in anticipation of the upcoming meeting with the accountant. And we wanted to talk about life insurance. We wanted to talk about Uncle Jimmy,

A. I know this was submitted to the SBA. Yes, I do know that this was submitted to the SBA.

Q. Okay. Now, this was 1995. That's more than ten years after the last acknowledgment of the debt.

A. Okay.

Q. Statute of limitations has long since run.

A. George, you're the lawyer. I'm not.

Q. And he reacknowledgeed the debt in 1995?

A. And again, I'm saying to you Mr. Murray is in a position where he can do that.

Q. Okay. Did you tell Liz about this document?

A. I mentioned to Elizabeth that the debt was acknowledged. I don't know if I mentioned the SBA or Signet, but I told her that.

Q. When was that?

A. I don't remember.

Q. It was at a time that you guys were still on the same side?

A. George, I wish you'd stop referring to us being on different sides. It's really inappropriate. Giggle, giggle. You want that for

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHARLESTON CASE NO. 2007-ES-10-1116

IN THE MATTER OF:

WILLIAM E. MURRAY

VIDEOTAPED
DEPOSITION OF: GILBERT MESTLER

DATE: January 28, 2011

TIME: 10:00 a.m.

LOCATION: THE HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for Estate of William Murray

REPORTED BY: Karen V. Andersen, RMR, CSR

VIDEOGRAPHER: Michael Andersen

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the Estate of Minnie Murray.

MS. CRAIG: Molly Craig on behalf of William Murray's estate.

MR. HOOD: Bobby Hood, the same.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

GILBERT MESTLER,

having been duly sworn, testifies as follows:

BY MR. KEFALOS:

Q. You're Gil Mestler?

A. Yes. My full name is Gilbert Evans Mestler.

Q. Will you refer your attention there to the document that is marked Exhibit 1 in front of you. Turn to the sixth page.

A. I am there.

Q. Good. Do you see some initials that are on that page?

A. I do.

Q. Whose initials are they?

A. They are William E. Murray's initials.

Q. Who put them there?

A. William E. Murray put them there.

Q. Were you there when Mr. Murray did that?

A. I was.

Q. Will you be able to tell us a little bit how that came about today?

A. Yes, I will.

Q. First tell us a little bit about your personal background. Are you employed?

A. Yes. I'm an officer on active duty in the United States Army, a lieutenant colonel, Special Forces branch, currently serving at the Pentagon at the Army Operations Center.

Q. How long have you been in that capacity?

A. For about one year. Before that, for two years I was assigned to Special Operations Command Central, with duties in Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, and other points in Central Asia and the Middle East.

Q. You are a ranger?

A. I'm a ranger qualified officer, yes.

Q. And Special Forces?

A. And Special Forces qualified officer.

Q. Tell us a little bit about your military background and experience.

A. I would be happy to. After high school, I had the pleasure of attending United States Military Academy at West Point, New York, from July 1971, to our graduation in June 1975. Thereupon, I was

A. To the best of my knowledge, yes.

Q. Tell me how it was that you came to be at the restaurant that day.

A. The restaurant referred to as Hunters on Third Avenue -- actually, Hunters doesn't exist anymore. It was torn down about two years ago, I think, though I haven't been in New York very much since then. It was on Third Avenue between 78th and 79th Street. I lived at 78th Street and Third Avenue. At the time Hunters was a bar and restaurant, the restaurant facility in the rear of the building.

And Elizabeth had asked me to come. I don't remember how much notice she gave me about this. But she perhaps had warned me that at some point in the next week or two, she might ask her father to execute a document, and asked me to either witness it or notarize it. Frankly, I don't remember which she requested of me. And so I was prepared to do that. I was in nursing school at the time, and I didn't have classes or clinical appointments on Fridays. So this event occurred on Friday immediately prior to Valentine's Day in 2006, which I remember distinctly because Elizabeth advised me that I ought to get flowers for my soon-to-be ex-wife and

the young lady, now my wife, who I was seeing at the time. So I got two sets of flowers for that Valentine's Day. So I know that this was the Friday immediately before Valentine's Day 2006.

Q. Now, when you went into the restaurant that afternoon, was Mr. Murray and Elizabeth already there?

A. Yes, they were. In fact, I think that Elizabeth had told me that she expected to have lunch with Mr. Murray and Alta Brockington, an old friend of Mr. Murray's and Elizabeth's, who lived in my building, interestingly enough.

Q. Alta Brockington?

A. Alta Brockington. My building, it's no longer my building, but the building that I lived in at the time, I had two banks of elevators, and it happened that Alta and I shared a bank of elevators. So I would see her occasionally. And I sort of expected when I got to Hunter's following Elizabeth's phone call that she was there with her dad, to see her, her father and Alta seated at a table. In fact, there was just Elizabeth and Mr. Murray at the table. I didn't see anything else that I recognized as being associated with either of them there at the restaurant.

Q. What did you do when you first went in the restaurant?

A. I just went over to the bar in order to bide my time and wait for the opportunity to be called forward by Elizabeth. Mr. Murray -- my impression of Mr. Murray is that he's a very -- was a very private individual, one who, you know, if he didn't invite you over, you waited until you were called forward. And I have no problem with that. He's an older gentleman, and certainly due respect was appropriate.

Q. Did you have an opportunity to observe Mr. Murray and Elizabeth at the table before?

A. I did. My recollection is that Mr. Murray was seated at a table for four. Elizabeth was to his right, if I'm not mistaken. And Mr. Murray was facing the bar area, front door of the restaurant. Elizabeth, being seated to his right, was faced more or less over to that side of the restaurant. There were papers on the table in front of them, and they were talking. And it appeared that it was a give-and-take conversation. It seemed to me that Elizabeth was on occasion reading to him. But I only observed them for a couple of minutes before I was called forward to the table.

Q. During that time that you observed him, did you see anything about his physical -- did you note anything about Mr. Murray's physical condition?

A. He seemed to have lost a little weight. He was not as robust as he had been in previous times that I had seen him.

Q. How did his health appear?

A. Other than being -- again, having lost a little bit of weight, he looked fine. You know, he was alert. And, you know, I saw no signs of any mental impairment whatsoever.

Q. You said that you were able to observe this conversation for a couple of minutes before. Could you tell if it was a two-way conversation or a one-way conversation?

A. It certainly appeared to be a discussion over whatever family matters or personal matters they were talking about. It certainly was well out of earshot. I was probably about eight meters away from them or about -- maybe 30 feet away from them.

Q. Do you remember any laughter? Do you remember any laughter?

A. Actually, no, but it certainly was a cordial conversation.

Q. How about any anger, do you remember any

anger?

A. No. In fact, every time I observed Mr. Murray with Elizabeth, I never observed him to display anything but a very cordial rapport with his daughter.

Q. How about any scolding, did anybody appear to be scolding Mr. --

A. No.

Q. Or anybody fussing?

A. Again, that would have stuck out in my mind, because I never observed Mr. Murray to -- actually, to scold anyone, and certainly not a woman, and certainly not one of his daughters, not in my experience.

Q. How about the reverse, was Liz --

A. Elizabeth, in my experience with her, has always been deferential to all, and particularly to her father. You know, Elizabeth, her closest relationship, other than relationship with her sisters, in particularly with Pam, has always, to my knowledge, had a warm relationship with her dad.

Q. How was it that you finally approached the table?

A. Elizabeth made eye contact with me. In fact, Elizabeth had acknowledged my movement to the

bar when I first got there, but I took it that she was biding her time to the appropriate moment where she could introduce me again to her father, and she waved me forward, so I approached the table.

Q. And what did she say when you approached the table?

A. My recollection, she said, daddy, you remember Gil who is here, if you want him to witness your signature. And she may have also said, or to notarize a document. And I, in fact, had brought my notarial stamp with me in case it were appropriate to notarize something that Mr. Murray might sign.

Q. Did Liz Murray say anything more about the document to be signed?

A. Yes. She said, my father and I have been discussing a debt to my mother's estate, and I've asked him to acknowledge that debt by signing this piece of paper. In fact, the piece of paper that was in front of Elizabeth and her dad at that time, to my recollection, is the Page 6 of Exhibit 1.

Q. There were other documents that were there too?

A. Yes. And one that really sticks out in my mind was an 8 1/2 x 14 paper with the appearance of some kind of note or older legal document. Because

we don't use 8 1/2 x 14 paper anymore. So that really stuck out. My recollection of it also was that it appeared to be older.

Q. Did Mr. Murray recognize you?

A. Oh, he did.

Q. Did he make eye contact with you?

A. He made eye contact with me, and he extended his right hand. He didn't stand, and I didn't expected him to. Because, again, he was, while not someone I would call frail, he was not as robust as he had been. And he extended his right hand to me as I approached his left side, and we shook hands. And his handshake was distinctive in that it was not firm, as it had been in the past. And while not being beefy, I took it to be edematous, that there was edema in his hand. It wasn't a frail hand, but yet, it was not a powerful handshake.

Q. When you say edema --

A. It was squishy. Buildup of excess fluids in the extremities, known as edema.

Q. Did he say anything to you when you shook?

A. He said, thank you for coming.

Q. Did he have any comment about the papers that Liz had described?

A. I said to him, sir, if you are ready to

sign that, I'm ready to witness that for you. And he said, I've already agreed to this.

MR. HOOD: Do we have a continuing agreement that all objections are reserved until we have a judge present, or do you want me to just make objections.

MR. KEFALOS: Sure, we can do that.

MR. HOOD: Okay. I will just hold back then.

BY MR. KEFALOS:

Q. Go on.

A. At any rate, he verbalized, I already agreed to this. And I had come there with the understanding from Elizabeth that I should be prepared to witness his signature. So I said, sir, if you agree to this, would you execute it now, or would you sign it now. And I don't believe he said anything, but he took a pen and he wrote "agreed" here, at least what appears to say agreed. He wrote this word that's immediately below his name.

Q. Okay.

A. And he sat back again, and he said, I have agreed to this. And the way in which he said I have agreed to this was as though, not only do I agree to it now, but I have agreed to this in the past. And I

said, sir, if you've agreed to this, would you mind signing it in front of me so that I might notarize it for you. And, again, he said, I've already agreed to this. And he reached forward. And I thought he would sign his name, but he wrote his initial, WEM, right next to where it said agreed.

In my experience with William Murray, he was not the kind of guy that you should challenge on what he does. And when he said, I have agreed to this, it seemed sufficient to me that he was acknowledging it. And for whatever reason, he was not comfortable physically with rendering a signature at that time. And I thought, in my legal mind, well, I could certainly witness this agreed statement and his initials as though they were his signature. But Elizabeth looked at me and said, Gil, he will sign it later. And he looked a little perturbed at me that I would challenge his ability to sign physically. And I thought, okay, not my call. You know, Elizabeth and her father have their own way of doing things, and I should back off. And again, he said, thank you very much for coming.

Q. Good.

A. Again, I was surprised that Alta hadn't been there and hadn't appeared in the course of this

event, which took a total of probably about six or seven minutes, between my arrival at the bar, my approach at the table, my spending some time there with Elizabeth and her dad. It was clear to me that I wasn't invited to lunch.

Q. So you didn't stay?

A. So I didn't stay. And Elizabeth said, Gil, I will give you a call. I left the bar and restaurant area, got back to Third Avenue, took a left toward my building. And about midway between the restaurant and the corner, which would have been a total of about 60 meters or so, saw Alta Brockington moving rapidly toward -- in the direction of the restaurant. I probably waved to her a little bit, but didn't stop, or I don't know that she saw me or not, and it appeared to me that she would proceed on to the restaurant. And I just went home to study or prepare for exercise or whatever.

Q. So you never notarized it?

A. I never did, and never signed it as a witness. Elizabeth spoke to me that day or the next and said, thanks for coming, I've asked Dana, who I never met, a lady who I think is a physician or some other well-educated person, to witness the document. And I said, you don't need it notarized? And she

said, no, it's been witnessed, not to worry about it. And I said, okay, fine.

Q. Good. At any time during the time that you were with Mr. Murray and Liz at the restaurant, was there anything that gave you any indication that he might not have been aware of what he was doing?

A. Absolutely not.

Q. That he might not have appreciated the significance of this act?

A. No, no. William Murray, up to that point -- and this was the last time, to my recollection, that I saw him alive -- had a very active mind. He certainly was never one to hold back his thoughts. Seemed totally cognizant of what he was doing.

Q. Is there any question in your mind that those represent his, that is Mr. Murray's, initials?

A. Oh, I was physically present when he wrote agreed and put his initials here. He may -- and I'm not clear on this, there's a line in-between his signature and his name, there's a line there, he may, in fact, have put that line there in my presence. I'm not sure. One would think that I would recall that, and I don't, one way or the other. What I see above the line there is what appears to be his

signature. It's certainly his normal -- pretty much normal way of writing.

It is a little surprising that it is so legible. But -- I'm not a subject matter expert, I'm volunteering an opinion here -- somebody who is suffering neurological degradation sometimes has, depending on their medication schedule and the time of day, the ability to do fine motor skills better than at other times.

My perception of him when he wrote agreed was two-fold: One, he's having some trouble writing; two, he said agreed. And where -- and again, this is just my impression, that as he approached the paper, in his brain was agreed, and his hand wrote agreed, and that he actually was embarrassed -- again, my impression -- he was embarrassed at having written agreed versus signing his name. And that made him a little bit agitated. Again, I'm trying to find a reason for why he appeared to be a little agitated at that point. And I think it was because he had wanted to fully execute the document knowing that I was there to witness the signature, and that he had simply written agreed, which is what he had verbalized.

Q. Okay.

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN THE MATTER OF: WILLIAM E. MURRAY

C/A NO. 2007-ES-10-1116

DEPOSITION OF: DANA F. FLAVIN, MD

DATE: July 19, 2011

TIME: 10:05 AM

LOCATION: Law Offices of
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for The Estate of
William E. Murray

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Q. Have you intentionally destroyed anything because of this case?

A. No. Why would I?

Q. I don't know.

A. Well, no, of course not.

Q. Do you have a promise from Liz or Pam to make money out of this case?

A. No, I do not.

Q. You're under oath.

A. I'm under oath.

Q. Okay.

A. And I have not -- I have not had any agreements with anyone over money on any situation whatsoever.

Q. Why out of the blue would they come to your house and get Mr. Murray to sign something in your presence when you've had no contact with them and never met them before?

A. Well, Bill was the one who initiated that, I didn't, and he's the one who wanted another proxy for his healthcare. It was for Mr. Murray, it was not from anyone else.

Q. You're telling me that Mr. Murray wanted to have what Liz typed up signed?

A. He asked me to review it and read it to

him and he wanted to sign it with me as a witness.

Q. Why would he want to affirm a debt in 19 -- a debt from 1980 in 2006? Why would he want to do that?

A. I have no idea. I only know that he asked me to witness it, that was all.

Q. And if he wanted to do it, why wouldn't he have talked to his estate attorney and had him do the proper documentation?

A. I have no idea. I never questioned Mr. Murray's intentions on whatever he did.

Q. And then why after it's signed would it be taken by you and put in a medical file?

A. Well, Mr. Murray said he wanted to make sure it was in safekeeping.

Q. I see. And you're the safekeeper?

A. Yes. And it wasn't in a medical file, it was strictly with all my neurology notes on his case.

Q. Which is his medical file?

A. Right.

Q. And not with his attorney who prepared his Will?

A. I didn't know Mr. Murray's attorneys. I knew Mr. Murray was an attorney. I did it and I

didn't question it.

Q. And when he signed it, why did he sign it with two different ink pens?

A. He only signed it once with me.

Q. Did he have a problem with a pen, did he switch pens, did he use a different kind of pen or what was that about?

A. I -- I really don't remember.

Q. Do you remember the kind of pen he used to sign it?

A. Not -- not offhand.

Q. Do you know that we questioned the authenticity of his signature and the way it was signed?

A. Yes, yes, yes.

Q. And do you know that we have an expert to affirm that?

A. Yes. No, I don't know you have an expert to affirm that.

Q. Okay. And the debt, the original debt is a grand total of 24,000 dollars in 1980?

A. I have no idea.

Q. Okay.

A. I really did not interest myself in Mr. Murray's private business. He asked me to

witness it, he was there, he asked me to read it to him and then he read it and I found it very interesting because Mr. Murray, being as thorough as he is, was not one to just sign something that somebody read. He looked at it again himself and so it took several hours.

Q. He wasn't capable of reading it himself?

A. He wanted me to read it first and then he wanted to look at it again. I had no idea why.

Q. How many times had Liz typed or retyped or Pam typed or retyped this whatever it's called, a letter I guess?

A. Well, Mr. Hood, I had no idea who typed this. I had no idea who had put it together. I assumed that James had done it because Mr. Murray had handed it to me and James did most of his typing so I had no idea.

Q. James was not present?

A. No.

Q. Nor did James ever hand it to you?

A. No.

Q. I'm correct?

A. Yes, you're correct.

Q. If Liz gets something from this

A. No, sir.
Q. Have you seen that she's done anything adverse to Hilton Smith?
A. I have not looked at her private matters nor have I -- no.
Q. Well, you've had a lot of e-mails with her and one of them said, how's the war going? What were you referring to?
A. Well, she said there were problems with the trust but I didn't ask her what the problems were, she just said there were problems with the trust.
Q. The problems are if she wants to get combative, she gets nothing. Do you understand that?
A. Well, I'm not familiar with the case, sir.
Q. Do you understand that's why I got hired, to make sure that didn't happen?
A. Well, if you say so, sir, then I guess I believe you.
Q. And Bill Murray, did he tell you that's why he was hiring me?
A. He never mentioned your name, sir.
Q. Do you agree that it's possible

Mr. Murray was under undue influence and was confused in February at your house when he allegedly signed a piece of paper?

A. No, sir.

Q. What brought you to Charleston the week he died?

A. Liz called me and said that he -- her father had requested that I fly in.

Q. I see. Now, he couldn't talk so how did he request it?

A. She had it on a tape recorder as far as I know.

Q. She's got a lot of stuff on tape recorders, doesn't she?

A. I don't know, I haven't heard the tapes.

Q. But you know there are tapes?

A. I do know that she taped it, she told me that she had taped it.

Q. And she's taped a lot, she's tried to get a lot of his healthcare providers to say that someone was killing him, didn't she?

A. I don't know, sir.

Q. You participated in that, didn't you?

A. I had spoken to the county coroner --

A. No, sir.
Q. They're not the Charleston fellows, it's somebody in New York.
A. No, sir.
Q. Did you get involved, read any documents, give any input, meet with anyone, discuss that litigation ever?
A. No, sir.
Q. What's your goal in supporting Liz and Pam in this litigation?
A. I am merely -- I was asked to tell the truth and I said I would.
Q. And the truth is out of the blue in February of '06 Mr. Murray comes to your house for dinner, Liz happens to be there and he's presented with two documents to sign in your presence that you read to him?
A. Um-hum, that's correct.
Q. And he signs them in your presence?
A. That's right, sir.
Q. And you don't remember anything funny about him signing them with several different pens?
A. I don't recall.
Q. And you don't remember that he was unduly influenced by Liz --

A. He only signed it once in my presence and he was competent, he was clear and it was never my place to question Mr. Murray on any legal issues. Mr. Murray was an excellent lawyer and he knew what he was doing and he asked me to do this for him and I did and that was it.

Q. Have you ever been qualified as an expert to discuss and give opinions about someone's ability and their intellectual capacity?

A. I have had to judge competence before and he was competent.

Q. And that was one time in Judge Harper's court, correct?

A. Yes.

Q. And what year was that?

A. That was 2000 -- I think it was 2000 -- 2008 or 2009.

Q. And were you cross-examined or did you just give your opinion to a probate judge?

A. I was cross-examined.

Q. By who?

A. By the lawyer for the opposing party.

Q. Who was the --

A. Oh, I don't know what his name was.

Q. Who were his clients?

A. Yes, sir.
Q. What else in the letter is wrong?
A. I had met Liz on the 10th so I was referring to before, in other words, in years before I had never met Liz.
Q. I have never met his daughter before.
A. Right. Before the 10th but I didn't write down the 10th, I just wrote before.
Q. I see.
A. That was my mistake because I had not -- I had never met her.
Q. Right.
A. Until the 10th.
Q. Okay. So that's a mistake. Any other mistakes in the letter?
A. Not that I know of, sir. I apologize.
Q. Now, you say he asked you to witness something.
A. Bill.
Q. It really wasn't Bill, was it, wasn't it Liz?
A. No, it was Bill.
Q. She typed it up?
A. Yeah, but he gave it to me. I didn't know she typed it up, I had no idea.

Q. What were his exact words?
A. He said, can you witness something for me? And I said, sure. And he said, I'd like you to read it first. So I read it. I read it out loud, he looked at it again and then he signed it but that was it.
Q. And then you read it to him out loud?
A. Yeah.
Q. And there were two documents?
A. Um-hum. I didn't read the whole thing on the second document.
Q. What whole thing? Which document is the second one?
A. It was a more elaborate one from earlier. The first was the letter from Liz and the second one was --
Q. One says William Murray.
A. Um-hum.
Q. And the other one says Daddy. Which one were you talking about?
A. I read Daddy out loud.
Q. Okay. That's February -- it's dated February 9, '06?
A. Um-hum.
Q. The answer is yes?

A. Yes, sir.
Q. And so it's typed by somebody a day before it's read by you to him?
A. Right.
Q. And you read the entire letter?
A. Right. I just --
Q. Excuse me, 16 through 22?
A. Yeah.
Q. So you read all those pages?
A. Uh-huh. And then he looked at them.
Q. How long did he look at them?
A. He glanced through them for about 20 minutes.
Q. Both of them or just one?
A. He glanced through both of them but he looked through that one first and then he looked through the other one.
Q. For about 20 minutes?
A. Yeah.
Q. And did Liz look at either one of them?
A. She wasn't in the room.
Q. Who else was in the room?
A. Nobody.
Q. Just you and Bill?
A. Just Bill and myself and Sonny was in

the kitchen.

Q. Did Sonny look at these?

A. I have no idea. Not to my knowledge.

Q. Did he see Bill sign them?

A. No, he didn't.

Q. Did anyone besides you see Bill sign them?

A. No.

Q. So Liz didn't see him sign them either?

A. No.

Q. I'm correct?

A. You're correct because she wasn't in the room.

Q. Okay. So the only two people in the room that saw -- when this was signed were yourself and Bill Murray?

A. Right. Right.

Q. There was no videotape of him signing it?

A. No.

Q. There was no recording of him signing it?

A. No.

Q. There was no one looking through a door or window or could overhear him signing it?

A. No.
Q. It was you and he and the door was closed and you were at your house?
A. Yes, sir.
Q. Was he seated in a chair?
A. Yes.
Q. The whole time?
A. Um-hum.
Q. The answer is yes?
A. Yes, sir. Sorry.
Q. Okay. And the other document, which is Flavin 13 through 15, did you read that one to him?
A. Can I see the document, sir?
Q. Yeah. It says William Murray at the top.
A. Um-hum.
Q. These are the ones you looked at before today to get ready for today.
MR. KEFALOS: Let her see it if she wants to see the document.
THE WITNESS: I'd like to see the document.
BY MR. HOOD:
Q. Whatever. You have a perfect right to see it.

that?

A. As the W is going up it's a little shaky.

Q. Well, both lines of the W are on the printed line, aren't they?

A. Yes.

Q. So I don't see anything.

A. I saw him -- I saw him sign it. I saw him sign it.

Q. What makes you say it's shaky?

A. Well, because I had seen his signature before 20 years ago and it was a stronger signature and I'm sure if you look at the signature from 20 years ago, you'll see that it was a little bit stronger but it's the same signature, it's just a little bit weaker.

Q. Was Liz standing there?

A. No.

Q. Insisting on him signing this?

A. No, sir. No, not at all.

Q. That didn't happen?

A. Absolutely not.

Q. All right. And where is the pen that Mr. Murray used to sign this document, Flavin 15?

A. I don't have the foggiest idea. I

anything on here before he finished?

A. No. She didn't have anything to do with that afterwards because he told me to put it away.

Q. Well, when did she put her name on it as a witness?

A. She did it before.

Q. Oh, before you witnessed it?

A. Before I witnessed it.

Q. Did he have any idea what he was signing?

A. Well, I read it to him and he read it.

Q. Did he have any idea what he was signing?

A. I would assume he did since he was mentally clear.

Q. And he was on the proper medication at the proper time?

A. Yeah, because Sonny was giving him his meds. Sonny was very good with him and always made sure that he was treated at the right time.

Q. And Sonny will verify what you just said?

A. Yes.

Q. Why don't we stop and let you have

BY MR. KEFALOS:

Q. This is George Kefalos speaking. You are Dana Flavin?

A. Yes.

Q. You knew William Murray?

A. Yes, I did.

Q. You knew him for 25 years?

A. Yes.

Q. Some?

A. Well...

Q. Can you identify this exhibit which is marked Exhibit Number 5?

A. Yes.

Q. All right. Will you turn to the page that contains some signatures.

A. Yes.

Q. Were you present when their signatures were put there?

A. Yes, from Mr. Murray.

Q. And is that Mr. Murray's signature there?

A. Yes, it is.

Q. Will you be able to tell us today how that came about?

A. He had phoned me -- he didn't phone me,

he brought something with him when he came to lunch and he -- I didn't know what it was all about but he asked me if I would witness something for him and I said, sure, why not.

Q. And is that your signature as a witness there?

A. Right.

Q. And there's a date next to your witness signature?

A. Right.

Q. And that date is?

A. February 10, 2006.

Q. Tell us a little bit about your personal background. Where do you live currently?

A. I'm presently in Germany south of Munich in Schonberg.

Q. How long have you been in Germany?

A. I've been in Germany since March off and on. I've been back and forth.

Q. All right. Did you live in Germany before March?

A. Yes, I did. I lived in Germany from 1985 until 2005.

Q. Where are you from originally?

A. Flossmoor, Illinois.

A. Yes, I did.

Q. So let me understand this. Liz brings her father to your house to meet you for the first time?

A. Yes. I was very nervous about meeting her because I had never met her before and I didn't meet any of the family members.

Q. And Mr. Murray says he wants you to witness some documents?

A. Yes.

Q. Liz left the room?

A. She said could I use the computer. She went to use the computer and he said, can you witness something for me, and I said sure.

Q. Okay. Now, you are a medical doctor?

A. I am a physician with a degree but I am not licensed.

Q. I see. And have you ever had occasion to evaluate people's mental status before February 10, 2006?

A. Yes. Regularly in internal medicine and intensive medicine in rotation in departments of medicine.

Q. You had known Mr. Murray about 25 years at the time he signed this document?

A. Yes, about 20 -- well, about 23, 24.
Q. 23, yeah.
A. Something like that.
Q. And you had seen him as his health had deteriorated over the years?
A. Yes, I had.
Q. And how long was Mr. Murray in the room with you that afternoon he signed the documents?
A. He was there several hours because we ate afterwards.
Q. What was his mental status that day?
A. He was clear. He was pretty -- he was clear. I found him mentally clear. His speech was still slow and his movement was slow but his mind was clear.
Q. Was he able to engage in a two-way conversation?
A. Yes, he was.
Q. Was he coherent?
A. Yes, he was.
Q. Did he respond appropriately to the questions?
A. Yes, he did.
Q. Was he animated?
A. Well, Parkinson patients are not

terribly animated. In fact, that's one of the symptoms, they have a very sort of flat face. He was alert.

Q. Okay.

A. And whenever Bill was around me, he was very, very positive, very happy.

Q. While you were there, while Mr. Murray was at your house, did you observe anybody fussing at him?

A. No, just when he came in, Liz making sure that he was walking okay and Sonny holding on to make sure that he could walk all right.

Q. What I'm asking about, was anybody pressuring him to sign these documents?

A. No. There wasn't anyone there.

Q. Did it appear that anybody had stage set the signing before?

A. No. Bill -- Bill was not the type of person that let pressure get to him and there wasn't any pressure that was noticed. His behavior was completely normal.

Q. After dinner Mr. Murray departed?

A. Yes.

Q. What happened to the originals of the documents?

A. He asked me to put them away.
Q. And did you keep them?
A. Yes, I did.
Q. And how long did you keep those documents?
A. For years and completely forgot about them.
Q. Okay. And there came a time when you were reminded of them?
A. Yes.
Q. What did you do with the documents?
A. I sent them on to Elizabeth Murray's lawyer.
Q. That was me?
A. Yes, it was.
Q. You sent them registered mail?
A. I sent them registered to George.
Q. And you've seen the originals here today?
A. Yes.
Q. When you exchanged farewells with Mr. Murray that day, did he make eye contact with you?
A. Yes, he did.
Q. Was he aware of his surroundings?

A. Yes, he was.
Q. Did he understand what had happened?
A. He was mentally clear so I'm -- I would assume that he knew what was happening because he was mentally clear and he said good-bye and thanked me for the food and so on and so forth.
Q. Okay. Did you stay in touch with him after that date?
A. Yes, I did.
Q. And what was your interest?
A. I was concerned about his health and I wanted to make sure that he went further to Dr. Fahn and that he was getting proper care and proper medication.
Q. Good. Okay. Finally, let me ask you, when Mr. Murray signed these documents marked Exhibit 5 and Exhibit 6, is there any question in your mind about his ability to understand what he was doing?
A. No. Not at all. Not at all.
MR. KEFALOS: Good. That's all the questions I have. Thank you.
THE WITNESS: Thank you.
(WHEREUPON, the proceedings concluded at 6:00 PM.)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

)

IN THE MATTER OF:)

WILLIAM E. MURRAY)

)

DEPOSITION of SANJIN SUJAK, held at the offices of Fink & Carney Reporting and Video Services, 39 West 37th Street, New York, New York 10018, on Thursday, June 11, 2015, commencing at 9:08 a.m., before Jean Wilm, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public within and for the State of New York.

while you waited on --

A So did Mr. Murray drink I think one glass of wine.

Q Who gave Mr. Murray the glass of wine?

A Well, it was offered to him. He took it. He usually didn't drink really. Sometimes alcohol really make him feel bad because of his medication.

Q The meeting that was taking place in the living room of Ms. Flavin's house while you were in the kitchen, it went on long enough for you to have two glasses of wine?

A Yeah, sure.

Q So after the meeting, did Ms. Flavin serve dinner?

A I don't remember, really. I cannot remember because I think we went -- on one occasion we went there for Thanksgiving day.

Q At some point that evening, you and Ms. Murray and Mr. Murray returned in the car from Greenwich to New York City; is that correct?

A Yes.

Q Who drove the car?

S. Sujak

A Elizabeth.

Q Because it was her car?

A Yes, it was her car and I was drinking. I had two glasses of wine, but still, you know?

Q Do you remember why Elizabeth Murray was driving her car on that day?

A I don't know.

Q So during the -- you said it was about a 40, 60 minute drive between Greenwich and New York City?

A Yes, depending on the traffic.

Q On the return drive back to New York City, did Mr. Murray or Ms. Murray discuss any documents that Mr. Murray allegedly signed?

A No.

Q Was there any discussion about the estate of Mr. Murray's late wife, Minnie Holmes?

A No.

Q Do you recall what Mr. Murray and Ms. Murray talked about on the way back to New York City?

A I don't really remember. They didn't want to talk in front of me what they --

STATE OF SOUTH CAROLINA IN THE PROBATE COURT
COUNTY OF CHARLESTON CA NO. 2007-ES-10-1116

IN THE MATTER OF: THE ESTATE OF WILLIAM E. MURRAY

DEPONENT'S COPY TO READ & SIGN

DEPOSITION OF: JEFFREY H. YOUNG

DATE: January 20, 2009

TIME: 9:30 a.m.

LOCATION: Residence of Jeffrey H. Young
1569 Brianna Lane
Charleston, SC

TAKEN BY: Counsel for the Estate of William E. Murray

REPORTED BY: PATRICIA THOMPSON-MORRISON
Registered Professional Reporter

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Page 26

living?
A. Larry worked at Lowe's and also did some landscaping work.
Q. I know you're good on the computer. Do you email back and forth with Pam Murray?
A. I do test email.
Q. So you email with Pam Murray?
A. No.
Q. Have you ever emailed with Pam Murray?
A. She emailed me one time when she lived over there when she was setting it up and she wanted to make sure it worked.
Q. Is this the only time you emailed with Pam Murray?
A. Yes, ma'am.
Q. How about with Larry Bump; have you ever emailed back and forth with him?
A. No.
Q. Do you email with anybody?
A. I email my brother and a friend of mine named Melvin. I detest email.
Q. Why do you detest email?
A. Because people start sending you so much pure crap, stories they think that are funny, and then your mailbox is full with all this crap. I just

Page 27

detest it. I only use it when I absolutely have to.
Q. I asked you about all of the family members that you have met of Pam and Elizabeth Murray.
Did you ever meet Mr. Murray, their father?
A. Yes.
Q. Tell me when did you meet Mr. Murray?
A. I couldn't tell you the exact date for the love of money, but I met him about five times altogether. He was a friendly old cuss, and when I would see the car or the van over there I would usually say hi and we would talk a minute. "I hear you helped Pam get her computer going." And we would talk.
I saw his condition the last two times that I saw him. His condition had deteriorated greatly.
Q. Were you aware he had Parkinson's disease?
A. I didn't know what he had, but I knew he had deteriorated. When I first met him he was able to stand and walk and seemed steady. This was soon after they moved in in 2005. And over the next year or two years I saw him two or three other times, and I remember telling Pam that I thought he was getting worse like momma with the sudden -- because I wasn't seeing him in between times. And: Whoa. What happened?

Page 28

The next to the last time I saw him he was really frail and shaky, and then the last time I saw him he was in a wheelchair and he wasn't initiating conversations like he used to do.
Q. During the last two times that you saw Mr. Murray before his death was he having trouble walking?
A. The last time I saw him he was in a wheelchair; and yes, he was shaky on his feet.
Q. And he had trouble communicating?
A. He didn't -- I don't know how to explain it. Before the times I had met him he would initiate conversations and tell stories or anecdotes, you know. I don't know if you met him. He was real humorous, but the last two times -- especially the last time. He was aware, but he wasn't telling stories, like things that related. He knew me.
Q. How do you know that he knew you?
A. Going by and: What y'all doing?
Q. Was he able to --
A. He knew my name, yes.
Q. Was he able to say your name the last time he saw you?
A. Jeff is what he called me.
Q. But was he able to say your name the last

Page 29

time he saw you?
A. I don't know. I do remember he asked how my mother was.
Q. Is that on one of those five times that you saw him?
A. No. This was the last time -- they were taking him past in a wheelchair, walking down the street, and I was playing in here and -- he knew my name and he asked about momma.
Q. Who was pushing the wheelchair?
A. Larry.
Q. Who else was there?
A. Pam.
Q. Anyone else?
A. A black lady. They told me her name. I can't remember what her name was.
Q. Who drove Mr. Murray over to your neighborhood?
A. I guess she did because he wasn't in a condition to drive.
Q. Did Pam Murray ever discuss with you any problems that she had with her family?
A. Some guy -- Hilton. She was having some sort of trouble with him about seeing the father. I remember that.

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Page 38

A. She was going to read a paper to her father.
Q. Did you read that paper yourself?
A. No, I didn't.
Q. Did you hear her read that paper?
A. I heard her reading it.
Q. Did you hear her read the entire document? It's a lengthy document.
A. Yes; the entire document. I remember a couple of things about the document. There was some sort of weird sounding inn in New York. Something about that. And part was about monies owed, and then there was part about he was giving Elizabeth the house. That's when I was kidding him about if he had any more to give away, that I was available for adoption.
Q. Did you say that while Pam was reading the letter to Mr. Murray, or did you say that after the letter --
A. This was at the end, the part about the house or something, and I was just -- I was kidding him, you know. He didn't really respond to it. I don't think he took me serious or anything, but you know . . .
Q. How long did it take Pam Murray to read this document to Mr. Murray?

Page 39

A. Five, ten minutes at the most.
Q. But you never actually saw the document?
A. I saw where I signed at the bottom.
Q. But did Pam Murray give you a copy of that document to read before you signed it?
A. No.
Q. She just asked you to sign the document?
A. She asked me to witness it. She read it to him, and he looked like he was perturbed about the whole -- "let's get this foolishness over" sort of attitude.
Q. Sir, if Pam Murray asked you to witness the document and sign your name to that document --
A. I was witnessing I saw her read it to him and him signing it.
Q. Sir, I understand that you saw her read the document to Mr. Murray, but my question is: You never verified by reading the document yourself to verify that what Miss Murray was reading was actually what you signed?
A. No.
Q. Is that correct?
A. No.
Q. Is that correct?
A. That's correct. I didn't read the document

Page 40

myself.
Q. Did Miss Murray offer you a copy of that document to read it before you witnessed it?
A. No. She read it to him and every now and then: Do you understand? I think that was more for my benefit, because like I say he seemed impatient wanting to get this done.
Q. Pam Murray was asking whether or not you understood what she was reading?
A. She was asking her father, but I think she was -- "Do you understand what I read, Dad?" I think that was more for my benefit.
Q. Was Mr. Murray able to communicate at this time?
A. Yes.
Q. What did he say?
A. He said yes, he understood, like he wanted to get this done.
Q. You said it took Pam Murray about five or ten minutes to read this letter to her father.
A. It was two or three pages.
Q. Then what happened after that time?
A. He went to sign -- he was real shaky in his hand. He couldn't hold the pen. It kept slipping through his fingers.

Page 41

Q. Who was giving Mr. Murray the pen to sign?
A. Pam was.
Q. Pam gave Mr. Murray a pen to sign, but Mr. Murray was unable to sign?
A. Yes. He couldn't hold it well.
Q. Then what happened after that?
A. I had a big Sharpee and I said: Try holding this. And he was able to hold that, but not real well either.
Q. Did you just happen to have a Sharpee with you?
A. I had been out here playing in the garage doing a little bit of wood cutting and stuff, and I use a Sharpee because it makes a broad line that I can see.
Q. You gave the Sharpee to Mr. Murray?
A. Uh-huh.
Q. Who actually signed for Mr. Murray?
A. Mr. Murray signed, but he -- he was real shaky.
Q. Did anyone hold the pen for Mr. Murray?
A. No.
Q. He was able to hold it by himself?
A. Yes, but he was trying to hold a regular pen -- I don't know -- like a Bic, and he couldn't seem

STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF CHARLESTON
IN RE: THE ESTATE OF WILLIAM EDWARDS MURRAY,
Deceased,
CASE NO. 2007-ES-10-0116

VIDEO
DEPOSITION OF: HILTON SMITH
DATE: December 16, 2014
TIME: 9:06 AM
LOCATION: Law Offices of
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel For the Elizabeth Murray and Pamela Murray
REPORTED BY: Roxanne M. Easterwood, Registered Professional Reporter
VIDEOGRAPHER: Nick Stello
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(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * *

VIDEOGRAPHER: We are now on the record. Today's date is December 16, 2014. The time is 9:06 a.m.

This is the video deposition of Hilton Smith. This deposition is taken in the matter of in re: The Estate of William E. Murray, Civil Action Number 2007-ES-10-0116.

Counsel, please introduce yourselves for the record.

MR. KEFALOS: This is George Kefalos, and I represent the estate of Minnie Murray and Elizabeth StyleSetters.

MR. SLOTCHIVER: Stephen Slotchiver, on the same side.

MS. HOOD: Molly Hood. I represent the

estate of William E. Murray.

MR. HOOD: Bobby Hood, the same.

MR. HAGERTY: John Hagerty, representing Hilton Smith.

VIDEOGRAPHER: Would the court reporter please swear in the deponent.

HILTON SMITH

being first duly sworn, testified as follows:

EXAMINATION

BY MR. KEFALOS:

Q. Hilton, I'm George Kefalos, and we have met sometime ago. I want to ask you some questions about what you might know about this claim today. Do you feel well enough to answer my questions today?

A. Currently, yes.

Q. Okay. Will you give me --

A. I'm a little cold.

Q. It's warm. It's not as cold as it was last time. Will you give me full and complete answers to my questions today?

A. To the best of my ability.

Q. Sure. And if you don't understand a question, will you direct your comments or questions to me rather than to anybody else so

that I might explain it to you?
A. Yes.
Q. Good. Let's talk a little bit about your background. First of all, how old are you?
A. I'm 60 years old.
Q. Okay. Where do you live?
A. I live in Hollywood, South Carolina in Stono Ferry neighborhood.
Q. How long have you been there?
A. Ten years.
Q. Prior to that time where were you living?
A. I was living in Hagerstown, Maryland.
Q. And how long were you up in Hagerstown?
A. Moved to Hagerstown, Maryland in about 1979. The last time I moved to Hagerstown was in 1979, and I lived there until about 2004.
Q. Where are you from originally?
A. Grew up in Washington, D.C.
Q. You went to high school in Washington?
A. I went to high school in Hagerstown.
Q. And how about college, did you attend college?
A. I went to college, yes.

Q. Where did you attend?
A. Georgetown University.
Q. Did you get a degree?
A. Yes, I did.
Q. What was the degree?
A. International finance.
Q. When did you graduate?
A. 1976.
Q. You were employed after that time. What was your first employment?
A. After college?
Q. Yes.
A. The World Bank.
Q. And where were you based?
A. Washington, D.C.
Q. What were you doing for the World Bank?
A. I was a research assistant in the industrial projects department.
Q. How long were you there?
A. About a year-and-a-half after I graduated. I had worked there as an intern during college. But after I graduated, my first job after college graduation, the World Bank, and that lasted about a year-and-a-half.

Q. Where did you go after World Bank?
A. I started working for East Bay Company.
Q. Bill Murray's company?
A. Bill Murray's company, East Bay Company.
Q. How did you meet Bill Murray?
A. I met Bill Murray because I married his daughter Catherine.
Q. How did you meet --
A. And through that I had an introduction to her father.
Q. How did you meet his daughter Catherine?
A. How did I meet his daughter? Catherine went to Georgetown University. We were -- you know, we met each other at college and from there became married.
Q. Okay. When were you married?
A. 1977.
Q. And was that the time that you then moved down to work for the East Bay Company?
A. I moved to East Bay Company, it was about June or July of 1977.
Q. And did you relocate to Charleston at

that time?
A. We moved here, yes.
Q. So you stayed in Charleston from '77 to about, what did you say, '96, when you went back to Hagerstown?
A. No. I said '77. I moved back to Hagerstown for the first -- no. No. What did I say? I moved back in '79 to Hagerstown. I was in Charleston from about '77 to '79.
Q. And then Hagerstown?
A. Then Hagerstown.
Q. Came back to Charleston for a while?
A. Then I came back to Charleston. In about 2000 -- well, I -- I had moved to Charleston in 2004. But I came back here all during my employment, all during my -- my business years. I continued to have some in -- some involvement with our East Bay Company and other assets here in Charleston.
Q. What was in Hagerstown that the East Bay Company was involved in initial -- initially -- initially that took you back there?
A. I went back to Hagerstown for no related reason to East Bay Company. I moved up there to do business for myself.

Q. Well, I'm -- I'm not following it then. Because you married Catherine and you moved to Charleston to work for the East Bay Company?
A. Uh-huh.
Q. And then you moved back to Hagerstown?
A. Yes.
Q. So did you leave the East Bay Company at that time?
A. Yes.
Q. Oh, okay. What were you doing with -- for East Bay Company when you first started?
A. I was running the development of the Save Charleston Partnership, which was a gourmatisserie being built on Market Street and a few other assets down here.
Q. You did that for about two years?
A. About two years.
Q. What prompted the leave?
A. My wife wanted to leave.
Q. She wanted to leave Charleston?
A. Yeah.
Q. Had she been raised in Charleston or raised in New York?
A. She was raised in New York City and went to a number of places during the course of

her younger life up until college. She lived in -- raised in New York. Primarily that's where she spent her time.
Q. Did you have any problem with Bill Murray at the time of your departure from Charleston back to Hagerstown, Maryland?
A. What do you mean?
Q. Well, I want to know, did you -- did you quit the job? Was there difficulty with your boss? Was there --
A. I'm sorry. I thought I answered the question. My wife wanted to leave. So I resigned.
Q. Okay.
A. And we moved to Hagerstown.
Q. What did you do when you were in Hagerstown?
A. I had acquired a building up there, a downtown property, which we purchased and developed and operated.
Q. What was that property?
A. It was known as the Dagmar Hotel.
Q. Okay. And how long did you -- let's see. You moved back. You purchased the Dagmar. You worked that. Did you eventually reestablish

your connection with Bill Murray?
A. I never really lost my connection in relation to Bill Murray, but I resumed business activities with him shortly after I returned to Hagerstown.
Q. Okay. What sort of activities were you involved in with Bill Murray at that time?
A. We -- we acquired several pieces of real estate.
Q. Did you -- what -- what real estate was this? And were these in your own names or in the company name?
A. The main -- I mean, I can't remember everything, George. But one -- one property was the Hamilton Hotel, which was owned by an entity.
We rarely bought assets in our own name. Typically we bought them in the name of a partnership or an LLC or a sub S corporation. And tax laws have changed over the course of the late '70s/early '80s to now. So the entities may have changed from then to now, the type of entities.
But we typically bought assets and entities. And the one I can remember, the first one was the Hamilton Hotel.
Q. How did your relationship, your

business relationship with Bill Murray progress from the time that you purchased the Hamilton Hotel with him?
A. Well, we continued to be involved in business for many years.
Q. Your business contacts expanded with him?
A. Yes. Our business involvement, our contacts, our relationship nurtured over -- up until the time of his death. We continued to be business partners.
Q. Okay. Well, that's what I'm interested in learning. How did you evolve from buying a hotel to what you call business partners?
A. Well, buying a hotel together I would call being business partners.
Q. Okay.
A. And when we did that investment together we were successful, and we continued to buy other assets together. So it was just an ongoing business relationship that had started in Charleston and continued for a long time.
Q. Was the business relationship an ad hoc; that is, project by project, or did you have a continuing vehicle from which you operated?

A. What do you mean a continuing vehicle?
Q. Let me ask you like this. Eventually -- you eventually joined the East Bay Company?
A. My first position was with the East Bay Company here in 1977.
Q. Yeah, but when you moved back to Hagerstown you re -- you reacquired a position in the East Bay Company?
A. No.
Q. Did you ever reacquire a position in the East Bay Company?
A. Yes. I came back here in 1999 and became the president of East Bay Company.
Q. Okay. Between '77 and '99, 22 years, did you have any official role in the East Bay Company?
A. I think I was on the board of directors.
Q. Okay. You weren't an employee of the East Bay Company at that time?
A. No, I was not.
Q. And your business dealings with Mr. Murray were on a parcel-by-parcel basis?
A. Parcel, building. We'd set up an entity when we'd buy something and go on and on

and on.
Q. What was your position with the East Bay Company at the time of Bill Murray's death?
A. I was president, CEO.
Q. When did you assume that role?
A. 1999.
Q. So when you came back?
A. When I came back here I became president and CEO of East Bay Company.
Q. You are still married to Catherine?
A. Yes, I am.
Q. Do you have children?
A. We do.
Q. How many kids?
A. We have two sons.
Q. And their name?
A. Hilton Charles Smith, III.
Q. How old is he?
A. He's 33.
Q. Okay. The other one?
A. Christopher Rutledge Smith. He's 31.
Q. All right. Where are they?
A. Christopher lives in Hagerstown, Maryland. Actually, it's called Williamsport, Maryland, which is a small town outside of

Hagerstown. And Hilton lives -- Hilton, my son -- our son, lives on James Island here in the South Carolina -- Charleston area.
Q. Now, let me ask you. Have you ever been arrested? I don't mean to offend you, but I ask all witnesses this question.
A. I've never been arrested.
Q. Never. You are the -- one of the personal representatives of Bill Murray's estate?
A. Yes, I am.
Q. What are your duties --
A. Well, actually, I'm a personal representative of, yeah, of his estate, correct.
Q. Yeah. What are your duties as personal representative?
A. My duties are to uphold the wishes of the creator of the -- of the will and trust. That's a primary duty. And we also have a duty to our beneficiaries to make our best effort to ensure that we add value, manage the -- the assets that Mr. Murray left behind in the best way that we can.
Q. If -- if I were to look in on you one day at work what would I see you doing?
A. Probably depends on the day you were

looking. I do whatever I have to do.
Q. Well, tell me the kinds of things that you do on a typical day as part of your duties as personal representative?
A. As personal representative, it's really varied, but it's -- it's based on the makeup of the assets of the estate, which are primarily real estate. So you're refinancing. You're buying. You're selling. You're negotiating with tenants. You're dealing with maintenance issues, trying -- you know, it's a variety of things.
But when you run a business you -- I've learned you really kind of do whatever you need to do. So that's what -- what I do.
Q. Now the East Bay Company is one of the assets of the estate?
A. George, I am under a confidentiality agreement as the executor trustee of the William E. Murray trust and will, specifically states that I'm not allowed to discuss any of the financial information other than what is specifically required under the terms of the will, which is all done on a -- every six months we provide our financial information that we're required under

the trust document, and anything more than that I compromise my position as a trustee to share with you financial information or specifics of the trust.

That's what I understand to be the case. So I don't feel comfortable unless I'm authorized by counsel to answer questions about the specific financial aspects of the trust.

Q. Well, I am not asking about the specific financial aspects.

A. You asked is that owned by the trust.

Q. Is the -- is it owned by the trust?

MR. HOOD: What's the question? Is what owned by the trust?

MR. KEFALOS: Is the East Bay Company owned by the trust?

MR. HOOD: To answer that he'll have to violate the terms of the trust I believe.

BY MR. KEFALOS:

Q. Do you have a position with the East Bay Company?

A. I'm the president, CEO of East Bay Company.

Q. Okay. How many employees are in the East Bay Company?

A. Just give me a second.

Q. Uh-huh.

A. Approximately twelve, thirteen.

Q. Where are they located?

A. All of our employees are located in the Charleston area.

Q. Okay. So you wear two hats: You are the personal representative of the estate, and you are also the CEO of the East Bay Company?

A. I do both of those jobs. Yes, sir.

Q. Where are your -- where are your -- where are the headquarters of the East Bay Company?

A. The headquarters of East Bay Company are at 215 East Bay Street.

Q. Is that where the books and records of the East Bay Company are kept?

A. Books and records are kept both here and also in Hagerstown, Maryland.

Q. Is there any one person who is in charge of the books and records of the East Bay Company?

A. Primarily, one person would be my son, Hilton Charles Smith, III.

Q. Okay. Well what is his educational

background?

A. He is a graduate of Vanderbilt University in business, finance.

Q. Okay. Does he have a degree beyond that?

A. That's the only degree he has. May I ask a question?

Q. Yeah.

A. Who are you?

MR. EPTING: My name is Andrew Kenneth Epting, Jr.

THE WITNESS: Andrew Epting, Jr. Nice to meet you.

MR. EPTING: Andrew Kenneth Epting, Jr.

THE WITNESS: Nice to meet you, sir.

MR. HOOD: Who just walked in the room. And this is the deponent, Mr. Hilton Smith.

BY MR. KEFALOS:

Q. So the East Bay Company has twelve employees. Are there any --

A. Approximately.

Q. Approximately. Are there any employees of the estate of William Murray?

A. You're asking me if the estate of

William E. Murray has any employees?

Q. Yes.

A. No.

Q. As the president of the East Bay Company, do you have the authority to hire and fire?

A. Yes.

Q. And you have the authority to set salaries?

A. With the -- some salaries I have the authority to set. Others require the approval of the board.

Q. Who's on the board?

A. The --

THE WITNESS: Am I allowed to answer this? He's asking me about who's on the board of an asset owned by the trust.

MR. KEFALOS: Well, you direct your questions to me.

THE WITNESS: Well, I'm trying to make sure I don't violate a confidentiality agreement.

MR. HOOD: If he violates it and loses his rights into the trust, absolutely. So I think we just have to move away from the trust.

MR. KEFALOS: I'm not asking about the

trust. I'm asking about the East Bay Company, who sets the salaries and who's on the board.
MR. HOOD: I don't know enough about it to -- do you know? Is it trust? Can we take a break and discuss it?
MR. KEFALOS: Sure.
MR. HOOD: With John at least, yes. I, candidly, don't know enough about it to advise him.
VIDEOGRAPHER: Going off the record. The time is 9:25 a.m.
(A recess transpired.)
MR. HOOD: I don't think he can answer it. We just have to be extra cautious here because of the terms of the trust. He would loss all interest if he violates it.
MR. KEFALOS: Back on the record.
VIDEOGRAPHER: We're back on the record. The time is 9:26 a.m.
MR. KEFALOS: So you were saying.
MR. HOOD: Yes, I would ask the witness not to answer the question.
MR. EPTING: On the grounds?
MR. HOOD: Well, I'll deal with one lawyer at a time.

MR. KEFALOS: You can deal with me. What is the basis for the direction of the witness on this?
MR. HOOD: Because I think it will violate the terms of the trust.
MR. KEFALOS: What would happen if he violated the terms of the trust?
MR. HOOD: I think he would lose significant rights and interest in the trust.
MR. KEFALOS: Who would assert that?
MR. HOOD: Well, I'm asserting it as the lawyer for Mr. Murray's estate.
MR. KEFALOS: You would be the one that would remove Mr. Hilton for revealing --
MR. HOOD: If he does something that violates what Mr. Murray wanted, I'll be the one to get rid of him with no hesitation.
BY MR. KEFALOS:
Q. Let me ask you this, Mr. Smith. Does the estate -- is the -- is there any other owner of the East Bay Company besides the estate of William Murray?
A. Yes.
Q. Who is that?
A. Catherine Smith.

Q. All right. Good. Then tell me -- back to my question. Who is on the board of the East Bay Company?
MR. HOOD: I don't think he can answer that. It's the same reason.
MR. KEFALOS: All right. I'm willing to seal this portion of the deposition so that there's no violation of the confidentiality agreement.
MR. HOOD: I think what we're going to have to do is, anything like this, is take it to the judge and let the judge rule. He can certainly answer the questions for the judge, but they'll be in camera. And then if she says there's something relevant that you have a right to know about, fine, and it doesn't violate the trust, and then he's not creating a problem to himself.
MR. KEFALOS: Okay.
BY MR. KEFALOS:
Q. Do you have the authority to set salaries in the East Bay Company subject to the approval of the board?
A. If the board gives me authority to set a salary where that would be required for board

approval, then I would be the one to take the action typically of the board.
Q. Is board approval required for every salary?
A. No.
Q. So you have the ability to set some salaries yourself?
A. Yes.
Q. For example, you -- do you pay your -- do you set your own salary in the East Bay Company?
A. No.
Q. That requires board approval?
A. You keep dancing with questions. I -- I -- I'm uncomfortable because I have an obligation to uphold the rules and requirements my father-in-law set in the trust and will. I'm not trying to be unable to answer you for any other reason, Mr. Kefalos. But you keep asking me the same questions that my lawyers have advised that they have a concern with. So I'm uncomfortable with your questioning.
Q. All right. Well, how much do you pay yourself?
A. I don't think I can tell you that.

Q. Has it gone up since Mr. Murray died?
A. Yes.
Q. And your son, how much do you pay your son?
A. I don't think I can share that with you base -- based on the rules of the -- of the confidentiality agreement, sir.
Q. You are aware that Mr. Murray was paying his daughter Liz $3000 a month at the time of his death?
A. I'm not -- I'm not exactly sure if he was paying her $3000 a month at the time of his death. I-- I don't know that exactly.
Q. Well, generally, he had been paying her $3000 a month?
A. I remember when Elizabeth Murray left The Inn At Quogue that the agreement that her father made with her was to educate her, to educate her through the New York School of Design, pay her -- all of her costs and provide her an allowance of $3000 a month. That's what I know, and I know that went on for a period of time.
Q. You stopped that payment after Mr. Murray's death, didn't you?
A. I didn't stop any payment. I never

made the payments. Those payments went from his office in New York. I didn't have -- I -- I didn't write those checks. I didn't authorized those checks. Those were checks that Mr. Murray authorized.
Q. Well, you stopped the office in New York from continuing to a make those payments, didn't you?
A. No.
Q. Who did?
A. Payments that were being made by my father-in-law that weren't evidenced by agreements or documents or whatever, anything like that would have stopped just by we didn't have authority to continue it.
Q. Now let's go back to the ventures that you were involved in with Bill Murray. In 2006 and '7 you were a partner with Mr. Murray in a company known as Carriage Hill?
A. Yes.
Q. Your interest was 20 percent and Mr. Murray's interest was 80 percent?
A. Now, again, you're asking me about trust financials. So I -- I don't know -- I don't think I can answer what the trust had. But our --

my -- my family had a 25 percent interest.
Q. Oh, 25 percent. And Mr. Murray had 75 percent in Carriage Hill?
A. I'm not going to answer that. I feel that that would be in violation of the agreement. Again, I'm bound by a confidentiality agreement, and I don't want you to put me in a position where I violate it by continuing to ask me questions that my attorneys have advised you I shouldn't answer.
Q. This is before the estate was created. I'm asking about your historical business dealings. It's got to nothing to do with the finances of the estate.
A. If I'm advised that I can share that with you I'll be happy to share it with you.
MR. KEFALOS: Would you --
MR. HOOD: It's an asset of the estate. So he should not answer it.
MR. KEFALOS: You're directing him not to answer it?
MR. HOOD: Correct.
BY MR. KEFALOS:
Q. Okay. Did you and Mr. Murray also have a company known as Manor House at the same

time in 2006 and 2007?
A. I have a company called Manor House.
Q. Was Mr. Murray a partner in Manor House in 2006 and 2007?
A. No.
Q. That was all your company?
A. I own -- my family owns Manor House Builders of South Carolina.
Q. Was there a Manor House Builders in Hagerstown, Maryland?
A. There's Manor House Builders in Maryland as well.
Q. Okay. Was Mr. Murray a partner in Manor House Builders in Maryland in 2006 and 2007?
A. No.
Q. All right. Now, in 2006 or before 2006 did Carriage Hill own about two dozen properties in -- outside Hagerstown on Lantern Lane, Bridle Court and Saddle Brook?
A. Carriage Hill is a residential subdivision, and when you have a residential subdivision you have streets. And those are three streets that you've just mentioned within that subdivision on which there are lots, and then we would build houses on the lots.

Q. Sure. What I want to know is did Carriage Hill in 2006 -- prior to 2006 own properties on Lantern Lane, Bridle Court and Saddle Brook?

A. I'm pretty sure it did.

Q. All right. Now, in 2006 and 2007 you transferred those properties from Carriage Hill, which Mr. Murray owned primarily, to Manor House, which you owned entirely. Do you remember that?

A. Uh-huh.

Q. Some of those --

A. Not specifically, but it was an ongoing process. So we would do that.

Q. And some of these transfers actually took place the day before Mr. Murray died when he was in a coma. Do you remember that?

A. Not specifically the day before he died. I remember when he was in a coma.

Q. For example, on November 3, 2006 you transferred property located at 10314 Lantern Lane from Carriage Hill to Manor House for $35,000?

A. Okay.

Q. All right. Do you remember that?

A. Not specifically. But it was a regular process. Manor House was building homes

on lots that were developed by Carriage Hill. So it would buy the lots and build houses and sell them.

Q. Now, the $35,000 that Manor House paid to Carriage Hill was not the fair market value of the property at the time, was it?

A. We -- we bought property at fair market value.

Q. Well, there was a house on the property at the time of the transfer in November 3, 2006?

A. Carriage Hill provided lots. Manor House built houses. So the house on the lot was built and paid for by Manor House. The lot was built and created by Carriage Hill. So Carriage Hill got paid for the lot that the house sat on.

Q. Well, the house had -- at the time of this transfer the house had already received the final building inspection, hadn't it?

A. I am not sure if it did. I'm -- you know, I not going to doubt you. You're...

Q. Okay. And the house had received it's certificate of occupancy. And Manor House took that same house that it paid $35,000 for in November and sold it in April of the next year for

$325,000?

A. Mr. Kefalos, let me say this again to you. Carriage Hill provided lots, the ground on which the house is built, okay. Then Carriage -- then Manor House came in and built a house on the lot. So Manor House sold the house for the number you mentioned, and Carriage Hill was paid for the lot that the house is on.

Q. Was there an agreement in writing that memorialized this?

A. To the best of my knowledge.

Q. Do you have access to it? Can you ask your attorneys to provide it -- ask your attorney to provide it to me?

A. I'd be happy to. As long as I'm not violating any conditions of -- of -- of the will and trust, I'd be happy to provide you with the document that we have.

Q. Okay. And did Manor House keep the profits from the sale of this house?

A. Manor House kept the profits from the sale of the house, yes, sir.

Q. And -- and how much did you give back to Carriage Hill on account of the profits?

A. Carriage Hill was paid for the lots.

That was its involvement in the transaction.

Q. Well, its involvement was a little bit beyond that, wasn't it? Didn't Carriage Hill guarantee the loan that Manor House took for the construction of the property?

A. Manor House guaranteed Carriage Hill's loan. I don't have the documents in front of me, but I -- they would show us how -- who guaranteed what.

Q. So you're saying that Carriage Hill did not guarantee Manor House's loan?

A. That's not what I said. You -- I'm not sure who guaranteed what. I'd have to look at the documents.

Q. All right. What I'm interested in is there's about two dozen homes from Hagerstown that were transferred from Carriage Hill to Manor House in a six or eight month period preceding Mr. Murray's death that I'd like any record that relate to an agreement for how much the --

MR. HOOD: Send us a request to produce and we'll certainly respond.

MR. KEFALOS: Okay. Any agreement between Mr. Murray and Mr. Smith or Carriage House or Carriage Hill and Manor House.

BY MR. KEFALOS:
Q. You were once friendly with Liz and Pam?
A. They have been my sister-in-laws for 38 years.
Q. Yeah. You were once very friendly with them? Is that a yes or no?
A. I'm saying they have been my sister-in-laws for 38 years. I have known them for a long time.
Q. Sure. But that doesn't answer my question. You were once friendly with them?
A. I -- I -- I don't really know, but I do know that they have been my sister-in-laws for 38 years, and I have known them, gone through an awful lot with them.
Q. You don't know if you were friendly with them?
A. You know, I -- I had fun with them at times, absolutely. We celebrated Christmases occasionally and birthdays and my father-in-law's birthdays. So, yeah, I think we had fun together.
Q. Yeah. That changed, didn't it?
A. Be more specific.
Q. Well, you're no longer friendly with

Liz and Pam?
A. I'm -- I'm fine with Liz and Pam.
Q. You don't have any hostility towards Liz?
A. I don't have hostility towards Liz or Pam.
Q. What's the Samuel Freeman Trust?
A. The Samuel Freeman Charitable Trust?
Q. Yes.
A. What would you like to know about it.
Q. What is it?
A. What is it? Well, the Samuel Freeman Charitable Trust is a charitable trust. It was created by Bill Murray for his client, Sam Freeman, and it operates as a New York charitable trust.
Q. Were you once a trustee of the Samuel Freeman Trust?
A. Yes.
Q. And Pam and Liz were once trustees of the Samuel Freeman Trust?
A. Pam and Liz were trustees of the Samuel Freeman Charitable Trust.
Q. You tried to get Pam and Liz removed from the board of the Samuel Freeman Charitable

Trust?
A. I'm not in a position to remove anybody from the board of the Samuel Freeman Charitable Trust.
Q. Did you try to get Pam and Liz removed from the board?
A. No.
Q. You were ultimately not successful in getting them removed, were you?
A. I'm not clear. I just answered your question and said no. I did not try to have them removed as trustees. Your followup confused me. Do you want to rephrase that?
Q. Let's move on. The bank handling the trust sued you for misconduct and self-dealing?
A. And I want to tell you, I have had a lot of litigation over the Samuel Freeman Charitable Trust. My lawyer, who finalized a settlement that took four years, told me at the end this is a sealed settlement agreement; you don't talk about any -- this to anybody unless you have a court order you to do so or you're in violation of a settlement agreement.
So I have called my lawyer, emailed an address to try to find his position on what he

recommends based on the deposition that I heard a week ago with Elizabeth where there was a lot of Freeman trust discussion brought up. I have not heard back from him yet, and I'm uncareful -- I'm uncomfortable getting anything close to breaching a commitment that I have to the attorney general of New York.
Q. Good. I understand that. But I would appreciate it if you would answer my question.
MR. HOOD: What is the question?
BY MR. KEFALOS:
Q. The question is the bank handling the trust sued for you misconduct and self-dealing?
A. I -- I can't -- I -- I'm not sure if I can answer that.
Q. Well, I'm asking you to answer it.
A. I know you are. You don't care. I care about violating the terms of a confidentiality agreement. That's something I should be concerned about and am, so.
Q. Well, you have attorneys here today.
A. These are not attorneys representing me on the Samuel Freeman Charitable Trust.
MR. HOOD: Why don't we do this, he's tried to contact the lawyer. He's left him his

cell number. He's got his cell phone with him. Let him leave his cell phone on. If it rings, let John step out and talk to this lawyer and see if he can answer your questions. Can we do this?

MR. EPTING: But Bobby, how can they publicly file suit, because that's the question, was he sued, how can that ever be confidential?

MR. HOOD: I agree with you, actually, but I don't want him to violate some agreement I don't know anything about with the attorney general of New York who loves to sue people.

I don't want him getting sued over some stupid answer in a deposition that don't have anything to do with anything.

MR. KEFALOS: So are you instructing him not to answer?

MR. HOOD: I guess I have to.

BY MR. KEFALOS:

Q. Were you removed from office of the Samuel Freeman Charitable Trust?

A. I resigned.

Q. You resigned under pressure?

A. I resigned.

Q. Did you resign under pressure?

A. I re -- I'm going to just leave it as

I resigned.

Q. Okay. Did you fight your removal from the Samuel Freeman Trust for misconduct and self-dealing?

A. I certainly defended myself.

Q. Did that cost you much in attorneys' fees?

A. It was -- it was very expensive.

Q. How much did it cost?

MR. HOOD: Now that would be private. What a lawyer charges a client is not relevant to anything in this case.

MR. KEFALOS: It sure is.

MR. HOOD: Why?

MR. KEFALOS: I started this questioning by asking him how he felt about Liz, and if he spent $3 million defending a claim that he blames Liz for, that's very relevant.

BY MR. KEFALOS:

Q. So how much did you spend on attorneys' fees?

A. Again, I'm going to take advice of counsel and upon receipt of this phone call or communication I'd be happy to answer questions I'm allowed to answer you in regard to the Freeman

trust.

MR. HOOD: Well, please don't answer it until then.

MR. KEFALOS: Okay. Good.

BY MR. KEFALOS:

Q. Do you blame Liz for the litigation the bank brought against you?

A. I know that Elizabeth had a lot to do with the litigation, but I can't blame her for it.

Q. She was doing what she was required to do as a fiduciary of the trust?

A. I'm not saying that. I'm saying that I know Liz had a lot to do with the litigation and I don't blame her for it.

Q. Was there any basis to the charge of self-dealing?

A. Again, George, you're asking questions that you know I'm not comfortable answering until I speak to my trust -- Samuel Freeman Trust lawyer, but you keep asking them. And I hate to have to continue to tell you that I'm not comfortable, but I'm not. So I --

Q. I do hate that you have to continue to answer that you're not comfortable. I'd ask you to answer. Was there any basis to the charge of

self-dealing?

MR. HOOD: And I ask him not to answer, please.

MR. KEFALOS: Okay.

BY MR. KEFALOS:

Q. Your children attended the Saint James School in Maryland?

A. Yes, they did.

Q. And did the Samuel Freeman Trust make grants to the Saint James school?

A. It certainly did.

Q. And did you obtain personal benefits from those grants?

A. Not that I'm aware of.

Q. Were some of those grants used to pay your children's tuition?

A. Not that I'm aware of.

Q. And were some of those grants used to pay for design services provided by your wife?

A. I'm -- I think some of the monies that went to Saint James could have been utilized for paying my wife to do some design services.

Q. Now, The Fund for American Studies is a nonprofit located in Washington, D.C., isn't it?

A. Pretty sure.

Q. And the Samuel Freeman Charitable Trust made grants to The Fund For American Studies?
A. Yes, it did.
Q. And did you obtain a personal benefit from those grants?
A. I did not.
Q. Did your children receive scholarships and travel expenses from The Fund For American Studies?
A. Yes.
Q. The Freeman trust made grants to Marymount Manhattan College?
A. Yes.
Q. And you obtained a personal benefit from these grants?
A. No.
Q. Well, in 2004 wasn't $15,000 of these grants used to pay for a table that you took at the annual dinner?
A. What? I took -- I'm not aware of that.
Q. In 2002 wasn't $25,000 of the grants made by the Samuel Freeman Charitable Trust used to pay for a table at the president's Medal Gala?

A. I'm not aware of that.
Q. $25,000. The Washington County Community Action Council is a nonprofit in Hagerstown?
A. Yeah.
Q. Provides services to the homeless?
A. Yes.
Q. The Freeman trust made grants in the amount of approximately $170,000 to the Washington County Community Action Council?
A. I know they made grants. I don't know the exact amount.
Q. And you obtained a personal benefit from these grants, didn't you?
A. The Dagmar Hotel had a lease agreement with Community Action Council.
Q. Good. And the funds that the Samuel Freeman Charitable Trust granted to the Washington County Community Action Association were used to rent rooms in the Dagmar Hotel?
A. I -- I wouldn't agree with that. It was used for the program. But this matter, George, has been sieved and screened and gone through through the litigation, and the outcome which I'm not -- you know, I'm not -- you don't --

you're trying to get me to say something that I'm not supposed to. But I would say that there was no personal benefit to me for making a grant to an institution that provided housing for not -- you know, for homeless people.
Q. In June of 1996 the Freeman trust made a $25,000 contribution to Spoleto USA?
A. I don't know exactly, but I know that the Freeman trust supported Spoleto.
Q. You obtained a personal benefit from this grant, didn't you?
A. No.
Q. Some of the grant was used to buy performance tickets for you and your wife?
A. I'm not aware of that.
Q. In 1996, July of '96, the Freeman trust made a donation of $5000 to Spoleto USA?
A. I know it supported Spoleto USA, but I don't know if it gave $5000 in 1996.
Q. In July of 1996?
A. In July of 1996.
Q. You obtained a personal benefit from that grant, didn't you?
A. No.
Q. That grant was used to pay for auction

items that you purchased at the Spoleto action?
A. That's not true.
Q. In May of 2004 the Freeman trust made a donation of $30,000 to Spoleto USA?
A. I know that Spoleto has been supported by the Samuel Freeman Charitable Trust.
Q. And you obtained a personal benefit from the grant that the Freeman trust made in May of 2004?
A. No, I did not.
Q. Well, some of the grant was used to purchase performance tickets for you and your wife?
A. I don't agree with that.
Q. Is there an explanation for -- for that? I mean, when you say you don't agree with it, you don't say --
A. Well, do you have anything to substantiate your position?
Q. I'm asking the questions.
A. My answer is I didn't benefit, and I didn't get tickets to go to a event paid for by Freeman trust donations.
Q. How about the East West Institute? Do you know what the East West Institute is?

A. Yes.
Q. It's a nonprofit in New York City?
A. Yes.
Q. The Freeman trust made donations to the East West Institute?
A. Yes, it did.
Q. And you obtained personal benefit from those donations?
A. No, I did not.
Q. Well, some of the money was used to cover your travel expenses to Russia, Turkey, Austria and the United Kingdom?
A. I was on the board of the -- of the East West Institute. So I went all over the place as a board member.
Q. $23,500 of those donations went to fund a cruise for you and your wife?
A. I'm not aware of being on a cruise.
Q. Do you know what the Coral Reef Alliance is?
A. I certainly do.
Q. It's a nonprofit in Hagerstown?
A. Not in Hagerstown, but it is a nonprofit organization.
Q. What does it do?

A. It's helps fight to protect coral reefs around the world.
Q. And the Freeman trust made donations to the Coral Reef --
A. Yes, it did. It did, and it still does. Well, no, it doesn't anymore. It used to.
Q. You obtained personal benefit from those grants, didn't you?
A. No, I did not.
Q. Well, didn't the grants pay for a scuba diving trip for you and your family?
A. No.
Q. Now, the estate of Minnie Murray has filed a claim with the estate of William Murray on account of a debt from 1980. Are you familiar with that?
A. I know there was a 19 -- I know that the estate of Minnie Farmer Holmes has filed a claim against the William E. Murray trust or William E. Murray estate, excuse me.
Q. You're aware that the amount of the claim is about $10 million today if interest is calculated?
A. I have heard that it's actually in excess of $10 million today.

Q. Do you think that there are enough assets in the William E. Murray estate to satisfy that claim?
A. George, the estate is made up of a lot of real estate, hard assets. And to -- I'm not really in a position to say for sure that if we liquidated the William E. Murray estate completely that there would be enough money to pay the -- the -- the estate taxes that are still due, and I think the claim you're mentioning, somebody told me it's about $12 million.
Q. Sure.
A. So I'm not sure that if we had to liquidate everything today that we would raise that much money.
Q. Okay. Now, the estate of William Murray has denied that claim made by the estate of Minnie Murray?
A. Yes, it has.
Q. Who made a decision to deny the claim?
A. Decision was made by our attorney, Edward Bennett.
Q. Did you participate in that decision?
A. I really wasn't able to participate in the decision. It was a legal decision. The

question isn't whether or not the estate of Minnie Farmer Holmes ever had a claim. The question is why Elizabeth Murray allowed the claim to go stale and didn't file a lawsuit prior to the time her father died to collect such a large amount of money. That's the issue.
Q. Is that a concern of yours?
A. Is what a concern of mine?
Q. That issue. You said the real issue.
A. The claim?
Q. You said the real issue is why Liz Murray didn't file a claim or a lawsuit against her father earlier. Is that a concern of yours?
A. No, it's not really a concern of mine.
Q. Why do you say it's the real issue then?
A. Because you asked if I had been a participant in the decision to deny the claim. I followed up with no, Edward Bennett, and you said is that my issue or my concern.
Q. No. I asked you whether you participated in that decision.
A. I said no, the decision was made by Edward Bennett.
Q. And did you think that the claim

should be paid?
A. I'm not in a position to overrule the estate attorney who tells me there's legal basis on why to deny a claim.
Q. Do you know what the reasons for the denial of the claim are?
A. I am not a lawyer.
Q. Sure.
A. I have been advised by counsel when I looked at our lawyer and I said, Edward, what do we do, he said you can't pay the claim; it's gone stale; it's not valid.
Q. Okay. You are aware of the 2006 document of renewal?
A. I have been made aware of it after my father-in-law died.
Whoopsy. My microphone just fell off.
MS. HOOD: George, do you mind if we take a break?
MR. KEFALOS: That's good. We can do that.
VIDEOGRAPHER: Going off the record. The time is 9:57 a.m.
(A recess was taken.)
VIDEOGRAPHER: We are back on the

record. The time is 10:13 a.m.
MR. KEFALOS: You were saying.
MR. HAGERTY: So, George, I went out of the room to -- to take that call with Mr. Smith. And we got an associate of Jerry Carp. So we did not get Jerry. So we did not get -- and it's -- they hadn't had the final word, but their -- their feeling is that we should do as Bobby Hood suggested.
If you want to get into more detail, if you want to go through all of the details of the Samuel Freeman case, which, as Mr. Epting has mentioned, is a matter of public record, I don't know what Mr. Smith could add to that, then we should do it through a judge and in camera discussion.
MR. KEFALOS: Okay. Okay.
BY MR. KEFALOS:
Q. When we broke we were talking about the Minnie Murray claim and Edward Bennett's comment that it was stale. Those are my words.
A. They're my words, actually. But yeah, it was not able to be paid because it hadn't kept -- been kept alive, is what Edward -- I think it's called statute of limitations.

Q. Yeah. There was a 2006 document that Liz says was a renewal of that loan.
A. Could you show me the document?
Q. Well, we'll get to it in a minute. But do you -- do you remember the 2006 document?
A. It would be better for me if I actually could look at it to talk about it to you.
MS. HOOD: George, I printed out copies of your exhibits. I'm happy to give him one if you want me to.
MR. KEFALOS: Let me see. Let's mark this as number 1 then.
(Smith EXH. 1, William E. Murray Document with 2/9/06 Letter and Attachments, marked for identification.)
BY MR. KEFALOS:
Q. If you'll look at Exhibit Number 1 there, it -- it's the 1, 2, 3 -- 4th page, a letter dated February 9, 2006 entitled Dear Daddy?
A. I have that in front of me. Thank you very much.
Q. Okay. Good. Now, this is the document that Liz maintains constitutes a renewal of that note. What was your position on this renewal?

A. On this what?
Q. This renewal -- this as a renewal?
A. The renewal?
Q. Yes.
A. Well, when the claim was initially filed with the estate on behalf of Elizabeth for her mother's will, under her mother's will, this document wasn't supplied.
Q. Okay.
A. We received this on the second effort when she contested our decision, and this document had not been seen by us before. We were not aware of this document.
And when I say we weren't, that means neither James Mahl nor Hilton Smith nor Edward Bennett were aware of this document. When we received the document Edward was still not satisfied that this renewed the claim.
Q. Why not?
A. You know, it's hard for me to speak on behalf of my attorney because I'm not an attorney and I can't remember everything he said to me and I don't want to breach any attorney-client privilege by sharing with you what my attorney told me. So am I better off asking my attorney to

answer that question, or am I violating any privilege?
Q. Well, you've already started talking about what your lawyer told you.
A. Well, I don't want to violate a privilege, so.
Q. I'm -- it's my position that you have already waived that privilege, okay. So I would ask you to tell me what Edward said about this document of renewal.
MR. HOOD: I'd advise him not to answer that question.
BY MR. KEFALOS:
Q. Okay. Well, what's your position on the document of renewal?
A. My position was surprise that a document of such significance could have been forgotten and not included in the original claim. That was one reaction I had.
A second reaction I had is that this is completely -- my father-in-law did not ever tell me he intended to honor this claim. He told me that he had provided for his daughters, he was going to provide for them through this last will and testament, which as his executor I was aware

of the terms of his last will and testament.
And I probably had some other feelings and other thoughts, but I -- I haven't read this recently to point out any other -- you know, every topic, but that would be kind of some of my thoughts, George.
Q. So what you're saying is that you don't think that it's real?
A. It cont -- contradicts with what I was told by Bill Murray. I was his executor, trustee of his trust. I had been his business partner for 35 years. We talked about a lot of things. We talked about a lot of things. So I was surprised.
I also felt that, you know, I -- I am not a handwriting expert. So I can't tell you whether this is -- you know, whose handwriting is whose. But this surprised me. It doesn't really look like Bill Murray's signature to me. But again, George, I'm not a handwriting expert. I was surprised that --
Q. Stop for a second.
A. Go ahead.
Q. I don't mean to interrupt you, but --
A. That's fine.
Q. Are you saying that you then challenge

the authenticity of that signature?
A. I said I'm not in a position to judge a signature. I'm not an expert in handwriting. We have people that do that that work for the estate and trust that have done that. You know, so.
Q. Okay. And what do they say?
A. I don't know if I'm in a position where I can share it with you.
Q. Okay. Well, I'd ask you to share it with me.
A. I'm sure you would.
Q. Yeah. Well, answer the question.
A. No objection from counsel? I have been advised that the signature isn't genuine.
Q. Who told you that?
A. I was -- that was what I -- I've heard. I can't remember who told me that.
Q. Now, there are two signatures on that page that you're looking at, and I think it's the fourth.
A. This, am I looking at the right page?
Q. Yes.
A. Because on this one there are actually three signatures.

Q. Well, there's two signatures that purport to be that of William Murray.
A. Oh, I apologize. Really?
Q. Well, you were here at Liz's deposition?
A. I sure was.
Q. And you heard her testify that he signed "agreed" and his initials and then above that before Dana Flavin he signed that other signature? You heard that?
A. I heard what Elizabeth said. You said there are two signatures here that I -- I see three signatures. You said no, there are two that relate to Mr. Murray. And this looks like a signature. This just looks like a blob.
Q. Now, which looks like his signature? The one that's written out?
A. The -- the marking that appears to be more of a signature is the one above the line.
Q. Yes.
A. Not only the line that's written but the line that's drawn.
Q. Yes.
A. That appears to be a signature. I don't know whose.

Q. You said that that appears -- that looks like Mr. Murray's signature?
A. I said it looks like a signature. I did not say it looks like Mr. Murray's signature. I said I am not a handwriting expert. I am not in a position to judge if it is or is not.
Q. So it --
A. This looks like someone's -- this looks like a signature, is my answer. Not Mr. Murray's, but it looks like a signature.
Q. So you're not saying whether this is -- that handwritten signature that says William E. Murray, you're not saying whether it is authentic or not? You're saying you don't have an opinion about that?
A. I don't know.
Q. Okay. And down below there's something that says agreed and some signatures?
A. I can't see that it says agreed, and I can't see a signature. It looks like a blob to me.
Q. Okay. Did Edward challenge the authenticity of the signature?
A. I -- I don't remember if he challenged it. I know that the signature would be important

to Edward. He would want to make sure that Mr. -- you know, that Mr. Murray's wishes were honored as well.
Q. Okay. Now, in February of 2006 was -- do you think Bill Murray was competent?
A. I feel that Bill Murray was competent in 2006 at times and at times not. It would depend.
Q. What would it depend on?
A. Time of day, how he was feeing.
Q. Food?
A. Things of that nature.
Q. Fatigue?
A. Yes.
Q. Drugs?
A. When you're on Park -- when you have Parkinson's you're more subject to ups and downs. But yes, I would say in 2006 he was in a -- in a position where he could be competent at times.
Q. So if I can summarize your position; that is, the estate's position on this debt, you say that the original debt dating from 1980 and any -- original debt from 1980 was barred by the statute of limitations?
A. I would correct you and say that the

original debt was pre 1980.
Q. Okay.
A. The debt was then put into an agreement in 1980.
Q. It was memorialized by --
A. Memorialized into an agreement in 1980.
Q. Okay. And that you believe is barred by the statute of limitations?
A. I have been advised that the claim is barred because of the statute of limitations which is a result of the -- of Elizabeth not keeping the claim current or having filed an action against her father prior to the time of his death.
Q. How could Elizabeth have kept the claim current?
A. I don't know all of the details. I would advise -- I would have had a counsel. I would have asked a lawyer. And she had a lawyer that drew the agreement in 1980. She had an accountant that she met with in '92 that I remember that she spent time with both of them asking how to keep the claim current. So I mean, I -- would be my answer.
Q. Now, did as far as the -- back to the

note again. And the estate's position on this 2006 renewal, you say that it's not an authentic document?
A. I said to you I'm not sure if the signature is valid or not.
Q. Okay. But you don't necessarily challenge Mr. Murray's competence at the time this document was signed?
A. I said that he had competency, times when he didn't. I don't know what his position was when he signed this. I wasn't there, didn't know about it.
Q. So you don't have any basis for challenging his competence in February 19 -- I'm sorry, 2006, February 9, 2006?
A. Could you restate the question?
Q. Do you have any reason to believe or any evidence that Mr. Murray was not competent on February 9, 2006?
A. I feel the fact that he didn't share this document with his advisors and people that he trusted and counted on on a daily basis makes me suspect this agreement, suspect it's validity.
Q. Does that mean that you think Mr. Murray was not competent on February 9, 2006?

A. I feel that if Mr. Murray was competent and knew what he signed he would have ensured that this document ended up in the hands of some -- of either James Mahl, Hilton Smith, Edward Bennett or some of his -- someone who is involved -- has been involved in his estate planning.

This is a significant issue for Bill Murray's wishes, his desires to treat all of his daughters equally. If a $12 million claim is paid he is not treating all of his daughters equally. He's -- he's knocking Brianna Marie out of the game. That was not what Bill Murray told me he wanted to do.

So I -- I think this is inconsistent with what Bill Murray had planned and intended and desired for him to have entered into an agreement that would have eliminated Brianna's involvement as a beneficiary of his estate.

Q. Are you saying that if indeed Mr. Murray signed this on February 9, 2006 he was not competent?

A. This goes -- this -- the paying this claim goes against what Bill Murray told me he wanted to do, goes against what he shared with me

through his will that he wanted to do.

Q. Does that mean that you felt that he was not competent?

A. That makes me feel he didn't realize what he was doing if he signed this.

Q. Now, you were familiar with this debt that dated back to 1980, weren't you?

A. Can you be more specific?

Q. Well, before you received this October -- I'm sorry, February 2006 note, you were aware of the existence of the debt that dated back to 1980?

A. I am -- I was aware from when I got married to my wife back in 1977 that there was a claim that the three girls' mothers had against their father. I had known about that for a long time.

Q. And you have spoken with Mr. Murray about it over the years?

A. I have spoken to Bill about it. Yes, definitely spoke to him about it over the year.

Q. Was there a time when he acknowledged the debt?

A. He entered into an agreement, and I think it was 1980. It was a document drawn by an

attorney named Bill McDaniel from Atlanta, Georgia who met with Bill, worked with Bill. And they created an agreement, and that memorialized the debt and its repayment.

Q. Did he ever acknowledge the debt after -- the debt to you -- I'm sorry.

Did he ever acknowledge to you the existence of the debt after the 1980 signature?

A. Yes. He made payments on it after the 1980 signature. To me that was a, you know, an example of him honoring it.

Q. Do you -- can you tell us when the last time was that he acknowledged the debt or you're aware of that Mr. Murray acknowledged the debt?

A. Bill was -- in the early '90s was creating financial statements for a group of creditors that were pretty aggressively coming down on him. It was a bad time for his business, and he was stating his obligations. And in a financial statement that he -- or a summary that he presented to Signet Bank and the Small Business Administration he acknowledged $1.4 million to the Minnie Holmes estate.

Q. That's how much the debt had grown at

that point?

A. George, I didn't create the statement, and I didn't challenge him on the amount of money that he put in or -- you know. But your -- your assumption would be as good as mine. But I -- I guess he thought that's about how much he owed at that time.

Q. And did he ever acknowledge the debt after the filing of that financial statement in the early '90s?

A. I -- I can't remember if he ever acknowledged it after that. I do know that he denounced the debt.

Q. Oh, really. When?

A. Many, many, many times after that date, and he -- he denounced it sometimes before the date of the agreement. You know, he -- he and his daughters went back and forth.

Q. What do you mean he denounced it?

A. He said I don't owe you the money; I've put you through schools and colleges and I've paid for your weddings and I bought you houses and I did this.

And being involved with Bill financially as I have, Bill was very -- you know,

he -- he was supporting his daughters' needs on a regular basis whether it be reeducating them and giving them an allowance or helping a daughter that was ill or a variety of issues.

And what Bill told -- I was -- I remember late -- probably mid to late '80s Pam, Liz and Catherine came to New York, met with Bill Murray in his office privately because he had stopped making his payments. They were very upset, and Bill told them at that time I'm not going to pay you anymore; if you do anything I'm going to cut you out of my will, and I'm going to give you everything I own, just leave me alone; I'm -- you know, you're going to be in my will; I'm going to treat you fairly; I'm going to take care of you in my will.

And Pam and Catherine came out of Bill's office, and in front of Bill's legal assistant, his legal secretary, Pam told us how she felt about her father and what a -- how disappointed she was. Liz came out shortly thereafter and the three of them went to lunch and...

Q. The three of them, you mean your wife --

A. Catherine, Pam and Elizabeth went to a lunch or left together. I don't know exactly what they did, but they were very disappointed.

Q. In his repudiation?

A. Saying I am not going to pay anymore.

Q. After that Mr. Murray did affirm the debt again, though?

A. I'm not aware of that.

Q. Well, we know that in the early '90s he signed a financial statement reflecting the debt?

A. I don't know that. I can't remember that right now.

Q. I thought you told us that the Signet Bank financial statement was -- reflected the debt of $1.6 million?

A. Actually, 1.4.

Q. 1.4.

A. And he put it on a financial state.

Q. Sure.

A. In the early '90s. So I guess -- okay, so he did acknowledge it there. But to his daughters, I -- you -- you're moving around a little bit. It confused me.

Q. Well I didn't ask whether it was to

his daughters.

A. Well let's start over. Let's start over so I'm not unclear.

Q. Are you aware of any time after the -- his financial statement where Mr. Murray acknowledged or reaffirmed the debt?

A. After the what financial statement?

Q. After the financial statement with Signet Bank?

A. And the Small Business Administration?

Q. Yes.

A. I'm not sure. I don't think so.

Q. And after that financial statement was there any time that you are aware of that Mr. Murray specifically repudiated the debt?

A. To me many times. I can't remember exactly when.

Q. Before or after this financial statement?

A. After the financial. This is mid '90s through the time of his death. Bill told me he was going to take care of his children the way he has provided through his will and trust and that he was not going to make anymore payments.

I did see a demand letter or it went

through my office as a demand letter in 1992, which was shortly after we met with Gail Margolis Reid and closed down the -- the financial, the cash side of the trust, the -- the Minnie Farmer Holmes will, rather, not trust. But that would be it.

Q. Was this repudiation that you talk about ever communicated to the girls to your knowledge?

A. Well, in the office that day.

Q. Let me -- let me -- after the signing of the financial statement to the SBA and Signet Bank was the repudiation that you have talked about, you said many times after that he told you, was that ever communicated to the girls to your knowledge?

A. I'm -- I'm -- I'm sure it was. I can't remember exactly when.

MR. KEFALOS: Okay. Let's mark this as number 2.

(Smith EXH. 2, 1980 Agreement, marked for identification.)

THE WITNESS: Do you want me to set these here? I have it in front of me.

BY MR. KEFALOS:

Q. Good. Can you identify this?
A. This is a memorialization, memo, whatever it is. This is a document reflecting the agreement between the parties for Mr. Murray to pay his daughters the money he had taken from his wife's estate dated April 22, 1980.
Q. And when did you first learn of this document?
A. I was -- I was aware of the document when it was being created to some extent from a distance, but I knew it was being created. I had spoken to Bill about it during its creation. So I would say some -- you know, a few months before. I can't remember exactly, but I -- I had knowledge of it.
Q. Do you know how it came about? I mean, do you know what the negotiations were or discussions were that led up to it? Were you involved in any of those things?
A. Essentially the girls wanted to have money paid back that was due from their mother's estate. That's this -- you know, they wanted to get paid. And this was a way to create an agreement that would demonstrate and document how it would get done.

Q. When did Minnie Murray pass? Do you remember?
A. She died sometime in 1967.
Q. Sorry. 1980 is 13 years later?
A. A in math.
Q. AMF?
A. You just -- A in math. You just came up with it.
Q. Oh, A in math?
A. '67 to '80 is 17 years. Yes, sir.
Q. That's more than the statute of limitations. Why would -- Mur -- this -- this obligation is 13 years old. Yet Murray reaffirms it way past the time of statute of limitations has expired?
A. He was in a position to.
Q. Okay. Now, Mr. Murray did make some payments on account of this, didn't he?
A. That's my understanding.
Q. And he stopped -- he made a payment of I think $19,000 and then he stopped further payments. Do you remember that?
A. I don't remember. I -- what I testified, what I said to you is I know he made a few payments.

Q. Did the -- did you participate in any efforts to collect the debt?
A. I was helping the three girls on this matter with their father I think twice formally and several times informally.
Q. All right. Let's look at this document which we'll mark Exhibit 3.
(Smith EXH. 3, 4/6/84 Letter From Hilton Smith, marked for identification.)
BY MR. KEFALOS:
Q. Can you identify this?
A. This is a letter from me dated April 6, 1984.
Q. It's to you, isn't it?
A. Oh, it is. It is, yeah. It's to me, 1984, April 6, signed by Pam, Elizabeth and Catherine.
Q. Okay. What is the -- what's it about?
A. This is -- this letter is to request and authorize your representation of the three beneficiaries of the estate of Minnie Farmer Holmes -- Minnie Holmes Murray, rather, deceased, with regard -- with specific regard to the following items.
Q. And was one of the items that they,

the girls, enlisted your help in the collection of that debt?
A. They -- the exchange of the note from William E. Murray to the estate in the amount of $240,000.
Q. Did you under -- how -- how did they come to hire you?
A. Well, my assumption is they felt I could help them.
Q. And did you undertake to help them?
A. I did.
Q. And did you consider yourself acting as their representative in their efforts to collect this debt?
A. Well, I don't know if I felt I was their representative. I was -- I am not a lawyer, George. What I am is I was working for my father-in-law at that point or with my father-in-law. We were partners. We did a lot of things together in 1984, had done a lot and have done a lot since. And the three girls felt that I could assist them in making some headway.
Q. Did you think you could assist them in making headway collecting this debt?
A. Yeah.

Q. Okay. Did you -- what did you do?
A. I did a lot of things. I talked to my father-in-law.
Q. What did he have to say?
A. He told me I'm really not going to pay anymore money, I'm going to take care of them through my -- my -- my last will and testament.
Q. Okay. Besides talking to your father-in-law and having him tell you he wasn't going to pay did you do anything else?
A. Yeah. I met with a fellow named Jim Holmes, who was running Columbia Office Supply, and they had not received any monies or information from him for a decade, and I was able to take that situation and correct it and make it so that they started getting a monthly check, making sure that they were kept in the -- in the groove of what was going on with Columbia Office Supply, which was a company that had been owned by Minnie Farmer Holmes's family in Columbia.
She -- her last name, obviously, was Holmes. And Jim Holmes, her brother, ran that business, which was a family company. They were in the office supply business, and they also then built a warehouse which was a successful venture

for the company and it resulted in some nice distributions to -- to the girls.
So I did that. Let me look at the rest of the letter. Maybe I did something else.
Q. What I'm interested in --
A. Well, okay. You ask the questions.
Q. And what did you do besides talking to Bill Murray to help them collect this debt?
A. Okay, to collect the $240,000?
Q. Yes.
A. Just speak -- Bill Murray was the person who was the decisionmaker. So I -- he was -- really the only thing I could do with that was to talk to Bill and plead and urge him to find a way to resolve this matter with his daughters so that everybody could be happy.
Q. All right. Did he acknowledge that he had made the debt?
A. Did he acknowledge the debt to me?
Q. Did he acknowledge that he had made the debt, that he had entered into the debt?
A. He did in the agreement of 1980.
Q. I'm interested in knowing --
A. Well, this is after 1980.
Q. Sure.

A. This is 1984 when they engaged me.
Q. Yes. Okay.
A. After that did he admit it again?
Q. No. At -- in your efforts to talk to him in 1984 did he say, okay, I know I made this debt, but I'm not going to pay it? Is that what his position was?
A. And just from my standpoint, we're talking 30 years ago. My recollection is what I have shared with you: Bill Murray felt that he had repaid his daughters through his generosity on an ongoing basis as of 1984 and thereafter, that he had made significant gifts and supported his daughters in a variety of ways so that he didn't feel he should be in a position to make anymore payments on the 1980 agreement.
Q. Okay.
A. That's what I remember.
Q. That's his position in 1984?
A. That's what I remember, general discussions.
Q. All right. Let's look at this document, which we'll mark as Exhibit 4.
(Smith EXH. 4, Check 0555, marked for identification.)

BY MR. KEFALOS:
Q. Can you identify this check?
A. This is a check from William E. Murray dated February 24, 1986 to the estate of Minnie Holmes Murray for $19,200. And it says 1984 interest in the memo.
Q. Were you aware of this check at the time it was written?
A. I can't remember.
Q. Now, this -- this original note was made in 1980, and this payment is six years later, 1986. Statute of limitations is --
A. Isn't there -- isn't there a schedule that goes with this document, this '80 agreement? Wasn't there a schedule of when payments would be made?
Q. Yeah. On halfway through that Exhibit Number 1 you'll see that the first payment was due October 13, 1980.
A. Wait. Wait. Wait. Exhibit Number 1 is --
Q. Yeah. I'm sorry.
A. The agreement of 1980 is Exhibit Number 2 in my pile.
Q. In Exhibit Number 1, halfway through

Exhibit Number 1 there is a schedule. It's probably in Exhibit -- if you'll look at Exhibit 2, that schedule is contained on the second page. Maybe that's easier.

A. Okay. Well, Exhibit 2 when I look at that, and the reason I was asking for this is it reflects that for the first three years no payments were required.

Q. Okay. And the first pay was due October 14th --

A. First payment was due -- it looks like it says September or October 13, 1980.

Q. Good. And that's what I said.

A. Okay.

Q. The first -- this payment was due October -- October 13, 1980, and Mr. Murray writes a check in 1986 on account of the payments that were due. And would you agree that that's more than six years later?

A. Did he write any other checks?

Q. Would you agree that's more than six years?

A. I agree that 1986 is six years after this agreement was entered into.

Q. Statute of limitations had long since

run?

A. Is that a question?

Q. Yes.

A. Again, Mr. Murray was in a position where he could ignore the statute of limitations.

Q. Sure. But he didn't. He chose not to. He chose to affirm the debt after the statute had run in 1986?

A. He wrote a check.

Q. Okay. Did you make any efforts to get him to pay after that time?

A. After 1986?

Q. Yes.

A. I can't remember.

Q. Did you talk with Mr. Murray about the debt around the time he wrote this check which is marked Exhibit Number 4?

A. I don't remember it precisely, George.

Q. Do you remember whether he repudiated or acknowledged the debt to you at that time?

A. I don't remember.

Q. Let's look at what we'll mark as Exhibit Number 5, which is a letter dated October 2, 1991.

(Smith EXH. 5, 10/2/91 Letter, marked

for identification.)

BY MR. KEFALOS:

Q. Have you ever seen this letter before?

A. Yes.

Q. All right. Tell us about the letter. How did it come about?

A. I'd read the letter.

Q. Pardon me?

A. I'd read the letter. I think it's self-explanatory.

Q. How did the letter come about? I'm not asking what's in it.

A. I'm not sure, other than it's written by my wife to her sister.

Q. Were you aware of the letter before it was written?

A. I'm not sure.

Q. Look at the second paragraph on the second page, second full photograph on the second page.

A. I am also very concerned. Is that what you're --

Q. The second paragraph on the second page?

A. On the second page, okay. The one

that starts obviously very busy lives?

Q. Yes. It says: I would like to request that we have a third party handle the finalization of these matters, and Hilton has offered to do so previously and now again.

Had your wife talked to you about helping them collect the debt from Mr. Murray in 1991.

A. I think that this was really more a matter -- as I look at this letter and from what I'm remembering, George, this was a letter that was more focused on trying to get a handle on the financial situation with the Minnie Farmer Holmes will, assets.

Elizabeth was the administratrix. She was not providing any information to my wife regarding what was happening with the money, where it was, what the balances were, who she was making divisions to. And the three of them felt there was value in bringing the account for the will to a close.

So that was -- this was a -- this letter was really the purpose was to try to get a handle on the assets of the -- of the will's assets.

Q. Wasn't it also related to the collection of the note?
A. Well, that was one of the assets.
Q. Okay. Well, that's what I'm interested in.
A. Well, be more specific for me. I don't mean to give you information you don't want.
Q. Did she talk with you; that is, your wife talk with you about helping the three girls collect this note before she prepared this letter?
A. I'm sure we did.
Q. All right. And did you agree to work on their behalf?
A. I'm sure I did.
Q. Okay. Look at the last paragraph. There's a sentence. It says: Whether or not he honors the debt at this time?
A. Where? I apologize. Where are we looking?
Q. Last paragraph on the second page.
A. Yeah.
Q. Whether or not he honors his debt at this time we need to remind him of it?
A. Last paragraph, whether. Okay, whether or not he honors his debt at this time we

need to remind him of it, especially prior to dissolution of the estate.
Q. And did the girls ask you to help remind their father of the existence of the debt?
A. At any specific time?
Q. At this time.
A. At the time of this letter?
Q. Yes.
A. I know that after the letter was written they asked for me to be involved in bringing the -- this -- the -- the liquidity, the cash of the will to a head to help get that accounted for. They --
Q. Does that include the collection of the note? That's all --
A. You interrupted me.
Q. I'm sorry, but I --
A. You don't want me to finish?
Q. Well, I want you to answer --
A. I'm trying to, but you interrupted me.
Q. I apologize for interrupting you. Go ahead and finish your --
A. So as a part of getting physical control over the trust one of the assets, certainly, George, would be this debt due from

their father, absolutely, as it would also include other assets and cash in the accounts and stocks and other items that they owned. That was the overall purpose of this letter that included an interest in collecting money from their father.
Q. The first sentence of that last paragraph on the second page says --
A. The first sentence of which paragraph, the last?
Q. Well, I guess it's the next to last paragraph. It says: There is also the matter of the note from our father which all of us are hesitant to discuss with him.
Do you see that? Do you know why the girls were hesitant to discuss that with him?
A. It was an unpleasant subject.
Q. The last sentence of that paragraph: Hilton or Dan would also be able to act as our representative without the emotional trauma we incurred several years ago.
Do you know what several years ago refers to?
A. You know, George, I'd be guessing.
Q. Well, you were part of what was going on at the time, weren't you?

A. Ab -- I've been a part of it, but for me to tell you what she's referencing in that sentence specifically I would be guessing.
Q. Well, go ahead and guess.
A. So without knowing, I'm sure, I think that the last most traumatic time after this letter of '92 or '91 was when they met with their father in the office in New York and he told them I'm not go to pay you, and if you have a problem, tough. But I'm not sure that's what my wife was referring to in that sentence.
Q. Well, do you remember if they experienced some emotional or if your wife experienced some emotional trauma as a result of that meeting?
A. Of the meeting in my father-in-law's office when he said he wasn't going to pay?
Q. Yes. Yes.
A. Yes. That was hard for all three of them.
Q. Did you agree to act on the girls' behalf?
A. I believe I did. I -- I'm sure. I remember I did, yes.
Q. What was your job to be with regard to

the note?
A. With regard to the note, I had the accountant, Gail Margolis Reid, provide a schedule and detail of the original amount that was due and then trail it with interest and what other charges there might be, but essentially account for the debt and put it in a fashion that it could then be turned into a demand to their father.
Q. Okay. And did you make a demand on Mr. Murray?
A. I didn't make a demand, but I was supporting them with this job I did. I helped them come up with a -- an accountable document, you know, account -- you know, a document that was accountable reflecting the money that he owed.
Q. Did you talk to Mr. Murray at this time about the debt? This is --
A. I'm sure that during --
Q. This is 1991.
A. I'm sure at some point from '91 to the time the demand was made I had discussions with Bill on this subject.
Q. Do you remember what his position was at that time about the note?
A. I think it would be -- I can't

remember exactly what his position was.
Q. Let's look at what we'll mark Exhibit Number 6.
(Smith EXH. 6, 10/9/92 Letter From Pamela, marked for identification.)
BY MR. KEFALOS:
Q. Can you identify this?
A. This was -- this isn't signed by Pamela, but it's signed by Elizabeth and Catherine. I think it was later signed by Pamela. They were giving us authority to be able to communicate with the probate court or whoever in an effort to provide an accountable demand position I believe for Mr. Murray. You know, this -- letting this go to the probate court. Maybe the Gail Margolis Reid, the accountant wanted something like this.
Q. So this is a year after that October 2, 1991 letter?
A. Uh-huh.
Q. Had you been working on the girls' behalf for that whole year?
A. I can't remember, but it was -- you know, it took some time. It entailed a trip to Atlanta with Pam, Liz and -- and I, Catherine and

the accountant. So it took a period of time. I think we finished it up in around December of '92 is my guess. I'm not sure.
Q. We have some letters. Let's look at this next one we'll mark as Exhibit 7.
Smith EXH. 7, 10/19/92 Letter, marked for identification.)
BY MR. KEFALOS:
Q. Can you identify this letter dated October 19, 1992?
A. Yes. And as I was guessing, this was probably -- I would say this was also something Gail Margolis Reid wanted to have authorization because we -- I think she had to go back to the IRS to get copies of income tax returns and they needed some authority to do so. We were trying to account for where all of the money had gone since Elizabeth had become administratrix.
Q. Do you remember if you spoke with Mr. Murray at the time?
A. About what?
Q. The note.
A. I believe that in October of '92 I probably spoke to Mr. Murray about the note.
Q. Do you remember what his position was

at that time?
A. I can't remember exactly.
Q. But this letter, which is Exhibit Number 7, is part of the record of your working on behalf of the girls to collect the note from Mr. Murray?
A. This letter was the result of efforts that I was making and Dan Kelly were making to account and provide what they needed to balance out who was due what or what was due.
Q. Let's look at this. We'll mark it Exhibit 8.
(Smith EXH. 8, 11/4/92 Letter from Hilton Smith to Pamela Stack, marked for identification.)
BY MR. KEFALOS:
Q. Can you identify this?
A. This is a letter from Hilton Smith dated November 4, 1992 to Ms. Pamela Stack.
Q. And was this one of the documents that you generated in furtherance of your work on behalf of the girls?
A. It's both me and Dan Kelly. Right. That's where I'm sending her these statements.
Q. You -- you were actually charging your

wife and her sisters for the work you were doing to try to recover this note?
A. Sure. Right. I was engaged. They were paying me to do what I was doing.
Q. You know there is a -- there is a legend there at the bottom of the document, at the bottom right. It says: Holmes-M/Stack.P.
Did you have a computer directory for the work you were doing on the Minnie Holmes Murray estate?
A. I don't think that's my notation.
Q. Who -- whose would that be?
A. I don't know.
Q. Well, it would have been generated by whoever was producing the letter. Did you have a secretary at the time?
A. I am sure I had an assistant or a secretary.
Q. Okay. Do you have any records that date back to the work that you were doing on behalf of the girls to collect this debt from Bill Murray?
A. Not at this time.
Q. The -- what happened to the -- the drive that contained this letter?

A. I have no idea. I mean, that's 30 years ago. I don't even know if we had a drive. This might have been typed. I don't know.
That's also on the bill, my bill of -- my bill of November 2 -- November 4, 1992 is another one of those notes.
Q. The legend?
A. But that's not something I ever remember. That's not something I believe we ever put on any of our stationery or any of our correspondence.
Q. Well, the bill says: Holmes-M/HCS-inventory, I-N-V.
A. I think that's invoice. I-N-V might be invoice. That's my guess.
Q. You're right. It is.
A. We didn't put that on that letter.
Q. Who would have put that on a letter that you sent?
A. I don't have any idea.
Q. Are you're kidding?
A. Well, I don't do that. I mean, we don't do that. The only thing we put is if I have an assistant type something they put their initials down, but we don't do things like that.

Q. You don't keep a record of the directory from which the document comes?
A. I put things in files.
Q. Somebody did it.
A. Somebody did it. I agree with you on that.
Q. Let's look at --
MR. KEFALOS: Let's mark this as Exhibit Number 9.
(Smith EXH. 9, 11/13/92 Letter From Hilton Smith to Gail Margolis Reid, marked for identification.)
BY MR. KEFALOS:
Q. This is a letter of November 13, 1992 from you to Gail Margolis Reid?
A. Uh-huh.
Q. What prompted you to send this letter?
A. Elizabeth, Pam and Catherine had agreed to met in Atlanta on the 12th of December to complete a review of the estate's books and records.
Q. Was this letter generated as part of your work on behalf of the estate of Minnie Murray to recover the debt?
A. As I stated in two letters ago, my

effort was to help the girls pull the financial status of the estate together so they would be able to liquidate the cash assets and have a handle on the balance of the assets of the estate and have them accounted for.
Q. And did that include the collection of the debt?
A. That was one of the items that was an asset of the estate at that time, absolutely.
Q. Now, this letter which comes from your office also contains a legend at the bottom, Holmes-M/Reid. You still --
A. I still -- George, I have never noticed that before. It's not something we do on our correspondence.
Q. Well, it is something that you did on your correspondence. It appears on all of your correspondence.
A. I don't think it appears on all of my correspondence. It appears on all of the correspondence you're pulling up. But we -- we don't -- I don't use that.
Do you have an original from your clients that they provided to you of that letter? I don't mean to ask you a question, but I'm just

-- if you want to figure it out, maybe that would be a way to. But I'd be happy to help you figure out who put that on if I can.

Q. Well, I appreciate that. Let's look at the next exhibit, which is marked -- we'll mark as Exhibit 10.

(Smith EXH. 10, 11/16/92 From Hilton Smith To Thomas Berner, marked for identification.)

BY MR. KEFALOS:

Q. This is a letter that's dated -- sorry. This is a letter dated November 16, 1992 from you to Thomas Berner. This also contains the legend at the bottom.

A. Which I don't know how it got there.

Q. Yeah. Was this letter generated as a part of your effort to help collect the debt to the estate of Minnie Murray?

A. Well, the second paragraph says: Creation of a hold harmless agreement that protects Elizabeth, Pam and Catherine. And I guess that was because they wanted to liquidate without going through probate.

So that appears to be part of the purpose of this letter, which was as overall my

trying to assist them in doing what they wanted to do with the liquid assets of the estate.

Q. Why was a hold harmless agreement necessary?

A. I think some lawyer suggested it, which is probably Mr. Berner, is a guess. Again, I'm not -- I'm not an attorney, George. But I use attorneys when I need advise. So I think that's probably where I got that from.

Q. I'll show you what we'll mark as Exhibit Number 11.

A. You're going to note that I still don't know how that Holmes thing got on there. Did you put these all in here?

(Smith EXH. 11, 11/17/92 Letter from Hilton Smith to Thomas Berner, marked for identification.)

BY MR. KEFALOS:

Q. Exhibit Number 11 is a letter from you to Thomas Berner dated November 17, 1992, and it also contains that legend at the bottom?

A. Which I don't know how it got there.

Q. Uh-huh. Was this letter generated as part of the work that you did to recover the debt to the estate of Minnie Murray?

A. Yes, sir, it was.

MR. KEFALOS: Let's mark this next one as Exhibit 12.

(Smith EXH. 12, 11/20/92 Letter to Hilton Smith from Dan Kelly, marked for identification.)

BY MR. KEFALOS:

Q. This is a letter from Dan Kelly to you dated November 20, 1992. Were you contemplating a partial liquidation of the estate of Minnie Murray at the time and keeping the note from Bill Murray as an asset?

A. It would be liquidating the liquidity, keeping the ill-liquid assets, which included a note from Mr. Murray and also interest in Huger Street Properties in Columbia, and I believe there were some -- I'm not sure, but I think there were some stocks. So there would have been some assets other than what you just mentioned left behind to be dealt with within the trust still or the estate still.

Q. Okay. And this letter was generated as part of your work?

A. Well, actually, this is a letter from me to Dan Kelly. Dan Kelly was assisting me in

the work or I was assisting him. We were working together, and he was communicating with me. This is a letter from him to me.

Q. Okay. Let's look at what we'll mark as Exhibit 13.

(Smith EXH. 13, 12/1/92 Letter From Gail Margolis Reid to Catherine and Elizabeth, marked for identification.)

BY MR. KEFALOS:

Q. This is a letter from Gail Margolis Reid to Elizabeth, Catherine, Pam dated December 1, 1992. Showing a copy to you?

A. And Dan Kelly.

Q. And Dan Kelly?

A. Yeah.

Q. What was this about?

A. Whatever. It's about the letter. Do you want me to read the letter to you?

Q. No. I want you to tell me what was the background for the letter?

A. Well, Gail Margolis Reid was the CPA that was assisting the girls: Pam, Liz and Catherine, in liquidating the cash portion of their mother's will. So she mentions that there's a meeting coming up on December 12th. I have been

reviewing all of the estate's records in my possession to determine the availability of the documents requested in Hilton's letter dated to me November 13, 1992.

So it looks to me like Gail is working to be in a position to assist in the summation of the cash assets of the will of Minnie Farmer Holmes.

Q. This was a time when you and Catherine and Pam and Elizabeth were all on the same side trying to collect this debt?

A. I was working for them, yeah.

Q. Let's look at what we'll mark Exhibit 14.

(Smith EXH. 14, 12/2/92 Memo, marked for identification.)

BY MR. KEFALOS:

Q. This is a memo dated December 2, 1992 from you to the girls. Why did you write this memo?

A. As you know, we are meeting on December 12th. So this was a letter being written in anticipation of the upcoming meeting with the accountant. And we wanted to talk about life insurance. We wanted to talk about Uncle Jimmy,

which was the Huger Street Limited Partnership. We wanted to talk about the hold harmless from Tom Berner, and we wanted to talk about the balance of the monies due from William E. Murray. And I said: I look forward to seeing you.

And this has that Holmes and estate thing that I don't know how that got on there.

Q. Let's look at number -- what we'll mark as Number 15.

(Smith EXH. 15, 12/12/92 Memo, marked for identification.)

BY MR. KEFALOS:

Q. Can you identify this?

A. This is a letter dated -- or it's a memorandum dated December 12, 1992 to William E. Murray from Pam, Elizabeth and Catherine, his three daughters.

Q. Yes. Did you have any hand in drafting this?

A. I might have had a hand, but I -- I -- I didn't draft it. I would -- this -- this appears to me to be written by a lawyer, but I'm -- I'm sure I could have provided insights for a part of it, I mean details of it, because I had been working this.

Q. Did this memorandum -- memo come as a result of your December 12th meeting with the girls?

A. This was something that they brought up themselves I believe. I'm not sure, but they wanted to turn it into community property. I think this was on the advice of counsel. I'm not positive, but I think. It's significant.

Q. Tell me what you think. What was the reason? What was the purpose of this December 12, 1992 memorandum?

A. Well, they're saying here that this shall become community property between Pam, Elizabeth and Catherine.

Q. What shall become community property?

A. The previous part of the paragraph. We enumerate the above mentioned -- to me I think it's -- the document states for itself.

Q. What did you understand the girls intended to accomplish by this document?

A. I don't remember.

Q. Well, you had a hand in the preparation of the document. What did you intend to accomplish?

A. I didn't want to accomplish anything.

I was trying to help them accomplish what they wanted. I think there was something about the claim would be stronger if it was all three of them or not. I -- I don't remember.

Q. Did you deliver this document to Mr. Murray?

A. No.

Q. Did you talk to Mr. Murray about this document?

A. I don't remember talking to Mr. Murray about this. I -- I know I mentioned the -- the default notice that was coming to them, but I don't remember going into what Pam, Liz and Catherine were going to do for themselves. I don't remember that.

Q. Okay. This is 1992, and the last payment that Mr. Murray had made at this point was in 1986. So this is six years later?

A. Okay.

Q. Statute of limitations had run out.

MR. HOOD: I thought the statute of limitations was six years.

MR. KEFALOS: Well, it depends.

MR. HOOD: You said that before, and it was less than six years.

MR. KEFALOS: Let's mark this as 16.
THE WITNESS: So is it or is not?
MR. HOOD: Well, I can't really give you advice, but you can ask him what the statute was.
(Smith EXH. 16, 12/11/92 Document, marked for identification.)
THE WITNESS: What is the statute?
MR. KEFALOS: Depends on what state you're in. In Georgia it's six years. In --
THE WITNESS: How would it apply to us, this document? What would be the statute --
MR. HOOD: At that time it was six years, though, wasn't it?
MR. KEFALOS: No. It's three years in South Carolina.
MR. HOOD: Y'all agree with that? I thought things got reduced in the '80s or '90s maybe.
MR. KEFALOS: This is '92. Anyway, why don't -- we'll take a break at this point.
THE WITNESS: If you'd like to break, absolutely.
MR. KEFALOS: No. I think the report -- the videographer says he has five minutes left.

So this is a good time to take a break.
VIDEOGRAPHER: Going off the record: The time is 11:18.
(A recess was taken.)
VIDEOGRAPHER: We are back on the record. The time is 11:30 a.m. This is the beginning of video number 2 in the deposition of Hilton Smith. Please proceed.
BY MR. KEFALOS:
Q. Now, we talked earlier about how to keep the debt current.
A. How to keep the debt current.
Q. Yeah.
A. I don't -- refresh me, please.
Q. Well, when I asked you first about the debts of Minnie Murray's estate, you said the real issue was why Liz didn't keep the debt current.
A. I apologize.
Q. With the issue of keeping the debt current, would you just take a look at Exhibit Number 16?
A. Okay.
Q. Can you identify this?
A. The first page?
Q. Well, there's two pages to it. Either

the first or the second page.
A. Well, I'll go to the second page. The first page just looks like a fax cover sheet.
Q. Yeah.
A. And this is a unsigned letter that says certified mail and notice of default, dated December 12, 1992. And this most likely is the document that came out of our meeting with Gail Margolis Reid, and it would be my guess that this is -- I think -- I think this is her draft cover page.
Q. If you look at the bottom, it contains that legend that's on all of your correspondence.
A. Well, it's on the exhibits you have presented. I don't know if it's on all of my -- I -- I -- I've told you, I don't recognize that signet or logo or whatever. And it's interesting, this one is on the other side of this -- of the paper.
But I continue to tell you, George, it's not our practice. I don't know how that got on there. Is there anything else about this besides my -- that logo that your -- or those words that you want me to talk about?
Q. Well, did you author this letter?

A. No.
Q. Well, it comes from your office. Look at the cover sheet.
A. Well, it was sent from my office, but that doesn't mean that I created it. There are a lot of things I forward that I don't create. And again, I am not a lawyer. I don't write default letters on a normal basis, and I don't believe I would have done this myself.
Q. So you --
A. I believe it came from, I was -- as I said earlier, this is at the time we had the meeting with the accountant in Atlanta. If you remember some of the correspondence earlier, Gail mentions we're going to meet December 12th. So my gut is she prepared this. That would be a guess. But it came -- I had it in my file and I forwarded it.
Q. Well, you had it in your file. It was prepared on your computers.
A. I'm not -- I don't agree. I don't agree with that.
Q. And you forwarded it?
A. I don't agree with that, honestly. I don't feel that I would have drafted this letter.

Q. Did you think that it was a good idea to send this letter?
A. I was forwarding it to Elizabeth Murray -- or no. This is from Elizabeth Murray to me.
Q. No. It's to Elizabeth Murray.
A. Oh, from me.
Q. From you?
A. So I sent it to Elizabeth Murray. Sure. I thought it was fine to send to her.
Q. No. Did you think that it was a good idea for Liz, Catherine and Pam to send this letter to their father making demand on the note?
A. They were advised that's how they can keep their claim open.
Q. All right. Did you -- is that what you thought, too?
A. That's what we were told. I -- I'm not a lawyer. I'm not an expert at these things. I was trying to help them collect this money. So this document I do not believe I drafted. I do think that for them to keep this claim current, which we wanted to do and that was our effort, a part of the accounting, that it should have been sent.

Q. Okay. Did you think that they should; that is, the girls, should renew this letter, this demand on a periodic basis in order to keep the debt current?
A. I remember hearing the accountant, Gail Margolis Reid, tell Elizabeth that, tell us all. We were sitting at a table like this. Gail was at the end. We were on either side. And I remember her saying this is -- this needs to go out on a regular basis. I don't remember how often.
Q. And did you believe that?
A. I didn't question Gail Margolis Reid.
Q. All right. And did you encourage the girls to write those letters on a regular basis making demand?
A. I don't remember doing that.
Q. I'm going to hand you a package of letters which we'll mark as Exhibit 17.
(Smith EXH. 17, 12/17/94 Letters, marked for identification.)
BY MR. KEFALOS:
Q. And ask you, have you ever seen these letters before?
A. I never saw them before my

father-in-law died.
Q. And how did you first come to see them after he died?
A. These were produced through the -- the litigation.
Q. Did Liz ever show them to you before the litigation?
A. No. No. Elizabeth never showed these to me. My father-in-law never showed these to me.
Q. Were you aware that the girls were sending these letters every two years?
A. No.
Q. Did you take any -- well, let me ask you. Did you take any action after this letter of December 12, 1992 to talk to Mr. Murray about collecting that debt?
A. I don't remember. I know that I had conversations with him, as I have told you. But I in general, I remember Bill Murray telling me, Hilton, I'm not going to honor this claim anymore and for the reasons I shared with you.
Q. And anymore --
A. You know, I've done all of these other things for my daughters: put them in school, bought them houses, dressed them, I just don't

feel that I need to, and that I'll protect them through their -- through my last will and testament.
Q. But were you working on the girls' behalf to recover this debt when you authored or wrote or sent that letter of December 12, 1992, which is marked Exhibit 16?
A. Exhibit 16?
Q. Yeah.
A. I did not draft that. I've testified. I did not do that. To the best of my knowledge, I didn't draft that, George. I believe it was drafted by Gail Margolis Reid. And at the time I was sitting at the table with them and working with them, and when I forwarded this document, the demand to Elizabeth, I was helping the girls.
Q. Good. And that's what I was interested in knowing. How long did you continue to help them try to collect this debt?
A. I don't know when I stopped trying to help them with regard to the debt. I talked to my father-in-law about it several times. I mean, I spoke to him about it near -- towards the end of his life even.
Q. Did you really?

A. Yeah.
Q. What was the circumstance for that?
A. We were in -- we were meeting and talking and I -- we were talking about what did Bill want to do, and he told me I'm taking care of my daughters; I do not intend to honor any claim from the Marnie estate -- or the Minnie Farmer Holmes estate; I'm taking care of my daughters through what I've done for them and what I will do through my last will and testament.
Q. When was that conversation? You said it was towards the end of his life?
A. Towards the end of his life. I can't tell you exactly. I saw my father-in-law almost every day for years at the end of -- towards the end of his life. I'd work out in the morning. I'd go over and see him for a couple of hours after I worked out, take a shower in his bathroom. We'd sit and talk.
Q. Did you --
A. So we talked about a number of things.
Q. Did you consider yourself still acting on the girls' behalf when you were talking to your father-in-law about the debt to Minnie Murray's estate during the end of his life?

A. No. No. I wasn't -- I wasn't representing anybody or working on anybody's behalf other than trying to find out what Bill Murray wanted.
Q. Well, you said you don't remember when you decided you weren't working for the girls any longer. Did you ever tell the girls, hey, girls I'm not going to work for you anymore to try to collect this debt?
A. I was im – you know, I was contract labor. I was working when I got paid. There were a lot of things that I did that I didn't get paid for. But as far as this matter, I was working for them during those periods and I got paid a few bucks and I did my best.
Q. Did you ever tell them that there was -- that you had decided that you were no longer going to pursue their claim?
A. I don't remember. I know that I never told them I was going to do it for the rest of my life.
Q. Okay.
A. I never represented I was going to be their advocate until the day I died on this matter.

Q. Well, that's fair. How long do you think they would have expected you to work on their behalf after this '92 letter?
A. I don't know. I don't know. But I think that it would have been incumbent upon the administratrix to do her job herself. She's certainly not doing my job.
Q. Well, I'm asking about what you thought.
A. And I'm telling you what I think. I didn't -- I never said I was going to do this forever.
Q. Sure. How long --
A. They never asked me am I still working for them. So I think it ended when -- when I stopped getting paid, and it over -- and it was over. I don't know. How long are you going to work for them?
Q. Well, you stopped getting paid long before this '92 letter?
A. So I did a few things to help, but it was voluntary.
Q. Sure. And when did you decide that you weren't going to help them anymore?
A. I never decided I wouldn't help them

anymore. I decided I was -- Mr. Murray changed his position. He decided I'm going to do it this way, and it was his choice, and he shared that with his daughters. So it was evident that either you're going to make Mr. Murray pay or you're not.
Q. Well, Mr. Murray had previously said he wasn't going to honor the debt and then did something to recognize the debt?
A. Well, the 1980 agreement.
Q. Yeah. So I'm interested in knowing when did you tell the girls, hey, girls, I'm no longer going to work on your behalf of try to recover this?
A. I don't remember if I said that or when I said it.
Q. So you don't even -- you don't remember even if you told them you're no longer working on their behalf?
A. I don't feel like I ever did stop working on their behalf. I mean, I have never done anything to hurt them. All I'm doing is honoring the wishes of Bill Murray. This isn't my debt. This is my father-in-law's debt. This is his estate. It's his will. It's his trust. These are what he -- things he wanted to do.

Q. Well, there's a difference between what he wanted to do and what he was obligated to do, and you were helping the girls enforce something that he was at one time obligated to do?
A. At one time I was employed to do that, and I helped them.
Q. And -- and you're telling us that you don't remember when, if ever, you told the girls I'm no longer going to help you?
A. I've said that I don't remember when I told them I wouldn't ever help them on their claim with their father or that I -- and I never said that I was going to do it for the rest of my life.
Q. Let's take a look at what we'll mark as Exhibit 18.
(Smith EXH. 18, Affidavit of Financial Condition of William E. Murray, marked for identification.)
BY MR. KEFALOS:
Q. We talked earlier about a financial statement that was provided to the -- was it the Signet Bank? Signal Bank?
A. I mentioned two com -- two entities, Signet Bank and the Small Business Administration. This document went to the Small Business

Administration.
Q. Okay. So you're familiar with this document?
A. I have seen this document before, yes, sir.
Q. Okay. All right. On page which is Bates number -- numbered 497 there is a listing of --
A. Just give me one second. Okay.
Q. There's a listing of the debts that Mr. Murray acknowledged at that time?
A. Item number 42 on page, doesn't say a number. But yeah, item number 42, I see the list of debts.
Q. Okay. And one of the debts that Mr. Murray acknowledged on August 2, 1995 was the claim of the estate of Minnie Murray?
A. I see that, $1 million 4.
Q. Great. And is that -- look to the last page there. Is that Mr. Murray's signature?
A. Again, I am not a handwriting expert. So I'm not really in a position to judge whether it's Mr. Murray's signature or not.
Q. Uh-huh. But you know that Mr. Murray submitted this to the SBA?

A. I know this was submitted to the SBA. Yes, I do know that this was submitted to the SBA.
Q. Okay. Now, this was 1995. That's more than ten years after the last acknowledgment of the debt.
A. Okay.
Q. Statute of limitations has long since run.
A. George, you're the lawyer. I'm not.
Q. And he reacknowledgeed the debt in 1995?
A. And again, I'm saying to you Mr. Murray is in a position where he can do that.
Q. Okay. Did you tell Liz about this document?
A. I mentioned to Elizabeth that the debt was acknowledged. I don't know if I mentioned the SBA or Signet, but I told her that.
Q. When was that?
A. I don't remember.
Q. It was at a time that you guys were still on the same side?
A. George, I wish you'd stop referring to us being on different sides. It's really inappropriate. Giggle, giggle. You want that for

the record?
Q. Yeah. Well, you were -- that was at a time when you were still trying to help them recover the debt?
A. Again, I have told you, I don't really know if I ever stopped. I never told them I wasn't going to do anything, but I shared information that was important to Elizabeth.
Q. Good. A couple of -- let's look at what we'll mark Exhibit 19.
(Smith EXH. 19, Mortgage, marked for identification.)
MR. KEFALOS: And you know what, let's put -- let's also add Exhibit 20 to that.
(Smith EXH. 20, Note, marked for identification.)
BY MR. KEFALOS:
Q. Do you -- can you identify Exhibits 19 and 20?
A. Do 19 first?
Q. Sure.
A. It says it's a mortgage from Wachovia Mortgage to the -- to William E. Murray as trustee of the William E. Murray irrevocable trust, and it's dated, this agreement, the mortgage is dated

February 3, 2006.
Q. Is that Mr. Murray's signature on the last page?
A. Did you put mine upside down to make it harder?
Q. I didn't intentionally do that.
A. You sure? George, again, I am not a handwriting expert. So I'm not in a position to tell you whether that's Mr. Murray's signature or not.
Q. Does it look like this signature?
A. I'm really not a handwriting expert and I'm not in a position to tell you whether it's his signature or not.
Q. Were you aware that Mr. Murray gave a mortgage to Wachovia on February 3, 2006?
A. I may have been. I can't remember it right now, but I may have been.
Q. All right. Do you deny that this is an authentic mortgage, a copy of the mortgage that Mr. Murray gave to Wachovia on February 3, 2006?
A. What I'm saying to you is I'm not sure -- I'm not testifying that that's Mr. Murray's signature. I am not saying that it's not an authentic document.

Q. And you don't --
A. I don't remember.
Q. You don't remember if you were aware that he was signing this mortgage at that time?
A. I honestly don't remember at this time.
Q. All right. And Exhibit Number 20 is the note that accompanies the mortgage. Were you aware that Mr. Murray signed a note at that time?
A. These are -- let me -- I think they're related documents.
Q. Yes, I think they are, too.
A. So I can't remember if I knew whether he signed this or not at the time. I may have or may not. I probably did know.
Q. Well, take a look at the witness line.
A. The what line?
Q. The witness line on the mortgage, which is marked Exhibit 19. Is that your signature there?
A. Exhibit 19? I'm sorry, I thought we were on to 20. I apologize. You want me to look where, at this last page?
Q. The last page on Exhibit 19.
A. Where Mr. Murray's sig -- sig --

proposed purported signature is on the right?
Q. Yeah.
A. And you want to know whose signature that is on the left?
Q. Yes.
A. That is not my signature.
Q. That's not your signature?
A. No.
Q. Do you know whose that is?
A. I -- it looks like it could be James Mahl's signature, but I'm not sure.
Q. Do you agree that Mr. Murray was competent in Feb -- on February 3, 2006 to sign this note and mortgage?
A. I would say Mr. Murray could be competent or could not be competent. It depends on the time of day, how he feels. He had good days and bad days. But overall I felt and I remember him being competent on -- more than not.
Q. Let's shift gears for a second and talk about Elizabeth StyleSetters. You are aware that Elizabeth StyleSetters has filed a claim against the estate of William Murray?
A. Yes, sir.
Q. And the estate has denied that claim?

A. Yes.
Q. Why?
A. We were advised on the advice of counsel that this was an unsupported un, a doc or a debt we couldn't honor.
Q. Why was it a debt that you could not honor?
A. Again, as I said to you before, I don't want to compromise my client-attorney privilege, and so I don't know if I should share with you what my attorney said.
Q. Well, when you -- strike that.
I would ask you to tell me what your attorney said was the basis for your denial file of the claim.
MR. HOOD: It's privileged.
MR. KEFALOS: Okay.
BY MR. KEFALOS:
Q. What did you tell your attorney -- yeah. Who was your attorney?
A. Edward Bennett.
Q. Okay.
A. Edward Bennett continues to represent the trust and estate.
Q. What did you tell Edward about this

debt?

A. We gave Edward all of the information that we had with regard to the debt. There's -- do you have the claim that I -- could I look at it as we -- it would facilitate me in answering you.

Q. I don't. I don't have the claim.

A. You don't have the claim?

Q. No.

A. Well, it's hard for me to remember what I -- what I said without having something to reference.

Q. Well, we know that the claim contained a lot of supporting documents that were supposed to have been -- represent debts that were incurred by Liz. I'm interested in knowing what you told Edward about the claim that Liz was making.

A. As I remember the claim, it is involving not only monies that Liz purportedly advanced and didn't get repaid from The Inn At Quogue. I remember there were other pieces of it. So that's why I'm a little confused. You really don't have her claim that I could look at to use as --

Q. No, I don't. Did you tell Edward that at some point, oh, maybe in 2000, that Mr. Murray

had acknowledged that there was a debt to Elizabeth StyleSetters?

A. Mr. Murray -- so I don't know if I told Edward that.

Q. Okay. Did you tell Edward that Mr. Murray had been paying Elizabeth 2 or $3000 a month since at least 2000?

A. When Elizabeth was no longer working at the The Inn At Quogue, which I think was around 2000 or 2001, Bill Murray agreed to assist and help her retrain herself so that she could be in a better position to be a self-supporting individual. And Elizabeth was interested in the New York School of Design I believe.

So Mr. Murray agreed he would pay for her tuition and her upkeep, books, things of that sort and support -- he -- so he paid her costa and he provided her a $3000 a month allowance. That's what Elizabeth got from my father-in-law as far as a monthly allowance.

I know that because I have seen correspondence and requests and Elizabeth's monthly summaries of what she needed from her dad.

Q. Did $2000 of that $3000 monthly allowance go on account of Liz's claim for work

she did at The Inn At Quogue?

A. My understanding is that they are unrelated. I was told that they were -- there was a $3000 allowance and for her -- her costs to go to school.

As far as Mr. Murray's position with Elizabeth's claim, when she originally approached her father she indicated she had about $500,000 due her, and that number changed a variety of times. But consistently throughout the entire discussion, all of the discussions, Bill Murray always looked at me and said where would Liz get this money; how could she ever lend me money. And I wasn't ever able -- in a position to give him any support to that.

Q. Didn't Liz provide documentation for the expenses that she had incurred?

A. Elizabeth provided our office in Hagerstown, which was then all sent to New York for review by James Mahl.

And understand, at -- when Elizabeth was involved with The Inn At Quogue it had just been acquired in '99. It had been a asset by a fellow that owed Bill Murray a bunch of money. He went bankrupt. Bill Murray decided he was going

to save his loan to this person by buying The Inn At Quogue. It was a dilapidated property in Quogue, New York. Elizabeth came in and she started assisting her father directly for her father making improvements to The Inn At Quogue.

That was a matter that was really handled between my father-in-law and James and her. And we also, my company, my involvement was we -- we handled the hotel, the operational business of the hotel.

So everything that Elizabeth was doing was either being funded through her father writing checks, reim -- reimbursing her, or monies that he would send to Hagerstown to support having her checks be paid from there.

What happened is when the Hagerstown information that Elizabeth had been requesting was shared with the New York office an audit was done between the two companies, the two bookkeeping offices, and then ultimately a final audit by James Mahl, and there was determined that there were multiple payments on one invoice. Elizabeth was getting paid in New York and Elizabeth was getting paid in Hagerstown for the same bill.

I'm not suggesting it was intentional,

but it happened. As a result, when the final accounting was done it was determined that Elizabeth actually had been overpaid, and that was memorialized in a letter to her. And thereafter there was continued demands made by Elizabeth that that wasn't right, that she was due more money, that she still had an obligation due her.

Her father agreed to allow her sister Pam at his expense to go and provide more accounting efforts and put it in a fashion that he was satisfied with. But at the end of the day Bill Murray continued to not believe that Elizabeth Murray had advanced monies on his behalf because he never believed she had the financial capacity to have done that.

Q. Okay. Well, do -- would it be fair to say that what you're saying is that while Murray acknowledged he had agreed to reimburse Liz for her expenses at The Inn At Quogue, he disputed --

A. I didn't say that. He agreed to reimburse her for some expenses. You know, I wasn't -- and George, I want to emphasize. I was not in that. That was between Bill Murray and Elizabeth Murray and to some extent James Mahl.

Q. But what you do know is he was

disputing the amount of the expenses?

A. What I know is that Bill Murray looked at me and said, Hilton, she doesn't have any money; how could she ever lend money to me. And I have never been able to answer that question.

Q. All right. Well, you never -- as I understand what you're saying, Murray never told you I did not agree to reimburse her for expenses; he questioned whether, in fact, she incurred those expenses?

A. I didn't go through the expenses with Bill.

Q. I'm not asking about going through them. I'm asking you for you to summarize his position on that debt.

A. It's what I have said.

Q. He didn't deny it existed; he -- he denied the amount?

A. He -- he said what I have just said to you: Hilton, how could Liz ever have gotten money; where would she have ever gotten the money to lend me money; I don't understand it.

Q. Well, let's look at what we'll mark as Exhibit 21.

(Smith EXH. 21, Document Bates EST OF

WEM 0021, marked for identification.)

BY MR. KEFALOS:

Q. Have you ever seen this before?

A. I believe I have seen this before.

Q. Good. Did you ever talk with Mr. Murray about this?

A. I'm pretty sure I have. Yeah.

Q. And what did he tell you?

A. He said that he was anxious to see what the accounting provided because he didn't believe Elizabeth was ever going to be in a position to have lent him money.

Q. Well, this acknowledges at least $50,000 as of --

A. No, no. It says: Salaries due to her in various times totaling on or about $50,000. Murray agrees to pay her back these monies. Elizabeth agrees to supply Murray the accurate accounting for these invoices by the end of April 2000 so that the parties are in agreement to total monies owed. So to me...

Q. Do you -- do you agree that this recognizes a debt to Elizabeth Murray?

A. No. I think this recognizes Bill Murray's willingness to give Elizabeth another

chance to show him and provide him evidence that she's due money.

Q. Did Mr. Murray pay $2000 a month on account of this obligation?

A. My understanding, sir, is just what I told you and really all I know. When Elizabeth left The Inn At Quogue she was facing a divorce. She didn't have a job. Her father wanted to assist her and help her retrain into a field that she could be self-sufficient, and he agreed to pay all of those costs and give her an allowance of $3000 a month.

Q. Well, this says: W.E. Murray agrees to pay her back these monies and accrued interest at the rate of $2000 a month.

And my question is did he pay her $2000 a month after this obligation was signed?

A. Well, I hear what you're asking me, and I'm still standing on what I knew to be the case. And if you take 1999 to 2007 times 2000 times 12, that's 24,000 times eight. It sounds like Elizabeth, if he was, has gotten all of her money back.

But my understanding is it was a $3000 allowance for her to spend to live. I do not

understand -- I -- I did not understand he was giving her this money in repayment for a debt that had not been proven, that he did not believe she could have lent him the money because of her financial position.

Q. Let's take a look at what we'll mark Exhibit 22.

(Smith EXH. 22, 2/4/03 Interoffice Memo, marked for identification.)

BY MR. KEFALOS:

Q. Have you ever seen this document, which is a memo, and the date is not -- it's a memo from William Murray to Elizabeth Murray, and the date on the first page is February 4, 2003 and on the second page it's February 4, 2004? Have you ever seen this before?

MS. HOOD: George, did you identify this document?

MR. KEFALOS: I thought I did, but it -- there were a couple of things I pulled out. This one -- I think this one and another one I didn't.

MR. HOOD: So would you explain to the witness his right?

MR. KEFALOS: Oh, you have a right to

confer with your attorneys about this memo.

MR. HOOD: If you want to.

MR. KEFALOS: If you want to.

THE WITNESS: So you didn't produce this?

MR. KEFALOS: Not before the deposition.

THE WITNESS: How come?

MR. KEFALOS: This was produced in discovery. Some things slip through the cracks.

THE WITNESS: I understand. I understand, George. But if you give me a moment I'll read it, and if I have questions I'll ask. But just give me a moment. Thanks.

(The witness reads the document, as requested.)

MR. KEFALOS: I think the last page probably should be a separate exhibit.

THE WITNESS: Do you want me to rip it off?

MR. KEFALOS: Yeah. Have you had a chance to review it?

THE WTINESS: I have looked at it. I'd like to ask my counsel for a few questions.

MR. KEFALOS: Sure. Go ahead.

THE WITNESS: Do you want us to leave the room or are you guys going to leave?

MS. HOOD: We'll go talk.

VIDEOGRAPHER: Going off the record. The time is 12:08 p.m.

(A recess was taken.)

VIDEOGRAPHER: We're back on the record. The time is 12:20 p.m.

THE WITNESS: I think that second page that George gave me is also part of this, the one with the check on it. You asked me to separate them.

BY MR. KEFALOS:

Q. Pull it out. That's fine.

A. And I did that. But that's -- do you want me to still hold that?

Q. No.

A. Okay.

Q. Referring your attention to 22. We were talking about Mr. Murray's attitude towards Liz's claim for her work at The Inn At Quogue. And we looked at the Exhibit 21, which was dated January 7, 2000, regarding the $2000 a month payment?

A. Uh-huh.

Q. And let's look three years later. We look at this Exhibit Number 22. Do you see he acknowledges The Inn -- the debt to The Inn At Quogue in the last sentence of the third paragraph?

A. You're talking about the subparagraphs in paragraph 3 on the first page?

Q. Yes.

A. By the end of February we will have the analysis from Hagerstown office of your claim of sums due. At that point we will review the outcome and go from there with regard to what monies are due you from the inn.

Q. Yeah.

A. So I think he's still open to having her show him, you know, what -- if she's due any money.

Q. Yeah.

A. I don't think he's acknowledging a claim. I think he's saying, hey, if you got more stuff show it to me.

Q. Okay. A couple of questions on a separate topic. How often do you produce an accounting from the estate?

A. We are obligated under the trust to

provide information every six months or on -- on the estate every six months.

Q. Uh-huh.

A. And that was ordered by the judge when we were coming through probate, and that's what we've been doing since the beginning of -- since, you know, it started.

Q. Have you provided that accounting to me as the attorneys for the -- for Liz and Pam and creditor claims?

A. I don't know who gets it other than the judge. That's who we provide it to. I know that I have received a few phone calls in the past from Brianna, who is a beneficiary. And she has looked at it. I mean, it's available. It's not something that's hidden from you I don't believe. At least it's not hidden from Brianna as a beneficiary.

So that's where it goes. I don't know. So you guys work in the probate court. You know how it works. But we submit that accounting through our designated person, Barry Gumb, every six months.

Q. Sure. Talk about Brianna. You know the -- Liz and Pam and the Minnie Murray claim and

the StyleSetters claim requested a copy of the will from the estate? Do you remember that?

A. No. They asked me for a copy of the will?

Q. Well, either you or the attorney for a copy of the will.

A. Well, I don't remember them asking me for a copy of the will.

Q. Okay. I can tell you that the only copy we received was a redacted copy. Is there any reason for that?

A. It's pursuant to the wishes of Bill Murray. He -- there's this clause, paragraph 20. I don't know if -- that's not been redacted from you, has it, in the -- in the will? Because you received a copy of the will.

Q. Yes.

A. And I don't believe the confidentiality clause was redacted. What's redacted is -- Bill's wishes were that no other beneficiary would know what the others are getting. That was a great concern of his.

Q. Is that part of your confidentiality obligation?

A. Actually, it's -- it's a requirement

of not only me but every beneficiary. For instance, if Catherine told you I'm getting eight percent she is violating the terms of the will.

Q. Well, I'm not talking -- I'm asking you about --

A. I'm just saying for me, for me as a trustee, I'm also a beneficiary, George. So I would compromise my role as a trustee. I would compromise my role as a beneficiary.

Q. Could you be removed for that? That is, by disclosing --

A. Yes. I think -- I think whoever violates the terms of Mr. Murray's will is subject to being removed.

Q. So if you gave me an unredacted copy of the will you could be removed as trustee --

A. What I know, George, is --

Q. -- for violating the confidentiality provision?

A. To answer your question, one, I'm not a lawyer and I'm not really sure. But what happened when my father-in-law died, he made sure that everybody's counsel got a redacted copy of the will and trust. And the reason it was redacted is per the terms and wishes of Bill

Murray. So that's what we're all doing over here. We're honoring Bill's wishes. That's our objective.

Q. Well, are -- were you honoring Bill's wishes when you gave an unredacted copy of the will to Brianna?

A. I didn't give an unredacted copy of the will to Brianna. I haven't given an unredacted copy of the will to anyone other than Edward Bennett or other financial --

Q. Would you agree that providing an unredacted copy of the will to Brianna would be a violation of the trust?

A. That's my understanding.

Q. Okay. Have you done any --

A. Or to any beneficiary. You know, it's not just Brianna.

Q. Okay. Have you done any calculations regarding the possible savings to the estate by paying the Minnie Murray claim?

A. Whether or not we pay the Minnie Murray claim isn't -- I mean, that's -- that's -- it's going to go one way or the other. I haven't looked at the estate specifically with regard to having made the payment, if we were in a position

to pay $12 million or whatever the court might order. But I can tell you, as you asked me earlier, would that affect Mr. Murray's wishes, this $12 million would significantly affect and take away from what one of Bill Murray's greatest wishes were, and that was to treat his four daughters equally. He told me that, and your client actually testified to that here in the room last week.

Q. You know that the Minnie Murray claim is deductible, tax deductible from the estate?

A. If -- yeah, if you --

Q. If it's valid?

A. If it's a claim, then it affects the estate tax, absolutely. There would be more expenses and less dollars to be taxed.

Q. Have you done a calculation of what tax savings might be realized by the estate had -- if the estate paid this $12 million claim to Minnie Minnie?

A. There's been some analysis by Edward Bennett.

Q. Do you know what the savings would be?

A. I don't -- I can't -- I'm really not supposed to go into financial matters specifically

with you at least.

Q. Do you know whether this claim; that is, the Minnie Murray claim or the Elizabeth StyleSetters claims, were deducted on the estate tax returns?

A. I don't know if I can tell you that.

Q. I just want to know if you know whether?

A. I'm pretty sure I know.

Q. Okay.

A. But I don't feel that I'm in a position to be able to tell you that.

Q. Well, that -- if the estate deducted the -- any part of the claim of Minnie Murray or Elizabeth StyleSetters, isn't that a recognition of the legitimacy of the claim?

A. George, be clear. I haven't told you whether it was reflected or not.

Q. I know. That's why --

A. I have told you that I'm not sure that I have a right to and that's why I won't. I do know whether they were or not, but I don't feel that it's a question I can answer, and I -- I'm not trying to be evasive. I'm just trying not to let you get me in trouble.

Q. Well, don't you realize or don't you see that it's important for me to know, because the estate is taking the position that these are not valid claims, but if the estate took an inconsistent position with the IRS, that would be important for us to know as creditors because that would be a recognition --

A. I appreciate your question. I appreciate your question. You know --

MR. HOOD: We'll think about the answer -- answer to your question serious, very seriously, and if we agree with you we will answer you.

MR. KEFALOS: All right. So right now you're instructing him not to answer?

MR. HOOD: Now, yes. The language is very strong. We cannot violate it.

MR. KEFALOS: Well, I know it's been violated in some ways.

MR. HOOD: In what ways?

MR. KEFALOS: The will has been produced in unredacted form to Brianna.

THE WITNESS: You know that?

MR. KEFALOS: I have a copy of it from Brianna.

THE WITNESS: Brianna gave you a copy of the will?

MR. KEFALOS: Yeah.

THE WITNESS: Did she tell you where she got it?

MR. KEFALOS: You. All right. So it -- it seems to me you assert this need for confidentiality conveniently.

THE WITNESS: No. This is respecting William Murray. That's what we're doing.

MR. HOOD: I'm not -- I'm doing it overall as to everything, not conveniently really. But your last question about the tax return and your explanation is very -- I agree with you really, but I need to look at the documents and see if I'd be violating the issues.

MR. KEFALOS: Okay. Good.

THE WITNESS: I'd be happy to answer if it's not.

BY MR. KEFALOS:

Q. Have you felt well enough to answer my questions today?

A. So far.

Q. Have you given me full and complete answers to my questions?

A. To the best of my ability.
Q. And have you understood those questions that you answered?
A. Pretty much. You're a little confusing, but I'm doing okay.
MR. KEFALOS: That's all the questions I have. Thank you.
MR. HOOD: We have no questions.
VIDEOGRAPHER: This concludes the video deposition of Hilton Smith. The time is 12:31 p.m. We are now off the record.
(The deposition was concluded at 12:31 PM.)

SIGNATURE OF DEPONENT
DEPONENT: HILTON SMITH
DEPOSITION DATE: December 16, 2014
REPORTER: ROXANNE M. EASTERWOOD, RPR
CASE CAPTION: IN RE: THE ESTATE OF WILLIAM EDWARDS MURRAY

(Please return both Signature of Deponent pages)

I, the undersigned, HILTON SMITH, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE LINE CHANGE REASON

SIGNATURE OF DEPONENT (CONTINUED)
DEPOSITION DATE: December 16, 2014
REPORTER: ROXANNE M. EASTERWOOD, RPR
CASE CAPTION: IN RE: THE ESTATE OF WILLIAM EDWARDS MURRAY

PAGE LINE CHANGE REASON

HILTON SMITH DATE

I, Roxanne M. Easterwood, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2015

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, pages 1 through 147, is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 16th day of December 2014 at Charleston, Charleston County, South Carolina.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2015

INDEX

	Page	Line
STIPULATION	3	1
HILTON SMITH	4	7
EXAMINATION	4	9
BY MR. KEFALOS		
SIGNATURE OF DEPONENT	142	1
CERTIFICATE OF REPORTER	144	1

REQUESTED INFORMATION INDEX

	Page	Line
Agreement between Mr. Murray and Mr. Smith or Carriage House or Carriage Hill and Manor House	32	23

EXHIBITS

	Page	Line
Smith EXH. 1, William E. Murray Document with 2/9/06 Letter and Attachments	51	13
Smith EXH. 2, 1980 Agreement	68	21
Smith EXH. 3, 4/6/84 Letter From Hilton Smith	71	8
Smith EXH. 4, Check 0555	75	24

Smith EXH. 5, 10/2/91 Letter	78	25
Smith EXH. 6, 10/9/92 Letter From Pamela	86	4
Smith EXH. 7, 10/19/92 Letter	87	6
Smith EXH. 8, 11/4/92 Letter from Hilton Smith to Pamela Stack	88	13
Smith EXH. 9, 11/13/92 Letter From Hilton Smith to Gail Margolis Reid	91	10
Smith EXH. 10, 11/16/92 From Hilton Smith To Thomas Berner	93	7
Smith EXH. 11, 11/17/92 Letter from Hilton Smith to Thomas Berner	94	15
Smith EXH. 12, 11/20/92 Letter to Hilton Smith from Dan Kelly	95	4
Smith EXH. 13, 12/1/92 Letter From Gail Margolis Reid to Catherine and Elizabeth	96	6
Smith EXH. 14, 12/2/92 Memo	97	15
Smith EXH. 15, 12/12/92 Memo	98	10
Smith EXH. 16, 12/11/92 Document	101	6
Smith EXH. 17, 12/17/94	106	20

Letters		
Smith EXH. 18, Affidavit of Financial Condition of William E. Murray	113	16
Smith EXH. 19, Mortgage	116	11
Smith EXH. 20, Note	116	15
Smith EXH. 21, Document Bates EST OF WEM 0021	126	25
Smith EXH. 22, 2/4/03 Interoffice Memo	129	8

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN THE MATTER OF: WILLIAM E. MURRAY
C/A NO. 2007-ES-10-1116

DEPOSITION OF: LARRY C. BUMP
DATE: June 22, 2015
TIME: 9:04 AM

LOCATION: Law Offices of
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Charleston, SC
TAKEN BY: Counsel for The Estate of
William E. Murray

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

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ALSO PRESENT:

Hilton Smith

(INDEX AT REAR OF TRANSCRIPT)

LARRY C. BUMP
being first duly sworn, testified as follows:
EXAMINATION
BY MS. CRAIG:
Q. Good morning, Mr. Bump. My name is Molly Craig and I represent the estate of William Murray. And I appreciate you being here for us to take your deposition today. I know you traveled I believe from Atlanta?
A. Um-hum.
Q. So thank you for being here. Also, we met briefly off of the record. You indicated that you had given a deposition about 20 years ago.
A. Yeah.
Q. It's a long time ago so let me just review the ground rules so that we understand one another. Our Court Reporter will be transcribing and documenting all the questions and answers during the course of the deposition and will you please make sure you give a verbal response to the questions that I ask versus nodding or shaking of the head?
A. Right.
Q. Because she can't, of course, record that.

A. Shaking of head.
Q. Yes, that's right. And also, if you have any questions about the questions that are posed to you during the course of your deposition, will you ask me to rephrase or restate the questions --
A. Sure.
Q. -- so that you understand them?
A. Yes.
Q. And is it agreeable that you will answer these questions pursuant to the oath that you've just taken?
A. Yes.
Q. Thank you, sir. All right, Mr. Bump, if you could give us your full name, please.
A. Larry Charles Bump.
Q. And have you taken any medication today that would affect your ability --
A. No.
Q. -- to give truthful and accurate testimony?
A. No.
Q. May I have your date of birth, please?
A. 4/8/54.
Q. And your place of birth?

A. Place of birth?
Q. Yes, sir.
A. Multnomah County, which is Portland, Oregon.
Q. Do you have any relatives in Charleston, South Carolina?
A. No. Nobody.
Q. By blood or marriage?
A. No.
Q. Tell us your educational background, please, sir.
A. Graduated from Parkrose Senior High School in 1972. I graduated from Gwinnette Technical College in 1993, got an Associate's in warehouse distribution and traffic management and that's about it.
Q. What year did you receive the Associate's in warehouse distribution?
A. '93.
Q. That was with Gwinnette Technical College?
A. Um-hum.
Q. Is that a yes?
A. Yes.
Q. Where do you reside, sir?

A. Right now I reside at 269 Powder Mill Drive and that is in Dallas, Georgia. I think the zip code is 30157.
Q. And how long have you lived in Dallas, Georgia?
A. Three weeks.
Q. Where did you live before that?
A. I lived at 443 -- 443 Longleaf Court there in Lawrenceville, Georgia.
Q. Where?
A. Lawrenceville, Georgia.
Q. So how long have you been in the Atlanta area?
A. Oh, since '73.
Q. Where are you employed?
A. Currently I'm employed with Driveline Retail.
Q. What do you do at Driveline Retail?
A. I am an associate. I do retail merchandising.
Q. Could you be more specific?
A. It means that I go into different stores, Walmart, Target, Costco, and I either do a new product install or I do different -- different -- do different design things.

MS. CRAIG: Can we go off the record one second?
(Off-the-record conference.)
MS. CRAIG: All right, back on.
BY MS. CRAIG:
Q. So how long have you had that job at Driveline Retail?
A. A year and a half.
Q. And before working at Driveline Retail where did you work?
A. I worked at Pro Lawns Landscaping, which was my business, and I did that since 1993 up until last November.
Q. So you were self-employed in the landscaping business from 1993 to 2014?
A. Um-hum.
Q. Is that a yes?
A. Yes.
Q. And why did you stop Pro Lawns Landscaping and go --
A. I had physical issues, health issues.
Q. But those health issues aren't preventing you from working at Driveline Retail?
A. Right. The landscaping was more physical exertion.

Q. Have you ever been arrested?
A. No.
Q. Any military service?
A. No.
Q. How long were you and Pam Murray in a romantic relationship?
A. Started in -- gosh, started in February of 2004.
Q. Your relationship with Pam Murray started February 2004 and ended when?
A. It ended in September of 2010.
Q. How did you meet Pam Murray?
A. Pam and I were going through -- I was going through a separation and was in a outpatient therapy for depression at the time. She was also a patient there too going through the same thing. We subsequently both went through divorces but we didn't really start dating until probably late July of that year.
Q. And when you say late July that year, you mean 2004?
A. Yes.
Q. What was the name of the facility where you and Pamela Murray were -- inpatient or outpatient?

A. Outpatient. It was Kaiser Permanente and I think the location was on -- in Sandy Springs but I don't recall the street.
Q. It's your recollection that Pam Murray was at Kaiser receiving treatment for depression?
A. Yeah. Same thing.
Q. Okay. Anything else?
A. Not that I know of.
Q. Did you and Pam Murray ever live together?
A. Yes.
Q. What years?
A. That started in -- well, it started when we moved here to Charleston in February of 2005.
Q. So you moved from Atlanta to Charleston with Pamela Murray February 2005?
A. Right.
Q. And where did you live?
A. We lived at 1561 Brianna Lane on James Island.
Q. How long did you and Pamela Murray live at 1561 Brianna Lane?
A. We left in late July of 2008.
Q. When you and Pamela Murray left

Charleston in July 2008, where did you go?
A. We moved to Cumming, Georgia.
Q. Did you and Pamela Murray continue to live together?
A. Yes.
Q. So did you and Miss Murray live together until the relationship ended in September 2010?
A. Yes.
Q. Did you ever marry Pam Murray?
A. No. We had -- we had planned to marry in -- get married in August of 2010 and she came down with recurrent breast cancer I believe at the end of January of the same year.
Q. What was the reason for the breakup of the relationship?
A. She moved to Washington -- Washington, DC.
Q. Did you stay in touch with Pam Murray?
A. No. Pam and I never spoke after that. No, I didn't speak to her after that.
Q. Did you ever speak to Pam Murray after she moved to DC in September 2010?
A. No.
Q. Throughout her course with cancer

treatment, you never spoke to her?
A. No. I got her through cancer treatment in Atlanta from January to August and then she decided to move up there because at the time they gave her 14 months to live so she chose to live near her kids up there.
Q. But during that time you didn't speak to her?
A. After she moved up there, no.
Q. Did you go to Pam's funeral?
A. No, I did not.
Q. How did you find out that Pam passed away?
A. Liz had called me.
Q. Are you talking about Elizabeth Murray?
A. Yes.
Q. During the time that you and Pam lived together between February 2004 and September 2010, was Pam employed?
A. Yeah, she -- she did her own accounting business. She actually did that and she worked for two or three other firms here in town doing the same thing but working for them. And don't ask me who they were because I don't remember.
Q. Was Pam financially dependent on you or

did she have --
A. No.
Q. -- her own income?
A. Just her own income.
Q. Were you financially dependent on Pam?
A. No.
Q. Did Mr. Murray buy the house where you and Pam Murray lived which was 1561 Brianna Lane?
A. I presume he did. I know that there was some transactions done in reference to that. He planned to give all of his daughters a house near him and that's where he planned to give them a house, at that place.
Q. Which daughters is it your understanding that Mr. Murray purchased houses for?
A. For Pamela, Brianna and for Liz, Elizabeth.
Q. Is that all of the daughters?
A. Three daughters, yeah.
Q. Did you ever pay rent to Liz on the house on Brianna Lane?
A. To Liz or to Pam?
Q. To anybody.
A. No.
Q. When did Pam sell the house on Brianna

Lane?
A. She sold it in -- at the end of July of 2008.
Q. Do you know what she did with the money from the sale of the house?
A. Yeah, she bought another place in Cumming, Georgia and that's as far as I know. After we moved to Cumming, that is.
Q. The house in Cumming, Georgia that Pam bought with the proceeds from the sale of the house on Brianna Lane, was that her house?
A. Yeah.
Q. And you lived there with her?
A. Yeah.
Q. Did you pay rent to Pam?
A. No.
Q. Did Pam ever discuss her father with you?
A. Yes.
Q. What do you recall about those discussions?
A. I met her father in between Thanksgiving and Christmas of 2004 my first time. I did not know a lot about all the situations in Charleston until after I moved up there -- up here

and then, you know, stories and facts started to come out. And I made no opinions, you know, on that until I was here and then I started listening and seeing things go on, yeah.
Q. Did you get along with Mr. Murray?
A. Oh, yeah.
Q. Did you like him?
A. Great, yeah.
Q. You liked Mr. Murray?
A. Not a problem. Oh, yeah.
Q. In your experience based on your personal observations, would you agree that he was a generous man?
A. Yes.
Q. And did he give gifts to his daughter, Pamela Murray?
A. Yeah.
Q. Did he give gifts to you as well?
A. No.
Q. I forgot to ask you at the beginning of the deposition. Have you ever been -- you said that you'd been married once and then you --
A. Yes.
Q. -- were hospitalized -- or you went for depression treatment as a result of that?

A. Right.
Q. What is the name of your first wife?
A. It's Graciela Bump.
Q. And is she still alive?
A. Yes.
Q. Where does she live?
A. She lives in Lawrenceville.
Q. And have you married subsequently?
A. No. I actually after -- after Pam left, I took two years and didn't date anybody. And then I've had several dating relationships, you know, along the way and now I have just moved in with somebody I met last -- last August.
Q. And what is that person's name?
A. It is Roberta Lecroix.
Q. Do you recall any conversations that you had with Pam Murray regarding the Minnie Holmes Murray estate?
A. Yes, just in -- I don't know all of the intricate details of it but I do know that apparently her father borrowed some money from the estate and apparently at some point promised to pay it back. He didn't pay it back. The three daughters, Catherine, Brianna -- or Catherine, Elizabeth and Pam, sued their father and

subsequently with the help of Mr. Hilton did an agreement to a promissory to repay those funds back, which he never did.
Q. And where did you -- who gave you that information?
A. Pam did.
Q. Did you speak to Elizabeth Murray about the estate of Minnie Holmes?
A. Well, there was conversation between the three of us. It wasn't -- I didn't get the -- like I said, I didn't get the intricate details, I just remember bits and pieces of the overall situation.
Q. When is the last time you spoke with Elizabeth Murray?
A. I would have to say it was probably April -- April 12, 13, 14, somewhere in there.
Q. April 12th, 2013 or --
A. No, no, April 12th of this year, 2015.
Q. Excuse me. How do you remember that date so specifically?
A. Well, it was in the middle of April and she called to tell me that Pam had named me as a beneficiary in her life insurance and apparently as a beneficiary on some furniture that she and I

purchased after we moved up here. No, excuse me, after we moved back to Cumming.
Q. So Pam left you a piece of furniture?
A. Some furniture and some money from her life insurance.
Q. Did you go get the furniture that Pam left for you?
A. No. In fact, Ashley Smith, who is her daughter, she is supposedly the executor of the estate, and I had not heard from her except on a text message saying that supposedly Pam wanted to change her Will like October -- no, not change the Will but change a beneficiary on her life insurance I think it was last October to give those -- those funds to Elizabeth because apparently Pam's last six months she had no money, Liz was paying her rent, her doctor bills, blah, blah, blah, blah, blah, so -- but apparently Pam filled out the change of beneficiary, stuck it back in her drawer, never sent it off.
Q. And when you say she never sent off the change of beneficiary, that was where she was going to --
A. Change it from me to Liz.
Q. -- make Elizabeth the beneficiary as

opposed to you?
A. Yeah.
Q. But that never happened?
A. Never happened.
Q. So you were the sole beneficiary of the life insurance policy?
A. No, just part. 10 percent.
Q. Who else?
A. It was me, Ashley, Allison and Jeanette Smith.
Q. Who's Jeanette Smith?
A. Jeanette is her youngest daughter.
Q. And Allison and Ashley, are they also her daughters?
A. Yeah, all three of them.
Q. So the beneficiaries under Pam Murray's life insurance were her three daughters and you?
A. Yes.
Q. And how much money did you receive as a beneficiary?
A. 25,000, which was 10 percent of the entire policy.
Q. Knowing that Pam tried to change the beneficiary of her life insurance from you to Elizabeth Murray, why didn't you give Elizabeth

Murray the 25,000 dollars?
A. Liz was trying to -- Liz actually asked me to give that to her. Apparently Liz wanted me to basically reimburse her for Pam's expenses, doctor bills. It was -- I believe it was a gift to me and Liz was trying to get that just to replace the funds that she paid out.
Q. Did Elizabeth offer to show you receipts of expenses she had paid for Pam?
A. Nope.
Q. So you said Elizabeth Murray asked you to give her the 25,000 dollars, correct, and you chose not to do so?
A. Right.
Q. And was Elizabeth Murray angry at you?
A. I don't know if you would say angry. I know that when I got the funds, apparently they all knew at the time and Liz never spoke to me after that.
Q. Did Elizabeth Murray threaten to sue you over the 25,000 dollars?
A. No.
Q. So the last time you spoke with Elizabeth Murray was April 12, 2015?
A. April 12th, 13th or 14th, somewhere in

there.
Q. Oh, excuse me, April 12, 13 or 14 --
A. Right.
Q. -- of this year, 2015. Did you ever speak to Elizabeth Murray about giving a deposition in this case?
A. There was a time I think you guys were trying to get me in a deposition in maybe, gosh, 2015. It was after we moved back to Cumming, I think. I'm thinking maybe 2009, somewhere in there. You guys sent me a notice of a deposition but, you know, I never heard from you guys again so...
Q. So you contacted Elizabeth Murray?
A. No, we were all in -- in talking at that time but nothing about what was going on. She just said, you know, they're going to contact you, and you did.
Q. Did you -- did Elizabeth tell you why we wanted to take your deposition?
A. It was over supposedly some document that I witnessed and I signed an affidavit for it.
Q. Did Elizabeth Murray ask you -- or Pam Murray ask you to witness documents from time to time?

A. That was the only document that I remember seeing with my own eyes and that's it. There was no other documents or anything.
Q. Did Mr. Murray ever ask you to witness a document?
A. Only that one time.
Q. And what did Mr. Murray say specifically to you?
A. He wanted all of us to sign as a witness to it.
Q. What did he say specifically?
A. Oh, gosh, you're talking -- you're talking eight years ago, you know. I can't tell you verbatim, you know, exactly what was said.
Q. After you and Pam were no longer in a relationship, which was in September 2010, did you stay in contact with Elizabeth Murray?
A. Just off and on just to say hi. I helped her with credit situations and then she called when Pam had died. We spoke occasionally within the last maybe couple years only on Pam's condition. You know, I didn't ask to hear that but she offered it.
Q. So Elizabeth would contact you, you did not contact Elizabeth?

A. Right.
Q. Would Elizabeth also e-mail you from time to time after September 2010?
A. No.
Q. So the only communication that you had with Elizabeth --
A. Phone.
Q. -- was on the telephone?
A. Yeah.
Q. And she was the one who initiated it?
A. Correct. And it was basically over Pam's health and some credit stuff, that's it.
Q. And what is the credit stuff you're talking about?
A. She was trying to fix her credit so I was helping her with the knowledge that I had along the way so that's all that was.
Q. And during this time were you aware that Elizabeth Murray had filed two claims against Mr. Murray's estate?
A. I knew that a long time ago.
Q. When did you learn that information?
A. Let's see. Passed away in 2007. I think she filed a claim sometime shortly after her father died.

Q. Are you aware that she filed two claims, one is on behalf of the Minnie Holmes Murray estate --
A. Yeah.
Q. -- and the other one is on behalf of Elizabeth personally?
A. Right.
Q. And are you aware that the one that Elizabeth has filed against the Murray estate for her personally is over 500,000 dollars?
A. Yeah.
Q. And are you aware that the claim that she's filed against Mr. Murray's estate for the Minnie Holmes Murray estate is millions of dollars?
A. Yeah, I do.
Q. And how do you know that?
A. How do I know what?
Q. How do you know that information?
A. We all talked about it.
Q. Who is we?
A. Pam and Liz and I.
Q. And what was discussed?
A. It was discussed that -- you know, the longer it went, the more it was accumulating interest, blah, blah, blah, blah, blah, and once

she filed it, that was pretty much it. You know, I knew that -- I knew that when she filed it, Mr. Hilton okayed all the other creditor claims and denied her too.
Q. Have you reviewed a copy of Pam's Will?
A. No. I have not seen it. They have not -- Ashley has not even called me to tell me that there was furniture involved. I haven't heard from her at all.
Q. Are you going to get the furniture that was left to you?
A. I don't think so. I mean, it -- we're talking a sofa, a chair, a coffee table and a big screen TV, a cabinet, that's about it. What -- what that was was Pam was big into antique furniture and I wasn't so much into that so we -- we compromised. So we purchased a sofa, coffee table and a chair and a TV stand in contemporary so it kind of blended in a little bit so I was pleased with that but I never sought to split that with her when she left, you know, I didn't really care. I had a bed, bed frame, king-size bed frame, and mattress. I kept that. That was in a guest room so I kept that so... But, you know, I didn't know that she had put that in the Will, you know, so...

Q. Have you contacted her daughter Ashley to request that you get the furniture?
A. I made a few phone calls and she's refused to call me back. So I haven't seen the Will, I don't even know what's in it.
Q. Have you requested a copy of the Will?
A. Not yet.
Q. Do you --
A. I'm sure I won't get it because Ashley just -- you know, she's not contacted me. I know there's certain rules in estates but she's apparently violated all of them.
Q. Do you know that if Elizabeth Murray is successful with the claim for the Minnie Holmes estate that Pam Murray's estate will receive money?
A. Yeah.
Q. And do you --
A. I assume so. I mean, I don't know the law or the verbatim about that but...
Q. Do you know whether or not you would be a beneficiary under Pam Murray's Will --
A. I have no clue.
Q. -- and would receive some of that money?
A. I have no clue.

Q. You have not had that discussion with Elizabeth?
A. No. There was never -- never any talk about it. I never even knew about the life insurance.
Q. Are you going to do anything to obtain a copy of the Will to see if you'd be a beneficiary under her estate if she receives funds regarding the Minnie Holmes Murray estate?
A. I don't know why Ashley has not sent me that because apparently the week -- the week before Liz called me, Liz -- or Ashley saw the Will and of course discussed it with Liz, discussed it with her sisters. I have not seen a copy of that at all. I believe eventually get one, you know, I'm assuming, but I don't know.
Q. Do you want to see a copy of Pam's Will?
A. Sure.
Q. Have you retained a lawyer to help you in that regard?
A. No.
Q. You mentioned earlier that there was a form that Pam Murray filled out six months prior to her death changing the beneficiary of her life

insurance from you to Elizabeth Murray, is that correct?
A. Right.
Q. Did you ever see a copy of that form?
A. No.
Q. Who told you that that document existed?
A. Apparently when Ashley went to find a copy of the insurance certificate, she could not find that. The only way that she knew who the insurance company was was by her -- by Pam's checking account.
Q. What was the name of the life insurance company?
A. Ohio National Life Insurance.
Q. Who is the person that told you that this document changing the beneficiary was signed by Pamela Murray and it existed?
A. Well, there was a text from Ashley that when I asked her for the name of the insurance company, she said it's Ohio something. Then I texted her back about something about the insurance and she said, I don't think your name's on that because I think it changed over to Liz's name. And apparently along the way I know Pam -- Ashley was

trying to get information from Pam about her life insurance, you know, getting things in order along the way. And Pam said, oh, I took care of that, it's done, blah, blah, blah, blah. It wasn't done. I think she put it in the drawer and didn't send it off. But I've never seen it, I don't know where it's at, that's all I know.
Q. Who is the person that told you that it existed, was it Ashley or Elizabeth?
A. Ashley said she saw it, Elizabeth said she saw it.
Q. But you --
A. So in fact, I don't know if Elizabeth seen it, but Ashley told Elizabeth after the three girls read the Will and got a copy of the insurance certificate at that time.
Q. But nobody sent you a copy of this alleged change of beneficiary form?
A. No. Haven't seen it.
Q. You indicated that Mr. Murray bought Pam a house during the time that you and Pam Murray were in a relationship. What other --
A. I think he bought -- I think he did that prior to Pam and I's meeting each other.
Q. So Mr. -- your knowledge is that

Mr. Murray bought Pam, his daughter, a house, correct?
A. Um-hum.
Q. And he also bought Elizabeth Murray a house?
A. (Witness moved head up and down.)
Q. Is that a yes?
A. He said he did.
Q. Is that a yes?
A. Yes. I'm sorry.
Q. It's all right. Did Mr. Murray also buy either Pam or Elizabeth a car?
A. He bought Pam a car but did not buy Liz a car.
Q. Were you aware that Mr. Murray assisted Pam and Elizabeth Murray with tuition payments for their children?
A. Yes.
Q. And are you aware that Mr. Murray was providing financial support to both Elizabeth and Pam Murray during the time that you and Pam Murray were together?
A. No. The only thing that -- well, I knew he possibly was for Liz but the only thing I knew about Pam was that he bought her a car I think

in say October of 2004 because he bought her a 2005 Camry and he bought her that for her birthday. He was concerned that her old '98 Camry would not -- could not be dependable going back and forth to Charleston.
Q. Other than the car and the house that Mr. Murray purchased for Pam Murray, what other presents did he give her during the time that you and Pam were together?
A. You know, birthday presents that were, you know, very small, maybe out to dinner, whatnot. The only other thing I know of financial-wise is he bequested a 25,000 dollar bequest from his Will.
Q. Mr. Murray gave Pam 25,000 dollars?
A. Gave her and I think Liz also. And then I think he gave each of the granddaughters and the grandsons some money too.
Q. When was the 25,000 dollars received by Pam from her father?
A. By Pam or?
Q. By Pam.
A. Okay.
Q. You said Pam received 25,000 dollars.
A. I'm trying to think because there was a whole bunch of stuff going on with that.

Q. Well, what I'm trying to clarify is --
A. Yeah, I know.
Q. -- was the 25,000 dollars given by Mr. Murray before he died?
A. No, after he died.
Q. Any other presents or financial assistance that Mr. Murray gave to Pam that you are aware of?
A. No.
Q. After you and Pam Murray ended your relationship, you said that Elizabeth would contact you by phone from time to time?
A. Or basically for the credit questions and to keep me abreast about Pam's, you know, ongoing condition, which I didn't ask for it, she just offered it.
Q. Did Elizabeth Murray send you gift cards?
A. Yes. We -- you know, I did work for her on the credit stuff. She sent me a Starbucks, a ten dollar card. She sent me a movie card for like 25 dollars. And it was basically I would spend hours researching things for her and stuff too, so it was just kind of like a, you know, here's something.

Q. Would she send those gift cards to you by mail?
A. Um-hum.
Q. Yes?
A. Yes.
Q. And would she have letters or notes attached to those gift cards?
A. No.
Q. And has Miss -- has Elizabeth Murray sent you any gift cards since you refused to give her the 25,000 dollars that she requested?
A. No.
Q. You've had no contact with her whatsoever?
A. Not since then.
Q. The telephone -- I assume it was a telephone call that Elizabeth made to you --
A. Yes.
Q. -- requesting the 25,000 dollars?
A. Yes.
Q. And was it a heated telephone call?
A. It wasn't pleasant. I mean, the first phone call was -- matter of fact, the first phone call was to tell me that Pam left me something in her life insurance. And in that phone call she

said, you know, I'm wanting to find out if you would give me that for all the money that I spent helping Pam. In other words, pay Pam's expenses because apparently she had given a lot of money. And I know that when Pam went to the hospital the last time, she said, I've got you covered on these expenses with the life insurance, but it never happened.

Q. Pam said that to who?

A. No, Liz said that, that Pam said that.

Q. That's what Elizabeth Murray told you?

A. Yes.

Q. Have you spoken with anyone in preparation for your deposition today?

A. No. Nobody.

Q. Have you reviewed any documents --

A. Nothing.

Q. -- in preparation for your deposition?

A. Nothing.

Q. Have you reviewed any depositions?

A. No. In fact, I was expecting some attorneys from their side, but nobody.

Q. No, Oana is --

THE WITNESS: Oh, you are.

MR. SMITH: She's your attorney.

BY MS. CRAIG:

Q. -- is here for --

A. Well, I was saying Slotchivers or those guys but...

Q. How do you know the Slotchivers?

A. I met them way back when when -- do you really want to know this?

Q. Yes, sir.

A. Okay. There was a period of time prior to Mr. Murray's death that -- it was -- it was about a week before he died. Mr. Murray had called Pam and wanted to go out to the hospital. He wasn't feeling well. So we all went over there and said, okay, so what's going on? He said, I don't feel good. So I said, okay, so where do you want to go? And he said, Roper. Helen said, oh, no, he's going to MUSC if he goes anywhere.

So Elizabeth and I went to the police department because we're figuring out that there's some -- something going on here. So the police -- I think it was the police chief or somebody there came up there with two other officers and asked -- because they felt that there was some sort of elder abuse type something going on. So they came up. They asked him, where do you want to go? He said, Roper. The police chief called the ambulance. The ambulance guys came up and asked him again, where do you want to go? He said, Roper. And Helen went off. So off he went to Roper. He was admitted. He was very dehydrated.

Then at some point Mr. Hilton comes in and -- waving his medical power-of-attorney and he yanked him out of there. Back home he went. A week later -- or no, the following day Pam and Liz were very concerned that something is going on bigger than what they know about. So they contacted the Slotchivers and got a -- I think it's called a governorship for their father and that happened the next day. Matter of fact, the judge was on vacation and the Slotchivers got her in to hear the case. And by five o'clock that evening, she said, okay. She assigned it to an attorney and he was in charge. He went that evening and saw Mr. Murray.

However, that evening also, I don't know which lawyer firm it was, sent a restraining order on Liz and Pam and Pam's three daughters, who weren't even living in Charleston at the time. So anyway, that's how I met the Slotchivers the first time.

Q. When is the second time you met the Slotchivers?

A. Second time was after Mr. Murray died and they were -- they had accepted the case from Pam and Liz to represent them.

Q. Did you go to that meeting with Pam and Liz and the Slotchivers?

A. If I -- if I did -- I'm trying to think if I went to that one. I knew I went to the first one when they accepted the case. I can't tell you if I went at the second one or not.

Q. So you --

A. Like I said, it's been eight years ago.

Q. So you went to the first meeting with the Slotchivers when they accepted the case and you were with Pam and Elizabeth Murray?

A. Yeah.

Q. Were you present for any other meetings with the Slotchivers?

A. No. No.

Q. That was the only one to the best of your recollection?

A. (Witness moved head up and down.)

Q. Were the Slotchivers representing you?

A. No.

Q. Tell me what was discussed during that first meeting.
A. It was discussed that there was a situation with creditor claims, for one. It was discussed surrounding Mr. Murray's death. And if there was anything else, you know, I don't recall it.
Q. How long was that meeting?
A. Maybe a couple of hours long.
Q. What do you recall was discussed about the creditor claims?
A. That Mr. Hilton denied the claims and they wanted the Slotchivers to represent them.
Q. Do you recall any other discussions about it?
A. No.
Q. What else do you recall in that two-hour meeting other than what you just said?
A. That's it.
Q. That's all you can remember?
A. I mean, there was so much lawyering going on that I was not even paying attention, really.
Q. Was it only Pam and Elizabeth Murray and you --

A. Yes.
Q. -- who were at the Slotchivers'?
A. Yes.
Q. Did you attend any other meetings with any other lawyers related to Mr. Murray's estate?
A. With the estate, no, but prior to Mr. Murray's death we went and saw an elder attorney about her father.
Q. What is the name of that lawyer?
A. And I don't know that guy's name. That was a very short one-hour deal and he -- he offered to take the case if things progressed further and then this ordeal with the hospital happened and then they went and saw the Slotchivers then.
Q. So the lawyer that you and Pam and Elizabeth Murray went to see --
A. No, it was just Pam and I.
Q. Okay. All right. So just you and Pam went to see a lawyer?
A. An elder attorney, yeah.
Q. Prior to Mr. Murray's death?
A. Yeah.
Q. Do you remember where that lawyer works? Downtown Charleston, across the bridge?
A. Oh, boy. I can't tell you. I mean,

eight years ago.
Q. I assume we're talking about a man versus a woman?
A. Yes, a man.
Q. Do you recall what he looked like?
A. No.
Q. And this elder attorney, was he representing you or was he representing Pam?
A. Pam.
Q. During that -- I think you said it was a one-hour meeting?
A. Somewhere in there, yes.
Q. During that one-hour meeting did Pam tell this lawyer that she wanted to change her father's Will?
A. No.
Q. Was there any discussion --
A. No.
Q. -- about Mr. Murray's estate planning at all?
A. No. There was only discussion about a possible elder abuse situation going on, that's it.
Q. What is the elder abuse that Pam was worried about?
A. Well, there were instances where

Mr. Murray seemed to be doped up a lot in my opinion. And there was -- there was an instance when -- and I can only tell you this -- and I don't know the date, I just know the instance, but her father has some heart palpitations going on and his blood pressure something. And I know that one night Pam took him to I think MUSC. And I think his regular doctors, I'm not sure if it's an assistant or an associate doctor, took him off some meds and within a couple days her father was very cognizant, very talkative, very jolly.
And I think this was on -- I think he came back home from there on a Thursday because apparently it was on a -- was on a following Saturday morning, I guess, and Mr. Hilton came back from out of town -- and his regular doctor was apparently over in Turkey or some country. And apparently there's quite a discussion going on, a lot of screaming. And this is secondhand. I did not see this or hear this but it was secondhand.
Q. And when you say it was secondhand, this was information that was relayed to you by Pam Murray?
A. Right.
Q. You didn't see any --

A. And that her father was pretty pissed off at Mr. Hilton. And apparently the next following Monday or Tuesday, I guess his regular doctor came back from town, Mr. Hilton took him back to the doctor and proceeded to put him back on his meds again.

Q. Now, all of that information you just relayed to me, you don't know -- have any firsthand knowledge?

A. I don't have direct knowledge of it but --

Q. This was information that was given to you by Pam Murray?

A. Yeah, in discussion.

Q. And what timeframe are we talking about?

A. I can't tell you what month, what date, all I can tell you is it was an incident that happened on a Thursday -- actually, it happened I think on a Wednesday. The hospital kept him for a day and one-half, he came home. And in two days he seemed to be happy, he seemed to be -- I mean, I saw him on that Friday and I was asked by Pam, dad seems content and happy? I said, he's talking more, you know. You know, I didn't have a whole

lot of one-on-one with their father to know a lot about the happiness, you know, and all. He would be happy and jolly and cut some jokes up but he seemed to be very -- very talkative.

Q. You can't remember what timeframe this was?

A. No. I can't give you a date or a month, nothing.

Q. Now, with regard to the Roper Hospital, did you ever review Mr. Murray's medical records from Roper Hospital?

A. No.

Q. Did you -- were you informed by Pam or Elizabeth Murray that the doctors found that Mr. Murray was well cared for?

A. No. All I knew is that when he went in there, he was very dehydrated. I was there that evening also and we, in fact -- we were in his room speaking to him and Mr. Hilton and Helen came over and we left the room, they went in and then at some point we went back in but all I can tell you is when we went back in, his eyes were about this big around and he was very weak.

Q. But you aren't aware of all of the medical tests that the medical personnel --

A. No, I can just --

Q. Hold on. We can't talk over --

A. From Roper? No.

Q. We can't talk over each other for the benefit of our Court Reporter. You aren't aware of all of the medical tests that were done by the doctors at Roper Hospital when Mr. Murray was there, is that fair?

A. No, except for the dehydration.

Q. And you had no conversations with those doctors --

A. No.

Q. -- is that right?

A. No.

Q. And so did Elizabeth or Pam Murray ever tell you that those doctors discharged Mr. Murray back to The Vendue because he was being well taken care of and well cared for there?

A. No.

Q. Did you ever have any conversations with his doctor, Dr. Bergman?

A. No. Don't know the guy.

Q. Don't know the guy.

A. No.

Q. At this time you are aware that

Mr. Murray had advanced Parkinson's?

A. My father did also, yes, I know.

Q. So this is -- unfortunately, this is a disease you're familiar with?

A. Right.

Q. Okay. Any other meetings with lawyers other than the one meeting that you said was with the Slotchivers about the creditors' claims and a couple of other matters and the meeting before Mr. Murray's death with a lawyer you can't remember?

A. Don't remember.

Q. So you're saying there could have been other meetings with lawyers, you just don't remember or that there were no other meetings?

A. I have no idea.

Q. You can't remember?

A. No.

(DFT. EXH. 1, Letter dated 6/21/07 to Elizabeth from Dad, with attachments, EEM003007 to EEM003014, was marked for identification.)

BY MS. CRAIG:

Q. Mr. Bump, I've handed you what's marked as Defendant's Exhibit 1 and this is a document that Elizabeth Murray has submitted regarding her

claim -- her personal claim, not the multimillion dollar claim for the Minnie Holmes estate, this is the over 500,000 dollar claim for her personally, okay? The date at the top is June 21, 2007, is that correct?

A. I have no idea on the date. It may be.

Q. But the date is actually written on the document we've handed you.

A. Yes.

Q. Does that say June 21, 2007?

A. Yes.

Q. Would you mind just taking a minute and look -- we're going to start first with the first three pages of this -- of this packet and just let me know --

A. Do you want me to read it?

Q. Well, just in looking at it, have you ever seen this before?

A. Yes.

Q. So you have seen the first three pages that we've marked as Defendant's Exhibit 1, correct?

A. Yes.

Q. Tell me, who wrote -- drafted the document?

A. I do know that prior to this -- or prior to the signing her father had subsequently drafted this himself and I think Pam or Liz took it and typed it up but, yes, I've seen this.

Q. Are you saying that Mr. Murray actually drafted this document by hand and then he had Elizabeth or Pam type it up?

A. I did not see him draft it by hand himself, all I saw was this document.

Q. Okay. So you've never seen a document that --

A. From him personally.

Q. -- that was created by Mr. Murray?

A. Right.

Q. So who drafted the first three pages of this document dated June 21, 2007?

A. I'm assuming, and I'm only assuming, that this was typed up by Liz. And, in fact, I know of one day when I was with Pam and with his nurse. And I think his nurse was somebody with a strange name, Svetlana, S-V-E-T something, was his nurse at the time. We took him out there at the park downstairs and apparently he wanted to sign it then but he could not grasp the pen at that time. This was --

Q. When was that?

A. Sometime in June. I can't give you --

Q. Okay. June 2007?

A. Yes. I can't give you a date and -- a time or a date but, yeah.

Q. Who was with you, Pam and Mr. Murray during the time you were in the park in June 2007?

A. His nurse. I think her name was Svetlana.

Q. Do you know her last name?

A. No.

Q. Do you know where she worked?

A. She worked for Mr. Murray --

Q. Do you know what the name of the company was?

A. -- as a nurse. Huh?

Q. Do you know the name of the company that she was working for?

A. I have no idea.

Q. During this time that you, the nurse, Pam and Mr. Murray were in the park in June 2007, was Mr. Murray walking?

A. No. He was in his wheelchair at the time.

Q. Which park were you all in?

A. The park right downstairs from his condo.

Q. The condo at The Vendue?

A. Yes.

Q. What was discussed during this time in the park in June of 2007? I just want to know everything you remember.

A. I know there was a point in time when Pam and I were with her father sitting there and he wanted to sign a document and at that time I didn't see that document that he wanted to sign but he couldn't hold a pen. He couldn't write that day. Conversation was between her and him. And it's been -- I can't tell you what it was about or verbatim in discussion. I mean, it's been eight years.

Q. And that's fine, sir.

A. Okay.

Q. And I expect that, quite frankly. I just want to find out if you remember anything specific and it sounds like you don't remember anything specific --

A. I don't.

Q. -- except for that Mr. Murray tried to sign something but was unable to do so?

A. Couldn't grab the pen.
Q. Okay. And do you know what it was that Mr. Murray was trying to sign?
A. At that time I did not.
Q. And who gave him documents to sign while you were in the park?
A. Pam did.
Q. Who drafted those documents?
A. Like I said, I -- I'm assuming that Pam did from Mr. Murray's documents.
Q. Okay. But you have no idea what those documents were?
A. I'm just assuming.
Q. Okay. During that time in the park, did Pam ask her father to make any changes to his Will?
A. No.
Q. Was there any --
A. Not that I know of. I mean, there was discussions between them. I wasn't sitting close enough to hear them and because I'm deaf in one ear, you know, I have to depend upon my left ear a lot so I did not know any of the stuff going on conversation-wise or what they were speaking about.
Q. Are you deaf in your right rear?

A. Right.
Q. So you don't remember any specific conversation between Pam and her father --
A. I do not.
Q. -- in the park?
A. I do not.
Q. And you have no idea what the document is that Pam was trying to get her dad to sign?
A. At that time I did not.
Q. Did Pam read a document to Mr. Murray or he she just wanted him to sign a document?
A. I can't recall.
Q. During this time in June 2007, is it fair to say that Mr. Murray had very advanced Parkinson's disease?
A. Um-hum.
Q. Is that yes?
A. Yes.
Q. And do you know that he was receiving treatment from a neurologist whose name was Dr. Bergman?
A. I know he was getting treatment but I don't recall the doctor's specific name, no.
Q. And you don't know any specifics about the treatment by Dr. Bergman?

A. No.
Q. Did you know that Dr. Bergman's actually given a deposition in this case?
A. I do not know.
Q. Did you know that Dr. Bergman has testified based on the care and treatment that he was giving Mr. Murray during this time that Mr. Murray was not competent as of May of 2007?
A. No.
Q. You did not know that?
A. No.
Q. All right, let's go through this letter, please.
A. On the first page or?
Q. Yeah, sure, let's start with the first page. Again, you -- you said that it's your assumption that Mr. Murray drafted a document that was then typed up by Elizabeth Murray?
A. Yes.
Q. Did anyone tell you that Mr. Murray had written this document out before Elizabeth typed it up?
A. Yeah.
Q. Who told you that?
A. Elizabeth.

Q. What did Elizabeth say?
A. All she said is she created this document based upon his desires and wants.
Q. And Elizabeth created this document based on a document that Mr. Murray had already written up?
A. I can't say if he wrote it or told her or anything. I can't say that because I wasn't there, I wasn't in the room, I wasn't aware.
Q. And when you look through, this is a very detailed letter that Elizabeth drafted. If you looked at the first three pages there's a lot there, over six points, and a lot of very detailed financial information contained in this document. During this time do you have -- did you know that Mr. Murray was not competent?
A. I did not know anything of that.
Q. So when you look at this document --
A. And I don't know whether this document was even -- how or when he did it, may have been six months prior, may have been then, I do not know. I wasn't there.
Q. When is the first time that you saw this document?
A. I saw this the first time when I

witnessed him signing it in July.
Q. Okay. Now, this is in July of 2000 --
A. '07.
Q. -- '07?
A. Um-hum.
Q. This is right before his -- he died in August of 2007.
A. I think this was like, what, three weeks before, two weeks before? This was -- I signed on July the 21st --
Q. And this --
A. -- on the third page.
Q. Okay. And that was approximately six weeks before Mr. Murray died, right?
A. Sure.
Q. All right, looking at the first page over on the right-hand side, there appear to be initials on the bottom of the document?
A. Um-hum.
Q. Are any of those initials yours?
A. Yes.
Q. Which one?
A. The middle one.
Q. The middle one. That's your signature or your initials?

A. LCB.
Q. Those are your initials?
A. Um-hum.
Q. Who asked you to put your initials on this page of the document?
A. I can't say that. I mean, I don't know.
Q. If you go to the second page, are your initials on that page of the document?
A. No.
Q. Why would your initials be on the first page of the document but not the second page of the document?
A. I have no idea.
Q. When you -- your custom and practice when you are initialling a document, do you typically initial all of the pages of a document or just one page?
A. I've initialed all kinds of things. I can't tell you that because -- I just can't.
Q. All right. Then looking now at the third page, do you have your initials or your signature anywhere?
A. Yes.
Q. Okay. Where?

A. It's in the middle. Well, no, it's at the line underneath William's signature and it's also written on the side, Larry C. Bump.
Q. And did you write Larry C. Bump to the side?
A. Yep.
Q. And did you write the date?
A. Yes.
Q. Did you also write 1561 Brianna Lane, Charleston, South Carolina, 29412?
A. I think I did.
Q. Does that appear to be your sig -- handwriting or somebody else's?
A. No, that appears to be mine.
Q. And are your initials on this document?
A. Yes.
Q. Where?
A. The right-hand side.
Q. Which ones?
A. In the middle.
Q. Do you know why you initialed the first page and the third page but not the second page?
A. Can't tell you.
Q. All right. Tell me -- the first time that you saw this document you said was on July 21,

2007, correct?
A. Correct.
Q. And prior to that time you never saw this document or was asked to draft any type document?
A. No.
Q. On July 21, 2007, how did it come to pass that you were asked to be a witness to this document?
A. Well, I know Mr. Murray at that time snuck out of his apartment with a black lady, and I don't know her exact name, some -- some strange name, but she was a nurse --
Q. I'm sorry, Mr. Murray snuck out of his apartment?
A. Yeah. They got him out of the apartment on that day. I think -- I think -- see, a lot of -- a lot of things that you aren't aware of is that Mr. Murray was -- was more cognizant than a lot of people think and he made the statement one day to me that said he wanted to be -- he wanted to do things other than what they want me to do.
Q. And who was he talking about? Did he say who they were?

A. They -- they, I assume Helen, Hilton, whoever.
Q. But that's an assumption, they could have been Elizabeth and Pam, correct?
A. No, because he was coming over to Pam and Elizabeth -- to Pam's house when this happened.
Q. But that's an assumption, correct? He said they are trying to get me things that I don't want to do, is that correct?
A. Well --
Q. He didn't say specifically who it was? That's my question.
A. No.
Q. Okay. So let's --
A. But we can preclude that he wanted out of his apartment to go over and visit Pam.
Q. And that's what I wanted --
A. Without Helen.
Q. Okay. That's what I wanted to pick up on.
A. Yes.
Q. So you said that Mr. Murray snuck out of his apartment?
A. His nurse -- I think Helen went out to have her nails done or something, yeah.

Q. Okay. So the nurse who was taking care of him at the time snuck him out of his apartment and took Mr. Murray where?
A. To Pam's condo.
Q. Who drove?
A. The black lady drove.
Q. What car did she drive him in?
A. It was a van.
Q. So Mr. Murray came to Brianna Lane on July 21, 2007?
A. (Witness moved head up and down.)
Q. Is that correct?
A. Yes.
Q. And how did he get from the car into Pam's house?
A. In the wheelchair.
Q. Who put him in the wheelchair?
A. The nurse.
Q. And the nurse came inside Brianna -- into the house on Brianna Lane?
A. Um-hum. No, in fact, he didn't come in immediately because we came out and the nurse, Pam and I went down the street. That's how he first met Jeff, the neighbor. But we didn't go immediately in the house when he got there.

Q. What time of day was this?
A. It was probably mid-afternoon.
Q. And what day of the week was it?
A. I'm thinking it was on a Saturday.
Q. So it was mid-afternoon in July and Mr. Murray is being pushed in his wheelchair --
A. Yes.
Q. -- up and down the street?
A. Right. Just around the corner. Not -- not around the corner but just like two condos down.
Q. Okay.
A. Three condos down.
Q. And who is pushing Mr. Murray in his wheelchair in July of 2007?
A. The black nurse.
Q. The nurse. And where did she take him?
A. We just went out -- he wanted to see his place, you know, out there and we passed --
Q. I'm sorry, what place?
A. Well, the place he built, Meridian Place.
Q. Okay. Please continue. So you went to see the place?
A. Well, he was outside looking around at

everything, you know, I'm assuming.
Q. Were you with him at that time?
A. Yes.
Q. Did he say anything?
A. No.
Q. So how long was Mr. Murray outside?
A. Maybe 20 minutes.
Q. What happened after the 20-minute walk at the -- on Brianna Lane in July of 2007?
A. We went back into the house.
Q. Into Pam's house?
A. Yes.
Q. Who was in Pam's house at that time?
A. At that moment it was Pam, me, her father and his nurse.
Q. And just -- if you'd just walk us through just what happened at that point, everything you remember.
A. Well, I know he came in and I think he had a glass of water. We talked. He seemed very talkative then.
Q. What did Mr. Murray say to you?
A. The backyard looks great, the weather. Not a lot of conversation. Pam and him had the conversation more than I did.

Q. Did Mr. Murray go to your backyard -- to Pam's backyard?
A. No. You could actually see it outside the door out there.
Q. How long did you and Mr. Murray and Pam and the nurse talk?
A. Well, the nurse, I think, wasn't in the room at the time.
Q. Where did she go?
A. I think she went into my office -- well, our office, Pam and my's office, and was on the computer or the phone, something in there.
Q. Where were you, Mr. Murray and Pam physically in the house at that time?
A. Sitting -- I think I was on the sofa and he was on my right side, I think, and Pam was standing between us. She was back and forth cooking also.
Q. Was Mr. Murray in his wheelchair --
A. Yes.
Q. -- or was he sitting on a sofa?
A. Wheelchair.
Q. How long did you and Mr. Murray and Pam visit in that room?
A. I can't tell you. I can't tell you.

No recollection.
Q. Okay. Do you recall what was discussed other than the yard and the weather?
A. No. No.
Q. You don't recall any specifics --
A. No.
Q. -- at that time? All right. Then what transpired?
A. I guess right before dinner Pam brought this letter out, document out to her father, and I think Jeff -- Jeff was there at that time also.
Q. When did Jeff arrive?
A. Oh, just before dinner.
Q. Do you know why Jeff came over?
A. He came over to visit and he came over to witness this document.
Q. Who asked Jeff to come witness a document?
A. Pam did, I believe.
Q. Now, you're aware that Jeff Young has substantial health problems of his own, correct?
A. Yes.
Q. You know that he is on a morphine pump constantly?
A. Oh, yeah.

Q. And that he takes Vicodin regularly?
A. Yeah, but that was due to an injury that he suffered down at the nuclear naval base down there.
Q. Yes, sir, but he's on a lot of pain medication --
A. Sure.
Q. -- because of the pain that he had due to his accident?
A. Sure.
Q. And he's also deaf, did you know that?
A. He's what?
Q. He also has hearing problems?
A. Yes.
Q. So at this point it's you, Jeff Young and Pam and Mr. Murray, is that correct?
A. Yes.
Q. And the nurse, did she ever come back into the room?
A. I can't tell you that.
Q. And then you said that Pam brought out a document?
A. Right.
Q. Okay. Did you read the document that Pam brought out?

A. Yes, I read it. Jeff read it also. And I think Pam started to read it to her father. I think maybe she got through a page and he became agitated and said -- he said, I know what it says because I did it. That's all he said. And then Pam at that point gave it to him to sign.
Q. So you -- how many copies of the document were there?
A. I have no idea.
Q. Was it just one document or did Pam give everybody copies?
A. No, just one document. I never had a copy of it.
Q. All right. Who read the document first?
A. Oh, I can't tell you. I don't know if Jeff read it first and then I read it or vice versa. You know, it's been eight years ago.
Q. Are you sure that Jeff read it?
A. Yes.
Q. And if he testified that he didn't read it, would that change your opinion?
A. No.
Q. So who read it first?
A. I -- like I said, I don't know who read

it first.
Q. Do you know who --
A. I don't know if I did, he did. I don't know.
Q. So you don't know who read it second?
A. No.
Q. Did Mr. Murray read it?
A. No. Pam read him -- like I said, she read him the first, maybe part of the second one and he said, I know what it said, you know, I did it.
Q. So Pam did not read the entire three-page document to her father?
A. Not that I know, no.
Q. Now, take as long as you need to review the document but what I'd like to know is that whether or not you can testify under oath that this is the exact same document that Pam asked her father to sign on July 21, 2007. It's very detailed.
A. Do you want me to read it?
Q. Yes. So if you want to take a minute and read it and then we'll -- we'll just take a short break while you're doing that.
A. Okay.

(A recess transpired.)
BY MS. CRAIG:
Q. During the break, Mr. Bump, did you have a chance to review the three pages which is marked as Defendant's Exhibit 1?
A. Yes.
Q. Okay. And that's again the June 21, 2007 letter that Elizabeth Murray drafted, correct?
A. Correct.
Q. And based upon your review, can you say with certainty that this is the exact same letter that you read on July 21, 2007 in Pam Murray's house on Brianna Lane?
A. Yes.
Q. This is a very detailed document with a lot of --
A. Yes.
Q. -- quite complicated financial jargon and you remember every word in this document --
A. No.
Q. -- and you're saying that this is the exact same document?
A. I mean, there were a lot of things in it but the backgrounds on all of these things, I don't have the full knowledge of all of these. I

just know that what she put in here is what she put in here and what her father signed for. That's all I can tell you.
Q. So this was eight years ago, right?
A. No, no, it was -- it was 2007 -- well, yeah, eight years ago.
Q. Okay. So eight years ago you read this document, correct?
A. Um-hum. Yes.
Q. And have you read it ever -- did you only read it that one time?
A. Yes.
Q. And have you -- and so you've never read it again after this --
A. No.
Q. -- this July 21, 2007?
A. No. Except now.
Q. And are you really telling us that you are saying that you remember that this is it word for word what you read in 2007? Because that seems a little incredible.
MS. JOHNSON: Object to the form.
THE WITNESS: All I can tell you is I knew there was a lot of things in it but I can't tell you word for word but I did have -- I did sign

it.
BY MS. CRAIG:
Q. Okay. That's fair.
A. Okay.
Q. So you can't --
A. I mean, I can't recall word for word, I mean...
Q. And that's why I'm asking the question --
A. Yeah.
Q. -- is you can't recall word for word the document that you signed eight years ago back in 2007?
A. No.
Q. Okay. But you do recall that Pam asked you to witness a document?
A. Yes.
Q. Now, who kept possession of the document that you witnessed?
A. After this?
Q. Yes, sir.
A. I have no idea.
Q. You don't know what happened to the papers after you witnessed it?
A. No. Have no idea.

Q. But you and Pam were living together, correct?
A. Yes.
Q. But you didn't see Pam keep it somewhere?
A. She may have filed -- have put it in a file, she may have given it back to Liz. I have no idea. I mean, some -- some things I'm -- I'm privileged to know and some things I was never told so, you know, if she filed it away, she filed it away. I have no idea.
Q. But you do recall that Elizabeth -- excuse me, that -- you do recall that Pam read a portion of this letter to her father but not the entire document?
A. Right.
Q. Correct?
A. Correct.
Q. And that was on July 21, 2007?
A. Correct.
Q. All right. So who asked Mr. Murray to sign the document?
A. Pam.
Q. What did she say?
A. I can't even tell you verbatim. I

can't even tell you how that came about. I mean, you know, if you saw me maybe five years ago, maybe I could, but now I can't honestly tell you exactly what she said or the context or the text of it.
Q. All right. Did you actually see Mr. Murray pick up a pen and sign this document?
A. Yeah, he picked up a pen and couldn't hold a thin pen like you've got so Jeff got him what appeared to be a magic marker and he signed it with that but he could not hold a thin Bic pen or anything.
Q. Do you recall who -- did Mr. Murray sign this document first or did somebody else sign it?
A. I think he signed it first and then I signed it second. I mean, I -- I'm assuming I signed it second.
Q. You're just assuming, you can't remember specifically, correct?
A. No, but he signed it and then I signed it.
Q. Okay.
A. But I don't know if Jeff signed it first or I signed it.
Q. Okay.

A. Do you follow me?
Q. Yes, sir. Yes, thank you.
A. I mean, I can't honestly say who did what when.
Q. It purports to have two signatures of Mr. Murray on Page 3 of Defendant's 1. Do you see that?
A. Well, yeah, after love, I guess. I am assuming that that's an initial or something.
Q. Right. So there's a squiggly line after love and then there's a squiggly line or a signature after William Edwards Murray, so there are two places where that same pen was used to sign the document?
A. Yes.
Q. Did you see Mr. Murray sign the one that says love, dad or signed William Edwards Murray?
A. I can't -- I can't tell you. All I know is he signed it here and then I had to sign it on the second line and fit it in there. That's all I can tell you.
Q. And when you say he signed it here, do you think he signed William Edwards Murray or the love, dad?

A. I'm assuming -- I'm assuming he signed them both.
Q. And that's -- and that's what my question is.
A. Yeah, I'm assuming --
Q. Can you say one way or the other whether or not you saw Mr. Murray sign both places on this document?
A. I know he signed the second one. I know that.
Q. Do you know whether or not he signed the place where the squiggly line says love, dad?
A. I can't even tell you that.
Q. Okay. You can't recall, correct?
A. No, um-um.
Q. Now, when you signed as a witness, do you recall whether or not Elizabeth Murray's signature was on this document? Do you see where her signature is on the document?
A. Yes.
Q. Okay. Was that --
A. That was signed, yes.
Q. You do remember that?
A. Yes.
Q. How is it that you remember that

Elizabeth Murray's signature was on the document?
A. Well, I assume -- I don't sign documents that have empty lines on them. Like when you buy a car, you know, you -- you don't sign things that haven't been fully put in there because you don't know what they're going to add to that but her signature was there and his was there when I signed it.
Q. So was Elizabeth Murray present?
A. No.
Q. That signature -- do you know when it got on this document?
A. I do not know.
Q. You never saw this document before the time that you were asked to witness it, correct?
A. Excuse me again?
Q. You never saw this document before the time that you were asked to witness Mr. Murray --
A. Correct.
Q. -- signing the document?
A. Liz I believe was in New York City at the time.
Q. All right. So now we go down to the next line and it says witnessed by. You've indicated that that is your signature, correct?

A. Yes, that is correct.
Q. All right. And then the next line, is that Jeffrey Young?
A. Yes.
Q. And did you see him sign the document?
A. Yes.
Q. All right. After the document was signed, you've testified that you have no idea what happened to the document, correct?
A. Correct.
Q. You weren't given a copy of it?
A. No.
Q. Was Mr. Murray given a copy of it?
A. I don't know.
Q. Was the nurse who was with Mr. Murray given a copy of it?
A. No.
Q. Did Mr. Murray instruct you to do anything with the document?
A. Not that I know of. Not me personally.
Q. Did he instruct anyone to do anything with the document?
A. I can't tell you that either.
Q. All right. So now let's go to -- let me ask you one other thing. Did Mr. -- did Pam

make any changes to this document during the time that you all were having this discussion in her house? Did she go to her computer, make changes and bring out another document?
A. I do not know.
Q. Okay.
A. I can't tell you that.
Q. All right. So if we now look to what is marked -- at the bottom there's a number, it says EEM003011. It says Larry Bump at the top, is that correct?
A. 3011? Got you.
Q. Yes. All right. Now, this appears to be a statement that you have signed. Can you tell me who drafted this statement?
A. I can't tell you that either.
Q. Did you draft it?
A. I mean, I -- I drafted it and I think Pam printed it but -- can I just read it?
Q. Of course you can. Take your time.
A. Okay. Yes. I do remember this now.
Q. Okay. So my question is, who drafted this document?
A. I did.
Q. Where did you draft it?

A. At the house.
Q. At Pam's house on Brianna Lane?
A. Yes. Yes.
Q. On whose computer?
A. On Pam's computer.
Q. Did anybody make any changes to the document that you drafted?
A. I remember bits and pieces. I can't say if anybody changed anything.
Q. So you remember drafting --
A. My signature is there at the notary, you know, but I have -- I mean, I read it -- I may have read it again at the notary but that's the last I saw this. I mean, I didn't see any of this second or third time.
Q. You said you drafted a statement on Pam's computer at Brianna Lane, correct?
A. Um-hum.
Q. Is that a yes?
A. Um-hum. Yes.
Q. Do you remember when you did that?
A. Again, no.
Q. Was it the same --
A. I can't give you -- I can't give you a day, a date. I can't.

Q. Because this document is not dated. That's what I'm trying to find out, is when it was drafted. And what I'm hearing from you if I'm correct is that you don't recall when this document was drafted, is that right?
A. Right.
Q. Okay. Where is that computer you were working on? Do you still have it?
A. Oh, that computer. Pam gave that to me when she left and that computer died sometime in 2012 and I trashed it and got another one.
Q. And when you say you trashed it, what did you do with it?
A. Put it in a dumpster.
Q. So you no longer have the computer where this --
A. No.
Q. -- was drafted?
A. No.
Q. Now, after you drafted a statement on the computer, did you discuss it with Pam or Elizabeth and make changes to it?
A. Can't tell you that either. Eight years ago.
Q. And do you know whether -- do you have

any personal knowledge that Elizabeth or Pam made any changes to this document before you signed it?
A. Can't tell you that either.
Q. Okay.
A. I don't know how they could have but I don't think so.
Q. But you don't remember when you drafted it, correct?
A. I do not.
Q. And do you know if you printed it out or did Pam print it out?
A. I printed it out.
Q. And do you know if you printed it out the same day it was drafted or was there a period of time in between those two functions?
A. I would just be assuming and I can't say for sure.
Q. Was this a -- was this a computer that Pam also had access to in your house?
A. Yes.
Q. So in looking at Page 3011, which is in Defendant's Exhibit 1, is it fair to say you can't say with certainty whether or not this is the actual statement that you drafted or whether there were changes made to the one that you drafted?

A. I mean, reading this it comes back to me but not verbatim. I mean, I can't tell you that.
Q. All right. So that's your signature at the bottom, correct?
A. Yes.
Q. And who is the notary?
A. I have no idea. I mean, I don't remember -- oh, wait a minute. Wait a minute. I'm trying to think. I think the notary is -- I think Pam had an account at a bank called Community Bank. I don't know the first name of it but it was Community Bank and it was on Folly Road. That's all I can tell you.
Q. Did you take this document --
A. Both of us did.
Q. So you and Pam went to Community Bank and asked that they notarize this statement --
A. Yes.
Q. -- is that correct?
A. Um-hum.
Q. When did that happen?
A. Again, you're asking me a date. I can't tell you that.
Q. And sir, just so you understand, the

reason I'm asking for a date is there is no date on the document.
A. Correct. I understand.
Q. That's what we're trying to find out. And I understand that we're talking eight years ago and that's a long time.
After you had the -- this document notarized, what -- where did the document go?
A. I have no idea. Same thing, I don't know if she filed it away, what she did with it, where it went. I have no knowledge.
Q. You gave it to Pam?
A. Yeah.
Q. Okay. Did you give a copy of this statement to anybody else other than Pam?
A. Nope.
Q. So it was Pam --
A. I mean, I handed it to her, she put it in a file or did something. I have no idea.
Q. Whatever Pam did with the original statement that you signed, you don't know?
A. I do not know.
Q. Do you remember anything else about this statement that we're discussing?
A. Nope.

Q. All right, if you look at the document right before your statement, and for the record it's EEM003010, it's a statement of Jeffrey Young. Do you see that?
A. Yeah.
Q. Have you ever seen this document before?
A. No. Not personally.
Q. Do you know who drafted this document?
A. I have no idea.
Q. Okay.
A. It may have been Jeff. He had a computer. But to be certain, I can't tell you that.
Q. It looks like Mr. Young actually had his statement notarized almost a year after this incident on July 21, 2007. Do you see that?
A. Um-hum.
Q. Is that a yes?
A. Yes. Sorry.
Q. Did you and Pam discuss having Mr. Young sign a statement almost a year after this event took place?
A. I don't recall this at all. I mean, I don't know the background on this.

Q. Okay. So you weren't involved in drafting this document?
A. No.
Q. And you've never seen this document until today?
A. Never seen it before.
Q. Do you recall any other documents that were shown to Mr. Murray on July 21, 2007 when he came to Pam's house?
A. Other than this, no. Not that I recall.
Q. All you recall is a three-page document being shown to Mr. Murray?
A. Yes.
Q. Was he shown any receipts or invoices or anything to prove the amount that was in this three-page document?
A. Not that I recall.
Q. If you continue on in the -- on Defendant's Exhibit 1, there are two pages at the end and it's EEM003013 and 3014.
A. Okay, hold on.
Q. Sure.
A. Okay, yes, I've got them.
Q. Have you seen these documents before?

A. No.
Q. Do you recall whether or not Mr. Murray was shown these documents on July 21, 2007?
A. I can't tell you that either.
Q. While Mr. Murray was at Pam's house on Brianna Lane on July 21, 2007, did he discuss any aspect of his estate planning?
A. The estate plan?
Q. His estate planning, like his Will or anything else.
A. The only thing he stated was that he wanted all of his daughters to have homes near him. That's all I knew. I -- I knew Brianna had one, I knew Pam had hers and I'm assuming that the condo beside us was Liz's.
Q. Did --
A. But that's all I heard about anything about his estate, his Will. Nothing. I mean, I was privileged to some things but not -- not his stuff.
Q. What were you privileged to?
A. Just the things that Pam and I knew about but that's it.
Q. Did Pam ever indicate to you that she wanted her father to change any aspect of his Will?

A. No.
Q. Did Pam ask her father in your presence to ever change any part of his Will?
A. No. And again, so long ago.
Q. Now, when did the nurse come out of the office and rejoin you and Mr. Murray and Pam?
A. I think possibly she came out at dinnertime because she did eat with us there, I believe.
Q. Was Mr. Murray able to eat?
A. Um-hum. I think so, yeah.
Q. Was he able to feed himself?
A. That I don't recall.
Q. Did you ever accompany Pam and Mr. Murray going to a lawyer's office?
A. No.
Q. The only time that you went to a lawyer's office with Pam was with the Slotchivers and then the lawyer before Mr. Murray died?
A. Yes.
Q. Was that man's name Dennis Christensen?
A. Gosh, I can't tell you that, rings a bell or not.
Q. Are you familiar with the Freeman trust?

A. Yes, I've heard bits and pieces of it. I don't know the background, a lot of stuff about that but, yeah.
Q. Were you aware that Elizabeth Murray met with the lawyers in that litigation to make a statement against her father?
A. Are you talking about the -- I know there was a situation with some sort of problem between him and Hilton and some misappropriated funds or something like that.
Q. And are you aware that Elizabeth was the one that went to US Trust and gave them that information?
A. Well, I -- you know, I thought both Pam and her did.
Q. Okay.
A. I thought. But yeah, I heard that they -- they were protecting themselves because they were also on that trust. That's what I understood. So yes, that's why they went and they did that.
Q. So you have personal knowledge of Pam and Elizabeth Murray going to --
A. I don't know the intricacies, all I know is that yes, they did.

Q. Okay. That's just what I need to --
A. Right.
Q. -- ask you the question about. So you're aware that Pam and Elizabeth Murray went to make a statement against their father, Mr. Murray, with the lawyers that were suing him?
A. Now, I don't know if it was against their father. I know that they went to attorneys but I didn't know if -- what the outcome was or what -- they were trying to pinpoint where the discrepancies and the misappropriations were. That's what I knew. That possibly was what that started.
Q. And was it your understanding that Pam and Elizabeth thought that the misappropriations, that that was being done by Mr. Murray?
A. I think most of those misappropriations that they found were more against Mr. Hilton.
Q. But do you know whether or not there was an actual lawsuit that was filed against Mr. Murray? Do you know that?
A. All I know is that they went to attorneys I believe with the bank but that's all I know about that. I don't know -- I don't know what they were suing them for, I don't know what they

were after. I mean, I was -- oh, I can't even tell you what year that was.
Q. That was my next question. Do you remember if it was -- it wasn't in 2007, is that fair?
A. Correct.
Q. Okay. So do you remember if it was the year before he died in 2006?
A. It may have been. Well, we moved up there in 2005 so I can say possibly.
Q. During that litigation against Mr. Murray, did he ever make any comments to you that he was upset that his daughters were assisting the lawyers who were suing him?
A. No. Mr. Murray and I discussed normal things like the weather, how I was doing at Lowe's. He never -- he never once talked to me about his daughters or anything going on in his personal or his business life.
Q. Mr. Murray never talked to you about his finances?
A. No.
Q. Mr. Murray never talked to you about his estate planning?
A. No.

Q. Did Pam tell you during that time when the -- there was active litigation against Mr. Murray in 2006, did she ever tell you that she claimed that her father lacked capacity, to remove him as trustee?
A. Not that I recall, no.
Q. As you sit here today, are you -- did Pam ever tell you that her father lacked capacity at any time before he died?
A. No. I think she was more concerned with him being drugged to a point where that may have -- may have been possible but she never told me that her father lacked capacity for himself, no.
Q. Did you ever see any documents where Pam had signed that her father had lacked capacity in 2006?
A. No.
Q. You're not aware of those documents?
A. No.
Q. And Pam hasn't shown you those documents?
A. No.
Q. And you had no discussions with Pam about any such documents or about the litigation?
A. No.

Q. Okay. Do you know anything about Mr. Murray being taped, recorded?
A. Yes.
Q. Tell me about that.
A. It was the day that he was in the hospital when he went to Roper and he was discussing with Liz and I think Liz tape recorded it, maybe Pam did. I don't know which one did. I was in the room when they were talking but I don't recall the exact conversation that took place but I did know afterwards that they did record him though, they were doing that.
Q. And so who was -- who was -- whose idea was it to record Mr. Murray?
A. That I can't tell you. I don't know.
Q. And who all was involved in the recording, how about that?
A. Okay, there's Liz, Pam and I.
Q. Okay.
A. Well, I mean, I spoke to him and asked him something about his feet or something but other than that, that's all I said.
Q. So you weren't -- you didn't request that he be --
A. No.

Q. -- that Mr. Murray be recorded?
A. To be recorded?
Q. Yes, sir.
A. No.
Q. So is it fair that it had to be Elizabeth or Pam or both?
A. Yes.
Q. And what was your understanding of the purpose of recording Mr. Murray at this time?
A. I have no idea.
Q. And what type of recording device was used, do you remember?
A. I think she had a -- like a Radio Shack recorder, like a voice recorder like you would do a transcript or something.
Q. Anybody else come in the room during the recording that was going on other than you, Pam and Elizabeth Murray?
A. Not that I can recall, no.
Q. In the recording it sounds like as though there's a man's voice that says, would you help them with the court to protect you. Do you know whether or not you asked Mr. Murray that in the recording?
A. I may have, yes, if I heard the

question from either Liz or Pam. I think I spoke up and said that.
Q. And then also in that same recording Elizabeth Murray told her father that she was going to see a lawyer in the morning. Do you know which lawyer she was going to see?
A. The Slotchivers.
Q. What was your understanding of why she was going to see the Slotchivers?
MS. JOHNSON: Object to the form. You can answer.
THE WITNESS: Because -- how do I say this? Because I'm not privileged -- or not privileged, but I wasn't aware how she came to that conclusion but that she was in the hospital because he wanted to go to Roper, he did not want to go to MUSC. So I think there was a situation where her father was very cognizant as to what was going on with him. He spoke very clearly to the police officers, spoke very clearly to the ambulance guy when they asked him where he wanted to go and I think they felt that at that moment there was a problem with what was going on at MUSC. That's my opinion.
BY MS. CRAIG:

Q. So the meeting with the lawyers that Elizabeth Murray referenced on the recording, that's with the Slotchivers. And did you go to that meeting with her?
A. Yes. That was -- that was the next morning, early morning I was there, and then it was fairly -- maybe an hour and then I think Stephen Slotchiver I think called the courthouse and went straight over there, but that's -- well, actually, we sat at the courthouse all day long.
Q. Was there any discussion with the lawyers about changing Mr. Murray's Will?
A. You're asking me something that was too long ago. I mean, verbatim stuff, no. I have no idea.
Q. Also in the recording there's a mention of your son calling to check on Mr. Murray. Do you have a son?
A. Calling to check on Mr. Murray?
Q. Yes, sir.
A. I have a son, he's 39 now, but I don't know how that conversation --
Q. You don't recall?
A. -- came up.
Q. You don't recall that?

A. No. But he did meet my son, I can't tell you what year, but my son got married and -- maybe it was one early summer he came up to visit me and we went to visit him at The Vendue. But, you know, if I said that, I would have said it in such a way that to say, you know, my son will call and check in on you. And again, it's been a long time ago.

Q. Did either Pam or Elizabeth Murray ask Mr. Murray to sign any documents?

A. I have no idea.

Q. Do you remember if there were any papers involved at all?

A. No.

Q. You don't remember or there were no papers?

A. Papers? No. I mean, we went straight to the hospital.

Q. So you do not recall --

A. I don't recall any papers.

Q. And then there were questions on the recording about Helen. Do you recall that?

A. No.

Q. And ultimately Mr. Murray said on the recording that he felt safe with Helen. Do you

recall that?

A. No.

Q. Were you aware that Elizabeth Murray or Pam were recording Mr. Murray at this time?

A. I believe I did.

Q. Did you go to Mr. Murray's funeral?

A. Yes.

Q. Did you have any conversations with a woman named Dana Flavin about Mr. Murray?

A. Dana Flavin. I believe she was either a doctor or a nurse. I mean, the name rings a bell, but possibly.

Q. Were you aware that somebody claimed that Mr. Murray had been poisoned and that's why he died?

A. Yes.

Q. What do you know about that?

A. The day that he passed away, apparently -- and I'm only telling you this because this is what I heard.

Q. From who?

A. From -- between Pam and Liz or somebody in the room after he died. And apparently the subject came up that Brianna made him some soup like two days before he died. The man was in

hospice but he was starving. That man ate food like you would not believe he ate food. So anyway, so on the morning that he passed away, which was I think on a Saturday, all the family was there and apparently there was some discussions between either the police chief or the coroner, somebody, maybe the detective, I'm not sure how that came about, but we were all in the family room there and I think a detective or somebody spoke up and said, well, there's an issue with poisoning possibly.

Q. Who said that?

A. And I don't know if that was poisoning of food or if it was a missing comfort kit.

Q. Who said that there was an issue with poisoning?

A. There was a detective or someone. There were so many people in that room and so many things being said. But what was -- what was odd to me was when this was discussed in that room, Brianna and her boyfriend bolted, left.

Q. What room were you all in?

A. We were in the big family room.

Q. At The Vendue?

A. Vendue, yeah.

Q. Okay. All right. So ultimately you

know that an autopsy was done, right?

A. Yes.

Q. And that Mr. Murray was not poisoned. Were you aware of that?

A. Correct.

Q. Okay. And he died because of the disease he had?

A. Have you read the autopsy?

Q. Yes, sir.

A. Okay.

Q. Have you read it?

A. I've read it also.

Q. Okay. And what was your interpretation?

A. My interpretation was Mr. Murray went in the hospital the week before because there was something going on with Mr. Murray. He didn't know what it was. He just felt sick. If they would have kept him long enough, they would have found that there was a torn -- I don't know, a rectum wall or something torn that was leaking blood into his lower cavity. That's what the autopsy showed also.

Q. Are you --

A. So --

Q. Are you critical --
A. I'm not a doctor but, you know.
Q. Are you critical of the nurses and doctors that were treating --
A. Excuse me?
Q. Are you critical of the nurses and the doctors who were treating Mr. Murray?
A. No, but I do know that when Mr. Hilton brought in the hospice at that time, Mr. Murray was probably four or five days of not being shaved, looked ragged. And Mr. Murray never looks ragged whenever I've seen him, he looks shaven and clean and everything, but he was made to look like hospice was -- would accept him as a patient.
Q. But at the end of the day, of course Mr. Murray was not poisoned, you're aware of that, right?
A. Oh, yeah. He had Parkinson's.
Q. And do you know that -- do you know who it was that accused Mr. Murray -- that made the accusation that Mr. Murray had been poisoned?
A. No.
Q. You don't know if it was Elizabeth or if it was Pam or somebody else?
A. No. I do not know.

Q. And do you have any medical training at all?
A. No.
Q. And how did you get a copy of the autopsy report of Mr. Murray?
A. Oh, gosh, possibly Pam got it, I read it.
Q. Have you reviewed any other medical records of Mr. Murray --
A. No.
Q. -- other than his autopsy report?
A. No. Well, the autopsy report I think took like 14 months to get it or something.
Q. Do you know why?
A. I have no idea. All I heard was that the coroner in Georgia was supposedly backlogged.
Q. Do you recall any other information related to this document which we've marked as Defendant's Exhibit 1 that you -- which bears your signature on the third page other than what we've talked about?
A. No.
Q. And do you recall any information related to the Minnie Holmes Murray estate other than what we've talked about?

A. Only that her father borrowed the money or took the money or whatever and he promised to pay it back. Actually, after the three daughters sued him did he come to the conclusion that he was going to pay them back. Mr. Hilton drafted the documents.
Q. And --
A. That's all I know.
Q. Who told you that?
A. Pam.
Q. So all this information came through Pam Murray?
A. Yeah.
Q. You had no conversations with Mr. Murray about the Minnie Holmes Murray estate?
A. No. We never discussed finances or his business or anything.
Q. And the conversations that you had with Pam Murray about this, can you say when those occurred?
A. No.
Q. Okay.
A. I cannot.
Q. As far as the life insurance proceeds, have you received the 25,000 dollar check?

A. Yes.
Q. And you indicated that you do not plan to give that money to Elizabeth Murray?
A. No.
Q. And she's aware of that, correct?
A. I assume she is.
Q. You told her, right?
A. Yeah.
Q. Did Elizabeth Murray indicate that she was trying to collect some funds from Pam Murray's daughters?
A. No. In fact, my conversation was when she asked me to pay -- to give her that money back for Pam's expenses, I mentioned to her and said, well, she has three daughters who would be more inclined to take care of their mother than you. And I told her, I said, you know, you should speak to them, you know, maybe they'll -- they'll give you some funds back because they're Pam's daughters and -- but I'm not aware that she's suing them or doing anything, no.
Q. And are you interested to find out whether or not you're a beneficiary under Pam Murray's Will?
A. The only thing I know of is the

furniture. That's all I know. I have not seen the Will -- and I probably should see it because I'm the beneficiary.

Q. And you have requested the Will, is that correct?

A. Not yet, no.

Q. Okay.

A. I'm just assuming that I'm going to get a copy of it but, like I say, it's been two months now, not a word from Ashley.

Q. So is Ashley the executor of her mother's estate?

A. Yes.

Q. So your inquiries to Ashley, have they been in writing or by telephone?

A. By phone.

Q. And you --

A. And they've been unreturned.

Q. How many times have you tried to call her?

A. Twice.

Q. When was the last time you tried to call her?

A. Oh, probably -- I called her the first time -- we haven't actually spoke on the phone, it

was more texts. And the first time I asked her for the name of the insurance. She was out of town, she said, I don't know it but I think it's Ohio something. And that's how I came about finding the insurance company because I wasn't even given the name or address or for the insurance documents or anything as a beneficiary.

Q. You just received 25,000 dollars --

A. No.

Q. -- as a check?

A. I did some footwork.

Q. What did you do?

A. First of all, Liz was very hesitant to tell me what happened. Second of all, I -- I knew she took her to Kaiser Permanente. I then --

Q. Remind me what that is.

A. That's a hospital.

Q. Okay. Elizabeth took Pam to Kaiser?

A. That evening right before she died or she died that evening, I'm not sure which. And so I was inquiring as to who the funeral home was and she danced around it. So this was about maybe three weeks after I was told that I was the beneficiary so I thought, well... So I called the insurance company. They knew before Ashley called

them that Pam had died due to the Social Security Index, of course.

So I set about -- the insurance company sent me a letter saying I was a beneficiary on the policy. I sent that copy into the Maryland records and for two weeks nobody could find a death certificate on her. So I asked Liz again, I said, who is the funeral place? And she said, well, Ashley picked out three of them and I gave her the money to take care of it but she wouldn't say who.

So I called her again on a Sunday, this was like a week or two later after that, and I finally got her to say, oh, but they took her by ambulance to the Virginia Medical Center. So I called the Virginia records department and I got it. So they sent the death certificate, which I have never seen, to the insurance and the insurance issued the check.

Q. And when did you receive the 25,000 dollar check?

A. About a month and a half ago.

Q. Have you spent the money or do you still have the money?

A. Some of it.

Q. So if Elizabeth sued you for the 25,000

dollars, would she be able to get the money back?

A. I don't know how she would sue me because of the insurance said we never received the change. So I think -- I haven't heard so I'm assuming she knows I got it.

Q. I assume it was a 100,000 dollar policy because you said 25,000 dollars each person and there were four beneficiaries?

A. It was 250,000.

Q. Okay. Then I misunderstood you. Her three daughters, did they take equally?

A. Equally.

Q. And then you --

A. I got 10 percent, they got the remaining split up between them equally.

Q. Okay. And do you expect to speak with Elizabeth Murray again?

A. If she calls me, probably, but no. I won't call her.

Q. Well, again, thank you for being here today --

A. Sure.

Q. -- giving your deposition. Have you understood all of the questions that I've asked you?

A. Yes.
Q. And do you want to make any changes to your testimony?
A. No.
Q. Okay.
MS. CRAIG: Thank you very much, sir. Those are all the questions I have.
THE WITNESS: Thank you.
MS. JOHNSON: I have no questions.
(WHEREUPON, the proceedings concluded at 11:21 AM.)
(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

SIGNATURE OF DEPONENT
DEPONENT: LARRY C. BUMP
DEPOSITION DATE: June 22, 2015
REPORTER: TERRI L. BRUSSEAU
AWR JOB #: 150622TLB
CASE CAPTION: IN THE MATTER OF: WILLIAM E. MURRAY
(Please return both Signature of Deponent pages)
I, the undersigned, LARRY C. BUMP, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)
DEPOSITION DATE: June 22, 2015
REPORTER: TERRI L. BRUSSEAU
AWR JOB #: 150622TLB
CASE CAPTION: IN THE MATTER OF: WILLIAM E. MURRAY

PAGE	LINE	CHANGE	REASON

LARRY C. BUMP Date

I, Terri L. Brusseau, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Terri L. Brusseau, RPR, CRR
My Commission expires
March 24, 2016.

CERTIFICATE OF REPORTER

I, Terri L. Brusseau, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 23rd day of June, 2015 at Charleston, Charleston County, South Carolina.

Terri L. Brusseau, RPR, CRR
My Commission expires
March 24, 2016.

INDEX

	Page	Line
LARRY C. BUMP	3	1
EXAMINATION	3	3
BY MS. CRAIG		
SIGNATURE OF DEPONENT	106	1
CERTIFICATE OF REPORTER	108	1

EXHIBITS

	Page	Line
DFT. EXH. 1, Letter dated 6/21/07 to Elizabeth from Dad, with attachments, EEM003007 to EEM003014	44	19

STATE OF SOUTH CAROLINA IN THE PROBATE COURT
COUNTY OF CHARLESTON CASE NO. 2007-ES-10-1116

IN THE MATTER OF:
WILLIAM E. MURRAY

VIDEOTAPED
DEPOSITION OF: GILBERT MESTLER

DATE: January 28, 2011

TIME: 10:00 a.m.

LOCATION: THE HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, SC

TAKEN BY: Counsel for Estate of William Murray

REPORTED BY: Karen V. Andersen, RMR, CSR

VIDEOGRAPHER: Michael Andersen

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(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

****

(PLF. EXH. 1, Letter dated February 9th, 2006, marked for identification.)

THE VIDEOGRAPHER: We are now on the record. Today's date is Friday, January 28th, 2011. The time is approximately 10:14 a.m. This is the videotaped deposition of Gil Mestler. The location is the Hood Law Firm, Charleston, South Carolina. My name is Michael Andersen, legal videographer, representing A. William Roberts, Jr. & Associates.

This deposition is taken in the matter of William E. Murray, Case Number 2007-ES-10-1116. Counsel, please introduce yourselves for the record.

MR. KEFALOS: I'm George Kefalos. I represent the Estate of Minnie Murray.

MR. BAKER: Barry Baker, also representing

the Estate of Minnie Murray.

MS. CRAIG: Molly Craig on behalf of William Murray's estate.

MR. HOOD: Bobby Hood, the same.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

GILBERT MESTLER,

having been duly sworn, testifies as follows:

BY MR. KEFALOS:

Q. You're Gil Mestler?

A. Yes. My full name is Gilbert Evans Mestler.

Q. Will you refer your attention there to the document that is marked Exhibit 1 in front of you. Turn to the sixth page.

A. I am there.

Q. Good. Do you see some initials that are on that page?

A. I do.

Q. Whose initials are they?

A. They are William E. Murray's initials.

Q. Who put them there?

A. William E. Murray put them there.

Q. Were you there when Mr. Murray did that?

A. I was.

Q. Will you be able to tell us a little bit how that came about today?
A. Yes, I will.
Q. First tell us a little bit about your personal background. Are you employed?
A. Yes. I'm an officer on active duty in the United States Army, a lieutenant colonel, Special Forces branch, currently serving at the Pentagon at the Army Operations Center.
Q. How long have you been in that capacity?
A. For about one year. Before that, for two years I was assigned to Special Operations Command Central, with duties in Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, and other points in Central Asia and the Middle East.
Q. You are a ranger?
A. I'm a ranger qualified officer, yes.
Q. And Special Forces?
A. And Special Forces qualified officer.
Q. Tell us a little bit about your military background and experience.
A. I would be happy to. After high school, I had the pleasure of attending United States Military Academy at West Point, New York, from July 1971, to our graduation in June 1975. Thereupon, I was

commissioned as a second lieutenant of infantry; went to Fort Benning for various schools, including ranger school; then deployed to Korea for a year as a rifle platoon leader. From there, I went to the Special Forces School of Fort Bragg, North Carolina; and then served for three years in 10th Special Forces Group in various duty positions; from there to the Infantry School at Fort Benning for about half a year.
Q. Let me ask you, first, let me interrupt. What's the 10th Special Forces Group?
A. 10th Special Forces Group is still in the active force structure. It's the Special Forces Group that's allocated to European command. In those days, we were pretty well totally focused on the Soviet Union west of the Ural Mountains and the areas that we referred to in those days as being behind the Iron Curtain. Today the 10th Special Forces Group is moved almost in whole to Fort Carson, Colorado. And now those fellows deploy generally to Iraq and other places in Europe to train European forces that we are allied with.
Q. Go on.
A. From Fort Benning, Georgia, I went to Europe for three years, and was an infantry officer in the Mechanized Infantry Unit. From there, I went

back to the States to the first Special Forces group at Fort Lewis, which was focused on our activities in Asia, including the Asian parts of the Soviet Union.
And I left the regular army from there in 1985. Attended law school at Fordham University from 1985 to 1988; practiced law in New York as a sole practitioner from 1988 on an occasional basis through about 2003 or so. During that time, my personal focus was on my family and on continued service as a Reserve and National Guard officer, command of the Special Forces Company in the Reserves. I was the deputy commander of special operations command in Korea and Seoul from 1994 to 2001.
Then after that, continued to serve, coming back on active duty in early 2008 to the Special Operations Command Central. So that's been my pleasure, to spend most of my adult life as a soldier in one component of United States Army or another.
Q. Where is your base of operations today?
A. Well, right now I live in Arlington, and work on a daily basis at the Pentagon. My wife lives in New York City, and so my home of record is New York City. Technically, I'm on a temporary duty status in the Washington, D.C. area, and have been

for the past year. I probably will stay in that capacity for another six months or so, at which time I will deploy again consistent with the needs of the nation.
Q. We've tried to schedule your deposition one time before. You were put on temporary duty?
A. Oh, at least one time before. I think your assistant Oana, Oana and I have been in communication occasionally. This is really the first time that we've had the ability to get all of us in one place at one time. Certainly, it's appropriate for me to be here, as opposed to be everybody going out to D.C. or New York or somewhere else simply to depose me, and I'm pleased to be here right now.
Q. Have you had any other specialized training aside from law and the military?
A. Yes. In 2003 to 2005, I went back to undergraduate school to do medical school prerequisites, chemistry, biology, things of that sort. I had the pleasure of teaching biology for a semester at Hunter College, and then entered nursing school at Columbia University. And from the summer of 2005 until my graduation in the summer of 2006, was in nursing school at Columbia. Worked for a year as a critical care nurse in New York Presbyterian

Hospital.
Q. Do you have any medical duties today in the military?
A. Only the occasional things that may come up in terms of rendering advice and assistance. I do not have any military medical credentials or nursing credentials, and don't pretend to have any; nor do I have legal credentials in the United States Armed Forces. But, yes, I am an attorney admitted to the bar and a licensed professional nurse in New York State. So you can't get away from those kind of legal and professional responsibilities that may come up. But, of course, when I'm deployed, if questions come up about medical issues, or if there's immediate care required, I'm certainly fully competent to do that.
Q. Can you tell us about when you first met William Murray?
A. Sure. It was my pleasure to meet Mr. Murray in the early 1990s, I believe it was 1993. And the occasion was a fundraising event to get funds to build a playground facility for my son's preschool. My son attended preschool with Elspeth Kelly, the daughter of Elizabeth Murray and --
Q. Who's Mr. Murray's daughter?

A. Mr. Murray's second daughter. To my knowledge, he has three or four daughters. I've had the pleasure of meeting all three of his daughters from Minnie. I believe the name is Minnie Murray, who passed away long before I even knew her.
Q. Can you tell me how your relationship with Mr. Murray progressed after the initial meeting at the fundraiser?
A. Sure. You know, Mr. Murray is -- was a dynamic person, kind of a charismatic personality. And I was always open to the idea of getting to know him a little bit. I certainly have a great deal of respect for Elizabeth, his second daughter, and his other daughters for that matter. So I was always open to the idea to get to know him, and any occasion that might come up that Elizabeth could bring the two of us together, I think she would do that.
And sometime in the late '90s, Elizabeth suggested to me that I might be of assistance to her father in his various business activities. And specifically, he had an office -- a set of offices off of one of the major roads in Cranbury, New Jersey that she suggested to him and to me that I might be of assistance to him and a residential building on 49th Street next to First Avenue in Manhattan. And

in, I believe, mid-1999 or so, I worked with Mr. Murray and James, his assistant, in helping to manage those properties.
In my opinion, this was not what one might consider full-time employment, but an opportunity to work with him, and again, to provide some local assistance to him. Because Elizabeth's perception was that he didn't -- that he would value such support.
Q. How long did you work with Mr. Murray?
A. I think it was four to six months or so in 1999 or 2000.
Q. And how did that relationship end?
A. It ended fairly suddenly, in that Mr. Murray told me one day that my services wouldn't be needed anymore to assist him, that he had put an old friend of his, a Teresa Fontana, in charge of the building. And by that time, I think I had stopped helping him with the Cranbury property, although I may have the facts wrong about that.
(PLF. EXH. 2, Letter dated 3/21/09 from Gilbert Mestler, marked for identification.)
BY MR. KEFALOS:
Q. Okay. I'm going to hand you what we will mark as Exhibit Number 2 here, and ask you if you can

identify that?
A. This is a photocopy of a statement that I wrote at the request of Ms. Elizabeth Murray in early 2009, in fact, dated 21st of March 2009. I remember distinctly writing this at my computer at work in the bunker at Special Operations Command Central at MacDill Air Force Base, Tampa, Florida.
Q. How did it come about that you prepared this letter?
A. Well, this letter was prepared after Elizabeth's father had passed away. Elizabeth called me, and mentioned to me that she would like to get a statement from me detailing the specifics of an event that I witnessed in early 2006 where she had asked her father to reaffirm a debt to her mother's estate, and she had asked me to come and witness his agreement to that debt and signature on the papers acknowledging that debt, so I wrote this statement.
Q. And have you had an opportunity to review this today?
A. I have, just this morning.
Q. Was it true when you wrote it?
A. Absolutely.
Q. And does it remain true, accurate and complete?

A. To the best of my knowledge, yes.
Q. Tell me how it was that you came to be at the restaurant that day.
A. The restaurant referred to as Hunters on Third Avenue -- actually, Hunters doesn't exist anymore. It was torn down about two years ago, I think, though I haven't been in New York very much since then. It was on Third Avenue between 78th and 79th Street. I lived at 78th Street and Third Avenue. At the time Hunters was a bar and restaurant, the restaurant facility in the rear of the building.
And Elizabeth had asked me to come. I don't remember how much notice she gave me about this. But she perhaps had warned me that at some point in the next week or two, she might ask her father to execute a document, and asked me to either witness it or notarize it. Frankly, I don't remember which she requested of me. And so I was prepared to do that. I was in nursing school at the time, and I didn't have classes or clinical appointments on Fridays. So this event occurred on Friday immediately prior to Valentine's Day in 2006, which I remember distinctly because Elizabeth advised me that I ought to get flowers for my soon-to-be ex-wife and

the young lady, now my wife, who I was seeing at the time. So I got two sets of flowers for that Valentine's Day. So I know that this was the Friday immediately before Valentine's Day 2006.
Q. Now, when you went into the restaurant that afternoon, was Mr. Murray and Elizabeth already there?
A. Yes, they were. In fact, I think that Elizabeth had told me that she expected to have lunch with Mr. Murray and Alta Brockington, an old friend of Mr. Murray's and Elizabeth's, who lived in my building, interestingly enough.
Q. Alta Brockington?
A. Alta Brockington. My building, it's no longer my building, but the building that I lived in at the time, I had two banks of elevators, and it happened that Alta and I shared a bank of elevators. So I would see her occasionally. And I sort of expected when I got to Hunter's following Elizabeth's phone call that she was there with her dad, to see her, her father and Alta seated at a table. In fact, there was just Elizabeth and Mr. Murray at the table. I didn't see anything else that I recognized as being associated with either of them there at the restaurant.

Q. What did you do when you first went in the restaurant?
A. I just went over to the bar in order to bide my time and wait for the opportunity to be called forward by Elizabeth. Mr. Murray -- my impression of Mr. Murray is that he's a very -- was a very private individual, one who, you know, if he didn't invite you over, you waited until you were called forward. And I have no problem with that. He's an older gentleman, and certainly due respect was appropriate.
Q. Did you have an opportunity to observe Mr. Murray and Elizabeth at the table before?
A. I did. My recollection is that Mr. Murray was seated at a table for four. Elizabeth was to his right, if I'm not mistaken. And Mr. Murray was facing the bar area, front door of the restaurant. Elizabeth, being seated to his right, was faced more or less over to that side of the restaurant. There were papers on the table in front of them, and they were talking. And it appeared that it was a give-and-take conversation. It seemed to me that Elizabeth was on occasion reading to him. But I only observed them for a couple of minutes before I was called forward to the table.

Q. During that time that you observed him, did you see anything about his physical -- did you note anything about Mr. Murray's physical condition?
A. He seemed to have lost a little weight. He was not as robust as he had been in previous times that I had seen him.
Q. How did his health appear?
A. Other than being -- again, having lost a little bit of weight, he looked fine. You know, he was alert. And, you know, I saw no signs of any mental impairment whatsoever.
Q. You said that you were able to observe this conversation for a couple of minutes before. Could you tell if it was a two-way conversation or a one-way conversation?
A. It certainly appeared to be a discussion over whatever family matters or personal matters they were talking about. It certainly was well out of earshot. I was probably about eight meters away from them or about -- maybe 30 feet away from them.
Q. Do you remember any laughter? Do you remember any laughter?
A. Actually, no, but it certainly was a cordial conversation.
Q. How about any anger, do you remember any

anger?
A. No. In fact, every time I observed Mr. Murray with Elizabeth, I never observed him to display anything but a very cordial rapport with his daughter.
Q. How about any scolding, did anybody appear to be scolding Mr. --
A. No.
Q. Or anybody fussing?
A. Again, that would have stuck out in my mind, because I never observed Mr. Murray to -- actually, to scold anyone, and certainly not a woman, and certainly not one of his daughters, not in my experience.
Q. How about the reverse, was Liz --
A. Elizabeth, in my experience with her, has always been deferential to all, and particularly to her father. You know, Elizabeth, her closest relationship, other than relationship with her sisters, in particularly with Pam, has always, to my knowledge, had a warm relationship with her dad.
Q. How was it that you finally approached the table?
A. Elizabeth made eye contact with me. In fact, Elizabeth had acknowledged my movement to the

bar when I first got there; but I took it that she was biding her time to the appropriate moment where she could introduce me again to her father, and she waved me forward, so I approached the table.
Q. And what did she say when you approached the table?
A. My recollection, she said, daddy, you remember Gil who is here, if you want him to witness your signature. And she may have also said, or to notarize a document. And I, in fact, had brought my notarial stamp with me in case it were appropriate to notarize something that Mr. Murray might sign.
Q. Did Liz Murray say anything more about the document to be signed?
A. Yes. She said, my father and I have been discussing a debt to my mother's estate, and I've asked him to acknowledge that debt by signing this piece of paper. In fact, the piece of paper that was in front of Elizabeth and her dad at that time, to my recollection, is the Page 6 of Exhibit 1.
Q. There were other documents that were there too?
A. Yes. And one that really sticks out in my mind was an 8 1/2 x 14 paper with the appearance of some kind of note or older legal document. Because

we don't use 8 1/2 x 14 paper anymore. So that really stuck out. My recollection of it also was that it appeared to be older.
Q. Did Mr. Murray recognize you?
A. Oh, he did.
Q. Did he make eye contact with you?
A. He made eye contact with me, and he extended his right hand. He didn't stand, and I didn't expected him to. Because, again, he was, while not someone I would call frail, he was not as robust as he had been. And he extended his right hand to me as I approached his left side, and we shook hands. And his handshake was distinctive in that it was not firm, as it had been in the past. And while not being beefy, I took it to be edematous, that there was edema in his hand. It wasn't a frail hand, but yet, it was not a powerful handshake.
Q. When you say edema --
A. It was squishy. Buildup of excess fluids in the extremities, known as edema.
Q. Did he say anything to you when you shook?
A. He said, thank you for coming.
Q. Did he have any comment about the papers that Liz had described?
A. I said to him, sir, if you are ready to

sign that, I'm ready to witness that for you. And he said, I've already agreed to this.
MR. HOOD: Do we have a continuing agreement that all objections are reserved until we have a judge present, or do you want me to just make objections.
MR. KEFALOS: Sure, we can do that.
MR. HOOD: Okay. I will just hold back then.
BY MR. KEFALOS:
Q. Go on.
A. At any rate, he verbalized, I already agreed to this. And I had come there with the understanding from Elizabeth that I should be prepared to witness his signature. So I said, sir, if you agree to this, would you execute it now, or would you sign it now. And I don't believe he said anything, but he took a pen and he wrote "agreed" here, at least what appears to say agreed. He wrote this word that's immediately below his name.
Q. Okay.
A. And he sat back again, and he said, I have agreed to this. And the way in which he said I have agreed to this was as though, not only do I agree to it now, but I have agreed to this in the past. And I

said, sir, if you've agreed to this, would you mind signing it in front of me so that I might notarize it for you. And, again, he said, I've already agreed to this. And he reached forward. And I thought he would sign his name, but he wrote his initial, WEM, right next to where it said agreed.

In my experience with William Murray, he was not the kind of guy that you should challenge on what he does. And when he said, I have agreed to this, it seemed sufficient to me that he was acknowledging it. And for whatever reason, he was not comfortable physically with rendering a signature at that time. And I thought, in my legal mind, well, I could certainly witness this agreed statement and his initials as though they were his signature. But Elizabeth looked at me and said, Gil, he will sign it later. And he looked a little perturbed at me that I would challenge his ability to sign physically. And I thought, okay, not my call. You know, Elizabeth and her father have their own way of doing things, and I should back off. And again, he said, thank you very much for coming.

Q. Good.

A. Again, I was surprised that Alta hadn't been there and hadn't appeared in the course of this

event, which took a total of probably about six or seven minutes, between my arrival at the bar, my approach at the table, my spending some time there with Elizabeth and her dad. It was clear to me that I wasn't invited to lunch.

Q. So you didn't stay?

A. So I didn't stay. And Elizabeth said, Gil, I will give you a call. I left the bar and restaurant area, got back to Third Avenue, took a left toward my building. And about midway between the restaurant and the corner, which would have been a total of about 60 meters or so, saw Alta Brockington moving rapidly toward -- in the direction of the restaurant. I probably waved to her a little bit, but didn't stop, or I don't know that she saw me or not, and it appeared to me that she would proceed on to the restaurant. And I just went home to study or prepare for exercise or whatever.

Q. So you never notarized it?

A. I never did, and never signed it as a witness. Elizabeth spoke to me that day or the next and said, thanks for coming, I've asked Dana, who I never met, a lady who I think is a physician or some other well-educated person, to witness the document. And I said, you don't need it notarized? And she

said, no, it's been witnessed, not to worry about it. And I said, okay, fine.

Q. Good. At any time during the time that you were with Mr. Murray and Liz at the restaurant, was there anything that gave you any indication that he might not have been aware of what he was doing?

A. Absolutely not.

Q. That he might not have appreciated the significance of this act?

A. No, no. William Murray, up to that point -- and this was the last time, to my recollection, that I saw him alive -- had a very active mind. He certainly was never one to hold back his thoughts. Seemed totally cognizant of what he was doing.

Q. Is there any question in your mind that those represent his, that is Mr. Murray's, initials?

A. Oh, I was physically present when he wrote agreed and put his initials here. He may -- and I'm not clear on this, there's a line in-between his signature and his name, there's a line there, he may, in fact, have put that line there in my presence. I'm not sure. One would think that I would recall that, and I don't, one way or the other. What I see above the line there is what appears to be his

signature. It's certainly his normal -- pretty much normal way of writing.

It is a little surprising that it is so legible. But -- I'm not a subject matter expert, I'm volunteering an opinion here -- somebody who is suffering neurological degradation sometimes has, depending on their medication schedule and the time of day, the ability to do fine motor skills better than at other times.

My perception of him when he wrote agreed was two-fold: One, he's having some trouble writing; two, he said agreed. And where -- and again, this is just my impression, that as he approached the paper, in his brain was agreed, and his hand wrote agreed, and that he actually was embarrassed -- again, my impression -- he was embarrassed at having written agreed versus signing his name. And that made him a little bit agitated. Again, I'm trying to find a reason for why he appeared to be a little agitated at that point. And I think it was because he had wanted to fully execute the document knowing that I was there to witness the signature, and that he had simply written agreed, which is what he had verbalized.

Q. Okay.

A. My thought only.
MR. KEFALOS: That's all the questions I have. Please answer anything that Ms. Craig or Mr. Hood have.
EXAMINATION
BY MR. HOOD:
Q. He never signed the document in your presence, correct?
A. Well, it depends on what we mean by a signature.
Q. He never signed William E. Murray in your presence, yes or no?
A. What you see --
Q. Wait a minute. Answer the question. Did he sign William E. Murray in your presence; yes or no?
A. Right here?
Q. Yes.
A. No, he did not.
Q. Thank you. And when had you seen him prior to this event, how close in time?
A. Probably within the year. The reason for that is, again, I lived in the same building with Ms. Brockington, and Mr. Murray would occasionally come into the building and same elevator bank and say

hello.
Q. For how long, other than saying hello, how long would you see him?
A. In terms of duration of time seeing him?
Q. Yes.
A. Two or three minutes.
Q. And then a year before this engagement at the Hunter restaurant with his daughter, you saw him then -- how much prior to that was it last time you saw him?
A. Again, I didn't see him very often between about 2000 and this occasion in 2006.
Q. Okay.
A. So I probably saw him at most three or four times, two or three minutes at a time. I have no recollection of having met with him, attended a -- that's not correct. I went with him, or was with him at his daughter's birthday party. And frankly, it would have had to have been her 50th birthday party. Elizabeth was born that October 1953. I was born in May of '53. Elizabeth made a big deal about my 50th birthday party. And her 50th birthday party was also made a bit of a to-do.
And her birthday party was at a friend's house near Katonah, New York. Her father attended.

I was with him at the party. We didn't speak very much, but we were at the party together. And I drove him home to his apartment at The Carlyle, a trip that would have taken about an hour and 20 minutes or so. I don't recall whose car I drove, because I didn't have a car.
Q. How many people in the car?
A. Myself, Mr. Murray, and one other person. And I think that would have been Helen, whose last name I'm afraid I don't know. I think it would have been Helen.
Q. What year was that?
A. Well, it was Elizabeth 50th birthday party, it would have to have been 2003. So that would have been a long time. In fact, he and I spoke in the car, because, of course, you're in a car together, and I'm driving. But we weren't going to have very many pregnant times. So, frankly, I do not remember the substance of our conversation, but he was the same mentally astute, switched-on person in October 2003 as he had been since I had first known him in 1993 or so.
Q. Okay. So as to Exhibit 1, you never notarized it?
A. I did not.

Q. And what you know about it, you sat down in a bunker and typed up, and that's Exhibit 2, correct?
A. That is correct.
Q. And in Exhibit 2, you tried to be full, complete and thorough in what you were saying about this event?
A. Well, you know, I wanted to fulfill Elizabeth's need for a written document. And of course, I thought about it prior to writing it, thought about it while writing, thought about it afterwards. And between that written document and my testimony here under oath, that I think provides the full and complete picture to the best of my recollection.
Q. Well, when you wrote this, why didn't you say what you've said here today, and that is, that Mr. Murray said that he agreed with what was in this document? That's not in Exhibit 2.
A. I understand that. Again, that was written -- well, I was at work, and I had a lot of --
Q. But that's a significant statement. You are a lawyer, you understand that. Mr. Murray saying I agree with this document is nowhere in Exhibit 2, correct?

A. If I could see -- let me look at Exhibit 2.

Q. You've got a copy in front of you. It would be in the second paragraph if it was going to be in there.

A. Perhaps. It looks like I didn't say anything in this written statement about what he may have vocalized.

Q. And the truth of the matter is, what he was thinking, what was in his head, you, nor anyone else, know?

A. Well, I heard him say, I have agreed to this. Once or twice he wrote agreed on there. It would be a stretch for me not to think that he agreed with the substance of the document.

Q. Yet, the word agreed is nowhere in Exhibit 2, your summary of this event?

A. That's pretty apparent.

Q. You also testified --

A. Now, sir, if I may, to fully answer your question, this was written in Florida without the opportunity to look again at this document, nor to remember exactly what Mr. Murray had written on this document. Yet, the first time I saw that document and saw the word agreed and his initials, I knew

instantly that that was his attempt to sign, what I took to be his attempt to sign contemporaneously with my witnessing it.

Q. You said that when you were leaving, he said thank you very much for coming.

A. Thank you for coming.

Q. And that's not in this Exhibit 2 either, is it?

A. No, it is not.

Q. In fact, you and Mr. Murray had had a run-in. He worked for you -- you worked for him, excuse me, and he fired you, correct?

A. I don't know if I would use the word fired.

Q. I would. You were fired. You were discharged?

A. That's your choice, sure. But at no point --

Q. You --

MR. KEFALOS: Let him answer the question.

THE WITNESS: At no point did I ever feel like there was personal animosity between Mr. Murray and I.

BY MR. HOOD:

Q. Did he like you living with his daughter

Elizabeth?

A. And at what point did I live with his daughter Elizabeth?

Q. That would be you. You tell me.

A. You know, there was a time in around 2005 or so when Elizabeth and Dan were still living together when I did occasionally sleep at their apartment as my relationship with my wife deteriorated. However, when you say live with, the implication there is there's something more than that.

Q. It's a one-bedroom apartment. Did you have sex with her, a relationship?

A. Absolutely not; absolutely not.

Q. Never have?

A. Never.

Q. You just stayed there? What, did you sleep on, the floor?

A. Yes.

Q. How many nights? How many months?

A. Not months; probably four or five nights. Elizabeth, to my recollection, and Dan, had a -- not a futon, but a kind of foam mattress. And so I would sleep at the foot of their bed on the foam mattress, for the probably five nights. Whether they were in

sequence or not, I don't frankly recall.

Q. There's nothing in Exhibit 2 that says Mr. Murray wanted to sign it; is there?

A. Not in Exhibit 2, but I could tell you about my recollection of Mr. Murray, an honorable man, at least as far as his daughters went, wanted to agree to the continuing debt.

Q. You're still a licensed practicing lawyer?

A. I am.

Q. You have a current --

A. I am admitted to the bar in New York, Massachusetts, Connecticut, Washington, D.C.

Q. And you are current with your CLEs and you are a licensed lawyer in those states?

A. No, because I've been on active duty since 2008. I have not stayed current with continuing legal education requirements in those jurisdictions where that's required, and I'm not required to do so.

Q. So you are a licensed practicing lawyer? You can sign pleadings, do what you want to do as a lawyer --

A. I can.

Q. -- in New York?

A. I can.

Q. Did Elizabeth come to you for legal advice

to contest her father's will?
A. No. And frankly, she would have been remiss in doing so. I'm not an expert in that area at all, nor do I hold myself out to be.
Q. Did she ask you for advice about contesting her father's will?
A. Not to my recollection, no. And if she had, I wouldn't have rendered it. I don't even know where her father's will -- you know, which laws would apply to her father's will.
Q. Did you refer her to someone who would know how to contest a will?
A. I have no recollection of that, no.
Q. Did you ever refer her to any kind of attorney for any kind of legal work?
A. I'm reviewing in my mind the legal issues that I'm aware that Elizabeth may have had in the time that I've known her, which include her divorce from Daniel. I cannot recall any time where I might have done that.
Q. What was the basis or the ground for that divorce?
A. I don't know. I mean, I know that -- I don't know, but I believe that they became incompatible with each other, but --

Q. Did you testify in that proceeding?
A. I did not.
Q. Prior to today, have you ever testified for Elizabeth about anything?
A. I don't think so, no.
Q. When did you --
A. I have no recollection of that.
Q. When was the last time you saw Elizabeth?
A. I have a son who was born on the 18th of December, 2010. Elizabeth came to the hospital when he was just a day or two old, so I saw her then.
Q. That's the last time you saw her?
A. And I saw her over a cup of coffee about two weeks ago or so, maybe three weeks ago.
Q. To discuss your testimony here today?
A. Only to say that, Elizabeth, I will tell them the truth.
Q. That's all you said?
A. That's it.
Q. You didn't discuss Exhibit 1, Exhibit 2, and the details thereof?
A. No, we did not.
Q. Have you met with anyone or talked with anyone about your testimony here today?
A. Yes, I have. I spoke with George this

morning. And George showed me this statement that I wrote back in 2006. He showed me Exhibit 1, Page 6. I did not look at Pages 1 through 5. I looked at, but did not read, the 8 1/2 x 14 pieces of paper that were, to my recollection, associated with this document when William Murray -- I almost said signed it -- when he put agreed and his initials here.
Q. You didn't actually see him scribble that, agreed and initials?
A. No, I did.
Q. Actually --
A. In two phases, as I recall it; first agreed, sat back. When I asked him again to sign the initials, again, I have no direct recollection of this line below his name, which may or may not have occurred contemporaneously with either the agreed or the initials, and that was it. But that was, as my recollection, a two-phased action, agreed, sit back, forward again, and initials.
Q. And when you said signed, and you pointed to sign, where to sign --
A. You know, this is -- I did not point. And I later, as I thought about this just in the last day or so, or this morning, I thought, you know, probably to assist him -- you know, again, thinking like a

person with some medical acumen, I might have assisted him in some way by isolating the place at which I expected him to sign, or by having other people already have signed so that he could see where he was expected to sign. I did not do so. In retrospect, that might have been a wonderful thing for me to have done. I did not do it.
Q. And he did not sign when you said sign?
A. I had expected him --
Q. No, first answer the question. Did he sign it when you --
A. He wrote agreed, he sat back, and he went forward, he put his initials WEM.
Q. I started with the first question, and I will ask it again. He did not write William E. Murray?
A. He did not.
Q. Now, who are these other people on each side?
A. Well, I recognize Elizabeth's signature here above her name. And I understand, from my conversation with Elizabeth subsequent to this, that she had gone with her dad to see a lady who I have never met, had not met at the time, have not met since, named Dana, who I believe Elizabeth told me

was a physician who was an old friend of her father's. Recalling, the key reason she wanted her dad to meet with Dana was because Elizabeth was concerned, on behalf of her father, with his continuing medical care. And Dana, being a physician, would help him by way of a living will or healthcare power of attorney, healthcare proxy document. And apparently -- I say apparently, because I don't know this for sure. When I asked Elizabeth, are you done with a need for a witness on your dad's signature? Elizabeth told me, yes, Dana did that when we went up to see her about the healthcare proxy. Elizabeth didn't use the term healthcare proxy, that's my term.

Q. At the time you were in the Hunter restaurant --

A. That person --

Q. -- this person did not sign?

A. -- was not there, no.

Q. When they signed it, they dated it 2/10/06, it looks like. How about Elizabeth -- I'm correct, right?

A. Yes.

Q. Elizabeth, was her signature on there at the time?

A. No, I don't think so, no.

Q. So the page was blank except for what was typed?

A. Exactly.

Q. Okay. Have you ever notarized a document as a lawyer?

A. I certainly have.

Q. How many times?

A. Not as many times as you might expect, probably about 15, 20 times or so, over the course of the years.

Q. So this was sort of an unusual event, put your seal in your pocket, go to a bar, stand ready to seal something?

A. At that point in my life, it certainly was. In fact, I would say since that time, I might have notarized two or three things.

Q. Who is Don Sharpe?

A. Ah, Don Sharpe is an attorney in New York. He's a professor of law at Fordham University.

Q. Are you all friends?

A. Or at least he was.

Q. Are you all friends?

A. I don't know him. No, I don't know that we've ever spoken or seen him.

Q. Is he a friend of Elizabeth's?

A. Elizabeth has mentioned him to me.

Q. In what capacity, or in what regard?

A. In the regard of, Gil, you want to get to know Don Sharpe, he's very smart --

Q. Does he live with Elizabeth? Have they ever lived together?

A. I don't think so.

Q. Has anyone lived with Elizabeth?

A. At this point?

Q. Yes.

A. In her life?

Q. Yes.

A. I'm not aware of anyone.

Q. In the last ten years?

A. Dan.

Q. Dan?

A. Dan Kelly.

Q. Her Ex?

A. Her ex-husband.

Q. Anybody besides Dan?

A. Elspeth Kelly her daughter.

Q. Anybody else?

A. I'm not aware of anyone that would -- when you say living with her, what do you mean by that?

Q. Cohabiting, whether it's for one hour or two hours or one day or a week or a month. She has a one-bedroom apartment.

A. It's a duplex apartment, in that it has two floors. There's one bedroom upstairs, a very small room that had been Elspeth's bedroom at some point in her life, I think.

Q. That's her daughter?

A. Her daughter. There's a small room off the kitchen on the first floor, which, you know, if you are a submariner, you would consider it palatial. It's pretty small. It's like a big closet which someone could live in. But I'm not directly aware of anyone living with Elizabeth. And I'm not aware of anyone who has been or is a love interest of Elizabeth other than Dan Kelly.

Q. What about her daughter, where does her daughter live?

A. Well, Dan moved out contemporaneous with the divorce, or before the divorce, moved up to 96th Street to an apartment building up there. And I understand that when Elspeth is not at her undergraduate school, which is up in Connecticut or Massachusetts, I believe, that she lives in the city with her dad, I think. But I don't know that for

certain. In fact, I haven't seen Dan Kelly for some time, probably since he moved out from Elizabeth's home.

Q. How old is the daughter?

A. Well, she would be about four or five months older than my son, who will turn 22 at the end of March. So Elspeth has turned 22 years old, I think, in November of last year.

Q. You are on active military duty?

A. I am.

Q. In good standing with the military?

A. Yes, I am.

Q. You've never had a discharge from the military service?

A. Only an honorable discharge from active duty in 1985, but I continued service as a Reserve officer and National Guard officer since then.

Q. That's your capacity now, Reserves?

A. Technically, I'm a Reserve officer on active duty, yes.

Q. Have you ever been arrested or charged with a crime?

A. I have been detained with allegations against me that would be criminal if I were charged with them, yes.

Q. Concerning what?

A. The loss of a weapon in Germany in 1982.

Q. Was that resolved in your favor?

A. It depends on how you look at it. I was offered to accept an Article 15 from Colonel Vouno, who was the division commander of the infantry division in January 1983. And General Vouno saw fit to put that documentation in what's called my restricted personnel file, so that it wouldn't be reviewed by anyone other than security personnel who were concerned with my ongoing security clearance.

Q. What kind of weapon was it?

A. M16A1.

Q. Why did you lose it?

A. That's a good question. Inadvertent lack of attention to detail.

Q. Did that end your military career?

A. I'm still serving on active duty.

Q. Did it end your hopes of any promotions?

A. I've been promoted twice since then. I was awarded the army commendation medal for that tour of service. It was one of those incidents that occurs sometimes in the life of a service member where an unfortunate thing happens. Same similar -- not same, similar thing happened to Colin Powell

early in his career where he lost a .45 caliber pistol, you know, personally, just like I personally lost my M16A1 rifle.

Q. Where is your ex-wife living?

A. Unfortunately, she's living in a nursing home in Queens. She had a subarachnoid hemorrhage in April 2008, and has been comatose or in a persistent vegetative state since then.

Q. Are you paying for her care?

A. She had a very good insurance policy, health insurance policy that I paid for under COBRA, so it lasted for about 18 months or so after her -- after her coming under that policy. And now, as far as I know, I'm told by the nursing home that her care is paid for by Medicaid.

Q. Did you ever work as a registered nurse?

A. I did.

Q. For how long?

A. One year.

Q. What year was that?

A. That would have been from the summer of 2006 to the summer of 2007.

Q. In what capacity as a nurse?

A. As a critical care nurse at New York Presbyterian Hospital.

Q. What is critical care?

A. Well, it's the field of nursing that involves dealing with people who are ventilated and medicated usually to the point -- to be ventilated, you pretty much have to be sedated. So you care for people who are sedated and ventilated and need to have their chemical balance maintained, their pharmacology maintained, and all their vital signs continuously maintained.

Q. Since that one year, you have not done anything with your registered nurse certificate?

A. Only attend training events in order to keep myself current.

Q. And when you had the interchange with Mr. Murray, he was never in critical care condition?

A. Not with me. And had he been, he certainly would not have been conversant at all, if he had been in that state.

Q. Have you ever represented Elizabeth Murray in any capacity as an attorney?

A. No, I don't recall ever representing her as an attorney.

Q. Did you ever provide any nursing care to her?

A. Yes, I did.

Q. When was that?
A. Elizabeth had --
Q. What?
A. -- a plastic surgery procedure in around 2006, and required dressing changes and maintaining her medication schedule, which wasn't very elaborate at all, for about two days or so. Mr. Murray -- as I understood it from Elizabeth, Mr. Murray paid for that procedure and allowed her to stay in an apartment of his on 69th Street and First Avenue during her recuperatory period, which, again, was about two days or so.
Q. What kind of surgery?
A. She had a -- what would you say? It was within the class of things that we might call facelift, a plastic surgery procedure. It was conducted in a medical office on Park Avenue, actually right across the street from her home at 740 Park Avenue. I don't recall the name of the surgeon. I did not attend that procedure itself, but I picked Elizabeth up from the medical office, transported her in a cab over to 69th Street to the apartment, got her up there, spent about the next 24 to 36 hours or so with her, you know, assisting, assisting her.
Q. What is your relationship with Dan Kelly?

That was her husband?
A. Yeah. Dan was a fellow father of a kid going to school in New York City. Dan's a -- I would put Dan with that the class of people that are friends, but I don't seek him out at this point, nor does he seek me out.
Q. How much money do you currently owe Liz?
A. I'm not aware of owing Liz any money.
Q. She's been writing you checks off and on over the years. Why has she done that?
A. As I have done for her, when Elizabeth would have what might be called minor financial difficulties, to the level of like $1,000, $2,000, short-term loan, I would loan her that money. She did the same for me. She doesn't do the same for me anymore. Number one, I don't need the money; number two, I don't believe she has the resources to do that if I did. So I wouldn't even approach her if I needed --
Q. When was the last time you borrowed money from her?
A. Probably in 2004, 2005, somewhere in there.
Q. Has she promised you any monetary or any other kind of remuneration for testifying here today?

A. No, she has not.
Q. Who paid you to come here today?
A. Actually, I don't know. I know that there was an excessive bill for airline and hotel. When I say excessive, I flew from Washington, D.C. area here last night. I looked at the Expedia bill that I got on e-mail, it was something like that $1,500. Frankly, I could have done better than that if I just made a phone call to an airline and said get me down there. Believe me, I would have come here on my own dime on behalf of a friend. Elizabeth is a friend of mine.
Q. Does she have any other friends besides you?
A. Yes.
Q. Who?
A. Lyn Grogan, who is another mother of kids who went to the same school as our kids did early on. I think Alta Brockington would be a friend of Elizabeth's. I'm sure I could think of others, but right now I'm not sure of any. For sure, Ms. Grogan, Lyn Grogan.
Q. Over the years, she's written, I think, around $11,000 in checks to you. The last one was 4,000 in March '06.

A. That probably was paying me back for a loan I had given her.
Q. So you have lent her $11,000 over time, including before you are talking about in '06?
A. Good question. If you are looking at her bank records and you say 11,000, that's certainly within the realm of possibility. Those could have been loans from her to me, or her repayment of loans from me to her. Should be just about an equal amount.
Q. What has she told you about her claim as a creditor?
A. To?
Q. In this matter.
A. Only that over the course of many years, her father has agreed that he owed money to her mother's estate. No -- in no time has she ever told me how much that might be, or what the circumstances were of how he might have become indebted to her mom's estate. I don't have any knowledge of that.
My perception is that he -- that Mr. Murray probably would be -- if I were to know any details about that, I'm sure it would embarrass him. And frankly, Elizabeth was, in my opinion, was protective of her father's interests and his

sensibilities. And it is not surprising to me at all that she would not volunteer such information to me.
Q. Well, did she ever tell you anything about her expectancy of what she was going to inherit from her mother?
A. No.
Q. Her father?
A. I think she expected that she would get some monetary benefit from her father's passing, but I don't know what it might have been. And I don't know that it would have been any different from what her sisters might have expected.
Q. You are hoping to share in whatever monetary remuneration she gets from her father's estate?
A. No, I'm not.
Q. Do you have any motivation being here today other than to testify for a friend?
A. That is it. Well, to testify for a friend, and there's a little bit of -- and this may be presumptuous of me to say, but Mr. Murray is dead and gone. My perception, although I never heard him -- he never vocalized to me that he felt he had a debt to anyone. But somehow, I think understanding over time that he was the father of at least three

women, I'm sure that -- again, my perception of him is he's an honorable man -- that he would want to see the correct thing done. When he said, I've agreed to this, in speaking about Exhibit 1 and its attachments -- when I say it's attachments, I mean the 8 1/2 x 14 pieces of paper, which may have been the recording of a debt to his former wife, the deceased's estate --
Q. You don't know what it was; you didn't read it?
A. I didn't read it. I may have looked at it casually. And my understanding was that he was reaffirming the debt to the mother's estate.
Q. From whom?
A. His debt to his former wife's estate.
Q. That's what Liz told you?
A. I understood that.
Q. The basis of your understanding is Liz told you that?
A. Right, given I didn't read the document in detail.
Q. And you weren't a lawyer involved in it?
A. And I was not practicing as an attorney involved in this case, no.
Q. And you've never read or seen any

promissory notes, any loan documents?
A. I don't believe so.
Q. How about any other debts or obligations?
A. What I wanted to say, in regard to my reason for being here, in addition to my duty to a friend who's asked me to testify to something I've observed, of course I need to get here. But beyond that, it is that -- among others, I'm sure I'm not the only one who can testify to these things -- that Bill Murray, in my opinion, felt an obligation to his daughters and to the rest of his family, his grandchildren, to do what was right vis-a-vis any enrichment he might have had from the past.
Q. Whether he did that or not, you have no knowledge?
A. I don't know. But, again, my role here is not just as a friend of Elizabeth Murray's, because there's no question that I am, and perhaps to some degree, someone who would be friendly toward her -- well, certainly to Elspeth and to the children of Pam who I met, I don't recall ever meeting any children of Katherine's, although I may have, but I have no antagonism toward Bill Murray, William Murray.
Q. Even though he fired you?
A. And he's gone.

Q. Even though he fired you; you don't want to get even with him?
A. No desire to get even with him at all. You know, certainly my heart wasn't in whatever I was doing, you know, for him at the request of Elizabeth or him. You know, it wasn't something that I felt particularly excited about. In fact, it was kind of a drudgery to go down to Cranbury, New Jersey and look at a bunch of stuff --
Q. How much were you paid for that drudgery?
A. Frankly, I don't recall. Whatever it was, it wasn't enough; probably about $1,000 a month or so.
Q. And where were you living in February of '06?
A. I was living at 205 East 78th Street.
Q. With who?
A. My wife at the time, my son.
Q. And her name?
A. I may have been sleeping on the floor, but, you know, I was in that apartment.
Q. What's your ex-wife's name?
A. She went by the name -- her professional name was Youngmi Han. Han is her family name, H-a-n. And for a time, probably for the bulk of our married

life, she used the name Young Mi Mestler, my last name. Before that, she was known as Ann Marie Mestler.

Q. Where is she from?

A. She's Korean-American. She grew up in the republic of Korea, and came to the States when she was about 20 years old or so, after high school, joined the American Army. We met in Korea while we were both serving there.

Q. So you were at this restaurant in February '06 for five minutes, ten minutes?

A. No, I wouldn't -- I certainly don't think it was more than ten minutes. I think I said it was six to seven minutes or so, that's probably about right.

Q. Do you trust and believe Liz?

A. I do.

Q. Do you think she's a credible and honest person?

A. I do.

Q. Why would she sign an affidavit in 2005 saying her father was incompetent; yet, you are sitting here saying in '06, he knew everything that was going on?

A. I have no knowledge of that affidavit from

2005.

Q. Did you prepare it for her?

A. I don't recall.

Q. Do you know why she --

A. May I see the document?

Q. Do you know why she would have signed such an affidavit?

A. No knowledge of it; don't know.

Q. In your statement, you say: Mr. Murray was exhibiting his characteristic vanity. What in the world are you talking about?

A. Well, he was a prideful person. And to demonstrate weakness -- in my opinion, he would be adverse to demonstrating weakness in front of anyone. And his -- my perception is his inability to execute the document that he was asked to execute in my presence probably was upsetting to him. That's my opinion. I don't know what was going on in his mind.

Q. Do you know whether he was able or had the ability to comprehend large amounts of information at a time in February of '06; do you know that?

A. I don't know.

Q. And you are not a medical doctor?

A. I am not.

Q. And you've had no training in determining

the mental status of human beings with regard to their ability to intelligently understand and know what they are doing? That's not something you are trained to do; you are trained to take care of people critically ill?

A. I think to some degree, the ability to assess another's ability to even comprehend complex transactions, I think we are all to some degree equipped to do that. But I've had no specific training in that area.

Q. Now, prior to walking in this restaurant, had you read this Dear Daddy letter, Exhibit 1?

A. Never seen it.

Q. And prior to today, have you ever read it?

A. I never read it today.

Q. Is that the first time --

A. I've looked at Page 6.

Q. Is today the first time you've looked at the Exhibit 1?

A. I have seen it. I have not read it.

Q. When did you first see it?

A. On the table in Hunter's restaurant, in the Hunter restaurant.

Q. When was the next time you saw it?

A. This morning. Actually, it was proffered

to me by counsel this morning, and I asked him, do you want me to read this now or not, and he said -- I believe he had said, you don't need to read it, and I chose not to.

Q. Okay. And these guys, these other lawyers across the room here, they are not your attorneys?

A. No, they are not.

Q. Do you have an attorney in this matter?

A. I do not.

Q. You are pro bono yourself?

A. You know, only a fool has himself as a lawyer, and I don't feel that I need an attorney at this juncture.

Q. Did you ever notarize any documents for Mr. Murray?

A. I certainly did while I was in his employ, if you will. And interesting enough, with him, I went very expeditiously one day to the emergency room at Lenox Hill Hospital to visit a friend of his who had suddenly taken ill, and actually was afraid that they would die in the emergency room. And we went there with the expressed purpose of coming up with a very quick last will and testament for her. And Bill Murray and I witnessed that, and I notarized it at the time in the emergency room at Lenox Hill.

Q. Did you ever notarize his signature?
A. I probably did, but I have no direct recollection of that.
Q. Now, as to East 49th Street, that was -- you called it an apartment building, condominium?
A. It would be an apartment building, I'm sure.
Q. And when were you hired?
A. At some point in 1999, if I'm not mistaken, maybe 2000.
Q. And you worked there for how long?
A. Oh, about four to six months maximum.
Q. Were you recommended for the job by Liz?
A. Yes, as far as I know, sure.
Q. And you were paid, what did you say, $1,000 a month?
A. Between the 49th Street property and the Cranbury property, and the other things that I might have done for William Murray, I was paid about 1,000, maybe 2,000 a month. I don't recall.
Q. Did you have any disagreements with Mr. Murray or any of the supervisors there?
A. I did. They weren't -- you know, it was his call. There was a gentleman there that was the building superintendent, who I think did a credible

job there, and Mr. Murray chose to dismiss the fellow fairly presumptively, you know, suddenly. I did not see a good reason to do that, but we didn't argue about it. It was his choice.
Q. Did you want to remodel the kitchen?
A. Oh, sure. Yeah, there were -- whenever an apartment changes hands in New York City, there are probably going to be a few things that need to be done. And there was a kitchen that was remodeled, at least one, probably more.
Q. Did he disagree with you spending money to do that?
A. I think so. Yeah, I think he was not pleased with spending money. You know, he had his bottom line to take care of. And I had no argument with that. You know, he had his choice about the way he wanted to conduct his affairs in his building, and he's got a perfect right to do that. His properties were not -- were adequate for normal life. And to make a few adjustments to them, to make them a little better or change them a little bit, people have differences of opinion about those things, not of any great significance.
Q. Is it fair to say that your relationship with Mr. Murray was not particularly cordial?

A. Isn't that funny? Mr. Murray is someone who I think was always cordial. And I would feel cordial toward him. That doesn't mean we need to work together.
Q. Did you leave on good terms?
A. Didn't leave on bad terms. I mean, I would have liked to have been compensated more. But it was sort of a relief to go. It's not -- it's pretty stressful when you have someone who you respect, who you would like to have a closer relationship with, and you don't, for whatever reason.
William Murray, again, is -- was a pretty private man in his relationships. It was, in my opinion, difficult to get his trust, you know, and the ability to function semi-independently under him. But that was his nature. And, you know, not me to try to change him.
Q. Do you have any affiliation with Marymount Manhattan College?
A. My son, up until this semester, attended school there from September 2008 until this past semester. He may or may not pick up again. I don't think he will.
Q. What's he doing there?

A. He lives in Manhattan. He was hired at the Reebok Sports Club to be a climbing instructor, and I think he ought to spend a little more time doing that and being compensated for it.
Q. Is he --
A. He climbs.
Q. Is he being paid to climb?
A. He is. Yeah, I would like to see him do a couple of other things, but I'm his father. You know, I've got things I would like to see him do. Doesn't mean I'm going to tell him to do it.
Q. Did you attend the memorial service at that college for Mr. Murray?
A. I did. It was a very, very moving and a wonderful event, yeah.
Q. Who invited you?
A. I'm sure it was Elizabeth, or maybe Pam, or both. I think -- I'm pretty sure Pam was there, although I don't remember for sure.
Q. What has Elizabeth told you about this lawsuit she's immersed in?
A. Not much. I mean, frankly, I received a copy of the Notice of Deposition back in December, and that's probably the first time I saw a legal document. Frankly, I didn't pay too much attention

to it except to say, you know what, I've told these guys that I need to make myself available, and I need to get there.

Q. Did Mr. Murray ever relate to you that he would be very unhappy with any child of his that was litigious concerning anything of his after his demise?

A. No.

Q. Would you find that to be a reasonable assessment of how he thought?

A. I don't know.

Q. Do you think it's appropriate that he would have me sitting here protecting his estate from someone making a claim against it, planning that prior to his demise?

A. I'm not sure if I understand the question.

Q. Well, you knew him, and you worked for him. Do you think it is the personality of Mr. Murray that he, prior to his demise, would hire me to protect his estate, and therein is the reason I'm asking you questions?

A. I am surprised, and I think it's sort of a shame that Mr. Murray passed without having resolved things to his own satisfaction and the satisfaction of those around him. I can't -- speaking for myself,

and knowing him as, again, a cordial, ethical and honorable man, I find it distressing that he would pass away and leave contention in his wake. I don't think that was his intention at all.

Q. Well --

A. Obviously, it wasn't his intention.

Q. If this claim was real, why would it not raise its head -- if it were real in '06 -- until 2010?

A. Well, you've got to tell me what this claim is. Are you talking about a debt to -- an alleged debt to the --

Q. Yes.

A. -- of Mr. Murray to the estate of his former wife?

Q. Right.

A. My impression has been that Elizabeth has been very cordial toward her dad in terms of her approaching him on this subject during the -- during his life time, that she was reluctant to put her foot down, if you will. I've never spoken with her about, why don't you confront your dad about this kind of stuff, if you have these problems. Because I'm not really aware of what these problems are in terms of his debt. There's sort of a general cloud of there's

something there. Okay. Certainly, it wasn't comfortable for William Murray to have a spouse commit suicide. That would be a very, very damaging thing to any person's soul, I think, whether he had any -- you know, whether one could put guilt upon him for that or not, I'm sure he put guilt upon himself. I think Elizabeth was very careful about bringing up the spector of her deceased mom, the deceased mother of Pam and Carolyn ever to him. And I think this was part and parcel of that. That was my impression. So it doesn't surprise me at all that she failed to confront him with this during the course of his life in a way that would have been distressful to him.

Q. So confronting him means sitting down in Hunter's restaurant and saying, sign this, daddy, you owe mama's estate some money?

A. You know, I knew that they were talking about something that had a lot of emotional baggage associated with it, but I never felt at that time that she was confrontational with him about it. My impression directly from him was that, Elizabeth, I've agreed to this in the past, I've agreed to this, nothing changes that.

Q. There's nothing in writing that has those words, correct: Elizabeth, I've agreed with this in

the past?

A. I heard him say that. He didn't say in the past. He said, I have already agreed to this.

Q. You heard him say that as you are telling it to us now; but when you did Exhibit 2, you didn't say that?

A. That's correct.

Q. Now, if everything was so great with Elizabeth when she was with her father at the Hunter restaurant, why, a year before that, had she signed an affidavit saying he's incompetent, yet she's trying to get him to sign something that's going to require him to pay some money?

A. I don't have any idea.

Q. She never discussed it with you?

A. No.

Q. You all never --

A. Not to my recollection.

Q. -- planned this out, talked about this, schemed about this, thought about this? That's why you come in and sit at the bar, she's over there with daddy, she signals you, you come over with the notary seal?

A. Listen, I know it sounds hard to imagine.

Q. It is.

A. But it may sound hard to imagine to you, but Elizabeth asked me to come over and witness her dad signing something.

Q. Yet, she put an affidavit under oath out a year before saying he was incompetent; she didn't tell you that, though?

A. I have no knowledge of that.

Q. If you had known that as a lawyer, that he was incompetent, would you have pulled your notary seal out, if he had signed that document, and notarized it?

A. You know, I might have made my own assessment of him --

Q. No, I didn't ask you that. As a lawyer, following the Canons of Ethics, if you had known he was incompetent in February of '06, would you have notarized his signature; yes or no?

A. Well, first off, if --

Q. No, no. It's an easy question.

A. No, no, no. It's important that we --

Q. You are going to answer the question first, and then you can talk all day long. Would you have notarized it; yes or no?

A. Sir, forgive me, but let's make sure we understand the terms that we are talking about. You

said if I knew that he was incompetent in February of 2006 --

Q. Right.

A. -- based upon your presumption that I was knowledgeable about an affidavit that Elizabeth may or may not have executed in 2005 saying he is incompetent. I have this to say about that. It may be that he was incompetent in 2005, for some reason, temporary in nature, and again, became competent. I don't believe for a moment that a person can become incompetent and remain that way in perpetuity. I think that it is entirely possible that a person could become incompetent for a temporary -- for a time, and then regain competence.

So in my answer to your question, even if I had been aware of Elizabeth's 2005 alleged declaration that her dad is incompetent, that doesn't mean that he wouldn't have been incompetent in February 2006.

Q. That's not my question. My question was, as a lawyer, would you have notarized his signature if he was incompetent?

A. No.

Q. Thank you. When is your next occasion to meet with Liz, or talk to her?

A. I don't know. I will probably see her in New York at some point.

Q. Did she come down here for this deposition with you?

A. No, I left from Washington, D.C.

Q. And she's not in Washington. She's in New York?

A. I have never seen Elizabeth in Washington. I know she's been in Washington a couple of times. She has a niece, I think one of Pam's kids lives in Washington. I heard she's going down there to see her.

Q. Did you talk with her about this deposition?

A. Only -- in fact, I e-mailed her and said, I'm going down to Charleston on the 28th, so that she would not stress about it. In fact, yesterday, when my plane was delayed, I think I might have -- I might have text messaged her or called her. No, she e-mailed me on Thursday morning saying, I understand -- or, are you snowed in, something like that, are you snowed in, on Thursday morning. And I e-mailed her back once I verified that planes were actually moving out of Reagan Airport that I intended to be on a plane in the afternoon.

Q. What did she tell you about money her father owed her?

A. Oh, she did mention that she felt she was owed some moneys for work she had done or equipment or furnishings she had purchased for the Inn at Quogue, which is one of the properties that I understand that he owned. And I think she felt she had been shortchanged there, but she gave me no specifics about it.

Q. How much money?

A. Probably more than 100,000, but less than 500,000, but I don't know, because she didn't tell me. But I --

Q. Whether there's any merit to that or not, do you know?

A. I don't know.

Q. This thing here, this claim here of debt to Elizabeth's mother's estate, how much money does she want in that?

A. I don't know. And I don't think --

Q. Do you know rough numbers?

A. I don't know. You know, it seems odd that this would have gone on for so many years if it were a substantial sum of money. I don't know. And you keep referring to this as a debt that Elizabeth

expects to get something from. And my understanding is, and I'm not sure why I understand this, but I believe this, that Elizabeth is not just representing her own interests here, but also those of her sisters, at least Pam and Caroline, is it --

MR. KEFALOS: I think it's Katherine.

THE WITNESS: Pam and Katherine. There may be other siblings or half siblings, but I don't know for sure about that.

BY MR. HOOD:

Q. Did you come down for the memorial service for Mr. Murray at the Citadel?

A. Unfortunately, I did not. In fact, I've never been to the Citadel.

Q. Did Elizabeth ask you to come down for it?

A. I don't recall if she did or not. I know that if I had had the ability to come down, I would have been very pleased to come down for that. I have a high regard for the Citadel as an institution. And the fellows I know who have graduated from there or have attended school there have been remarkable guys, good, good remarkable fellows. I have some very close friends who are graduates or former cadets.

Q. Is there any outstanding debt between Elizabeth and you, whether she's lent you money or

you've lent her money?

A. I don't recall any. I don't think there is.

Q. Whether this agreed and initials document with the attached additional pages was, in fact, in front of Mr. Murray, all you know is about Page 6? You didn't read on Exhibit 1 Page 1 through 5?

A. I do not recall reading them or scanning them; I may have at the time at the table.

Q. During this couple minute event --

A. I wasn't there very long. And again, if I had looked at them -- you know, my purpose in being there was to witness his signature on a piece of paper.

Q. You know, I have a hard time figuring out why you graduate from law school, you are licensed in several states to practice, and yet, you go to nursing school; what in the world inspired you to do that?

A. Well, have you ever practiced law in New York? I take it you have not.

Q. Well, a little bit. I've tried cases there, yeah.

A. Okay. Well, I must tell you, the practice of law as a sole practitioner in the city of New York

is not as cordial as it is down here in Charleston.

Q. I've seen that.

A. Yeah. It's not in me. I'm not a knuckle-dragging New York attorney. I don't have any aspirations to be such. I went to law school because it seemed like a good use of my time then to learn about the civilian world, because I've spent all of my life from the time I was 18-years-old as a soldier, either at the Military Academy or serving on active duty. And coming out of active duty, you know, regardless of your political impressions, professional soldiers, sailors, airmen, and marines, are honorable men, they must be, honorable men and women. They have to be, because the things that we deal with are life and death issues for our subordinates and ourselves and our nation.

You go out into the civilian world, and people obfuscate the truth, they quibble, they do things for their own vested self-interest. And often, attorneys are used as instruments to do those kinds of things. And I'm just not adept at doing that. I don't want to pull the wool over anybody's eyes. I'm not a very good advocate on the part of a client that I don't think has a meritorious case. So I'm not cut out for that.

Q. Have you told Elizabeth she doesn't have a meritorious case here?

A. I'm not aware of the details of Elizabeth's case, so -- and it would be beyond me, other than as a friend, to render an opinion about such a thing. I mean, I'm cognizant of the fact that I'm not an attorney in South Carolina, don't pretend to be one, not admitted to the bar here. I would love to consider it in the future, but I would have to study up a bit. Your legal culture here I think is admirable, but I'm getting pretty old in order to do that.

Q. When was the last time you took a bar examination?

A. That would be 1990 in Connecticut, if I remember correctly.

MR. SMITH: About the same time you and I did, Bobby, when we finished law school.

MR. HOOD: About 1990.

MR. SMITH: 1969

MR. HOOD: There you go.

BY MR. HOOD:

Q. So then in the middle of being a nurse, you go work for somebody that owns an apartment building; what's that about?

A. No, no, no, no. Working with Mr. Murray in 1999 or 2000 or so, I had not had the opportunity to go to nursing school or become --
Q. Oh, it was before you went to nursing school?
A. Yes.
Q. Okay. So why were you working for him anyway? You are a licensed practicing lawyer?
A. Yeah, okay, licensed, and practicing at a low level, not aggressively practicing law. Elizabeth, I think, thought, well, I've got this friend here, Gil, who's a good guy, and an honest and ethical guy, and my dad needs help, you know, help that he can trust. And I certainly filled that bill. Whether Mr. Bill Murray ever really trusted me or not, I don't know.
You know, I think one of my regrets in my short life is that, you know, when I worked with Bill Murray, I never felt like he trusted me, you know, to handle his affairs. And that's not a good position to be in. You know, if you have a guy who trusts you to act on his behalf, and you fail him, that's one thing. I never felt that William Murray trusted me.
MR. HOOD: Let's take a pause here. We will go off the video for a minute and take a break.

THE VIDEOGRAPHER: We are now going off the record. The time is approximately 11:39 a.m.
(A recess transpired.)
THE VIDEOGRAPHER: We are now back on the record. Today's date is January 28, 2011. The time is approximately 11:50 a.m. This is Tape Number 2 in the videotaped deposition of Gil Mestler. Please continue.
BY MR. HOOD:
Q. As to Exhibit 2, tell me again where you were when you typed that?
A. I was in my office in what I would refer to as a bunker. It's an old B-52 alert bunker at MacDill Air Force Base just off the taxiway, MacDill Air Force Base, Tampa, Florida.
Q. Okay. And what kind of equipment was being used to type this?
A. It would have been Microsoft Word on a U.S. Government computer.
Q. Okay. And did you do it in draft form before you finalized it?
A. Only insofar as I might have spell checked it and reviewed it before I printed it.
Q. Okay. And did you send it to anyone prior to finalizing it?

A. No, I did not.
Q. Well, we have a situation here where a lot of things have been sent to Liz back and forth, drafts of different things. Did you do that with her on this Exhibit 2 at all?
A. I do not believe so.
Q. And --
A. And I could elaborate on it, if you don't mind.
Q. Sure.
A. I'm not -- everybody has their way of looking at a particular situation. I have my recollection, and I don't want someone else intruding in my recollection of what I perceived. And I know that if I have a vision, if I talk with too many people about that, it's going to change my perception. And to preserve my immediate understanding of what I remember, I tend to always minimize my contact with others where there may be some legal significance to what I've got to say. So it would be very unlikely for me to have taken this and passed it back to Liz, who was also there at the time, and say, what do you think, have I got my facts right, or anything of the sort.
Q. You didn't do that?

A. I don't believe I did. I could say categorically, it would be totally against my nature to do so.
Q. And the computer that you were using in that bunker, is it available?
A. Oh, I'm sorry, it probably wouldn't be, no.
Q. And the disk that was used to draft this, did you keep a copy of it?
A. I'm sure I didn't.
Q. Do you have anything electronic regarding Exhibit 2?
A. I would not. And undoubtedly, those hard drives have been scrubbed. This was done not on a classified computer system, but I would have done it on an unclassified, but government computer system, printed it, signed it, perhaps scanned it in order to send it. But, again, all that would have been done on U.S. Government equipment.
Q. So there's no way we can go back and get the electronic data, the mega data or whatever it is?
A. Yeah, I doubt it. I don't think so. That would be -- I doubt it.
Q. How long ago was it that you did it?
A. March 21st, 2009.

Q. If you were going to try to go back and find that data, where would you go?

A. I would go to the J-6 shop, the communication electronics folks at Special Operations Command Central and say, hey, on this date, something was scanned and sent out from a machine in this room, have you guys got any way of going back and digging that up and --

Q. Who at the Air Force Base can tell us where the computer is located that you used?

A. Well, I don't know now. You know, that was two years ago, almost two years ago.

Q. Well, what would the person's title be? Someone ships out, someone else comes in, what would their title be?

A. Maybe information security officer. There may be -- you know, again, it's beyond my technical knowledge to say whether or not there's a way to do this. I mean, I could say I used the computer that was in this room at that time to draft this for myself. It would have gotten printed at a printer in the hallway outside that office, printed, signed, scanned.

There's a line right here on this thing, which I remember when I printed this going, oh, you

know -- my recollection is the line was something on the printer. It may have been something on the scanner. I just remember being uncomfortable with this line over here and thinking, well, I've got to get this thing out of here. So, you know, I'm not going to spend the rest of my day doing this. This probably took half hour or so total time for me to write it and get it out of here. And, frankly, I can't remember if it was scanned and e-mailed or scanned and faxed. And for that matter, if so, where is the original? You know, where is the original with my signature, my pen and ink signature on it? I don't even know.

Q. I don't think we've seen that.

A. Yeah, I don't know if maybe I just shredded it, because every single thing you would produce in a facility like that, you are not even going to put in the trash, you are going to shred it. So probably the original paper copy of this, even though it's an unclassified document and personal in nature, probably got shredded, in the normal course of events, not -- how would you say, not to obfuscate anything. Again, this is what it is.

When I wrote it at Elizabeth's request, I frankly didn't have any idea that it would become an

exhibit in a court case. You know, I figured, okay, you need my honest statement of what I saw. Who knew it would have ended up being Exhibit Number 2 in whatever this case is called.

Q. Have you ever done any documents that have become court exhibits or documents?

A. I'm sure I have, yeah.

Q. In what capacity?

A. As a military officer, as an attorney, as a human being. I'm sure I have, yeah.

Q. Who was your commanding officer when this was done?

A. Probably Major General Charles Cleveland.

Q. And your immediate supervising officer? Cleveland, he's still alive?

A. He's alive, yeah.

Q. He's the head guy for that base, I guess?

A. No, he's the commander of Special Operations Command Central.

Q. Who was your immediate supervisor at that time?

A. It's hard to say. People moved around quite a bit. And because of my status, I don't get rated by anyone, so I don't have someone that I need to be beholding to in that way.

Q. Well, must have been somebody you stood up and saluted?

A. Oh, yeah, anybody I ranked with, sure.

Q. Who was in the bunker with you that ranked you?

A. Lots of people. Probably at that time it was a colonel by the name of Rosengard who has since retired, and I understand actually from conversation in the airport yesterday, has left active duty.

Q. Where is he living?

A. I have no idea.

Q. What was his first name?

A. Colonel. I don't recall.

Q. Just colonel?

A. We could look him up. We could Google him. He's fairly well-known.

Q. How do you spell his last name?

A. R-o-s-e-n-g-a-r-d.

Q. Any other names you could give me?

A. I could give you a plethora of names. Actually, at that time, the fellow who I worked most closely with was a lieutenant colonel by the name of Douglas Gordon Eadie, E-a-d-i-e, and he is still on activity duty physically located in Qatar, Doha Qatar, but assigned to Special Operations Command

Central.
Q. Doha, Qatar, where is that?
A. It's the capital of Qatar. It's in the Arabian Gulf.
Q. Qatar is a country?
A. It is, Q-a-t-a-r.
Q. Oh, you pronounce it Qatar [kuht-er]. Yeah, I didn't know you pronounce it Qatar [kuht-er].
A. Some people call it Qatar [kah-tahr]. Some people call it Qatar [kuht-er].
Q. The news people call it Qatar [kah-tahr].
A. It's a hot place, physically hot.
Q. You've been there?
A. I have.
Q. Yeah, I haven't. Who were you mailing this to or e-mailing it to?
A. Probably Elizabeth.
Q. Okay. And --
A. I don't -- unless I would have sent it directly to George's law firm. I don't know; do you? I don't recall if it went to Elizabeth.
Q. Well, we can put George under oath, and his wife's got a lot of questions she wants me to ask him any way.
A. I don't mean to draw George into this as a

witness to anything.
Q. I'm not going to ask him any questions. But you sent it, you think, to Elizabeth, is what your thought was?
A. I may very well have. But, again, I would not adjust my statement whatsoever on the basis of what she might have to say about her being a party to this, her having been the person that asked me for it. She asked for my honest recollection of this, and I rendered that.
Q. Did she make any revisions or changes to what you sent her?
A. No.
Q. What was the building number that the bunker was? Identify it for me.
A. I wouldn't have any idea. I don't recall. It's still to this day is the physical site of the headquarters of Special Operations Command Central.
Q. And when you are on the base, how do you get to it?
A. You drive around the bay and pass the golf course, and meander a little bit, and eventually you find a sign that says go over that way.
Q. And the sign has written on it what?
A. SOCCENT, which is the abbreviation for

Special Operations Command Central, S-O-C-C-E-N-T.
Q. Okay. And the printer was in the same place, the SOCCENT?
A. Oh, okay, like a lot of other senior headquarters like that, it has a Judge Advocate General officer, who is an attorney admitted to the bar in one jurisdiction or another that has the mantle of legal authority, you know, as far as expertise within the unit, and he might be a good person to say, hey, we've got a question about can we get some electronic copy of this thing. He might be the right way to go. I don't know. In fact, his office is right down the hall from the fellows who run the computer systems and do all that kind of stuff. So in terms of expeditiously getting some further documentation on this, that might be a route to go.
Q. And the printer was in the same building?
A. Sure, yeah.
Q. And the JAG guy is in the same building?
A. One floor up, yeah, so two-floor bunker.
Q. Who was the JAG guy when you were there?
A. Andre -- Lieutenant Commander Andre -- again, I could go back in the records. He's since left active duty. He's going to a graduate program

at Harvard right now, that's why he left the Navy, unfortunately. But he would have been replaced by another fellow of similar qualifications.
Q. Okay. And did you fax this to someone?
A. I do not recall if it would have been faxed or scanned and e-mailed. I don't recall.
Q. In other words, you did one or the other, but you can't remember which?
A. Right, right.
Q. And your best recollection is it would have gone to Elizabeth Murray?
A. I would say probably I would -- this is probably, I can't swear to this, so if that's acceptable to you, let me venture a guess here that I would have printed it, signed it, scanned it, and e-mailed it out contemporaneously to Elizabeth and whoever the attorneys were who were involved in the matter giving her advice on. But again, I didn't expect this to be an item of evidence; probably should have, but --
Q. What was your e-mail address at that time?
A. Well, I had access to my civilian e-mail through the -- at the bunker, in my recollection. And I don't think I would have used a government e-mail system to send this out. I probably would

have simply used my own personal e-mail address.
Q. Which is?
A. Probably would have used Gilmestler, g-i-l-m-e-s-t-l-e-r, at gmail.com.
Q. Is that still your e-mail address?
A. Yes, yes.
Q. And where is your computer that you use for e-mailing?
A. Well, again, this more likely than not, this would have been e-mailed on my personal e-mail account from a U.S. government computer at MacDill. That computer that I had in my possession at that time at MacDill is no longer -- I don't use it anymore. I use a Mac now. I have a new wife who thought a Mac was a good thing, so I use that.
Q. Where is the old one?
A. I don't know.
Q. Do you have an office somewhere that it would be?
A. No.
Q. Do you have a place where you store all --
A. It's gone.
Q. Do you have a place where you store things?
A. I have a couple of places where I store

things. In Pelham, New York, and in a contemporary's home in Tampa, Florida.
Q. Would you check those locations for that computer?
A. Absolutely, sure.
Q. And then let George know?
A. Sure.
Q. Kefalos. Thank you.
A. Although, again, I distinctly recall writing this at my desk, you know, at my normal government work station, probably in the evening. And I certainly date things the date I do them. So the evening of 21, March 2009, whatever day of the week that was, I would have been sitting at my computer after, if you will, normal duty hours, writing this thing up to fulfill, you know, a request of a friend, Elizabeth, to write this up. I would have written it up. The fact is, my office was immediately next-door to a position that was manned 24/7 for emergency messages that might come in. That's where the printers and scanners were, you know, place manned constantly. So I would have written it, proofed it myself, printed it, signed it, initialed it, scanned it or faxed it from there at that time.

Q. Did you initial each page at the time?
A. It's only a two-page document, right there and my signature there.
Q. Right. Did you do that at the time?
A. Yes.
MR. HOOD: Thank you. Those are all the questions I have.

EXAMINATION

BY MR. KEFALOS:
Q. I have a couple of follow-up. I want to talk with you about what you meant when you said you regret that Bill Murray didn't trust you. Let me ask you this.
A. Okay.
Q. Does that mean that you were not at Hunter's restaurant in that February, Friday, in 2006?
A. Absolutely not. No, I was there.
Q. Does that mean that you did not hear Liz explain the significance of the document to William Murray?
A. No.
Q. Does that mean that you did not hear Mr. Murray say he had already agreed?
A. No, I heard him; I heard him say that.

Q. Does that mean that you did not see him write agree?
A. No, I absolutely saw him write agreed, pause, sit back, lean forward again when I asked him to please sign the document and put his initials.
Q. What did you mean when you said that you regret he didn't trust you?
A. I'm talking about back in the 1990s, from the first time I met him. You know, he was the kind of fellow who, if the stories about him were correct, would have been a very interesting guy to get along with. And you know, again, I had a poor impression of practicing attorneys in the New York area. And I don't mean -- there's certainly a large number of very professional attorneys, but quite a few who are less than ethical in their legal behavior and in their personal lives.
And I felt that Bill Murray would have been a tremendous mentor to me as a developing attorney if I chose to go that route in life. And I was surprised that my perception of his take to me was not one that I felt included absolute trust.
I'm really used to people that I relate to, whether they are superiors or contemporaries or subordinates, having absolute trust and faith in me.

The fact that another person will have absolute trust and faith in you, helps to keep you someone who is deserving of that trust. And I was not -- I held myself responsible for -- whether it was my deportment or my background or something, why would a guy who I respected, William Murray, not trust -- not make me feel like he trusted me to take care of his affairs, his business, his everything.

When I work with somebody, I expect them to be above board in all things. It's just expected. And in the military world, certainly where I have much more life experience, as a matter of course, we expect that until we are proven not to be one who can be trusted. And the fact of the matter is, it's a rare situation where that happens. It does happen, of course. And then you wonder, what is this guy, this person doing in my business.

I always thought that if we are on the same side of a legal activity or a business activity, we ought to be able to trust each other. And I never felt that William Murray thought that he could allow me the free rein to take care of business in the way it ought to be taken care of, whether it was the building on 49th Street, or the property down in Cranbury, or anything else for that matter.

Q. So do you mean to say that trust is like confidence in you?

A. Yes, yeah. Confidence in one's competency in a business is one thing; I mean trust in terms of ethics. In other words, I never felt like he would trust me with his life, with his property, with his family, with those other things that I expect to be trusted with in my life.

Specifically, William Murray had at least one or more somewhat significant trusts that he was the trustee for. And as an attorney working with him, I expected that he would bring me onboard with that activity and allow me to help him with it, to advise him, to help him manage the records, to keep those fiduciary responsibilities above board. And very specifically, he never -- other than I knew where the box was, where the papers went that related to those trusts, I was never given any access to that information; whereas, others who were not attorneys -- not to say that they meant they were less trustworthy -- but others who were not attorneys were.

MR. KEFALOS: That's all the questions I have. Thank you.

MR. HOOD: Thank you. That's all we've got.

THE VIDEOGRAPHER: This concludes today's videotaped deposition of Gil Mestler. The time is approximately 12:11 p.m. We are now off the record.

(The deposition was concluded at 12:11 p.m.)

SIGNATURE OF DEPONENT

DEPONENT: GILBERT MESTLER
DEPOSITION DATE: 1/28/11
REPORTER: KAREN ANDERSEN, CSR, RPR
CASE CAPTION: IN THE MATTER OF WILLIAM E. MURRAY

(Please return both Signature of Deponent pages)

I, the undersigned, GILBERT MESTLER, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)
DEPOSITION DATE: 1/28/11
REPORTER: KAREN V. ANDERSEN
CASE CAPTION: IN THE MATTER OF WILLIAM E. MURRAY

PAGE	LINE	CHANGE	REASON

GILBERT MESTLER Date

I, KAREN V. ANDERSEN, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

KAREN V. ANDERSEN, RMR
My Commission expires September 14, 2016

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 3rd day of February, 2011 at Charleston County, South Carolina.

Karen V. Andersen, RMR, CSR
My Commission expires:
September 14, 2016

INDEX

EXAMINATION
Witness Name Page
STIPULATION 3
GILBERT MESTLER
BY MR. KEFALOS 4
BY MR. HOOD 25
BY MR. KEFALOS 87
SIGNATURE OF DEPONENT 92
CERTIFICATE OF REPORTER 94

EXHIBITS

Exhibit Page Line
PLF. EXH. 1 ..... 3 11
Letter dated February 9th, 2006
PLF. EXH. 2 ..... 11 21
Letter dated 3/21/09 from Gilbert Mestler

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN THE MATTER OF: WILLIAM E. MURRAY
C/A NO. 2007-ES-10-1116

DEPOSITION OF:DANA F. FLAVIN, MD.
DATE: July 19, 2011
TIME: 10:05 AM

LOCATION: Law Offices of
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC
TAKEN BY: Counsel for The Estate of
William E. Murray

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

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John Hagerty

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * *

DANA F. FLAVIN, MD

being first duly sworn, testified as follows:

EXAMINATION

BY MR. HOOD:

Q. Good morning, Dr. Flavin.
A. Good morning.
Q. How are you feeling today?
A. A little tired, I'm still jet lagged.
Q. Well, you got in yesterday?
A. I got in yesterday but I came into the US on Friday.
Q. Okay. Well, jet lag ought to be gone by Tuesday.
A. No, Friday.
Q. You got here Friday?

A. No, I arrived in the United States on Friday and I arrived in Charleston yesterday.
Q. I see.
A. Yes.
Q. A deposition's a formal process that you're under oath.
A. Yes, I am aware of that.
Q. Subject to perjury.
A. Yes.
Q. When you're asked a question, we assume you understand that, we assume you answer the question to the best of your ability completely and honestly.
A. Yes.
Q. You have a right to read and sign the transcript to the deposition.
A. Um-hum.
Q. That's your right. You can either do it or not, the choice is yours. Your attorney, Mr. Kefalos, has indicated that you would decide that at the end of the deposition, which is fine with us.
A. Um-hum.
Q. During the course of the deposition if you have a question you should direct it to me.

Now that you've been sworn, during the breaks of the deposition you should not discuss anything about your testimony or why you're here today.
A. Um-hum.
Q. Certainly it's fine to have casual conversation but not about anything dealing with your testimony.
A. Um-hum.
Q. If I ask you a question and you don't understand it, you should let me know that so I can explain the question to you.
A. Very good.
Q. All those preliminary things easy to understand and you follow what I'm saying completely?
A. Everything.
Q. Okay. And when I ask you a question, please answer it with words rather than uh-huh or yes because the Court Reporter doesn't know for sure whether you're saying yes or no unless you really do.
A. Exactly.
Q. Now, you and my client, Bill Murray, were close friends?
A. Yes.

Q. And you had a very high respect for him?
A. Tremendous. Really brilliant lawyer.
Q. And you understand that he hired me to protect his interests, his wishes and his estate?
A. Um-hum.
Q. Do you know that?
A. No, I wasn't familiar with the details on this at all.
Q. Yeah. That's why I'm sitting here. He and his estate are what I represent, okay?
A. Did you represent him during his life?
Q. I did.
A. Oh, good.
Q. He asked me to be sitting right here in circumstances such as this to protect his estate.
A. Um-hum.
Q. In his lifetime.
A. Yes.
Q. He also asked me to make sure any of his beneficiaries that contested anything about his estate would inherit nothing.
A. Um-hum.
Q. Zero.
A. Um-hum.

Q. Um-hum doesn't answer a question.
A. Well, it isn't a question. You were explaining.
Q. Did you know he had that in his Will?
A. I have no idea, I've never seen his Will and I've never asked to see his Will and I have no interest in his Will.
Q. You're correct, you don't, but you had something to an obligation of his estate that is very important to his estate that we need to get to the bottom of here today.
A. Okay.
Q. And we're going to. Did you get involved in the planning and strategy for Pam and Liz, and I'll refer to Pam and Liz as Mr. Murray's children, and you know them by their names?
A. Um-hum.
Q. Their strategy and their plan in the US trust litigation?
A. Absolutely not.
Q. So you didn't recommend to them that they claim that their father was incompetent as early as 1999?
A. I never said anything in regards to any of that and did not involve myself in any of their

private affairs.
Q. Okay. Would that have been true, that he was incompetent as early as 1999?
A. No, I would say from -- I can't judge from 1999 in relationship to competence or incompetent. He was always clear on the telephone when I spoke to him, I was in Germany, and I saw him periodically. He was in my professional opinion competent.
Q. And your professional opinion, what gives you the right to have a professional opinion about his competence?
A. Well, I have to be judging competence of patients on a regular basis to see whether or not they're capable of taking their medication and things along that line.
Q. I see.
A. Mentally clear from his responses, et cetera, and interaction, yes, he was competent.
Q. So if Pam and Liz were claiming he was incompetent, they were lying?
A. I have no idea where they came to any such a statement, I was not involved in it and I knew nothing about it. I cannot judge another person as to what their reasons for anything. I

knew nothing about it.
Q. Well, do you now understand that they will get nothing from any of the trust?
A. I didn't involve myself in their trust or in their financial affairs.
Q. Do you now understand that the court has ruled and the case they brought has been thrown out?
A. I had no idea anything about it.
Q. Did you end your relationship on a pleasant note with Mr. Murray?
A. I never ended my relationship with Mr. Murray, we remained good friends until he died.
Q. Okay. And as early as September of '05 were you aware that Pam and Liz claimed that their father, Mr. Murray, had good days and bad days and was subject to undue influence?
A. I didn't know Pam or Elizabeth in September of 2005.
Q. When did you first know them?
A. I didn't meet Liz until I think it was about the 10th of February when she came up with her father for lunch but it was a late lunch.
Q. The 10th of February is the first time you met Liz?

A. 2006, yeah. 2006. I had never met her before. I had heard her name. Her father had spoken of his girls but I had never had the opportunity to meet her.
Q. And where were you when you first met her?
A. I was at -- at my house in Greenwich.
Q. What was the address?
A. 24 Midway Drive.
Q. Greenwich, Connecticut?
A. Yes.
Q. And what was the occasion?
A. Well, I had invited him up to dinner. I had seen him before for Thanksgiving when I returned to the United States, I moved to Greenwich, and he came to Thanksgiving dinner and I saw him again at Christmastime 2005 and then in February again I invited him to dinner.
Q. Did he ever say anything to you about his estate planning?
A. Actually, he told me about his healthcare. He was very concerned that he was not receiving proper medical healthcare and he asked me if I would help him to find a specialist who I felt was competent and so I did and that was in 2005.

Q. Okay. And when did he ask you in 2005?
A. He asked me must have been around Thanksgiving time if I would help him find someone and I did, I found Dr. Stanley Fahn. Dr. Fahn is one of the top specialists in the world in Parkinson's disorders.
Q. Okay. And prior to February the 10th of 2006 you had never met nor had you ever talked or communicated with his daughters, Pam or Liz?
A. No.
Q. Am I correct?
A. That's correct, I never spoke to them, I never met them. I didn't know them. I only knew of their names from Bill, that was all.
Q. Okay. And who did you invite to dinner on that occasion?
A. I invited Bill and he said his daughter was coming with him.
Q. Which daughter?
A. Elizabeth.
Q. And where was Pam?
A. I have no idea. I didn't know her then.
Q. And where was Helen?
A. Helen was -- must have been at the

apartment but I have no idea. I only knew she didn't come with him.
Q. Was there any reason Helen didn't come with him?
A. Well, Helen didn't usually come with Bill because he would usually not tell them when he was going to visit somebody because he preferred to go alone.
Q. Because what?
A. He preferred to go alone.
Q. Was he physically able to ambulate and walk into your house on that date?
A. Yes. Yes. With a cane.
Q. With a cane?
A. Right.
Q. And did he have any healthcare provider with him?
A. He had Sonny with him.
Q. Who?
A. Sonny. I don't know his last name. He was essentially his assistant but he wasn't a nurse or anything in the medical profession.
Q. His name was Sonny?
A. Yes, but I don't know his last name.
Q. But you don't know his last name?

A. No.
Q. Where did he live, Sonny?
A. I have no idea. New York, I suppose, but he worked for Mr. Murray.
Q. Okay. And if Pam and Liz had claimed that at that time he was incapacitated, incompetent, shouldn't be chairman of any trust, shouldn't be given any responsibility, would they have been wrong?
A. I can't judge for anything other than his mental clarity and competence when I saw him and he was always competent and clear when I saw him.
Q. Which was when?
A. I saw him at Thanksgiving in 2005, Christmas 2005 and in February of 2006.
Q. And after that when did you next see him?
A. I would speak to him on the phone. He returned to South Carolina and I would speak to him on the phone. I don't recall seeing him but trying to call him periodically until I -- until I was asked to come to South Carolina. He requested that I come to South Carolina in 2007.
Q. And how many times did you talk to him

on the phone from February 10, '06 until you came to South Carolina in '07?
A. Many times but not -- I would say probably once every two or three weeks and when he could talk, sometimes he would say that he couldn't talk because there was someone in the room.
Q. And did you record any of these conversations?
A. No. It's illegal to record a conversation, isn't it?
Q. It is, that's why I asked you.
A. Okay.
Q. Have you ever done anything illegal?
A. No.
Q. Have you ever been charged with a crime?
A. No.
Q. Served any time in jail?
A. No.
Q. Had allegations against you of a crime?
A. Oh, once.
Q. And they were?
A. They were that I was practicing without a license in Germany.
Q. And you didn't have a license in

Germany, did you?
A. No, I didn't, and I wasn't practicing.
Q. I see.
A. And I was cleared.
Q. And you were cleared?
A. And it's on my record, right, that I was cleared.
Q. Have you ever been licensed to practice medicine in Germany?
A. No, I'm getting that right now.
Q. I see.
A. I'm putting the paperwork in.
Q. I see. You've been working on that for a few years?
A. Well, they don't allow you to have a license -- they didn't allow you to have a license in Germany without giving up your American passport and I felt my country was too important to give up my American passport and since I love America and wish to be a resident of the United States and even though I travel back and forth I would not give up my passport but they changed the laws in December.
If you're familiar with the laws in Germany and Austria, they required this for anyone that wants a European passport, they must give up

their American passport and you didn't get a license in Germany or Austria without having a European passport. Now you can as of December 2010.
Q. Did you tell Mr. Murray about that?
A. He was -- he was familiar with the situation, yes.
Q. Was he funding some education you were doing to try to get a license in Germany?
A. No.
Q. He never did that?
A. No, he never funded education for me to get a license in Germany. May I add something, a German medical degree cost me 1750 a semester so I paid for it myself.
Q. Okay. And how many semesters did you have to take of courses?
A. It was eight years so approximately two to three semesters a year.
Q. Okay.
A. Tremendous education.
Q. So you've been working on getting licensed in Germany for eight years?
A. Well, I've been also consulting pharmaceutical companies at the same time.

Q. Okay. And have you practiced medicine at the same time?
A. No, I was consulting.
Q. I see.
A. Consulting patients, colleagues and Jewish Pharmaceutical, BASF, several other companies, Novartis and Bristol-Myers Squibb.
Q. In what capacity?
A. Oncology, oncology research and cancer prevention, BA interest in cancer prevention. And I had finished a master's on the effects of nutrients in relationship to cancer prevention and cancer support and so for Novartis I actually developed a new treatment to cure mononucleosis of hepatosplenomegalies and that works in about 24 to 48 hours and it's published and they wanted to patent it so I was collaborating with Novartis on that.
Q. Because it had been patented?
A. Yes, it has been.
Q. What's it's called?
A. It's called combination treatment of viral infections. If you want the PST number, I can ask my patent lawyer.
Q. What's her name?

A. Dr. Sigrid Obenland. She's in Munich, Germany.
Q. And do you have any other medicines or anything else that's patented?
A. Yes, I have a patent pending for a -- for an arthritis treatment, combination treatment for arthritis and we are presently patenting a cream for reversing aging to help support my foundation and we have a hair regrowth formula and an acne formula that we are working on the patents right now.
Q. Okay. So you have -- is the patent in your name or someone else's name?
A. It's in my name.
Q. Are the other applications in your name?
A. Yes.
Q. But they haven't been approved yet?
A. No, the other ones are presently pending. I have a provisional patent and we're shifting it over to a PCT.
Q. Have you ever been involved in litigation?
A. Yes, I have been.
Q. What kind of litigation?

A. I was actually an expert witness for a patient in Germany who was under undue influence and on morphine at the time.
Q. Undue influence and morphine?
A. Yes. That was in Greenwich, Connecticut.
Q. Tell me about that case.
A. That was a case of an African American man who I had known who had asked for a consultation in a particular area that I'm not -- I'm not legally allowed to discuss because it's medical and he called me to tell me that his --
Q. As long as you don't tell me his name, you can answer my question completely.
A. Okay. Well, it was prostate cancer of a patient and he was asked for consultation for nutrition and nutrient support for him.
Q. Okay. What was your role?
A. Essentially as a consultant to him.
Q. Okay. And what year was this?
A. This was in -- let's see, 2000 -- 2008 or 2009.
Q. Did you ever discuss that case with Mr. Murray?
A. No. No, I didn't.

Q. Did you testify in that case?
A. Yes, I did.
Q. In a deposition like you're doing today?
A. No, in court.
Q. In a courtroom?
A. Yes, in Greenwich, Connecticut.
Q. Okay. And what was the substance of your testimony?
A. Essentially to explain the mechanism of the opium patch that the patient had in relationship to the influence that might have on the patient's ability to be competent, first of all, and second of all, to be susceptible to undue influence.
Q. In your opinion had that patient been subjected to undue influence?
A. In my opinion a -- in this particular case a testimonial signed for last Will and Testament one day before the patient died of terminal cancer when there had never been a Testament before and it was signed in support of the children instead of the husband and his property was all taken from him. It's extremely difficult.

Q. So you testified for the wife?
A. No, I testified for essentially to the courts on my professional opinion on the pharmacological mechanisms of morphine on competence and of the ability for a patient to respond to undue influence from the family.
Q. Okay. This was in state or federal court in Greenwich, Connecticut?
A. This was in a local -- local court in Greenwich.
Q. Local meaning state?
A. Yes, Greenwich. But I don't – I don't know – you know much better the terminologies of the individual court cases. This was an unofficial preliminary hearing so it wasn't an official court case, it was a preliminary hearing.
Q. Into the cause of death?
A. No, into the questioning of the Will.
Q. Okay. I am going to need to get the name of the person who was the plaintiff in that case and the defendant. I need the caption of the case.
A. Okay. Well, what I can do is call and -- Judge Harper is the name, Judge Harper in Greenwich, Connecticut is the judge, he knows me.

Q. H-A-R-P-E-R?
A. Exactly. He's a local.
Q. How does he know you?
A. He knows me both because of testimonials but also because I've been assisting other individuals in cases in relationship to their parents, support of their parents and help with their parents, so I've met him several occasions and then I've met him politically also.
Q. Was it your opinion in that case that someone had given the patient morphine to kill the patient?
A. No. No.
Q. What did the morphine have to do with the man's demise?
A. Woman.
Q. Or the woman's demise or undue influence?
A. It had nothing to do with demise, it had to do with her ability to answer questions and to respond to a situation of writing a Will.
Q. Tell me about other times you've testified in Judge Harper's court or any other court in the world.
A. No, that was it, just Judge Harper

and --
Q. What's his first name?
A. I don't remember.
Q. Do you have any relationship with him?
A. No, I just call him Judge Harper.
Q. Okay.
A. He knew me because I was also helping the Attorney General Blumenthal in his election who is now Senator Blumenthal from Connecticut.
Q. In what capacity were you helping him?
A. I was canvassing for him and I had volunteered to help out because I felt he was a very good man. He was also looking up health interest and since I am a former health official, I'm very interested in making sure that the health of the constituents, et cetera, is always guaranteed and that everything is done to protect them.
Q. So you would disagree with Pam and Liz that their father was incompetent as early as 1999?
A. Yes, I would.
Q. And you base that upon seeing him at Thanksgiving and Christmas of 2005?
A. Right, and speaking to him on the phone.

Q. And talking to him on the telephone?
A. Right. Right. James, his assistant, knew me well so when I was in New York, we would go to lunch sometimes, Bill and I.
Q. And what years were those?
A. Oh, well, that was 2005 because predominantly I was in Europe and only when I came back from Europe if I were in New York at meetings did I have an opportunity to see Bill but not very often.
Q. When did you first meet him?
A. I first met Bill in 1985.
Q. Okay. Where was that?
A. That was in New York.
Q. Okay. And what -- and how did you all meet?
A. Well, Helen Coley Nauts, who was running the Cancer Research Institute, a foundation in New York, I had met her at one of the -- one of the meetings on cancer and I had been the science assistant to the associate bureau director for toxicology of the Food and Drug Administration so I was covering cancer, cancer prevention and so on. And I was writing a book on cancer and I met Helen and I told her that I had been studying also in

Washington for a degree in nutrient biochemistry because I had found that specific nutrients could play a role in cancer. And Helen suggested since it was graduate school that I speak to Mr. Murray and see about a donation towards the university so that I could continue on doing my research for breast cancer and she said I believe two of his wives had died of breast cancer and that it was a very -- a very important matter for him to support cancer. He did a tremendous support of cancer.

This was what he -- Dr. Olds, whom unfortunately I only knew from his name, he supported, and Jim Watson, whom I met, he supported a tremendous amount of research in cancer and this was one of the reasons that I really, really admired him and all that he had done for all the people that he had helped. And many people did not realize or know how many people and how many individuals he had generously helped for education and so on.

I met one Russian man, young man, who I don't recall his name when I stayed at Bill's apartment with Helen and Bill and this Russian gentleman, I don't even know what year it was, and they put me up in the living room. It was -- it

was fun, very, very interesting, and I -- and he told me -- this young Russian fellow told me that Mr. Murray had supported his education, et cetera, so I was always pleasantly surprised to find out how generous he had been to help other people to get ahead in life. He was a good man.

Q. So you first met him and what month was it in, '85?

A. March.

Q. March?

A. Yes.

Q. Did you all ever live in the same location together?

A. For one day.

Q. For one day?

A. Right.

Q. When was that?

A. Well, Mr. Murray told me that it would be too inconvenient for me to stay at a hotel and he had a huge apartment with several rooms. He had I think two or three bedrooms at least and said that I could stay -- stay there.

Q. When was that?

A. In March, March of '85. I don't recall the exact date.

Q. Okay. Was Helen there also?

A. No. I don't believe he was with Helen, he was -- he was single.

Q. He was single at the time?

A. He was single at the time.

Q. And how long did you stay with him?

A. Just one day.

Q. And never any other occasions?

A. No. No, I mean, I told you I stayed at Helen and Bill's when I was in New York.

Q. Right. And what years were those?

A. I don't recall what year that was. It -- because I was in and out for meetings in US, cancer meetings, so I don't recall when it was.

Q. When did you start having sexual relations with Mr. Murray?

A. I only had one sexual relationship with Mr. Murray.

Q. One?

A. One.

Q. And it got you pregnant?

A. Yes.

Q. And you had a daughter by him?

A. Yes.

Q. And did Liz take your daughter's

toothbrush and have the DNA tested to see if it was his daughter?

A. She asked me to send it in.

Q. Did you do it?

A. Yes, I did.

Q. And did it prove he was the father?

A. Yes.

Q. And where is that document?

A. I have -- I don't know.

Q. Why hadn't you ever come forward with that document?

A. Why should I come forward with the document? I have no reason to come forward with the document.

Q. Okay. I thought from what I studied to get ready for your deposition you had refused paternity testing of Courtney.

A. Well, I didn't feel it was necessary. I had no reason to pursue a paternity testing. I didn't wish to upset my daughter.

Q. Okay. Who did the testing?

A. I don't recall the name of the institution.

Q. And what is the type of test they did?

A. It's a DNA test.

Q. And what was learned from that test?
A. That the DNA test matched and that -- Bill suspected and I knew but I didn't -- I just laughed about it and said, it doesn't really matter, the main thing is she's very smart, very healthy, very happy child.
Q. And did he ever know she was his child?
A. He -- he knew but he wanted proof and I said it wasn't important. And he said it could be to her advantage when she's older. And I said I would rather have the child happy and not be informed or involved in any other -- any other issues and that her happiness was more important than any advantages that she might ever have.
Q. Why would she be unhappy to know that he was her father?
A. Because she was raised by a German man whom she thought was her father and I thought it was her father in the beginning until the child was born and the child was born early and it went back to March and I had been separated from my fiance for about three, four months.
Q. She was born in March of what year?
A. 19 -- no, she was conceived in March and born in January -- January 2nd of 1986.

Q. Conceived in March of '80 --
A. 6 --
Q. '85?
A. '85, right.
Q. And born in? What's her date of birth?
A. I was expecting her in February and I -- when she arrived early but was perfectly healthy and not premature, I couldn't figure out why she was not premature when she was months early and then I went back to March and realized that the charming Mr. Murray, who had no locks on his doors, was the father of the child but I just felt that it was one of these situations that happens that you don't really wish to discuss because you certainly don't want to create any problems or misunderstandings.
Q. With whom?
A. With my husband.
Q. I see. At the time you had sex with Mr. Murray, you were married?
A. No, sir. I was single and I didn't marry until several months later.
Q. I see. How many times have you been married?
A. Once.

Q. And what was the date of your wedding?
A. June 1st.
Q. What year?
A. Of 1985.
Q. And how long were you married?
A. I was married for 20 years.
Q. To whom?
A. Dr. Bernhard Koenig.
Q. Spell that.
A. K-O-E-N-I-G. It's with an umlaut in Germany but they use an E in the United States.
Q. The rest of his name, if you'd please spell it.
A. Koenig Bernhard, B-E-R-N-H-A-R-D, and Koenig is K-O, umlaut or O, E-N-I-G.
Q. And is he alive?
A. Yes, he's alive.
Q. And where does he live?
A. He lives in Germany.
Q. What town?
A. He lives in Munich, Germany.
Q. What does he do?
A. He is a director of LaRoche Pharmaceuticals.
Q. The director?

A. No, he's not the director, he's a director.
Q. Does that mean he's on the board or what does it mean to call him a director?
A. No, that means he runs a department.
Q. Which is?
A. I don't even know the name of his department anymore because they keep changing -- they change things a lot. He originally started in AIDS research, HIV, and then he went on to cancer research and now he's in management but it's most likely related to testing, cancer testing, testing for new products and new chemicals.
Q. Did you have any other children?
A. No.
Q. You've only had one pregnancy?
A. That's right. No, I had three pregnancies.
Q. But no live births?
A. No, no, I had two miscarriages after my daughter was born.
Q. And Dr. -- what's his last name?
A. Koenig.
Q. Koenig. Did he think that Courtney was his daughter?

A. Well, we both did in the very beginning.
Q. And did he raise her as his daughter?
A. Yes, he did.
Q. And does she think he is her father?
A. Yes, she does.
Q. And did she ever think Mr. Murray was her father?
A. She thought he was a godfather.
Q. A godfather?
A. Right.
Q. And did he provide anything monetarily for her during her life -- during his life?
A. He gave her two presents. One was a leather coat when she was in New York, she must have been about 15, and he actually went shopping with us and I was so surprised at how patient he was because I don't think I've ever seen a man patient shopping, especially with him, and she was looking everywhere and she ended up -- she ended up picking a leather coat. And the other time was in December of 2005 when he gave her a laptop.
Q. December?
A. For her studies.
Q. December of '05 he gave her a laptop?

A. Um-hum. Yes.
Q. And where is that laptop now?
A. In Germany.
Q. She still uses it?
A. Actually, I don't know. I know she's had problems with her laptop, she needs a new one.
Q. And you gave your computer to Liz I believe?
A. No.
Q. You didn't?
A. No.
Q. That's not correct?
A. No, it's not correct.
Q. Okay. Where is your computer?
A. My computer is in storage.
Q. Did Liz give you her computer?
A. No.
Q. So neither one of you all gave each other a computer?
A. No.
Q. And where would your computer be in storage?
A. In actually New Haven.
Q. I'm sorry, I didn't hear.
A. New Haven, Connecticut.

Q. New Haven, Connecticut. At which location?
A. It's in PODS.
Q. Okay, what location?
A. If it's there. Some of my things were sold because I'm moving to Germany and so I can't use the computer that I had and I can't use all my electrical equipment so it may have been sold already, I don't know. I have to sell my TV and my treadmill.
Q. The question is very simple. Where is the POD?
A. The POD is in Norwalk.
Q. Say again.
A. In Norwalk -- I'm sorry, at PODS in New Haven, Connecticut.
Q. At which storage facility?
A. It's a PODS storage facility. I don't know the name of it. I don't have it offhand.
Q. Okay. I want to get that computer and have an expert look at it.
A. Okay. Well, if we can find it in the PODS if it's there. Several of my things disappeared while I was moving, an antique chair or couch and I have to see if it's there at all.

Q. Have you intentionally destroyed anything because of this case?
A. No. Why would I?
Q. I don't know.
A. Well, no, of course not.
Q. Do you have a promise from Liz or Pam to make money out of this case?
A. No, I do not.
Q. You're under oath.
A. I'm under oath.
Q. Okay.
A. And I have not -- I have not had any agreements with anyone over money on any situation whatsoever.
Q. Why out of the blue would they come to your house and get Mr. Murray to sign something in your presence when you've had no contact with them and never met them before?
A. Well, Bill was the one who initiated that, I didn't, and he's the one who wanted another proxy for his healthcare. It was for Mr. Murray, it was not from anyone else.
Q. You're telling me that Mr. Murray wanted to have what Liz typed up signed?
A. He asked me to review it and read it to

him and he wanted to sign it with me as a witness.
Q. Why would he want to affirm a debt in 19 -- a debt from 1980 in 2006? Why would he want to do that?
A. I have no idea. I only know that he asked me to witness it, that was all.
Q. And if he wanted to do it, why wouldn't he have talked to his estate attorney and had him do the proper documentation?
A. I have no idea. I never questioned Mr. Murray's intentions on whatever he did.
Q. And then why after it's signed would it be taken by you and put in a medical file?
A. Well, Mr. Murray said he wanted to make sure it was in safekeeping.
Q. I see. And you're the safekeeper?
A. Yes. And it wasn't in a medical file, it was strictly with all my neurology notes on his case.
Q. Which is his medical file?
A. Right.
Q. And not with his attorney who prepared his Will?
A. I didn't know Mr. Murray's attorneys. I knew Mr. Murray was an attorney. I did it and I

didn't question it.
Q. And when he signed it, why did he sign it with two different ink pens?
A. He only signed it once with me.
Q. Did he have a problem with a pen, did he switch pens, did he use a different kind of pen or what was that about?
A. I -- I really don't remember.
Q. Do you remember the kind of pen he used to sign it?
A. Not -- not offhand.
Q. Do you know that we questioned the authenticity of his signature and the way it was signed?
A. Yes, yes, yes.
Q. And do you know that we have an expert to affirm that?
A. Yes. No, I don't know you have an expert to affirm that.
Q. Okay. And the debt, the original debt is a grand total of 24,000 dollars in 1980?
A. I have no idea.
Q. Okay.
A. I really did not interest myself in Mr. Murray's private business. He asked me to

witness it, he was there, he asked me to read it to him and then he read it and I found it very interesting because Mr. Murray, being as thorough as he is, was not one to just sign something that somebody read. He looked at it again himself and so it took several hours.
Q. He wasn't capable of reading it himself?
A. He wanted me to read it first and then he wanted to look at it again. I had no idea why.
Q. How many times had Liz typed or retyped or Pam typed or retyped this whatever it's called, a letter I guess?
A. Well, Mr. Hood, I had no idea who typed this. I had no idea who had put it together. I assumed that James had done it because Mr. Murray had handed it to me and James did most of his typing so I had no idea.
Q. James was not present?
A. No.
Q. Nor did James ever hand it to you?
A. No.
Q. I'm correct?
A. Yes, you're correct.
Q. If Liz gets something from this

agreement, is she going to give you anything?
A. I have absolutely no intention of receiving anything from Liz on anything in relationship to any monetary advantages whatsoever.
Q. Well, aren't you totally financially destitute?
A. No, sir, I'm not.
Q. Have you ever had sex with anyone else and claimed some interest in their estate or helped make a claim against their estate?
A. No, sir.
Q. Has your foundations or anyone you've ever worked for?
A. No.
Q. Did you have sex with Mr. Murray for financial gain?
A. No, sir.
Q. Did he compensate you?
A. Mr. Murray did not compensate me for any -- any personal interactions.
Q. He did compensate you?
A. No, he did not.
Q. You never got any money from Mr. Murray?
A. Mr. Murray made a donation for my

research and that was sent to the university but that was all.
Q. Which provided a job for you?
A. No, I was doing research anyway.
Q. And how many hundreds of thousands of dollars were those donations?
A. I think it was about 2500.
Q. 2500 dollars?
A. Yes, sir.
Q. And that's it?
A. Well, later on he gave another donation to the foundation.
Q. How much was that?
A. That was in 2006. That was to cover Parkinson's and he wanted me to use it towards Parkinson's, which I did, and attend a meeting in Washington, DC, which I did, with Dr. Fahn, meeting with Dr. Fahn and many other colleagues.
Q. What was the meeting about?
A. The meeting was about Parkinson's disease and there were tremendous amount of research in relationship to the fact that in Parkinson's disease, which is what I had reviewed, I had given presentations on Parkinson's in India in 1993 for a meeting, and they have a metal

toxicity in the substantia nigra in the brain in Parkinson's patients is known, first of all. Second of all, they showed that the inflammatory condition in a neurological disease is a continuous inflammation. In other words, the patients need to be continuously on antiinflammatory substances to protect their brain.
Q. Does it matter to you in your testimony here today that Pam is very sick?
A. It matters very much. I met her in the summer of 2007.
Q. And what is your understanding of her current condition?
A. It's a very advanced breast cancer disease.
Q. Is it terminal?
A. If she doesn't have the proper treatment, yes.
Q. And has she been getting the proper treatment?
A. She has been getting the conventional treatment and unfortunately it is not -- it is not helping as much as they had hoped.
Q. What grade of cancer is it or what is it called?

A. It's a breast cancer but I did not look at her data or her reports so I can't really go into detail on, I only know that she is not doing well.
Q. And have you had any role as a physician in her care?
A. No. I have been -- I have asked if I can give her some advice to help her out but so far they -- I have not assisted her.
Q. And Liz, she's financially without funds, are you aware of that?
A. I have no idea what her financial situation is.
Q. If she should gain funds, would that be a benefit to you?
A. No, sir, not at all.
Q. And there's no unwritten or oral understanding between you and Liz?
A. No, sir.
Q. About money?
A. No. No, sir, not at all.
Q. Or gain to you or to a foundation?
A. No.
Q. Or some organization?
A. No.

Q. That you will benefit from?
A. No.
Q. Or it will benefit from what she does?
A. No. No, sir.
Q. There's nothing like that?
A. Nothing.
Q. If this was a valid agreement in February of '86 -- February '06 by Mr. Murray, why would he not tell me, his attorney, why would he not tell Edward Bennett, his estate attorney, why would his executor, Hilton Smith, not know about it, why would his daughter not know about it, why would Jim Morrow not know about it, why would Helen not know about it, who lived with him for a long, long time? If this was a real agreement that he knew he was signing and he signed, why would anyone that loved him, cared for him or represented him not know about it from him?
A. I never questioned Mr. Murray's intentions on anything and I have no idea, I cannot answer for him.
Q. Okay. Has Liz told you that she has a burning desire to destroy Hilton Smith?
A. No, sir.
Q. Have you seen that she does?

A. No, sir.
Q. Have you seen that she's done anything adverse to Hilton Smith?
A. I have not looked at her private matters nor have I -- no.
Q. Well, you've had a lot of e-mails with her and one of them said, how's the war going? What were you referring to?
A. Well, she said there were problems with the trust but I didn't ask her what the problems were, she just said there were problems with the trust.
Q. The problems are if she wants to get combative, she gets nothing. Do you understand that?
A. Well, I'm not familiar with the case, sir.
Q. Do you understand that's why I got hired, to make sure that didn't happen?
A. Well, if you say so, sir, then I guess I believe you.
Q. And Bill Murray, did he tell you that's why he was hiring me?
A. He never mentioned your name, sir.
Q. Do you agree that it's possible

Mr. Murray was under undue influence and was confused in February at your house when he allegedly signed a piece of paper?
A. No, sir.
Q. What brought you to Charleston the week he died?
A. Liz called me and said that he -- her father had requested that I fly in.
Q. I see. Now, he couldn't talk so how did he request it?
A. She had it on a tape recorder as far as I know.
Q. She's got a lot of stuff on tape recorders, doesn't she?
A. I don't know, I haven't heard the tapes.
Q. But you know there are tapes?
A. I do know that she taped it, she told me that she had taped it.
Q. And she's taped a lot, she's tried to get a lot of his healthcare providers to say that someone was killing him, didn't she?
A. I don't know, sir.
Q. You participated in that, didn't you?
A. I had spoken to the county coroner --

or the coroner in South Carolina on his -- at the time of his death.
Q. And you claimed that someone killed him with morphine?
A. I did not claim, I said I suspected that something may be irregular here and I wanted a toxicological report.
Q. Who did you talk to?
A. Joel Sexton.
Q. And did you go see him at his office?
A. No, I spoke to him on the phone. I did speak to the coroner in Charleston, however, and she said, are you accusing someone of murder? I said, I am not accusing anyone of anything, I am merely stating something is awry here and needs to be further investigated.
Q. So all of a sudden in the middle of the night a policeman arrives at Mr. Murray's doorstep, hauls him to the emergency room at Roper Hospital because someone's reported, that is, you, that someone's killing him?
A. No, sir, I'm afraid you have the facts wrong.
Q. That didn't happen?
A. I wasn't even there at the time.

Q. Did you know that happened to him?
A. I found out later on that he had been removed to the hospital.
Q. And then after he had died, someone had his body dug up and sent to Atlanta because it couldn't be done properly in Charleston and his body was chopped up in pieces and an autopsy was done because of you, right?
A. I have no idea why or if they did it or if he were buried, I was -- I was only aware at the funeral that his body was not there and Dr. Sexton said that the best thing to do was to have a complete toxicological report. And Dr. Sexton also said that the only way to be confirmed whether or not there was anything of foul play because of the fact that this had been delayed and delayed and delayed was to do a brain toxocologic report, which was not done to my knowledge or was it?
Q. Did you read the autopsy report?
A. Yes, I did.
Q. Then you ought to know, you're a doctor.
A. Right, but they did not do the brain and the brain should have been done.
Q. So today you don't want to apologize

for accusing Brianna of murder?
A. I never accused anyone of murder, sir.
Q. Helen of murder?
A. I never accused anyone of murder, sir.
Q. Hilton Smith of murder?
A. I never accused anyone of murder, sir.
Q. James Morrow of murder?
A. I made no accusations or allegations, I merely said something was not in order here and I wanted a complete and thorough investigation of it.
Q. Do you want to apologize for what you did?
A. I didn't do nothing wrong, sir. I am a physician and I am a scientist and I had to make sure that there was nothing wrong.
Q. And you did just that, didn't you?
A. I had to do what my medical duty and obligation.
Q. And who was your medical duty to?
A. Mr. Murray.
Q. Why?
A. Because I loved him very much.
Q. Was he a patient of yours?
A. He was a very good friend.
Q. Was he a patient of yours, yes or no?

A. No, he was not.
Q. Did you ever have a physician/patient relationship with him?
A. I had a consultation relationship with him to help and advise him and bring him to colleagues who were confident in Parkinson's disease, which is what I did.
Q. And did you treat him as a physician?
A. No, I did not.
Q. And at the time that you got a consult for his Parkinson's, were you acting as a physician?
A. I was acting as a consultant and advisor to him.
Q. Did you prescribe medications for him?
A. I did not. Dr. Fahn did and his other neurologist but I don't know who they all were.
Q. Did you change the medications they prescribed or that others prescribed?
A. No, I have no legal right to change any medications whatsoever.
Q. Why did you have a medical file on him if he wasn't your patient?
A. Because he wanted me to keep a file on it and because Dr. Fahn and Dr. Severt, with whom I

spoke at Columbia University, had sent me the information on him.
Q. Well, you asked for that after he died?
A. Yes, I did.
Q. Why?
A. Because I wanted to see what the data was in relationship to his medications, et cetera.
Q. For what reason?
A. For what reason?
Q. Yes.
A. To make sure that he had been properly taken care of.
Q. Are you through with your investigation of his murder?
A. I did not -- would you please rephrase that question.
Q. Are you through with your investigation of the alleged murder of William Murray?
A. Am I through?
Q. Yes.
A. In other words, have I completed my investigation?
Q. Yes.
A. I shall always wonder why they never did a brain toxicological report. It will always

be an open question in my mind as both a scientist and a physician. My cousin was the county coroner in Chicago, Illinois and he told me and I was often involved in pathology in evaluating situations. I do not know why a brain toxocologic report was never done.
Q. How many times have you accused someone of killing another human being with morphine?
A. I have never accused anyone of killing another human being with morphine.
Q. Have you ever accused anyone of killing another human being with anything?
A. I have never accused another human being of killing anyone.
Q. Have you ever accused a healthcare provider or a family member of a person not taking proper care of them?
A. No, sir.
Q. Intentionally not feeding them?
A. No, sir.
Q. Allowing them to become sick?
A. No, sir.
Q. Deathly ill?
A. No, sir, although I have heard of it.
Q. This is the only time you've done it?

A. Well, I have not -- I have seen in many situations that in hospice that there is a situation in hospice where the patients are given morphine and they are not fed or given water and the medications are taken away.

Q. Have you complained about that?

A. Actually, I verbalized a disagreement in this with Sally Wildman, a lawyer in Chicago, whose mother was put in hospice at the request of her siblings. She was opposed and the two siblings agreed and therefore her mother was put in hospice. That was to my knowledge the first time I ever realized that hospice would give morphine and would take away medications.

Q. Did you confer with the physician who did the autopsy on Mr. Murray?

A. I only conferred with Joel Sexton, Dr. Joel Sexton.

Q. Did you have any written or oral communication with Dr. Sexton other than what you've just told me or with any other doctor about the autopsy?

A. I had several conversations with Dr. Sexton in relationship to his situation that I wanted to clear up any questions or doubts.

Q. And what would you have wanted to have cleared up about the brain?

A. I wanted to find out whether or not there was an overdose of morphine in the brain. Dr. Sexton informed me that the only way that you can evaluate whether or not a person has received an excessive amount of morphine over a period of time is the brain because he explained to me that in the liver, in the gastrointestinal tract and the heart and other organs that the breakdown in morphine is much quicker but the brain is much slower breakdown and that's why he suggested that there be a toxicological report on the brain.

Q. Have you read the report?

A. Yes, I did.

Q. Okay. Multiple brain sections examined?

A. Right.

Q. Anything confusing about that?

A. No, sir.

Q. Everything was negative?

A. Toxicological. How many months? How many months after his death was the autopsy? I've forgotten.

Q. You didn't like when it was done?

A. It was done much too late.

Q. Have you been board certified in the field of pathology before?

A. No, sir.

Q. Have you ever practiced medicine in the field of pathology?

A. No, sir.

Q. Have you ever determined the cause of death of a human being?

A. Yes, sir.

Q. As a pathologist?

A. No, sir, merely working in pathology under Andy Toman, the coroner of Chicago.

Q. And what year was that?

A. 1974.

Q. '74?

A. Yes.

Q. 37, 8 years ago?

A. Yes, sir.

Q. That was awhile back, huh?

A. I don't forget much, sir.

Q. Did you know this Dr. Kris Sperry, the MD that did the autopsy in Atlanta?

A. No, sir, I never met him.

Q. Autopsy revealed no evidence of injury

or neglect and toxic studies are not contributory. Now, what's confusing about that?

A. Well, there's nothing confusing about that, sir.

Q. There was nothing in the brain found to support your morphine hypothesis, was there?

A. Sir, it would depend on the time difference between when the autopsy was done and the toxocologic report was done. The breakdown of morphine is a relatively short period of time so I don't know what -- exactly how many months that was but I would have to ask Dr. Sexton, who is an expert board certified pathologist, as to what his opinion was, how long would it take for the brain to break down the morphine and I don't think that would be --

Q. You're not competent enough to answer that yourself?

A. I'm not a pathologist, sir, as you mentioned.

Q. You're not medically competent to answer that yourself, are you?

A. I am not a pathologist, sir.

Q. And the fact that the doctor and the estate of course is paying for all of this, fly his

body to Atlanta, paying for the pathology, paying for the report, all because of you and your accusations that someone murdered him?
A. These are not --
Q. Concludes --
A. These were suspicions, they were not accusations, sir.
Q. Are you still making them?
A. I shall always wonder, sir.
Q. Even though the pathologist that looked at his body and his organs because of you?
A. Toxocologic report was the only thing that was important to me and should have been done immediately after his death.
Q. And what this says is that the manner of death is natural. Anything confusing about the word natural?
A. No, sir. Morphine is natural also, sir.
Q. Okay. So you persist about the morphine, you don't want to apologize. And who specifically do you want to accuse of murder?
A. I'm not accusing anyone of murder, sir.
Q. Well, all these people loved Mr. Murray and cared for him for a long time. You weren't in

the picture, you were somewhere in Germany married to someone else.
A. And I spoke to him regularly on the phone.
Q. Imagine how they reacted to what you've claimed, what you put in writing to the medical examiner of Charleston County.
A. Um-hum.
Q. How would you like it if we accused you of murdering somebody --
A. Well, sir --
Q. -- that you loved?
A. I believe that in a situation like this that one has to do duty before emotion and my duty was to be absolutely sure that there had not been something awry in the death of Mr. Murray.
Q. Did Liz put you up to this?
A. No, sir, she did not.
Q. You're under oath.
A. I am under oath and she did not.
Q. Did Pam?
A. No one put me up to this.
Q. You just out of the blue flew into Charleston and came up with it yourself?
A. Yes, I did. I did not out of the blue

fly in to Charleston. As I mentioned before, I had been called by Liz that her father was in a very, very serious state of health and that he had requested that I fly in and I flew in the next day.
Q. And the time you had seen him before flying in for his death week was when?
A. That was in -- it must have been -- I don't even remember which month it was. It was summer.
Q. Well, when did he die?
A. He died in 2007.
Q. Okay. And what month?
A. I believe it was August.
Q. Okay. And you saw him last when?
A. Well, I stayed -- I stayed there for a period of time at Pam's place so that I could go in every day and see him.
Q. Do you realize that this autopsy that the estate paid for, in my opinion a total waste of money --
A. But you're not a physician, sir.
Q. Nor are you. You're a researcher. You're not a practicing doctor.
A. I --
Q. Be honest about it.

A. I'm getting licensed in Germany now that the law's changed.
Q. You could not treat a human being in America or Germany today, correct?
A. I can consult.
Q. Did I say treat or not? Do you understand my words? Very simple.
A. Yes, I do.
Q. Okay. You can't, it would be illegal, you would be practicing medicine without a license?
A. If someone suspected that my death were awry and they were in the medical field and they did nothing about it, I myself would be disappointed and I can honestly say that I did what I felt was my duty and my obligation to Mr. Murray.
Q. You and Liz had total control of what was done by this autopsy, correct?
A. I had no idea what Liz had control over or not, I only requested that this be done.
Q. Do you know that the estate was not allowed to have any input into this autopsy, that it was entirely done by Liz and her lawyers, did you know that?
A. I did not know.
Q. All at your direction?

A. Well, I suggested that they do this under Dr. Sexton's suggestion.
Q. Do you think that the people that loved and cared for Mr. Murray ought to sue you for defamation for accusing them of murder with absolutely no support for it?
A. I never accused them of murder, sir. There is no accusation of murder.
Q. Well, why was his body dug up and flown over to Atlanta and chopped up?
A. Because I wanted to know the cause of his death.
Q. You had no right to know the cause of death, he wasn't your husband.
A. He was a friend.
Q. He was a friend. So anybody in America that has a friend who dies, their body is dug up?
A. He asked me if I would advise him in medical issues.
Q. When?
A. It was part of the medical proxy.
Q. In 19 what, in 2000 what?
A. In 2005.
Q. Okay. He died in what year?
A. Or 2006, actually, and he died in 2007.

Q. No, it was 2005 when you went to see the doctor in Connecticut, you know that, don't you? You've got his records?
A. I'm saying the medical proxy was in 2006, sir.
Q. The what was?
A. The medical proxy was in 2006.
Q. Who wrote that thing?
A. I have no idea. He asked me to witness it. I did not ask him who wrote it.
Q. How many times did Pam or Liz draft that before they handed it -- Liz handed it to him to sign?
A. Mr. Hood, how would I know that when I didn't even know them?
Q. Because you signed drafts of it.
A. I did not receive drafts.
Q. Why when you write to them do you call them sweetie, cutie --
A. I call everybody sweetie and cutie.
Q. -- lovey? Why do you have this affection for someone you don't even know?
A. I met them in -- I met them in 2006, I met Liz, and then I met Pam in 2007.
Q. And they've been your sweetie and cutie

ever since then?
A. Well, I respect them tremendously.
Q. You do? Why?
A. Because they are decent people, because Liz is an extremely intelligent young woman who is very kind, very helpful, very giving and --
Q. How much money has she given you?
A. None.
Q. Why if all of those things does she claim in a lawsuit in New York that her daddy is totally incompetent and shouldn't be running a trust?
A. I can't answer for her, sir.
Q. Well, you just said she was wonderful and she's cutie and sweet and lovey-dovey.
A. I have no idea about her business aspects and business work that she's done.
Q. How about the lawyers, do you all have the same lawyer?
A. Lawyer for what?
Q. Well, start with those in the room. Are these guys here your lawyers?
A. No, sir, they're Liz's lawyers.
Q. They don't represent you?
A. Not that I know of. Are you

representing me?
Q. Have you paid them to represent you, yes or no?
A. No, sir.
Q. Now, how about the guy in New York?
A. What guy in New York, sir?
Q. You tell me. Who is your lawyer in New York?
A. I don't have a lawyer in New York, sir.
Q. Never had one in New York?
A. Not to my knowledge.
Q. Who was the guy that told you how to get to Hilton, go after him?
A. Somebody told me to get to Hilton?
Q. Yeah.
A. Nobody even mentioned Hilton in relationship to anything legal in New York or any lawyers.
Q. How about Don Sharpe?
A. Who is Don Sharpe, sir?
Q. He was your lawyer in New York, told you how to get and go after Hilton and what you're doing here today.
A. I don't know Don Sharpe, sir.
Q. You don't know him?

A. No, sir.
Q. Never heard his name before?
A. No, sir.
Q. Never paid him a fee and never been represented by him?
A. No, sir.
Q. Have you sought any legal advice from anyone about anything connected with the estate of William Murray, his death or the allegations involved in this lawsuit?
A. Joel Sexton from the pathology.
Q. Anyone else?
A. And whom else?
Q. Anyone else in the world.
A. I may have spoken to former lawyers but I don't recall the conversation anymore.
Q. Who were the former lawyers?
A. I don't know, who were the former lawyers?
Q. Slotchiver?
A. Yes. Yes.
Q. Now, they produced a bunch of stuff and cut out stuff. Why did they do that, your e-mails?
A. I have no idea, sir.
Q. Did they ever represent you?

A. No, sir, they did not.
Q. So Steve Slotchiver is not your lawyer, correct?
A. That's correct.
Q. And anything he has of yours is not privileged or private?
A. Not that I know of that he has anything of mine, sir.
Q. Okay. Did you bring documents with you today as we requested?
A. I don't have any documents, sir.
Q. Oh, yes, you do. You have a lot of e-mails, particularly with the Slotchivers.
A. Well, since I don't have my computer and I don't have old e-mails, it's a little bit difficult for me to bring something when I'm living in Germany and I don't even have access to anything.
Q. Now, the computer that would have these e-mails is the one in storage in Connecticut?
A. Actually, no. No.
Q. Which computer would it be?
A. That would have to be my old computer from Midway Drive.
Q. And where is that?

A. Well, that's -- I sold that.
Q. To whom?
A. Some fellow that answered on the Internet. I don't remember who it was. That was about two years ago.
Q. Did you get a receipt?
A. No.
Q. You found him on the Internet? What computer were you using to find him?
A. A Dell, an old Dell.
Q. Where is that computer?
A. I don't know where that computer is.
Q. So we're not ever going to be able to find your computer that has these e-mails to the Slotchivers?
A. Well, not that the -- there were e-mails, that's what --
Q. There are a bunch of them.
A. Yeah. And I thought that you had e-mails.
Q. They have been redacted. We're going to cure that problem.
A. That's good to know.
Q. And then I'm going to take your deposition again.

A. Okay. That's good.
Q. And you'll be available?
A. Yes.
Q. You know, did you find it inconvenient to get on a plane and come to America to give this testimony today?
A. No, sir. I had to take care of things in New York anyway.
Q. And you know the estate's paying for it?
A. I had no idea who was paying for it, I only knew that I wasn't paying for it.
Q. Do you know how much money of the estate that was wasted fighting the US trust case, how many millions of dollars that would have been inherited by your friends?
A. I wasn't involved in that, sir, I don't -- I don't interest myself in other people's business affairs in relationship issues that are not mine.
Q. You never discussed that litigation with Pam or Liz or their lawyers?
A. No.
Q. Do you know who their lawyers were in that litigation?

A. No, sir.
Q. They're not the Charleston fellows, it's somebody in New York.
A. No, sir.
Q. Did you get involved, read any documents, give any input, meet with anyone, discuss that litigation ever?
A. No, sir.
Q. What's your goal in supporting Liz and Pam in this litigation?
A. I am merely -- I was asked to tell the truth and I said I would.
Q. And the truth is out of the blue in February of '06 Mr. Murray comes to your house for dinner, Liz happens to be there and he's presented with two documents to sign in your presence that you read to him?
A. Um-hum, that's correct.
Q. And he signs them in your presence?
A. That's right, sir.
Q. And you don't remember anything funny about him signing them with several different pens?
A. I don't recall.
Q. And you don't remember that he was unduly influenced by Liz --

A. He only signed it once in my presence and he was competent, he was clear and it was never my place to question Mr. Murray on any legal issues. Mr. Murray was an excellent lawyer and he knew what he was doing and he asked me to do this for him and I did and that was it.
Q. Have you ever been qualified as an expert to discuss and give opinions about someone's ability and their intellectual capacity?
A. I have had to judge competence before and he was competent.
Q. And that was one time in Judge Harper's court, correct?
A. Yes.
Q. And what year was that?
A. That was 2000 -- I think it was 2000 -- 2008 or 2009.
Q. And were you cross-examined or did you just give your opinion to a probate judge?
A. I was cross-examined.
Q. By who?
A. By the lawyer for the opposing party.
Q. Who was the --
A. Oh, I don't know what his name was.
Q. Who were his clients?

A. Well, I'd have to check with my lawyer to find out if I can mention this because of the fact that it's a medical issue.
Q. That would be good. What's the name of your lawyer?
A. I didn't have a lawyer representing me, I was only called in as an expert witness under Judge Harper.
Q. Was the hearing closed or was it a public hearing?
A. It was closed.
Q. I'm sorry?
A. Closed.
Q. Why?
A. I was -- I think it was Probate Court.
Q. All courts are open to the public. Why was it not open to the public? What was it about it that was secret?
A. I don't know, sir, you're the lawyer, I'm not --
Q. I'm telling you they're all open.
A. Well, then I guess it was open but I have no idea, I only know that the family was there, I was there and Judge Harper was there.
Q. News media there?

A. No, sir.
Q. That was in '08 you think?
A. I think it was '08 or '09 but I'm not sure. I thought the media couldn't come in a court of law.
Q. They are in courts of law every day all over America, unlike Germany.
A. Um-hum.
Q. We have freedom of the press in this country, don't you remember that from grammar school?
A. I know freedom of the press but I was not aware that they were filming in court rooms.
Q. I didn't say anything about filming. Was someone filming this particular proceeding?
A. No, sir.
Q. Have you ever been filmed saying anything?
A. Yes, sir.
Q. When?
A. For the foundation. I have given presentations around the world in cancer, cancer research, cancer prevention.
Q. What years?
A. Just about every year. I just came

back from a meeting in Italy for complementary alternative medicine where I gave a presentation on reversal of brain tumors and I gave a talk in Germany at the German Society of Oncology.
Q. When was that?
A. That was about three months ago.
Q. These are all recorded?
A. Some are recorded, some are not.
Q. Do you keep copies of the recordings?
A. No. Sometimes they're on my Web site.
Q. I've read your Web site. Is everything on it truthful and correct?
A. Yes, sir.
Q. I'm not going to find some representation by you on that Web site that's not accurate?
A. No, sir. Not to my knowledge.
Q. We'll get back to that.
A. Okay.
Q. What do you know about the Donaldson and the Freeman trust litigation?
A. Nothing.
Q. Did anyone ever talk to you about it?
A. No, sir.
Q. Have you ever claimed you were pregnant

by anyone other than Bill Murray?
A. I don't think I ever discussed it, sir.
Q. The question is pretty easy. Have you ever claimed it, yes or no?
A. No.
Q. Have you ever claimed you were pregnant or you had sex with anyone in return for getting money?
A. No, sir.
Q. When Liz took the toothbrush of your daughter, did you know she had taken it?
A. I sent it in.
Q. You sent it in?
A. Um-hum.
Q. Not Liz?
A. No, she asked me to send it in.
Q. And you did?
A. Yes, sir.
Q. Yet you refused to do it for Mr. Murray?
A. No, because I was not interested in it in relationship to any monetary gain for Courtney.
Q. You refused to do the paternity testing of Courtney, your daughter?
A. Right.

Q. When requested by Mr. Murray, correct?
A. Yes.
Q. When requested by Liz, you did it?
A. Well, she asked me if I would please do this, she felt that it was important.
Q. Why would it be important for Liz to prove her father had another child?
A. I have no idea, sir.
Q. Well, what's her motivation there?
A. I think you'd have to ask her, sir.
Q. Has Liz ever imparted to you her desire to make Hilton's life miserable?
A. No.
Q. Did you read the e-mail she sent you?
A. Well, she said that she wanted fairness and justice.
Q. Fairness and justice?
A. Um-hum.
Q. Prove Daddy has an illegitimate child, prove Daddy is under the influence of other people, prove Daddy is being killed by people, healthcare providers, those are the -- that's the justice she wants?
A. Those are your words, sir, not mine.
Q. But when we read your e-mails we find

they are your words, aren't they?
A. Well, they find that I was extremely suspicious because the morphine was in the refrigerator where everyone had access to it and because Mr. Murray's pupils were not dilated in the dark and when pupils are not dilated in the dark, it's a sign of morphine toxicity.
Q. And you told all that to Joel Sexton?
A. Yes, sir, I did.
Q. And knowing all of that, no one ever accused anybody other than you of murder?
A. I never accused anyone of murder, sir, I said I suspected foul play, I was not sure, but something was awry.
Q. Don't you think what you've done rises to the level for Hilton Smith to sue you for defamation?
A. I have no idea, sir, I'm not a lawyer.
Q. And Helen?
A. I am not a lawyer, sir.
Q. And James?
A. I am not a lawyer, sir.
Q. How about the care providers, what did you accuse them of?
A. I didn't accuse them of anything.

Q. Did you know they were the only ones who had access to medicine?
A. They weren't the only ones, sir, it was in the refrigerator and the refrigerator was open.
Q. Okay. And who were the healthcare providers when you were there the last week of his life?
A. I didn't know all of their names. Walter was a representative of the court, he wasn't a healthcare provider, and Cherry, but I don't know her last name, and there was an elderly lady and I don't recall her name either.
Q. They were all healthcare providers?
A. I believe so.
Q. Now, did you participate with Liz in recording them and trying to get someone to say they did something wrong?
A. No, sir.
Q. Did you suggest that to Liz?
A. No, sir.
Q. Did you give her any ideas of things to ask about?
A. No, sir.
Q. Did she share with you her recordings of those conversations?

A. No, sir.
Q. With the care providers?
A. No, sir.
Q. Do you know where those recordings are today?
A. No, sir.
Q. Has Liz told you it's her intention to contest her father's Will?
A. No, sir.
Q. Has she put that in writing to you?
A. No, sir.
Q. Is it on some of these e-mails that have been blanked out?
A. Not that I know of, sir. I haven't looked at the e-mails at all and I don't know if they're blanked out or not, sir.
Q. Now, when's the last time you treated a human being as a doctor, medical doctor?
A. Well, sir, you have mentioned treated about ten times already.
Q. At least.
A. And I said I was not treating, I was consulting and advising.
Q. And I just asked you something different. Have you -- when's the last time you've

treated as a medical doctor a human being --
A. I have not treated --
Q. -- in your lifetime?
A. -- as a medical doctor because I have not been licensed as a medical doctor.
Q. Okay.
A. I have, however, as a medical student given medications that were required of me to give to patients.
Q. Okay. Did you graduate from medical school?
A. Yes, sir, I did.
Q. What year?
A. In 1999.
Q. From what school?
A. From Leopold Franzens University.
Q. You're going to have to spell that for the Court Reporter.
A. Sorry, it's Austrian. Leopold, L-E-O-P-O-L-D, Franzen, F-R-A-N-Z, as in zebra, E-N-S, as in Sam, University and that's in Innsbruck, Austria, I-N-N-S-B-R-U-C-K, Austria.
Q. Okay. So now you have a medical degree from that school in '99?
A. Yes, sir.

Q. Does it give you the right to prescribe medicine and to treat human beings?
A. No, sir.
Q. What kind of degree is it?
A. It's a doctor of medicine degree.
Q. Okay. And in America do you have any degree that allows you to treat and prescribe medicine?
A. No, sir.
Q. Have you ever met Brianna?
A. Yes, I did.
Q. Who is she?
A. She is according to Bill one of his daughters.
Q. Did you question that?
A. Why should I? I didn't question anything that Bill did.
Q. Okay. When did you first meet her?
A. I met her in Greenwich, Connecticut.
Q. What year?
A. Well, it must have been 2000 -- 2006 because she came in with Liz and I didn't know Liz before that.
Q. Was this at the same time that Liz came to your house, February 10th?

A. No, no, this was much later. This was later.
Q. How much later?
A. Several months at least.
Q. So February, March, April. What month are we dealing with in '06?
A. I don't know. I don't remember. It was warm and we went to lunch, the three of us.
Q. Who was the third person?
A. Brianna.
Q. And you?
A. And Liz.
Q. And Liz?
A. Right.
Q. What was discussed?
A. Her father.
Q. Okay. Anything else?
A. No. We just laughed about his antics.
Q. Do you deny that you discussed with Brianna the Freeman and Donaldson trust?
A. I did not discuss the Freeman and Donaldson trust because I didn't know anything about it.
Q. Have you ever discussed it with Brianna?

A. No, sir.
Q. Are you sure?
A. Yes, sir.
Q. Were you hoping to get any money out of those trusts?
A. No, sir. Would you mind if I go to the ladies' room?
Q. No, not at all. We'll take a break. Remember not to talk to anybody.
A. No, sir.
(A recess transpired.)
BY MR. HOOD:
Q. What's your full name, please?
A. Dana Frances Flavin. Dr. Dana Frances Flavin.
Q. And where does the Dr. come from?
A. Dr.med.univ. is the title for my doctor of medicine degree in Austria.
Q. Obtained in '99?
A. Yes, sir.
Q. What's your date of birth?
A. 6/29/48.
Q. What's your residence -- what is your -- what do you claim as your legal residence?
A. Well, right now my legal residence is

Germany.
Q. What's the current street address?
A. It's Am Bachfeld, A-M, and then Bachfeld, B-A-C-H-F-E-L-D, 12-A, in Berg, B-E-R-G, Germany, zip code 82335.
Q. And do you have a residence in the United States?
A. No, I don't.
Q. Do you hold a voter registration card in America?
A. Connecticut.
Q. And what's the address on your voter registration card?
A. That was at 24 Midway Drive.
Q. What town?
A. In Greenwich.
Q. And do you still have property there in Greenwich?
A. No, sir.
Q. And your driver's license?
A. Is Greenwich, Connecticut.
Q. Same address?
A. Yeah.
Q. Your Social Security number?
A. 333-42-7597.

Q. Now, if you become a German citizen -- are you going to become?
A. No.
Q. You're going to stay an American citizen?
A. Oh, absolutely.
Q. Do you need the equivalent of a Green Card to work in Germany?
A. I have it. I have it in my passport. It's called Aufenhalts Erlaubnis.
Q. It allows you to stay in the country?
A. It allows me to stay in the country, right.
Q. And the CV that you brought with you lays out your education, I guess?
A. Yes, sir.
Q. And your most recent degree you've gotten in America is a nutritional degree from Howard University?
A. Yes, sir.
Q. That was in '86?
A. Yes, sir.
Q. Do you have any relatives or family in America?
A. Yes, sir.

Q. Who?
A. I have a sister in Ohio and a sister in Baltimore and nieces and nephews throughout the United States. My brother just passed away in South Carolina.
Q. Where did he live in South Carolina?
A. Clemson.
Q. What did he do?
A. He was retired.
Q. What did he do when he worked?
A. He was an industrial engineer.
Q. For whom did he work?
A. I don't know, sir, because he was in South Carolina and I was busy.
Q. Right, but when is the last time you saw your brother?
A. About two years ago.
Q. Were you all close?
A. Yes, I loved him very much.
Q. And your two sisters, are you close to them?
A. Well, I don't talk to them that much, I don't see them very often.
Q. I see. What was your brother's name that lived in Clemson?

A. Peter Byers Francis Flavin.
Q. And so your maiden name is Flavin?
A. With an I-S. Yes, sir.
Q. And Flavin is your maiden name?
A. Yes.
Q. And you were born and raised where?
A. I was born and raised in Flossmoor, Illinois.
Q. And your parents, what were their names?
A. Dr. Byron Francis Flavin and Genevieve Kryda Flavin.
Q. What kind of doctor was your father?
A. He was an oral surgeon and a dentist.
Q. Your two sisters, what are their occupations?
A. One is a nurse and the other is retired from NBC in marketing.
Q. Okay. Has there been any family litigation in your family?
A. No.
Q. You have no relatives by blood or marriage in Charleston County?
A. No, sir.
Q. Where does your daughter Courtney live?

A. Courtney lives in Germany, Munich.
Q. Do you speak German?
A. Yes.
Q. Does she?
A. Ja freilich, which means in German, yes, of course.
Q. How many -- how many times over her life did William Murray see Courtney?
A. About four times.
Q. And tell me about each of those.
A. Okay. Well, the first when she was two.
Q. Okay.
A. And I came over for a science meeting that my husband had and then my father passed away so I was heading down to Baltimore and then once when she was older, probably about 14 or 15, and when we went to New York and he took her shopping and then again in 2006 when we went into New York around Christmastime.
Q. 2006?
A. Yes. 2005, I'm sorry. It was 2005.
Q. And that's when you took him to the Presbyterian hospital at the same time period?
A. Yeah. Well, I took him before she

arrived. She arrived for Christmas holiday.
Q. I see. You took him Thanksgiving time?
A. I took him right after Thanksgiving time. I was worried.
Q. Okay. We'll get back into all that.
A. Okay.
Q. That last time he saw her, Christmastime, where did you all see each other?
A. In his office.
Q. In New York?
A. Yes, sir.
Q. Where was his office?
A. Around 78th or 79th.
Q. Okay. And was anyone present?
A. James.
Q. Anybody else?
A. I don't know. He had a secretary too but I can't remember her name who was there sometimes.
Q. And did Mr. Murray ever send any money or do anything monetarily for Courtney or for you?
A. Well, he bought her a laptop, yes. He bought her a laptop.
Q. At that Christmastime?
A. Yes.

Q. Anything else?
A. No, sir.
Q. And you've never had any other relations with any other men other than your husband and the one time with Mr. Murray?
A. That's right.
Q. So there are no other prior spouses or husbands or anything, divorces or anything like that?
A. No, sir.
Q. What is Dancour, LLC?
A. Oh, Dancour, LLC is a company that I started in Delaware in relationship to the face creams so that I could have a -- sell the face creams on the Internet and then have Dancour donate to the foundation so that we could continue supporting the foundation.
Q. Is Dancour still in operation?
A. Yes. There's no money in it but it's still in operation.
Q. You're the principal?
A. Yes.
Q. And it has no money?
A. Nope.
Q. What about Flavin Pharmaceuticals,

Inc.?
A. Ah, that was under the venture capital company United American Ventures in California and they had purchased 55 percent of my patent for an antiviral and that was in 2008 that they purchased that and then they established Flavin Pharmaceuticals as a venture capital company, you're probably more aware than I, they build up a company and then will sell the company and their rights to the patent.
Q. And has that been done?
A. No, unfortunately that was closed down, the United American Ventures was closed down.
Q. And so what --
A. So it doesn't exist.
Q. When was that that it was closed down?
A. That was in January, February of 2010. No, I'm sorry, 2009 I think it was.
Q. Okay.
A. Or 2010. Yes.
Q. What is your means of livelihood? Do you have a stream of income from anything?
A. Yes, I'm actually paid as an assistant to a patent attorney in Germany and I also receive alimony.

Q. From whom?
A. From my ex-husband.
Q. What's his name?
A. Dr. Bernhard Koenig.
Q. When did you all divorce?
A. 2005.
Q. What was the reason for the divorce?
A. He submitted the divorce proceedings.
Q. On the grounds of?
A. He had another woman that he wanted to marry.
Q. This was in what month of '05?
A. August 2005.
Q. Okay. And did he marry the other woman?
A. Yes, he did.
Q. And so you have no spouse since '05?
A. No, sir.
Q. I'm correct?
A. Yes, sir.
Q. So you live by yourself?
A. Yes, sir.
Q. No one's lived with you since '05?
A. No, just guests, people coming in. My daughter came and stayed for a month.

Q. No men?
A. No, sir. No.
Q. And what is I-M-R-A-C, Haus Burkstetten?
A. Oh, Haus Burkstetten, that was the villa I lived in. IMRAC, International Medical Research and Consulting.
Q. What's that about?
A. That was a small company that was involved that I established and involved in consulting.
Q. When was that?
A. God, that was in the '90s. I don't recall exactly the date.
Q. What's the name of the lawyer you consult for?
A. Dr. Sigrid Obenland, the one that I said was my patent lawyer in Munich, Germany.
Q. So you're also a consultant to him?
A. To her, yes.
Q. To her?
A. Yes, she hired me as an assistant to her.
Q. Does she pay you on a monthly basis?
A. She's going to.

Q. But has she paid you anything?
A. Not yet.
Q. Why is she going to pay you and hadn't paid you?
A. Well, because it wasn't starting until the first of July and I had -- I had to move so I was busy with a few things and so we're going to go ahead and get established when I get back. I've been essentially just collaborating with her right now.
Q. I see. And why did you have to move?
A. Because I don't have a -- I don't have a permanent residency in Germany and I want to have a house that I live in myself.
Q. And have you accomplished that?
A. Yeah, I found one.
Q. And what's that address going to be?
A. Number 2 Erbrachweg, E-R-B-R-A-C-H-W-E-G, apologize for the complications of the German, it's a tough language, and that's also in Berg, that same Berg zip code, et cetera.
Q. And Bristol-Myers, what did you do for them?
A. I was a consultant for them for

oncology. Aki von Roy. He was the president of Bristol-Myers Squibb.
Q. Who?
A. Aki. Mr. Joachim von Roy.
Q. In Germany?
A. Yes.
Q. He's not an American?
A. No, he's German.
Q. And he's not the American president either?
A. No.
Q. So this is German Bristol-Myers. And what did you do there?
A. He had asked me to be an oncology advisor for Bristol-Myers Squibb.
Q. Were you paid?
A. No, because as I was supposed to fly up to Brussels, he was -- he was -- they had a shift in the company and he left the company so I didn't -- I didn't follow through.
Q. So you never got hired?
A. No, I never got officially hired but I was an advisor to their colleagues up in Brussels but I wasn't paid for it.
Q. Okay. And that lasted for a month or

two months?
A. About a month.
Q. How about the Novartis Consumer Health, N-O-V-A-R-T-I-S?
A. Novartis?
Q. Novartis. What is that?
A. Novartis is a former branch of Hoffman LaRoche and Novartis Pharmaceuticals, that was the -- he -- the director was Werner Scholler. And if you look, they are on the publication for the first cure for mononucleosis hepatosplenomegalies in 24 hours, that was the child, the son whose life I saved, and then Dr. Steinrock and Dr. Schultie Steinberg's -- Schultie Steinberg's grandson was cured in 48 hours of the hepatosplenomegaly and Dr. Steinrock's son was cured in 36 hours of the hepatosplenomegaly so Novartis wanted to patent the combination therapy.
Q. So what is -- is that a company that you work for?
A. Yes, I did work for them.
Q. Did you get paid?
A. Yes, I did.
Q. How long did you work for that company?
A. About a year.

Q. And that was in Germany what year?
A. That was in Switzerland.
Q. Switzerland?
A. Yeah.
Q. What year?
A. What year was that, 2006? 2006.
Q. You're no longer working for them?
A. No.
Q. And BASF?
A. Yeah. BASF is a German company.
Q. Did you work for them?
A. Yes, I did.
Q. In what capacity?
A. I actually wrote a review on nutrients and nutrition in relationship to cancer prevention for them. They were interested in their vitamins and promoting their vitamins in relationship to cancer prevention.
Q. Were you paid for that?
A. Yes, I was.
Q. How long was that engagement?
A. That was about six months to a year or two.
Q. In what year?
A. That must have been -- let me think.

That must have been '87 because I went over there -- I went over there in '80 -- well, '85 at Christmas time or in the fall, yeah, in the fall, and then I worked with BASF and afterward because I had known them all from all the scientific meetings when I was with FDA.

Q. Did you work for the Nutrition Foundation?

A. Yes, I did.

Q. In what capacity?

A. Science advisor to the president of the Nutrition Foundation.

Q. How long did you do that?

A. I did it for several years. That was 1981 through I think '85 or '84. They merged with the Nutrition Foundation in Atlanta and so the -- then they closed the company but that was -- that must have been '85.

Q. Were you an employee?

A. Yes, sir.

Q. And it's closed since '85?

A. Yes, sir.

Q. And what did you do for the FDA?

A. I was the science assistant to the associate bureau director for toxicology.

Q. And how long did you do that?

A. From 1979 to 1981.

Q. And what was your -- what was your government pay grade?

A. 12.

Q. And your title?

A. Science assistant to the associate bureau director for toxicology, Food and Drug Administration.

Q. And did other employees have the same title?

A. No, sir, nobody. It was an appointment.

Q. And who was your boss?

A. Dr. Albert Colby.

Q. Is he still there?

A. No, he passed away and he left anyway.

Q. Have you ever represented to anyone that you're -- you were a top toxicologist at the FDA?

A. I was a top toxicologist at the FDA but I was not a licensed toxicologist, it was an appointed position.

Q. What made you top?

A. Well, because I was top advisor to the

director of toxicology and it was all under Sandy Miller, and he was under Burry Foods at the time.

Q. And you were dealing with what kind of toxicological matters?

A. Anything that related to foods, food additives, carcinogenic substances in foods or changes in foods in relationship to, for example, hybridization of potatoes will actually increase the carcinogenic capacity. And I wrote articles on soy milk, raw soy milk in relationship to protease inhibitors, was looking into the factors of raw milk on protease.

Q. Have you ever had anything that you've written peer reviewed?

A. All my scientific articles have to be peer reviewed and reviewed by the editors before they can be published.

Q. And have you had anything that you've published in a peer review journal?

A. Yes, sir, I have.

Q. And those are listed in your CV?

A. Yes, sir.

Q. And are you working on anything right now?

A. Yes, I am, sir.

Q. What are you working on now?

A. I am working on the effects of Boswellia serrata in relationship to Herceptin inhibitors in breast cancer, brain metastases, and I'm working on the similarities and correlations of cancer stem cells in cancer stem cells and embryonic cells to look at the effects of teratogen, such as Accutane, which is an acne medication, or Cyclopamine, which is a brand new drug from Bristol-Myers Squibb, in fact, and I'm looking at the possibilities of testing further for chemotherapy combined with teratogens to enhance the effects of the therapy and decrease the amounts of metastases that can come from the chemotherapy.

Q. And for whom are you doing this work currently?

A. For the Foundation.

Q. Which Foundation?

A. Foundation for Collaborative Medicine in Research.

Q. And who owns that?

A. Actually three partners, incorporated originally Washington, DC, 2001, and we were a nonprofit by ONC3, we are now a public charity so the research that I do is for the Foundation for

publications.
Q. Okay. We got the tax returns from that outfit and they're not making any money, are they?
A. No, we have a lot of people that have no health insurance, have no money, and I can't tell somebody I'm not going to advise them or help them if they don't have any money. I think that would be against all ethics in relationship to my oath.
Q. And you're not being paid anything?
A. Sometimes I receive donations to the foundation from some patients, sometimes they'll pay in writing a journalistic article or something.
Q. But no money is being paid to you by that foundation?
A. No, my money is going into the Foundation, sir.
Q. So the tax returns are accurate?
A. Yes, absolutely.
Q. You have no salary?
A. No.
Q. What is a targeted therapist or -- yeah, therapy?
A. Target therapy. Yeah, target therapy is a name that I essentially copyrighted because of

the fact that what I've been looking at is the molecular biology of cancer and which targets in the cancer cells will respond to what inhibitors and which combinations are the best to put together.
Q. How many times did you take the German medical examination?
A. Three times -- four times.
Q. So you flunked it three times and passed it fourth?
A. No, I passed it -- the first one, part one, and part two I kept missing by two or three points. It's German, sir, it's multiple choice. And the student said to me, I don't know how you can do it, we can't even understand the questions.
Q. So Germany doesn't have any doctors, they can't pass this multiple test?
A. Oh, they did, they would eek through but they're better at multiple choice. I've never been good at multiple choice, I'm too analytical.
Q. So you flunked it how many times?
A. Three times.
Q. Did you pass it the last time?
A. Yes, sir. I took it in Austria.
Q. Because you were not successful with

the German exam?
A. Right, I had trouble with multiple choice in the German exam.
Q. But they will let you after having passed it in Austria practice in Germany?
A. Absolutely, because Austria has a different exam. They have instead of -- instead of a multiple choice exam on one day, an oral exam. They have 12 specialty exams so it takes over two years and so every four to six weeks or two months in some cases, for example, internal medicine, it's about 1200 pages for the internal medicine books and so for each specialty exam I had to have an exam.
Q. Did you ever invest in anything, any business, anything, nonprofit or profit venture with Mr. Murray?
A. No.
Q. When did Mr. Murray start living with Helen Flynn?
A. Oh, I don't know, sir.
Q. When did you first meet Helen?
A. I met Helen when I came over to a science meeting but I don't remember what year it was.

Q. Meaning from Germany to America?
A. Yes. And I was supposed to meet him for dinner at his office so I waited at his office and James was there. James should have a record of that. But I waited and waited and he showed up and Helen was with him and he introduced me to Helen.
Q. Was that awkward?
A. No. Why should it be?
Q. Was she nice?
A. She was wonderful.
Q. Did he like her a lot?
A. He appeared to be happy when I first met them. I --
Q. What year do you think that was?
A. I couldn't say. I really couldn't say.
Q. Well, you went from --
A. Might have been -- it might have been 2003 -- it might have been 2003 or 2004.
Q. Okay. And you've told me about when you first met Elizabeth.
A. Um-hum.
Q. That was February the 10th, '06?
A. Yeah.
Q. And you first met Pam the same time?
A. No, sir, I met her -- I met her a year

later.
Q. And how many times have you physically met with each of them?
A. Just once with Pam and Liz had come to dinner a few times at the house when I had other guests, a banker that also went to Wharton.
Q. Where she went?
A. Yeah.
Q. Did they hit it off or start dating or anything?
A. No. No.
Q. You had him because you thought she --
A. Well, because they both were from Wharton and because of the fact that he's an investment banker, an old friend of mine from Greenwich.
Q. I see. What's his name?
A. His -- I don't remember his name, that's terrible. I'm really bad at names, I get this blank. Come on, Dana. I can't believe I can't remember his name.
Q. Well, do you pronounce your first name Dana or Dana?
A. Dana. I just had a blank-out. I can't believe this. Stuart.

Q. Stuart?
A. Stuart, yes.
Q. And what would Stuart's last name be?
A. Let me look it up. You know how in America they always say the first names, in Germany they always say the last names. God, I can't believe I can't remember Stuart's last name. This is embarrassing. Sorry about this.
Q. Well, we won't tell Stuart.
A. Don't tell Stuart. He's 75. Possibly be --
Q. You're going to look it up on your Blackberry?
A. Yes. I can't believe this.
Q. If you type in Stuart, you'll get him.
A. Yes, must be my jet lag.
Q. Does he spell it S-T-U?
A. Ryder.
Q. That's a German name.
A. He's retired, sir.
Q. Was with whom?
A. I don't know. I don't know which bank. I know he was in Asia for several years and then he was in London before that and then in Asia but he was a Wharton graduate and since Liz was a

graduate, I thought it would be nice to introduce the two of them.
Q. How about Mr. Murray's other daughter, Catherine, have you ever met her?
A. Once.
Q. When did you meet her?
A. In South Carolina at the funeral.
Q. Physically at the funeral?
A. Yes.
Q. During Mr. Murray's -- the week before he died?
A. I may have seen her at the apartment but I really don't even remember.
Q. And you didn't make any statement to her that I'm the mother of your father's child --
A. No, sir.
Q. -- Courtney?
A. No.
Q. Or something to the effect that your father and I have a child named Courtney?
A. No, sir.
Q. You never said that to any of his other children?
A. No, sir.
Q. And so have you ever talked to

Catherine at all about anything?
A. No, sir.
Q. You know what's bizarre here to me is Liz and Pam absolutely hate the rest of the family and Bill Murray and their conduct towards Bill Murray and his estate. You loved Bill Murray?
A. Yes, very much.
Q. You have a child by Bill Murray?
A. Um-hum.
Q. Right?
A. Yes.
Q. How are you so friendly and sweet with them rather than the other side of the family that loved him and cared for him?
A. I -- I don't know the other side of the family.
Q. Have you made any effort to get to know Catherine or Hilton or James or Helen, the people that --
A. Helen I sent flowers to when she broke her hip.
Q. That was nice.
A. I send her birthday cards. I sent Bill birthday cards.
Q. Okay. What years?

A. Helen was I think in the hospital in 2000 -- must have been 2006 when she broke her hip.
Q. Okay.
A. And I sent her flowers.
Q. And for Bill's birthdays what years?
A. Oh, I don't even remember.
Q. Well, you all had a relationship and what year was it?
A. '85.
Q. '85. Then no relationship until February the 10th --
A. No, no, no, we -- I would call him a lot, we would converse on the telephone. And when I was in New York I would see Bill but that was -- there wasn't any physical relationship if that's what you're inferring.
Q. Well, why would he see you if there wasn't any physical relationship? He was a man.
A. He loved me.
Q. He loved you so he had sex with you or not?
A. No. Sex doesn't necessarily have to mean love, does it? I know people that love a lot of people too but they don't have sex with them. Depends on the church I guess.

Q. All right. So you had a lot of contact with him between '85 and '06?
A. Um-hum.
Q. The answer is yes?
A. Yes.
Q. And the contact was by telephone?
A. Telephone or when I was in New York.
Q. And --
A. Oh, and in Greece too. In Greece.
Q. You physically saw him in Greece?
A. Yes, he attended a cancer meeting.
Q. Okay. So these occasions when you would see him in New York and in Greece that one time, they were just how are you doing, get acquainted, reacquainted kind of conversations?
A. Yes. He was very interested in the cancer research, as I said, and he had funded a lot of Dr. Kedar Prasad in Colorado's work for cancer. Dr. Prasad was working on vitamin E and I had known him for many, many years because we collaborated while I was at FDA and I met him.
Q. What's his first name?
A. K-E --
Q. Where was he?
A. He was in Denver, Colorado. K-E-D-A-R,

Kedar, Prasad, P-R-A-S-A-D.
Q. Okay. Well, when you first met Bill, he was not married and he wasn't cohabitating with Helen Flynn, correct?
A. Correct.
Q. And so later when he cohabitated with her and never married her, you never were in the picture except by telephone?
A. Well, no, I told you I stayed at their house, their apartment in New York.
Q. One time?
A. Yes.
Q. One night?
A. Right.
Q. He didn't want you to go to a hotel or motel?
A. No. I'm sure that this sounds very unusual for some men but there are men that can have women that they may have known and they remain friends even though they are no longer biblical friendship or relationship and that's essentially how it was. I know he respected my work tremendously and he --
Q. What's biblical mean?
A. Well, biblical according to the

expression is a biblical knowledge of a person would be a physical relationship with them.
Q. I see.
A. And I respected his work tremendously.
Q. Okay. Tell me about any discussions you've had with our friend George Kefalos sitting there next to you. He's not your lawyer so it's not privileged so I have a right to know.
A. Right.
Q. Tell me about it.
A. Well, George said answer each question honestly, directly and to the best of your knowledge and essentially he told me to give as much information as you need.
Q. Okay. And you've been doing that?
A. Yes, sir.
Q. All right. Any other communications with him?
A. No, just one in relationship to the flight and flight time is all.
Q. What did you do to prepare for today's deposition?
A. Essentially I went back through and asked him for the dates and checked back through the papers that I had witnessed since I didn't have

copies of them.
Q. Okay. And what did you learn from looking back at those?
A. I just remembered the day that he was there sitting in the chair in the corner and talking with me.
Q. In the corner?
A. Yeah, there was a -- I had two wingback chairs in my cottage house in Greenwich and he had a favorite one.
Q. Okay. And yet he had only been there once?
A. No, he had been there Thanksgiving. And Thanksgiving, that was the chair he chose. And then when he came again in February, that was the chair he sat in.
Q. Okay. Have you ever had any conversations with Hilton Smith?
A. No, only briefly met Hilton at Bill's bedside when he was dying.
Q. And what was exchanged -- what was said between the two of you?
A. Nothing. Hilton just said to the nurse, isn't it time for Mr. Murray's comfort medicine?

Q. Meaning?
A. Well, I found out later on that comfort medicine is what they call morphine in the south.
Q. Okay. When did he say that?
A. He said that when he came in from a trip, he had been somewhere in Philadelphia or Pennsylvania.
Q. And how long had you been there when that was said?
A. I'd been there in South Carolina for about a week.
Q. So that was the day he died?
A. No, sir.
Q. How many days later did he die after that statement?
A. I don't -- I don't recall.
Q. So you don't know whether he died the next day or?
A. No, it was several days.
Q. Okay. Several days. So you came in at the invitation of Liz?
A. Yes, sir.
Q. And where did you stay?
A. I stayed with Pam.
Q. At Pam's -- where did Pam live?

A. She had a small house.
Q. Where?
A. In South Carolina.
Q. Good.
A. I don't know exactly what the address was.
Q. In Charleston?
A. I think it's right outside of Charleston. It's not in the city itself.
Q. It was her home or did she rent it?
A. I don't know, I didn't ask her.
Q. I see. And who else was staying at Pam's while you were there?
A. Pam's friend, her boyfriend.
Q. What's his name?
A. I don't remember his name.
Q. Is he still around?
A. I have no idea. I didn't ask.
Q. Was he at the funeral?
A. I don't know. I don't remember.
Q. Well, when you got up to go to the funeral, was he there getting dressed going to the funeral?
A. I don't remember whether he went or not.

Q. You went?
A. Yeah, I went.
Q. Did you arrive physically with Pam?
A. I think I rode with Liz but I don't recall whether it was with Pam or Liz. I really don't remember.
Q. Were you with the family in a hearse?
A. No.
Q. In a limousine?
A. No.
Q. Well, did Liz come pick you up at Pam's to take you to the funeral?
A. She was staying there too.
Q. You were both staying there. Anyone else staying there?
A. The dogs.
Q. Whose dogs?
A. Liz's dogs.
Q. How many dogs has she got?
A. She had one and Pam had two.
Q. What kind of dogs?
A. Well, Pam had Schnauzers and Liz had I think it's a Shih Tzu.
Q. Noisy dogs?
A. Well, I didn't even know she had the

dog until it started licking my face around two o'clock in the morning when her daughter had brought the dog in and I woke up at 2:00 in the morning with a tongue in my nose or something about that big.

Q. The tongue or the dog?

A. The tongue of the dog in my nose. The dog came over and started licking my face.

Q. And that was the day of the funeral?

A. No, it must have been a day or two before.

Q. How out of the blue do they invite you down for your father's last week of life?

A. He asked me. That's what Elizabeth said.

Q. Did you ever hear him say that?

A. I didn't hear him say anything, I wasn't there.

Q. Did they want you down to talk to the healthcare providers to try to see if somebody was killing him?

A. No.

Q. Did you make any investigation on your own or at their request with regard to his care?

A. I'm totally on my own. Totally on my

own.

Q. They didn't know you were doing it?

A. Yes, they did, I told them I was concerned.

Q. What exactly did you tell them?

A. That there was morphine in the refrigerator and extremely concerned that his pupils were not dilated in the dark.

Q. How much was in the refrigerator?

A. There was a whole box full of small vials, sir, and it was not locked. When I went to get a glass of milk, I saw it in the refrigerator.

Q. Was it labeled morphine?

A. Yes, sir, codeine -- no, morphine.

Q. Were you casually or were you investigating?

A. No, I wanted to get a glass of milk.

Q. What time of day?

A. I drink milk sometimes in the morning or sometimes at night.

Q. What time of day did you open the icebox?

A. I don't remember, must have been afternoon I guess.

Q. For a glass of milk in the afternoon?

A. Um-hum.

Q. The answer is yes?

A. Yes, sir.

Q. And the milk was in the icebox?

A. Yes, sir.

Q. What else was in the icebox?

A. Food. Different foods.

Q. And where were you?

A. In the kitchen.

Q. Of?

A. Mr. Murray's apartment.

Q. Located where?

A. In Charleston but I don't have the address.

Q. Okay. And who was sleeping in the apartment?

A. Helen was sleeping in the apartment.

Q. Mr. Murray and who else?

A. And then Walter from the courts was there throughout the day and he had caretakers there.

Q. Now, Walter got appointed by the court because of you saying that you were worried about someone giving Mr. Murray morphine, right?

A. To my knowledge Walter told me that he

was appointed by the courts because the courts had taken Mr. Murray out of -- because Mr. Murray had been removed from the hospital in that same evening that he had been put into the hospital.

Q. Because he wanted to be removed. You read the medical records, hadn't you?

A. I don't recall him wanting to be removed, sir.

Q. You don't recall a doctor testifying he wanted to be removed and so he discharged him?

A. No.

Q. There's no reason to keep him, he was perfectly fine?

A. No, sir, I do not recall that at all.

Q. Did you talk to the doctor?

A. No, sir, I did not.

Q. Did you read his report?

A. No, sir, I did not.

Q. So when you closed your medical file on Mr. Murray and wrote to the doctor you had seen back in '05 with Mr. Murray, you got his medical records, right?

A. Right. That was in relationship to his Parkinson's.

Q. But as to the medical file on

Mr. Murray here in Charleston as to the hospital, you never wrote and got those records?
A. No, but I probably should have.
Q. Yeah, you should have. You would have seen there was nothing to be concerned about.
A. Um-hum. So as you say or -- that's -- I shall always wonder.
Q. Do you think it was a good thing in the middle of the night the police because of you went to Mr. Murray's apartment?
A. No, no.
Q. Took him to the hospital?
A. No, no, it had nothing to do with me, sir. I wasn't even aware of this.
Q. You weren't?
A. No, I was not.
Q. Who made them concerned for Mr. Murray if it wasn't you?
A. It must have been Elizabeth but I don't know. I was only called afterwards and then I flew down. I knew nothing about this.
Q. I see. So it was Elizabeth that was questioning?
A. Well, I don't know, sir. You would know better than I. I never looked at any of the

records on this.
Q. Did she tell you she was going to contest how he left his estate?
A. No, sir.
Q. How about Alta Brockington, did you meet her?
A. No, sir.
Q. And when you were here during the week of his death, did you meet Elizabeth's attorneys, Mr. Kefalos, Mr. Baker, anybody else?
A. No, I met the other gentleman.
Q. Mr. Slotchiver?
A. Yes.
Q. And he was a lawyer for them at that time?
A. Yes.
Q. For Liz at that time?
A. Yes.
Q. Okay. And is he still involved?
A. I have no idea, sir.
Q. How many times did you meet with him?
A. Just once.
Q. And where did you meet with him?
A. In Charleston.
Q. At where?

A. At his office.
Q. At his office?
A. Right.
Q. Which is two blocks from where Mr. Murray lived?
A. Yes. Is it? Well, you would know better than I.
Q. I do know. You went to his office?
A. Um-hum.
Q. Which Mr. Slotchiver did you meet with?
A. I don't -- I don't know their first names.
Q. Was he skinny, was he --
A. Older. I met the older one for a few minutes and then I guess -- I don't know whether it was his son or brother or whatever.
Q. Was he heavyset or skinny?
A. He was fit.
Q. There are two -- there's a Mr. Slotchiver, Sr., who is the elder.
A. Right.
Q. And he's probably in his seventies or eighties. Did you meet him?
A. Yes, when I walked in.
Q. Did you talk to him about anything?

A. No, I didn't.
Q. All right. And he has two sons that practice law with him?
A. Um-hum.
Q. And one is slim and one is not slim, he's larger like me. Which one did you talk to?
A. I don't remember.
Q. It would be pretty easy to remember.
A. Yeah, I know, but I just -- I really don't. I remember they were -- they were very charming and very nice and that's all I knew.
Q. Okay. And what was the substance of the conversation?
A. Well, essentially just to meet them.
Q. Just to meet them?
A. Yes.
Q. They're very expensive lawyers just to meet.
A. Well, Liz wanted me to meet with them but I didn't -- we didn't discuss anything.
Q. You met them and nothing of substance was said?
A. No.
Q. Were you asked to sign an affidavit?
A. No.

Q. Make a statement?
A. Hum-um.
Q. Nothing?
A. No, sir. Do you need a coffee?
Q. Have you ever requested -- I'm sorry?
A. Do you need a coffee?
Q. No, I never drink coffee in the afternoon.
A. Want some water?
Q. No. I appreciate your concern.
A. Sorry, this jet lag is killing me and I don't even remember Stuart's name.
Q. We'll stop at any time if you're uneasy or don't feel well.
A. No, I'm just very tired. It's been a very long week.
Q. All right. Do you want to stop because we'll stop if you want to. This is not a torture chamber at all.
A. No, I don't feel that I'm being tortured. I know you're just trying to find out the truths and the facts and I appreciate that very much.
Q. And my obligation is to Mr. Murray, your friend.

A. Yes, I know, sir.
Q. And I have some real problems with the truth and validity of what we're talking about.
A. Well, I'm sure for every situation it always appears that there are more sides than one and that's why you're the lawyer and that's what your job is.
Q. Well, I'm glad you understand that.
A. Yes, sir, completely.
Q. On March the 17th, '09 you wrote a letter to Dr. Fahn, F-A-H-N?
A. Um-hum.
Q. And you refer to Dr. Severt, S-E-V-E-R-T?
A. Severt, yes. That was his assistant.
Q. Okay. And you liked him, the assistant?
A. Both of them were fabulous. Brilliant neurologists, exceptional people.
Q. And the only contact you had with them was in '05?
A. And in '06.
Q. And in '06?
A. Right.
Q. When in '06?

A. It was February, near the end of February.
Q. After Mr. Murray came to your house?
A. Yes. Yes.
Q. Okay. We'll get back to that one. Now, why do you write to this doctor on that date and ask him to send records involving Mr. Murray?
A. On what day, sir?
Q. You're writing him 3/17/09.
A. Yes.
Q. Why are you doing that?
A. Liz asked me if I would procure the documents on his healthcare.
Q. Did she have a medical authorization to do that?
A. No.
Q. Did you have a medical authorization to do that?
A. I as an advisor to him, I asked if I could look at them and they said yes.
Q. Now, he's dead, you're not advising anybody except Liz. He's dead and in the ground.
A. Um-hum.
Q. This is March '09, correct?
A. Yes.

Q. All right. So what you're doing is around the corner here?
A. No, sir, I was just trying to find out what were the medical story behind that because I never got a chance to follow up anyway to see exactly what had he put him on later on.
Q. Well, you didn't have a right to, you weren't a physician treating a patient?
A. No, I was a consultant advising him.
Q. Do you know what HIPAA is?
A. I had permission from Mr. Murray to advise him.
Q. He gave a medical authorization through -- prepared by his lawyer, Edward Bennett, that was in detail and it said nothing but, right, you've seen it, right?
A. I witnessed it.
Q. No, that's not what I'm talking about.
A. Oh, you're not talking about that one.
Q. The one that he did with his lawyer is valid and properly witnessed.
A. That's your statement that it's invalid or valid.
Q. It's totally invalid.
A. I have no idea which is valid and which

is not valid.
Q. Okay. Well, a child can't notarize or witness a medical authorization nor can a treating physician.
A. Um-hum.
Q. And you and Liz were the two people that allegedly seeing the signature?
A. I wasn't treating, I was consulting.
Q. Yet you write this letter as a treating, asked for records?
A. I did not say I was treating.
Q. Well, let's look at the letter. My visit in the winter so that I may close his file.
A. Um-hum. That's right. I keep a file on everyone that I consult.
Q. Okay. And you've produced that file and all that's in it is what you got in response to this letter?
A. Right. That's it.
Q. I accompanied, quote, my patient, yet you're not treating him?
A. Um-hum.
Q. But you're calling him your patient?
A. Right.
Q. That was a lie, wasn't it?

A. That was an erroneous statement, it should have said as a consultant.
Q. Do you understand in South Carolina -- in America when you say my patient --
A. Um-hum.
Q. -- you're making a representation as a medical doctor to another doctor that you are a licensed practicing physician treating a patient and have a right to his records?
A. That was not my intention.
Q. Well, you wanted the records. You had no right under HIPAA to get these records and you knew that but you refer to this as my patient.
A. Um-hum. It was my referral.
Q. Well, it could have been anyone's referral, it could have been Mr. Kefalos' referral.
A. Um-hum.
Q. That doesn't give him a right to the medical records, does it, you know that from going to med school, don't you?
A. Well, I asked for them as -- I referred him to them and I just wanted to close out the papers.
Q. Because Liz wanted you to get them is the real reason you wrote?

A. She asked me if I could get a copy of his medical records and so I said, no problem. I didn't see a problem in it.
Q. Did she pay you to write this letter?
A. No, sir.
Q. Did she promise anything to do this letter?
A. No, sir.
Q. Well, it doesn't make sense.
A. It doesn't make sense to you, sir.
Q. Right.
A. But it makes sense to me.
Q. Have you ever done this for anyone four years after, asked for medical records to close a file?
A. Yes, I have.
Q. When?
A. In Germany.
Q. When?
A. Years ago.
Q. 1960, '70, what are you talking about?
A. No, talking about '90s.
Q. Okay. To close a file?
A. Well, when patients pass away, for example, I need to look at the cause of death and

so on and so forth.
Q. Why is that? Because you're not treating anybody.
A. I'm advising them and we can see the results and the data. I'll give you a perfect example.
Q. I want to deal with Mr. Murray, not some hypothetical patient.
MR. BAKER: Let her answer the question. Let her finish her answer.
BY MR. HOOD:
Q. You can talk all day if you want to.
A. The point is when, for example, my consulting person in Germany passed away after seven years, I had actually given her Boswellia serrata, which is an antiinflammatory, and was able to get rid of a brain metastases in three months.
Q. You hadn't given Mr. Murray anything, he had a lot of doctors treating?
A. Absolutely. I made recommendations for nutrition and nutrients.
Q. And you're not trained to treat Parkinson's disease, which he had, correct?
A. I'm actually educated in neuropharmacology.

Q. Right. Medicine?
A. Medicine.
Q. Right. Chemicals?
A. Well, pharmacological agents are chemicals.
Q. Right.
A. Food is a chemical.
Q. You do not treat nor have you ever treated a human being with Parkinson's disease, correct?
A. No, I have consulted.
Q. It would be illegal for you to treat a human being with Parkinson's disease anywhere in the world?
A. Right, so I consulted him.
Q. Now, you called him my patient.
A. Right. That was obviously a mistake.
Q. You weren't treating the patient?
A. Right.
Q. He's dead and gone?
A. Right.
Q. And yet you are after the fact, a couple of years after the fact saying I want to close a file on my patient, send me the records?
A. Right.

Q. And when you got them, you gave them immediately to Liz?
A. I had copies of them and she wanted a copy of them.
Q. And how did you physically give them to her?
A. I don't remember.
Q. Did you scan them in and e-mail, did you copy them, did you fax them? There's a way you did it. How did you do it?
A. Well, I probably wouldn't have scanned anything, I probably would have just given them to her.
Q. Well, she's in Charleston and you're wherever in Germany?
A. No, that was -- what year was that?
Q. March the 17th, St. Patrick's Day, 2009.
A. Right. And I was in -- in 2009 I was here.
Q. In Charleston?
A. No, sir, I was in -- I was in Greenwich, Connecticut.
Q. She was in Charleston?
A. Yeah. She flew back and forth to New

York all the time and drove back and forth to New York all the time.
Q. Seeing you all the time?
A. No, on occasion.
Q. Do you specifically remember how you gave her the records?
A. No, I'm afraid I don't.
Q. And what did you learn from these records?
A. Well, I just -- all I learned was that what medications he was on, which I had already known, which they had already let me know.
Q. And the fact that they wrote mentation on off two and three, what did that mean to you?
A. Well, that's -- those are neurological evaluations. You'd have to ask Dr. Fahn on that, he is the expert in the neurological evaluation test or Severt.
Q. So you don't know what that means?
A. I'm -- I don't do neurological reports.
Q. I didn't -- that's not the question. You know a lot. I'm asking you do you know what those numbers mean?
A. I'm not familiar with their coding score.

Q. Okay. So if when this doctor, Dr. --
A. Severt.
Q. -- Fahn saw Mr. Murray in '05, Mr. Murray was susceptible to undue influence and confused according to this doctor's chart?
A. No.
Q. You're denying that?
A. I deny that. In fact, I will give a quote from Mr. Murray to Dr. Fahn. Mr. Murray said to him, you might think that I'm slow but I'm from Charleston.
Q. Okay. Was he saying that in Geechi when he said it or just saying it?
A. He was just saying it because Dr. Fahn was asking him questions and he would ponder over the questions and then he would give an answer. And I found it very interesting because Bill was always one to not rapidly just answer a question but to contemplate on it.
Q. Okay. And did you gain any useful information in your investigation here of Mr. Murray's demise from these records?
A. No, sir.
Q. Did you read the records and discuss them with Liz?

A. No, sir.
Q. For example, the history and the examination and the assessment and plan are all in longhand. Did you read those to Elizabeth?
A. Did I read them to Elizabeth?
Q. Yes.
A. No.
Q. Did you read them to anyone?
A. No.
Q. Did you learn anything new from reading them?
A. No, only that they had done a very good job at Columbia University and tried to program him properly.
Q. There at Columbia or at the Presbyterian?
A. Columbia, St. Luke's, it's all up together.
Q. So no surprises from these records?
A. No.
Q. Now, they all happened to be at the same time as he's signing a document at your house allegedly February of '06, right?
A. He saw him first in December of '05 and saw him again in the end of -- of February.

Q. Right. He saw him after being at your house and before?
A. Right.
Q. You never got a medical authorization from Mr. Murray for you to get anything nor did Liz ever have one, correct?
A. I don't know about Liz.
Q. You didn't have one?
A. No, I didn't have one.
Q. And she never gave you one if she had one?
A. Didn't know if she had one.
Q. She never gave you one or said she had one?
A. Not that I -- no. No.
Q. Now, was Pam involved in getting these records or just Liz?
A. Just Liz.
Q. Has most of your involvement been with Liz rather than Pam?
A. Oh, I've spoken to Pam on the phone on occasion but not in relationship to this situation, only in relationship to her health.
Q. Okay. Now, if this treating doctor who you were very pleased with concludes that

Mr. Murray had severe memory loss with disorientation, severe impairment handling problems, you would disagree with that?
A. No, I wouldn't disagree with that, I would say that from the situation with Parkinson's disease that it's kind of like fatigue if you're improperly medicated. And when you are improperly medicated, what happens is, for example, Lucky and Sonny said that sometimes either he would get too much medicine or not enough medicine when Helen would give him the medicine because she would get confused. And with Bill, one of the things that I wanted to do was to make sure that he was on the proper medicine, that he wouldn't go through these stages of being fatigued and tired where it wasn't that he was mentally incompetent, on the contrary, but extremely tired and in a state where he wanted to sleep or sit down and not to talk.
Q. Okay. So if Dr. Fahn concluded that Mr. Murray was often disoriented and had little spontaneous speech, you would disagree with that?
A. No, I wouldn't disagree with that.
Q. Okay. So then when he allegedly signed anything at your house, was he also disoriented?
A. No, he was not.

Q. Well, what happened to him in a week or two between signing and seeing this doctor to make him disoriented?
A. One of the things that I noticed, and this is what Sonny had said, was that when he had Sonny or Lucky with him and was gone for the day, he got his medications at the right time and seemed totally normal and did not have these memory problems, he did have speech problems, that was part of the motor problems. However, when he was with Helen, this is why he told me he wanted to have more therapy and he wanted to stay in New York because he didn't feel he was getting enough therapy in South Carolina.
Q. So doesn't all that translate into February 10 at your house he's disoriented because Helen's giving him medicine at the wrong time and she's confused?
A. No.
Q. Why is that not right from what you just said?
A. Because he was gone all day with Sonny and Sonny took care of his medicine.
Q. On February the 10th he was on medicine, how do you know that?

A. Because he was at the house.
Q. He was at your house, what time?
A. The same time he drove up with Bill and Liz.
Q. I see.
A. And he went in the kitchen.
Q. So Sonny is in the house?
A. Yes.
Q. Bill is there, you're there. Anyone else?
A. No. Liz was in the office on the computer, Sonny was in the kitchen and I was in the living room with Bill.
Q. Did you have a printer for your computer?
A. Um-hum.
Q. Your answer is yes?
A. Yes.
Q. And she was changing and revising what she was wanting to get him to sign?
A. No, she was going on her e-mails.
Q. Her e-mails?
A. Yeah.
Q. And she was good at e-mailing and drafting documents for a lot of different people to

sign?
A. I have no idea, sir, I don't know her competence.
Q. Well, then let's get to the next document. Did you write this letter or not, February 23, '09 to Mr. Kefalos, or did Liz write it?
A. Which letter?
Q. It's registered mail to George Kefalos, I'm an old friend of Mr. Murray's.
A. Um-hum.
Q. Reaching back over 20 years.
A. Um-hum.
Q. Did you write this letter?
A. Well, I have to see the letter, sir.
Q. Oh, you're not familiar with it?
A. No.
Q. It's Flavin Document 2. Take your time and read it and I'll use the bathroom while you read it. If you need to, we'll take a break.
A. Okay.
(A recess transpired.)
BY MR. HOOD:
Q. Looking -- to go back a minute before we go to your letter, Flavin 2, it's got two dates

and columns. The first one is June 12, '09. Is that what we think because I can't really read it, this witness, that's correct, isn't it?
MR. KEFALOS: Flavin 2 --
BY MR. HOOD:
Q. This right here. It's got 6/12/05, is that correct?
A. Yeah, it looks like it.
Q. Okay. And the next page it looks a little bit better.
A. Yeah.
Q. You're the witness. I want you to confirm it, not me.
A. All right, yes. You've got the second page, is that it?
Q. Yes, ma'am, I just handed you the second page.
A. Okay. Yeah. Well, it's '05 and it's 6 something but it has to be 12 because we went in December.
Q. Okay. So you went -- oh, I see, you went in December of '05?
A. Right.
Q. So it's some date in December of '05, not June?

A. Yes, sir.
Q. And then the next visit?
A. I think it said D-E-C. That might be D-E-C.
Q. Oh, you think it's written -- I see, D-E-C, just like the next one has got February in the middle, it's 6 December '05?
A. Right.
Q. And then the next one is 28 February '06?
A. Yeah, I can honestly say the way doctors write it's a miracle more people aren't dead.
Q. But for the record the two documents I've read here, the dates are correct?
A. Yes, sir.
Q. Okay. Those were Flavin 1 and 2.
A. Correct.
Q. Now, back to your letter.
A. Yes, sir.
MR. BAKER: Do you want to take a second so we can place an order or what? We'll stop for a minute.
(A recess transpired.)
BY MR. HOOD:

Q. Let's talk about this letter.
A. Okay.
Q. Did you write it or did Liz write it?
A. No.
Q. You didn't help Liz type it up?
A. No, sir.
Q. Like so many things you didn't type it up and say sent to Dana?
A. No.
Q. You don't say Dana? Did she call you Dana or Doctor?
A. She calls me Dana. Some people call me Dana, some people call me Dana.
Q. In Charleston we call it Dana.
A. And my father used to say call me whatever you want as long as you call me to dinner.
Q. That's a good thing to say but then you might question what we're eating so I don't know if I want to call you to dinner. So let's look at this letter.
A. Yes, sir.
Q. You conclude that you consulted with Dr. Fahn in late '05 and we've just -- that was the December visit?
A. Yes, sir.

Q. And then again in February and we established that was February the 8th, two days later Mr. Murray's at your house?
A. Um-hum.
Q. Your answer is a yes?
A. No, it wasn't, it wasn't two days later, the date is wrong on there, it's the 28th, not the 8th. That's a typing error.
Q. Oh.
A. I'm sorry.
Q. There's a typo in your letter. You didn't make that typo, did Liz make that typo?
A. She didn't type it, sir.
Q. Wouldn't that letter help if it was -- this case if it says the 8th rather than the --
A. I have no idea.
Q. -- the real date, the 28th?
A. I have no idea. I only know it was the 28th that we went to Dr. Fahn's.
Q. Okay. We've now got his record.
A. Right.
Q. And it shows clearly the 28th.
A. Right. Right.
Q. Okay. So that's a mistake in your letter. Anything else in the letter that's wrong?

A. Yes, sir.
Q. What else in the letter is wrong?
A. I had met Liz on the 10th so I was referring to before, in other words, in years before I had never met Liz.
Q. I have never met his daughter before.
A. Right. Before the 10th but I didn't write down the 10th, I just wrote before.
Q. I see.
A. That was my mistake because I had not -- I had never met her.
Q. Right.
A. Until the 10th.
Q. Okay. So that's a mistake. Any other mistakes in the letter?
A. Not that I know of, sir. I apologize.
Q. Now, you say he asked you to witness something.
A. Bill.
Q. It really wasn't Bill, was it, wasn't it Liz?
A. No, it was Bill.
Q. She typed it up?
A. Yeah, but he gave it to me. I didn't know she typed it up, I had no idea.

Q. What were his exact words?
A. He said, can you witness something for me? And I said, sure. And he said, I'd like you to read it first. So I read it. I read it out loud, he looked at it again and then he signed it but that was it.
Q. And then you read it to him out loud?
A. Yeah.
Q. And there were two documents?
A. Um-hum. I didn't read the whole thing on the second document.
Q. What whole thing? Which document is the second one?
A. It was a more elaborate one from earlier. The first was the letter from Liz and the second one was --
Q. One says William Murray.
A. Um-hum.
Q. And the other one says Daddy. Which one were you talking about?
A. I read Daddy out loud.
Q. Okay. That's February -- it's dated February 9, '06?
A. Um-hum.
Q. The answer is yes?

A. Yes, sir.
Q. And so it's typed by somebody a day before it's read by you to him?
A. Right.
Q. And you read the entire letter?
A. Right. I just --
Q. Excuse me, 16 through 22?
A. Yeah.
Q. So you read all those pages?
A. Uh-huh. And then he looked at them.
Q. How long did he look at them?
A. He glanced through them for about 20 minutes.
Q. Both of them or just one?
A. He glanced through both of them but he looked through that one first and then he looked through the other one.
Q. For about 20 minutes?
A. Yeah.
Q. And did Liz look at either one of them?
A. She wasn't in the room.
Q. Who else was in the room?
A. Nobody.
Q. Just you and Bill?
A. Just Bill and myself and Sonny was in

the kitchen.
Q. Did Sonny look at these?
A. I have no idea. Not to my knowledge.
Q. Did he see Bill sign them?
A. No, he didn't.
Q. Did anyone besides you see Bill sign them?
A. No.
Q. So Liz didn't see him sign them either?
A. No.
Q. I'm correct?
A. You're correct because she wasn't in the room.
Q. Okay. So the only two people in the room that saw -- when this was signed were yourself and Bill Murray?
A. Right. Right.
Q. There was no videotape of him signing it?
A. No.
Q. There was no recording of him signing it?
A. No.
Q. There was no one looking through a door or window or could overhear him signing it?

A. No.
Q. It was you and he and the door was closed and you were at your house?
A. Yes, sir.
Q. Was he seated in a chair?
A. Yes.
Q. The whole time?
A. Um-hum.
Q. The answer is yes?
A. Yes, sir. Sorry.
Q. Okay. And the other document, which is Flavin 13 through 15, did you read that one to him?
A. Can I see the document, sir?
Q. Yeah. It says William Murray at the top.
A. Um-hum.
Q. These are the ones you looked at before today to get ready for today.
MR. KEFALOS: Let her see it if she wants to see the document.
THE WITNESS: I'd like to see the document.
BY MR. HOOD:
Q. Whatever. You have a perfect right to see it.

MR. BAKER: George gave it to her.
BY MR. HOOD:
Q. Okay. Now, this one with William Murray at the top, Flavin 13 to 15, did you read that one out loud to him?
A. Yes, I did.
Q. Did he comprehend it?
A. He certainly did.
Q. Why in the world is he doing this when he's already done it?
A. I have no idea. As I said, I never questioned Bill's reason for this.
Q. He was a very smart lawyer?
A. Very smart lawyer.
Q. He knew that he had in place everything he needed for his healthcare?
A. No, he didn't, sir.
Q. Written by him?
A. No, he didn't sir. He did not and he told me he didn't, sir. I am sorry but that's exactly what he said to me.
Q. What was his change that he didn't?
A. He felt that he was not being -- that his needs were not being properly met and he felt that he was not getting the proper healthcare.

That's what he said to me.
Q. Okay. Did you have any verification or confirmation of that from any other source?
A. Only from Dr. Fahn when he was testing him and checking him that obviously he was -- he was blocking in his walking and having trouble with his medications, that's -- when I saw that, I realized that he was -- he needed more guidance in this and that's why I took him to Dr. Fahn. He asked me if I would find him a neurologist and I did.
Q. Did Dr. Fahn change his medication?
A. Yes, he did.
Q. Did it help him?
A. It helped him when he took it and when he received it at the proper dosage.
Q. Okay.
A. But I saw changes in him that indicated that he was not always receiving the proper dosage and that's what Sonny said too. Lucky may have mentioned it also and Lucky mentioned that he was confused sometimes and that was most likely related to Helen getting confused because she was confused and she was -- she was going through some behavioral changes that could have been indicative

of dementia, I don't know, because I never -- I never evaluated her, this is what they told me. And they said that they were having trouble because of the fact that they wanted to take him to therapy, she'd keep him in bed all morning and that she was giving medication, sometimes forgetting it or too much and so this is what -- I was concerned about this because I felt that this was compromising his ability essentially.
Q. Why did you care?
A. As I said, I loved Bill very much, I respected him tremendously for what he had done for so many people for the -- for his help with Dr. Olds, his help with Jim Watson, his support of many, many individuals.
Q. Well, you're not suggesting that Helen did anything intentionally?
A. I don't think Helen did anything intentionally at all, I think she was confused.
Q. Was she like you, devoted to him and loved him?
A. That was my impression.
Q. That's mine too and nothing in between?
A. No.
Q. Did you ever talk to any other doctors

about Mr. Murray's healthcare besides this guy -- the doctor you took him to?
A. I don't recall if I spoke to the other colleague. There was another doctor in New York and I don't recall his name.
Q. Well, let's -- you mention in your letter to the doctor that you liked the doctor in his office when you wrote to get the medical records.
A. Um-hum. Oh, Seabrook -- oh, Dr. Severt. Yeah. Well, they were together.
Q. Right. Dr. Severt and Dr. Fahn?
A. Right.
Q. Any other doctors that you ever had any communication with orally, in writing, by telephone or any way?
A. Not that I recall. I did meet one other colleague but I don't remember his name and that was -- I don't even remember what hospital that was.
Q. Treating Mr. Murray?
A. Yes.
Q. What about the doctor that was treating him at MUSC, did you ever talk to him?
A. No, I never met him.

Q. Have you ever heard of Dr. Bergman?
A. Yes, I've heard of him.
Q. Have you looked up his CV on the Internet?
A. No.
Q. It's thicker than yours.
A. Hmm. That's nice.
Q. Yeah. And he's board certified in things which you are not?
A. Dr. Fahn is also.
Q. Yeah, Dr. Fahn is also. What's he board certified in?
A. Dr. Fahn?
Q. Yeah.
A. He's a neurologist.
Q. So he's a -- he is a board certified neurologist?
A. As far as I know.
Q. Okay. Do you have any reason to question the quality, correctness or accuracy of the care by Dr. Bergman?
A. I was noticing that he was having more runoffs with what they call it, fall-offs, freezing after meals, standing up and not being able to move forward. I was very concerned that he wasn't -- he

wasn't being properly medicated and perhaps because he was in New York and Bergman was down here and didn't get a chance to observe, I don't know. I don't know the reason why but Bill had asked me to find another neurologist for him, that he could get a second opinion and see if he could be helped.

Q. Did Dr. Bergman and Dr. Fahn or Dr. Severt ever communicate together to your knowledge?

A. I have no idea. I don't know.

Q. Did you ever suggest that to any of them?

A. Yes, I did.

Q. To whom?

A. To Dr. Fahn.

Q. What did you suggest?

A. I said, you might want to get the records from Dr. Bergman from South Carolina.

Q. And he never did?

A. I don't know.

Q. Well, you wrote him and asked him?

A. Right.

Q. To get the records on your patient?

A. Right. Right.

Q. Bill Murray?

A. Well, then obviously he didn't.

Q. And you got the records and they didn't include anything from MUSC?

A. No.

Q. Have you ever seen the records from MUSC?

A. No, sir.

Q. And do you know anything about Dr. Bergman and his qualifications?

A. No, I only know Bill asked me to find him another neurologist and I did. I did exactly what he asked me to do.

Q. Okay. He was very sick and he wanted a second opinion?

A. Yes.

Q. That's very common?

A. Yes.

Q. But as to that second opinion and the person you took him to, that person never went further and got his medical records from MUSC?

A. No.

Q. I'm right, correct?

A. As far as -- as far as I know.

Q. And did that doctor you took him to, did they do any lab work, did they draw any blood?

A. I don't think so. I don't think so.

Q. So they looked at him, examined him and talked to him?

A. Right.

Q. And that was it twice?

A. They did rather extensive examining of him too. In fact, Dr. Fahn even had him stand in the hallway and had him close his eyes and see how his balance was, et cetera, et cetera, he was very thorough with him.

Q. A neurological exam?

A. Right.

Q. Which you know nothing because you're not a neurologist?

A. No, sir, I studied neurology, also studied psychiatry in Germany, so yes, I did study neurology.

Q. But not in America?

A. No, I studied neuropsychology in America.

Q. How was Germany -- what did you just say?

A. Psychiatry?

Q. Yeah. Is that -- what was the word you said you studied in Germany?

A. Psychiatry. Neurology. They were part of the medical records for education.

Q. Did those people come around to modern day science in Germany?

A. I would say that in many ways, yes, in general, yes, they are very good. They're very good. They're very thorough but they cover all the international meetings and their top chiefs of their departments, et cetera, and the residents all attend the top international meetings in their disciplines.

Q. Out of curiosity, were any of these doctors that you worked with Nazis during the war?

A. I don't think they would let me know if they were. I think most of them moved off to Argentina.

Q. Yeah.

A. We have a few moving back illegally.

Q. Okay. So what testing and what care was given to Mr. Murray at MUSC, you don't know?

A. No, sir, I don't.

Q. And you've never looked at those records?

A. No, I didn't.

Q. You never sought to ask for those

records on your patient, Bill Murray?
A. No, because Bill said he just wanted another neurologist and another opinion and I didn't feel that it was relevant to go ahead.
Q. Okay. So you're not familiar with the Unified Parkinson's Disease Rating Scale?
A. No.
Q. Now, back to your letter. So far we've got two mistakes. Any more mistakes?
A. Not that I know of.
Q. 11 and 12. Did you know what you were witnessing when you witnessed it? The words you use here are something.
A. Yes. I didn't know before I read it.
Q. And after you read it what did you understand you had read?
A. Well, I had read essentially that what his interests were for his health. And I didn't question Bill when he asked me to witness this, I didn't question him.
Q. Okay. And that was one document. How about the other document, what was your understanding of it?
A. Which is the second document?
Q. Well, one says William Murray, the

other says Daddy.
A. Uh-huh. Right.
Q. What about the one that says Daddy, February 9, '06?
A. Right.
Q. Did you see that before you had him walk in your house?
A. No, I had no idea.
Q. And did Pam print it out or Liz print it out while he was at your house?
A. No, nobody printed it out and I had no idea who wrote it.
Q. Okay. Liz has now admitted to you that she wrote it?
A. Later on she said she did but I had no idea when I first looked at it who wrote it or anything about it.
Q. Now, he signs it in a room where just you are present. You witness it at the time, just the two of you in the room?
A. Yes, sir.
Q. And then Liz witnesses it. How does that happen?
A. Afterwards, I guess.
Q. So you all leave the room or she comes

into the room?
A. I don't remember. I remember him signing it and I remember my signing it.
Q. Why did you put a date under your signature?
A. Because I wanted to make sure the date was recorded.
Q. Why?
A. Well, whenever I sign anything, I want to have a date on it. Don't you think it's a good idea?
Q. Liz didn't seem to think it was a good idea.
A. Well, I did.
Q. Nor did Mr. Murray.
A. Well, they didn't have one on there but I felt it was important under my name. And whenever I sign something, I try to have a date under it so I can try and remember when I did it.
Q. Okay.
A. I found it unusual that he asked me to witness this.
Q. I do too.
A. But he did. And I thought, why me, why not James. And he seemed to think that I was a

nonbiased, nonpartisan individual and he's known me for years, he trusted me and he knew that I cared about him and his health.
Q. But you hadn't seen him in a long time?
A. Well, I'd seen him throughout the winter -- I mean with the -- taking him to the doctors and so on and so forth.
Q. Two times, once before, once after this signing?
A. Right.
Q. That's it?
A. No, I saw him at Christmastime with Courtney, I saw him at Thanksgiving.
Q. One day, two hours, four hours?
A. More like four or five.
Q. Each time or total?
A. Each time.
Q. Christmas day?
A. No, no, no, sir. It was sometime around Christmas but --
Q. Around Christmas?
A. Yeah. James would know.
Q. Have you listened to any other recordings that Liz has of anyone saying anything about any of the things I've been asking about?

A. No, sir. Didn't know she had recordings.
Q. I thought she told you she had recordings.
A. She told me she had recordings of her father when he went into the hospital that he wanted me to come, that was all I knew, but I didn't hear any of it.
Q. Now, what safe place did you put the documents?
A. I put them in my office.
Q. That's a safe place?
A. Well, if you saw my office you will realize that it's a safe place because there's so much stuff in there and so much information, et cetera, and I know where everything is but nobody else does.
Q. Is it as clean as this desk was before we started?
A. No.
Q. So how is it going to be a safe place?
A. Because I have files. I have boxes of files for every single cancer disease and every other disease and the research and the literature and so on, so forth, and they're all marked so this

was in neurology.
Q. So this was put -- his file was put under neurology?
A. Um-hum.
Q. Your answer is yes?
A. Yes, sir. Sorry.
Q. And that was a safe place?
A. Yes.
Q. How big was the neurology?
A. Neurology file?
Q. However many files you had under neurology.
A. I had about -- about 15, 15 files.
Q. 15 files?
A. Yes.
Q. And did that take a box?
A. Yes.
Q. Or more?
A. A box. It's a small box.
Q. And who were the other -- or what were the other items in there besides Mr. Murray?
A. There were articles on Parkinson's disease, articles on heavy metal toxicity in the substantia nigra and some of the literature in relationship to toxicity in Parkinson's disease.

Q. Did you ever learn anything from any of those articles that was significant to the quality of life or health of Mr. Murray?
A. Yes, I did.
Q. What did you learn?
A. Well, I learned first of all that in neurological diseases the inflammation is a chronic inflammation and I had recommended to Mr. Murray that he take certain antioxidants and antiinflammatory substances.
Q. Anything else?
A. Natural.
Q. You told me about that.
A. Diet.
Q. Anything else?
A. Yeah, diet also. I recommended to him for diet blueberries increase stem cell turnover the brain can help to repair.
Q. So we all ought to be eating blueberries?
A. Yes, sir.
Q. Do you eat them every day?
A. I try to eat blueberries as much as possible as long as they're not sprayed or contaminated blueberries.

MR. KEFALOS: I eat them every day.
MR. SMITH: It's obvious.
MR. KEFALOS: Every day.
(A recess transpired.)
BY MR. HOOD:
Q. Why did you add this sentence to your exhibit, to your Flavin 12, why did you add this sentence, I believe he was entirely clear so far as his intentions and will to sign both documents? Who asked you to put that in there and why did you put that in there?
A. Which letter is that?
Q. The one and only letter I've shown you that you've been looking at.
A. Oh, yes. Because he was.
Q. Yeah, but what has that got to do with anything in the world? Who cares in February of '09 whether Mr. Murray was entirely clear and his mind was clear? What's the reason for putting those two or three sentences in there about that?
A. Well, because I wanted to make sure that it was known that he was clear at that time.
Q. Well, who was questioning he wasn't clear?
A. Well --

Q. Other than Liz and Pam?
A. Well, Liz and Pam. I don't know. They -- I put that in because that's how I saw it. Now, you're telling me that Liz was saying he wasn't clear and I am saying he was clear.
Q. Yeah, I'm not telling you that, that's what they put in a court document.
A. Oh, okay.
Q. No, you're telling me from the court document, not that you're saying, right. I rephrase my question. They're telling the court this man is not competent to run a trust.
A. Right.
Q. He doesn't know where he is, he's confused, he has been like this since '99.
A. I didn't agree with them.
Q. Why would they do that? Why would they cost his estate, his family all of the fight and all of the expense, millions of dollars that they would have inherited?
A. Mr. Hood, I can't ask -- I can't answer why somebody does something.
Q. I can't either. There's nothing rational about it to me.
A. I have no idea either.

Q. Did she ever talk to you about it, I'm going to make this as miserable for Hilton and Catherine as I can make it? Because that's what they've been doing.
A. Well, that's --
Q. But you've helped them?
A. I am only trying to tell the story, the truth that I know. I cannot answer for other people, their intentions or why they do things or what they did, it's -- that's not why I'm here, I am merely here to tell you what I know.
Q. What's hard to understand looking at the outside looking in here is that you feel that way --
A. Right.
Q. -- and you loved him and thought a lot of him --
A. Yes.
Q. -- as did other people --
A. Um-hum.
Q. -- yet you're helping the two people that have made his life miserable and basically deteriorated his health enormously --
A. No.
Q. -- by this litigation. Do you know

about that?
A. No, sir, I do not.
Q. Did they ever tell you how much they were deteriorating his health by accusing him of being incompetent to be a trust?
A. No, sir.
Q. The chairman of a trust?
A. No, sir.
Q. Have you read the pleadings? Because it's right there in black and white where they say all this, not Bobby, I'm not saying it, it's them that say it.
A. I hear you but I don't have access to this.
Q. Doesn't that offend you that they would do this to their father that you loved?
A. I wasn't there.
Q. Well, you're here today.
A. I'm here today but I did not know about the details of the information.
Q. Well, it's pretty bad. Does that change your way of looking at this situation?
A. Sir, I am not here to evaluate Liz, Pam or the entire family, I am only here to tell you that I witnessed this and that was what Bill wanted

and that's exactly what I did.
Q. Okay. Now, you go on to say, and Liz called me to ask if I still had the documents. Why would you in '09 have documents that go back to '06 on a dead man?
A. Because I kept them in my files.
Q. Well, they didn't have anything to do with his Parkinson's.
A. No, but Bill wanted me to keep a copy.
Q. So you didn't have the original, you had a copy?
A. Well, I don't know -- no, I had the original. I didn't have the copy.
Q. You said Bill wanted you to keep a copy?
A. Well, I meant keep the copies that he had signed essentially.
Q. So you were the custodian of the original?
A. Yeah.
Q. Not his lawyer?
A. No.
Q. Not him?
A. No.
Q. Not Liz?

A. Hum-um.
Q. The answer to all those questions are no?
A. No, sir.
Q. Just you?
A. Yeah, just me.
Q. Well, then why do you need Liz's approval? Why is Liz in control of what you're doing?
A. Liz isn't in control of what I'm doing.
Q. That's what you said, I'm happy to give this over to you after having received Elizabeth's approval.
A. Well, I didn't --
Q. Why is she controlling you?
A. She wanted me to send it off.
Q. To whom?
A. She's not controlling me. To Mr. Kefalos.
Q. George is okay. We know who you're talking about.
A. Okay.
Q. Now, did you send it to him?
A. I sent it to you, didn't I?
MR. KEFALOS: Yeah.

THE WITNESS: Yes.
BY MR. HOOD:
Q. Was that another letter or was it this letter?
A. I think it was this letter, wasn't it?
MR. KEFALOS: I'm sorry, what are you talking about sending it to? There was a registered mail letter.
BY MR. HOOD:
Q. This letter is registered mail and you write, I am happy to give this over to you after having received Liz's approval. Now, when did you give it to him? Because you're not sending it with this letter.
MR. KEFALOS: It did come with the letter.
MR. HOOD: It came with the letter?
MR. KEFALOS: It came with the originals.
BY MR. HOOD:
Q. Now, let's look at the original. Is that your signature on that letter?
MR. BAKER: That's what, Flavin Number 12?
MR. HOOD: Flavin 12.

MR. KEFALOS: But it's not Bates stamped but it is Flavin 12.
MR. BAKER: That's the original of it?
BY MR. HOOD:
Q. Is that your signature?
A. Yes, sir.
Q. Any doubt in your mind?
A. No.
Q. That's it, that's the way you sign your name?
A. Right.
Q. And you put MD after your name?
A. Yes. It's Dr.med.univ, however.
Q. What does that mean?
A. It's a doctor degree in Austria for medicine so it's a medical degree but it's a doctor of medicine.
Q. How long have you been putting MD after your name?
A. Ever since I got back to the States when nobody knew what Dr.Med.Univ. And then I had a long talk with Hornblower and Weeks and he said, you can't do that, you have to put Dr.Med.Univ., ever since that.
Q. What did this have?

A. That has MD.
Q. And that's wrong?
A. That's equivalent to a Dr.Med.Univ. for the United States but it's the official title in Germany is Dr.Med., Doctor of Medicine. Dr.Med.Univ. is what it's called.
Q. When you signed this in '09, you did not qualify that you were not a medical doctor to Mr. Kefalos, did you?
A. I didn't say I was, sir.
Q. You signed it an MD?
A. Well, I have a medical degree, sir. That is my official medical degree.
Q. Does that degree say you are a medical doctor?
A. Yes, it does.
Q. Which degree is that that gives you that status?
A. That's Dr.Med.Univ. from Leopold-Franzens University.
Q. What year?
A. 1999.
Q. Okay.
A. The last page I think on there.
Q. Okay. Why did you send this letter by